



Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2005

No. 82, 2005

**An Act to amend the law relating to
superannuation, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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An Act to amend the law relating to superannuation, and for related purposes

[Assented to 29 June 2005]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Superannuation Legislation
Amendment (Choice of Superannuation Funds) Act 2005*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	29 June 2005
2. Schedule 1, item 1	1 July 2005.	1 July 2005
3. Schedule 1, items 2 and 3	Immediately after the commencement of Schedule 1 to the <i>Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004</i> .	1 July 2005
4. Schedule 1, item 4	1 July 2005.	1 July 2005
5. Schedule 1, items 5 to 14	Immediately after the commencement of Schedule 1 to the <i>Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004</i> .	1 July 2005
6. Schedule 2	1 July 2005.	1 July 2005

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Choice of superannuation funds

Small Superannuation Accounts Act 1995

1 At the end of section 25

Add “if, and only if, the payment is made before 1 July 2006”.

Superannuation Guarantee (Administration) Act 1992

2 Subsection 19(2E)

After “The Commissioner may”, insert “, after taking account, wherever appropriate, of the operation of section 19A,”.

3 Paragraph 20(2)(c)

After “end of the quarter,”, insert “there is a high probability that”.

4 Paragraph 23(13)(a)

After “in respect of an employee”, insert “before 1 July 2006”.

5 After paragraph 32C(2)(b)

Insert:

(ba) the fund either:

- (i) is specified under section 32P in the standard choice form provided as the fund to which the employer will contribute for the benefit of the employee if the employee does not make a choice or will be so specified within the time specified in section 32N for the provision of a standard choice form to the employee; or
- (ii) if the employer has not contributed, and cannot contribute, to a fund (the *first employer fund*) that was so specified or that was purportedly so specified—will be so specified within 28 days of the employer becoming aware that the employer cannot contribute to the first employer fund; and

6 After section 32C

Insert:

32CA Certain contributions taken not to satisfy the choice of fund requirements

Despite section 32C, a contribution to a fund by an employer for the benefit of an employee is taken not to comply with the choice of fund requirements if the employer imposes a direct cost or charge on the employee as a consequence of having to contribute to that fund.

7 After paragraph 32D(c)

Insert:

- (ca) if the time is a time before 1 July 2006—it is the account that is continued in existence under section 8 of the *Small Superannuation Accounts Act 1995* as the Superannuation Holding Accounts Special Account; or

8 Subsection 32E(1) (definition of *fund*)

Repeal the definition, substitute:

fund means:

- (a) a superannuation fund; and
- (b) a superannuation scheme; and
- (c) an RSA;

and, until immediately before 1 July 2006, includes the account that is continued in existence under section 8 of the *Small Superannuation Accounts Act 1995* as the Superannuation Holding Accounts Special Account.

9 After subsection 32F(1)

Insert:

(1A) If:

- (a) an employer has offered an employee a choice of fund before 1 July 2005; and
- (b) the employee has chosen a fund in accordance with the choice of funds that is offered; and
- (c) the limitations on that choice are consistent with section 32G or, if the choice was made before the commencement of that section, would have been consistent with section 32G if the section had been in force at the time the choice was made;

then, for the purposes of this Part, any fund chosen by the employee is taken to be the chosen fund for the employee with effect from:

- (d) 1 July 2005; or
 - (e) a date that is 2 months after the fund is so chosen (unless the employer determines an earlier time after 1 July 2005 but within that 2 months);
- whichever last occurs.

10 After subsection 32N(5)

Insert:

(5A) An employer must also give a standard choice form (the *updated standard choice form*) to an employee if:

- (a) the employer has specified a fund (the *employer fund*) in a standard choice form as the fund to which the employer will contribute under subsection 32C(2) in the event of the employee failing to make a choice of fund; and
- (b) the employer discovers, after giving an employee the standard choice form, that the employer cannot contribute to the employer fund for the benefit of the employee.

The updated standard choice form must be given within 28 days after the employer first becomes aware that the employer cannot contribute to the employer fund for the benefit of the employee.

11 At the end of section 32NA

Add:

- (3) Subject to subsections 32N(3) and (4), an employer is not required under section 32N to give an employee a standard choice form if:
 - (a) the employee has chosen a fund before 1 July 2005; and
 - (b) the fund so chosen is to be taken, in accordance with subsection 32F(1A), to be the chosen fund for that employee.
- (4) An employer is not required under section 32N to give an employee a standard choice form if the employee:
 - (a) is a member of an unfunded public sector scheme; and
 - (b) is not a Commonwealth employee who is a member of the CSS or the PSS.

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- (5) An employer is not required under section 32N to give an employee a standard choice form if the employee ceases to be an employee before the end of the period for giving a standard choice form to the employee.
 - (6) An employer is not required under section 32N to give an employee a standard choice form if:
 - (a) it is a condition of the employment of that employee that the employee choose a fund from funds that include all funds that are eligible choice funds for the employer at the time the choice is made; and
 - (b) the employer does not have an arrangement to pay contributions to a fund for the benefit of an employee in the event that the employee failed or refused to choose a fund.
 - (7) An employer is not required under section 32N to give an employee a standard choice form during a quarter if:
 - (a) the employee is a defined benefit member of a defined benefit superannuation scheme; and
 - (b) subsection 20(2) is satisfied in relation to that scheme and that quarter.
 - (8) An employer is not required under section 32N to give an employee a standard choice form during a quarter if:
 - (a) the employee is a defined benefit member of a defined benefit superannuation scheme; and
 - (b) subsection 20(3) is satisfied in relation to the defined benefit that has accrued to that member.
 - (9) An employer is not required under section 32N to give an employee a standard choice form if:
 - (a) the employee is a defined benefit member of a defined benefit superannuation scheme; and
 - (b) the employee would be entitled, on the employee's retirement, resignation or retrenchment, to the same amount of benefit from the defined benefit superannuation scheme, whether or not the employee had contributions made by the employer for his or her benefit to a fund other than the defined benefit superannuation scheme.

Superannuation Industry (Supervision) Act 1993

12 Subparagraph 6(1)(a)(iv)

Repeal the subparagraph, substitute:

- (iv) Part 7 (other than sections 64A and 68A);

13 Subparagraph 6(1)(c)(i)

Repeal the subparagraph, substitute:

- (i) sections 64A and 68A; and

14 Subparagraph 6(1)(e)(i)

Repeal the subparagraph, substitute:

- (i) Parts 4, 5, 7 (other than section 68A) and 8;

Schedule 2—Retirement savings accounts

Retirement Savings Accounts Act 1997

1 After subsection 78(1)

Insert:

- (1A) However, subsection (1) does not apply in relation to a supply, or offer to supply, of a kind prescribed in the regulations for the purposes of this subsection.

2 After subsection 78(2)

Insert:

- (2A) However, subsection (2) does not apply in relation to a supply, or offer to supply, of a kind prescribed in the regulations for the purposes of this subsection.

*[Minister's second reading speech made in—
House of Representatives on 26 May 2005
Senate on 14 June 2005]*

(72/05)