



Australian Government  
Australian Taxation Office

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# *Superannuation Guarantee (Administration) Act 1992*

## Legislative Instrument

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### Explanatory Statement

#### **General Outline of Instrument**

This instrument revokes the instrument registered on 21 September 2005 (Legislative Instrument F2005L02718).

The instrument sets out revised written guidelines the Commissioner of Taxation (the Commissioner) must have regard to in making a decision whether to reduce the amount of the increase in an employer's individual superannuation guarantee shortfall (the 'choice shortfall') for an employee for a quarter under the *Superannuation Guarantee (Administration) Act 1992*.

The instrument is made under subsection 21(1) of the *Superannuation Guarantee (Administration) Act 1992*.

The instrument will be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

#### **Date of effect**

This instrument replaces Legislative Instrument F2005L02718 with effect from the date of registration.

#### **What is this instrument about:**

This instrument is made by the Commissioner pursuant to the *Superannuation Guarantee (Administration) Act 1992*. It contains revised written guidelines the Commissioner must have regard to in making a decision whether to reduce an employer's 'choice shortfall' for an employee for a quarter under the Act.

#### **What is the effect of this instrument:**

This instrument provides revised written guidelines the Commissioner must have regard to when deciding whether to reduce the choice shortfall.

#### **Background:**

The choice of fund requirements form part of the *Superannuation Guarantee (Administration) Act 1992*. The requirements took effect from 1 July 2005.

However, there are two significant changes which affect employers and the way they meet their choice of fund requirements, both with effect from 1 July 2006.

- Choice of fund has been extended to more employees.
- Some funds (including funds that are employer funds and chosen funds under choice of fund) are closing prior to the introduction of new licensing rules.

This instrument simply extends the introductory period for a further 12 months to allow employers sufficient opportunity to understand and comply with these changes.

Subsections 19(2A) and 19(2B) of the *Superannuation Guarantee (Administration) Act 1992* give rise to an increase in the amount of an employer's individual superannuation guarantee shortfall for a quarter where the employer makes contributions to a complying superannuation fund or retirement savings account but does not comply with the choice of fund requirements.

Under subsection 19(2E), the Commissioner may reduce the choice shortfall in part or in full. In making a decision under subsection 19(2E), the Commissioner is required by section 21 to have regard to written guidelines.

This instrument sets out revised guidelines the Commissioner will have regard to when making a decision under subsection 19(2E).

In order to assist the public and ATO officers, the Commissioner will also revise Law Administration Practice Statement PS LA 2005/18 to explain this instrument.

**Consultation:**

There was no public consultation undertaken in the development of this revised instrument. However, the guidelines have been subject to targeted consultation with key industry groups. No adverse comments were received. The Commissioner has also consulted with various stakeholders within the Tax Office in relation to the contents of this instrument.

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9 June 2006

**Commissioner of Taxation**

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**Subject References:**

Individual superannuation guarantee shortfall  
choice of fund requirements

**Legislative References:**

*Superannuation Guarantee (Administration) Act 1992*  
*Legislative Instruments Act 2003*