



Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004

No. 102, 2004

**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 30 June 2004]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Superannuation Legislation
Amendment (Choice of Superannuation Funds) Act 2004*.

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.	30 June 2004
2. Schedule 1	1 July 2005.	1 July 2005
3. Schedule 2	The day on which this Act receives the Royal Assent.	30 June 2004

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Retirement Savings Accounts Act 1997

1A Division 3 of Part 5

Repeal the Division.

Superannuation Guarantee (Administration) Act 1992

1 Subsection 5(1)

Omit “Commonwealth is”, substitute “Commonwealth, Commonwealth Departments and untaxable Commonwealth authorities are”.

2 Subsection 5(2)

Repeal the subsection, substitute:

- (2) However, subject to this Act and to such modifications as are prescribed, this Act applies in all other respects, in respect of any matter or thing in respect of the employment of a Commonwealth employee, as if:
 - (a) the employee were employed by the responsible Department and not by the Commonwealth; and
 - (b) the responsible Department were a company and each other Department, and each authority of the Commonwealth, were a company related to the responsible Department; and
 - (c) the responsible Department were a government body.
- (2A) In addition, subject to such modifications as are prescribed, this Act applies in relation to an untaxable Commonwealth authority in the same way as it applies in relation to a Commonwealth Department.
- (2B) The Finance Minister may give such directions in writing as are necessary or convenient to be given for carrying out or giving effect to this section and, in particular, may give directions in relation to the transfer of money within an account, or between

accounts, operated by the Commonwealth or a Commonwealth entity.

- (2C) Directions under subsection (2B) have effect, and must be complied with, notwithstanding any other law of the Commonwealth.

3 Subsection 5(3)

After “Commonwealth”, insert “, a Commonwealth Department or an untaxable Commonwealth authority”.

4 Subsection 5(4)

After “Commonwealth”, insert “, Commonwealth Departments or untaxable Commonwealth authorities”.

5 At the end of section 5

Add:

- (5) In this section:

Commonwealth Department means:

- (a) a Department of State; or
- (b) a Department of the Parliament; or
- (c) a branch or part of the Australian Public Service in relation to which a person has, under an Act, the powers of, or exercisable by, the Secretary of a Department of the Australian Public Service.

Commonwealth entity means:

- (a) an Agency (within the meaning of the *Financial Management and Accountability Act 1997*); or
 - (b) a Commonwealth authority (within the meaning of the *Commonwealth Authorities and Companies Act 1997*);
- that cannot be made liable to taxation by a Commonwealth law.

Finance Department means the Department administered by the Finance Minister.

Finance Minister means the Minister administering the *Financial Management and Accountability Act 1997*.

modifications includes additions, omissions and substitutions.

responsible Department, in relation to the employment of a Commonwealth employee, means:

- (a) where the remuneration in respect of that employment is or was paid wholly or principally out of money appropriated under an annual Appropriation Act—the Commonwealth Department in respect of which the money was appropriated; and
- (b) where the remuneration in respect of that employment is or was paid wholly or principally out of money appropriated under an Act other than an annual Appropriation Act:
 - (i) if the employee performs or performed the duties of that employment in, or in respect of, a Commonwealth Department—that Commonwealth Department; or
 - (ii) in any other case—the Department of State administered by the Minister who administers the Act under which that money was appropriated, insofar as the Act appropriated that money; and
- (c) where the remuneration in respect of that employment is or was paid wholly or principally out of money appropriated by the Constitution—the Finance Department.

untaxable Commonwealth authority means an authority of the Commonwealth that cannot, by a law of the Commonwealth, be made liable to taxation by the Commonwealth.

6 Subsection 6(1)

Insert:

Commonwealth employee means an employee of the Commonwealth.

7 Subsection 6(1)

Insert:

Commonwealth industrial award means:

- (a) an industrial award or determination made under a law of the Commonwealth; or

- (b) an industrial agreement approved or registered under such a law.

8 Subsection 6(1)

Insert:

CSS means the scheme known as the Commonwealth Superannuation Scheme.

9 Subsection 6(1)

Insert:

defined benefit member means a member entitled on retirement to be paid a benefit defined, wholly or in part, by reference to either or both of the following:

- (a) the amount of the member's salary:
- (i) at the date of the member's retirement or an earlier date;
 - or
 - (ii) averaged over a period before retirement;
- (b) a specified amount.

10 Subsection 6(1)

Insert:

defined benefit superannuation scheme has the meaning given by section 6A.

11 Subsection 6(1) (definition of *industrial award*)

Repeal the definition, substitute:

industrial award means a Commonwealth industrial award, a State industrial award or a Territory industrial award.

12 Subsection 6(1)

Insert:

PSS means the Public Sector Superannuation Scheme within the meaning of the *Superannuation Act 1990*.

13 Subsection 6(1)

Insert:

State industrial award means:

- (a) an industrial award or determination made under a law of a State; or
- (b) an industrial agreement approved or registered under such a law.

14 Subsection 6(1)

Insert:

Territory industrial award means:

- (a) an industrial award or determination made under a law of a Territory; or
- (b) an industrial agreement approved or registered under such a law.

15 Subsection 6(1)

Insert:

unfunded public sector scheme means a public sector scheme that is a defined benefit superannuation scheme:

- (a) in respect of which no fund is established for the purposes of the scheme; or
- (b) under which all or some of the amounts that will be required for the payment of benefits are not paid into the fund established for the purposes of the scheme or are not paid until the members become entitled to receive the benefits.

15A After subsection 19(2)

Insert:

- (2A) If an employer makes one or more contributions (the *no choice contributions*) to an RSA or a complying superannuation fund other than a defined benefit superannuation scheme, for the benefit of an employee during a quarter and the contributions are not made in compliance with the choice of fund requirements, the employer's *individual superannuation guarantee shortfall* for the

Schedule 1 Choice of superannuation funds

employee for the quarter is increased by the amount worked out in accordance with the formula:

$$25\% \times \left[\text{Notional quarterly shortfall} - \text{Amount worked out under subsection (1)} \right]$$

where:

notional quarterly shortfall is the amount that would have been worked out under subsection (1) if the no choice contributions had not been made.

Note 1: See also subsection (2E) and section 19A.

Note 2: Part 3A sets out the choice of fund requirements.

(2B) If:

- (a) a reduction of the charge percentage for an employee for a quarter is made under subsection 22(2) in respect of a defined benefit superannuation scheme; and
- (b) there is at least one relevant day in the quarter where, if contributions (the **notional contributions**) had been made to the scheme by the employer for the benefit of the employee on the day, the notional contributions would have been made not in compliance with the choice of fund requirements; and
- (c) section 20 (which deals with certain cases where no contributions are required) does not apply to the employer in respect of the employee in respect of the scheme for the quarter;

the employer's **individual superannuation guarantee shortfall** for the employee for the quarter is increased by the amount worked out in accordance with the formula:

$$25\% \times \left[\text{Notional quarterly shortfall} - \text{Amount worked out under subsection (1)} \right] \times \frac{\text{Number of breach of condition days}}{\text{Relevant days in quarter}}$$

where:

notional quarterly shortfall is the amount that would have been worked out under subsection (1) if no reduction were made under subsection 22(2) in respect of the scheme.

number of breach of condition days is the number of relevant days in the quarter on which, if a contribution had been made to the scheme by the employer for the benefit of the employee, those contributions would have been made not in compliance with the choice of fund requirements.

Note 1: See also subsection (2E) and section 19A.

Note 2: Part 3A sets out the choice of fund requirements.

(2C) The following days in a quarter are ***relevant days*** for the purposes of subsection (2B):

- (a) if the value of ***B*** in the formula in subsection 22(2) for the quarter is 1—every day in the quarter; or
- (b) in any other case—every day in the quarter that is in the shorter of the scheme membership period or the certificate period referred to in subsection 22(2).

(2D) A reference in subsections (2A) and (2B) to an employer's individual superannuation guarantee shortfall being increased includes a reference to the shortfall being increased from nil.

(2E) The Commissioner may reduce (including to nil) the amount of an increase in an employer's individual superannuation guarantee shortfall for an employee for a quarter under subsection (2A) or (2B).

Note: The Commissioner must have regard to written guidelines when deciding whether or not to make a decision under this subsection: see section 21.

15B Subsection 19(4)

Omit "An employer's individual superannuation guarantee shortfall", substitute "Despite subsections (1), (2A) and (2B), an employer's ***individual superannuation guarantee shortfall***".

15C After section 19

Insert:

19A Limit on shortfall increases arising from failure to comply with choice of fund requirements

- (1) Subject to subsections (2) and (3), if the total of the amounts worked out for an employee for a quarter under subsections 19(2A) and (2B) exceeds \$500, the total is taken to be \$500.
- (2) If:
 - (a) the total (the *previous amount*) of the amounts worked out for an employee under subsections 19(2A) and (2B) for previous quarters within an employer's notice period for an employee does not exceed \$500; and
 - (b) the current quarter is within the same employer's notice period for the employee; and
 - (c) the total of the amounts worked out under subsections 19(2A) and (2B) for the employee for the current quarter and the previous quarters within the employer's notice period for the employee exceeds \$500;then, the total of the amounts worked out under subsections 19(2A) and (2B) for the employee for the current quarter is taken to be the amount by which \$500 exceeds the previous amount.
- (3) If a quarter (the *later quarter*) in an employer's notice period for an employee follows a quarter within that notice period:
 - (a) to which subsection (1) applied; or
 - (b) to which paragraph (2)(c) applied;in respect of the employee, the total of the amounts worked out for the employee under subsections 19(2A) and (2B) for the later quarter is taken to be nil.
- (4) An *employer's notice period* for an employee:
 - (a) begins on:
 - (i) in the case of the first employer's notice period for the employee—the later of 1 July 2005 and the day on which the employee is first employed by the employer; or
 - (ii) in any other case—when the immediately preceding employer's notice period for the employee ends; and

- (b) ends on the day the Commissioner gives the employer written notice that the employer's notice period for the employee has ended.

15D After proposed section 19A

Insert:

20 Scheme in surplus or member has accrued maximum benefit

- (1) This section applies to an employer in respect of an employee in respect of a defined benefit superannuation scheme for a quarter if the employee is a defined benefit member of the scheme and either subsection (2) or (3) is satisfied.

Scheme in surplus

- (2) This subsection is satisfied if:
 - (a) the employee was a defined benefit member of the fund immediately before 1 July 2005 and has not ceased to be such a member since that time and before the start of the quarter; and
 - (b) an actuary has provided a certificate in accordance with regulations under the *Superannuation Industry (Supervision) Act 1993* stating that the employer is not required to make contributions for the quarter and there has been such a certificate covering all times since 1 July 2005; and
 - (c) an actuary has provided a certificate stating that, in the actuary's opinion, at all times from 1 July 2005 until the end of the quarter, the assets of the scheme are, and will be, equal to or greater than 110% of the greater of the scheme's liabilities in respect of vested benefits and the scheme's accrued actuarial liabilities.

The certificate under paragraph (c) must have been provided no earlier than 15 months before the end of the quarter.

Member has accrued maximum benefit

- (3) This subsection is satisfied if, after the start of the quarter, the defined benefit that has accrued to the employee will not increase other than:

- (a) as a result of increases in the employee's salary or remuneration; or
- (b) by reference to accruals of investment earnings; or
- (c) by reference to indexation based on, or calculated by reference to, a relevant price index or wages index; or
- (d) in any other way prescribed for the purposes of this paragraph.

Meaning of scheme's accrued actuarial liabilities and scheme's liabilities in respect of vested benefits

- (4) In this section:

scheme's accrued actuarial liabilities, at a particular time, means the total value, as certified by an actuary, of the future benefit entitlements of members of the scheme in respect of membership up to that time based on assumptions about future economic conditions and the future of matters affecting membership of the scheme, being assumptions made in accordance with applicable professional actuarial standards (if any).

scheme's liabilities in respect of vested benefits, at a particular time, means the total value of the benefits payable from the scheme to which the members of the scheme would be entitled if they all voluntarily terminated their service with their employers at that time.

15E Before section 22

Insert:

21 Guidelines for reducing an increase in an individual superannuation guarantee shortfall

- (1) The Commissioner must develop written guidelines that he or she must have regard to when deciding whether or not to make a decision under subsection 19(2E).

Note: Subsection 19(2E) allows the Commissioner to reduce (including to nil) the amount of an increase in an individual superannuation guarantee shortfall under subsection 19(2A) or (2B).

- (2) The guidelines are to be made available for inspection on the Internet.

16 At the end of subsection 23(2)

Add:

Note: In certain cases, the choice of fund requirements provide that the employee's notional earnings base is adjusted: see section 32Y.

17 At the end of subsection 23(3)

Add:

Note: In certain cases, the choice of fund requirements provide that the employee's notional earnings base is adjusted: see section 32Y.

18 At the end of subsection 23(4)

Add:

Note: In certain cases, the choice of fund requirements provide that the employee's notional earnings base is adjusted: see section 32Y.

19 At the end of subsection 23(4A)

Add:

Note: In certain cases, the choice of fund requirements provide that the employee's notional earnings base is adjusted: see section 32Y.

20 At the end of subsection 23(4D)

Add:

Note: In certain cases, the choice of fund requirements provide that the employee's notional earnings base is adjusted: see section 32Y.

21 At the end of subsection 23(5)

Add:

Note: In certain cases, the choice of fund requirements provide that the employee's ordinary time earnings are adjusted: see section 32Y.

22 After Part 3

Insert:

Part 3A—Choice of fund requirements

Division 1—Overview of Part

32A Purpose of Part

This Part sets out the circumstances in which contributions are made in compliance with the choice of fund requirements. This is important because an employer's individual superannuation guarantee shortfall for an employee for a quarter may be increased where contributions do not comply.

32B Structure of Part

The structure of this Part is as follows:

Structure of Part	
Division	Topic
Division 1	Overview of Part
Division 2	Which contributions satisfy the choice of fund requirements?
Division 3	Eligible choice funds
Division 4	Choosing a fund
Division 6	Standard choice forms
Division 8	Miscellaneous

Division 2—Which contributions satisfy the choice of fund requirements?

32C Contributions that satisfy the choice of fund requirements

Contributions to certain funds

- (1) A contribution to a fund by an employer for the benefit of an employee is made in compliance with the choice of fund requirements if the contribution is made to a fund that, at the time that the contribution is made, is:

- (a) a chosen fund for the employee (see Division 4); or
- (b) if the employee is not a Commonwealth employee who is a member of the CSS or the PSS—an unfunded public sector scheme.

Contributions to other funds

- (2) A contribution to a fund by an employer for the benefit of an employee is made in compliance with the choice of fund requirements if, at the time the contribution is made:
 - (a) there is no chosen fund for the employee; and
 - (b) the fund is an eligible choice fund for the employer; and
 - (c) the fund complies with the requirements (if any) set out in the regulations in relation to offering insurance in respect of death.
- (2A) Subsection (2) does not apply if the employer is required under section 32N to give the employee a standard choice form and the employer does not do this by the time specified in the subsection concerned. However, this subsection ceases to apply from the time that the employer gives the standard choice form to the employee.

Contributions to the CSS

- (3) A contribution to a fund by an employer for the benefit of an employee at a particular time is also made in compliance with the choice of fund requirements if the contribution is made to the CSS. However, this subsection does not apply if the law of the Commonwealth under which the contribution is made has been prescribed in relation to that time under regulations made for the purpose of this subsection.

Contributions to the PSS

- (4) A contribution to a fund by an employer for the benefit of an employee at a particular time is also made in compliance with the choice of fund requirements if the contribution is made to the PSS. However, this subsection does not apply if the law of the Commonwealth under which the contribution is made has been prescribed in relation to that time under regulations made for the purpose of this subsection.

Contributions under the Superannuation (Productivity Benefit) Act 1988

- (5) A contribution to a fund by an employer for the benefit of an employee at a particular time is also made in compliance with the choice of fund requirements if the contribution is made under the *Superannuation (Productivity Benefit) Act 1988*. However, this subsection does not apply if that Act has been prescribed in relation to that time under regulations made for the purpose of this subsection.

Contributions under AWAs or certified agreements

- (6) A contribution to a fund by an employer for the benefit of an employee is also made in compliance with the choice of fund requirements if the contribution is made under, or in accordance with, an AWA or a certified agreement under the *Workplace Relations Act 1996* or a certified agreement under the *Industrial Relations Act 1988*.

Contributions under certain Victorian agreements

- (7) A contribution to a fund by an employer for the benefit of an employee is also made in compliance with the choice of fund requirements if the contribution is made under, or in accordance with, an employment agreement that was in force under the **Employee Relations Act 1992** of Victoria and which continues to be in operation by virtue of section 515 of the *Workplace Relations Act 1996*.

Contributions under State awards

- (8) A contribution to a fund by an employer for the benefit of an employee is also made in compliance with the choice of fund requirements if the contribution, or a part of the contribution, is made under, or in accordance with, a State industrial award.

Contributions under prescribed legislation

- (9) A contribution to a fund by an employer for the benefit of an employee at a particular time is also made in compliance with the choice of fund requirements if the contribution is made under a law of the Commonwealth, of a State or of a Territory and the law is
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prescribed in relation to that time under regulations made for the purpose of this subsection.

Contributions made after employees cease employment

(10) If:

- (a) an employee ceases to be employed by an employer; and
- (b) after the employment ceases, the employer makes a contribution to a fund for the benefit of the employee and in respect of the employment;

then, for the purposes of this section, the contribution is taken to have been made immediately before the employment ceases.

Note: This section is used in determining if an individual superannuation guarantee shortfall is increased under subsection 19(2A) or (2B). Where subsection 19(2B) is relevant, the contributions referred to in this section are the notional contributions referred to in paragraph 19(2B)(b).

Division 3—Eligible choice funds

32D What funds are eligible choice funds?

A fund is an eligible choice fund for an employer at a particular time if:

- (a) it is a complying superannuation fund at that time; or
- (b) it is a complying superannuation scheme at that time; or
- (c) it is an RSA; or
- (d) at that time, a benefit certificate in relation to the fund is conclusively presumed under section 24, in relation to the employer, to be a certificate in relation to a complying superannuation scheme; or
- (e) contributions made by the employer to the fund at that time are conclusively presumed under section 25 to be contributions to a complying superannuation fund.

32E Meaning of *funds*—includes RSAs and schemes

(1) In this Part:

fund means:

- (a) a superannuation fund; and
 - (b) a superannuation scheme; and
 - (c) an RSA.
- (2) For the purposes of this Part, the holder of an RSA is taken to be a member.

Division 4—Choosing a fund

32F What is a chosen fund

- (1) If an employee wants a fund to be a chosen fund for the employee, the employee must give the employer written notice to that effect.

Note: A fund can only be a chosen fund if the employer is able to make contributions to the fund for the benefit of the employee (see subsection 32G(2)).

- (2) The fund becomes a chosen fund for the employee 2 months after the employee gives the notice to the employer or at such earlier time after the notice is given as the employer determines.
- (3) A fund (the *selected fund*) cannot become a chosen fund for an employee under this section if:
- (a) immediately before the employee gave the notice to the employer, the employee was a defined benefit member of a defined benefit superannuation scheme; and
 - (b) even if the selected fund were to become a chosen fund for the employee, 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 as the employee would be entitled if the selected fund were not a chosen fund for the employee.

32FA Employer may refuse to accept certain chosen funds

- (1) An employer may refuse to accept the fund chosen by an employee under section 32F if the employee does not provide, together with the notice under that section:
- (a) a written statement setting out:
 - (i) contact details for the fund; and

- (ii) any other prescribed information; and
 - (b) written evidence that the fund will accept contributions made by the employer for the benefit of the employee.
- (2) An employer may refuse to accept the fund chosen by an employee under section 32F if the employee has chosen another fund within the previous 12 months.

32G Limit on funds that may be chosen

- (1) The fund chosen by the employee must be an eligible choice fund for the employer at the time that the choice is made.
- (2) The fund chosen by the employee must be a fund to which the employer can make contributions for the benefit of the employee at the time that the choice is made.

32H When fund ceases to be a chosen fund

- (1) A fund (the *old fund*) ceases to be a chosen fund for an employee if:
 - (a) there is another fund that is a chosen fund for the employee; and
 - (b) the employee has not given the employer a written notice stating that the old fund continues to be a chosen fund for the employee.
 - (2) A fund also ceases to be a chosen fund if the employee requests the employer, under subsection 32N(3), to give him or her a standard choice form and the employer does not do this by the time specified in that subsection.
 - (3) A fund also ceases to be a chosen fund if it is impossible for the employer to contribute on behalf of the employee to the chosen fund. This may occur immediately after the fund becomes a chosen fund for the employee.

Example: The chosen fund is closed to new members or ceases to accept further contributions.
 - (4) A fund also ceases to be a chosen fund if the fund ceases to be an eligible choice fund for the employer. This may occur immediately after the fund becomes a chosen fund for the employee.
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Division 6—Standard choice forms

32N When a standard choice form must be provided

- (1) An employer must give a standard choice form before 29 July 2005 to each employee employed by the employer on 1 July 2005.
- (2) An employer must give a standard choice form to an employee within 28 days of the employee first commencing employment with the employer.
- (3) An employer must also give a standard choice form to an employee within 28 days of the employee giving the employer a written request to do so. However, a request is taken never to have been made if the employee has been given a standard choice form within the previous 12 months.
- (4) An employer must also give a standard choice form to an employee within 28 days of the employer becoming aware that there ceased to be any chosen fund for the employee because of:
 - (a) subsection 32H(3) (employer unable to contribute to fund);
or
 - (b) subsection 32H(4) (fund ceasing to be eligible choice fund).
- (5) An employer must also give a standard choice form to an employee if:
 - (a) the employer is making contributions, in accordance with subsection 32C(2), to a fund for the benefit of the employee; and
 - (b) the employer changes the fund to which the employer makes contributions, in accordance with that subsection, for the benefit of the employee.The standard choice form must be given within 28 days after the change.
- (6) An employer may also give a standard choice form at any time.

32NA When a standard choice form does not have to be provided

- (1) An employer is not required under section 32N to give an employee a standard choice form if the employee has chosen a
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fund under section 32F by the time specified in subsection 32N(1), (2), (3) or (4).

- (2) An employer is not required under section 32N to give an employee a standard choice form if:
 - (a) the employer is making contributions of a kind mentioned in subsections 32C(3) to (9) for the benefit of the employee; and
 - (b) the contributions are made in compliance with the choice of fund requirements.

32P Standard choice form

- (1) For the purposes of this Part, a *standard choice form* is a form that is in writing and that contains the following information:
 - (a) a statement that the employee may choose any eligible choice fund for the employer as a chosen fund for the employee;
 - (c) the name of the fund that the employer will contribute to if the employee does not make a choice;
 - (e) other information that is required, under the regulations, to be included in the form;
 - (g) if the employee is a member of a defined benefits scheme— information in relation to that scheme that is required, under the regulations, to be included.
- (2) The regulations may require additional information in relation to funds to be made available to employees and may prescribe where and when such information is to be made available.

Division 8—Miscellaneous

32X Application of Part to different employers of an employee

This Part applies separately to each employer of an employee. For example, a fund that is a chosen fund of an employee as a result of a standard choice form being given by an employer is only a chosen fund in relation to the operation of these provisions to that employer.

32Y Notional earnings base to continue to be used

- (1) This section applies if:
 - (a) an employer is contributing to a fund (the *choice fund*) that is a chosen fund of an employee; and
 - (b) it is reasonable to assume that, if the choice of fund requirements did not apply, the employer would instead have contributed to a different fund (the *other fund*) for the benefit of that employee; and
 - (c) contributions to the other fund would not have been covered by subsection 23(5).
- (2) This section also applies if:
 - (a) an employer is contributing to a fund (the *choice fund*) that is a chosen fund of an employee; and
 - (b) it is reasonable to assume that, if the choice of fund requirements did not apply, that a reduction in the charge percentage for the employer would have been made under subsection 22(2) as a result of a scheme (the *other fund*) for the benefit of that employee.
- (3) In working out the reduction in the charge percentage under subsection 23(2), (3), (4), (4A) or (4D) as a result of a contribution to the choice fund, the employee's notional earnings base is taken to be equal to the lesser of that notional earnings base and the amount that would have been the employee's notional earnings base if the contribution had been made to the other fund, or the reduction had been made under subsection 22(2) as a result of the other fund (as the case requires).
- (4) In working out the reduction in the charge percentage under subsection 23(5) as a result of a contribution to the choice fund, the employee's ordinary time earnings are taken to be equal to the lesser of those ordinary time earnings and the amount that would have been the employee's notional earnings base if the contribution had been made to the other fund, or the reduction had been made under subsection 22(2) as a result of the other fund (as the case requires).

32Z Contributions satisfy Commonwealth or Territory industrial award requirements

A requirement in a Commonwealth industrial award or a Territory industrial award that an employer make contributions to a superannuation fund on behalf of an employee is not enforceable to the extent that the employer instead makes the contributions on behalf of the employee, in compliance with this Part, to another superannuation fund that is a chosen fund.

32ZA Employers not liable for damages

An employer is not liable to compensate any person for loss or damage arising from anything done by the employer in complying with this Part.

Superannuation Industry (Supervision) Act 1993

23 At the end of Part 7

Add:

68A Conduct relating to fund membership

- (1) A trustee of a regulated superannuation fund, or an associate of a trustee of a regulated superannuation fund, must not:
 - (a) supply, or offer to supply, goods or services to a person; or
 - (b) supply, or offer to supply, goods or services to a person at a particular price; or
 - (c) give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply, or the proposed supply, of goods or services to a person;on the condition that one or more of the employees of the person will be, or will apply or agree to be, members of the fund.
- (2) However, subsection (1) does not apply in relation to a supply of a kind prescribed in the regulations for the purposes of this subsection.
- (3) A trustee of a regulated superannuation fund, or an associate of a trustee of a regulated superannuation fund, must not refuse:

- (a) to supply, or offer to supply, goods or services to a person; or
 - (b) to supply, or offer to supply, goods or services to a person at a particular price; or
 - (c) to give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply, or the proposed supply, of goods or services to a person;
- for the reason that one or more of the employees of the person are not, or have not applied or agreed to be, members of the fund.
- (4) However, subsection (3) does not apply in relation to a supply of a kind prescribed in the regulations for the purposes of this subsection.

Civil liability

- (5) If:
- (a) a person (the ***offender***) contravenes subsection (1) or (3); and
 - (b) another person (the ***victim***) suffers loss or damage because of the contravention;
- the victim may recover the amount of the loss or damage by action against the offender.
- (6) The action must be begun within 6 years after the day on which the cause of action arose.
- (7) This section does not affect any liability that the offender or another person has under any other provision of this Act or under any other law.

Schedule 2—Extension of definition of dependant

Income Tax Assessment Act 1936

1 Subsection 27A(1) (definition of *dependant*)

Repeal the definition, substitute:

dependant, in relation to a person (the *first person*), includes:

- (a) in subparagraph (3)(a)(ii), subsections (5), (5C) and (7) and paragraph (12)(a):
 - (i) any spouse or former spouse of the first person; and
 - (ii) any child of the first person; and
- (b) in any other case:
 - (i) any spouse or former spouse of the first person; and
 - (ii) any child, aged less than 18 years, of the first person; and
 - (iii) any person with whom the first person has an interdependency relationship.

2 Subsection 27A(1)

Insert:

interdependency relationship has the meaning given by section 27AAB.

3 After section 27AAA

Insert:

27AAB Interdependency relationship

- (1) Subject to subsection (3), for the purposes of this Subdivision, 2 persons (whether or not related by family) have an *interdependency relationship* if:
 - (a) they have a close personal relationship; and
 - (b) they live together; and
-

- (c) one or each of them provides the other with financial support;
and
 - (d) one or each of them provides the other with domestic support
and personal care.
- (2) Subject to subsection (3), for the purposes of this Subdivision, if:
- (a) 2 persons (whether or not related by family) satisfy the
requirement of paragraph (1)(a); and
 - (b) they do not satisfy the other requirements of an
interdependency relationship under subsection (1); and
 - (c) the reason they do not satisfy the other requirements is that
either or both of them suffer from a physical, intellectual or
psychiatric disability;
- they have an *interdependency relationship*.
- (3) The regulations may specify:
- (a) matters that are, or are not, to be taken into account in
determining under subsection (1) or (2) whether 2 persons
have an *interdependency relationship*; and
 - (b) circumstances in which 2 persons have, or do not have, an
interdependency relationship.

Retirement Savings Accounts Act 1997

4 Section 16

Insert:

interdependency relationship has the meaning given by
section 20A.

5 Subsection 20(1)

Omit “and any child of the person”, substitute “of the person, any child
of the person and any person with whom the person has an
interdependency relationship”.

6 After section 20

Insert:

20A Interdependency relationship

- (1) Subject to subsection (3), for the purposes of this Act, 2 persons (whether or not related by family) have an *interdependency relationship* if:
 - (a) they have a close personal relationship; and
 - (b) they live together; and
 - (c) one or each of them provides the other with financial support; and
 - (d) one or each of them provides the other with domestic support and personal care.
- (2) Subject to subsection (3), for the purposes of this Act, if:
 - (a) 2 persons (whether or not related by family) satisfy the requirement of paragraph (1)(a); and
 - (b) they do not satisfy the other requirements of an interdependency relationship under subsection (1); and
 - (c) the reason they do not satisfy the other requirements is that either or both of them suffer from a physical, intellectual or psychiatric disability;they have an *interdependency relationship*.
- (3) The regulations may specify:
 - (a) matters that are, or are not, to be taken into account in determining under subsection (1) or (2) whether 2 persons have an *interdependency relationship*; and
 - (b) circumstances in which 2 persons have, or do not have, an *interdependency relationship*.

Superannuation Industry (Supervision) Act 1993

7 Subsection 10(1) (definition of *dependant*)

Omit “and any child of the person”, substitute “of the person, any child of the person and any person with whom the person has an interdependency relationship”.

8 Subsection 10(1)

Insert:

interdependency relationship has the meaning given by section 10A.

9 After section 10

Insert:

10A Interdependency relationship

- (1) Subject to subsection (3), for the purposes of this Act, 2 persons (whether or not related by family) have an *interdependency relationship* if:
 - (a) they have a close personal relationship; and
 - (b) they live together; and
 - (c) one or each of them provides the other with financial support; and
 - (d) one or each of them provides the other with domestic support and personal care.
- (2) Subject to subsection (3), for the purposes of this Act, if:
 - (a) 2 persons (whether or not related by family) satisfy the requirement of paragraph (1)(a); and
 - (b) they do not satisfy the other requirements of an interdependency relationship under subsection (1); and
 - (c) the reason they do not satisfy the other requirements is that either or both of them suffer from a physical, intellectual or psychiatric disability;they have an *interdependency relationship*.
- (3) The regulations may specify:
 - (a) matters that are, or are not, to be taken into account in determining under subsection (1) or (2) whether 2 persons have an *interdependency relationship*; and
 - (b) circumstances in which 2 persons have, or do not have, an *interdependency relationship*.

10 Application

- (1) The amendments made by items 1 to 3 of this Schedule apply to eligible termination payments made after the commencement of those items.
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- (2) The amendments made by items 4 to 9 of this Schedule apply to the doing of things after the commencement of those items.
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*[Minister's second reading speech made in—
House of Representatives on 27 June 2002
Senate on 10 February 2004]*

(150/02)
