

Final “Choice of Fund” Regulations

Treasury has now released final regulations in respect of the “Choice of Fund” legislation, along with the final version of the “Standard Choice Form”. In addition, the Government has foreshadowed some changes in the “Choice of Fund” legislation.

Minimum Level of Death Cover in Default Fund

The final regulations prescribe a minimum level of insurance cover (for death only) that a fund will need to provide in order to be a default fund under the Choice regime. The prescribed level of cover is broadly similar to the draft regulations but with some minor changes. In this regard, a default fund will comply with the requirements if they provide one of the following options:

1. For a person who has not attained the age of 56, death cover costing a minimum premium of 50 cents per week; or
2. An age-based scale providing at least the following cover:

Age Range	Minimum Death Cover
from 20 to 34	\$50,000
35 to 39	\$35,000
40 to 44	\$20,000
45 to 49	\$14,000
50 to 55	\$7,000

For defined benefit members, the regulations allow the fund to provide death cover with a future service component at least equivalent to the levels in the table above.

Importantly, where an employer contributes to a fund prior to 1 July 2005, that employer can continue contributing to the fund (or a successor fund) for existing and new employees until 30 June 2008 without the fund having to meet the minimum insurance requirements.

There are also a number of other exceptions to the insurance requirements, including:

- the employer contributes to a fund specified under a Federal award which does not meet the minimum cover level;
- the employer contributes to an RSA or a capital guaranteed fund in respect of the employee;
- the employer has arranged at least equivalent death cover outside the default superannuation arrangement; or

- the employer contributes to an existing fund that, on 11 March 2005, the rules of the fund provide a total death benefit of at least \$50,000 in respect of the employee.

Cover does not have to be provided to a particular employee if it cannot be obtained due to the employee's health, occupation or working hours.

The Standard Choice Form

The Standard Choice Form remains a two page form, with the first page being an explanation of the options available, the steps to make a choice, and tips for comparing funds. The second page has sections for the employer and employee to complete.

The layout of the Standard Choice Form has changed from the draft regulations although the content is broadly similar. A new “Part C: Employer Only” section has been added to record the dates of receipt and processing of the completed form.

It is important to note that the draft words for warning defined benefit members have not been included in the final regulations, but it appears they could be issued separately at a later date by the ATO.

The regulations have prescribed the following information must be provided by the employee in a completed Standard Choice Form:

- employee's account name;
- any unique number or identifier that is used in respect of the employee's account;
- the full name of the fund;
- the fund's ABN (if any);
- a written statement from the fund's trustee that the fund is a complying fund or, if the fund is a self-managed fund, evidence from the ATO that it is a regulated superannuation fund;

- information regarding method of payment and the details necessary to make payment;
- any unique number or identifier the fund uses in relation to the specific product chosen by the employee; and
- any unique number or identifier used by the employer in relation to the employee.

Changes in the SIS Regulations

The final regulations have provided the following exclusions to the general principle that prohibits a trustee providing (or withholding) benefits to an employer if their employees become members of the fund. The exclusions will allow a trustee, or associate of the trustee, to:

- provide an advice or administration service that relates to the payment of superannuation contributions to an employer or its employees;
- offer a clearing house service to an employer. A clearing house is a service that will distribute contributions to an employee's chosen fund on behalf of the employer;
- supply or offer goods and services to an employer. The supply or offer must also be available to all employees of the employer who are members of the fund on the same terms as those made to the employer; and
- provide a business loan to an employer where it is supplied on a commercial arm's length basis and where only the employer is required to be a member of the fund.

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Choice Education Campaign

The ATO has set up a helpline on **13 28 64** for enquiries about Choice of Fund. The helpline will be operational from early April 2005.

We understand the ATO's timetable for the education of employers and employees in relation to choice of fund is as follows:

- 11 April – mail out to all employers and launch of the www.superchoice.gov.au website.
- 24 April – start of 3-week advertising campaign (employer focus).
- 3 June – second mail out to employers.
- 19 June – start of 3-week advertising campaign (employee focus).

A key message from the ATO to employers will be to pay contributions to the default fund unless you have all of the information specified in the regulations from an employee.

Changes to the Choice of Fund Legislation

The Federal Assistant Treasurer Mal Brough has announced that the Government will be pursuing the following changes to the Choice of Fund legislation.

The legislation will be amended to exempt businesses who already offer choice of fund as a condition of employment from the requirement of choosing a 'default fund'. Under the proposed amendments, an employer in this situation will not have to nominate a default fund on 1 July. The employer will also not be required to hand over a Standard Choice Form.

This is expected to benefit smaller businesses that employ a few people during peak work periods. This exclusion does not exempt an employer from having to meet their Superannuation Guarantee obligations.

In addition, for businesses already offering choice of fund, if an employee has already chosen a fund before 1 July 2005, this choice will be treated as meeting the Choice of Fund rules, and employers will not have to hand out the Standard Choice Form to these employees.

The Government has also announced that it intends to extend the coverage of the Choice of Fund legislation to employees on state awards who are currently excluded by the Choice legislation. The Government will do this by initially seeking the co-operation of the states to allow state award employees to choose their own super fund. Ultimately, the Government intends to amend the Choice legislation to override state laws to give Choice to employees on state awards from 1 July 2006.

It is important to note that the Assistant Treasurer has not foreshadowed any clarifications or further exemptions for defined benefit members in relation to the Choice legislation.

Next Steps for Choice

Now that the final regulations have been announced, with an implementation date of 1 July 2005, we recommend that clients consider the following steps to prepare for 1 July 2005:

- finalise the company's preferred strategy in relation to the benefits provided to employees who exercise choice and the company's ongoing insurance arrangements for all its employees;
- seek legal advice to determine whether the preferred strategy can be implemented under the Trust Deed and Rules and whether any amendments are required;
- commence a communication campaign explaining the company's position regarding choice. The communication campaign may include superannuation briefings to employees to explain the company's strategy regarding choice, the default fund, the mechanics of exercising choice and the Standard Choice Form;
- commence an education program for payroll and HR staff regarding dealing with employees asking for advice. Given the commencement of the Government's choice education campaign, employees may start approaching payroll or your HR department with questions; and
- finalise internal procedures for dealing with Standard Choice Forms and for implementing employees' choices.

Contact

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