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HOUSE OF REPRESENTATIVES

SUPERANNUATION LEGISLATION AMENDMENT (CHOICE OF FUND)
BILL 2016

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Small Business and Assistant Treasurer, the Hon Kelly O'Dwyer MP)

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
ATO	Australian Taxation Office
Bill	Superannuation Legislation Amendment (Choice of Fund) Bill 2016
FW Act	<i>Fair Work Act 2009</i>
FWC	Fair Work Commission
RIS	Regulation Impact Statement
SG	Superannuation guarantee
SGAA	<i>Superannuation Guarantee (Administration) Act 1992</i>
Treasury	Department of the Treasury

General outline and financial impact

Extending superannuation choice to workplace determinations and enterprise agreements

The Superannuation Legislation Amendment (Choice of Fund) Bill 2016 (Bill) amends the *Superannuation Guarantee (Administration) Act 1992* to ensure employees under new workplace determinations or enterprise agreements that are made from 1 July 2016 have an opportunity to separately choose their superannuation fund.

Date of effect: 1 July 2016

Proposal announced: 20 October 2015

Financial impact: Nil.

Human rights implications: This Bill does not raise any human rights issues. See *Statement of Compatibility with Human Rights* — Chapter 3, paragraphs 3.1 to 3.4.

Compliance cost impact: Average annual regulatory cost of \$3.965 million.

Summary of regulation impact statement

Regulation impact on business

Impact: Total annual average regulatory cost is \$3.965 million; \$1.564 million for business and superannuation funds and \$2.401 million for individuals.

Main points:

- Some employees cannot choose the superannuation fund into which their compulsory employer superannuation is paid. This prevents them making key decisions around their retirement savings, can result in the payment of unnecessary fees and insurance premiums, and can reduce competition between superannuation funds.

- Choice of fund for compulsory contributions can be restricted by some employers under Commonwealth legislation. Without Government action individuals under certain collective agreements will continue to face restricted choice of fund.
- Three options were considered.
 - Maintain the status quo (Option 1)
 - Extend choice to employees under enterprise agreements and workplace determinations made after 1 July 2016 (Option 2)
 - Extend choice to all employees under existing and new enterprise agreements and workplace determinations after 1 July 2016, and employers must offer a choice of fund form to all existing employees (Option 3)
- Treasury undertook public consultation (for 6 weeks) on draft legislation and explanatory material for Option 2.
- Option 2 is the best option because it extends choice in a meaningful way while minimising compliance costs for employers.
- Legislative amendments are required to implement Option 2. The associated obligations on industry are an established part of the superannuation regime and can be readily made. There are multiple official Government-Industry working groups for participants in the superannuation industry to communicate any issues with the implementation of the policy. The Australian Taxation Office also provides guidance on compliance with superannuation obligations.

Chapter 1

Extending superannuation choice to workplace determinations and enterprise agreements

Outline of chapter

1.1 This Bill amends the *Superannuation Guarantee (Administration) Act 1992* (SGAA) to ensure employees under new workplace determinations or enterprise agreements made from 1 July 2016 have an opportunity to separately choose the superannuation fund for their compulsory employer contributions.

1.2 All legislative references in this Chapter are to the SGAA unless otherwise indicated.

Context of amendments

1.3 An important part of Australia's superannuation system is the provision of compulsory employer contributions by employers to complying superannuation funds in respect of their employees.

1.4 Currently some employees do not have the opportunity to choose their own superannuation fund. Where an employer makes contributions under, or in accordance with, an enterprise agreement or workplace determination, employers satisfy the choice of fund requirements in the SGAA. These agreements or determinations may specify a given superannuation fund, or a number of superannuation funds, that an employer may contribute to for the benefit of the employee.

Summary of new law

1.5 The amendments will enable employees under workplace determinations or enterprise agreements made from 1 July 2016 to choose their own superannuation fund.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Compulsory employer superannuation contributions to a fund under, or in accordance with, a workplace determination or enterprise agreement made before 1 July 2016 will comply with the choice of fund requirements.	Compulsory employer superannuation contributions to a fund under, or in accordance with, a workplace determination or enterprise agreement comply with the choice of fund requirements.
An employee will be able to choose their own superannuation fund where they are employed under a workplace determination or enterprise agreement that is made from 1 July 2016. New employees to whom such a determination or agreement applies must be provided with a standard choice form and if there is no chosen fund for a new employee the default fund arrangements apply. An employer does not have to provide existing employees with a form unless requested once a new determination or agreement is made. Where there is no chosen fund for an existing employee, an employer that continues to make compulsory contributions for that employee with the same fund, in accordance with the previous determination or agreement, will comply with the choice of fund requirements.	Employees of employers that make compulsory employer superannuation contributions to a fund under, or in accordance with, a workplace determination or an enterprise agreement, may not be able to choose their own superannuation fund.
An employer will not have an increase in the superannuation guarantee shortfall in a given quarter for an employee who is member of a defined benefit scheme, where the employee's benefit in the scheme would not be affected if compulsory superannuation contributions were made to another fund.	An employer may have an increase in the superannuation guarantee shortfall in a given quarter for an employee who is member of a defined benefit scheme, where the employee's benefit in the scheme would not be affected if compulsory superannuation contributions were made to another fund.

Detailed explanation of new law

Existing arrangements for choice of fund

1.6 Part 3A sets out the choice of fund requirements that employers must comply with to avoid penalties in the form of increased superannuation guarantee charges. These requirements include offering employees a choice of superannuation fund and providing them with a standard choice form in particular circumstances.

1.7 Division 2 of Part 3A outlines when contributions made by an employer satisfy the choice of fund requirements. Under subsection 32C(1) contributions made to a chosen fund for an employee or to certain unfunded public sector schemes satisfy the choice of fund requirements. Subsection 32C(2) sets out contributions that satisfy the choice of fund requirements where there is no chosen fund and those contributions are made to a default fund. The remaining subsections in section 32C set out other circumstances where contributions made to a fund are in compliance with the choice of fund requirements.

1.8 Specifically, subsection 32C(6) provides that a contribution is 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, certain specified industrial agreements, awards, a workplace determination or an enterprise agreement.

1.9 If an employer makes contributions that do not comply with the choice of fund requirements the employer will have an increased superannuation guarantee shortfall for the quarter under either subsection 19(2A) or (2B). This increases the employer's liability to superannuation guarantee charge which is paid to the Commissioner of Taxation in respect of an employee. Contributions made to a defined benefit scheme do not attract an increase in superannuation guarantee shortfall where, for a given quarter, the scheme is in surplus or the employee concerned has accrued their maximum benefit in the scheme.

1.10 Division 6 of Part 3A outlines employer obligations to provide standard choice forms to employees. Section 32N generally requires that an employer provide a standard choice form to an employee within 28 days of each of the following:

- the employee commencing employment;
- the employer receiving a written request from an employee;
- the employer becoming aware of a chosen fund ceasing to be available for contributions; or

- the employer changing default fund arrangements.

1.11 Section 32NA sets out the circumstances when an employer does not need to provide a standard choice form, including if the employer is making contributions of a kind mentioned in subsections 32C(3) to (9) for the benefit of the employee.

Defined benefit schemes

1.12 Division 4 of Part 3A sets out a process to be followed when an employee is choosing a fund. Subsection 32F(3) ensures that employees who are existing members of certain defined benefit schemes cannot choose another fund. These are schemes where a member's retirement, resignation or retrenchment benefit in the fund would remain unchanged if the employer made contributions to another fund under the choice of fund arrangements.

1.13 According to subsections 32NA(7), (8) and (9), an employer is not required to give an employee who is an existing member of a defined benefit scheme a standard choice form where:

- the scheme is in surplus and subsection 20(2) is satisfied;
- the employee has accrued their maximum benefit in the scheme and subsection 20(3) is satisfied; or
- the employee's benefits in the scheme will remain the same if the employer makes contributions to another fund for the employee.

1.14 These provisions effectively deny choice of fund to certain existing employees who are members of defined benefit schemes. Employers who do not provide choice according to these provisions can be relieved from an increase in their superannuation guarantee shortfall under subsection 19(2B) if section 20 applies.

1.15 Section 20 applies to an employer where the employee is a member of a defined benefit scheme and either subsection 20(2) or (3) is satisfied. Subsection 20(2) is satisfied if the employee has been a member of the defined benefit fund since before 1 July 2005 and the fund is in surplus. Subsection 20(3) is satisfied if the member has accrued their maximum benefit in the fund. Subsections 20(2) and (3) mirror subsections 32NA(7) and (8), however, section 20 does not contain an equivalent to subsection 32NA(9).

Extending choice of fund

1.16 This Bill amends subsection 32C(6) to limit the circumstances in which an employer can satisfy the choice of fund requirements by contributing to a superannuation fund under, or in accordance with, a workplace determination or enterprise agreement to where that determination or agreement was made before 1 July 2016.

1.17 Where a workplace determination or enterprise agreement is made on or after 1 July 2016, an employer will need to allow employees to choose their own superannuation fund (unless other circumstances exempt the employer from doing so). *[Schedule 1, items 5 and 6, paragraphs 32C(6)(g) and (h)]*

1.18 This will require the employer to give a standard choice form to an employee in the circumstances set out in section 32N, including on commencement of employment and on written request from an employee. A new employee will be able to choose a fund for their compulsory superannuation contributions. If a new employee does not choose a fund, the employer must contribute to the fund that is specified in the standard choice form provided in accordance with the default fund provisions in subsection 32C(2).

1.19 Existing employees will not need to be given a standard choice form where a workplace determination or enterprise agreement is made on or after 1 July 2016. However they will be able to request a choice of fund form from their employer and the employer will be required to act on this request in accordance with Division 4 of Part 3A.

1.20 Where an existing employee does not choose their own superannuation fund, the employer will be able to continue to make compulsory superannuation contributions to the same fund that the employer previously contributed to for the employee under, or in accordance with a workplace determination or enterprise agreement made before 1 July 2016. An employer will also be able to specify this fund as a default fund in a standard choice form provided on request to the existing employee. *[Schedule 1, item 7, subsection 32C(6AA)]*

1.21 This Bill does not make any changes to the default fund provisions.

1.22 Where a workplace determination or enterprise agreement made after 1 July 2016 includes a term that restricts choice (for example, if the determination or agreement was made without appreciating the changes made by this Bill), such a term will not be enforceable under section 32Z to the extent that the employer instead makes contributions to an employee's chosen fund. Examples of terms which restrict choice include

terms that specify the name of the fund to which the employer must contribute, or terms that list several funds the employer must choose between to make contributions to.

1.23 The amendments to the choice of fund requirements also apply to employers who make contributions to defined benefit schemes on behalf of their employees who are members. The exemptions from providing choice to employees who are existing members of certain defined benefit schemes continue to apply. Existing employees who are not defined benefit members and who become newly eligible to join a defined benefit scheme do not need to be given a standard choice form unless requested (or another subsection of section 32N applies). New employees who are not existing defined benefit members but who are eligible to join a defined benefit scheme must be given a standard choice form within 28 days of commencing employment. Once an employee is a member of a defined benefit scheme the exemptions from the choice of fund requirements will apply where relevant.

1.24 The amendments to the choice of fund requirements only apply to workplace determinations or enterprise agreements made on or after 1 July 2016. They do not apply to workplace determinations or enterprise agreements made before 1 July 2016. Enterprise agreements that are made before 1 July 2016, but which apply after 1 July 2016, will not be affected by these amendments. When a determination or agreement is ‘made’ and ‘applies’ is determined in accordance with the *Fair Work Act 2009* (FW Act).

1.25 The consequences of a workplace determination or enterprise agreement applying to an employee and employer are that the determination or agreement imposes obligations on the parties and gives them entitlements. Subsection 32C(6) provides that a contribution made under, or in accordance with certain specified industrial instruments complies with the choice of fund requirements. For a contribution to be made ‘under, or in accordance with’ a listed industrial instrument it must apply for the purposes of the FW Act.

1.26 When a workplace determination or enterprise agreement is ‘made’ and ‘applies’ for the purposes of the FW Act.

1.27 The terms ‘workplace determination’ and ‘enterprise agreement’ have the same meaning they have in the FW Act. Whether a determination or agreement is ‘made’ and ‘applies’ is determined in accordance with the FW Act.

1.28 A workplace determination is made by the Fair Work Commission (FWC) and operates from the day on which it is made. The FW Act applies to a workplace determination that is in operation as if it

were an enterprise agreement that is in operation (with some exceptions). This means that a workplace determination will also apply to an employee, employer or employee organisation once it is in operation and covers the employee, employer or organisation.

1.29 An enterprise agreement is made when a majority of employees vote to approve the agreement. But the enterprise agreement does not operate until at least seven days after the agreement is approved by the FWC. An enterprise agreement applies to an employee, employer or employee organisation if it is in operation and covers the employee, employer or organisation.

1.30 In the time between when an enterprise agreement is made and when it applies, employment rights and obligations are governed by the existing agreement. This means that during this period, an employer should continue to make contributions in accordance with the existing agreement that applies to the employee and employer.

Defined benefit scheme exemption from increased shortfall

1.31 The amendments made by this Bill recognise a further case where there is no increase in the quarterly superannuation guarantee shortfall for an employer who makes contributions in respect of an employee who is a member of a defined benefit scheme. This exclusion will apply where an employee cannot choose a fund under Division 4 of Part 3A because their retirement, resignation or retrenchment benefit in a defined benefit scheme would not be affected if compulsory contributions were made to another fund. This will ensure that employers cannot be penalised for failing to technically comply with the choice provisions, if there is no chosen fund for an employee, notwithstanding that the employee concerned is unable to choose a fund under subsection 32F(3). *[Schedule 1, items 1 to 4, paragraph 19(2B)(c), subsection 20(1), subsection 20(3A) and section 20]*

1.32 This is a technical amendment to clarify that employers do not have an increased individual superannuation guarantee shortfall under subsection 19(2B) where the employer has not given an employee a choice of fund form in accordance with subsection 32NA(9).

Application and transitional provisions

1.33 The amendments made by this Bill commence on 1 July 2016.

Chapter 2

Regulation impact statement

Context

2.1 In 2005 the Howard Government introduced a choice of superannuation fund regime. This regime allows most employees to select the superannuation fund into which their superannuation guarantee (SG) contributions are made, so long as the fund satisfies certain eligibility requirements.

2.2 However, there are legislative exceptions to this rule that restrict choice, the most common of which is where employee conditions are negotiated under certain collective agreements.

2.3 The final report of the Financial System Inquiry (December 2014) recommended that restrictions on an individual's choice of fund be removed on the basis that "as a general principle everyone should be able to choose the fund that receives their SG contributions".

Remaining restrictions on choice of fund

2.4 Employers are generally required to provide their employees with a standard choice form within 28 days of the employee commencing employment.¹ If an employee does not choose a fund, either by giving written notice to the employer or by completing the standard choice form, employers are required to contribute to their default fund. Non-compliance with these requirements (the 'choice of fund requirements') may result in an employer becoming liable to pay a SG shortfall on top of the 9.5 per cent contribution.²

2.5 Certain other contributions are also deemed to be compliant with current choice of fund requirements, including contributions made to funds specified under certain industrial instruments. These include:

- Enterprise agreements agreed to collectively by employees and their employer. These agreements can contain superannuation clauses, which may:

¹ Employers do not need to provide a choice of fund form to temporary residents.

² Employers who contribute on behalf of some employees that are members of defined benefit schemes are not liable for the shortfall, and do not have to offer choice of fund.

- Nominate a default fund for employees who have not exercised choice of fund;
- In some instances, deny employees choice of fund by:
 - i. mandating a particular fund for all employees covered by the agreement, or
 - ii. mandating particular funds for different types of employees (for example permanent and casual employees); or
 - iii. limit choice by nominating a small list of funds from which an employee may choose.
- Workplace determinations made where a Full Bench of the Fair Work Commission (FWC) determines the terms and conditions that will cover an employer and its employees. Workplace determinations can only be made in special or unusual circumstances, including where industrial action has been terminated and the parties cannot agree on the terms of an enterprise agreement within a given timeframe. These types of instruments are uncommon but may also deny employees choice of fund by mandating a particular fund for all employees covered by the determination.
- Older forms of industrial instruments ('legacy agreements' and 'legacy awards'). These instruments existed under previous industrial relations laws and can no longer be made. Some legacy agreements may still be in operation as the agreement may not have been renewed or terminated. The Department of Employment does not have data on the prevalence of these agreements that are still in operation.
- State industrial awards and agreements, which continue to apply to State public sector employers and parts of the private sector in Western Australia, namely, non-constitutional corporations (for example, sole traders, partnerships and non-trading or financial corporations). These may also include superannuation specific clauses that may restrict choice of fund.

2.6 The effect of these exemptions is that some employees do not have choice of fund.

2.7 While comprehensive data is not available, the Association of Superannuation Funds of Australia estimated in 2012 that 20 per cent of employees continue to have restricted or no choice of superannuation fund. This is estimated to equate to around two million individuals.

2.8 Enterprise agreements are the most common mechanism by which choice for individuals can be restricted through 'deemed choice'. Furthermore, enterprise agreements and workplace determinations are the only Federal instruments currently being made. As at June 2014, there were approximately 2.5 million employees covered by current Federal enterprise agreements. Some agreements have superannuation clauses that restrict choice of fund. A Department of Employment sample of Federal enterprise agreements estimates that around 30 per cent of individuals employed under federal enterprise agreements faced some restriction on their choice of fund in June 2014. The sample controlled for agreement size, thus each category of agreement size is neither under nor over-represented.

2.9 If an enterprise agreement provides for contributions to be paid to a particular fund or to one of a limited list of funds, then the employer must pay those contributions to the fund(s), or risk breaching the agreement. The payment of contributions to the fund(s) is then deemed to be compliant with the choice requirements, meaning that if the employer contributes the appropriate amount to that fund within the correct timeframe, they will not be liable to pay a penalty. In these circumstances, individuals have no freedom to exclude themselves from the collective agreement and exercise their own choice.

The Problem

2.10 Australia has a three-pillar approach to the provision of retirement income. The three pillars comprise a means tested and publicly funded age pension, a privately managed system of compulsory savings based on the SG, and voluntary private savings (both inside and outside superannuation). In the future, compulsory superannuation contributions by employers will form a significant part of the retirement incomes of many Australians.

2.11 The provision of regular SG contributions into funds by employers on behalf of their eligible employees aims to overcome the tendency for individuals to fail to save adequately for their retirement during their working life. Both contributions and earnings benefit from concessional tax treatment.

2.12 The inability of some workers to choose the fund into which SG contributions are made causes a range of issues.

2.13 Providing individuals the freedom to choose the fund into which their employer makes contributions ensures that employees have the freedom to plan their savings strategy for retirement.

2.14 When individuals commence a new job or employment arrangement, they may desire to continue making contributions into an existing superannuation account. They may also have a preference for a particular fund based on the fees, returns or other benefits that fund membership provides.

2.15 Forcing employees to have their contributions made into a different fund chosen by their employer can result in some employees having two (or more) funds open. This problem may be particularly significant for individuals employed in multiple jobs (for example casuals), who do not have a choice of fund.

2.16 It is not known exactly how many people have multiple accounts due to restrictions on choice. The problem of multiple accounts is widespread and can arise for a range of different reasons. The Australian Taxation Office estimated that in 2015 45 per cent of working Australians had more than one account. Given this is a large percentage, it is reasonable to assume some overlap with the population who face restricted choice.³ Frequent complaints to Ministers and the Department of the Treasury (Treasury) by members of the public with restricted choice confirm this.⁴

2.17 Maintaining more than one superannuation fund can result in lower lifetime savings through duplicate fees, charges and insurance premiums. It can also result in additional compliance costs from keeping track of multiple accounts. Duplicate fees and premiums can result in lower retirement balances.

2.18 While strong default settings are important in Australia's superannuation system, the inability to exercise choice can also contribute to individuals' disengagement with their superannuation savings.

³ Estimates of choice restriction among all employees, and the specific subset of individuals employed under enterprise agreements are detailed below.

⁴ The Trade Union Royal Commission also provided case studies on employees with restricted choice, including Katherine Cole, who wanted her compulsory contributions to be made to her self-managed super fund, but could not because she had no choice of fund: see Chapters 6.2 and 6.3 of the Trade Union Royal Commission Interim Report.

2.19 Restricting the freedom of individuals to choose their fund may also reduce competition between funds. Although some funds may benefit from scale economies by having members channelled to them, their incentive to compete on the basis of fees may be reduced.

2.20 Where employees are forced to open a new account upon entering a new employment arrangement, the only option available to them to consolidate their savings in a fund of their choice is to periodically rollover monies from this account into their preferred fund. This is likely to generate administrative compliance costs for both individuals and funds while still having the costs of keeping more than one account open. There may also be limits on their capacity to rollover funds, including minimum balance requirements for partial rollovers.

The need for Government action

2.21 The current policy settings for the majority of employees seek to provide choice of fund on the general principle that individuals should be able to make decisions about their superannuation that suit their needs. This freedom may help to boost the efficiency of the superannuation system and to keep individuals engaged with their superannuation.⁵

2.22 However, under current legislative arrangements some individuals may have their choice restricted by an enterprise agreement that specifies a particular fund, as this is taken to indicate collective choice. Individuals affected by such agreements can only attempt to exercise choice by seeking to influence enterprise agreement negotiations when they occur (most likely only once every several years, meaning this may not be possible for casual workers or employees who join an enterprise after negotiations have been finalised) or by ending their employment arrangement.

2.23 Government action could expand the potential for people to exercise choice of fund, while not limiting the ability for certain agreements to specify default funds.

⁵ Although evidence detailed below suggests the rate of choice among superannuation account holders may not be above 30 per cent.

Policy options considered

2.24 There are a number of ways choice of fund requirements could be extended to remove restrictions on individuals covered by certain instruments.

2.25 Many agreements that specify a fund for employees are already in existence and in force, while new agreements are made regularly across a range of workplaces. Policy decisions need to be made about the treatment of both ongoing and future agreements, and the various compliance costs that will arise from mandating changes to agreements across different workplaces and industries.

2.26 State awards and agreements that specify a fund for their members are made by State Governments, and so are not considered. Employers contributing on behalf of employees that are existing defined benefit members rely on certain exemptions from choice to preserve the funding arrangements of defined benefit schemes, and are also not being considered. Legacy agreements which may still be in operation are not being considered because they are uncommon, there is a lack of data on them, and they may be replaced by enterprise agreements.

2.27 Enterprise agreements and workplace determinations are the only new Federal industrial instruments that can be made, and so should be central to any options.

2.28 The options considered are:

- Status quo (Option 1).
- Mandate that no restrictions on choice of fund remain for any new enterprise agreements and workplace determination made after 1 July 2016 and existing employees who want choice must request a choice form (Option 2).
- Mandate that choice of fund be given to all employees under existing and new enterprise agreements and workplace determinations from 1 July 2016 (Option 3).

2.29 These options range from retaining current policy settings, to introducing change in a gradual or rapid manner. These will have a varying degree of impact on the problem outlined above, and generate a varying degree of compliance and administrative costs for businesses, funds and individuals.

2.30 As workplace determinations are uncommon, often occur in place of an enterprise agreement (for example, when terms cannot be agreed), and affect the same stakeholders within the Federal industrial relations system, only enterprise agreements are referred to below for simplicity.

2.31 Options 2 and 3 would need legislative changes as the exemptions from choice are in the *Superannuation Guarantee (Administration) Act 1992*.

Likely Net Benefit of Options

Option 1: The status quo

2.32 Under this option, there would be no changes to legislation or regulation to extend the choice of fund requirements to more employees.

2.33 Employees could still be denied choice by employers who rely on exemptions from the choice of fund requirements.

2.34 Inefficiencies and inequities in the superannuation system which result from the restriction of choice of fund, particularly around multiple accounts and duplicate fees paid by fund members, would remain and continue to reduce the savings available for retirement income in the long term.

2.35 There may be some benefits to employees from collective agreement on a particular fund, such as negotiating higher superannuation contributions, advantageous insurance arrangements, or lower fees in exchange for using an employer's fund exclusively. These benefits should still be able to be negotiated taking into account choice of fund.

2.36 When the choice of fund regime was introduced and exemptions were made, concerns were raised about the compliance costs of employers having to make contributions to multiple funds. The Final Report to the Financial System Inquiry noted that changes in technology, such as SuperStream and clearing houses, have reduced these costs – see below in Option 2 for further information.

Costs generated by duplicated fees

2.37 While choice of fund remains restricted, some employees will face additional fees paid for the maintenance of multiple funds.

2.38 If upon commencing a new employment arrangement, an employee is unable to direct their SG contributions to an existing fund, they may not necessarily rollover monies from their existing fund into the fund mandated by their enterprise agreement, as they may have a preference for their existing fund (for instance, they might view this fund as delivering better value returns). Instead, they may maintain both funds in order to receive payments from their new employer while also retaining existing money in the fund of their preference.

2.39 Individuals who work in multiple jobs as part time or casual employees may be particularly vulnerable to restrictions on choice. If a casual employee works under two different enterprise agreements and each mandates a different fund, they would have no choice but to maintain multiple funds (with associated fees) in order to receive their SG payments.

2.40 In some cases, where individuals are disengaged from their superannuation, they may be unaware that their savings are in multiple accounts, or that funds can be rolled over, especially given that they are not prompted by the need to complete a choice of fund form.

2.41 Multiple accounts will lead to a duplication of fees as the individual pays to maintain accounts with both funds, substantially increasing the cost of accruing savings for their retirement through the superannuation system as demonstrated by the following example.

Example 2.1

Simon is a 40 year old customer service assistant. The enterprise agreement with his current employer nominates a fund into which his employer has to pay his superannuation contributions. He has \$50,000 in Fund ABC from previous employment and \$22,000 in Fund XYZ that he accumulates under his current employer. As he did not have choice of fund with his new employer (as is common in the retail sector) he has two superannuation accounts that he has not consolidated as he did not have the prompt of choice.

It is estimated that Simon pays around \$600 in fees and insurance per annum for his Fund XYZ superannuation account. These costs (which are in addition to the costs associated with his preferred Fund ABC) could be reduced or eliminated if he consolidated his superannuation accounts into Fund ABC as he now pays two sets of fees and default insurance.

2.42 Despite it being difficult to estimate the number of individuals who would be advantaged by access to the choice of fund arrangements, the potential cost of duplicate accounts was identified by the Final Report to the Financial System Inquiry and referred to in its discussion on choice of fund, stating that the reduction of fees and insurance of multiple accounts could increase superannuation balances at retirement by around \$25,000 and retirement incomes by up to \$1,600 per year.

Other costs of the status quo

2.43 There are a number of other costs that the current choice of fund arrangements can impose. In particular, employees and superannuation funds face administrative costs generated by the regular rollover of monies.

2.44 Employees forced to receive SG payments in a non-preferred fund may elect to regularly rollover monies from this fund to their preferred fund to ensure their gains are maximised, although funds are not obliged to action rollovers more than once per year. Alternatively, they may seek to rollover their monies and close their account upon entering or leaving a workplace where choice is not offered. In both scenarios employees and funds will both incur costs from requesting that monies be rolled over and the performance of the process.

2.45 Other administrative costs will arise for those individuals who are engaged with their superannuation from the multiplication of funds, such as the monitoring of balances, fees and returns across multiple accounts, as well as increased member communications and funds management costs for funds themselves. In addition, employees face the risk of losing track of accounts and thus losing savings they have accrued for their retirement.

Regulatory Burden Estimate (RBE) Table – Option 1

Average annual regulatory costs (from business as usual)			
Change in costs (\$ million)	Businesses and Funds	Individuals	Total change in cost
Total, by sector	-	-	-

Option 2: Mandate that no restrictions on choice of fund remain for any new enterprise agreements made after 1 July 2016 - existing employees who want choice must request a choice form

2.46 Under this option, certain employers who are currently not required to give their employees a choice of superannuation fund would be required to do so upon commencement of a new enterprise agreement that is made after 1 July 2016. Ongoing employees would be able to request a choice of fund form, while from this point the employer would also have to offer choice to their new employees on an ongoing basis (contributions would still be made to default funds in cases where choice was not exercised by an employee).

2.47 The costs of this option would be incurred by employees, employers and superannuation funds. There would be some initial compliance costs as enterprise agreements transition to being required to provide choice, and some ongoing costs as both new and existing employees exercise their right to choose a fund.

Costs to employers

2.48 Where a new enterprise agreement is made on or after 1 July 2016, an employer would need to provide a choice of fund form to any ongoing employee who requests one. Employers would also need to update information in their payroll systems to make SG payments to these new funds where employees completed the form and chose a different fund. There would also be ongoing costs associated with offering choice to new employees after these changes are implemented.

2.49 However, with the introduction of SuperStream, the cost to employers associated with sending employee data to multiple funds has been significantly reduced.

2.50 Under SuperStream, employers are required to send contributions electronically and using standard data and format to any fund. Default funds are required to offer employers an option to facilitate the 'pass-through' of contributions data, that is a single point of entry that enables employers to send all their contributions data to a single destination from where it will be delivered to any identified fund. The presence of choice may involve a realignment of transaction processing costs on employers but it is expected these will be insignificant.

2.51 In relation to the cost of sending contributions to multiple superannuation funds, from 1 July 2016 the payment of superannuation must be made electronically by all businesses. To facilitate the payment of contributions by employers, there are a number of free or very low cost clearing house services available to employers of all sizes which facilitate

making payments to multiple superannuation funds, including the Small Business Superannuation Clearing House administrated by the Australian Taxation Office (ATO). In addition to these, there are a number of low-cost in-house software solutions on the market which also provide this service. It is difficult to estimate the difference in costs across business size, but contribution and data sending costs are expected to be similar for the reasons above. However, generally the larger a business gets the more sophisticated its back office administration systems and processes are, which assist in meeting these obligations.

2.52 Department of Employment figures indicate that approximately 763,000 individuals are employed under enterprise agreements that restrict choice. This figure does not include people on expired enterprise agreements waiting to be renegotiated. As it is based on employees covered at agreement approval time, it does not allow for subsequent net employee level changes for each enterprise agreement. The figure does not exclude existing defined benefit members, who already have separate exemptions from choice of fund. ATO records indicate that 7.58 per cent of employees contribute to defined benefit funds rather than accumulation funds, so we expect the influence of this effect to be fairly small. In order not to underestimate factors that would suggest higher rates of choice restriction (which could lead to understated compliance costs), we have assumed 800,000 individuals are employed under enterprise agreements that restrict choice.

2.53 The number of employees who will exercise choice under this option is expected to be low. The Department of Employment conservatively estimates that approximately 10 per cent of employees that become eligible for choice under this proposal will choose a different fund as a result of these changes. This is based on the Cooper Review finding in 2010 that 70 per cent of Australians holding a superannuation account were members of the default fund selected by their employer (Treasury, 2012, *Review into the Governance, Efficiency, Structure and Operation of Australia's Superannuation System 2010*, final report prepared by J Cooper). As this is a conservative estimate, for the purpose of this Regulation Impact Statement (RIS) the assumption used in costing is that 15 per cent of employees who receive choice of fund as a result of this measure will exercise it.⁶ This figure also represents a middle-ground

⁶ It could be expected from a behavioural point of view that the rate of choice would differ between Options 2 and 3 because under Option 3 all employees are being given a form and essentially prompted to consider choice. This suggests a lower choice rate for Option 2 should be used, but because any difference in choice rates would be difficult to justify and compliance costs should not be understated, the same rate is used for both options.

between the higher estimates of choice and lower estimates based on related behaviour.⁷

2.54 It is therefore expected that an estimated 120,000 individual employees would request and complete a choice of fund form once choice had become available to them under a new agreement. Approximately ten minutes of administrative work would be required to provide a choice form to each employee, and a further five minutes to input data for those employees that exercise choice, with standard labour costs assumed. The start-up compliance costs for employers are therefore anticipated to be:

- \$1,319,000 in providing a standard choice form to employees who ask for one upon commencement of the new agreement.
- \$628,000 in processing their choice of fund forms.

2.55 Assuming an average annual employee turnover of 13 per cent, it is expected that employers would need to provide a standard choice form for 104,000 new employees each year once all agreements had been updated. Of these new employees, it is estimated that only 15,600 would exercise choice, requiring further administrative time as above. The ongoing compliance costs for employers are therefore anticipated to be:

- \$1,089,000 in providing a standard choice form for new employees.
- \$84,000 in processing the choice of fund form of those who exercise choice.

2.56 Businesses will begin to incur the ongoing compliance cost of this change in different years, depending on the timing of their enterprise agreement's expiry and renegotiation. However, all agreements must include a nominal expiry date within four years of the date of FWC approval.

2.57 While agreements may not be renegotiated immediately following expiry, and restrictions on choice remain in place until a new agreement comes into effect, this effect is impossible to forecast. In addition, in some cases employers may operate with multiple enterprise agreements or awards, further staggering the impact of this change. These businesses might be required to operate with two sets of choice rules

⁷ Roy Morgan research states that 3.2 per cent of superannuation products are 'switched' annually (finding no. 6617, 6 January 2016). See also a summary of estimates in the *Default Superannuation Funds in Modern Awards*, Productivity Commission Inquiry Report, No 60 5 October 2012, page 36.

simultaneously. However, those employers who want to offer choice despite one of their enterprise agreements still restricting choice can do so under superannuation law.⁸

Costs to employees

2.58 Employees who exercise choice under Option 2 may incur one-off additional search costs associated with choosing a fund and compliance costs associated with establishing an account.

2.59 However, as most employees do not engage with their superannuation, low levels of initial take up of choice are still expected, which would minimise compliance costs. Ongoing compliance costs, generated by new employees or employees who wish to make further changes to their choice of fund are also anticipated to be low due to the general lack of engagement with superannuation.

2.60 It is expected that only 15 per cent of employees offered a standard choice form will choose to exercise choice. This is calculated to be an estimated 120,000 individuals as businesses offer choice for the first time. Researching a fund and completing the form is expected to require three hours, costed using the default value of leisure time. The start-up compliance costs for employees are therefore anticipated to be:

- \$10,440,000 researching a new fund and filling in a choice of fund form.

2.61 Given expected employee turnover and low levels of take-up of choice, it is expected that 15,600 new employees would elect to exercise choice each year. These individuals would also incur the time costs above. The ongoing compliance costs for employees are anticipated to be:

- \$1,357,000 researching a new fund and filling in a choice of fund form for new employees.

2.62 Consultation submissions argued that benefits to employees from collective agreement on a particular fund, such as any negotiated higher superannuation contribution rates, advantageous insurance arrangements, or lower fees in exchange for using an employer's fund exclusively could be lost if choice is expanded. It was not explained how this would occur. These benefits should still be able to be negotiated taking into account choice of fund given take-up is expected to be low. This is covered further in the consultation section below.

⁸ See section 32Z of the *Superannuation Guarantee (Administration) Act 1992*.

Costs to superannuation funds

2.63 The compliance cost impact on superannuation funds is also likely to be small. It is expected there would be a small initial surge of compliance costs spread across funds due to balances being transferred and old accounts being closed.

2.64 As above, it is estimated that 120,000 members would depart a fund specified in an enterprise agreement that currently restricts choice. Given the improvements in electronic rollover, it is estimated that around 15 minutes of administrative work would be required for each rollover and closure. The start-up compliance costs for superannuation funds are therefore anticipated to be:

- \$1,960,000 in closing accounts and transferring balances between chosen funds.

2.65 Some funds that are mandated funds in certain industries that have large numbers of employees (such the Retail Employee Superannuation Trust (REST) for the retail sector) would be expected to have higher compliance costs, and may incur broader costs if large numbers of members choose to close their accounts. These impacts are difficult to estimate, however, and may not eventuate if the take-up of choice is lower than expected.

Summary of compliance costs

2.66 This proposal is estimated to result in \$14,348,000 of initial compliance costs to employers, employees and funds, spread over several years as different enterprise agreements are renewed. Employers would incur costs by providing a choice form to employees and processing any changes. Employees affected by this change would incur compliance costs of researching a new fund and completing a choice of fund form.

2.67 This proposal is also estimated to have ongoing costs of \$2,530,000 per year. These costs would fall mostly on employers and employees, and would take effect over several years as enterprise agreements are renewed. Employers would have to continue to provide a choice form to new employees and process this. New employees would have compliance costs from researching a fund and filling in a standard choice form.

2.68 The average total cost over 10 years from 1 July 2016 is expected to be \$3,965,000.

Associated benefits

2.69 The introduction of choice of fund for all employees would have significant benefits for employees who exercise choice. As outlined under Option 1, the restriction of choice can have significant impacts, particularly in generating fees from multiple funds, as well as administrative costs. These will vary depending on the individual and what decisions they decide to make, and so are difficult to estimate. However, it is clear that those who are disadvantaged by choice can suffer a significant impact on retirement savings.

2.70 There are also unquantifiable ongoing benefits of a person being able to make key decisions about their own superannuation savings. The Financial System Inquiry consulted on extending choice of fund and concluded in its Final Report that people should be able to choose their fund, and that the superannuation system should assist members to achieve their individual goals and make savings decision that best suit their personal circumstances.

2.71 The Financial System Inquiry also identified the potential for increased competition and member engagement as important broader benefits that can arise from increased choice.

Regulatory Burden Estimate (RBE) Table – Option 2

<i>Average annual regulatory costs (from business as usual)</i>			
Change in costs (\$ million)	Business and Funds	Individuals	Total change in cost
Total, by sector	\$1.564	\$2.401	\$3.965

Option 3: Mandate that choice of fund be given to all employees under existing and new enterprise agreements and workplace determinations from 1 July 2016, and employers must offer a choice of fund form to all existing employees

2.72 Option 3 has two aspects that differ from Option 2:

- the Government would need to make arrangements to override clauses in enterprise agreements that allow employers to restrict choice; and

- Employers would have to offer a choice of fund form to all existing employees.

2.73 Any new enterprise agreements or workplace determinations made would also have to offer choice, in the same way as Option 2.

2.74 This option would generate compliance costs for employers, employees, superannuation funds and possibly government, depending on the mechanisms put in place for implementation and oversight of compliance.

Costs to employers

2.75 On 1 July 2016, employers with enterprise agreements that restricted choice would need to immediately provide employees with a choice of fund form. As with Option 2, the take up of a new choice of fund is expected to be low. There would also be ongoing costs associated with offering choice to new employees after these changes are implemented.

2.76 All affected businesses would need to be prepared to implement choice from 1 July 2016, with no time beyond this for businesses to develop and roll out changes to processes. Failure to do so could result in employers facing an SG penalty. The costs of this compared to option 2 are difficult to estimate.

2.77 From 1 July 2016, all businesses must be able to send SuperStream compliant data and contributions. The introduction of these changes will simplify how contributions are made by employers, ensuring that the contribution data and payment requirements are made electronically and reducing the cost to employers of implementing choice of fund.

2.78 Employers would need to provide a choice of fund form to *all* of the 800,000 individual employees currently facing restricted choice in their enterprise agreement, as well as inputting the data from those individuals (assumed to be 15 per cent) that choose to exercise choice. These initial costs are therefore calculated to be:

- \$8,378,000 in providing a standard choice form to all existing employees on enterprise agreements from 1 July 2016.
- \$628,000 in processing their choice of fund form.

2.79 The ongoing compliance costs for employers are anticipated to be the same as under Option 2:

- \$1,089,000 in providing a standard choice form to new employees.
- \$84,000 in processing their choice of fund form.

2.80 In addition to the added burden of providing a choice form to all current employees at July 1, 2016, under Option 3 the ongoing costs will be incurred in full each year from 1 July 2016 as new employees are hired. The start-up costs will all be incurred in the initial year as well, rather than spread across several years.

2.81 While it cannot be estimated, there would be a cost associated with overriding existing agreements. Some employers would be operating on the basis of their agreement, and could find transitioning to choice more difficult than others.

Costs to employees

2.82 Employees given the option of choice under this option may incur one-off additional search costs associated with choosing a fund and compliance costs associated with establishing an account.

2.83 However, as most employees do not engage with their superannuation, low levels of initial take up of choice are still expected, which would minimise compliance costs. Ongoing compliance costs, generated by new employees or employees who wish to make further changes to their choice of fund are also anticipated to be low due to the general lack of engagement with superannuation.

2.84 The start-up compliance costs for employees are anticipated to be:

- \$10,440,000 researching a new fund and filling in a choice of fund form.

2.85 The ongoing compliance costs for employees are anticipated to be:

- \$1,357,000 researching a new fund and filling in a choice of fund form for new employees.

2.86 As with the costs to employers, these ongoing costs will be incurred every year from 1 July 2016, with the full start-up costs also falling entirely in the first year.

Costs to superannuation funds

2.87 The compliance cost impact on superannuation funds is also likely to be small. It is expected there would be a small initial surge of compliance costs spread across funds due to balances being transferred and old accounts being closed. Some funds that are nominated funds in certain industries that have large numbers of employees (such as REST for the retail sector) would be expected to have higher compliance costs.

2.88 The start-up compliance costs for superannuation funds are anticipated to be:

- \$1,960,000 in closing accounts and transferring balances between chosen funds.

Summary of compliance costs

2.89 This proposal is estimated to result in \$21,406,000 of initial compliance costs to employers, employees and funds in the first year of operation. Employers would incur costs by providing a choice form to employees and processing any changes. Employees affected by this change would incur compliance costs of researching a new fund and completing a choice of fund form.

2.90 This proposal is also estimated to have \$2,530,000 per year in ongoing costs. These costs would fall mostly on employers and employees. Employers would have to continue to provide a choice form to new employees and process this. New employees would have compliance costs from researching a fund and filling in a standard choice form.

2.91 There would be additional unquantifiable costs compared to Option 2 of overriding existing agreements.

2.92 The full compliance cost in the initial year is significantly higher than under Option 2.

2.93 The average total cost over 10 years from 1 July 2016 is also expected to be higher under Option 3, at \$4,671,000.

Associated benefits

2.94 The introduction of choice of fund for all employees would have significant cost reductions for employees. As outlined under Option 1, the restriction of choice can have significant impacts, particularly in generating fees from multiple funds, as well as administrative costs. These will vary depending on the individual and what decisions they decide to make.

2.95 Removing restrictions on choice would likely remove some of these costs as employees choose to stay with a single fund through different employment arrangements, paying only a single set of fees and reducing the administrative costs of rolling over money and monitoring different superannuation accounts.

2.96 As in Option 2, there are also unquantifiable ongoing benefits of a person being able to make key decisions about their own superannuation savings.

Regulatory Burden Estimate (RBE) Table – Option 3

Average annual regulatory costs (from business as usual)			
Change in costs (\$ million)	Business and Funds	Individuals	Total change in cost
Total, by sector	\$2.270	\$2.401	\$4.671

Consultation

2.97 The Financial System Inquiry consulted broadly with the public on a recommendation to fully remove restrictions on the general policy of restricting an individual's choice of superannuation fund. The Final Report to the Financial System Inquiry concluded employees should have choice of fund, and stated that some submissions highlighted the benefits of choice in providing flexibility for members and lowering fees through greater competition (Recommendation 12). In addition, the Trade Union Royal Commission consulted on extending choice of fund and found in its Final Report that the benefits of choice outweigh arguments against continued restrictions.

2.98 Taking into account the Financial System Inquiry's recommendation, the Government's response was to propose extending choice to employees on enterprise agreements and workplace determinations made after 1 July 2016. The Government consulted on draft legislation and explanatory memorandum to give effect to this proposal. The draft legislation proposed giving effect to Option 2.

2.99 As a result, consultation on a concrete proposal raised the impacts and cost of the proposed changes for businesses, individual employees and superannuation funds.

2.100 Given that there are diverse stakeholders potentially affected by these changes, Treasury consulted over 6 weeks. The exposure draft

legislation and explanatory memorandum were made available on the Treasury website and a large number of stakeholders were alerted to this, and offered the opportunity to discuss any concerns about the proposal with the Treasury.

2.101 Key stakeholders covered the following issues in their written submissions.

The benefits of choice

2.102 Submissions supporting the proposal argue that there are benefits from expanding choice, including:

- individual choice and flexibility over retirement savings;
- reducing multiple accounts and associated fees and insurance premiums;
- increased competition among superannuation funds for members; and,
- increased member engagement.

2.103 Submissions that do not support the proposal make opposing arguments that:

- individuals may not be better off with choice: it is claimed that default funds, which are often mandated in enterprise agreements that restrict choice and are generally not-for-profit, deliver better returns, more appropriate insurance, and play a role in employer compliance;
 - alternatively, it is claimed that there is no need to expand choice because most people do not exercise it.
- choice does not, or has not been proved to, contribute to member engagement, either because the two are not linked or too much choice is detrimental to engagement;
- choice will not deliver lower fees through competition; and
- any benefits to employees from collective agreement on a particular fund, such as negotiating higher superannuation contributions, advantageous insurance arrangements, or lower fees in exchange for using an employer's fund may be lost. One stakeholder recommended protections to ensure these benefits are not lost in the event choice is expanded.

2.104 Ultimately, choice is an individual matter, and individuals who wish to do so can consider their own circumstances and make decisions in their best interests.

2.105 The proposal does not assume that individuals with restricted choice are in sub-optimal superannuation arrangements. Nor does it assume that choice is restricted to a type of fund, be it an industry fund or a retail fund, and moving to a different type of fund will be advantageous for all employees.

2.106 The proposal gives individuals the ability to choose a different fund from a fund currently mandated in an agreement, the currently mandated fund (if it becomes the default fund or not), or to not make a choice at all. Individuals who, based on their circumstances, would be better off choosing another fund can do so. They can choose the mandated fund, an industry fund, a retail fund or a self-managed superannuation fund.

2.107 On this basis, it is expected that those who do choose a fund would do so for a benefit to themselves.

2.108 Along similar lines, if members are disengaged or if having choice would not present some employees with better outcomes, choice would not need to be restricted by employers at the moment to retain them in the mandated fund.

2.109 In terms of employee benefits, there are not strong reasons to support the status quo.

2.110 The basis for the suggestion that extending choice of itself could result in lesser benefits for all employees was not covered in detail in some submissions, but it is understood this could occur either because generous benefits are negotiated in exchange for full employee membership in the fund, or because of a relationship between employer representatives and the fund.

2.111 However, it was not demonstrated that expanding choice would put these benefits at risk. And it is inconsistent with assertions from stakeholders and evidence that take-up of choice will be low: enterprise bargaining could take place on the basis that majority employee membership with the default fund would continue and benefits above the community standard could still be obtained.

Compliance costs of contributing to multiple funds

2.112 Some submissions supporting the status quo pointed to possible savings in compliance costs for employers that come from contributing to

a single fund. Compliance costs were a significant issue when choice of fund was introduced in 2005.

2.113 Others submissions pointed out that SuperStream and the proliferation of low cost clearing houses have significantly reduced these costs. Details on this are included above. In addition, the majority of employees in Australia have choice and many employers of all sizes already contribute to multiple funds using these technologies.

Choice for defined benefit members

2.114 Concerns were raised about extending choice to:

- existing members of defined benefit schemes; and
- employees who become eligible to join a defined benefit scheme.

2.115 Submissions argued that extending choice to employees who are members of a defined benefit fund could have adverse consequences for the fund and the employer.

2.116 Existing exemptions from providing choice for certain members of defined benefit funds will continue to apply. These exemptions reflect that the employee is already entitled to defined retirement benefits as a result of their employment and their employers should not have to pay additional superannuation to another fund.

2.117 Some submissions argued employees who become entitled to join a defined benefit fund, not being an existing member, should not get choice for similar reasons. However, employers have not already funded (or are not liable to fund) benefits in these cases. And any effect of choice on the future membership of the fund would be expected to be manageable in view of expected relatively low take-up of choice in these circumstances. Some defined benefit funds, such as Unisuper, already offer choice of an accumulation plan as an alternative to compulsory defined benefit membership.

2.118 In view of that and the potential benefits of choice, employees who are not existing members of a defined benefit fund should have choice of fund.

Existing employees and the obligation to provide a choice of fund form

2.119 Public consultation and related discussions with stakeholders confirmed, among other things, that there is a preference among those in industry who support extending choice for employers not to be required to

offer a choice of fund form to all employees after a new enterprise agreement is made from 1 July 2016. Given that the take-up of choice is expected to be relatively low, it is reasonable for employees who want choice to simply ask their employer for a choice of fund form.

Other issues

2.120 In relation to specific implementation options and compliance costs, several stakeholders raised a variant of Options 1 and 3. In addition to mandating choice in new enterprise agreements made after 1 July 2016, some submissions proposed that enterprise agreements made before 1 July 2016 that restrict choice be overridden after a certain date (several years after 1 July 2016) to provide choice.

2.121 The submissions argued this would save compliance costs for large employers with multiple agreements. Employers in this situation could have parts of their workforce gaining choice as enterprise agreements are renegotiated, while other parts still have restricted choice. Another submission added that employees on recently made enterprise agreements could have several years before the next renegotiation.

2.122 The Government believes that overriding multiple agreements of an employer so that they can provide choice of fund is unnecessary. A provision of the *Superannuation Guarantee (Administration) Act 1992* makes clauses in enterprise agreements unenforceable where the employer gives the employee choice of fund: see section 32Z. This provides a voluntary option for employers with multiple agreements to treat their workforce uniformly, and has been clarified in the explanatory memorandum to the Bill.

2.123 Overriding all agreements after a certain date would create difficulties for employers because it would interfere with enterprise bargains already struck. As described in option 3, these costs are difficult to estimate but are clearly undesirable.

2.124 Submissions also made other minor and technical points of less relevance to consideration of broad policy options.

2.125 Treasury will publish a consultation summary on its website.

Best option

2.126 Two major independent reviews conducted in recent years, each of which undertook public consultation on the benefits of choice of fund, have recommended that Government expand choice of fund. The benefits

of increased member engagement and competition, the ability to avoid duplicate fees and insurance premiums, and the importance of individual choice in savings decisions that impact retirement income are significant and rule out Option 1.

2.127 Option 2 is preferable to Option 3 because it has lower compliance costs, but still gives choice of fund to those who want it.

2.128 Given the low expected take-up of choice, reducing the burden on employers of providing choice of fund forms to employees who aren't expected to exercise choice is justified. Mandating choice for all new agreements instead of overriding existing ones is also preferable because it respects bargains already struck between employers and employees, and allows time to consider implementation before new enterprise agreements are negotiated.

RIS Status

2.129 Treasury prepared a short-form RIS and agreed regulatory costs and offsets with the Office of Best Practice Regulation for the initial decision.

2.130 Treasury prepared a standard form RIS for final assessment, and agreed regulatory costs with the Office of Best Practice Regulation for the final decision.

2.131 The Department of Employment and the ATO were consulted in the development of the measure and this RIS.

Implementation and evaluation

2.132 Option 2 can be achieved through amendments to the *Superannuation Guarantee (Administration) Act 1992*.

2.133 As described in the costs of Options 2 and 3 above, the offering of choice of fund is one aspect of other established superannuation obligations. The SuperStream reforms and availability of contribution clearing houses provide ready means for employers and superannuation funds to implement these reforms. The majority of employers under enterprise agreements already offer choice, demonstrating that these changes can be readily made. The ATO also provides information to employers and funds on compliance with superannuation obligations.

2.134 The superannuation industry has a range of established methods for raising any issues with the policy and implementation of this measure

with Government, including the Superannuation Industry Advisory Group and the Superannuation Industry Relationship Network; the ATO and the Treasury are represented at both.

Chapter 3

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

3.1 The *Superannuation Legislation Amendment (Choice of Fund) Bill 2016* (Bill) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

3.1 This Bill amends the *Superannuation Guarantee (Administration) Act 1992* to ensure employees covered by new workplace determinations or enterprise agreements that are made from 1 July 2016 have an opportunity to separately choose their superannuation fund.

3.2 Minor technical amendments are also made to clarify an exemption for employers from an increased individual superannuation guarantee shortfall where the employer has not given an employee a standard choice form in accordance with the choice of fund requirements and the employee is a member of a defined benefit superannuation scheme.

Human rights implications

3.3 This Bill does not engage any of the applicable rights or freedoms.

Conclusion

3.4 This Bill is compatible with human rights as it does not raise any human rights issues.

Index

Schedule 1: Extending superannuation choice to workplace determinations and enterprise agreements

<i>Bill reference</i>	<i>Paragraph number</i>
Items 1 to 4, paragraph 19(2B)(c), subsection 20(1), subsection 20(3A) and section 20	1.31
Items 5 and 6, paragraphs 32C(6)(g) and (h)	1.17
Item 7, subsection 32C(6AA)	1.20