



# Implications of choice of superannuation fund legislation for members, employers and funds

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# Executive Summary

## *Who will have choice?*

Out of the 9,460,000 or so employed persons in Australia, around 5.2 million employees potentially will have a right to choose their superannuation fund under the Commonwealth choice of fund legislation.

In comparison, currently around 1 million self employed and owner managers of businesses already have choice of fund, and another 1.9 million or more employees have choice of fund because their employer agrees or because of other existing State legislation and State public sector employment practices.

ASFA Research Centre estimates suggest that after 1 July 2005 some 5.7 million Australians will have a statutory right (either Commonwealth or State) to choose their fund.

## *Who will be exempt from choice?*

While the bulk of employees will be able to choose their fund, ASFA understands that the Australian Taxation Office will be taking a fairly broad approach in interpreting the exemption relating to industrial awards and agreements dealing with superannuation. ASFA's understanding is that if the award or agreement places a positive obligation on the employer to contribute to superannuation, then the exemption will apply to the employees covered by the award or agreement. The clear intention of the legislation is, amongst other things, to avoid double jeopardy for employers.

It is assumed that around 50 per cent of State awards are specific enough in their coverage of superannuation for employees covered by such awards to be excluded from the choice legislative requirements, while in the case of State and Commonwealth registered or certified agreements the figure is more like 80 per cent. This would exempt around 1.6 million employees in total from the choice provisions.

## *Who will exercise choice?*

Based on survey data of fund members, it is estimated that around about 8 per cent of fund members will be able to and will want to exercise choice of fund. This will lead to gross flows between fund sectors of about 6 per cent of fund members, with these flows taking some years to occur fully.

The percentage of assets on the move is likely to be higher, given that those with higher account balances appear to be the most inclined to move. The analysis suggests that over time some 7.5 per cent of total superannuation assets will move following the introduction of legislated choice of fund.

## *The winners and losers amongst fund sectors*

In accordance with conventional wisdom, the analysis in the paper indicates that Self Managed Superannuation Funds are likely to have significant growth in account

numbers and assets following the introduction of choice of fund. Choice will lead to few outflows from SMSFs, but substantial inflows from members previously in retail, public sector, corporate and industry funds. These net inflows might amount over time to 4 per cent or more of the total assets of the sector, on top of the 22 per cent of system assets currently in SMSFs.

Retail funds could well be net losers from the introduction of choice of fund, with a higher proportion of their members indicating a preparedness or likelihood of changing funds. While some of these movements will be between retail funds, there is likely to be significant flows of assets into SMSFs and to a lesser extent to industry funds.

On the other hand, industry funds will have the benefit of provisions specifying the fund to be used in a number of State awards and agreements and in a number of Commonwealth certified agreements, together with the benefit of default arrangements in certain Commonwealth awards. As well, a considerable proportion of industry fund members with account balances of \$6,000 or less will not be attractive propositions for retail funds, unless they can be delivered along with other account balances attached to employees with the same employer. Industry fund members with high account balances wanting to exercise choice would be more attractive to the retail funds, but these accounts will end up in SMSFs in many instances.

Flows of members and assets involving corporate funds and public sector funds will be almost entirely outwards, but flows relating to member exercise of choice of fund are not likely to be large and are likely to go to SMSFs. Closure of corporate funds and public sector funds resulting from decisions by employer sponsors would give rise to larger shifts of assets and members.

#### *The impact of APRA licensing and other corporate fund closures*

Overall, the aggregate assets of corporate funds could drop by around one-third as a result of fund closures (rather than choice of fund decisions by members), with the number of corporate funds falling by a much greater proportion. The level of corporate fund assets is likely to bottom out at a still substantial level (\$40 billion or so) because there are a number of multi-billion dollar corporate funds that will be both viable and desired by employer sponsors following APRA licensing.

In terms of the flows involved, around \$0.5 billion might flow from very small corporate funds into Self Managed Superannuation Funds, while around \$20 billion will flow to, in descending order of assets involved, group arrangements provided in the retail sector, industry funds, and personal and small employer arrangements in the retail sector.

#### *How many different funds can an employer expect to pay to?*

Once employees begin to exercise choice both large and small employers can expect to start making contributions to more funds than they currently do. The number will depend on the characteristics of the employer's workforce, the industry sector or sectors that the firm operates in, and the rate of turnover of employees.

Based on the distribution of retail and industry funds nominated by the respondents of the ANOP survey described in detail in Attachment A of this paper, a very large employer not exempt from providing choice might eventually be making contributions to up to around 50 superannuation funds. Around 20 funds might be the main recipients of contributions, with approximately 10 funds receiving around half of the contributions.

*How likely is a United Kingdom mis-selling scandal?*

While there will be some risks with the introduction of legislated choice, there are a number of factors which make it likely that the Australian experience will be quite different from that which occurred some years ago in the United Kingdom.

Reducing the chances of widespread mis-selling is that there are not large numbers of individuals with substantial defined benefit interests, and those that do have such benefits will generally be exempt from the choice provisions. The regulatory regime here is also relatively strong, with high awareness of the problems that occurred in the United Kingdom.

All that said, it is still likely that mis-selling is happening and will continue. Some professional advisers, particularly those without an AFSL license and/or those who do not undertake an effective “know your client” process, can consistently recommend the establishment of SMSFs, even in instances when the objective case for doing so is weak.

For the future, it will be important for employers to be careful in regard to who they allow to provide educational or marketing material to their employees. Some funds have already reported instances where “educational seminars” provided by third parties have inappropriately recommended certain actions. Careful surveillance and feedback from fund members and managers in workplaces will be helpful in identifying any such instances, and in bringing such activities to the attention of the appropriate regulator.

# Who will have choice?

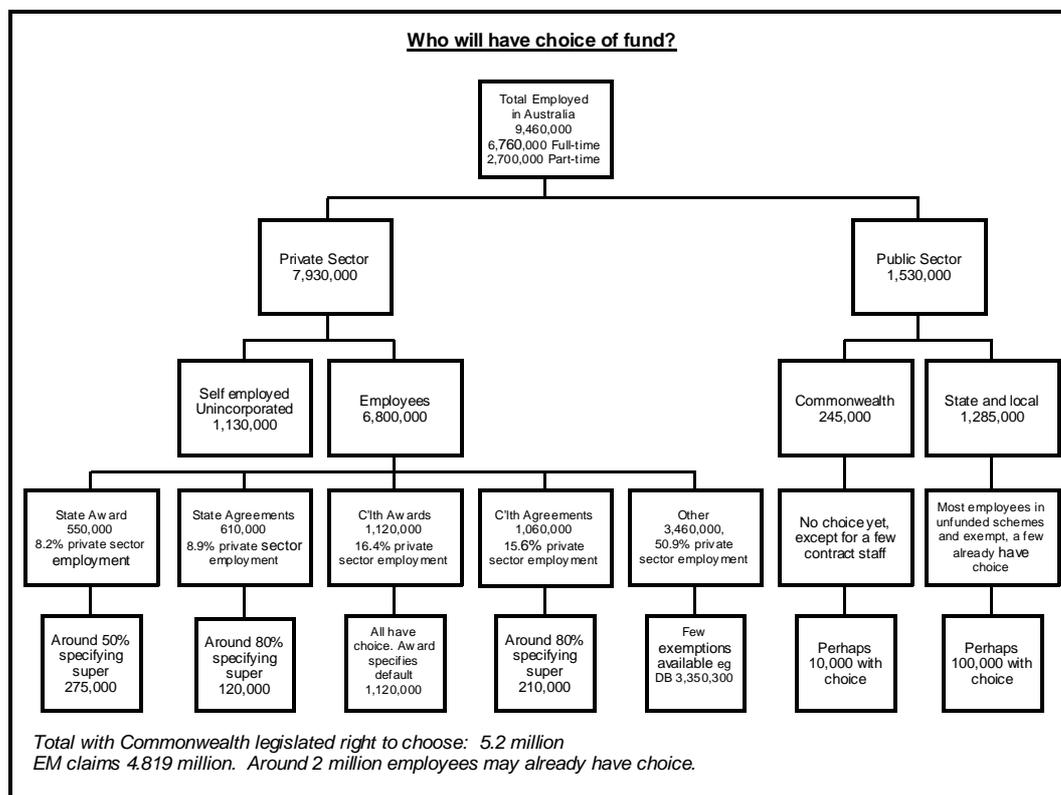
Determining who has a legislated right to choice of superannuation fund under the Commonwealth choice of fund legislation which will take effect from 1 July 2005 is not a straightforward task.

One of the reasons for this is that the legislation only operates in regard to employees where an employer has an obligation to make superannuation contributions under the Superannuation Guarantee (SG) legislation. Accordingly, choice of fund legislation is not relevant to those who are self employed. Similarly, it is not relevant to employees who are earning less than \$450 in a month, or who are aged 70 or over. If employers choose to provide superannuation to the latter categories of employees, or are required to by an industrial award or agreement, then the SG provisions, including choice of fund, do not apply.

There also is a range of exemptions to the requirement to offer choice even in cases where there is a SG obligation. In the case of a number of the exemptions there is only limited information available on the likely extent to which the exemption will apply. In some cases it is necessary to extrapolate from what are necessarily partial or incomplete data.

Figure 1 provides a breakdown of the various categories of employment in Australia, circa 2003. It starts, at the top of the figure, with the total number employed and then works through the various exclusions and exemptions from choice of fund to estimate the numbers with a legislative right to choice in the boxes in the bottom of the figure.

**Figure 1**



**In other words, out of the 9,460,000 or so employed persons in Australia, no more than 5.2 million employees potentially will have a right to choose their superannuation fund under the choice of fund legislation.**

The 5.2 million would be diminished a little by the number of employees not covered by the SG because of low earnings (less than \$450 a month in every month of the year) or age.

The estimate in the figure is remarkably in line with the estimate provided by the Commonwealth Treasury in the Explanatory Memorandum of the choice of fund legislation. In that document it was estimated that 4.819 million employees would be affected by choice of fund. While neither a breakdown of that figure or the year to which it applied were given, it appears to be an estimate relevant to 2002 or thereabouts, as the estimate of employees affected did not change with several iterations of the draft legislation over a number of years. It is also likely that some rounding of that estimate would be appropriate given the uncertainty attached to the exact quantitative impact of a number of the choice of fund exemptions and the exact extent of number of employees in regard to which SG obligations arise.

#### *Choice of fund apart from Commonwealth legislative requirements*

A considerable proportion of the labour force already has choice of fund, and there also will be more employees with choice than those required to be handed the various forms etc under the Commonwealth choice of fund legislation.

**Currently out of the 9.46 million in the Australian labour force, around 1 million self employed and owner managers of businesses already have (by definition) choice of fund, and another 1.9 million or more employees will have choice of fund because their employer agrees or because of other existing State legislation and State public sector employment practices.** Attachment A has further details on the percentage of employees reporting that they have choice of fund and the number of employees covered by State choice of fund arrangements.

There will be some overlap between those entitled to choice of fund under the Commonwealth legislation and those currently able to exercise choice because their employer allows it, or State legislation (such as in Western Australia) requires it for certain employees. **ASFA Research Centre estimates suggest that after 1 July 2005 some 5.7 million Australians will have a statutory right to choose their fund.** This is made up of 500,000 or so employees who will be able to choose their fund under State arrangements (in regard to both the public and private sectors), and 5.2 million entitled to choice of fund under the Commonwealth legislation.

If all the States introduced choice of fund legislation along the lines of that of the Commonwealth, or if the Commonwealth were able to over-ride State industrial legislation, then the increase in the number of employees with a right to choice of fund would be relatively modest at around 275,000. The number is not high because the reach of State awards (as opposed to State registered industrial agreements) is relatively limited amongst private sector employees, and many such awards do not specify a superannuation fund or funds.

Nevertheless, the *Courier Mail* of 27 December 2004 reported that the Assistant Treasurer, Mal Brough, has written to State Premiers calling on them to provide choice for workers on State awards. The article also quotes Mr Brough as stating that if the States do not do this on their own accord then the Commonwealth will legislate as of July 2006 using the corporations power to bypass the States. If the corporations power were used only a proportion of those covered by State awards would be affected, as not all employers covered by State awards are corporations.

Requiring employers to offer choice of fund to employees covered by registered or certified industrial agreements dealing with superannuation would increase the numbers with a legislative right to choice considerably. This would bring in a further 500,000 or so employees covered by State industrial agreements and another 850,000 employees covered by Commonwealth agreements.

The likelihood of legislation extending choice to those covered by industrial agreements at either the Commonwealth or State levels does not appear to be high in the immediate future. Over-riding collective agreements dealing with superannuation has not been a priority to date for the Commonwealth Government, but it could of course become an issue in the future.

In this context, with the change to the makeup of the Senate after 1 July 2005 changes to Commonwealth industrial relations legislation might occur, and this could have implications for how superannuation is dealt with. If superannuation were removed from the list of allowable matters for Commonwealth industrial awards then default arrangements for some 550,000 employees would then in law become matters for the respective employers to determine. At the time of preparation of this paper media reporting of Commonwealth Government intentions in this area indicated that while a number of matters were likely to be removed as allowable matters, the issue of award coverage of superannuation was still being considered.

Some commentators have also queried whether the decision in the Electrolux case will lead to superannuation not being a matter that can be dealt with in Commonwealth certified agreements. In the Electrolux case the High Court determined that matters such as bargaining agents fees which did not pertain to the employment relationship could not form part of certified agreements. However, while there is some uncertainty as to the implications of the decision for certain matters covered in some industrial agreements, to date there has been no suggestion that superannuation is not a matter pertaining to the employment relationship. On the other hand, there are suggestions that income protection insurance and journey accident insurance are not matters pertaining to the employment relationship.

## **1. Choice of fund and the public sector**

The SG legislation states that it binds the Crown in the right of each State and Territory, and that it also binds the Commonwealth and Commonwealth authorities. That said, the legislation also provides that if the legislation imposes a superannuation guarantee charge on a State that exceeds the legislative power of the Commonwealth, then that obligation is severed from the legislation.

In any event, in most instances the States will not have to offer choice to their public sector employees. The choice of fund legislation effectively exempts contributions to

unfunded public arrangements. The only exception relates to contributions in respect of Commonwealth employees that are members of the CSS or PSS schemes where there is an initial exemption which can be revoked by the Commonwealth. Many State government employees are members of unfunded public arrangements or are otherwise exempt from having to be offered choice. This means that a constitutional challenge to the legislation is very unlikely.

That said, a number of States have closed unfunded arrangements to new employees, and they either make contributions to a funded public arrangement, or, less commonly, allow the employee to choose the fund to which contributions are made.

Whether a State public sector employer will be required to offer choice of fund in the manner specified by the Commonwealth legislation to those public sector employees in regard to which contributions are made to a funded public sector scheme depends in part on whether regulations are made by the Commonwealth under subsection 32C(9) prescribing contributions made under certain State laws. As we understand it from material posted on the websites of relevant public sector funds, a number of States (including Queensland and NSW) quite reasonably anticipate that relevant State laws requiring State government employers to pay contributions to a specified State government superannuation fund will be so prescribed, thereby exempting relevant contributions from the choice arrangements. However, exemption from the Commonwealth legislation does not stop the States offering choice of fund on their own terms and using their own mechanisms.

It should be noted that the exemption depends on there being a legislated obligation to pay to a specified fund, rather than merely on the fund being established under State legislation. As well and as set out above, there also are some potential constitutional issues in regard to State government employment and the SG.

State and Territory governments will also in many cases have available to them the exemption applying to employees covered by an industrial agreement (see the following section). Over 90 per cent of public sector employees are covered by collective or individual formal industrial agreements, with most of these agreements dealing with superannuation. Some public sector employees will not have to be offered choice because three or even four exemptions relevant to them will apply.

This does not mean that there generally will be no choice of fund for State government employees. Some State schemes (such as First State Super in NSW) already provide for choice of fund, so the exemption from the choice of fund legislation in these cases is more about how choice is offered and exercised rather than whether it is available. However, the way choice is offered does matter. If all new and existing employees are given a form pointing to choice being available, this is likely to have more impact on the takeup of choice of fund than employees being able to exercise choice if they get to know they have this right through some indirect source.

Consistent with the above, the estimates in Figure 1 assume that no more than 100,000 State and Local Government Employees will have Commonwealth legislated choice of fund. These employees would mostly be in local government employment and the few pockets of State or Territory government employment where there are no unfunded schemes, collective agreements dealing with superannuation and/or legislated

requirements to pay contributions in a specific way. However, there could well be other State, Territory and local government employees who have choice as a result of a policy decision by their employer. This could be as many as 400,000 or more public servants given that First State Super alone has 300,000 active members.

There will not be much choice of fund for Commonwealth employees, at least initially. Contributions to the major Commonwealth schemes, namely the CSS and PSS, and contributions made under the Superannuation (Productivity Benefit) Act 1988 are exempt until such time regulations remove this exemption. Accordingly most Commonwealth public servants will not have choice of fund come 1 July 2005, although members of the CSS and PSS may well be given choice at some point in the future. There does not seem to be an intention to provide choice of fund to those who qualify for, say, membership of the military superannuation schemes.

Most new members joining the PSS scheme on or after 1 July 2005 will be members of a new accumulation plan which will receive basic employer contributions of 15.4% of superannuation salary. Persons with an existing interest in the CSS or PSS will be unaffected and will not be able to transfer into the new plan.

AGEST is the nominated default fund for contributions by the Commonwealth under the Superannuation (Productivity Benefit) Act 1988. As such it receives superannuation contributions for temporary Commonwealth employees and others not eligible for PSS or CSS membership, amongst others. Until regulations are made, employers making contributions under that Act appear to be exempt from the choice provisions. Accordingly, the Figure assumes that only 10,000 Commonwealth public sector employees will have legislated choice of fund as at 1 July 2005. Even this figure may be an upper estimate.

As indicated by Section 5 of this paper, the flow of public sector members (in those cases where choice of fund does apply) can be expected to be to master trusts (retail), industry funds and SMSFs. Given that there will be generally high balance accounts associated with individuals wanting to set up an SMSF and the level of interest in SMSFs relative to other types of fund, it is projected by the ASFA Research Centre that most of the superannuation assets flowing out from public sector funds as a result of choice will be to SMSFs.

The flow of assets out from public sector funds, and other types of superannuation funds, will take a little time, as it may be several years before all those likely to change funds act on their inclination. As well, the choice of fund legislation applies to future contributions rather than transfer of account balances. However, once employer contributions stop being made to a fund, the portability of account balance provisions which came into effect on 1 July 2004 can be put into use by members, and account balances could be rolled over after a period of six months or more following the exercise of choice.

## **2. Choice of fund and employees covered under State awards and agreements**

If an employer contribution, or part of a contribution, is made under or in accordance with a State industrial award then this is deemed by the choice of fund legislation to be in compliance with the choice requirements (Section 32C(8) of the *Superannuation*

*Guarantee (Administration) Act 1992*). The definition of State industrial award includes an agreement approved or registered under a State industrial law.

The incidence of both State and Commonwealth awards and agreements as at May 2002 is set out in the ABS publication *Employee Earnings and Hours*, Cat. No 6306.0. The estimates in Figure 1 reflect these statistics.

Award and industrial agreement superannuation provisions usually contain three elements:

- Specification of quantum of employer contributions.
- Specification of categories of employees in respect of which contributions are to be paid.
- Specification of the fund.

**ASFA understands that the Australian Taxation Office will be taking a fairly broad approach in interpreting the exemption relating to industrial awards and agreements.**

In essence, “under or in accordance with” is much broader than the phrase “to the fund specified in”, with the latter phrase not used in the legislation. When payments are made “under or in accordance with” an award or agreement this means that the payments are being made in compliance with the superannuation terms. Those terms may be extensive, or they may not. They may include a specified fund, or they may not.

While this approach is justifiable given the words used in the legislation and the lack of any contrary intention in the Explanatory Memorandum, it also makes sense because of ease of administration and also because the parties to the agreement or award have considered the topic of superannuation and settled on the approach that they want to adopt.

ASFA’s understanding is that if the award or agreement places a positive obligation on the employer to contribute to superannuation, then the exemption will apply to the employees covered by the award or agreement. This will be the case even if the award or agreement in itself allows choice of fund or opting out from a default fund. As ASFA understands the matter, it is also not necessary for the award specification to nominate a fund, or for it to cover the full amount (9 per cent of wages) required to be paid by the Superannuation Guarantee legislation for a complete carve out to occur.

**The clear intention of the legislation is, amongst other things, to avoid double jeopardy for employers**, where they would be required to comply with both a State award or agreement and the choice of fund legislation. The legislation is designed to simplify compliance for employers as much as possible, with a carve out from the Commonwealth choice arrangements in cases where State industrial awards deal with any amount of superannuation required to be paid by the employer. **These carve outs clearly have an employer focus.** There is no real evidence that they were introduced to assist “the industrial relations club”, as a few commentators in the media have suggested.

However, despite this likely broad interpretation of award provisions that will lead to an exemption from choice, not all employees under State awards and agreements will be

exempt. The simple reason for this is not all such awards and agreements mention superannuation, or place an obligation on the employer to contribute.

State awards and agreements are likely to cover around 17% of private sector employment, based on the most recent ABS data, with agreements more likely to have provisions specifying how employer superannuation contributions are to be made than award provisions. Typically agreements operate in situations where there are 500 or more employees. In such cases where an employer has a relatively large number of employees there often can be reasons why the number of funds will be limited by the industrial agreement. One such reason might be that the employer is a sponsor of a corporate superannuation fund covering all employees in the firm, or group coverage has been arranged with a master trust or industry fund. Employers with a large number of employees also might be wary of having to pay superannuation to a large number of superannuation funds. Similarly, large employers can prefer to have one overall industrial agreement, rather than an array of various award provisions and individual contracts.

Agreements about superannuation can also be made in formal individual agreements under industrial relations legislation (which are often the same basic deal being offered on an individual basis by an employer on a take it or leave it basis to all or some of the employees of a firm or government agency), but registered individual agreements are not very common in State or Territory jurisdictions other than in Western Australia.

In line with the reasoning above and anecdotal evidence about what is in awards and registered agreements, **it is assumed that around 50 per cent of State awards are specific enough in their coverage of superannuation to be excluded from the choice legislative requirements, while in the case of State registered agreements the figure is more like 80 per cent.** Exclusion of superannuation choice by award coverage could be expected to be relevant for a significant proportion of employees of small businesses covered by State awards, while an even higher proportion of employees of larger firms are likely to be excluded due to the operation of State industrial agreements.

In terms of an industry split of employment, awards have a relatively high incidence in retail trade and accommodation, cafes and restaurants, while collective agreements are common in education, electricity, gas and water supply, communications, transport and storage and finance and insurance. This will be relevant to funds which wish to undertake any targeted marketing directed at employers or employees following the implementation of choice of fund.

Again, exclusion from the provisions of the choice of fund legislation does not necessarily mean that employees covered by the relevant State awards and agreements will not have choice of fund. Many State awards have provision for multiple funds and/or opting out from the default fund. Some States (most notably NSW and Queensland) have overriding legislation which allows an individual to choose, subject to the agreement of their employer, a fund different to that specified in a State award, but admittedly such provisions are not well known or much used by employees.

An exception to this is in Western Australia, where employers are required to provide employees covered by State awards or enterprise agreements which deal with superannuation, with a form which sets out the right of the employee to choice of fund

under the Western Australian legislation. While it has been reported in a range of media at various times that 300,000 employees have choice of fund under the WA provisions, this is likely to be an overestimate. There are only about 800,000 private sector employees, and only a minority is covered by State awards and agreements. Given the coverage of State awards and agreements and the extent to which they deal with superannuation, a figure more like 90,000 appears to be a reasonable estimate. **In any given year some 10,000 or 15,000 Western Australian employees might exercise choice of fund under State legislation, and many of these are employees changing jobs who are opting to stay in the fund to which their previous employer contributed.** This helps explain why the introduction of legislated choice of fund in that State has been relatively smooth.

### **3. Choice of fund and employees covered under Commonwealth awards and agreements**

Commonwealth awards and agreements tend to be more pervasive in the labour force than State awards and agreements. As indicated by Figure 1, around 16 per cent of private sector employees are covered by Commonwealth awards, with a further 16 per cent covered by either collective or individual industrial agreements certified under Commonwealth legislation. In regard to the split between collective and individual agreements, most are covered by collective arrangements with only about 2 per cent of private sector employees currently covered by formal individual agreements.

However, statements by the Office of the Employment Advocate, which does the supervision and registering of such agreements, indicate that their incidence continues to grow. Choice of fund also might be another incentive for certain employers to offer such contracts to each existing employee and/or to new employees in order to deal with choice of fund in a different way to that specified in the legislation. That said, time, effort and expense are all required to implement Australian Workplace Agreements, and to date they have not proved that popular outside the public sector. AWAs, while individual agreements, can be offered on more or less uniform terms to employees of large employers rather than being a preserve of small firms.

Accordingly, collective agreements under the Commonwealth legislation are likely to apply to the employees of large firms, while individual agreements are likely to be used by firms of varying sizes. Superannuation is likely to be a matter dealt with in both types of agreement, with collective agreements generally significantly limiting the cases in which choice of fund is offered to employees. In individual agreements this will not necessarily be the case, but the confidentiality of such agreements makes it hard to be definitive.

There have been some anecdotal suggestions that some small employers have entered into AWAs in order to avoid the obligations of the choice legislation. However, given the time and effort required to develop, negotiate and have approved such agreements, the incidence of such behaviour is likely to be low. The incidence of AWAs is not high amongst small business, and the choice of fund legislation is not likely to make much difference to this.

The choice of fund legislation overrides Commonwealth award provisions in that a superannuation fund chosen by an employee in accordance with the choice of fund legislation displaces any Commonwealth award specification of a superannuation fund

(Section 32Z of the *Superannuation Guarantee (Administration) Act 1992*). However, in the absence of any valid choice of fund by the employee, the award provision continues to operate. If the Commonwealth award specifies that a particular fund is to be used, or specifies the range of funds that can be used, then the award provision continues to apply and the employer cannot specify a default fund other than in accordance with the award provision.

However, like State registered industrial agreements, in cases where a Commonwealth certified industrial agreement deals with superannuation, employer contributions are deemed to be made in accordance with the choice of fund requirements (Section 32C(6) of the *Superannuation Guarantee (Administration) Act 1992*). If the agreement concerned specifies a superannuation contribution amount of less than the mandatory 9% SG, the exemption from choice will apply to the whole contribution, not just the contribution required to be made under the agreement.

For reasons similar to those applicable to State registered industrial agreements, it is assumed that around 80 per cent of Commonwealth industrial agreements will specify superannuation sufficiently to exclude the operation of the choice of fund legislation in regard to the employees covered by the agreements. **All up, it is estimated that coverage of superannuation under State awards and agreements and Commonwealth agreements will lead to some 1.6 million employees being exempted from coverage of the choice of fund legislation.**

Even in the absence of the exemption for those covered by industrial agreements dealing with superannuation, it is likely that a number of large employers would effectively be exempt from the choice of fund provisions in regard to a large number of employees because the corporate superannuation fund currently used by the employer is on a contribution holiday. For instance, the *Australian Financial Review* of 15 December 2004 carried a report dealing with the provisions of the enterprise bargaining agreement of the Commonwealth Bank and its inter-relationship with the corporate superannuation fund used by the bank.

The next section deals with the exemptions applying to funds on a contribution holiday and certain members of defined benefit funds.

#### **4. Other employees (not public servants, nor covered by any industrial award or registered agreement)**

Apart from the broad exemptions applying to public servants and those covered by industrial agreements described in the earlier sections which relate to some millions of employees, there also are a number of other exemptions from choice of relatively limited scope. These primarily relate to certain corporate defined benefit funds or divisions of corporate defined benefit funds. Only a relatively limited number of employees are likely to be affected by these specific exemptions, particularly given that the defined benefit arrangements often relate to employees who also are subject to the coverage of industrial agreements dealing with superannuation.

## 4.1 Exemptions that can apply when an employee is a member of a defined benefit scheme

The exemptions fall into three main categories:

- Where the employee is currently a defined benefit member of a defined benefit fund and even if contributions were made to another fund the employee would on retirement, resignation or retrenchment be entitled to the same benefit they would have had the employee not chose the other fund (Section 32F of the *Superannuation Guarantee (Administration) Act 1992*).
- Where a defined benefit scheme is continuously in surplus from 1 July 2005 then an employer may in respect of an employee who has continuously been a defined benefit member of the scheme since 30 June 2005 effectively ignore any choice of fund nomination by the employee provided actuarial certificates to this effect are kept up to date (Section 20 of the *Superannuation Guarantee (Administration) Act 1992*).
- Where a defined benefit scheme member has reached their maximum benefit accrual, which is considered to have occurred if after the start of the quarter the defined benefit that has accrued to the employee will not increase other than because of a pay rise, an increase in benefits due to investment earnings, an increase in the benefit due to indexation or any other way that is prescribed (Section 20(3) of the *Superannuation Guarantee (Administration) Act 1992*).

There is also a potential exemption available to employers where contributions are made under prescribed laws (Section 32C(9) of the *Superannuation Guarantee (Administration) Act 1992*). While it is likely, as noted in Section 1 above that a number of the States are likely to make application under this provision to cover contributions required under State legislation to be made to a funded public scheme, there are other possible applicants. For instance, in some industry sectors, such as coal mining, industrial provisions, including superannuation fund to be used, can be specified in legislation rather than in an award or agreement.

These various provisions will be important to the employers to which they apply in that otherwise certain employees might double up on their compulsory superannuation contributions. However, the number of employees to whom the exemptions apply is likely to be relatively limited compared to the overall number of employees in the workforce. For instance, there are only 86,000 members in pure private sector defined benefit schemes, and only a minority of the 2.7 million members in private hybrid schemes in defined benefit divisions. As well, only a proportion of these defined benefit members would meet the criteria set out above. While schemes in surplus were not that uncommon some years ago, the decline in investment returns that was experienced a few years ago reduced or eliminated some of those surpluses. As years pass, surpluses are eroded by accruing superannuation liabilities. In any event large employers with a defined benefit fund, or a fund with defined benefit divisions, are likely to have an industrial agreement dealing with superannuation, and an exemption under that head.

**All up, exemptions under the various categories described above might be relevant to some 100,000 or so employees, with around 3.4 million of this “other” category primary facie entitled to exercise choice of fund after 1 July 2005.** In fact, a significant proportion of this group might already be exercising choice of fund given that there are no legislative or financial constraints to choice applying.

#### **4.2 The not quite exemption when an employer requires all employees to choose a fund**

There can be circumstances where an employer can satisfy their obligations under the choice of legislation without doing much or anything different to what they have done in the past. More specifically, Section 32 NA of the choice of fund legislation provides that a Standard Choice Form does not have to be provided to an employee if the employee has chosen a fund under section 32 F (i.e. given the employer a written notice) by the time specified in subsection 32N (1), (2), (3) or (4). Some employers currently require all new employees to choose a fund as part of the overall conditions of employment, and it can be argued that such employees do not have to select a default fund or provide employees with a Standard Choice Form as the employee already will have provided a written notice.

However, as the law stands, the do nothing different option for such employers does give rise to Superannuation Guarantee compliance risks for the employer. For instance, even if an employer is able to make provision of a notice by the employee specifying the superannuation fund to be used a pre-condition of employment, what happens if the chosen fund becomes not "eligible" or was never eligible?

The danger for the employer is that the employer has to pay SG for its employees at least quarterly. Not having a default fund would give rise to compliance difficulties if the employee did not provide a chosen fund to which the employer could contribute to meet their obligation (on time). While an employer can claim they require an employee to nominate a fund, the reality of most workplaces is many employees will not nominate a fund without a lot of prompting. Some employees will fail to nominate a fund even with continued prompting.

The Minister for Revenue and Assistant Treasurer, Mal Brough, issued a media release on 19 January 2005 foreshadowing legislative amendments which would exempt certain employers from having to choose a default fund and notifying employees about that fund. Such amendments appear to be aimed at protecting employers who routinely require new employees to specify a superannuation fund to receive contributions. However, how exactly they might be protected is not clear. Perhaps the amending legislation will work by allowing employers not to provide a Standard Choice Form in those circumstances, or allowing them to use SHAR (a payment facility for SG contributions maintained by the Australian Taxation Office) if no fund is nominated. However, at the time of preparation of this paper it was not clear what is intended.

Foreshadowed industry consultation before the preparation of legislation should assist in clarifying what is intended, and whether this in effect will be a further exception to the general choice of fund provisions. It is likely that small business operators would be the group which would most likely benefit from such changes to the legislation. Many large employers will already be exempt because of industrial agreements or the like, while other large employers because of practical considerations are unlikely to have put

in place processes which required all new employees to specify their superannuation fund.

## **5. Implications for funds from implementation of choice of fund**

As indicated by the analysis in the preceding sections, following the implementation of the Commonwealth choice of fund legislation on 1 July 2005, around 5.2 million employees receiving SG employer superannuation contributions will have a legislated right to choose their superannuation fund. Another 500,000 or so might have choice under State legislative provisions.

The market impact of choice will depend on both the number and characteristics of employees given the right to choose their superannuation fund, and their preparedness to change funds, both initially and over time. Layered on top will be the effect of certain funds, mostly corporate funds, closing down due to company decisions and the demands of the APRA licensing process, and the exercise of choice under arrangements other than the Commonwealth legislation.

### **5.1 Movement of members and assets**

The above analysis sets out the types of employees able to exercise choice, while Attachment A to this paper sets out relevant survey findings in regard to attitudes of various funds to choice, and the type of decisions they are likely to make. In broad terms, based on this comprehensive analysis and market research, **it is estimated by the ASFA Research Centre that around about 8 per cent of fund members will be able to and will want to exercise choice of fund.** Some of these changes in fund will be between funds within specific sectors (for example, retail fund to retail fund, or industry fund to industry fund).

**Some market sectors will have flows both in and out, but in the case of public sector and corporate schemes the flows will be almost entirely outwards** due to restrictions on accepting contributions from employees other than those of the employer sponsors of the funds concerned. However, in the case of public sector schemes the flows outwards will depend on the attitude of the governments concerned as to paying real money for transfers out from the largely unfunded schemes.

**It is estimated that the gross flows of members between fund sectors will over time be less than 6 per cent of total membership. It may take some years for this to occur.**

Table 5.1 provides details of the estimated flow of members from sector to sector.

**Table 5.1: Movement of members after choice of fund implementation**

<b>Fund type</b>	<b>Number of employed fund members (million)</b>	<b>Exercising choice of fund(a)</b>	<b>Gross flows out from sector</b>	<b>Destination of flows from sector</b>
Corporate	0.4	6%	6%	40% master trust, 40% industry, 20% SMSF
Industry	2.2	11%	7%	60% master trust, 40% SMSF
Public sector (b)	1.4	0.5%	0.5%	30% master trust, 30% industry, 40% SMSF
Retail	2.3	12%	9%	50% industry fund, 50% SMSF
Self managed fund	0.34	3%	3%	60% retail fund, 40% industry fund
<b>Total</b>	<b>6.8</b>	<b>8.2%</b>	<b>5.7%</b>	

(a) Assumes that the bulk of respondents who indicated that they are very likely to consider changing funds together with some of those indicating that are likely to consider changing funds, will do so. Also adjusts for exemptions to choice.

(b) Amount of flows will depend on arrangements for Commonwealth employees and attitudes of State and Territory Governments.

**The percentage of assets on the move is likely to be higher, given that those with higher account balances appear to be the most inclined to move, and the most able to set up a Self Managed Superannuation Fund. The analysis suggests that over time some 7.5 per cent of total superannuation assets will move following the introduction of legislated choice of fund.**

Table 5.2 provides details of the forecast flow of assets between fund sectors. Some sectors are likely to have flows both in and out, some will have only flows out, with SMSFs being mostly recipients of asset flows.

**Table 5.2: Movement of assets after choice of fund implementation**

<b>Fund type</b>	<b>Percentage of total super assets</b>	<b>Percentage of assets the subject of choice(a)</b>	<b>Gross asset flows out from sector</b>	<b>Destination of asset flows from sector</b>
Corporate	9.3%	9%	6%	30% master trust, 30% industry, 40% SMSF
Industry	11.5%	11%	7%	40% master trust, 60% SMSF
Public sector (b)	20.2%	1%	1%	20% master trust, 20% industry, 60% SMSF
Retail	34.4%	20%	14%	30% industry fund, 70% SMSF
Self managed fund	21.5%	5%	5%	70% retail fund, 30% industry fund
<b>Total</b>	<b>100%</b>	<b>10.2%</b>	<b>7.5%</b>	

(a) Assumes that the bulk of respondents who indicated that they are very likely to consider changing funds together with some of those indicating that are likely to consider changing funds, will do so. Also adjusts for exemptions to choice. Flow from SMSFs is only loosely related to choice legislation, but assumes higher community awareness about advantages and disadvantages of specific types of funds will lead to some flows from SMSFs.

(b) Amount of flows will depend on arrangements for Commonwealth employees and attitudes of State and Territory Governments.

## **5.2 Winners and losers in terms of funds and membership numbers and asset levels**

The analysis above both confirms some conventional wisdom about the likely market share implications from the introduction of choice of fund, and confronts other pieces of conventional wisdom.

**In accordance with conventional wisdom, the analysis indicates that Self Managed Superannuation Funds are likely to have significant growth in account numbers and assets following the introduction of choice of fund.** Choice will lead to few outflows from SMSFs, in that the handing out of forms by employers will prompt SMSF members to review their superannuation arrangements, albeit arrangements which, by definition, they chose. On the other hand, there will be substantial inflows to SMSFs from members previously in retail, public sector, corporate and industry funds. **These net inflows might amount over time to 4 per cent or more of the total assets of the sector, on top of the 22 per cent of system assets currently in SMSFs.**

There will be a significant flow out from corporate funds, and no flow ins. The public sector will be largely immune from choice of fund legislation unless and until the CSS and PSS schemes are made subject by regulation to the choice provisions. Even then, a significant part of the flow out will be to SMSFs.

Industry funds are likely to experience both flows in and out, both to and from a range of other types of funds. The overall net flows are unlikely to be dramatic.

**Retail funds could well be net losers from the introduction of choice of fund, with a higher proportion of their members indicating a preparedness or likelihood of changing funds.** While some of these movements will be between retail funds, there is likely to be significant flows of assets into SMSFs and to a lesser extent to industry funds. This will be balanced to some extent by inflows from previous industry fund and corporate members, but these flows to retail are likely to be dominated by lower account balance members. The higher account balance members of corporate and industry funds are more likely to end up in SMSFs. Collective agreements will also limit the extent to which retail funds might be able to achieve inflows of balances from high account balance corporate fund members.

**The current large market share of retail is both an asset and liability in a choice of fund environment.** Retail funds appear to have an unfortunate (for them) conjunction of a higher than average proportion of restive members and not much in the way of exemptions from choice. State awards and agreements and Commonwealth collective and individual agreements do not often specify retail funds.

On the other hand, industry funds will have the benefit of provisions in State awards and agreements and in Commonwealth agreements, together with the benefit of default arrangements in certain Commonwealth awards. As well, a considerable proportion of industry fund members with account balances of \$6,000 or less will not be attractive propositions for retail funds, unless they can be delivered along with other account balances attached to employees with the same employer. Industry fund members with high account balances wanting to exercise choice would be more attractive to the retail funds, but these accounts will end up in SMSFs in many instances.

### **5.3 Winners from closure of corporate funds and fund consolidation**

Legislated choice of superannuation fund will not be the only development influencing the shape of the superannuation industry. Over the next few years there also will be considerable consolidation in the number of funds, with, in particular, many corporate superannuation funds closing. This will be both because of a more rigorous APRA licensing regime following the Safety of Superannuation legislation, and strategic decisions by corporations as to what their core functions are.

Much of the consolidation in terms of a reduction in number of funds will occur in the small corporate superannuation fund area. There currently still are some hundreds of corporate funds with total assets less than \$1 million, and some hundreds more with assets between \$1 million and \$2 million. Often most of the assets of such funds relate to the superannuation accounts of the owner/managers of the corporate sponsors. Following APRA licensing these funds will close, and most of the assets can be expected to flow to SMSFs.

However, for funds with assets greater than \$2 million most if not all of the account balances will flow to retail or industry funds. The process of selecting a successor fund is likely to be more ad hoc the lower the amount of assets involved, but once there is \$10 million or more involved the likelihood of a more formal tender process increases.

Currently most of those tender processes lead to some sort of wholesale deal being struck by a retail provider, but increasingly industry funds are considered within such processes and in some cases the successor fund will be an industry fund.

Table 5.3 provides data on the current and past size distribution of superannuation funds, together with an ASFA Research Centre projection of the future structure of the industry. The projections in the table are more or less consistent with APRA expectations as to the future number of funds they will be regulating after the Safety of Superannuation licensing process is complete. However, the ASFA projections are a little bit lower, with a relatively high attrition rate assumed for corporate funds in the \$20 million to \$100 million range.

**Table 5.3: Structure of the superannuation industry**

Asset Range (\$)	1997-98	2002	2003	2006 (forecast)
<1m	1,826	649	450	Nil
1-5m	1,248	639	501	Nil
5-10m	506	207	182	Nil
10-20m	370	150	201	Nil
20-50m	342	287	160	30
50-100m	146	136	115	50
100-250m	145	123	121	80
250-500m	67	72	69	50
500-1,000m	45	62	61	60
1-5b	44	67	76	70
5-10b	4	9	12	20
10-20b	0	1	1	3
20b+	0	1	2	2
<b>Total</b>	<b>4,743</b>	<b>2,403</b>	<b>1,978</b>	<b>355</b>

Source: APRA Levy Discussion Paper, projections for 2006 by ASFA Research Centre

Closure of the many hundreds of the “rats and mice” small corporate funds shown in the top two lines of the above table will not lead to massive asset flows. Around \$0.5 billion is likely to flow into SMSFs, with another \$3.5 billion flowing from corporate funds with less than \$20 million in assets into retail funds in most instances.

For the corporate funds with assets between \$20 million and \$250 million, the projected fund closures would lead to around \$17 billion flowing to other funds. Up to 80 per cent of this amount could flow to group arrangements provided by retail funds, but this percentage could be lower depending on the success of industry funds in accessing this successor fund market.

**Overall, the aggregate assets of corporate funds could drop by around one-third as a result of fund closures (rather than choice of fund decisions by members), with the number of corporate funds falling by a much greater proportion. The level of corporate fund assets is likely to bottom out at a still substantial level (\$40 billion**

or so) because there are a number of multi-billion dollar corporate funds that will be viable following APRA licensing. Moreover, there are still some corporate funds on contribution holidays, and other corporate funds with defined benefit divisions might be difficult to close down and find a successor fund. The corporate fund sector might be in decline, but it certainly does not appear to be a decline to anywhere near extinction.

#### **5.4 How many different funds can an employer expect to pay to?**

Once employees begin to exercise choice both large and small employers can expect to start making contributions to more funds than they currently do. The number will depend on the characteristics of the employer's workforce, the industry sector or sectors that the firm operates in, and the rate of turnover of employees.

Based on the distribution of retail and industry funds nominated by the respondents of the ANOP survey described in detail in Attachment A, a very large employer not exempt from providing choice might eventually be making contributions to up to around 50 superannuation funds. Around 20 funds might be the main recipients of contributions, with around 10 funds receiving around half of the contributions. For a small employer, 20 employees or less, payments might be made to between 5 and 10 superannuation funds.

The actual number of funds a particular employer will contribute to could well be more or less than these numbers. The number will be less if employees are very similar in their work backgrounds, and will be more if an employer operates in more than one geographical area or has activities in a number of industry sectors. If a number of employees nominate Self Managed Superannuation Funds, this will of course increase the number of contributions that an employer is required to make.

The requirement for a chosen fund to be one in which an employee is an existing public offer member or for the employer to have signed up or be agreeable to signing up as an employer sponsor will nevertheless keep a cap on the number of APRA regulated funds to which an employer will contribute.

#### **5.5 How likely is a United Kingdom mis-selling scandal?**

A continuing worry for the sector and policy makers is that the introduction of legislated choice of fund will lead to fund members being sold products which are not suitable and/or demonstrably worse than the funds they already are in. However, **while there will be some risks with the introduction of legislated choice, there are a number of factors which make it likely that the Australian experience will be quite different from that which occurred some years ago in the United Kingdom.**

First, **there is not as large a stock of individuals in good defined benefit funds with large accrued benefits that can be transferred out.** While defined benefit schemes are still relatively common in the public sector, these will be largely exempt from legislated choice of fund. As well there are not that many employees in private sector pure defined benefit funds, or DB divisions of private sector hybrid funds. Often when there are such members, the various exemptions relating to defined benefit schemes will apply. Usually DB schemes in Australia do not contemplate an employee leaving the scheme while still remaining in employment, and such design features make it likely that one of the exemptions will apply. Where an exemption from choice applies, then

there is no flow of future contributions to another fund, or a transfer of the member accrued benefit under the portability regulations.

Second, **the great bulk of members of accumulation schemes do not have account balances which would make it worthwhile poaching them as customers** from the funds they are in. As indicated in the below, only around 17% of men and 7% of women have account balances in excess of \$100,000 (Table 5.4).

**Table 5.4: Distribution of Superannuation Balances by Age and Gender**

<i>Superannuation Balances</i>									
	No Super	\$1 - \$1000	\$1000 - \$4999	\$5000 - \$9999	\$10000 - \$19999	\$20000 - \$49999	\$50000 - \$100000	> \$100000	Total
<i>Males</i>									
15 - 24	7.5%	3.7%	4.2%	1.8%	.8%	.3%	.1%	.1%	<b>18.4%</b>
25 - 34	1.5%	.6%	2.8%	2.8%	4.9%	4.3%	1.5%	1.0%	<b>19.3%</b>
35 - 44	1.6%	.4%	1.4%	1.6%	2.7%	5.6%	2.8%	3.1%	<b>19.3%</b>
45 - 54	2.3%	.2%	.8%	.7%	1.5%	3.2%	2.6%	6.1%	<b>17.3%</b>
55 - 64	3.9%	.2%	.4%	.2%	.7%	1.4%	1.4%	4.4%	<b>12.6%</b>
65+	9.6%	.1%	.1%	.1%	.2%	.5%	.5%	1.9%	<b>13.1%</b>
<b>Total</b>	<b>26.4%</b>	<b>5.2%</b>	<b>9.7%</b>	<b>7.3%</b>	<b>10.7%</b>	<b>15.2%</b>	<b>8.8%</b>	<b>16.6%</b>	<b>100.0%</b>
<i>Females</i>									
15 - 24	7.8%	4.0%	3.3%	1.1%	.8%	.3%	.1%	.0%	<b>17.4%</b>
25 - 34	3.4%	1.1%	3.7%	3.0%	4.0%	2.7%	1.1%	.4%	<b>19.2%</b>
35 - 44	4.1%	.8%	2.9%	2.0%	3.1%	3.0%	1.5%	1.3%	<b>18.7%</b>
45 - 54	4.0%	.4%	1.7%	1.4%	2.3%	3.2%	1.7%	2.6%	<b>17.2%</b>
55 - 64	5.7%	.4%	.5%	.5%	.6%	1.3%	1.1%	2.1%	<b>12.2%</b>
65+	13.4%	.1%	.1%	.1%	.2%	.4%	.3%	.8%	<b>15.3%</b>
<b>Total</b>	<b>38.2%</b>	<b>6.8%</b>	<b>12.2%</b>	<b>8.0%</b>	<b>11.0%</b>	<b>10.9%</b>	<b>5.7%</b>	<b>7.2%</b>	<b>100.0%</b>

Source: Unit record file of the 2002 data collection of the Household, Income and Labour Dynamics in Australia (HILDA) Survey.

The larger account balances tend to be concentrated in public sector, corporate and retail funds. In a survey of funds recently conducted by the ASFA Research Centre, for most of the industry funds surveyed there was only 1 or 2 per cent of accounts held by women having a balance of over \$50,000, with the percentages for men being only 2 or 3 per cent of accounts. In some industry funds these figures were even lower. Accordingly, for some considerable time industry funds will have a considerable part of their market share protected by the fact that a large percentage of their members will not be attractive prospects for other funds and may not even meet the qualifying criteria for joining other funds in terms of minimum balance and/or ongoing contributions.

That said, there will be continuing interest in any group of employees that can be delivered as a group. As well, 1 or 2 per cent of accounts translates into some scores of thousands of industry fund members with substantial account balances and/or large ongoing contributions.

Third, **the market share figures are very different to the United Kingdom. Over 55 per cent of superannuation assets are already in retail funds or SMSFs.** A further 20 per cent of assets are in the largely exempt public sector funds. Of the remaining 20 per cent or so of sector assets in industry and corporate funds, a reasonable proportion will be covered by State awards, industrial agreements at either the State or Commonwealth level, or by other exemptions. In reality, only a relatively small proportion of the market could ever be potentially mis-sold to.

Fourth, **the regulatory regime here is much stronger, with high awareness of the problems that occurred in the United Kingdom.** Advisory groups and product providers will be aware of the consequences of being found to have mis-sold financial products not suited to the circumstances of individual clients. The potential compensation bills are likely to have just as much impact on behaviour as the fears of disciplinary action by the regulator.

**All that said, it is still likely that mis-selling is happening and will continue, particularly if some financial advisers are not well supervised by the group they are affiliated to, or if non-licensed advisers influence decisions by fund members.**

Rumours of mis-selling SMSFs have begun to emerge. Mis-selling is easiest to undertake when prospective buyers are already inclined to buy. As indicated by the survey data in Attachment A, there is a significant number of relatively high account balance individuals who consider that they can do better in terms of both increasing investment returns and decreasing costs. While some SMSFs will achieve such outcomes by good management or by luck, others will not.

However, to date most instances of mis-selling appear to be relatively isolated cases driven by individual advisers of some sort rather than coordinated marketing campaigns by financial institutions. **Some professional advisers, particularly those without an AFSL license and those who do not undertake an effective “know your client” process, can consistently recommend the establishment of SMSFs, even if instances when the objective case for doing so is weak.** Where such advisers derive significant income from services provided to SMSFs the chances of mis-selling would be increased.

For the future, it will be important for employers to be careful in regard to who they allow to provide educational or marketing material to their employees. Some funds have already reported instances where “educational seminars” provided by third parties have inappropriately recommended courses of action by fund members. Careful surveillance and feedback from fund members and managers in workplaces will be helpful in identifying any such instances, and in bringing such activities to the attention of the appropriate regulator.

Another area that might require ongoing regulatory scrutiny will be the process of members being transferred and/or an employer selecting a new default fund following the closure of small corporate funds. APRA anticipates that the bulk of corporate funds, particularly the smaller ones, will be closed down rather than meet the new Safety of Super licensing requirements. While the assets under management and total members will not be large relative to the overall assets and members of the superannuation sector,

selling to the decision makers in this market would be more profitable than making sales to individual fund members. Employer sponsors of medium to large corporate funds are likely to make use of formal or structured tender processes for a successor fund. However, at the smaller end of the scale processes are likely to be less formal and potentially affected by mis-selling.

## **Attachment A: ANOP Polling of Fund Membership Characteristics and Attitudes to Choice**

ANOP Research Services was commissioned by ASFA to conduct a national survey of the workforce about choice of fund. The national survey consisted of a telephone survey conducted in October 2004 of 514 Australians aged 25 to 64 years in regular full-time or part-time work (10 hours per week). Accordingly the bulk of the respondents were benefiting from compulsory employer contributions.

Analysis of respondents' descriptions of their occupations indicates about 9 per cent of those surveyed were self employed or were the owner/manager of an incorporated business. While a significant proportion of this group was subject to the SG arrangements because many of the businesses were incorporated, by definition such owner managers already had choice of fund.

The primary aim of the research was to gauge awareness of, and attitudes to, choice of fund. For instance, the survey investigated the impact of various factors, such as satisfaction with current fund, and perceptions of the relative level of returns and fees, on the likelihood of changing funds. The research also provides a valuable snapshot of the demographics of membership of various categories of funds and the split of employees between various types of funds. This demography helps to explain the likely outcomes for different types of fund from the introduction of legislated choice of fund.

The classification of responses into different fund sectors was based on respondents being asked to name their current main superannuation fund. Pleasingly, the vast bulk of respondents were able to name their fund with sufficient clarity for it to be identified and classified, although there were some interesting phonetic modifications in the recording of fund names. The ASFA Research Centre then classified each respondent into fund sectors (that is, retail, industry, public sector, corporate and self managed fund). Reflecting the coverage of large funds, around 30 funds each had at least several members amongst the respondents. This made the classification task feasible, although still a little tedious.

### **A1. Profile of Fund Sectors**

Table A1 provides selected details of funds and the demographic characteristics of the members of the various types of funds.

Employees are most likely to nominate a retail fund of some sort as their current main superannuation fund, but the proportion nominating an industry fund is not far behind. A substantial proportion of the sample nominated a public sector fund, with the proportion for this sector in line with the proportion of employees in the public sector. The gap between the proportion nominating a retail fund as their main fund and those nominating an industry fund appears to have narrowed in the last few years. The recorded results would reflect both market developments, and more individuals recognising an industry fund as their main fund as a result of growth in account balances. As noted above, employees now do generally seem to be aware of the fund their employer contributes to.

The proportion of employees in corporate funds as indicated by the survey is still substantial at around 6%, but this is down a few percentage points from the level recorded in an ANOP survey for ASFA two years previously. This figure is likely to decline further with the closure of corporate funds following the introduction of more onerous licensing conditions by APRA and review by companies of what their core business activities are.

The proportion of respondents nominating a Self Managed Superannuation Fund as their main fund continues to grow, up by 2 percentage points in the last two years. An even higher percentage of respondents in the current round volunteered that they were in a SMSF, but analysis of the name of fund provided by some such respondents indicated that a significant number of respondents confused an individual account through a wrap or master trust with a SMSF. The classifications used in this analysis are based on what the fund named actually is, rather than the perception of the member.

Around 65 per cent of the Self Managed Superannuation Funds that were identified were used by the self employed. Around 40 per cent of those identified as being self employed had a SMSF. Around half of the self employed had contributions made to a retail fund, with the remaining 10 per cent having contributions made to an industry fund. Industry funds were more commonly used by the self employed in the construction and agricultural sectors.

<b>Table A1: Profile of Fund Membership(a)</b>						
<b>Current fund sector membership</b>	<b>Total</b>	<b>Retail Fund</b>	<b>Industry Fund</b>	<b>Public Sector</b>	<b>Corporate Fund</b>	<b>SMSF</b>
	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>
<b>Fund membership</b>	100	31	29	21	6	5
<b>Gender</b>						
Men	56	61	48	55	55	68
Women	44	39	52	45	45	32
<b>Age</b>						
25-34	28	18	38	31	41	5
35-44	30	34	27	25	22	45
45-54	28	31	23	32	21	24
55-64	14	17	12	12	16	26
<b>Work</b>						
Full-time	75	73	70	85	92	69
Part-time	25	27	30	15	8	31
<b>H'hold Income</b>						
Under \$40,000	16	19	25	6	6	8
\$40-\$59,000	17	16	17	22	6	12
\$60-\$79,000	21	21	19	28	16	4
\$80-\$99,000	17	17	13	20	25	22
\$100,000 plus	21	18	20	19	41	40
<b>Occupation</b>						
Prof/Mgrs	30	27	24	47	49	30
Cleric/Sales	22	23	27	14	28	7
Assoc Prof	22	26	19	18	7	51
Blue Collar	21	20	28	11	13	4
<b>Company Size</b>						
1-20	29	40	29	6	4	67
21-499	24	26	31	19	14	26
500+	44	32	36	74	82	7
<b>% of sample:</b>		<b>31%</b>	<b>29%</b>	<b>21%</b>	<b>6%</b>	<b>5%</b>

(a) Results exclude the respondents unable or unwilling to identify their fund, or which is unable to be identified from the information provided.

Compared to the other fund sectors, industry funds tend to have a higher proportion of women, younger people, part-time workers, the lower paid, and clerical/sales and blue collar workers. This will come as no surprise to most industry funds. However, there is still a fair degree of diversity in the membership of other types of funds, and industry funds themselves do have members across the complete range of age, income and occupation.

Retail funds tend to have a very strong market share amongst small businesses, as do industry funds. Public sector and corporate funds not surprisingly tend to have relatively large employers contributing on behalf of their members. Public sector and corporate fund members also tend to be more highly paid, less likely to work part-time and to be in professional or management positions. Around 15 per cent of retail fund members surveyed appeared to be self employed or were owner/managers of small incorporated businesses.

While the respondent base for the survey results was not large for SMSFs, the demography of membership reported is more or less as expected. Their members tend to be in professional or management positions, and on relatively high incomes, although there are exceptions to this. As noted above, around 65 per cent of those with a SMSF indicated that they were self employed or an owner/manager of a small incorporated business.

## **A2. How are superannuation funds currently chosen?**

Currently out of the 9.46 million in the Australian labour force, around 1 million self employed and owner managers of businesses already have (by definition) choice of fund, and another 1.9 million or more employees have choice of fund because their employer agrees or because of other existing State legislation and State public sector employment practices. Reflecting the demographics of the membership of various types of fund, and the types of industries and employers each fund sector deals with, there currently are significant differences in the incidence of employees personally choosing the fund they are in.

As indicated by Table A2, while overall around one in four respondents indicated that they personally chose the fund they are in, in the retail fund sector the figure is nearly one in two. This reflects the fact that many retail fund members are employees in small firms where there are no award, industrial agreement or legislative constraints on where contributions are made. As well, if there are only a few employees in a firm, the employer may be willing to take into account the views of each employee as to where the superannuation should be paid. This will particularly be the case where the employee is a manager and/or major shareholder in the small business, and especially in regard to the contributions made in regard to the owner/manager. As noted above, around 15 per cent of the retail fund members surveyed were in this latter category. When adjustment for the effectively self employed is made, around 38 per cent of retail fund members who are employees indicated that they personally chose the fund they are in.

Similarly there are many cases where employer contributions to industry funds are made in accordance with the direction of employees, rather than being a function of award provisions or an employer decision. Consistent with this, industry funds have 12 per cent of members indicating they personally chose to be in such funds, with industry

funds having around 3 per cent of their membership drawn from the self employed. However, both the operation of industrial awards and agreements and the willingness of many industry fund members to leave the superannuation decision to their employer would be responsible for the relatively high figure of 85 per cent of members being in a fund chosen or provided by their employer. In the case of public sector and corporate funds that percentage currently approaches 100 per cent.

A higher percentage of men than women currently choose their own fund, and as well a higher percentage of older employees choose their own fund. There may be some basic behavioural forces at work here, but equally it may have something to do with the type of work and industries that the various demographic groups are employed in. Given that there are multiple possible correlations in the incidence of choice of fund some caution is needed in equating correlation with causation.

It should be noted that a considerable proportion of respondents reporting that their employer chose the fund might actually already have a right to choose a fund other than the default suggested by the employer. For instance, while only 3% of public servants reported that they chose their own fund, in one public sector fund alone (First State Super) some 300,000 currently employed NSW public servants already have the right to exercise choice of fund. Many employees will not know that they already have a right to choose another fund. Even if they do know that, they may quite reasonably not regard a decision to allow their employer to choose a fund for them as a positive choice by themselves.

While it is unusual for employees who are members of corporate funds to have choice of fund, it would be relatively common for employees in industry funds to be able to choose their fund. However, having the right to choose may not necessarily translate into actual personal exercise of choice. Many workers, particularly younger workers with relatively low balances, can be comfortable with their employer choosing a fund because the employees concerned may not feel equipped to make such a choice and/or willing to commit the time and effort needed to make an informed choice.

<b>Table A2: How Current Super Fund Was Chosen</b>				
<b>Q: Was this super fund provided by your employer – or did you chose it, or did someone else chose it for you?</b>				
<b>Choice of current fund:</b>	<b>Chosen, provided by employer %</b>	<b>Personally chosen %</b>	<b>Someone else chose %</b>	<b>Unsure %</b>
<b>TOTAL</b>	73	23	3	1
<b>Fund Sector</b>				
Retail	46	47	6	1
Industry	85	12	2	1
Public Sector	97	3	-	-
Corporate^	100	-	-	-
SMSF^	4	96	-	-
<b>Gender</b>				
Men	70	26	4	-
Women	77	20	2	1
<b>Age</b>				
25-34	87	10	3	-
35-44	73	21	5	1
45-54	65	32	2	1
55-64	61	39	-	-
<b>H'hold Income</b>				
Under \$40,000	73	22	3	2
\$40-\$59,000	71	26	3	-
\$60-\$79,000	73	24	3	-
\$80-\$99,000	79	16	4	1
\$100,000 plus	74	24	2	-

^ Caution: Small base size

\* Indicates less than ½%

### **A3. Who is likely to change funds under choice?**

The ANOP survey results also provide some indication of the percentage of fund members who are likely to change superannuation fund following the introduction of legislated choice of fund. As a rough rule of thumb, the experience of market researchers is that most of the individuals who indicate that they are very likely to do something will actually do that thing, while only a very small proportion of those responding “quite likely” will move from intention to action. Using the total for “very likely” might be a reasonable proxy for the weighted combination of the two categories in regard to those actually likely to change funds.

The survey data indicate that retail fund members are the most likely to shift funds. Some of these moves may be to other retail funds and some might be industry funds, but other data from the survey indicate that retail fund members have a particular preparedness to set up a Self Managed Superannuation Fund. However, some caution is needed in interpreting the implications of these member views. Less than half of retail fund members are in their fund because of an employer decision, and presumably these fund members do not need choice of fund legislation to shift funds. Certainly the 15 per cent or so of retail fund members who are effectively self employed do not need the choice legislation to switch funds. That said, the fact that those in small businesses will be handing out choice forms to their employees could be a stimulus for the small business owner to take action themselves.

Public sector and corporate fund members appear to be fairly bolted onto their funds. This reflects the fact that often such funds offer very good benefits for members. It also might reflect the understanding of the members of such funds that they might not be allowed to switch funds, both currently and prospectively. Of those relatively few corporate and public sector fund members contemplating changing funds, a SMSF again is popular amongst the options being considered, particularly amongst upper income earners.

Although only a small sample, the SMSF members generally well liked their fund and do not want a change of fund, but some of the SMSF members were contemplating change. This is reassuring, as Australian Taxation Office figures indicate that a significant proportion of SMSFs have relatively low assets which make their viability an arguable proposition.

<b>Likelihood of changing:</b>	<b>Very Likely %</b>	<b>Quite Likely %</b>	<b>Not Likely At All %</b>	<b>Total Likely %</b>
<b>TOTAL</b>	9	17	37	<b>26</b>
<b>Fund Sector</b>				
Retail	<b>13</b>	16	36	<b>29</b>
Industry	<b>11</b>	20	32	<b>31</b>
Public Sector	3	13	38	<b>16</b>
Corporate^	7	28	42	<b>35</b>
SMSF^	<b>12</b>	4	<b>64</b>	<b>16</b>
<b>No. of Super Funds</b>				
More than one	<b>12</b>	25	29	<b>37</b>
All in one	7	11	43	<b>18</b>
<b>Gender</b>				
Men	<b>11</b>	16	42	<b>27</b>
Women	7	17	32	<b>24</b>
<b>Age</b>				
25-34	9	21	31	<b>30</b>
35-44	9	22	29	<b>31</b>
45-54	10	11	46	<b>21</b>
55-64	9	7	50	<b>16</b>
<b>H'hold Income</b>				
Under \$40,000	8	19	35	<b>27</b>
\$40-\$59,000	7	14	35	<b>21</b>
\$60-\$79,000	8	15	34	<b>23</b>
\$80-\$99,000	9	17	42	<b>26</b>
\$100,000 plus	<b>16</b>	21	33	<b>37</b>

^ Caution: Small base size

As shown by the next table, “happiness with fund” is strongly correlated with intentions in regard to changing funds. Industry and public sector funds together with SMSFs recorded a high proportion of happy members. While retail and corporate funds have high proportions of happy members, they also have significant proportions of members who identify as not being happy campers. However, as with most of the corporate fund estimates, the sample size for components of this group requires caution to be adopted in interpreting the estimate.

<b>Overall Satisfaction with Current Fund</b>			
<b>Q: Are you generally happy with your (main) super fund, or not?</b>			
<b>Satisfaction with current fund:</b>	<b>Yes, happy with fund %</b>	<b>No, not happy with fund %</b>	<b>Unsure %</b>
<b>TOTAL</b>	76	14	10
<b>Fund Sector</b>			
Retail	67	26	7
Industry	81	4	15
Public Sector	82	10	8
Corporate^	76	24	-
SMSF^	89	7	4

The next table identifies some of the factors behind the happiness of members. Positive factors tend to be good returns, effective member communication and generous contributions by public sector and corporate employer sponsors. Respondents certainly demonstrate rationality in such responses.

<b>Why happy:</b>	<b>Happy with fund %</b>	<b>Good returns %</b>	<b>Good communication %</b>	<b>Had no problems %</b>	<b>Low fees %</b>	<b>Employer cont. %</b>
<b>TOTAL</b>	<b>76</b>	30	10	9	6	5
<b>Fund Sector</b>						
Retail	<b>67</b>	24	8	10	4	1
Industry	<b>81</b>	33	15	13	8	2
Public Sector	<b>82</b>	35	9	8	6	13
Corporate^	<b>76</b>	38	12	6	11	11
SMSF^	<b>89</b>	39	-	-	8	-

In regard to the reasons for dissatisfaction with the current fund of respondents, as indicated in the table below, poor returns and high fees were factors identified by the minority of respondents who reported that they were not happy with their superannuation fund. It is possible that some of the dissatisfaction with returns relates to investment returns two or three years ago rather than in the most recent period. Negative investment returns (loss of capital in more blunt terms) can be remembered more clearly than periods of above average returns.

Poor returns were a concern for some retail and corporate fund members, with high fees a secondary concern amongst retail fund members. It should be noted that these concerns amongst various fund members often are related to perceptions, and may or

may not be related to whether the particular fund actually had poor returns in the most recent period or longer term, or had high fees.

<b>Reasons for Dissatisfaction with Current Fund</b>			
<b>Q: Are you generally happy with your (main) super fund, or not?</b>			
<b>Q: Why are you not happy with your super fund?</b>			
<b>Why unhappy:</b>	<b>Not happy with fund %</b>	<b>Poor returns %</b>	<b>High fees %</b>
<b>TOTAL</b>	<b>14</b>	<b>8</b>	<b>3</b>
<b>Fund Sector</b>			
Retail	<b>26</b>	15	7
Industry	<b>4</b>	2	1
Public Sector	<b>10</b>	6	1
Corporate^	<b>24</b>	15	-
SMSF^	<b>7</b>	8	-

#### A4. Where are members likely to go if they change funds?

The next table summarises what respondents identified as the important factors in choosing a fund. Again, these reported factors may or may not be the actual drivers of behaviour. However, it is clear that perceptions of financial performance, fees and charges, and fund reputation are important, as is the desire of members to consolidate accounts to reduce fees and simplify matters. Investment options, insurance cover and ancillary services are less important factors, but still are identified as significant factors by substantial minorities of respondents.

There may be pointers from these “very important factors” for funds as to how they should market themselves in a choice of fund environment.

Summary of the "Very Important" Responses							
Q: How important is each of the following to you personally if you were to consider changing super funds?							
Very important response:	Financial performance %	Fees & charges %	Fund's reputation %	Consolidate funds %	Investment options %	Insurance coverage %	Range of other services %
<b>TOTAL</b>	76	62	49	41	38	36	16
<b>Fund Sector</b>							
Retail	75	66	50	37	39	33	15
Industry	75	60	54	49	37	45	21
Public Sector	78	59	45	34	31	29	11
Corporate^	79	55	58	34	44	40	31
SMSF^	75	56	38	67	57	31	23

The survey also identified the extent of interest in Self Managed Superannuation Funds. A significant minority of retail and corporate fund members appear to be actively considering the establishment of such a fund. This has important implications for those funds once the choice of fund legislation takes effect.

In interpreting the results it also should be remembered that it is not unusual for fund members to confuse a personal account with a retail fund with a SMSF. Some of the contemplated shifts might involve a retail fund destination making use of a wrap or master trust, rather than the formal establishment of a SMSF.

<b>Whether Considered DIY Super</b>					
<b>Q: Have you considered setting up your own do-it-yourself super fund?</b>					
			<b>Have considered</b>		
<b>Setting up own DIY fund:</b>	<b>Have not considered %</b>	<b>Have considered %</b>	<b>Already set up %</b>	<b>Still considering %</b>	<b>No longer considering%</b>
<b>TOTAL</b>	<b>74</b>	<b>25</b>	8	8	9
<b>Fund Sector</b>					
Retail	<b>65</b>	<b>33</b>	5	13	15
Industry	<b>85</b>	<b>14</b>	1	6	5
Public Sector	<b>85</b>	<b>14</b>	4	3	7
Corporate <sup>^</sup>	<b>79</b>	<b>21</b>	-	14	7

In regard to the reasons for considering setting up a SMSF, flexibility/control and pursuit of better returns were commonly mentioned, particularly by retail fund members. This tends to be in line with conventional wisdom of why individuals set up a SMSF. Control is an important motivating factor, particularly for those with significant retirement savings and experience in control of their professional or business life. As noted above, the survey indicated that the majority of SMSF members are effectively self employed.

<b>Reasons for Considering DIY Super</b>						
<b>Q: Why have you considered setting up (did you set-up) your own super fund?</b>						
<b>Why considered DIY super:</b>	<b>Have considered %</b>	<b>Flexibility/ Control %</b>	<b>Better returns %</b>	<b>Lower costs %</b>	<b>Poor returns %</b>	<b>All mentions of returns %</b>
<b>TOTAL</b>	<b>25</b>	8	5	4	2	<b>8</b>
<b>Fund Sector</b>						
Retail	<b>33</b>	10	8	4	3	<b>11</b>
Industry	<b>14</b>	5	3	1	1	<b>4</b>
Public Sector	<b>14</b>	5	4	1	1	<b>5</b>
Corporate <sup>^</sup>	<b>21</b>	8	-	-	-	-