
EXPOSURE DRAFT: CHOICE OF FUND REQUIREMENTS

EXPLANATORY MATERIALS

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Glossary

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

<i>Abbreviation</i>	<i>Definition</i>
SGAA	<i>Superannuation Guarantee (Administration) Act 1992</i>

Chapter 1

Choice of fund requirements

Outline of chapter

1.1 Schedule 1 to this Bill amends the *Superannuation Guarantee (Administration) Act 1992* (SGAA) to remove the obligation for employers to offer a choice of superannuation fund to temporary residents, or when superannuation funds merge.

1.2 This will simplify superannuation compliance obligations for employers.

Context of amendments

1.3 The SGAA requires employers to offer a choice of superannuation fund to employees.

1.4 An employer satisfies this requirement where they make superannuation guarantee contributions to a fund chosen by an employee or, if the employee does not make a choice, to a default fund chosen by the employer and specified in a standard choice form provided to the employee. Employers must give employees a standard choice form within 28 days of their employment commencing.

1.5 Employers that do not comply with their choice of fund obligations may be liable to pay the superannuation guarantee charge for given employees.

1.6 The requirement to provide employees with a choice of superannuation fund is particularly burdensome for employers that employ a large number of temporary residents. Many temporary residents do not have existing superannuation arrangements and given the short term nature of their employment are unlikely to choose a fund.

1.7 It is similarly burdensome for employers to be required to provide employees with a standard choice form when an employee's

superannuation benefits are transferred to a successor fund under a fund merger arrangement.

1.8 The amendments contained in this Bill will simplify superannuation compliance obligations for employers in these circumstances.

Summary of new law

1.9 Schedule 1 to this Bill simplifies the choice of superannuation obligations for employers by amending the SGAA to remove the requirement for employers to offer a choice of superannuation fund to temporary residents, or when superannuation funds merge.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Employers are not required to give employees a standard choice form if they hold a temporary visa as defined by the <i>Migration Act 1958</i> .	Employers must give a standard choice form to employees within 28 days of them beginning employment.
Employers are not required to give employees a standard choice form when their superannuation benefits are transferred from a chosen fund or a default fund to a successor fund as a result of a superannuation fund merger arrangement.	Employers may be required to give employees a standard choice form when the employee's superannuation benefits are transferred from a chosen fund or default fund to a successor fund under a fund merger arrangement.

Detailed explanation of new law

1.10 Schedule 1 to this Bill amends Part 3A of the SGAA to remove the obligation for employers to offer a choice of superannuation fund to temporary residents, or when superannuation funds merge.

1.11 Part 3A of the SGAA 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.

1.12 Division 2 of Part 3A of the SGAA outlines when contributions made by an employer satisfy the choice of fund requirements. This includes contributions to a fund chosen by an employee, or where the employee does not make a choice, to a default fund that is specified in the standard choice form provided by the employer to the employee.

1.13 Division 6 of Part 3A of the SGAA outlines employer obligations for providing standard choice forms to employees. Section 32N of the SGAA generally requires that an employer provide a standard choice form to an employee within 28 days of the employee commencing employment, receiving a request from an employee, a chosen fund ceasing to be available for contributions, or the employer changing the default fund arrangements. Section 32NA of the SGAA specifies when a standard choice form is not required.

1.14 The requirement to provide employees with a choice of superannuation fund is burdensome for employers that employ a large number of temporary residents. Many temporary residents do not have existing superannuation arrangements and given the short term nature of their employment are unlikely to choose a fund.

1.15 It is similarly burdensome for employers to be required to provide employees with a standard choice form when an employee's superannuation benefits are transferred to a successor fund under a fund merger arrangement.

1.16 The amendments contained in Schedule 1 of this Bill simplify superannuation compliance obligations for employers by removing the requirement for employers to provide standard choice forms in these circumstances.

Temporary Residents

1.17 Employers will not be required to provide a standard choice form to an employee if the employee is, within the meaning of the *Migration Act 1958*, the holder of a temporary visa (a temporary resident). (*Schedule 1, item 2, subsection 32NA(11)*)

1.18 The requirement in paragraph 32C(2)(ba) of the SGAA to contribute to a fund specified in the standard choice form provided to an employee will not apply if the employee is a temporary resident. Contributions made by an employer for an employee that is a temporary resident and who has not chosen a fund are contributions made in compliance with the choice of fund requirements in Division 2 of the SGAA. (*Schedule 1, item 1, subsection 32C(2AA)*)

1.19 However, an employer's contributions will still need to be made to a fund that satisfies the requirements for default funds in subsection 32C(2) of the SGAA.

1.20 These amendments do not affect an employee's ability to choose their own fund under Division 4 of the SGAA.

1.21 'Temporary visa' is defined in subsection 30(2) of the *Migration Act 1953* as:

A visa to remain in Australia (whether also a visa to travel to and enter Australia) may be a visa, to be known as a temporary visa, to remain:

- a) during a specified period; or
- b) until a specified event happens; or
- c) while the holder has a specified status.

1.22 This definition has been adopted as 'temporary resident' is not defined in the SGAA and, for the purpose of satisfying the conditions of release for departing Australia superannuation payments set out in item 103A of Schedule 1 of the *Superannuation Industry (Supervisions) Regulations 1994*, a 'temporary resident' means a holder of a temporary visa under the *Migration Act 1953*.

1.23 A 'temporary resident' under the *Migration Act 1953* would also include a New Zealand citizen, even though New Zealand citizens can generally stay indefinitely in Australia. Including New Zealand citizens in the definition of a 'temporary resident' will further reduce complexity and compliance costs for small businesses. This is because small businesses would otherwise have to distinguish between New Zealand citizens and other temporary residents.

Transfers to successor funds

1.24 Employers will not be required to provide a standard choice form to employees whose superannuation benefits are transferred from a chosen fund or a default fund to a successor fund as a result of a superannuation fund merger arrangement.

1.25 Where benefits are transferred from an employee's chosen fund to a successor fund, the successor fund is taken to be the chosen fund for the employee and the original fund is taken to no longer be a chosen fund for the employee. This means that contributions the employer makes to the successor fund for the benefit of the employee satisfy the choice of

fund requirements and the employer will not need to give the employee a standard choice form. (*Schedule 1, item 7, section 32J*)

1.26 Where benefits are transferred from a default fund to a successor default fund, the successor default fund is deemed to be the fund specified in the standard choice form for a given employee. This means that contributions the employer makes to the successor default fund for the benefit of the employee satisfy the choice of fund requirements and the employer will not need to give the employee a standard choice form. (*Schedule 1, items 5 and 8, subparagraph 32C(2)(ba)(iii) and subsection 32NA(1A)*)

1.27 A fund is a successor default fund if certain requirements are met. This includes that the employee's interest in a fund (the original fund) is transferred to a new fund without their consent; the original fund was a default fund specified on the standard choice form provided to the employee; and the new fund is a successor fund within the meaning of the *Income Tax Assessment Act 1997*. (*Schedule 1, item 6, subsection 32C(2AB)*)

1.28 These amendments do not affect an employee's ability to choose their own fund under Division 4 of the SGAA.

Application and transitional provisions

1.29 Part 1 commences on 1 July 2015. However, if an employee begins employment before the commencement of Part 1, but the 28 day period referred to in subsection 32N(2) of the SGAA ends after that commencement, the amendments made by Part 1 are taken to have applied, in relation to that employee, from the beginning of that employment.

1.30 Part 2 applies in relation to transfers of interests in superannuation funds that occur on or after 1 July 2015.