



NOVEMBER 2004

**TECHNICAL UPDATE
THE PROPOSED CHOICE OF FUND LEGISLATION**

After being talked about for the last few years the Federal Government recently passed the Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004 which received assent on 30 June 2004. The "Choice of Fund" legislation comes into effect from 1 July 2005.

What Does It Do?

Commencing 1 July 2005, many Australian employees will have the option of having their Superannuation Guarantee contributions paid into an alternative complying fund, other than the fund the employer has selected. The proposed legislation will only apply to those receiving Superannuation Guarantee ("SG") contributions after 1 July 2005 and will have no bearing on contributions paid before this time (these are covered by the portability legislation) or on future employer contributions outside of the SG (e.g. salary sacrifice).

The legislation also introduces protection to employers from liability to compensate any person for loss or damage arising from anything done by the employer in complying with the Choice requirements.

Who is Included in Choice?

Choice of Fund applies to:

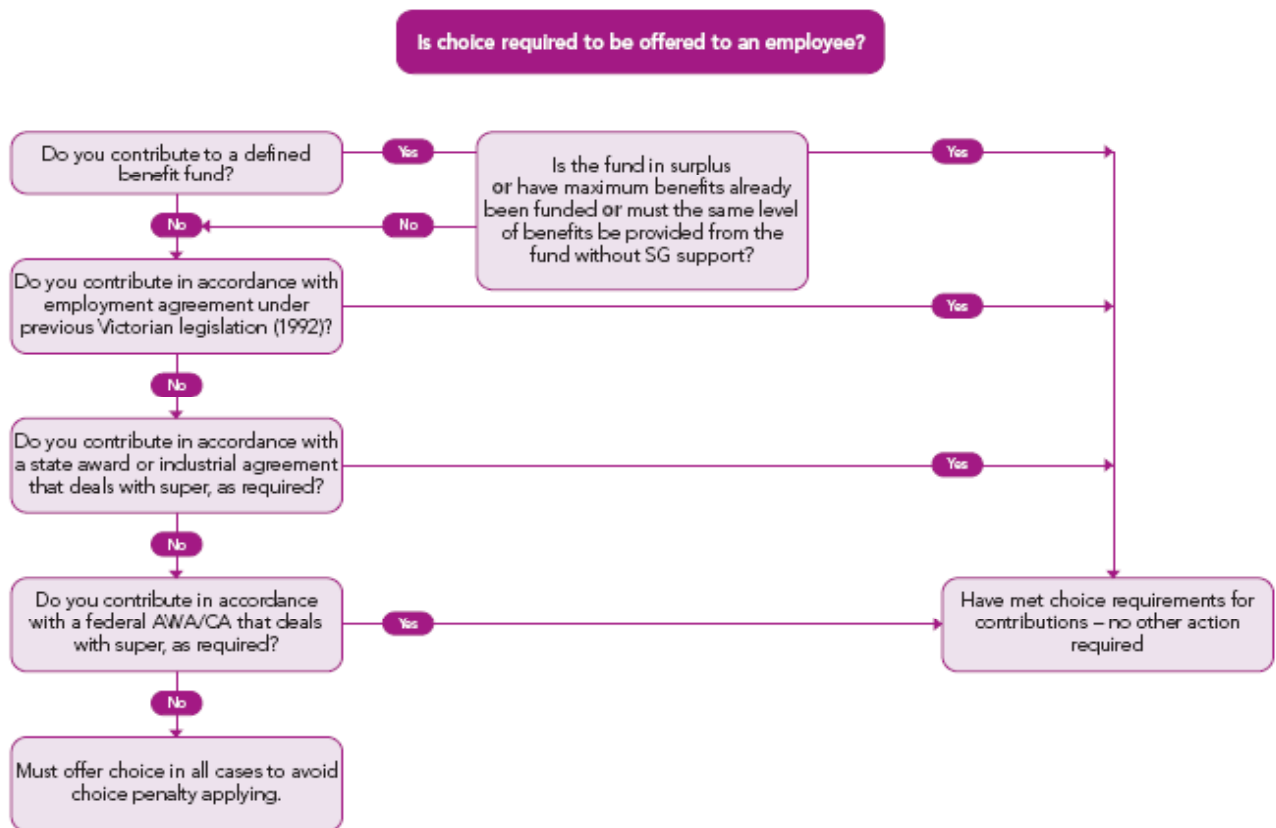
- Non-award employees;
- Federal award employees (although funds nominated under the award will be the default fund for choice); and
- Employees for which there are no superannuation provisions in the relevant award, certified agreement or AWA.

Who Is Exempted From Choice?

Choice of Fund will not apply:

- To most Federal Government employees;
- Where super contributions are made under Australian Workplace Agreements or Certified Agreements under the Workplace Relations Act 1996 or a Certified Agreement under the Industrial Relations Act 1988;
- Where super contributions are made in accordance with an employment agreement under the Employee Relations Act 1992 of Victoria and which continues to operate by virtue of section 515 of the Workplace Relations Act 1996;
- Where super contributions are paid under a State industrial award; or
- If the employer pays super contributions to an existing defined benefit member where the defined benefit would not be reduced if contributions were made to another fund.

The following flowchart may assist in deciding which of your employees are eligible for choice:



What Will Employers Have To Do?

An employer will be required to provide an employee with a “standard choice form” that contains:

- A statement that the employee may choose any “eligible choice fund” (any complying superannuation fund or scheme or Retirement Savings Account);
- The name of the fund to which the employer will contribute if the employee does not make a choice (formerly known as a default fund); and
- Additional information if the employee is a member of a defined benefits scheme.

The employee’s choice will take effect two months after the notice is given to the employer, or earlier at the employer’s discretion.

A standard choice form can be provided at any time, but is required to be provided by the employer:

- Before 29 July 2005 to all current employees as at 1 July 2005;
- Within 28 days of commencing employment after 1 July 2005; or
- Within 28 days of an employee requesting, in writing, a standard choice form.

In addition to the standard choice form, the employee will need to provide their employer:



- Contact details for the chosen fund;
- Evidence that the chosen fund will accept contributions for the benefit of the employee; and
- Any other prescribed information.

Can you Refuse a Chosen Fund?

An Employer may refuse to accept a fund chosen by the employee if:

- An employee does not provide the information required on the standard choice form;
- If the employee has already chosen a fund within the last twelve months.

Other than at the commencement, either 1 July 2005 or when a new employee starts, choice will be initiated by employees, while employers can be reactive.

Are there any penalties for Non-Compliance with Choice?

It seems that the penalty per employer will be capped at a maximum of \$500 per breach where a breach is for a “notice period” which starts from the commencement of choice or the first day of employment if later, and ends when the ATO notifies the employer in writing. In addition, to the SG shortfall an interest component and administration charge is also incurred. This is known as the Super Guarantee Charge. The Super Guarantee Charge is not tax deductible to the employer.

What is the correct Definition of Salary for SG Purposes under Choice?

The proposed legislation provides that an employer may continue to provide SG using a “protected earnings base”, rather than Ordinary Time Earnings for SG purposes, irrespective of the fund chosen by the employee. A “protected earnings base” would usually relate to a “predecessor fund” agreement that has allowed the employer to continue to use their pre August 1991 definition of salary or a specific definition of what constitutes the definition of salary under an award.

The test for this provision to apply is that it is “reasonable to assume” that if the Choice of Fund requirements had not applied, the employer would have met its SG obligations through a fund where the protected earning base would have applied.

You may be aware the ability to use a protected earnings base expires in July 2008. From then, Ordinary Time Earnings is the salary basis for the calculation of SG contributions for all employers. We would recommend that employers should start reviewing their employment and remuneration practices to enable this change to be easily implemented in July 2008.

What About The Default Fund?

If the employee does not make a choice the employer will be able to contribute to the default fund (which must be disclosed on the standard choice form). The default fund is the default under the applicable Federal award or, if no such fund, any complying fund.

Remember, that the default fund must offer prescribed levels of insurance.



Anything Else I Should Know?

The following additional measures are proposed:

- “Kickbacks” to employers will be prohibited;
- A Choice education campaign will be carried out; and
- ASIC or APRA will be required to monitor and report on super fees for the first five years of Choice.

What are the main issues for Employers?

The main issues that Employers need to consider prior to 1 July 2005 are as follows:

- The increased administration associated with Choice i.e. paperwork, ensuring chosen funds comply, changes by employees, record keeping etc;
- Development of a “Standard Choice” form;
- Ensuring standard “Letters of Appointment” for new staff correctly reflect the impact of the Choice legislation;
- Ensuring payroll systems can cope with payments to various superannuation plans;
- Education of employees;
- Education of the Human Resource/Payroll staff to ensure on-going compliance.

Naturally, Northbridge Financial Consulting is available to assist you developing a strategy to cope with the introduction of the Choice of Fund legislation.

The above details about Choice are as we currently understand them to be. Further regulations will be introduced to clarify and expand on the details. It is anticipated that the regulations will be available in early 2005.

FOR FURTHER INFORMATION

For further information please contact either David Lewis or Brendan Paddison at NFC on (02) 9929 2700, e-mail us at info@northbridgeadmin.com.au or visit our website www.northbridgeadmin.com.au.

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