



Department of Consumer  
and Employment Protection  
Government of Western Australia

Labour Relations

## Superannuation choice of fund

### Information for employers and employees on State and federal choice of fund provisions in Western Australia

#### Overview

Most Western Australian employees have the right to choose their own superannuation fund. This booklet provides information for employers and employees on the choice of superannuation fund provisions in the *Industrial Relations Act 1979* (WA) and the more recent federal choice of superannuation fund provisions under the amended *Superannuation Guarantee Administration Act 1992* (Clth).

The *Industrial Relations Act* provisions apply to all persons on State awards, enterprise bargaining agreements and orders that require superannuation contributions to be made for employees.

From 1 July 2005 amendments to the *Superannuation Guarantee Administration Act* provide most other employees with federal choice coverage.

Employees employed under the following are now covered by the federal superannuation choice system:

- a State award, enterprise bargaining agreement, or order which does not require employers to make superannuation contributions on behalf of employees;
- an employer-employee agreement;
- a common law contract;
- a federal award;
- an Australian Workplace Agreement which does not require superannuation contributions; or
- a federal certified agreement which does not require superannuation contributions.

The federal legislation does not extend choice to employees who are covered by either an Australian Workplace Agreement or a federal certified agreement that **does** require superannuation contributions to be made for employees.

Under both the State and federal choice systems, employers are obliged to notify relevant employees that they have the right to choose their own superannuation fund, and employers must pay the award superannuation contributions to any appropriate fund nominated in writing by employees.

Details of how the choice of superannuation provisions operate are described in this publication. Further information can be obtained by contacting Wageline on 1300 655 266.

## Introduction to superannuation

All employers are obliged to make quarterly superannuation contributions for eligible employees under the federal *Superannuation Guarantee (Administration) Act*. The minimum level of superannuation contribution for employees has been 9% since 1 July 2002. Superannuation is usually calculated based on an employee's "ordinary time earnings", the definition of which may differ based on the provisions of the relevant State award or enterprise bargaining agreement or on the wording of the trust deed of a particular superannuation fund.

Many State awards and enterprise bargaining agreements also require employers to provide superannuation to employees, often at 3% of salary. In practice, employers meet their obligations to provide this award superannuation as part of providing the 9% superannuation contributions required under the *Superannuation Guarantee (Administration) Act*.

The *Superannuation Guarantee (Administration) Act* exempts employers from making superannuation contributions of behalf of certain groups of employees. These include:

- employees paid less than \$450 in a calendar month;
- employees aged 70 years and over;
- employees under 18 years of age working 30 hours or less, per week;
- employees paid to do work of a domestic or private nature for not more than 30 hours a week (e.g. a part-time nanny or housekeeper).

For more information on superannuation obligations under the *Superannuation Guarantee Administration Act*, employers and employees can contact the Superannuation Guarantee Hotline on 13 10 20 or visit [www.ato.gov.au/super](http://www.ato.gov.au/super).

Information on award superannuation provisions can be obtained by contacting Wageline on 1300 655 266.

## Award superannuation contributions

Many superannuation clauses in State awards or enterprise bargaining agreements only require employers to contribute 3% of employees' wages or salary to a superannuation fund on behalf of the employees. However, the federal superannuation legislation requires minimum contributions of 9% of salary.

The provisions requiring employers to provide a choice of superannuation fund only apply to the amount specified in the State award or enterprise bargaining agreement. In practice, however, most employers pay the entire 9% contribution into a fund nominated by employees.

It is important for employers to note that award superannuation contributions may be required for employees who fall within the exempt categories under the *Superannuation Guarantee Administration Act*, but who are not excluded from the superannuation provisions in the relevant award.

The introduction of the federal choice regime does not alter the obligations of employers who are already required to follow the State choice of superannuation fund requirements under State awards and enterprise bargaining agreements.

## Choice of superannuation fund

Employees who are covered by the State choice system are those covered by:

- a State award, enterprise bargaining agreement, or order registered in the Western Australian Industrial Relations Commission **which requires employers to make superannuation contributions on behalf of employees.**

Employees who are covered by the federal choice system effective from 1 July 2005 are those covered by:

- a State award, enterprise bargaining agreement, or order **which does not require employers to make superannuation contributions on behalf of employees;**
- an employer-employee agreement;
- a common law contract;
- a federal award;
- an Australian Workplace Agreement **which does not require employers to make superannuation contributions on behalf of employees; or**
- a federal certified agreement **which does not require employers to make superannuation contributions on behalf of employees.**

Employees who are covered by neither the State nor federal choice system are those covered by:

- an Australian Workplace Agreements **which requires employers to make superannuation contributions on behalf of employees.**
- a federal certified agreement **which requires employers to make superannuation contributions on behalf of employees.**

Employers or employees who are unsure about their coverage should contact Wageline on 1300 655 266.

Both the State and federal choice of fund provisions do not apply to Western Australian Government employees, as superannuation for these employees is regulated by a separate Act of Parliament and is not interrupted by the federal legislation. The federal choice of fund system does not apply to federal Government employees.

## Employer obligations

Under both State and federal systems, employers have an obligation to ensure that all existing and new employees are aware of their right to choose a superannuation fund.

### State

Employers must provide all new employees as soon as possible after commencing work with either:

- a notification of Choice of Superannuation Fund Form (Form One); or
- a written notice setting out all the information contained in Form One.

Once employees have been notified, employers are then obliged to pay employees superannuation contributions to any appropriate fund nominated in writing by employees.

The information contained in the Form One is reproduced on Pages 7 and 8 of this publication. Copies of Form One are available for purchase from the State Law Publisher at 10 William Street Perth WA 6000 or via the website [www.slp.wa.gov.au](http://www.slp.wa.gov.au).

## Federal

Initially, employers are required to provide all employees employed on or before 1 July 2005 with a federal Standard Choice Form by 29 July 2005.

The federal Standard Choice Form and further information is available via the Australian Taxation Office website [www.superchoice.gov.au](http://www.superchoice.gov.au) or by phoning 13 28 64.

For all new employees, a federal Standard Choice Form must be provided within 28 days of commencement of employment. Employees can take the initiative and inform their employer of their choice of superannuation fund before those deadlines.

For existing employees, employers must also provide a federal Standard Choice Form within 28 days of employees giving them a written request for a Standard Choice Form, as long as another request has not been made within the past 12 months.

## Appropriate funds

In both State and federal systems, employees can nominate any superannuation fund that is:

- able to accept contributions from their employer; and
- a complying fund under the *Superannuation Guarantee (Administration) Act*.

Employees can determine if a particular superannuation fund is a complying fund under the *Superannuation Guarantee (Administration) Act* by contacting the fund's trustees or the Australian Prudential Regulation Authority on 13 10 60.

## Choosing a suitable fund

The choice of a superannuation fund is an important decision, and as such employees should carefully research and assess the benefits and conditions of entering any particular fund. Before nominating a fund, employees should carefully read all material provided by the superannuation fund, and consult their accountant or financial adviser for independent advice on the best fund for them.

A list of key considerations for employees is outlined in Form One on Page 8 of this publication, as part of the "Information for Employees". Page 1 of the federal Standard Choice Form also contains "Tips for Comparing Funds" and is available via the Australian Taxation Office website [www.superchoice.gov.au](http://www.superchoice.gov.au) or by phoning 13 28 64.

Employees benefit from having the right to choose their own superannuation fund in a number of ways. A key benefit is that employees can choose a fund that most appropriately meets their current and future superannuation needs and goals. Having a choice of fund also provides portability, allowing employees to stay with the one fund when moving between employers or between industries, and therefore maximising the long term benefits from superannuation contributions.

## Freedom of Choice

Employees who have a right to choose their own superannuation fund must be able to do so without interference or fear of repercussions.

### State

The *Industrial Relations Act* imposes a penalty on employers, or any other people, who attempt to persuade employees by threats or intimation to nominate a particular fund. This would include employers indicating that employment is conditional upon nominating or changing to a particular superannuation fund. The penalty is \$1000 for an individual or \$5000 for a body corporate.

If a fund nominated by employees is a complying fund and can accept contributions on the employee's behalf, employers cannot unreasonably refuse to contribute to that fund. If employers refuse to make contributions to an employee-nominated fund and the refusal is unreasonable, they may be in breach of the award or enterprise bargaining agreement and be subject to a penalty for that breach. The penalty can be as high as \$2000 for unreasonably refusing the nomination of any employees.

Employees who are concerned about their employer refusing to accept their chosen superannuation fund, or applying pressure to nominate a particular fund should contact Wageline on 1300 655 266.

### Federal

It is an offence for employers to not provide a federal Standard Choice Form and sufficient superannuation support to employees who are eligible to choose their superannuation fund under the federal system. If employers fail to meet these obligations, a superannuation guarantee statement must be lodged with the Australian Taxation Office and a "superannuation guarantee charge" is payable. More information can be obtained via the Australian Taxation Office website [www.superchoice.gov.au](http://www.superchoice.gov.au) or by phoning 13 28 64.

A choice shortfall also applies to employers who do not correctly pay superannuation contributions to employees' chosen funds, even if contributions are made instead to a fund that otherwise complies with the requirements of the federal legislation. The choice shortfall is roughly 25% of the contributions that are paid to the wrong fund. More information on penalties can be obtained via the Australian Taxation Office website [www.superchoice.gov.au](http://www.superchoice.gov.au) or by phoning 13 28 64.

## Fund performance

Employers will not generally be liable for any loss suffered by employees if the employee-nominated fund under-performs compared to their previous fund.

## Changing funds

When considering changing funds, employees must be aware that some superannuation funds may refuse to roll over existing contributions to an alternative fund. Superannuation funds are governed by trust deeds that set out their rules, and some funds may have rules which require or allow the trustee administering the fund to refuse to roll over an employee's contributions to another fund.

Some funds prevent trustees from rolling over contributions into another fund for a specified time (e.g. 12 months). Some funds may also charge a fee for transferring contributions to a new fund.

Employees who believe that a trustee of a superannuation fund has exercised his or her discretion wrongly or unfairly, can make a complaint under the fund's complaint procedures. If the complaint is not resolved, employees can contact the Superannuation Complaints Tribunal on 13 14 34.

### **State**

Once employees have nominated a fund they can only change the nomination and choose a different fund if the employer agrees. However, employers cannot unreasonably refuse to agree to a change of fund.

### **Federal**

Employers may refuse to accept the fund chosen by employees if the employees have chosen another fund within the previous 12 months.

### **Failure to choose**

#### **State**

If employees do not take advantage of their right to nominate a superannuation fund, employers are required to contribute to any superannuation fund nominated in the applicable State award or enterprise bargaining agreement. If no superannuation fund is specified in the award or agreement, employers can contribute to any complying superannuation fund. Employees who fail to choose a fund in the first instance retain the right to choose later.

#### **Federal**

If employees do not take advantage of their right to nominate a superannuation fund, employers are required to contribute to a default fund, which must be specified in the federal standard choice form. If a federal award applies that nominates a fund, employers will be required to make payments to that fund. Otherwise, in those instances where employees do not choose funds, employers are free to choose a fund themselves, as long as it is a complying fund.

Employers are not required to give employees a standard choice form if the employees have chosen a fund within the previous 12 months.

(Industrial Relations (Superannuation) Regulations 1997(WA) – Schedule 1)

## State choice of fund system Form One Information

The following information appears on Form One of the *Industrial Relations (Superannuation) Regulations 1997*. This information must be provided by employers to all new employees who are covered by the State choice of fund provisions and any existing employees who have not previously been notified.

**Please note: Employers and employees covered by the federal choice of superannuation system cannot use this form. The federal Standard Choice Form can be obtained at [www.superchoice.gov.au](http://www.superchoice.gov.au) or by phoning 13 28 64.**

### Notification of Choice of Superannuation Fund

#### **Employer to make superannuation contributions**

Your employer is required by an award, order or enterprise bargaining agreement to make certain superannuation contributions for you. You may also be able to make contributions of your own.

#### **Which fund?**

You are entitled to choose the superannuation fund to which your contributions will be paid. You may choose any fund that is -

- a complying fund for the purposes of the *Commonwealth Superannuation Guarantee (Administration) Act 1992*; and
- able to accept contributions from your employer.

The trustee of a fund you wish to join should be able to tell you if the fund complies with these requirements.

Unless and until you nominate a fund, subject to any applicable award, order or enterprise bargaining agreement, your contributions will be paid to a fund chosen by your employer.

#### **How to nominate the fund of your choice**

To nominate the fund of your choice you must give notice in writing to your employer specifying which fund you have chosen.

#### **Changing funds**

Once you have nominated a fund you cannot change your nomination and choose a different fund unless your employer agrees. However, your employer cannot unreasonably refuse to agree to a change of fund.

#### **MAKE THE RIGHT CHOICE**

**Choosing the right fund is a complex decision. Before you nominate a fund read the "Information for Employees" section carefully and consult your accountant or an independent financial adviser to make sure it is the best fund for you.**

*[Continued on following page. . . ]*

## Form One Information *(continued)*

### Information for Employees

Before you nominate a fund there are many things you need to consider to make sure the fund is suitable for you. Some of the things you should consider are:

- the type and level of **benefits** provided by the fund
- the **fees and charges** charged by the fund
- the type and level of **insurance** provided by the fund
- the **preservation** requirements applying to benefits in the fund
- any other restrictions on **access to benefits**
- the trustee's **procedure for checking that employer contributions** are being made
- whether the fund permits **additional member contributions**
- the fund's **complaint resolution procedure**
- what sort of **investment options** are available to fund members
- whether the trustee employs fund managers, actuaries, stockbrokers and other **advisers**, and if so who they are, what they do and how much they are paid
- whether there is a "**cooling-off**" **period** for new members
- the **tax** implications of making contributions and receiving benefits
- the quality and frequency of **information** about the fund's investments and performance provided to fund members by the trustee.

If you are already in a superannuation fund you should also consider the consequences of changing to a new fund. Some of the things you should consider are:

- whether you can **transfer benefits** from your current fund to the new fund, and whether there are **fees** for doing this
- whether there will be **changes in your contribution and benefit levels**
- whether there are any **fees or charges** to exit from your current fund
- whether changing funds will affect the **preservation** requirements applying to your benefit
- the **tax** implications of changing funds.

### MAKE THE RIGHT CHOICE

Choosing the right fund is a complex decision. Before you nominate a fund: -

- **carefully read the member booklet, prospectus or other information provided by the trustee of the fund; and**
- **consult your accountant or an independent financial adviser;**

**to make sure it is the best fund for you.**

[Current as at 9 May 2005]