choice of superannuation fund

meeting your obligations

An Australian Government Initiative

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foreword

From 1 July 2005, the choice of superannuation fund initiative will allow many Australian employees to choose the fund into which their future superannuation guarantee contributions will be made. This change is expected to provide employees with a greater sense of ownership over their retirement savings.

This initiative will be jointly administered by the Tax Office, Australian Securities and Investments Commission and Australian Prudential Regulatory Authority. This booklet aims to help employers, superannuation fund trustees and financial advisers understand their obligations and our compliance approaches. Because we are committed to being open in our dealings with the community, it also explains what they can expect from us.

It's important for employees to take time to carefully consider which superannuation fund will work best for them. We will provide assistance to help them make informed decisions.

We expect superannuation fund trustees and financial advisers to be ready to comply with their obligations so that they operate in the best interests of the community.

There will be a focus on compliance across this initiative. Where employers and the community make a genuine effort to comply, we will work with them to rectify any issues. However, a firm approach will be taken with those who set out to deliberately avoid meeting their obligations.

By publishing our compliance approaches, we hope to influence the decisions people make about meeting their obligations. We urge all employers, trustees, financial advisers and tax practitioners to read this booklet and ensure they fully understand their obligations and our compliance approaches to the choice of superannuation fund initiative.

Jeffrey Lucy AM

Chairman of Australian Securities and Investments Commission

Michael Carmody AO

Commissioner of Taxation

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ABOUT THIS BOOKLET

This booklet explains the obligations and penalties under the choice of superannuation fund initiative for employers, employees, superannuation funds and their trustees, and financial advisers.

It also outlines the compliance approaches the Tax Office, the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA) will use to ensure people comply with their choice of superannuation fund obligations.

In this guide, all references to superannuation funds include retirement savings accounts.

WHAT IS CHOICE OF SUPERANNUATION FUND?

Choice of superannuation fund is a new law that gives many employees the right to choose which superannuation fund will receive their employer superannuation contributions.

It starts on 1 July 2005.

WHO DOES CHOICE OF SUPERANNUATION FUND AFFECT?

Employers, employees, superannuation funds and their trustees, and financial advisers all have obligations under choice of superannuation fund. The Tax Office, ASIC and APRA will jointly ensure that people comply with their obligations.

EMPLOYERS

Generally, from 1 July 2005, employers must offer choice of superannuation fund to all eligible employees. To meet this obligation, employers need to identify their eligible employees; provide a *Standard choice form* to their eligible employees; and act on an employee's choice.

Employers also need to choose an employer fund to which they will make superannuation guarantee contributions if an employee does not make a choice.

EMPLOYEES

Generally, from 1 July 2005, employees can choose the fund to receive their future superannuation contributions unless:

- their superannuation contributions are made under a certified agreement or an Australian workplace agreement
- their superannuation contributions are made under a state award or industrial agreement (visit **www.superchoice.gov.au** for more information), or
- their employer is a sponsor of a particular defined benefit fund and certain conditions are met (for more information, see page six of the booklet *Choice of superannuation fund – guide for employers*, which is available at **www.ato.gov.au/super**).

There will also be public servants and individuals working for government agencies who may not need to be offered choice of superannuation fund.

If an employee is engaged under a federal award, they must be offered choice of superannuation fund whether or not that award requires contributions to be made to a specific superannuation fund.

Some state laws also provide for choice of superannuation fund under state based arrangements.

Employees who aren't sure what award or industrial agreement (if any) they are covered by can find out by:

- asking their employer
- visiting the website **www.wagenet.gov.au** (for federal awards and agreements and links to information on state awards and state industrial agreements), or
- phoning the government agency responsible for workplace relations in their state or territory.

If an eligible employee wishes to choose a superannuation fund, they should provide their employer with all the required information. The employer does not have to make superannuation contributions to the employee's chosen fund until all information is provided.

SUPERANNUATION FUNDS AND TRUSTEES

Superannuation funds can inform employees whether their employer is able to make contributions to the fund on their behalf. If so, funds should provide employees with the information they need to complete the *Standard choice form*.

Superannuation funds and trustees must also comply with all relevant licensing and disclosure requirements. They must not illegally provide kickbacks to employers for choosing their fund as the employer fund, or engage in misleading or deceptive conduct.

FINANCIAL ADVISERS

Financial advisers may provide advice to employees and employers about which fund best meets their needs. However, there are strict rules that advisers must follow when providing this advice. For example, they must:

- ensure their advice is appropriate
- not make false or misleading statements (particularly about a fund's features, performance or suitability for an employee or employer)
- disclose any payments they expect to receive for having an employee or employer become (or remain) a member of a particular fund, and
- disclose any conflicts of interest that might influence their advice.

OVERVIEW OF THE TAX OFFICE'S COMPLIANCE APPROACH

The Tax Office is responsible for ensuring that employers offer their eligible employees the opportunity to choose a superannuation fund and make superannuation contributions to their employees' chosen fund/s.

Working with ASIC and Treasury, the Tax Office will help employers, employees, superannuation funds and financial advisers to understand and meet their obligations. The Tax Office also works in close cooperation with other regulatory agencies to ensure employers meet their obligations.

During the first year of the new system, the Tax Office will focus on ensuring that employers are aware of, and understand, their new obligations.

The Tax Office recognises that most employers will support choice of superannuation fund and make a genuine effort to meet their obligations within the time frames required. It also understands that some employers may initially experience difficulties in fully understanding and meeting their new obligations, and may make mistakes despite a genuine effort to comply.

Accordingly, where the Tax Office identifies mistakes that result from genuine misunderstandings, it will generally not apply penalties for breaches of choice of superannuation fund, provided that the employer commits to correcting the mistakes within an acceptable time frame.This approach will continue until the end of June 2006.

However, penalties will not be reduced where the employer has not made any attempt to comply or has deliberately or recklessly avoided their obligations. Normal penalties will continue to apply to employers who do not comply with other related obligations, such as providing minimum levels of superannuation support.

From July 2006, the Tax Office expects that the choice of superannuation fund arrangements will be well understood and that employers will comply with their obligations. It will accordingly re-balance its compliance approach to reflect a stronger emphasis on verification activities, with non-compliance penalised in line with normal penalty guidelines.

OVERVIEW OF ASIC'S COMPLIANCE APPROACH

ASIC regulates company and financial services laws to protect consumers, investors and creditors. It licenses businesses that advise on, or deal in, financial products or provide financial services, including superannuation. It can also act against any misleading, deceptive and unconscionable conduct in relation to superannuation.

ASIC works with the Tax Office in joint investigations on superannuation, particularly on early access schemes.

Other than provisions prohibiting the offer of kickbacks to employers and requiring disclosure of fees and costs in product disclosure statements and periodic statements, there are no significant new obligations for trustees or advisers around choice of superannuation fund. Therefore, ASIC expects them to be ready to comply with their legal obligations.

In the lead-up to the initiative's introduction, ASIC has been working with the financial services industry to ensure it understands its compliance obligations. ASIC therefore expects the industry to act responsibly, in the best interests of consumers, and comply with existing obligations relating to disclosure, advice and conduct (including advertising).

Because most employers are new to the financial services regime, ASIC will take a balanced approach with employers who inadvertently provide advice without a licence in the early stages of choice of superannuation fund. This does not apply to those who deliberately fail to comply with the law. ASIC will also consider action against other unlicensed people who breach financial services laws.

Where new obligations (for example, the Corporations Regulations Fee Template and the single fee measure) are imposed on other parties, ASIC will take a reasonable approach to those who are genuinely trying to comply with the law around choice of superannuation fund. However, it will consider enforcement action where there are deliberate or careless breaches, or where there is likely to be significant harm to the consumer.

ASIC will continue to publish guidance about choice of superannuation fund in the lead-up to, and after, 1 July 2005 so that the industry is aware of its ongoing compliance expectations. This will include guidance about advice on switching superannuation funds. ASIC will also monitor compliance, for example, through shadow shopping surveys.

OVERVIEW OF APRA'S COMPLIANCE APPROACH

APRA regulates the prudent management of all complying superannuation funds (other than self managed superannuation funds, which are regulated by the Tax Office, and exempt public sector superannuation schemes).

As part of its prudential focus, APRA will examine the operational frameworks of funds for servicing choice of superannuation fund.

APRA is able to take up members' concerns with the trustees of funds if members believe that their fund is not being prudently managed or that their employer is not forwarding any personal contributions to their fund on a timely basis. However, secrecy provisions prevent APRA from discussing fund-related issues with members who complain.

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EMPLOYERS' OBLIGATIONS

From 1 July 2005, employers must offer choice of superannuation fund to eligible employees.

Employers' obligations under choice of superannuation fund are contained in this section. However, the Tax Office publication *Choice of superannuation fund – guide for employers* explains in more detail what employers need to do. It is available from **www.ato.gov.au/super**

IDENTIFY ELIGIBLE EMPLOYEES

Employers must identify which employees should be offered choice of superannuation fund because not all employees are eligible.

Generally, employers must offer choice of superannuation fund to an employee unless they make superannuation contributions for that employee under:

- a certified agreement or an Australian workplace agreement, or
- a state award or industrial agreement (visit **www.superchoice.gov.au** for more information).

If an employer is a sponsor of a particular defined benefit fund, they may not have to offer a choice of superannuation fund to employees who are members (for more information, see page six of the booklet *Choice of superannuation fund – guide for employers)*.

There will also be public servants and individuals working for government agencies who may not need to be offered choice of superannuation fund.

If an employee is engaged under a federal award, they must be offered choice of superannuation fund whether or not that award requires contributions to be made to a specific superannuation fund.

Some state laws also provide for choice of superannuation fund under state based arrangements.

Employers who are unsure which award or industrial agreement (if any) their employees are covered by, or who need to check if an award includes any conditions for payment of superannuation, can:

- ask their employer association
- visit the website **www.wagenet.gov.au** (for federal awards and agreements and links to information on state awards and state industrial agreements), or
- phone the government agency responsible for workplace relations in their state or territory.

Visit the website **www.superchoice.gov.au** for more information about employee eligibility, including links to information about state laws on access to choice of superannuation fund.

IDENTIFY AN APPROPRIATE EMPLOYER FUND

An employer must nominate an employer fund that each employee's superannuation contributions will be made to if the employee does not choose a fund. The employer fund does not need to be the same fund for each employee. However, employers can nominate only one employer fund per employee. The employer fund can be the fund into which you currently make superannuation guarantee contributions for an employee.

Regardless of whether employers nominate a current or new fund as their employer fund, they need to check that the employer fund:

- is a complying fund, and
- meets the insurance requirements for choice of superannuation fund or is covered by the transitional arrangements for insurance coverage.

Employers can contact the trustee or an authorised representative of the fund to verify that the superannuation fund is complying.

The insurance requirements for choice of superannuation fund – and some exclusions to the insurance requirements – are outlined at **www.superchoice.gov.au** and on page 7 of the Tax Office publication *Choice of superannuation fund – guide for employers*.

Employers need to include the details of the employer fund on Part A of the *Standard choice form*.

PROVIDE A *STANDARD CHOICE FORM* TO ELIGIBLE EMPLOYEES

If employers have eligible employees as at 1 July 2005, they must give those employees a *Standard choice form* before 29 July 2005.

Employers must give new eligible employees first starting after 1 July 2005 a *Standard choice form* within 28 days of their start date.

Employers also need to give a *Standard choice form* to affected employees within 28 days of:

- a written request from an employee asking for a *Standard choice form* (unless the employer has provided that employee with a *Standard choice form* within the previous 12 months)
- becoming aware that they are unable to contribute to an employee's chosen fund
- becoming aware that the employee's chosen fund has ceased to be a complying fund, or
- a change of the employer fund.

The *Standard choice form* must include details of the employer fund that superannuation contributions will be made to if the employee does not choose a fund. The employer fund can be the fund into which the employer currently makes superannuation contributions for the employee.

Employers can download a *Standard choice form* from the website **www.superchoice.gov.au** or phone **13 28 64** for a copy.

ACT ON EMPLOYEE'S CHOICE

Once an eligible employee makes a choice of superannuation fund, the employer has two months to get ready to make contributions to that fund. After this time, any superannuation contributions made for that employee must be to their chosen fund.

MAKE SUPERANNUATION CONTRIBUTIONS TO THE EMPLOYER FUND FOR EMPLOYEES WHO HAVE NOT CHOSEN A FUND

An employer must make sufficient superannuation contributions for an employee to an employer fund each quarter if:

- an employee has not chosen a fund, or
- the employer has not accepted an employee's choice because the employee has not provided all the information required to choose a fund.

MUST NOT CHARGE A FEE FOR OFFERING A CHOICE OF SUPERANNUATION FUND

An employer must not charge an employee a fee to recoup the cost of complying with the choice of superannuation fund obligations.

KEEP RECORDS

Employers need to maintain records that show they have met their choice of superannuation fund obligations, including:

- details of employees who do not have to be offered a choice of superannuation fund
- records confirming that the employer fund meets the insurance requirements or is covered by the transitional arrangements for insurance coverage
- records showing that the *Standard choice form* has been provided to all eligible employees
- written information employees provided when they nominated their chosen funds, and
- receipts or other documents issued by funds showing that the employer has made superannuation contributions to employees' chosen funds.

Employers' choice of superannuation fund records must be in English and kept for five years.

If these records are not in a written form (for example, if they are in an electronic medium such as magnetic tape or computer disc), they must be in a form that is readily accessible and easily converted into English.

MUST NOT ACCEPT INDUCEMENTS TO CHOOSE A PARTICULAR FUND

Other than in the limited circumstances set out on page 10 of this booklet, it is illegal for trustees of superannuation funds or their associates (which might include a financial adviser) to offer inducements to employers on the condition that their employees join the fund.

Employers should report to ASIC any inducements they have been offered by phoning **1300 300 630**.

MUST NOT GIVE FINANCIAL ADVICE UNLESS LICENSED TO DO SO

Some employees may ask their employers for advice about choice of superannuation fund, particularly when they receive the *Standard choice form*. This might include advice about:

- joining or making contributions to a superannuation fund (including the employer fund)
- consolidating superannuation accounts, or
- selecting investment or insurance options within a fund.

Most employers are not licensed or authorised to give financial product advice and therefore should not answer these types of questions. They can only give factual information to employees about superannuation.

If an employee wants more than factual information, or information about how to compare funds, their employer should refer them to the website **www.superchoice.gov.au** and to the free booklet *Super Choices* which is available on the website or by calling **13 28 64**.

The employer could also suggest that the employee seek advice from a licensed financial adviser. Questions about the employer fund should be referred to the fund's trustee.

For more information, refer to ASIC's frequently asked questions about *If I am an employer – what can I tell my employees about making a choice of superannuation fund?* (QFS No 156). This is available from **www.asic.gov.au**

EMPLOYEES' OBLIGATIONS

Employees are not obliged to choose a superannuation fund or return the *Standard choice form* to their employer. However, if an employee wishes to choose a superannuation fund, they must fulfil the obligations listed below.

Before doing these things, employees are encouraged to read the publication *Super Choices* to learn more about superannuation and how to compare funds. This free booklet is available by calling **13 28 64** or can be downloaded from the website **www.superchoice.gov.au**

ARRANGE TO BECOME A MEMBER OF THEIR CHOSEN FUND

If they are not already a member of the fund they wish to choose, an employee must arrange to become a member.

GIVE THEIR EMPLOYER A CORRECTLY COMPLETED *STANDARD CHOICE FORM*

If an employee wishes to choose a superannuation fund, they should provide their employer with the following information:

- the fund's full name and contact details
- the fund's Australian business number (if it has one)
- the employee's membership details, including their account name in the fund and the number or other unique identifier (if any) the fund uses to refer to their account
- a statement, provided by or on behalf of the trustee of the fund, that the fund is a resident regulated fund and is able to accept contributions from the employer
- the method of payment the employer can use to make the superannuation contributions to the fund
- the superannuation product identification number (if any), and
- the unique identifier or number (if any) the employer uses to refer to the employee (such as a payroll number).

If an employee's chosen fund is a self managed superannuation fund, evidence must also be provided to show that it is a regulated superannuation fund. If the fund is less than two years old, this evidence should be the Tax Office notice of registration called *Advice about regulation of your self managed fund*. If the fund is more than two years old, this evidence should be the Tax Office letter of compliance called *Notice of complying fund status – self managed superannuation fund*.

If an employee does not provide all the information required, their employer can continue to make contributions to the employer fund.

An employee should keep a copy of the information they give to their employer and the date the information was provided. The Tax Office may contact the employee to verify that all the required information was provided for a choice to take effect.

MUST NOT TAKE MONEY OUT OF THEIR SUPERANNUATION FUND EARLY

Employees must not use a self managed superannuation fund or other scheme to obtain improper early access to their superannuation. This is illegal and significant penalties apply to both the fund and the recipient if a benefit is unlawfully released early.

Employees should be wary of advertisements, seminars and websites that claim they can have early access to their preserved superannuation benefits. Early access or release of superannuation benefits is permitted only in cases of severe financial hardship or on tightly restricted compassionate grounds.

Before considering an early release of benefits, employees should seek independent advice on the taxation consequences from an Australian tax professional who is familiar with the superannuation legislation or note the warnings on the Tax Office website at **www.ato.gov.au/super**

SUPERANNUATION FUNDS AND TRUSTEES' OBLIGATIONS

The obligations superannuation funds and their trustees must fulfil under choice of superannuation fund are listed in this section. However, these obligations are explained in more detail on ASIC's website **www.asic.gov.au**

ADVISE EMPLOYEES IF THEIR EMPLOYER CAN MAKE CONTRIBUTIONS TO THE FUND

If requested, a trustee of a superannuation fund that wishes to accept new choice of superannaution fund members should provide a written statement to an employee that their fund is a resident regulated fund and can accept contributions from the employer for the employee.

GIVE EMPLOYEES INFORMATION TO COMPLETE THE *STANDARD CHOICE FORM*

If the superannuation fund is able to accept contributions from the employer on behalf of an employee, trustees should provide the employee with the information they need to complete the *Standard choice form*, including:

- the fund's full name and contact details
- the fund's Australian business number (if it has one)
- the employee's fund membership details
- a statement from the trustee that the fund is a resident regulated superannuation fund and is able to accept contributions from the employer
- the method of payment the employer can use to make superannuation contributions to the fund, and
- the superannuation product identification number (if any).

BE APPROPRIATELY LICENSED

The trustee of a public offer superannuation fund will need to be licensed by ASIC in relation to any dealing activities, unless an appropriate exception applies. A trustee of a superannuation fund that provides financial product advice will also need to be appropriately licensed and authorised or provide advice only within the limited exemptions specified in the law.

It is up to trustees to ensure that they have the right authorisations to cover the type of advice they are giving about choice of superannuation fund (for example, general or personal advice) or that their advice falls within the specific exceptions in the law. Recent policy proposals announced by the Australian Government may provide additional exceptions in relation to financial product advice.

Without the appropriate license or authorisation, a trustee cannot give financial advice about their fund, including to existing or prospective members or to employers unless they are acting within a legal exception.

For more information, see the ASIC guide *Licensing: The scope of the licensing regime: Financial product advice and dealing* (updated November 2002) and frequently asked questions (QFS) 17 and 134 at **www.asic.gov.au**

COMPLY WITH DISCLOSURE OBLIGATIONS

Trustees must prepare (and keep up to date) a product disclosure statement for their superannuation fund.

The product disclosure statement must be clear, concise, effective and contain the information an employee would reasonably need to make a decision about joining the fund. This includes information about the features of the fund, including insurance benefits, and fees and costs.

A trustee must also give additional information about the fund on request to prospective and existing members and advisers.

For more information, see ASIC Policy Statement (PS) 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* at **www.asic.gov.au**

MUST NOT MAKE FALSE OR MISLEADING STATEMENTS ABOUT THE FUND

A trustee must not engage in misleading or deceptive conduct. This might include:

- making false or misleading statements, for example about whether the fund is a complying fund or eligible choice of superannuation fund, or about the features of a fund (including its fees, costs and financial performance), or
- failing to provide certain information about the fund.

MUST NOT OFFER EMPLOYERS INDUCEMENTS FOR CHOOSING THE FUND

Superannuation fund trustees (and their associates) must not give or offer inducements to an employer on the condition that their employees join the trustee's fund. This includes offering or giving discounted goods or services.

The limited exceptions to this rule are where the offer to the employer:

- relates to providing a 'clearing-house service' that distributes superannuation contributions to the employee's fund on behalf of the employer
- relates to providing an administration or advice service relating to the payment of superannuation contributions
- relates to an arms-length business loan (but only if it is the employer who is required to be a member of the fund), or
- is available on the same terms to all employees who are also members.

MUST NOT ALLOW MEMBERS OR TRUSTEES TO ILLEGALLY ACCESS SUPERANNUATION BENEFITS EARLY

It is illegal for individuals to set up a self managed superannuation fund to obtain early access to their superannuation without meeting a condition of release, such as retirement. Significant penalties apply to both the fund and the recipient if a benefit is unlawfully released early.

Before considering an early release of benefits, trustees of superannuation funds should seek independent advice from an Australian tax professional who is familiar with the superannuation legislation or note the warnings on the Tax Office website at **www.ato.gov.au/super**

PROVIDE INFORMATION ABOUT THE FUND ON REQUEST

Trustees must comply with their obligation to provide relevant information about their fund on request. This includes requests from members for additional information.

ASSURE THE FUND'S OPERATIONAL FRAMEWORK

Trustees of superannuation funds need to ensure that the fund's operational and IT systems can service their requirements under choice of superannuation fund in a robust and efficient way, without increasing the fund's risks. The fund should have a risk-management strategy that explicitly addresses these requirements, both at the time of trustee licensing by APRA and subsequently.

FINANCIAL ADVISERS' OBLIGATIONS

The obligations financial advisers must fulfil under choice of superannuation fund are listed in this section. However, these obligations are explained in more detail in ASIC's policy statements and guides. For more information, visit ASIC's website **www.asic.gov.au** and read the following:

- Section C of Policy Statement (PS) 164, *Licensing: Organisational capacities*
- *Small business and your AFS licence: Compliance with Policy Statement 164*, which provides examples of checklists and measures that small businesses can tailor to their needs, and
- Sections C and D of Policy Statement (PS) 175, *Licensing: Financial Product Advisers – conduct and disclosure*, which provides guidance about their appropriate advice and statement of advice obligations.

Australian Standard (AS) 3806-1998: Compliance programs is also a useful guide for planning and implementing compliance measures, processes and procedures. To get a copy, visit the Australian Standards website at **www.standards.com.au**

BE APPROPRIATELY LICENSED

Generally, a person who carries on a financial services business, including providing financial product advice, needs to be licensed by ASIC or authorised to give advice on behalf of a licensee (an authorised representative). Certain exemptions apply.

Financial advisers need to ensure they have the right authorisations to cover the advice they give about superannuation (for example, personal or general advice).

FULFIL THEIR AUSTRALIAN FINANCIAL SERVICE LICENCE OBLIGATIONS

A licensed financial adviser must act honestly, efficiently and fairly, and comply with the conditions of their licence and financial services laws.

A licensee must ensure that its authorised representatives are adequately trained and competent to provide the financial services they are authorised for, such as advice about superannuation.

Licensees also have obligations relating to:

- compliance and risk management
- the adequacy of financial, technological and human resources, and
- dispute resolution and compensation arrangements.

MAKE SURE THAT THEIR ADVICE IS APPROPRIATE

An adviser must have a reasonable basis for any personal financial product advice they give. This includes advice about which superannuation fund to choose. An adviser must therefore obtain and consider information about both the client and the relevant financial product/s.

Where they advise a switch from one superannuation product to another, an adviser must generally make a comparison of the relevant costs, features and benefits of both the 'from' fund and the 'to' fund.

Advisers must also ensure they manage any conflicts of interest that might influence their advice. This includes conflicts that might arise because of the way advisers are paid.

ASIC will be issuing guidance for advisers about switching advice. See chapter five of this booklet for more information.

COMPLY WITH DISCLOSURE OBLIGATIONS

If an adviser gives either general or personal financial advice, they must prepare and provide a financial services guide. The financial services guide should confirm whether the adviser is authorised to give advice about superannuation.

For personal advice, advisers must also provide their retail clients with a statement of advice, generally at the time the advice is given. The statement of advice must clearly and unambiguously set out the advice and the basis of the advice.

Where advisers recommend a switch of funds, the statement of advice must also include information about specific costs and consequences of the switch, including loss of any benefits.

DISCLOSE ALL COMMISSIONS

Financial advisers must disclose all commissions and other payments they expect to receive as a result of having an employee or employer become or remain a member of a particular fund. This includes 'soft' dollar payments that might be capable of influencing their advice, such as subsidised business equipment, adviser conferences and volume bonuses.

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CONSEQUENCES OF NON-COMPLIANCE BY EMPLOYERS

Where an employer does not meet their choice of superannuation fund obligations for their eligible employees, they may be liable for the choice shortfall, other penalties and/or prosecution.

The choice shortfall applies where the employer has made contributions for an eligible employee to a complying fund but did not:

- offer the employee a choice of superannuation fund and the employee did not choose a fund
- make the contributions to the employee's chosen fund if the employee did choose a fund, or
- make the contributions to the employer fund if the employee did not choose a fund.

The choice shortfall is usually 25% of the contributions that are not made in compliance with the choice of superannuation fund obligations.

Employers that charge employees a fee to recoup the cost of complying with the choice of superannuation fund obligations will also be subject to the choice shortfall.

The choice shortfall is capped at $500 for a notice period (refer to the definition on page 31) per employee.

To ensure they are not subject to the choice shortfall, it is essential that employers make sufficient superannuation contributions to each employee's chosen fund or, where they have not chosen a fund, to the employer fund identified on the *Standard choice form*.

Where an employer determines they have not properly fulfilled their choice of superannuation fund obligations, they are required to advise the Tax Office using the *Superannuation guarantee quarterly statement*. The new *Superannuation guarantee quarterly statement*, which includes choice of superannuation fund, will be available at **www.ato.gov.au/super** by the end of October 2005.

For the first year (1 July 2005–30 June 2006), the Tax Office will focus on helping employers to understand and adapt to the choice of superannuation fund requirements. It recognises that employers may still be implementing appropriate record keeping practices to show that they have met their new obligations. Therefore, during this period, an employer who demonstrates they have made a genuine effort to comply will generally have any record keeping penalties reduced and/or any choice shortfall reduced to nil.

However, choice shortfall and penalties will not be reduced where the employer has not made any attempt to comply or has deliberately or recklessly avoided their obligations. These decisions will be made on a case-by-case basis. In the most serious cases employers may face prosecution. Tax Office guidelines on reduction of the choice shortfall will be available at **www.ato.gov.au** in July 2005.

More information about the choice shortfall and how to calculate it is available in the Tax Office publication *Employer's guide to the Superannuation guarantee quarterly statement* which will be available at **www.ato.gov.au/super** by the end of October 2005. More information about the superannuation guarantee is available in the Tax Office publication *Superannuation guarantee – a guide for employers* available at **www.ato.gov.au/super**

CONSEQUENCES OF NON-COMPLIANCE BY EMPLOYEES

Employees must not use a self managed superannuation fund or other scheme to obtain illegal early access to their superannuation. They should be aware that significant penalties could apply for illegally accessing their superannuation benefits early.

The Tax Office may:

- assess individuals who have participated in early access schemes – the withdrawn benefits will be taxed at the individual's marginal rate and penalties will be imposed where applicable, and

- disqualify and/or refer for prosecution action individuals who set up funds for illegal early access.

CONSEQUENCES OF NON-COMPLIANCE BY SUPERANNUATION FUNDS AND TRUSTEES

PARTICIPATING IN EARLY ACCESS SCHEMES

If the Tax Office identifies self managed superannuation funds, promoters or individuals that are using early access schemes, it can:

- disqualify and/or pursue prosecution action against trustees of self managed superannuation funds who participate in these schemes
- assess promoters on the income they derive through early access of superannuation
- refer promoters to ASIC for follow-up action
- tax the superannuation funds as non-complying, and/or
- assess individuals who have participated in the schemes – the withdrawn benefits will be taxed at the individual's marginal rate and penalties will be imposed where applicable.

Where the Tax Office suspects that self managed superannuation funds are being used to gain illegal early access to superannuation, it may recommend criminal investigations of both the promoters and participants. These investigations are often done jointly with ASIC and may lead to the referral of matters to the Commonwealth Director of Public Prosecutions.

FAILURE TO ASSURE THE FUND'S OPERATIONAL FRAMEWORK

Failure to establish and maintain robust operational and information technology (IT) systems to service the fund's choice of superannuation fund requirements will impact on its prudential risk rating and the intensity of APRA's supervisory actions.

CONSEQUENCES OF NON-COMPLIANCE WITH OBLIGATIONS REGULATED BY ASIC

Non-compliance with any of the licensing, advice, disclosure or conduct requirements in relation to choice of superannuation fund might result in enforcement action by ASIC. This applies particularly to superannuation funds and advisers, and also to any unlicensed activity by others.

ASIC may take criminal, civil or administrative action depending on the nature of the breach. For example:

- A failure to comply with any of the licensee's obligations may give ASIC grounds for exercising its administrative powers to revoke or suspend a licence or to impose licence conditions.
- A failure to comply with certain provisions by any person (even if they are unlicensed) may give ASIC grounds for exercising its administrative powers to ban the person permanently (or for a specified period of time) from providing financial services.
- ASIC may take criminal or civil action (depending on the nature and severity of the breach) for breaches of the laws relating to advice and disclosure, and under the consumer protection provisions of the *ASIC Act 2001*. Depending on the offence, a range of penalties can apply, including injunctions, fines of up to $220,000 for individuals and $1,100,000 for corporations or imprisonment for up to five years.

Parties other than ASIC are also able to take action to enforce financial services laws. For example, competitors may take private action against funds or advisers. Also, clients or members who have suffered financial loss may seek redress through the Superannuation Complaints Tribunal, other external dispute resolution avenues or the Courts.

04

compliance approaches

04 compliance approaches

EMPLOYERS

HOW THE TAX OFFICE WILL HELP EMPLOYERS MEET THEIR CHOICE OF SUPERANNUATION OBLIGATIONS

The Tax Office will focus on ensuring that employers are aware of and understand their new obligations. A range of activities will be used to complement the government's community and industry awareness campaigns. These include:

- providing a booklet, *Choice of superannuation fund – guide for employers,* which explains what they need to do to meet their choice of superannuation fund obligations
- providing telephone and website support to answer enquiries about choice of superannuation fund
- delivering choice of superannuation fund seminars
- providing information as part of routine tax compliance verification visits to employers, and
- contacting employers who may have previously experienced problems in meeting their superannuation guarantee obligations to ensure that they are aware of and understand their choice of superannuation fund obligations.

The range of activities listed above will continue throughout the introductory year.

The Tax Office will continue to take action to ensure that employers are correctly meeting their ongoing superannuation guarantee obligations and apply normal penalty guidelines in cases of non-compliance.

THE FIRST YEAR OF CHOICE OF SUPERANNUATION FUND

Before 29 July 2005, employers will need to have offered existing eligible employees a choice of superannuation fund. Where an employee makes a choice of superannuation fund, the employer must act on that choice within two months.

From October 2005 onwards, the Tax Office will start a range of activities to assure compliance with choice of superannuation fund obligations. However, it will continue to support employers who make a genuine effort to comply.

Some of the compliance activities to be undertaken include:

- following up on all complaints received from employees about an employer not meeting their superannuation guarantee or choice of superannuation fund obligations. This may involve a desk audit, telephone verification check, field audit and/or contacting third parties, such as superannuation funds, to confirm information provided by employers
- using routine tax compliance verification visits to employers to check that superannuation guarantee and choice of superannuation fund obligations are being met
- contacting employers who have previously experienced problems in meeting their obligations to ensure they meet their superannuation guarantee and choice of superannuation fund obligations. The Tax Office may also contact third parties, such as superannuation funds, to verify information provided by employers
- conducting industry-based audits to assess compliance levels with superannuation guarantee and choice of superannuation fund obligations. These audits will target industries considered to be at higher risk of non-compliance due to factors such as non-standard employment arrangements; links to the cash economy; or a high incidence of employee complaints
- monitoring new self managed superannuation fund registrations to ensure that these are not used by individuals to inappropriately access their superannuation contributions early. Trustees of self managed superannuation funds may be subject to desk audits, telephone verification checks or field audits, and
- providing choice of superannuation fund information to new employers.

During this period, the Tax Office will continue to enforce the existing superannuation guarantee obligations and apply normal penalty policies in cases of non-compliance with these obligations.

AFTER THE FIRST YEAR OF CHOICE OF SUPERANNUATION FUND

It is expected that the choice of superannuation fund initiative will be effectively implemented by July 2006. Existing employers will be expected to have developed an understanding of their obligations and to have put in place the necessary infrastructure and procedures to enable them to comply.

The Tax Office will continue with its program of verification activities and refine its approaches based on its experience during the initiative's first year of operation. It will also adjust its penalty reduction policy to reflect a maturing system. From the quarter starting 1 July 2006, non-compliance will be penalised in line with normal penalty guidelines.

EMPLOYEES

The Tax Office will focus on preventing improper early access by employees to preserved superannuation benefits.

The Tax Office may refer for prosecution employees who provide false or misleading statements, for example if an employee provides their personal bank account details to an employer instead of their chosen superannuation fund's bank account details.

It will also work with ASIC and APRA to help employees understand their entitlements under choice of superannuation fund.

HOW THE TAX OFFICE AND ASIC WILL HELP EMPLOYEES UNDERSTAND THEIR ENTITLEMENTS UNDER CHOICE OF SUPERANNUATION FUND

Information is being provided through the Super Choice website at **www.superchoice.gov.au**

A Super Choice Infoline has been set up to answer questions – call **13 28 64.**

A free publication, *Super Choices*, has been released to provide employees with information about superannuation, choice of superannuation fund and how to compare funds. It is available from the Super Choice website or by calling the Super Choice Infoline.

An education campaign is being undertaken to ensure that employees can find out if they are eligible for choice of superannuation fund.

In addition, seminars will be conducted through employer groups and industry bodies to explain what employees have to do if they wish to choose a fund and what employees should consider when making a choice.

SUPERANNUATION FUNDS AND TRUSTEES

APRA'S PRUDENTIAL SUPERVISION

As part of its continual prudential evaluation, APRA will review the risk management processes of trustees to assess whether a fund's controls are adequate for the operational risks it faces. Operational risks may arise from fund administration, information technology, fraud and the management of change, such as the introduction of new products and processes.

APRA adopts a graduated system of risk assessment (low, medium, high or extreme) with commensurate supervisory action (normal, oversight, mandated improvement or restructure). Under this risk-based approach, more intensive supervision will be applied to funds assessed as having a higher risk of failure and to funds which will have a large impact if they do fail.

ASIC'S COMPLIANCE APPROACH

Superannuation funds and trustees can expect ASIC to show tolerance with those that are genuinely trying to do the right thing under choice of superannuation fund. However, it will take a tougher approach where breaches are deliberate, relate to long-standing legal obligations or could cause detriment to consumers.

More information on how ASIC will ensure superannuation funds and their trustees comply with specific obligations under choice of superannuation fund is provided in the sections below.

Licensing

ASIC will monitor unlicensed activity after the introduction of choice of superannuation fund. This will involve looking at the activities of unlicensed persons, including accountants, as well as the conduct of licensees who may be acting outside their authorisations. Trustees of superannuation funds that are giving financial advice need to ensure that they have the appropriate authorisations.

Disclosure

ASIC regularly reviews product disclosure statements as part of its ongoing compliance role. It will focus on reviewing superannuation product disclosure statements after the introduction of choice of superannuation fund. It will look at the accessibility of product disclosure statements (including those available electronically) in addition to whether the product disclosure statements comply with the law.

There are new regulations about how fees and costs should be disclosed in product disclosure statements and periodic statements. These do not apply to retirement savings accounts. Trustees of superannuation funds need to ensure that all product disclosure statements given after 1 July 2005 comply with these regulations. ASIC considers the new fee disclosure requirements central to helping employees compare the cost of funds.

Advertising

ASIC will take action on advertisements that are misleading, deceptive or that misrepresent the features, suitability or performance of a fund. It will particularly focus on comparative advertising and representations about past performance and fees and costs.

ASIC is currently monitoring advertisements and promotions across all media (including direct marketing) about superannuation, choice of superannuation fund and self managed superannuation funds. It also accepts complaints from consumers and industry representatives about advertisements.

Kickbacks

To make sure that employers choose employer funds that are in their employees' best interests, ASIC will actively monitor allegations of inducements offered by superannuation fund trustees (or their associates) to employers. It encourages employers to inform ASIC where they have been offered what may be illegal inducements.

Complaints handling

Trustees are required to have internal procedures for dealing effectively with member complaints and enquiries. ASIC has found that there is scope for improvement in this area. In particular, improvements are needed in relation to distinguishing between enquiries and complaints, maintaining proper records, documenting procedures and providing information to members about their right to lodge a complaint with the Superannuation Complaints Tribunal.

To help trustees improve their complaints handling procedures, ASIC will soon issue guidance on complaints handling.

FINANCIAL ADVISERS

ASIC will be reasonable in dealing with advisers that are genuinely trying to do the right thing under choice of superannuation fund. However, financial advisers can expect ASIC to take action for breaches that are deliberate, relate to long-standing legal obligations or could cause significant harm to the consumer.

APPROPRIATE ADVICE

Most of the legal obligations relevant to advice about choice of superannuation fund are not new. For example, ensuring client's circumstances are taken into account, that the advice given is appropriate and that advisers manage conflicts of interest are requirements that financial advisers must always fulfil.

For choice of superannuation fund, ASIC will focus on ensuring that employees get appropriate advice, particularly in relation to switching between funds. ASIC will conduct a nation-wide shadow shopping survey to monitor the advice that advisers give their clients. This survey will check whether the financial advice given complies with the law and, in particular, the switching obligations.

ASIC has issued extensive guidance about appropriate advice obligations. It expects advisers to comply with them, and will take action where there are significant or wilful breaches, or where it considers there is potential for consumer harm.

UNLICENSED FINANCIAL ADVICE

ASIC has issued guidance about exemptions from the requirement to be licensed and about what is (and is not) financial product advice. This includes guidance for accountants who seek to rely on the licensing exemption relating to advice about setting up self managed superannuation funds.

Advisers need to consider whether they need to be licensed or authorised, and also to be clear about the limitations of any authorisations or exemptions that they are seeking to operate under.

05

what attracts the attention of the Tax Office, ASIC and APRA?

05 what attracts the attention of the Tax Office, ASIC and APRA

EMPLOYERS

WHAT ATTRACTS THE ATTENTION OF THE TAX OFFICE?

Issues identified by Tax Office field staff

In 2005–06, Tax Office field staff will check that employers are meeting their choice of superannuation fund and superannuation guarantee obligations.

Employee complaints

The Tax Office will investigate all cases where an employee claims that their employer:

- has not made their superannuation guarantee contributions
- did not offer them a choice of superannuation fund, or
- did not act on their choice within two months.

High-risk industries – including cash-economy industries

The Tax Office is aware that employers in certain high-risk industries, including cash-economy industries, are less likely to make superannuation guarantee contributions. It will target employers in these industries to ensure choice of superannuation fund and superannuation guarantee obligations are met.

Areas considered to be high risk vary. For the latest information on risks the Tax Office is targeting, refer to its annual compliance program at **www.ato.gov.au**

Data matching anomalies

The Tax Office is increasing the use of data matching in its selection of audit projects. It reviews income tax, pay as you go (PAYG) withholding, superannuation fund reports and other data to identify potential non-compliance by employers.

Employers are likely to be selected for audit, for example, where the Tax Office identifies that salary or wages have been paid for an employee but superannuation contributions have not been received by a fund for that employee.

Non-compliance with other tax obligations

Employers who are non-compliant with other employer obligations, such as income tax, PAYG withholding and the goods and services tax, are considered more likely not to meet their superannuation guarantee obligations and therefore more likely to be selected for review.

Other notifications

In addition to actioning complaints from employees, the Tax Office will follow up all instances where other members of the community advise that an employer is not meeting their choice of superannuation fund or superannuation guarantee obligations.

SUPERANNUATION FUNDS AND TRUSTEES

The Tax Office, ASIC, APRA and the Superannuation Complaints Tribunal work together to conduct investigations, collect information from the public on non-compliance and deal with problems.

APRA looks at a number of areas during a prudential review of a superannuation fund, including some operational matters relevant to choice of superannuation fund:

- eligibility requirements for members to join the fund
- operational processes to determine if employers are providing complete contribution details to the fund
- procedures for following up member complaints about contributions that have not been made or are late, and
- procedures for following up outstanding contributions from employers.

ASIC works to identify superannuation funds (other than self managed superannuation funds) that do the wrong thing.

The Superannuation Complaints Tribunal works to resolve complaints about superannuation funds.

The Tax Office looks for schemes that use self managed superannuation funds to illegally access superannuation early. More details are provided in the section below.

SELF MANAGED SUPERANNUATION FUNDS, EARLY ACCESS AND THEIR PROMOTERS

Self managed superannuation funds are sometimes illegally promoted as a way of accessing superannuation before retirement.

The Tax Office identifies promoters and individuals participating in this type of scheme in a number of ways, including:

- monitoring advertisements on the internet, in newspapers and on radio
- monitoring AUSTRAC data
- obtaining information from the community and from other government agencies
- obtaining feedback from financial institutions, superannuation funds, administrators and financial advisers, and
- examining data held on its own systems.

FINANCIAL ADVISERS

SWITCHING ADVICE

ASIC wants to ensure all employees get appropriate advice about their superannuation. It is particularly concerned that those employees who already have a superannuation fund are not mis-sold or 'churned' into new superannuation funds, where they would be as well off, or better off, staying in their current fund.

Because the introduction of choice of superannuation fund could potentially give rise to mis-selling and significant consumer detriment, ASIC will focus on the quality of advice in the following circumstances:

- advice to employees to move accumulated superannuation benefits from a fund/s to another fund, or
- advice to employees about where to direct their future employer superannuation contributions.

Key ASIC compliance messages include:

- advisers must make proper investigation of the 'from' fund that they advised the client to switch from (or stop making contributions to). Without this investigation, their advice is more likely to be inappropriate for the employee
- advisers must make appropriate disclosures about their switching advice. If there is limited investigation of the 'from' fund then it is more likely that advisers will be unable to give appropriate advice because they can't disclose the costs, loss of benefits and other significant consequences of the switch, and
- there must be adequate procedures in place for managing conflicts of interest that might influence advice. This is a licensee obligation.

ADVICE ABOUT SELF MANAGED SUPERANNNUATION FUNDS

There has been significant growth in the number of self managed superannuation funds established over the last few years. ASIC is concerned that consumers get appropriate advice about the relative costs and benefits of establishing a self managed superannuation fund, that they are aware of the time and skills required of a trustee, and that they have sufficient funds to justify the establishment and ongoing costs of a self managed superannuation fund.

ASIC is particularly interested in the conduct of accountants in relation to self managed superannuation funds. If they are not licensed to give financial advice, accountants are able to give only limited advice about the establishment and structure of a self managed superannuation fund.

06

more information

06 more information

WHERE TO GET MORE INFORMATION

The Tax Office, ASIC, APRA and the Superannuation Complaints Tribunal have different responsibilities for choice of superannuation fund. This section is designed to help you identify which organisation can help with your enquiry.

A good starting point for employees, employers and professional advisers to get general information is the Super Choice website and Infoline:

- visit **www.superchoice.gov.au**, or
- phone **13 28 64**.

THE TAX OFFICE

For more information on superannuation, employers can:

- visit the website at **www.ato.gov.au/super**, or
- phone the Tax Office's superannuation information line on **13 10 20**.

For more information on self managed superannuation funds:

- refer to the booklet *DIY super – it's your money... but not yet!* which is available at **www.ato.gov.au/super**
- visit **www.ato.gov.au/super**
- phone **13 10 20**
- obtain a fax by phoning **13 28 60**, or
- write to
  Superannuation Business Line
  Australian Taxation Office
  PO Box 277
  WTC VIC 8005

If you do not speak English well and want to talk to a tax officer, phone the Translating and Interpreting Service on **13 14 50** for help with your call.

If you have a hearing or speech impairment and have access to appropriate TTY or modem equipment, phone **13 36 77**. If you do not have access to TTY or modem equipment, phone the Speech to Speech Relay Service on **1300 555 727**.

If you want to provide information about tax evasion or early access to superannuation schemes

The Tax Office website has a link for reporting tax evasion and avoidance. It explains what tax evasion is and provides details about other questions you might have.

You can anonymously report information about tax evasion to the Tax Office by:

- phoning **1800 060 062**
- faxing **1800 804 544**
- visiting **www.ato.gov.au**, or
- writing to
  Australian Taxation Office
  Tax Evasion Referral Centre
  Locked Bag 6050
  Dandenong VIC 3175

Information provided by the community is a valuable part of the Tax Office's compliance program and is used with other intelligence in investigations.

ASIC

ASIC publishes extensive guidance for the financial services industry about how to comply with their legal obligations. This information is contained in policy statements, information releases, subject guides and fact sheets at **www.asic.gov.au**

Anyone can use the free searching facility on ASIC's website **www.asic.gov.au** to check if a business holds an Australian financial services licence or is an authorised representative of an Australian financial services licensee.

ASIC's consumer website **www.fido.gov.au** offers financial tips and safety checks on superannuation, financial advice, money matters and warnings about scams.

ASIC also investigates complaints about fraud, dishonesty, and misleading, deceptive and unconscionable conduct in superannuation and financial services. To make a complaint, phone **1300 300 630**.

APRA

To find more information on the prudential requirements applying to superannuation funds, you can:

- visit APRA's website **www.apra.gov.au**
- email APRA's Contact Centre at **APRAinfo@apra.gov.au**, or
- phone **1300 13 10 60**.

SUPERANNUATION COMPLAINTS TRIBUNAL

The Superannuation Complaints Tribunal is an independent tribunal that deals with complaints about superannuation funds, annuities and deferred annuities. It does this through conciliation to resolve the complaint and, in some cases, through a formal review of the decision/s or conduct to which the complaint relates.

The Tribunal is required to be fair, economical, informal and quick. There is no fee charged for lodging a complaint with the Tribunal, and none of the Tribunal's costs are charged to the complainant.

The Tribunal does not have jurisdiction to deal with complaints about the decisions or conduct of an employer.

For more information you can:

- visit the Tribunal's website at **www.sct.gov.au**
- call **1300 780 808**, or
- write to
  The Superannuation Complaints Tribunal
  Locked Bag 3060
  GPO Melbourne VIC 3001

DEFINITIONS

Cash economy

Where income is received in cash payments and not recorded or declared to the Tax Office in order to avoid paying tax.

Choice of superannuation fund

An initiative that allows certain employees to choose which fund they want their employer superannuation guarantee contributions made to.

Choice shortfall

A component of the superannuation guarantee charge which an employer will be liable for if they do not meet their choice of superannuation fund obligations. It is capped at a maximum of $500 per employee per notice period.

Chosen fund

A superannuation fund that an employee nominates in writing to their employer as the fund to which they want their employer superannuation guarantee contributions made.

Clearing house service

A third party (or superannuation trustee) distributes superannuation contributions to the employee's fund on behalf of the employer.

Comparative advertising

Advertising by one party which compares a superannuation fund or advisory service with one or more other superannuation funds or advisory servicers.

Complying superannuation fund

This is a fund that meets certain regulatory requirements

Note: See section 42 of the *Superannuation Industry (Supervision) Act 1993* for an exact definition.

Data matching

This involves obtaining data from external sources and matching it against Tax Office data to identify non-compliance.

Dealing

'Dealing' captures a very wide range of conduct associated with financial products. This includes applying for or acquiring a financial product and issuing, varying or disposing of a financial product on another person's behalf. Dealing also includes 'arranging' for a person to engage in any such conduct, and captures conduct by which a person negotiates for, or brings into effect, a dealing in a financial product.

Defined benefit fund

A type of fund that provides benefits for members in accordance with a set formula that is contained in the governing rules of a superannuation fund.

Eligible employees

Employees who are entitled to choose which superannuation fund will receive their employer superannuation guarantee contributions.

Employer fund

The superannuation fund into which an employer will make superannuation guarantee contributions on an employee's behalf, if that employee does not choose a fund.

Financial product

A 'financial product' generally means a facility through which, or through the acquisition of which, a person does one or more of the following:

(a) makes a financial investment (see section 763B of the *Corporations Act 2001*)

(b) manages financial risk (see section 763C of the Corporations Act)

(c) makes non-cash payments (see section 763D of the Corporations Act)

Financial products also specifically include:

- interests in a managed investment scheme
- derivatives
- general insurance
- life insurance
- superannuation
- basic deposit products, and
- retirement savings accounts.

Note: see Division 3 of Part 7.1 of the Corporations Act for an exact definition.

Financial services guide

A document that explains the nature of financial services being offered by an Australian financial services licence holder, the fees charged and how the person providing the service deals with customer complaints.

Note: see section 761A of the Corporations Act for an exact definition.

'From' fund

In terms of switching superannuation funds, the 'from' fund is the fund in which someone has current membership.

General advice

This is financial product advice that's intended to influence a person or persons in making a decision in relation to a particular financial product. General advice does not take into account the particular objectives, financial situation and needs of an individual.

Goods and services tax (GST)

A broad-based tax of 10 per cent that is payable on most supplies of goods and services consumed in Australia.

Notice period

An employer's notice period for an employee will start on:

- introduction of choice of superannuation fund (1 July 2005)
- the day the employee starts work for the employer, or
- the day after the preceding notice period has ended.

A notice period will end once the Tax Office gives the employer written notice that the notice period for the employee has ended.

Pay as you go (PAYG) withholding

Employees pay income tax through the year by having their employers send deductions from their salary or wages to the Tax Office.

Periodic statement

A document that superannuation fund trustees must send out to members of the fund at specified intervals, often annually. It contains information about the member's superannuation account balance, including contributions, rollovers, transfers, investment returns, fees and costs that have been deducted from the member's account.

Personal advice

This is financial product advice that takes into account an individual's personal objectives, financial situation and needs.

Product disclosure statement

A document that the issuer of a financial product must provide in relation to the offer of issue of that financial product. It gives information about the issuer, benefits, risks and costs of the product and certain other information.

Public offer superannuation fund

A public offer superannuation fund is a fund which can accept members who do not have any connection with an employer, or members who themselves direct where their employer contributions go.

Note: see section 18 of the *Superannuation Industry (Supervision) Act 1993* for an exact definition.

Self managed superannuation fund

A fund with fewer than five members, where all the members are trustees.

Shadow shopping surveys

A compliance technique in which ASIC recruits consumers and monitors the financial advice they are given, without telling the adviser, to ensure it is relevant and meets all legal requirements.

Standard choice form

The form that an employer must give an employee to choose a superannuation fund. It must include the name of the fund to which the employer will contribute if the employee does not make a choice.

Statement of advice

A record of any personal advice given by an Australian financial services licensee or its authorised representative which explains the basis for the advice and recommendations.

Superannuation guarantee

Minimum levels of superannuation that employers must contribute for their employees. Currently, they must contribute 9% of an employee's earnings.

Superannuation guarantee charge

The charge imposed by the Tax Office if an employer does not make sufficient superannuation contributions for an employee to a complying fund by the 28th day after the end of the payment quarter.

Superannuation guarantee quarterly statement

The form used by employers and their representatives to notify the Tax Office that they have not made sufficient superannuation guarantee contributions for an employee and/or they have not met their choice of superannuation fund obligations.

‘To’ fund

In terms of switching between superannuation funds, the ‘to’ fund is the superannuation fund an employer or employee is advised to start making contributions to and/or to rollover existing superannuation accounts to.

Regulated superannuation fund

A fund that meets a number of requirements set out in section 19 of the *Superannuation Industry (Supervision) Act 1993* (SIS). A fundamental requirement is that the fund has made an election to be governed by the rules of the SIS Act.

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