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SELECT COMMITTEE ON SUPERANNUATION

Reference: Choice of superannuation fund

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SENATE

Tuesday, 17 February 1998

SELECT COMMITTEE ON SUPERANNUATION

Members: Senator Watson (*Chair*), Senators Allison, Conroy, Chris Evans, Ferguson, Hogg and McGauran

Senators attending the hearing: Senators Allison, Conroy, Hogg, Sherry and Watson

Matter referred by the Senate for inquiry into and report on:

The introduction of choice of superannuation fund and the need for education of employees and employers about the implications of choice, including investment choice.

The Committee's inquiry is to include, but not be limited to, the provisions of the Government's legislation on choice of fund.

For the purpose of the inquiry the Committee will take evidence from the public, superannuation providers, employer and employee organisations, consumer groups and Government agencies, and conduct public hearings as appropriate.

WITNESSES

AVELING, Mr Anthony Robin, Acting Chief Executive, Australian Bankers Association, 42nd Floor, 55 Collins Street, Melbourne, Victoria 3000	3
BARKER, Ms Sharon Anne, Policy Coordinator, Financial and Consumer Rights Council, 2nd Floor, 347 Flinders Lane, Melbourne, Victoria 3000	22
BYRNE, Ms Ann, Convenor, Industry Funds Forum, Level 10, 313 Latrobe Street, Melbourne, Victoria 3000	28
BLAKE, Mr Nick, Industrial Officer, Australian Nursing Federation, 373-375 St Georges Road, North Fitzroy, Victoria 3058	94
COOK, Mr Geoffrey, President, Australian Institute of Superannuation Trustees, Level 12, 313 Latrobe Street, Melbourne, Victoria 3000	103
GIBBS, Mr Stephen Phillip, Executive Officer, Australian Institute of Superannuation Trustees, Level 12, 313 Latrobe Street, Melbourne, Victoria 3000	103
HEALEY, Mr Gary Hugh, Director, Australian Bankers Association, 42nd Floor, 55 Collins Street, Melbourne, Victoria 3000	3
HENDERSON, Mr Jeremy, Research Officer, Industry Funds Forum, Level 10, 313 Latrobe Street, Melbourne, Victoria 3000	28

JONES, Mr Denis Michael, Assistant Federal Secretary, Australian Nursing Federation, 373-375 St Georges Road, North Fitzroy, Victoria 3068	94
KNIGHT, Mr David John, Compensation and Benefits Manager, Coles Myer Ltd, 800 Toorak Road, Tooronga, Victoria 3146	84
O’SULLIVAN, Mr Michael, National Executive President, Australian Services Union, Level 2, 116-124 Queensberry Street, Carlton South, Victoria 3053	54
SILK, Mr Ian Scott, Industry Funds Forum, Level 10, 313 Latrobe Street, Melbourne, Victoria 3000	28
THOMPSON, Mr Peter James, Employee Relations Manager—CML Stores, Coles Myer Ltd, 800 Toorak Road, Tooronga, Victoria 3146	84
TWEEDIE, Mr John, Member, Superannuation Working Group, Australian Bankers Association, 42nd Floor, 55 Collins Street, Melbourne, Victoria 3000	3
WELLS, Mr Anthony Cardale, Director, Superchoice Software Pty Ltd, Level 5, 492 St Kilda Road, Melbourne, Victoria 3004	70

Committee met at 9.04 a.m.

CHAIR—I welcome everybody to this public hearing of the Senate Select Committee on Superannuation. This is the first public hearing on the committee's inquiry into choice of fund. The committee's terms of reference are as follows: the introduction of choice of superannuation fund and the need for education of employees and employers about the implications of choice, including investment choice. The committee's inquiry is to include, but not be limited to, the provisions of the government legislation on choice of fund as contained in Taxation Laws Amendment Bill (No. 7) 1997. As you realise, this is an omnibus bill and deals with matters other than superannuation and other than choice.

The committee's formal reporting date is 14 May 1998. However, the committee will report to the parliament on 23 March, following a commitment by the opposition and the Australian Democrats not to delay the bill. However, the passage of the bill is subject to the Senate and we have to recognise that there is a heavy legislative program in a very restricted time.

The legislation gives effect to the government's policy to give employees greater choice as to the complying superannuation fund or RSA to which employer superannuation guarantee contributions are to be made. Employers essentially have three options for satisfying their choice of fund obligations. These are to make a limited choice and offer four specified types of funds and RSAs—and I think we all know what those four choices are—to make an unlimited choice offer under which the employee selects the fund, or to enter into an AWA or certified agreement. Workplace agreements may be formal, certified agreements and specified types of informal agreements.

The choice of a fund is to come into effect in two stages. The first is on 1 July 1998 for new employees, and the second is on 1 July 2000 for all continuing employees. This legislation overrides federal award provisions and employers who employ people under federal awards must offer choice of fund to their employees.

A number of submissions to the inquiry have also addressed the government's proposal that superannuation no longer be an allowable matter under the Workplace Relations Act. This matter is not strictly within the terms of reference. However, the committee has decided to allow witnesses to present evidence on this matter as it is probable that the legislation to implement these changes will be referred to either this committee or the Senate Economics Legislation Committee in the near future. However, we do ask witnesses to bear in mind that this inquiry is actually about the choice of fund, and so to limit their remarks and questions accordingly.

I would also like to explain that today we will have Senator Nick Sherry with us at the table. He will be here shortly. I must point out that, while Senator Sherry is at present not a member of the committee, he has been associated with the committee from its inception—in fact, he was its first chairman—and I understand he may be joining us later on as a formal member. I therefore asked him to join us at the table today as a prospective member to observe proceedings.

According to the rules, because he is not currently a member, he cannot take an active part in the proceedings. This is why he will not be asking any questions today, which I am sure will be very difficult for him. However, he does assure me that he will be taking copious notes. Therefore, Nick, I take this opportunity on behalf of the committee to welcome you to the table and we hope that, other things being equal, you will be able to rejoin us formally at some time in the future.

Before we commence taking evidence, let me place on record the fact that all witnesses are protected by parliamentary privilege in respect of submissions made to the committee and evidence which is given before it. Parliamentary privilege, for those who have not appeared previously before the committee, means special rights and immunities attached to parliament or to its members and to others necessary for the discharge of functions of the parliament without obstruction and without fear of prosecution. Any act by any person which operates to the disadvantage of a witness on account of evidence given by him or her before a Senate committee is treated as a breach of privilege, and so you are accordingly protected.

[9.06 a.m.]

AVELING, Mr Anthony Robin, Acting Chief Executive, Australian Bankers Association, 42nd Floor, 55 Collins Street, Melbourne, Victoria 3000

HEALEY, Mr Gary Hugh, Director, Australian Bankers Association, 42nd Floor, 55 Collins Street, Melbourne, Victoria 3000

TWEEDIE, Mr John, Member, Superannuation Working Group, Australian Bankers Association, 42nd Floor, 55 Collins Street, Melbourne, Victoria 3000

CHAIR—I have much pleasure now in introducing our first witnesses this morning, from the Australian Bankers Association—Mr Healey, Mr Aveling and Mr Tweedie, who is the solicitor from the Commonwealth Bank. We thank you for your submission and invite you to speak to your submission or to make an opening comment and, following that, the usual rule is that committee members ask you some questions about the content of your submission. You can each make a short contribution if you come from a different perspective, or one of your members can carry the presentation. We will leave it to you.

Mr Aveling—Thank you, Mr Chairman. I will make the opening remarks and then Gary Healey, who has had carriage of this issue within the ABA, and John Tweedie, who is a member of the superannuation working group, will answer all the hard questions. If we can do it that way, I would appreciate that.

We are very pleased to be here to talk about the choice legislation. Given that it will affect all employers and, by 1 July 2000, all employees, we see that this legislation is as significant as the original superannuation guarantee legislation. On behalf of the ABA, we strongly support the competitive benefits that will flow from the choice legislation and their early availability from 1 July. We also believe that it is essential that there be a strong educational and communication program.

I will just talk briefly on each of those three points. To start, we do not see how it can be appropriate that in a compulsory superannuation system a significant number of superannuation members—24 per cent according to the ISC, but probably much higher—cannot choose their own superannuation fund. This is money which I emphasise is compulsorily contributed on their behalf. Choice gives people control over their superannuation, and it is control to select the fund based on their risk return preferences, to spread the exposures, to avoid investing in undesired funds, or to adapt their superannuation arrangements as circumstances change. To us, this is the essence of competition; it is the consumer that is in the box seat; it is the shopping around by consumers which will bring all the competitive forces into play.

Lack of member choice is an important reason why competition and efficiency in this marketplace are not as strong as they should be. Allowing member choice of fund will increase competition between funds, it should enhance efficiency, and it will put downward pressure on costs and encourage rationalisation of the industry. This is important when saving for retirement, as a reduction in cost translates into higher returns, the benefits of which should compound.

I would just like to give you an example of the compounding effect. The Wallis report, based on work by the retirement and income modelling task force in Treasury, estimated that a one per cent improvement in returns is equivalent to additional available superannuation assets of \$11 billion by the year 2000, \$75 billion by 2010, and \$205 billion by 2020. So modest improvements in returns can therefore provide large gains for ordinary Australians.

Of course, it is hard to predict how competition will work through the market, but the industry has some features which suggest that there could be substantial competitive gains. Firstly, Australia has a number of small funds that are not taking advantage of the large economies of scale that exist in funds management. This means the costs to consumers are higher than they need to be. Secondly, of the 140,000 active funds, only about four per cent have assets in excess of \$1 million, and over 90 per cent of funds have fewer than five members. Thirdly, the administration cost per member in defined benefit and corporate funds drops by a factor of 10 as the number of members increases from 15 to 10,000. Similar figures exist for accumulation funds. So the point is that modest cost reductions, therefore, should and can provide substantial benefits to superannuants.

In addition, choice will allow people to signal to providers how they feel about their products. If people do not like a particular product—the returns, the fees, the features, et cetera—then they can choose another one.

As we said in our submission, people do not need to change funds for these effects to occur. The simple threat that someone may move their business is sufficient to stimulate competition in this marketplace. Competition will increase once existing employers are brought into the regime, but the full competitive gain for this market will only occur once full portability is introduced. We have recommended that full portability be introduced when existing employers are brought into the regime.

This brings me to the start-up date. We support the 1 July start up, and we are working actively with the ATO and the ISC and the government to achieve this. Our reason for this is simple: the sooner the legislation can be introduced, the sooner the competitive change can begin to permeate the market. This is particularly important as the compulsory superannuation guarantee contribution increases.

There are of course a number of people arguing for delay, and some of these have genuine concerns about the amount of work that needs to be done by 1 July. Our answer to that is: let's take on the challenge. This is very desirable if we all work together in the interests of the people, and there is a lot of innovation that will come forward and allow people to get through to that date.

We would point out also that there are some who feel threatened by the prospect of increased competition and, tactically, could be arguing for delay to protect their own vested interests. Where this does not coincide with the public interest, we would argue that this should be rejected.

There are, though, some important prerequisites if we are to achieve the competitive gains from choice. The key one is that choice must be informed. The competitive benefits of

choice are directly related to the ability of employees and employers to use and understand the regime—people see the system as complex, confusing and constantly changing. Average balances are still low. With compulsion, people do not feel in control. There is still a negative attitude to super as an investment in some quarters. People may find the information on super too difficult to understand. There is disinterest by some employers. There are low levels of literacy. It is important that we understand the drivers of these views. This is critical to making the education and communication effective. To what extent is the lack of understanding, for example, affected by the absence of choice? Why bother trying to understand something when you have not been able to do anything about it?

The two key pieces of work being done on this are the ISC disclosure paper, which will form the basis of the disclosure regulations, and the ATO's work on how choice should be communicated. The regulations for choice need to be completed as a matter of urgency, given the 1 July start-up date. We look forward to further discussions with the ISC on this.

We are also working closely with the ATO on how to communicate the choice regime and the need for regulation. On that, the ATO's conference of 29 and 30 January did provide a great opportunity for various groups to put views on the nature and scope of the communication task. The thing that we found most significant was the almost unanimous view that the communication effort ahead is large and is likely to take some time.

It is our view that the communication and education task before us involves reaching the hearts and minds of every employee and employer, and bringing about a culture of active interest. That is why we have recommended that the government take a high profile, active role, preferably via TV, in communicating the choice regime. A major public education campaign is also required.

The government, we believe, should find whatever funds are necessary to ensure that the communication of this policy and the associated education is as good as it can be, and that it covers all employees and all employers. At a fundamental level, the messages must focus on removing the blockages to people's understanding of superannuation.

In summary, the competitive effects from allowing people to choose what should happen to their own money are likely to be significant. The current industry structure suggests that ordinary Australians stand to reap substantial gains, including but not only lower costs. This is something that we think everyone should support.

As for the legislation, we believe it achieves an appropriate balance between the role of the employer and the role of the employee. We say: let's have those competitive benefits start flowing from 1 July and let's make sure that the choices people make are informed ones as a result of a high profile communications campaign. That is all we would like to say at this point.

CHAIR—Mr Tweedie, have you no comment at this stage?

Mr Tweedie—No, no comment.

CHAIR—Thank you very much; that is a very informed presentation, Mr Aveling. The central feature was that informed choice and competition will bring down costs. However, in this arena competition may also raise marketing costs. To what extent do you think marketing costs are going to be a significant component of the overall cost structure in relation to the superannuation?

Secondly, the cost is one part of the equation; the other part is returns. Will banks, through their RSAs, on average over a lifetime, be able to provide the sort of return that ordinary superannuation funds are able to provide? I mention this because, in one of our earlier reports, we drew the conclusion that generally people at that time tended to favour the more conservative approach. I think it is fairly well known in the industry that the younger the person is the more they should go for a growth type of fund; whereas, if they are approaching retirement, it is the more conservative, cash type of fund that they should move for. Can you match those returns? Are you going to point that out in your advertising, to ensure that there is informed choice? And what segment of the market will you be aiming for?

Mr Healey—A couple of issues are worth pointing out there. Certainly, you are right: for funds that do not currently advertise—and industry funds are a good example—there will be an increase in the costs associated with marketing and advertising. It is important to realise, though, that that is only part of the overall equation. What we are talking about here is a change in the environment that essentially allows people a greater role in their own financial affairs and has the benefit—if what we are talking about in terms of structure flows through—of producing a fairly significant change in the structure of the industry and, in particular, of leading to fund amalgamations. So we think there are quite substantial cost benefits that could be had as a result of that. I suppose yes: on one level there are certainly some marketing costs that will be there.

Senator HOGG—Do you have any figures to support what you are saying?

Mr Healey—In terms of the potential changes in the market? This is a very difficult thing, because we are trying to predict the outcome of deregulating a market that has not yet been deregulated. Can I prove to you that costs will go down by X per cent? The answer is no, I cannot. What we have, though, is some information at least, based on the sort of analysis that the Wallis report did, that suggests there are some features of the industry that could benefit from competitive stimulus coming into them.

We have got larger numbers of small funds. We do not have some of the scale economies being utilised in the market that perhaps we need. But, more generally, there is a significant component of the superannuation market—24 per cent at least, according to the ISC's numbers—where people are not actually having any control over what they do with their superannuation money. So no, we cannot prove this; and the reason is that we are talking about deregulating a market, and it is very difficult to predict in advance what the outcome will be.

Mr Aveling—Before Gary finishes his answer, I would just point to one example, and that is what has happened in the housing loan market. What happened, of course, was increased competition with new players coming in. The marketing costs have increased as a

result of that, both for banks and for the mortgage originators themselves. But we have all seen what has happened to that marketplace. It is now much more competitive than it was. It is better for the consumer than it used to be. We could not have put a figure on that beforehand, but we can look at the results now and see what competition has done to that marketplace.

I had a helicopter flying past my house at the weekend with a big Aussie Homes sign saying, 'Look what we can do for you.' I did not particularly like looking at it, I have to say, coming from my industry. That must have cost a lot of money, but they have proved that they are very competitive in the marketplace. Then, of course, the other players—in our case, the banks—responded strongly as well. So the evidence of what happens with competition is there in many places.

Mr Healey—Thanks, Tony. As to just what proportion of marketing costs this could be, I would have no idea. 'Anyone's guess' is, I think, the answer to that. That will differ, depending on different players in the market. Some people will obviously do more than others. I do not think there is any definitive answer I can give on that.

CHAIR—What about people trying to maintain their market share? This happened in insurance, didn't it? People went for a lot of advertising just to maintain market share. Is that likely to happen?

Mr Healey—The real question there, Mr Chairman, is just how good the disclosure regime and the education regime can be. This comes to the next point that you have raised, about what we will be doing with advertising.

A really critical thing that I would like to emphasise is the need for the disclosure regime to be a regime that people can understand and use and that is actually able to have sensible information in it that the majority of people can use. The sooner we know what that regime is, the better. That will be base from which people like us, as banks, and others will determine what they will do in a marketing sense. So it is too early to say what we will be doing in a marketing sense on these issues.

The other critical thing is the education regime. The really important thing there is that the government take very close control over the nature of the education that will be provided in the market and that they do more than have a major, high profile, public education campaign. They should actually determine the parameters within which people like us, as providers, communicate to the market. That is quite important and will affect the way in which we advertise.

To answer the question about RSAs—can we guarantee that, over a lifetime, they will provide the sorts of returns that ordinary super can provide?—I think if you mean ordinary super in terms of a growth product, the answer is clearly no; an RSA product is a different product. The issue there becomes: how good can one get the disclosures on capital guaranteed products, which are RSA products, versus other products? That, again, comes back to the critical need to make sure that we get the disclosure regime in this area developed as quickly as we can, have it tested in a way that makes it meaningful to people and easy for

them to use, and also have an education campaign that really can kick in as soon as we can get it going.

CHAIR—Will you be offering hybrid RSAs or not?

Mr Healey—I do not know the answer yet to what our members would be offering. The reason for that is a simple one: we do not yet have the regime in front of us.

CHAIR—This is a fairly cardinal section so, before we move to other questions, are there any other questions that members of the committee would like to ask on this particular issue?

Senator ALLISON—I would like an expansion, Mr Healey, on why you think the government ought to take control, I think you said, of the advertising, to determine the parameters of the advertising, and why you think the government should pay for an advertising campaign at all.

Mr Healey—To answer the first question, the reason the government needs to take a clear role is that what we are trying to do is to communicate to the market a very clear message. It is really important, given the sort of information that people have about the level of understanding in the superannuation market, that that be done in a very clear way. You could just say to industry, ‘Okay, go away and do it.’ The outcome of that is likely to be a series of mixed messages that are heavily laced with views on the particular biases that those industry sectors have towards the products or the market. So the reason we think the government needs to take a high profile role is that you need a very clear, very good message going out to people that is actually usable and effective. That is one issue.

As to why the government needs to pay for it, our view is that the government has a very direct responsibility, given that we have compulsion in the system. There is certainly a very significant role for providers and for industry as well to come in behind the government and support what is going on. But the consequences if this goes wrong need to be sheeted home directly to the government. Quite frankly, the government needs to put more than \$2.4 million into this. It is not—

Senator ALLISON—Why do you mean by ‘if this goes wrong’? What are the implications of the government not—

Mr Healey—If, for example, the government decides to do something that only targets a tiny proportion of employers with its education campaign, that would be a significant problem. If it decided to, say, leave out small businesses, that would be a significant problem.

Senator ALLISON—I thought you were suggesting the problem might be in the outcome, rather than in the way the government deals with it.

Mr Healey—It could be in that, yes. If you had a disclosure regime that did not lead to the good kinds of consumer outcomes that you wanted, that would also be a significant

issue. So we think this is a really significant issue for the government. We think it is one in which they have to be very careful about simply saying, 'Yes, industry, please go and fix it.'

Senator HOGG—Could I just go back to the issue of the increased cost to the funds. How significant are those costs going to be and will they impact on the competitiveness of those funds in the future?

Mr Healey—As to how significant they would be, as I said earlier it is very difficult to tell because what all of the providers will need to know is what the full regime out there is before they decide the nature of what they will set up, so I cannot answer as to what percentage marketing costs will be.

Senator HOGG—Do you have any idea of the impact on the eventual return that the holders of equity in those funds will suffer?

Mr Healey—No, I do not, and it is for the same reason: you are trying to predict in advance the outcome of a competitive market. I suppose what I would say is that we think that the industry funds are actually quite well placed to benefit out of this market. They have got very low cost structures. They seem to have really good relationships with their members and their employer markets so we are not, as banks, underrating by any means the significance of the competitive threat that we see that may come from industry funds. The problem we have is that we have only got part of the jigsaw at this stage. We do not have the full jigsaw in front of us so we cannot really say what the competitive outcomes will be.

CHAIR—What market do you really hope to pick up? What will be the thrust of your advertising to what particular market? You indicated there are a lot of funds out there with small memberships and where the average balance was fairly low. Do you intend to target those particular funds or can we automatically assume that those sorts of people will go into an RSA or move across to an amalgamated, say, industry fund and go to a public offer fund?

Mr Healey—I think any of those could happen. Again, it is very difficult to say what the market outcomes will be in advance of letting the market begin, so I think any of what you have suggested is possible, but I have no basis on which to say, yes, we could end up one way versus another. The critical thing is that the market be developed in a way that can get good, meaningful consumer behaviours going so that we as providers get back good, useful information on what we are doing.

Senator CONROY—I was just interested when you were indicating \$2.4 million might not be enough. Do you think that the advertising campaign should include television?

Mr Healey—Yes, and the reason for that is that the sorts of concerns that people at the ATO conference on the 29th and 30th were raising were quite significant. As Tony mentioned before, there was unanimous concern that understanding in the market and behaviour in the market were not as good as they need to be. How are you going to remove that? This obviously needs to be tested by the ATO and others but we think that TV is a really important way to do it. We do not think, for example, that putting brochures or leaflets out would necessarily help. We think serious consideration should be given to a

mail-out to every household in the country. You only need to begin to think of TV and a mail-out and you soon get way over \$2.4 million.

The critical issue which the ATO and government need to test is what is actually driving behaviours in the market. There are some encouraging signs in the work they are doing. I understand they have got a market research company and maybe an advertising company involved, and that they are very interested in trying to test the way in which people are actually behaving and why. But, having done that, I think it is then important that you do something that, as Tony was saying, removes the blockages. This is not about taking a market where behaviours are already good. We are deregulating a market where behaviours need to be significantly improved.

CHAIR—How long should this advertising take place? You have got to build it up a little bit, probably starting gently and then softly and then becoming a little bit more sophisticated as you go on; otherwise you will just confuse people very quickly. What sort of time span do you think would be necessary to provide that sort of build-up and that informed choice?

Mr Healey—I would say that the education component of what we have got to achieve may take a number of years. That is a significant issue in itself. It is, for example, giving to people information so they understand things like what a risk versus a return trade-off is, what compounding is, whether they have enough information to know what they should be doing with their superannuation and whether they have enough superannuation available. A lot of people do not know, for example, that you probably need about 65 per cent of final average salary. So the education side is a long-term thing, but the sooner it starts the better.

As to the broader issues about telling employees and employers what their rights and their obligations are under the act, that needs to start as soon as you know the basis upon which the act and the regulations will be established. But that may need to be something that is brought in, again, once new employees come into the regime. There may be a need for some reinforcement of that between a July 1998 start-up and a 2000 existing employees start-up as well. So it is an ongoing campaign.

CHAIR—I am interested that it might take two years. As I see it, the most vulnerable people are the new employees because they are also the most difficult to communicate with. The funds know their existing membership. The employers know their existing employees who are going to be affected. But this legislation is designed to start on 1 July 1998 and apply only to new people. Would you like to comment on that, given that you think it might take up to two years for people to get really informed choice about risk and return?

Mr Healey—I did not say that. I just said that the education and disclosures that you need to put in place are things that need to take place over a period of time if you are going to improve behaviours. I agree with you that there is a new employees task ahead of us. The problem is that what is a new employee today is not necessarily a new employee tomorrow. You have this moving feast of new employees.

There are ways to target them, however. They may involve things like advertising, TV campaigns, et cetera. They may involve the employer community to a significant extent,

through brochures, et cetera. I know that there is one industry association—I think one of the major employer groups—that is doing some quite interesting work with one of the superannuation bodies in this area. So I do not think communicating to new employees is impossible.

The important thing is that, as you have said, it be done early and it be done well. In my comments I was just answering the time frame issue rather than the substance of what I think needs to be in there.

Senator HOGG—I have formed the view from what you have been saying that you are trying to put the cart before the horse. The fact seems to be that people need to become educated and need to understand what this is about before they can make an informed choice. I have gathered from what you have said that this is going to take some time, and yet we have got the legislation prospectively coming into operation from 1 July. Then you are going to have people not educated, not understanding the situation, being confronted with a choice and unable to make a reasonable choice. How do you overcome that?

Mr Healey—I do not know that it is quite as bad as that. The real issue is where the ISC end up with their disclosure regime. We do not know the answer to that yet. We and others have said to the ISC, ‘We think the existing approach that you have got will be too confusing and too complex for people. Go away and come up with something that is simpler.’ Once they have done that, which we hope will happen in the next week or two, we will then know the nature of the message that needs to be communicated to employees and employers on the rights and the obligations under the legislation.

Provided that is done in a way that is tested properly, I think we can explain to people the rights and the obligations under the legislation. I agree with you that we have got a monumental task in front of us between now and 1 July, but we are very keen to try and do everything that we can to get it up and running. As to how long it is going to take to change consumer behaviours, I think potentially it could take some time.

Senator HOGG—You are talking about people’s behavioural patterns. Behavioural patterns tend to take a long time to change. Yet you are wanting behavioural patterns to change almost overnight, as I read it.

I will just throw one other thing at you, which you might address as well. There is going to be a need for regulations under this legislation. With the likelihood that the legislation will not pass until the end of March, approaching Easter, and then with the need to have regulations proclaimed and also go through the disallowance process in the Senate, how are you going to overcome the concerted time that you then have in which to educate people in an adequate manner? One might be looking at a six-week campaign at best. That to me is a very limited time, even based on your evidence.

Mr Healey—I agree that it is very tight. The key thing is to get the regulations completed as soon as possible. I do not think there should be anything stopping the ISC from coming up virtually immediately with draft regulations.

CHAIR—Did they give you any indication, at that seminar that you attended in January, as to how long it would take the regulations to follow the legislation?

Mr Healey—No. We have not yet had an indication of when the regulations would hit. We are talking to the government and everyone else that will listen to us about the need to get that completed as soon as possible. We have got a particular perspective, in that we have to actually build systems to implement the regime as providers, so the sooner we know the sooner we can actually change computers and that sort of stuff.

Senator HOGG—Yes, but, given that you would be dealing only with drafts of regulations, it is very difficult to go out to the marketplace with any certainty.

Mr Healey—I agree.

Senator HOGG—Therefore, it seems to me that all the evidence that you presented this morning tends to indicate that deferral of this for as long as possible is warranted, so that all the proper mechanisms can be put in place so that we do not end up with a mess at some stage in the future.

Mr Tweedie—Senator, could I make a comment on that point. You seem to imply that what is going to happen on 1 July, for the people who have to make the choice then or shortly thereafter, will be sudden death; there will not be any other option. The legislation has built into it provisions for choice being offered on a 12-monthly basis, or more regularly if the employer wishes to allow that.

Senator HOGG—I understand that. I am fully cognisant of that. It just seems to me that we are trying to push the change too quickly.

Mr Healey—I hear what you are saying.

Senator CONROY—Do you think that, if there were to be no education campaign possible before 1 July, it should still go ahead on 1 July—if it just was not bureaucratically, administratively possible?

Mr Healey—No, definitely not. If you cannot do it, you should not do it.

Senator CONROY—I noticed that the chair raised this earlier, and Senator Hogg has alluded to it. I have concerns that in the best case scenario it is going to be the end of March before the legislation is actually passed. To then mount any sort of serious government media advertising campaign they will need to call tenders, they will need to go through some sort of process of selection over—I would have thought—a few weeks, which takes you into April or the beginning of May. By the time they map it out, book television time and start the advertising, I would think you would be lucky to have any advertising campaign, any education program, started before 1 July.

Mr Healey—Again, though, it depends on whether or not you could be doing some of that now. For example, on the sorts of messages that may get people to understand more about their superannuation, the ATO could be testing now whether people understand risk

return; they could be testing now whether people understand compounding, et cetera. There are significant elements of this work that can go ahead. There is a lot of information about how people are using the market, and there may be bits of it that you can be doing right now. I would agree that, until you get the regulations on the table in front of you, you do not know what the rights and obligations of employees and employers are. You cannot, until that point, decide how then to communicate this.

Senator CONROY—Accepting the point you make about themes, my concern is that there may be a couple of amendments the government are not prepared to wear in the Senate, or in the end there may be a couple of amendments that they are prepared to wear but that do subtly change the situation. It is hard for the ISC, the ATO or anyone else to leap into the market and spend a significant amount of money, if they may find by the end of March or the beginning of April that a subtle but important change in the legislation has come through. So I have that concern. I am interested also in your point on compounding.

Mr Aveling—Before you get onto the compounding, you plan these campaigns in great detail so that you know exactly what you want to do at a certain point in time. If there are some amendments that are going to change some of that, then you make changes in your actual implementation, so 90 to 95 per cent of this can be in place. It is like any marketing campaign: there are a number of unknowns that are going to occur. I do think most of the work can take place beforehand and just be adjusted before you go out with a final message to take account of any changes that may come through in the regulations.

Senator CONROY—I am interested in the question of compounding and whether or not people understand that. One of the issues that has been raised in some of the other submissions today is the question of whether or not there will be a yearly payment into a superannuation account, or ongoing monthly or quarterly. Lots of awards have requirements for monthly payments, and the whole compounding principle works on getting the money in early and letting it build on itself. Would you have a view about whether or not, if award superannuation is taken out as an allowable matter, there should be a continuation of the 12-month payment system, a three-month payment system or a monthly payment system of your superannuation?

Mr Healey—That is something we have not canvassed with members. I would be happy to do that and come back to the committee in the next day or so.

Senator CONROY—This concerns the principle of compounding.

Mr Healey—Yes. Can we send you a short letter, Mr Chairman, on that one, taking up Stephen's point?

CHAIR—Yes, that will be lovely.

Senator ALLISON—Mr Healey, could you outline the disclosure requirements that you believe ought to apply?

Mr Healey—I think paragraph 38 of the ISC's discussion paper—and there are a range of other pieces of material that people have put forward—suggests other things that should

be in there as well. The key issue with this is to make sure that what you end up with covers the information that people need and are able to digest. So our comments to the ISC, although not providing a detailed solution on what we actually thought should go into the disclosure regime, suggested that whatever you do in this area needs to be uniform. It needs to essentially be before people are buying the products, so predisclosure, and it needs to be able to be understood.

So we ourselves have not developed a detailed view on everything that must go into a disclosure regime. What we are doing at the moment is waiting for the ISC to, if you like, put everyone's comments together on this paper and then come out with what we expect will be a draft proposed regime.

Senator ALLISON—So you are not arguing for lighter disclosure requirements; rather for clarity and simplicity. Is that the thrust?

Mr Healey—Yes, I think that is a fair way to describe it.

Senator ALLISON—You said earlier that 24 per cent of people in superannuation funds cannot choose and do not have the option of avoiding undesired funds. What did you mean by that?

Mr Healey—Simply that if someone, say, at a particular stage of their life, through potentially an education campaign or some other means of financial advice, decides that they are in the wrong product—say they are five years out from retirement and they are in a growth product and they think that the markets may get a bit volatile and they want to lock in the capital value of their product—they might decide, 'Okay, I'm in the wrong product. This fund is not a fund I desire, given my needs have changed. I'll move into another one.' So that is really what it means.

Senator ALLISON—Isn't that an argument for a better choice of investment within funds?

Mr Healey—They are related issues. Freedom of choice of superannuation fund is not the same as investment choice. Investment choice, I think you will find, will be something that will increasingly occur and, indeed, is occurring in the market as the market develops. We believe that freedom of choice of superannuation fund is also an important prerequisite for maximising competition in the market.

Senator ALLISON—Would you expect your industry to offer investment choice, and to what degree?

Mr Healey—That is happening now in the market. Certainly there is a significant range of new products. Just what they will be and the features of them will be something that the market will sort out. Again, it is not something you can predict, but I think it would be fair to say investment choice will become an increasing part of the product array.

Senator ALLISON—Experience in the UK, in particular, has indicated there are problems with the selling of this kind of product: the more competitive you get, the more

people are out there trying to sell products. Do you foresee any difficulties in Australia in that respect? And what would your organisation wish to see, as a protection against that?

Mr Healey—There are a couple of things worth talking about on the UK. We are quite a lot further down the track than the UK was in terms of disclosure requirements for superannuation products. For example, we have a code of practice that is voluntarily operating for the sale of life products. Under Corporations Law there are provisions for appropriate advice to be provided on personal superannuation products. The ASC regulates the provision of super advice as part of its broader responsibilities. We have also got section 52 of the Trade Practices Act and the SIS disclosures which are quite a deal more extensive than the equivalent disclosures that existed in the UK at the time.

Having said that, if we are going to avoid the problems of the UK, it is very important that the disclosure regime ensure people can understand the differences between accumulation funds and defined benefit funds. I am encouraged to see that the ISC paper has picked up that issue very squarely, which is good, and that key feature statements in particular cover the important feature of products, including fees, commissions and different benefit types.

I suppose a final key requirement is that that advice regime be as good as you can get it. The Wallis proposals are now being developed through the Corporations Law economic reform program to try and make clearer the nature of advice regulations, so that may provide some benefits as well. One final one is that the education programs have to be as good as you can possibly get, and the communication strategies which you come up with as well.

We are by no means complacent about the UK experience. I actually think that the two-volume UK report provides a very good consumer test of what we need to look to if we are to do this right in Australia.

CHAIR—I have a question for you in terms of employer legal liability. Where the first option is chosen and there has to be an offering of four types of funds, including an RSA, the employer is required to provide a key feature statement. While the government has indicated that there will not be a liability on the employer provided they follow the regulations, et cetera, there is other legislation around, such as trade practices. Maybe if an employer is a little bit enthusiastic in terms of his key feature statement, do you think there is the possibility that other legislation, such as trade practices, could override what the government intends in terms of limited liability for the employers under freedom of choice?

Mr Tweedie—There is a basic question of what the government does intend with the limitation of employer liability. You refer to other legislation as also the common law responsibilities—not to act in a negligent fashion. I think what will emerge for employers is that employers should stick to the rules in the way that they are promulgated for the disclosure that they have to give if employers choose to expand on the basic information required to be given. If they did that in a way which was negligent then there could be employer liability. I do not think that, ultimately, legislation is going to overcome that. The most important thing from the employer's point of view is that the employer have a very clear picture of what the employer is required to disclose.

My understanding from the legislation and the disclosure requirements is that that very clear picture is going to be provided to the employer so that employers should be able to know the nature of the disclosure that they should give without getting themselves into problem areas of excessive disclosure on things that ultimately turn out to be wrong.

CHAIR—I have another legal question while you are here as we do not always have a solicitor at the table. Under the unfettered choice provisions, what responsibility would there be on the employer in terms of ensuring the genuineness of a superannuation product that an employee may suggest?

For example, it may be, say, ‘AMPE investments’ which might be something quite unrelated to the reputable AMP Society. It might have an address in Adelaide or something. To what extent do you think the employer has an obligation to check out the bona fides of each choice that is made? Will bundled products cover for a superannuation product?

I am just a little bit concerned about an employee coming in and choosing the ABC company superannuation fund. The employer might never have heard of that. Is there an obligation really at law for him to ensure that it is a proper superannuation fund? It might be a unit trust or it might be a collective investment.

Mr Tweedie—The question is a very valid one, Senator, from the employer’s point of view because there is a penalty imposed in the legislation. If the employer does not offer choice and does not do it properly then a penalty could apply under the legislation. From an employer’s point of view, the employer wants the certainty that the fund that the employee is putting forward is a regulated superannuation fund or a retirement savings account.

CHAIR—That is the question.

Mr Tweedie—That is the first issue. That issue is resolved to some extent in the superannuation guarantee legislation in that employers have the right conferred on them under the legislation to rely on a certificate from the fund—not from the employee but from the fund—indicating that it is in fact a proper regulated superannuation fund for the purposes of contribution. What would really be needed on that—

CHAIR—Can I just interrupt there? So there is an obligation on the fund to notify each employer that it is a proper regulated fund before it accepts the money?

Mr Tweedie—From the employer’s point of view, if the employer wants the security of knowing that it is contributing into a fund that is capable of receiving the money for superannuation guarantee purposes, the employer should get a statement from the fund indicating that. Every super fund does not have to tell every employer, but if an employee comes along to an employer and says, ‘I want to put it into XYZ superannuation fund,’ the employer should have the option of ensuring that that is a valid superannuation fund.

CHAIR—I know you should have the option, but from a legal point of view would it be advisable that the employer make reasonable inquiries to ensure that it is a proper regulated fund and insist that it gets a letter from the fund itself? It is going to put more and more responsibility back on the employer, you say?

Mr Tweedie—Because of the penalties, it would be prudent for the employer to do so or the employer could end up paying the penalty. Under the current regime, if the employer does not ensure that he is paying the superannuation guarantee to a regulated superannuation fund or an RSA, the employer can be required to pay the charge to the tax office which would effectively be double superannuation.

CHAIR—So the concept of unfettered choice does not automatically absolve the employer from asking a number of questions about the fund, particularly about it being a regulated fund, and in addition to that maybe even getting a certificate?

Mr Tweedie—As I say, that would be a prudent course for the employer. If the employee wants a particular fund, the employer wants to know that by using that fund he will satisfy his obligations.

CHAIR—It is not a problem for the big companies, but if you are just employing one or two people a person down the track could run into some significant problems.

Mr Tweedie—There is a potential issue that has been raised by various commentators about this legislation on the unlimited choice and that is that the employee could come along—this is something that could be dangerous for employers—and proffer a fund which has within its rules obligations imposed on employers—for example that, instead of only paying the superannuation guarantee, they pay all administration expenses and even perhaps contribute a greater amount than the superannuation guarantee. That is something that the legislation might need to address in the amendment phase to make sure that the unlimited choice in fact does not disappear as being a viable option because of the fact that employers are loath to use it because of the dangers of—

CHAIR—Could you give us a paper that expands a little bit more succinctly on that?

Mr Tweedie—Yes.

CHAIR—It is a major problem because I think a lot of employers are of the view that they have no responsibility. You have put a new dimension on that.

Mr Tweedie—Some of the submissions, I believe, have already adverted to the point that I just made about the potential for employers to have foisted upon them funds which create liabilities in excess of the liability that they would have expected to have.

Senator CONROY—Do the penalties that they are paying to the tax office not go to the individual? Do they stay with the tax office?

Mr Tweedie—My understanding is that they go to the individual.

Senator CONROY—There could almost be an incentive to say, ‘ABC is my super fund,’ then 12 months down the track turn around and say, ‘It wasn’t a registered fund.’ The penalties that apply would come back to the individual employee.

Mr Tweedie—That is right. This is the situation at the moment with the superannuation guarantee. It is prudent for an employer, if he is not aware of the fund and the bona fides of the fund, to get a certificate from the fund which the current superannuation guarantee legislation indicates will protect the employer when the employer makes the contributions. That regime should apply to the choice of contributions as well. I believe it would.

Senator HOGG—I would like to raise one further issue with Mr Healey and that is the issue of the monitoring of fees and charges. How are we going to ensure that they are properly monitored? What mechanisms can be put in place to ensure that there is a transparency there when people are making a choice between funds? Otherwise, it could well be that there is an incentive for cross-subsidisation of those fees and charges—the masking of the charges in some way to not really make the product fully—

Mr Healey—That is a good question, John. We support the disclosure of fees, charges and commissions. I draw your attention to the ISC's paper that made that exact point. It said that it is really important that they actually be disclosed.

Senator HOGG—Disclosure is one thing, but monitoring is a different issue though. How does one monitor it?

Mr Healey—That may be an issue that the government wants to consider. There are a range of ways one can do that. The ACCC has within its powers, for example, monitoring facilities. They have been used in the past quite effectively. There are other ways to do those things through, say, regular parliamentary inquiry hearings. We have had that experience in the banking community, for example, where Steve Martin's committee did some really useful work from 1990 through to 1995, where each year we had to come and talk to Steve and his members about what was happening. There is a range of ways to do it. It is an important issue, I agree.

Senator HOGG—I have one final question. How are the banks going to offer a choice of funds to their staff seeing that they themselves invariably are managers or owners of major funds?

Mr Healey—We do not know the answer to that at this stage. I suspect that, if we asked, they would not tell us. It will be something that they will determine once the regime is up and running.

Senator HOGG—One would expect that the champions of freedom of choice would invariably go down the path of offering a wide range of funds even though they are selling the product. This is going to be a contentious issue in not just banks. I am not trying to single them out. There are a number of other areas as well.

Senator CONROY—Service providers are going to obviously have a direct financial interest in providing their own service.

Mr Healey—As you would expect, yes. But just what actual products providers, including banks, will offer, you do not know until you have got the market up and running. I would be guessing.

Mr Aveling—But they are likely to offer a range of choice there because more and more employees of banks are being treated as customers of banks. The old paternalism that you have got to do certain things to get certain benefits—

Senator HOGG—They are also treated as former employees if they do not do the right thing as well.

Senator ALLISON—I have a quick question to ask about RSAs. Is the uptake of RSAs as you expected it to be? What sort of percentage is it now claiming in the field?

Mr Healey—I think that it is as expected but, if the committee is happy, I would like to come back on that and give you something that answers it a bit more fully.

CHAIR—Is a once in 12 months choice option about the right time interval, or should it be longer or shorter?

Mr Healey—We have not got any particular concerns with 12 months. It certainly should not be unfettered as it was in Chile. That simply drives up your costs.

CHAIR—I think some of the banks have got defined benefit funds. There is the potential for increased cost to the employers who are on a contribution holiday as a result of accrued surpluses. Here, if the employees opt for other funds, employers could be required to make contributions. Would you like to comment?

Mr Tweedie—I would like to comment on that. That is an issue that has been focused on by many employer groups. There clearly would be a potential for increased costs to employers who have defined benefit funds for their employees and on a contributions holiday. The ABA has actually suggested in its written submission and in some attachments to that submission a way that we think could get around that problem, whereby one superannuation fund which is in surplus could be used to fund another superannuation fund or RSA chosen by an employee, based on the situation that, if the choice were not offered, the person would have stayed in the fund that was on the contribution holiday. Why can't the surplus that would have otherwise been used to fund benefits in the defined benefit fund be used to fund benefits in the chosen fund or RSA?

CHAIR—Otherwise, at the present time, we would have a situation where an employer could be forced to allow members who have actually reached their maximum benefit accrual to choose another fund. The employer would be forced to recommence contributions just to cover the superannuation guarantee charge.

Mr Tweedie—That is a separate issue.

CHAIR—Yes, that does follow on from that.

Mr Tweedie—The surplus issue is one issue. It is actually quite a separate issue. Many defined benefit schemes will be structured on the basis of a multiplier times final average salary—say eight times final average salary. When a person reaches the eight times final average salary level, if choice is then offered—on my understanding of the way the

legislation is proposed—that choice would then have to be offered to the member and, if the member employee chose another fund at that stage, the employer would have to recommence contributions.

Our submission is that in that situation, if the person already has the maximum benefit and there is a benefit certificate from the actuary—because the defined benefit funds will have that—saying that this person has all the benefits that are needed to satisfy the superannuation guarantee, then choice should not actually be offered to that person.

CHAIR—So you would recommend that for the existing legislation?

Mr Tweedie—That is right.

Senator CONROY—Just to come back to that question of banks being the service providers for their own employees, there has been a lot of concern about questions of third line forcing and arrangements. It would be harder for banks, I guess, to have that separation than for other institutions. How do you see that, just in terms of protecting bank employees?

Mr Tweedie—Sorry?

Senator CONROY—I am just worried about a bank using itself as the service provider and including only its own options. There is obviously a clear financial benefit to them to be their own service provider. How do we address that?

Mr Tweedie—I am not sure, but I would assume that some of the banks and other financial organisations would be seeking to package a group of funds.

Senator CONROY—How do you get the CBA to go to Natwest or NAB as one of the packages? That is basically what I am asking.

Mr Tweedie—But what do you mean, to bring a product from another service provider?

Senator CONROY—Yes. How do CBA go and pick one of NAB's products and put it into their package?

Mr Aveling—If I can just make some comment on that: all these funds, of course, have trustees and, as a trustee, you put on your trustee hat. Having been a trustee of the Australian Guarantee Corporation hat, I can say we actually decided that the Westpac provider was not meeting our requirements in terms of the performance of the fund and we went outside. You have got to do the right thing by your members. There is a statutory responsibility but there is also a moral responsibility. I think, and certainly as far as the banks are concerned, you find that people follow their obligations.

Senator CONROY—There are a few courageous trustees around, are there?

Mr Aveling—Particularly when they get to my age.

Senator CONROY—I have one other question to do with the fees. I was recently talking to one fund that charges only 60c a week and discussing the government's suggestion that there is going to be a reduction in fees. Do you realistically believe that, with the extra costs of advertising, marketing and the extra staff that will probably need to be put on to deal with all of these issues, a lot of funds will reduce their fees in a choice regime?

Mr Healey—That is a very tricky question. There are certain components of the cost structure of the market that are very low now. There is no doubt about that. But there are others where I would like to see change—for example, exit fees. The overall outcome in terms of fees is something that I would like to think is going to be better and more transparent for the consumer, better tailored to their needs and better able to measure those needs. It is very hard to foresee just what the outcomes will be but I would like to think that it will be something that competitive forces will crank into, particularly exit fees.

Senator CONROY—Will this legislation stop existing contracts that have exit fees? It cannot be retrospective, so if you are locked into a fund that has an exit fee are you still going to cop an exit fee if you decide to choose differently in a year or so?

Mr Tweedie—That will depend on the rules of the fund. The legislation is not going to impact on existing arrangements under trust deeds that have exit fees in them.

Senator CONROY—Right.

Mr Aveling—Just referring to your previous point, the very best funds that exist out there at the moment may well not be able to reduce their fees. This is where the competition will come in. As long as you have transparency in fees, then when you are trying to make a choice as to where you want to go you are going to look at these fees and say, 'I am not going to go to that high cost provider. I am going to go to the low cost provider.' Fees are part of the equation, as are, obviously, the investment returns that you can get. But most people will find it difficult to determine exactly what the returns are going to be because we never know. We can look at the risk return trade-off and the fees. Those that cannot meet the market will fall by the wayside. It will be the bigger and better funds that will survive.

Mr Tweedie—We are actually talking about future contributions too. There might be an exit fee in a fund that a person was in previously but they exercise their choice of going into a fund that does not have fees. The issue may arise with portability and when they want to merge their benefits.

Senator CONROY—I am just concerned about a situation where an employer uses the default clause to move someone into a new fund. They may not necessarily have wanted to move but did not get their form in within 28 days. While they are not forced to exit, it is dead money in the sense that contributions are not going in but they are incurring costs. So they are going to cop an exit fee when they leave to join the employer's fund that they have been put in. I am worried about things like that.

CHAIR—Thank you. It was a very informed presentation. Thank you for the frank way you answered the questions.

[10.15 a.m.]

BARKER, Ms Sharon Anne, Policy Coordinator, Financial and Consumer Rights Council, 2nd Floor, 347 Flinders Lane, Melbourne, Victoria 3000

CHAIR—Welcome. I would like to point out that we have at the table a former chairman and member of the committee since its inauguration, Senator Sherry. Senator Sherry is not at the moment a member of the committee but we have invited him to come to the table. Unfortunately, he is not allowed to ask questions. I know that will be difficult for him but he will be taking copious notes and undoubtedly passing messages to Senator Hogg, who may ask questions.

I have to leave for about 10 minutes so I will ask my colleague Senator Conroy to chair the meeting in my absence. I do apologise, but I have an engagement to attend to.

ACTING CHAIR (Senator Conroy)—Ms Barker, I invite you to make an opening statement to go with your submission.

Ms Barker—Thank you for the opportunity to come along and speak to you today. I am not going to dazzle you, unfortunately, with my technical and legal knowledge about superannuation. I am here to provide a community perspective and, in particular, to ask you to consider issues of information and support to the community.

I am here to represent the Financial and Consumer Rights Council of Victoria, which is a non-profit organisation made up of individuals who are financial counsellors and consumer support workers who work in community based agencies. We have 120 members and they provide a free service to the community on financial and consumer issues, usually to community members who are facing unemployment, family breakdown, business failure and issues of bankruptcy.

I would like to raise the issues that were included in our submission. There are three major issues that we would like you to consider. The first one concerns issues of information. We believe that employees should be given comprehensive, up-front information prior to becoming a member of a fund, which is currently, I believe, the requirements for the public offer fund.

Secondly, we believe that it is essential that there is a standardised format for the type of information that is provided to consumers or to the general public to ensure that people have an opportunity to compare oranges with oranges. We have some examples of consumers not being able to compare different types of funds very well. We have examples of banks offering different products and it is very difficult for consumers to compare those products. It is the same for health insurance products where consumers have great difficulty comparing the different products offered and different prices.

The third issue that we would like you to consider is some form of assistance advice and support to the community. We feel that this support should be independent; it should be accessible, which means that possibly it should be free of charge; and it should be linguistically and culturally appropriate. That sounds quite simple, but we have recently done some

research at the Financial and Consumer Rights Council which indicates that people from non-English speaking backgrounds do not access mainstream services. So there certainly is an argument for providing specific services to non-English speaking background people. They are the three issues that we would like to offer today. I am happy to answer any questions.

ACTING CHAIR—You mentioned there were examples of the inability to compare funds. Are you able to give the committee those? They would be very useful in helping to guide the committee on what we should recommend—for example, if we were actually able to say, ‘Here are some examples of where funds have not had apples and apples; they have apples and oranges.’ Would they be available to the committee without breaching any individual’s confidence?

Ms Barker—I can provide you with some case study information. Before I came to the Financial and Consumer Rights Council, I worked as a consumer support worker in the north-eastern suburbs and one case that comes to mind is of a couple who were members of a health insurance organisation. They had been members for 15 years and it was not until the husband had to go into hospital with cancer that they found that they were not insured at the top rate that they thought they were insured for. In fact, they had a very basic cover.

Until that time they had been provided with regular information, but they had not been able to understand that information. The fund suggested that it was in plain English—and it certainly was—but it was very difficult for that couple to understand. Our members are asked to provide information to consumers who are trying to choose an insurance fund and often they, themselves, have difficulty understanding the different break-ups of the products offered.

We find that it is the same with many of the banking products: the way they group their products together makes it very difficult for people to actually compare. We do not know what basic format you may be able to follow, but we feel that there does definitely need to be a standardised format.

ACTING CHAIR—The second issue you mentioned was about research—about accessing the mainstream. Is that confidential information? Would you be able to release that to the committee? That would assist us in terms of the argument of why the government should not just put an advertisement in the *Age*.

Ms Barker—We are still conducting the research. We have been researching the Cambodian and former Yugoslav communities by asking them specifically about issues of credit and debt and whether they access financial counselling services. We have been out into the community—we have spoken to individuals and we have also conducted some focus groups—and we have found that many of the people that we have spoken to have different cultural values about, in this case, credit and debt. We feel that superannuation may be a bit of a mystery to some of those people as well.

We have found that they do not access mainstream services. They do not access financial counsellors very well. In some cases they prefer to go to their own community members and get as much information—or misinformation—as they can. In other cases, they do not like to

go to their community members because they may get some sort of bad reputation. So that is the dilemma for service providers in providing a range of services to non-English speaking background people that actually meets their cultural needs. That is a huge dilemma.

The other issue is people with low language skills. They may not come from a non-English speaking background but, in fact, they need extra support. We feel that perhaps people who are accessing financial counsellors and consumer support workers will come to us when this process goes ahead for advice and support. Obviously, at this stage we are not funded or informed enough to support those people through that process.

ACTING CHAIR—In fact, you are deluged.

Ms Barker—Yes. We do understand that this is a very important issue. It is important that people are able to make informed decisions because ultimately they are going to have to live with these decisions in the future.

Senator HOGG—On the issue that you have raised about people with low language skills, I would imagine that a substantial number of people out in the community are illiterate, for want of a better word.

Ms Barker—Yes.

Senator HOGG—Have you any idea of the extent of that?

Ms Barker—No, I do not have statistics on that. Many of the clients of financial counsellors and consumer support workers have low literacy skills. We get a smattering of people who are not able to read at all, but I do not have statistics on that.

Superannuation is a really difficult issue for people to get their head around. It is not something that they have had to deal with in the past. It is something that they have filled in a form about, or they have had a family member fill in a form for them, and it has just happened. This is a whole new ball game that is involved here, and the stress factor involved in just having to think about that issue is going to be huge.

CHAIR—What about the commencement date? Do you think it is too early?

Ms Barker—I do.

CHAIR—Particularly for vulnerable people?

Ms Barker—Our members think that it certainly is too soon. We would like to see an education campaign happening prior to this process going ahead. Should there be some sort of support service set up, we would also obviously like that to happen prior to this process going ahead.

Senator CONROY—Do you think it should commence on 1 July if they have not had a significant education campaign?

Ms Barker—I do not think so. Our concern is that people, through the stress of knowing that they have to get this matter dealt with quickly, will not consider funds appropriately and will just march into something because their friend, relative or whatever has heard on the grapevine that it is okay to do that, and so they may get themselves into a fund that is inappropriate for their needs.

Senator HOGG—What form should the education take, in your view, given that there is a wide range of people in terms of English speaking background, culture, literacy and their ability to comprehend what superannuation is about? Do you have a suggested format?

Ms Barker—There needs to be a media campaign where people can get an overview of what is happening. But, at a different level, we feel that perhaps working—

Senator HOGG—Can I stop you there? A media campaign would imply advertising on TV and radio or in the newspapers. For people of low literacy skills, newspapers are not going to be very helpful.

Ms Barker—That is true.

Senator HOGG—TV and radio are therefore the only way, and typically there are 30-second or one-minute grabs on TV. How does one take forward an education campaign which will cover the wide diversity in this issue in such short spaces of time?

Ms Barker—We think there needs to be a range of strategies, I suppose. A media campaign is the first one, just to raise that initial consciousness: perhaps with people having a quick grab on SBS Radio. We know that a lot of non-English speaking background people listen to that particular station. We feel that such places as migrant resource centres and ethnic community groups may be good places to target, to provide information via social workers, rather than having posters and pamphlets and that sort of information product.

Senator HOGG—You mentioned health, before: people having trouble distinguishing between what various health funds might offer. But the very significant difference is that the choice of health funds is not compulsory; whereas, in this instance, one is being compelled to make a choice. Secondly, superannuation has a naturally long-term implication for the person, as it is going to be their retirement benefit. Are the types of consumers that you deal with aware of the subtleties of those changes?

Ms Barker—I do not think so at all. Most of the consumers we see who have a concern about superannuation at this stage are trying to get an early release from their superannuation to avoid bankruptcy, and they do not know where they stand in relation to that. We are unsure about what is going to happen in this process of change, but we are sure that people will be pretty stressed out by the process and are going to have difficulties just getting their head around, firstly, the concept of superannuation. Many people are not quite sure which fund they belong to now and what that offers them. Actually to familiarise themselves with what they have currently got and compare that with other options is a pretty big task.

Senator HOGG—Change of itself is naturally stressful unless change is managed properly, so what we are talking about here is the proper management of stress. How many

people would fall into the category of being affected by this decision? Do you have any idea in terms of people from non-English speaking backgrounds?

Ms Barker—I would say that 90 per cent of the clients that financial counsellors and consumer support workers see each year would fall into this category.

Senator HOGG—How many people do you see?

Ms Barker—In Victoria, I cannot give you the current figures, I am afraid.

Senator HOGG—Could you take that on notice and get back to us to so that we have some idea of the clientele you deal with, the problems you deal with and how this particular issue would impact upon those people. I would imagine there would be some where it would not impact at all.

Ms Barker—I would be happy to do that. But keep in mind that many people from a non-English speaking background do not access financial counselling services. It is one issue that we are trying very hard to address. So there are those issues about targeting people where they are most comfortable, I suppose. It is an ongoing problem for the community. We do not have any perfect answers to that but perhaps targeting community groups would be one way to go with that.

CHAIR—Have you any comments to make about the default option? That is the situation where a person does not exercise a choice as to where the funds should go.

Ms Barker—Could you give me some more information?

CHAIR—It is the situation where a person does not actually exercise a choice, and the employer therefore puts moneys into a certain fund. We have received quite a number of comments about some difficulties with that concept. Have you looked at it or would you like to give us a paper on it? You might like to take it on notice: feel free to take any of these questions on notice.

Ms Barker—It is an issue that we have considered in terms of people having an ability to make a choice. They need the information to be able to do that. We are concerned that people will put this process into the too hard basket and allow the process to happen, and sit back and be a passive participant, I suppose.

CHAIR—Right.

Ms Barker—We are concerned that for very vulnerable groups they may not have choice and that, in fact, the employer may go ahead and do that. It is a dilemma for the concept, if the concept is about choice, isn't it? But, in fact, vulnerable groups may not have that choice. The process itself may be too difficult for them to even be able to cope with the concept of choice.

CHAIR—Are there any concluding comments you would like to make?

Ms Barker—Only that I would like to thank you for listening to me today. We would like to stress that we feel that it is absolutely essential that a support service be set up for consumers that is independent, free of charge and readily accessible.

Senator HOGG—Should organisations such as yours be included in any education program and how would that be achieved?

Ms Barker—I think we should be involved because most of our members are based in community settings and that is an ideal way to get information out to the community. I think workers themselves need to be informed about the changes. That may be an education process for financial counsellors, social workers, community workers and those sorts of people. It may be in the form of seminars, lectures or written information. There is a range of options there. I suppose one of the main issues will be about educating workers so that they can provide this information and support to the community.

Senator HOGG—One of my fears is that, if the people out there, in organisations such as yours that are advising people in the community, are not educated, then it is just another factor that is going to complicate the whole issue. The difficulty is the time constraints that we have in which to educate people on the issue of choice. It seems to me it is going to be a long time before we can get the education process properly done and then move on to the next section without any fear about people making choice.

Ms Barker—Yes, it does seem that the time lines are extremely tight to achieve such a huge change.

CHAIR—We selected your group as representative of consumers. A very important part of our deliberations is to ensure that we do have balance. If there is anything that you would like to add in the next week or so or elaborate on as a result of the questions that have been asked, feel free to do so. Thank you for appearing before the committee this morning.

Ms Barker—Thank you.

Proceedings suspended from 10.37 a.m. to 11.00 a.m.

BYRNE, Ms Ann, Convenor, Industry Funds Forum, Level 10, 313 Latrobe Street, Melbourne, Victoria 3000

HENDERSON, Mr Jeremy, Research Officer, Industry Funds Forum, Level 10, 313 Latrobe Street, Melbourne, Victoria 3000

SILK, Mr Ian Scott, Industry Funds Forum, Level 10, 313 Latrobe Street, Melbourne, Victoria 3000

CHAIR—The committee will now continue the taking of evidence. I welcome Ms Ann Byrne, Mr Jeremy Henderson and Mr Ian Silk. I would like to point out that we have at our table Senator the Hon. Nick Sherry. Although a former member of this committee, he is not a member at the moment. He would like to rejoin. Given his wide experience and enthusiasm for this particular topic, we have invited him to the table. Unfortunately, the laws of the Senate preclude him from asking questions, but he will be taking copious notes. I thought I had better give that preface as you may wonder why he does not ask any questions—otherwise he would probably be one of our leading questioners.

Thank you very much for your submission and for appearing before us today. We invite you to speak to the submission and to highlight particular areas where you believe the committee should take note. If there are any issues which you would like to take on notice, do not hesitate to ask to do so because you come from varied experiences and have a great depth of knowledge of superannuation. If you are in doubt on any particular issue, please feel free to take it on notice. We would like you to respond within the next 10 days, say, because the writing of the report has a very tight deadline of 23 March. I thank you for coming. I invite you to speak to the submission, and then members of the committee will ask questions.

Ms Byrne—Before we start, there is one mistake in our submission which I think we should bring to your attention. It is on page 2 in the first paragraph of the introduction. It says, ‘In total these funds’—which are the funds of the Industry Funds Forum—‘have over three million members and assets totalling more than \$102 billion.’ It should actually be \$12 billion. We have just grown the assets of the superannuation industry a little by a typo.

CHAIR—We are conscious of your very significant growth rate of industry funding.

Ms Byrne—You did not think it was that fast?

CHAIR—Maybe after choice.

Ms Byrne—Maybe. Thank you for allowing us to come to speak to you today. We think the best way for us to talk about our submission is not to go through all of it but to actually talk to you about what we see to be the major points. They are essentially related to two issues. One is about the introduction or implementation of choice, on which we have made a number of recommendations. The second one is about the definition of an industry based superannuation fund. We are going to talk about those two particular issues, but we welcome your questions if we have not addressed any of the other issues.

Firstly, about the introduction or the implementation of choice, on page 3 of our submission we have actually put a number of fundamental principles which we believe are very important when you are making such a fundamental legislative change in implementing choice. They are that members' interests are protected; that there is provision of sufficient education and comparative information to enable the employees to make an informed choice; that there are any appropriate legal sanctions against mis-selling; that overall outcomes are in the national interest and not in any particular sectoral interest; that the implementation should be sufficiently straightforward and cost effective; and also that there should be some predetermined criteria for all funds to adhere to information which allows them to be compared with each other—I suppose apples for apples. So it is our view that those principles are a very good guide in putting together an implementation strategy.

Therefore, it is our submission, particularly due to the fact that many Australians are new to superannuation and that some 10 or 11 years ago only 25 per cent of Australians would have had superannuation, that in fact there needs to be a very clear education program developed before choice of fund is implemented. It will need to take account of the different needs of the different sectors of the work force, particularly the needs of young people who, if the legislation is introduced in its current form, would be the first people because one would assume that they would be the new employees that come in, and also the needs of non-English speaking Australians.

All the funds in the Industry Funds Forum have many members who do not speak English as a first language. The fund that I am party to—STA—has members who, we believe, speak something like a total of 23 different languages. All of the funds are gradually putting together information in a variety of those languages.

If that education campaign is put together, it should be in such a way that members can appreciate the implications of making a choice. We have come across some statistics in a survey from the Australian Bureau of Statistics which Ian will address.

Mr Silk—The Australian Bureau of Statistics undertook a major survey in 1996. In the survey they spoke personally with around 9,200 adult Australians. The purpose of the survey was to assess the level of literacy and numeracy amongst adult Australians. The survey ranked adult Australians from level 1 through to level 5, level 1 being the poorest level of literacy and numeracy and level 5 being the highest. The means of assessing the levels of numeracy were practical issues, such as whether people could read a bus timetable, whether they could calculate discounts off appliances marked down in a department store, and so on.

The survey found that 2.5 million adult Australians are at level 1 on the literacy and numeracy table and that 48 per cent are in levels 1 and 2. They are absolutely astounding statistics in the context of general numeracy and literacy levels in the community. But if we look at those findings in the context of the issue that is currently before the committee, it seems that it is an essential part of the introduction of choice, if it is not to backfire, that considerable resources and time be employed in informing and educating the community about the issues that are before them, so that they are in a position to make an informed choice.

Ms Byrne—There are many examples where people in the past have made an uninformed choice. They then try to change their superannuation fund—which we all have experiences of—and it is very difficult for them to do so because there are different levels of fees and charges which would be levied against their funds. We do not want to be in a situation, if a choice of fund is introduced on 1 July, where people are not making a considered and informed choice.

Our second point is that, to make a considered and informed choice, the members of funds have to be provided with the information that allows them to compare superannuation funds. It is very difficult at the moment for you to compare superannuation funds. Superannuation funds have different financial years. Some—probably, I think, the vast majority—have a reporting date of 30 June; some, though, have a reporting date of 30 September and some have reporting dates of 31 December or 31 March. So if you are doing a comparison, particularly between the earning rates of those funds, it is very difficult unless you have the same reporting date.

The other issue that is very important to members in terms of their selection is the disclosure of all fees and charges. We believe that information should be available so that members can understand clearly what all the administrative charges and all the investment charges are, and can actually do an accurate comparison.

I will give you an example of how they are not always accurate. In the current requirements for key features statements, which are only currently required for public offer funds, when you actually put together your management expense ratio you do not always have to put in all of your indirect investment expenses. It is my understanding that if your investments are in a pooled vehicle, because the return you get on that vehicle is less the expenses then that does not have to be declared. But still it is not clear to the member exactly what the cost of running the fund is. So we believe that the provision of that comparative information is very important.

Not only is it important, but it is important that people can actually understand it. If any of you have had anything to do with the key features statements that are required of public offer funds, you will know that they are quite difficult for the ordinary lay person to understand. It is our contention that all comparative information should be able to be summarised in one page. You may have a more lengthy document, which may be two or three pages, which has all of the more detailed information, but in the end everything should be able to be put onto one page, with the essential key features that require comparison. What I am leading to is that because we—

CHAIR—If I can interrupt there, life assurance companies and banks might have a lot of indirect costs, mightn't they? It is fairly easy for an industry fund or a public offer fund to identify costs, et cetera. Where you have a very large organisation, the apportionment of costs is quite significant. Have you any suggestions on that?

Ms Byrne—I would say that all organisations these days do actually look at the costs of running their business. So I would suggest that, if there were sufficient guidelines, they may in fact be able to find out what those costs are. From my experience, I do not know any organisation that does not clearly know what it actually costs to provide a particular service.

CHAIR—I just raise the question in light of the possibility of cross-subsidisation.

Senator CONROY—Disguising the cost to make themselves look cheaper.

Mr Henderson—It is a real problem with respect to RSAs, particularly given the recommendations that the ISC has made for disclosure requirements. Effectively what they are saying there is that there is no need for full disclosure in relation to RSAs because what you see is what you get and you are getting a capital guaranteed rate of return. At the end of the day, there are no means of determining whether cross-subsidisation is occurring with RSAs or not. That is one of the reasons that we are so keen that there is attribution in relation to actual costs and that people do have the full story in front of them.

In terms of the life offices, I think it is fair to say that, generally speaking, they will run separate cost centres in relation to each fund and they will allocate a degree of overheads from the parent organisation to the particular fund.

CHAIR—Sorry for interrupting, but I thought it was a cardinal point.

Ms Byrne—That is fine.

Senator CONROY—On a slightly different point, if I can interrupt as well, I have noted an increasing tendency among funds, including industry funds, in terms of earning rates, and it comes to this question of comparison of earning rates and whether or not the disclosure should include what your actual earning rate is, as opposed to what you declare—in other words, putting reserves into your annual earning rates figure so you cannot really tell how a fund has performed. It may only be one or two per cent in some cases, but it may be larger.

Ms Byrne—You must actually declare your actual earning rate at the moment and then you must declare your crediting rate. Therefore in every annual report that issue is actually—

Senator CONROY—It is just a question of where it is declared.

Ms Byrne—That is right. It must be declared in the annual report that goes to the members. Are you suggesting that it might be in a corner or somewhere?

Senator CONROY—The fine print.

Ms Byrne—I suppose that is the point we are trying to make: that it has to be very clear to people what it is that they are comparing.

Senator CONROY—It is just that that issue is one that I have been aware of happening for some time.

Ms Byrne—That is why we are saying that a one-page summary should be able to have all that information up front in lights so people can actually say, ‘That fund declared 15 per cent, that fund declared 16, over a particular period. If only that was going to happen this year.’

Senator CONROY—It is just that the graph at the bottom of the page goes with the crediting rate rather than the earning rate.

Ms Byrne—Yes.

Senator CONROY—And an image is much more potent than a little bit down the bottom—that they only earned two per cent this year but were crediting six.

Ms Byrne—We would like to raise another issue about the implementation, and it is essentially an issue that has been raised particularly by the employers who participate in industry funds. We have had a whole range of concerns raised via the employer associations that are party to the fund about what they are required to do once the legislation is through parliament and the regulations are available.

They say—and I am in agreement with them—that to have an implementation date of 1 July is just virtually impossible for them, because they will have to decide which option they are going to go with: whether they are going to go with the unlimited option, the four-choice option, or whether they are going to use the workplace agreement option.

If they are going along the four-choice option, they will have to do some research to actually decide what the particular funds will be. They will have to put out educational material for their employees, to notify them that there is going to be a change in their organisation with the way that superannuation is operating. Many of them do employ new employees constantly, because there is a turnover of staff. Therefore there are new people coming in, and they will have to have all those particular things ready. They just do not believe that it is appropriate for them to be given only, I imagine, one or two months to be able to prepare such a fundamental change in their human resource practice. So it is our contention that the implementation date should be put back.

I will address the other issue which we want to bring to your attention. It is the definition, at page 8, of an industry based fund. The legislation as it currently is worded allows so many funds to be industry based funds that we were somewhat surprised when it came out. To actually have a definition that says that a fund that is included in the awards is an industry fund means that almost every master trust can now be an industry fund, every life office fund can now be an industry fund.

We would be recommending that the definition of an industry based fund should be what an industry fund is, which is what I think the general community understands an industry fund to be. They understand them to have equal representation requirements, in line with SIS, that there be at least two or more employer sponsors. We believe that the definition should also include that they are not for profit, that in fact there is a trustee structure that clearly defines them as being different from the other types of funds, particularly the master trusts. Do you want to say something on that?

Mr Silk—No, only to confirm that the definition as it currently stands is a complete misnomer in terms of what the industry and the community have regarded for the best part of a decade as an industry fund. We are not seeking to exclude the funds that Ann has referred to from being involved in the choice regime; we are simply saying that they should

not be occupying the one slot for industry funds. They have got other avenues for participation.

CHAIR—Could you give us a definition of an industry fund? Would you say that it is a fund, for example, where there are equal numbers of employer input?

Ms Byrne—It has equal representation of employers and employees, it has two or more employer sponsors and it operates on a not for profit basis.

CHAIR—That just about covers it.

Mr Silk—The difficulty with the definition now is principally the part that states that a fund is an industry fund if it is nominated in an award. There are any number of federal and state awards—hundreds—and many of those reflect private arrangements between an employer and a union and their employees. They have transported into an award a particular fund, a commercial fund, a non-industry fund. Because of the fact that that is in one award in, say, the Northern Territory, in terms of this definition that fund is regarded and defined as an industry fund for the entire nation, for every industry.

CHAIR—Where would the master trusts fit in if you narrowed the definition?

Ms Byrne—They actually go into the public offer. That is where they clearly fit. For that four-choice option, they would be in the public offer section with an RSA, a company sponsored fund and an industry fund.

Mr Henderson—The other thing is that there is no reason they cannot offer more than the four if they want to accommodate, possibly, an existing fund that may be nominated in their particular award as well as an industry fund.

Senator HOGG—Just on that point: what if superannuation is not an allowable matter for the purpose of the making of awards? How will that affect your definition?

Mr Silk—It would not affect this issue, because the proposal in the bill is for those funds that are nominated in awards at the time of the passage of that legislation. That is presupposing that the superannuation would not have been removed as an allowable award matter prior to the passage of this legislation.

Senator CONROY—What would happen if two funds amalgamated and changed name? Would that then rule it out?

Mr Silk—I would not have thought so.

Senator CONROY—It is almost a legal question.

Mr Silk—I would have thought the successor fund would have carried on.

Mr Henderson—It is worth noting, though, that if this definition were to remain there—at the moment it says ‘any fund nominated in an award at the time the legislation is

proclaimed', which is presumably going to be some time from 1 July onwards—that means that since 4 December, when the legislation came into the House, if people wanted to rort the system they could have reached a mickey mouse agreement of some sort that nominated their fund, and thereby meet the definition of industry fund. I am not saying that there is any evidence that suggests that it has happened, but it could very easily happen because the definition of awards in the legislation is so wide as to include, say, workplace agreements between two individuals.

Senator HOGG—You restrict the definition to two or more employers. Is that a sufficient criterion in itself? One may well have a fund with two or more employers but still, nonetheless, a very small fund and not truly an industry fund. Is there some other criterion that needs to be taken into consideration, whether it be in terms of the asset base of the fund, or the number of people who are actually members of the fund?

Mr Henderson—I do not think so. One of the major distinctions between the definition that Ann proposed and the one that is proposed in the bill is that in the bill's definition they are alternatives. So you only have to meet one of the criteria to be defined as an industry fund. The definition we are talking about would not be alternatives. You would have to meet each of those tests, including more than one employer but also equal representation of member representatives and employer representatives, and that the entire structure, including the trustee, operates on a not for profit basis.

If it meets those three fundamental propositions, it probably is a bit artificial to determine some arbitrary asset level or number of member levels. If it meets those core propositions, then it is generally going to be regarded as an industry fund in the terms that most people in the community understand.

Ms Byrne—I think ASFA, in their submission, have suggested that it should be two or more non-associated employer sponsors. So there would have to be two distinct organisations. There are some very small industry funds and there are very small superannuation funds all over the place, but I do not think this definition could address the issue of what is an appropriate size.

Senator HOGG—So what if a fund was sponsored by an employer organisation? Does that fit in with the criteria?

Ms Byrne—If it actually has equal representation of employers and members, yes, and if it operates on a not for profit basis, yes.

Senator HOGG—If those employers represent only, say, a sector of an industry, does that then fulfil the requirement of an industry fund? I think of an industry such as the retail industry, where you may well have a fund that is set up by, say, a small retailer group in the food area, and that is their predominant market. They then would have access to the whole of the marketplace under this definition.

Mr Henderson—In reality, they do now.

Ms Byrne—They do now, yes.

Mr Henderson—I do not think it is appropriate to use this legislation to actually restrict people from starting up a new industry fund if they wanted to. Once you start drawing those lines, it actually makes it very difficult to open it up in that regard.

Mr Silk—Can I just follow that point up? This discussion is not intended to limit the entry of other funds into the market. It is simply to ensure that funds are appropriately classified. So, in your instance, if a group of food industry retailers wanted to get together and set up a fund because they were unhappy with another fund that they were currently in, so long as they met those key criteria, as far as we are concerned that would be appropriate. This is not an anti-competitive issue that we are talking about here; it is simply a correct categorisation issue.

Senator HOGG—Yes, but it does get down to the point of what constitutes the industry. For example, there are industry funds that are specifically tailored to a specific calling or classification of employees. You could really go right across industry with that sort of definition. They are invariably award specific.

Ms Byrne—Industry funds?

Senator HOGG—Yes.

Ms Byrne—That is not necessarily the case. I represent the Superannuation Trust of Australia, when I am not representing the Industry Funds Forum, and Ian represents the Australian Retirement Fund. We are both multi-industry funds. So you could say that STA and ARF can actually recruit every Australian. But we do not do that. We have decided what our particular markets are because of our employer and employee sponsors. Our employer sponsor is the metal trades industry so we concentrate in that particular area. Ian concentrates in another area. But anybody who wishes to join any industry fund may in fact do so. There are members in STA from a whole range of different industries. In fact, some of the entertainment people choose to be a part of STA. We are not saying that people should be precluded, but we do believe that from the definition it should be clearly understood as an industry based fund. Industry funds are not single industry funds at the moment.

CHAIR—So an employer, if he wishes to, could nominate two industry funds?

Ms Byrne—That is right.

Mr Henderson—A number do now.

Ms Byrne—Many employers do, particularly the very larger employers who pay into a range of industry funds. They probably also have a corporate or company fund that they offer to people—and people choose from them.

Senator CONROY—How many industry funds would now be public offer funds?

Ms Byrne—I think about six, but that is not an accurate answer.

Senator CONROY—I think it is a bit more than that.

Ms Byrne—I would have to ask.

CHAIR—It would be grey, too.

Ms Byrne—Yes.

Senator CONROY—Would you envisage within 12 months there being any industry funds that would not have a public offer component?

Ms Byrne—I would imagine there would be quite a few which would not actually have that status.

Mr Silk—According to the ISC there are about 160 industry funds. The Industry Funds Forum has about 20 of those, but they are 20 of the largest. A lot of them are very small. Many of them have indicated they are going to continue to specialise in the industry that they have specifically targeted, and have no interest in expanding their membership on a public offer fund basis.

Senator CONROY—In terms of your 20 members, do you envisage any of those not being public offer?

Ms Byrne—I think there would be some of them which would not be public offer in a number of years.

Mr Henderson—It is a strategic decision with considerable cost attached to it. That is one of the problems. So the economies of scale question comes into that as well.

Ms Byrne—They are essentially the issues that we wanted to bring to your attention: an education program that is required; clear disclosure requirements so people can compare apples with apples; and the definition of an industry fund. We believe that if choice is going to be offered in a reasonable way, and if people are to make an informed choice, the introduction date must be deferred.

CHAIR—Would you like to comment on an introduction date?

Ms Byrne—In our submission, Senator, we have put 1 July 2000.

CHAIR—I have a question on the default option. Would it be possible for an employer to choose an RSA?

Ms Byrne—I imagine it would be.

Mr Henderson—Under the legislation, as it stands.

Ms Byrne—Under the legislation, yes. The employer could choose any fund as a default fund. In our submission, we have actually said that the default option should in fact be the current fund, or for new employees be a fund that is actually chosen by some form of consensus with the current employees.

CHAIR—From a practical point of view, how do you implement that?

Ms Byrne—I would suggest that most employers, small or large, have some sort of consultative process so that they can work with their employees on a whole range of issues to do with productivity and other matters, and that they could, in that, look at what would be the most appropriate default fund for people coming on. Many employers are concerned—and this has always been their concern, ever since the introduction of superannuation, which is why they have preferred a much more selective choice—that for them to pay into a whole range of different funds can be quite administratively expensive. Even if there is a whole lot of electronic processes available, it still is an expensive way for them to deal with a single matter.

Therefore, the employers that I have spoken to would suggest that the default fund would be their current fund for the particular group of employees. With many of the funds, if you are in a particular section of the work force or a particular industry, you in fact move within that industry when you change jobs; and so we must keep in mind that portability is an issue. Therefore, if someone is in the metal manufacturing sector and they move to another metal manufacturer, they should still have STA available—or another industry fund, depending on what the industry is.

Mr Silk—When you ask what mechanism exists in respect of choosing the default fund on a consultative basis, there are a number of issues that employers are required to deal with under the proposed model. Many employers will make those decisions unilaterally but, equally, many will involve some sort of consultation with their employees directly or through their union or by some other means. The issue of the choice of a default fund is, I would have thought, considerably less complex and less contentious than some of the other decisions, such as which four funds are going into the choice of fund basket. In terms of the issues that employers need to address, we are simply saying that the default fund is likely to be one of many that employers that choose to involve their employees should seek to put on the menu of issues that need to be jointly addressed.

CHAIR—Do you think there are going to be some difficulties for the Superannuation Complaints Tribunal in terms of the question of choice?

Ms Byrne—If that is actually within their jurisdiction. I would see that there actually is a role for the Superannuation Complaints Tribunal if there is a dispute about a particular issue. They are set up to deal with complaints. What their current allowable matters are would need to be changed.

Mr Silk—This is one of the issues that bears very much on whether superannuation should be removed as an allowable award matter, because the Australian Industrial Relations Commission—or the Australian Conciliation and Arbitration Commission, as it then was—spent a lot of its time, when compulsory superannuation was introduced through the award system, resolving precisely this type of dispute. If superannuation is removed as an allowable award matter, there would need to be a vehicle for dealing with disputes. If the SCT had the appropriate jurisdiction, it would be the best vehicle. But one would have to ask whether, if there is a body that has dealt with these issues for a long period of time and has considerable expertise in the area, it would not be the appropriate body in the first instance.

CHAIR—What would be the role of trustees? Would they be the intermediate? Would they look at it first, before it went to the complaints tribunal?

Ms Byrne—It would be an issue between the employer and the employee, rather than actually the trustees.

CHAIR—So there would be a whole new mechanism required to get a conduit to the complaints tribunal?

Ms Byrne—Or to the Industrial Relations Commission—whatever was seen to be appropriate.

CHAIR—I see.

Mr Henderson—I do not think that constitutionally it could be done other than under the conciliation and arbitration power; and, if you are going to use that, then it has to be done through the Industrial Relations Commission, it would seem to me.

CHAIR—That will still be around, will it?

Mr Henderson—You are probably in a better position to judge that than we are.

CHAIR—You have put forward a suggestion that there does need to be a final arbiter on this. I am trying to work out at the moment who is really in the best position to determine these sorts of disputes between the employer and the employee. Until now, disputes within super have come through the fund, haven't they?

Ms Byrne—Yes, because they have normally been to do with the fund: for example, members may have not got the benefit they thought they should have got. But, if it is about choosing the four funds or choosing the one fund or whatever it is, it is not actually an issue for the superannuation funds; they come in later. It is actually an issue for the employer and the relationship with their employees. Historically, when there has been a dispute, all of those matters have been dealt with via our industrial relations processes.

In talking with the sponsors of STA—both the MTIA and the participating employee associations—they actually saw the placement of superannuation into the metal industry award essentially to be about resolving disputes about that particular matter. It was putting in place a process by which, if there were a dispute, it could be resolved within the context of that award.

CHAIR—Okay. Would you be in favour of establishing an acceptable mechanism, where there are disputes directly in relation to choice between the employer and the employee?

Mr Silk—Yes. The bill seems to be silent on the issue of how to—

CHAIR—That is why we are asking the question.

Mr Silk—Yes. It seems to be silent on the issue of how to overcome disputes such as those you are discussing, except in respect of imposing a penalty on employers if they fail to meet certain obligations. But that of itself does not resolve the dispute. It imposes a penalty on one of the parties that is seen to be at error but it does not actually resolve the dispute. You have highlighted a good point. There is a need for a mechanism to be established. There would seem to be some difficulties with the Superannuation Complaints Tribunal being that mechanism; but, in any event, there is a mechanism that already exists that has dealt with these issues and continues to deal with them.

CHAIR—Would anyone like to pursue this point?

Senator CONROY—Not at this point.

CHAIR—Senator Hogg, do you want to pursue this point?

Senator HOGG—No.

Mr Henderson—I want to address one additional thing that we have touched on in our submission. It relates to, if you like, the education process and also the implementation program, and it is the question of consistency on a national basis. I recognise that there are some constitutional difficulties in terms of overriding state awards with respect to provisions for choice of superannuation. But one of the things that really does not seem to have been addressed, notwithstanding the government's statement at budget time previously, is dealing with the states with a view to achieving some national consistency on choice of super.

At the moment, we already have considerable confusion about what is going to come in and, on a state-by-state basis, the application is going to vary dramatically. There is no doubt we need an intensive education campaign but, as things stand, that education campaign will firstly have to tell people whether or not they are actually caught up in the web. For instance, in New South Wales probably something like 60 per cent of employees are under state awards and so they will not be affected at all by the federal legislation.

Ms Byrne—What about Victoria?

Mr Henderson—In Victoria, pretty well everybody is affected.

Ms Byrne—Victoria has no state awards, and therefore everybody will be affected by the legislation. I do not know what the percentages are in the other states, but it will mean that it will make it very difficult for people to actually work out whether they are covered by this particular legislation.

Senator CONROY—Do you want to keep going on that point?

Mr Henderson—I was just going to say that in Western Australia, where I come from, it is a complete dog's breakfast at the moment, because the state legislation there was introduced without any education program, which meant nobody knew it was coming. They do not know what to do with it, and the regulations that have been put down are being challenged now as well. It is an example of how not to go about it. It is, I guess, an object

lesson for saying that, if you are going to introduce it, you should do it in a staged process so that you make sure that all the various parts of it, including the education and information campaign, are taken care of within it. But the consistency issue is a really important one.

CHAIR—Is it a staged process, apart from a staged process for the educational campaign?

Mr Henderson—The education campaign seems to be part of that staged process. The first part of the process is obviously the passing of the legislation. Then you have got a timetable after that, involving the development of the criteria through the ISC for the key feature statements. Then you need to allow time for those key feature statements to be developed, after which the employers are then in a situation to deal with employees in relation to determining which choices to offer. Each of those things is a fairly lengthy process.

Somewhere in there, you need to determine where your education program fits and over what time frame. Just designing it properly—in order to do a full education and information campaign using radio, TV and newspapers—has to have a two- to three-month planning period before you actually start putting it out, it seems to me, if it is going to be done properly. You then need to survey to determine how successful you have been in achieving those goals. All of that seems to need at least a 12-month process from when the legislation is passed, as an absolute minimum.

Senator CONROY—Do you believe that they should proceed from 1 July if they have not had an education campaign that you consider satisfactory?

Mr Henderson—I think it would be a disaster. One of the consequences that will occur, and which really has not been thought about much, is that a lot of people will end up with an inappropriate choice in terms of their long-term investment. RSAs will be promoted as an easy way to solve their problem; but, at the end of the day, while an RSA will give them a capital guaranteed return, over the period of a lifetime they will end up with something like 60 to 70 per cent less than they would do if they were in, say, a balanced fund of some sort, and that is going to cost the nation in the long term quite considerably and put a big hole in our retirement incomes policy. You know very well that superannuation has been a very large part of addressing that for this nation. If we do not grab that bull by the horns now, we are actually shooting ourselves in the foot.

Senator HOGG—Could you just expand for me on the problems in the Western Australian situation? I think it is important.

Mr Henderson—The legislation was introduced in 1995 by the state government. It was part of a whole raft of legislation known as the ‘second wave’ of industrial amendments. They introduced a proposition whereby, from the date of implementation of the legislation, any employee on an award or an industrial agreement which provided for payment of superannuation would be entitled to choose any complying fund which accepted their contributions; and whereby, within six months of the legislation being passed, all awards would have to be changed to reflect that, so that people had the right to choose, but also to

say that, if they did not exercise that choice, the original award specification would continue to apply.

The first problem that arises is the fact that legislation was passed in 1995 but it was not proclaimed until 1 January this year. RSAs, of course, were not even around when the legislation was passed, so they cannot choose RSAs. I do not mind that from a personal point of view but, again, it is an inconsistency in the process. The second problem is that the regulations that have been gazetted do not specify any requirements in terms of provision of information. All they do is require employers to tell employees what to look for in seeking to choose a super fund—and it is quite an extensive list.

The Chamber of Commerce and Industry have received legal advice that the regulations are ultra vires provisions of the act in some areas. They have consequently advised their employer members that they do not have to comply with the provisions of the regulations until such time as awards are amended. What we have got is a situation where employers are throwing up their hands and saying, 'What do I do?' To a very large extent, the answer is that you do not have to do anything, unless an employee who is on an award approaches you and says, 'I want to move funds,' in which case you have to accept their nomination.

Senator HOGG—How many employees would be under state awards, as opposed to federal awards, in Western Australia?

Mr Henderson—In Western Australia, the total figure under state jurisdiction is something like 60 per cent. I could be corrected on that. However, a lot of those do not have superannuation provisions in the award. State public sector employees have always been governed by the state legislation on the state public sector scheme, so they do not come under the choice regime. People on workplace agreements under the state legislation are not affected.

So it would have to be a very rough estimate. I think the work force in Western Australia is somewhere of the order of 750,000. I would think that somewhere around 200,000 to 250,000 would be affected by this legislation, and I would say that about 10 of them have actually exercised choice.

CHAIR—Would you like to see, before the passing of this legislation, an intergovernmental meeting to ensure there is a degree of consistency across Australia?

Mr Henderson—Absolutely.

Senator HOGG—Do we have any idea, from your organisation, of the magnitude of the problem right across Australia? We know that in Victoria they are all on federal awards, but what is the wider situation? Do we have a state by state break-up at all?

Ms Byrne—We can get that for you and get it back to you today.

Senator HOGG—That would be fine. In respect of the industry funds that you represent, do you have an idea of the break-up between those covered by state and those covered by federal awards?

Ms Byrne—No, we do not at the moment. We will be able to get that.

Senator HOGG—And that might pose difficulties for industry funds. Is there going to be an inconsistency between people who may all be members of the one industry fund but covered by different award systems?

Ms Byrne—That is the case.

Mr Silk—That is a difficulty for industry funds but we can manage that; it is our responsibility to manage it. The primary issue that is being raised here is the difficulty for employers. Not only do you have instances where some employees are covered by federal awards and others by state awards, but there are many employers who have, in a single work force, people covered by federal awards and some other employees covered by state awards. That is an extremely common occurrence in workplaces throughout the nation.

This is part of the education campaign we are talking about. It is not a campaign that needs to be directed exclusively to employees, because the first level of choice in this whole arrangement is actually employer choice, the choice of the models that are proposed in the legislation. Employers need to understand, firstly, what their options are but also, secondly, how that applies in their particular workplace. If I am an employer and I have got a dozen employees, eight of them federal award people and four of them state award people, I might not be able to offer choice to the four. I probably can but I need to decide whether I will do that. So there is a lot of information that needs to be provided to employers, in the first instance, so that they are in a position to provide the appropriate information to their employees, who can then, hopefully, make an informed choice on the basis of the information that they have received.

CHAIR—How does that situation differ from the one we have at the present time?

Mr Silk—It differs in a number of respects. Let us take an employer that is covered by a federal award. As you would know, in the most simple example a federal award might specify that employees employed by employers covered by the award have their superannuation paid into a single nominated fund. That is unusual; most provide a choice. But there is usually a defined choice, then with the opportunity for there to be agreement on a move to another fund that is not nominated in the award. But here we are introducing a whole new regime.

We have conducted seminars for our employers over the last 12 months, talking to them about this. I have personally spoken at those seminars and have spoken to over 400 employers of the fund and have asked them what they think about the initial proposal, not this latest bill. One employer said that they were ambivalent about it. Every other one said that it would cause them problems, that they did not like it and that they opposed it. On the basis of that, our fund, our employer organisations—together with a range of other people in the industry—made representations, and a number of those representations have been heeded in this latest bill. But what does remain, and what I would have thought would be beyond dispute, is that there are a series of obligations on employers here that do not exist at the moment.

Employers at the moment have a superannuation regime in place in their work force that will need to change, except for those that have an enterprise agreement that will continue on. The degree of change depends on which situation you are looking at, but it must be the case—it is the purpose of this whole bill—that greater choice and greater freedom to make decisions on this issue come to pass. They will come to pass not just for employees, because the first decision is made by employers.

CHAIR—Do you think it could be a vehicle for industrial disharmony, where you have a number of employees under federal provisions of choice and either a significant number or some key people under a state award?

Mr Silk—You can paint a doomsday scenario that this legislation will lead to industry chaos. I think that is extremely unlikely. But, equally, I would like to be as sure of winning Tatts as that there will be industrial disputes occasioned by the changes that this legislation will introduce. In certain workplaces, that is extremely likely.

CHAIR—Because?

Mr Silk—Because we are moving from a position of status quo to a position of choice, where a whole of vested interests will be seeking to push their barrows. A whole lot of people who do not have a stake in the system now will want to increase or establish a market share. Some people who have got an entrenched market share will want to at least retain or possibly expand it, and they will be using their influence at the workplace to ensure that their commercial interests are met. They will be exploiting divisions and creating divisions to achieve that end. I do not think this is going to be a widespread situation, but I am sure that it will occur.

CHAIR—What are the downsides for employers in this change?

Mr Silk—I have thought of a couple of downsides. The first downside is the administrative resources that they may be required to utilise in order to effect the change. The second is the extent to which they may be held liable for any shortcomings in the process. Both of those issues have been addressed in part in this bill, as compared with the announcement that was made earlier, but there are significant concerns still held by employers on both those points, notwithstanding the bill that was tabled in December of last year. Employers are still saying, ‘We are not unhappy with the current situation. We understand it is changing, but we have concerns about the impact it is going to have on us from a resource point of view and from what might loosely be termed a liability point of view.’

CHAIR—Can you elaborate on the resource point of view, the sorts of costs? Obviously, they have got to provide a key feature statement if you provide the four options.

Ms Byrne—I will address the first one and start off about resources. Firstly, they have to decide which option they are going to go for—whether they are going to go for the limited choice option of the four funds, whether they are going to go for the unlimited choice option or whether they are going to have an enterprise agreement. Therefore they have to spend some time deciding that.

If they go on the limited choice option of the four different styles of funds, they then have to make some decision about what will be the public offer fund, what will be the RSA—their company fund they probably already have—and what will be the industry fund. The industry fund also they probably have already within their workplace. How will they decide which public offer fund it is? Do they need to do some sort of survey of all of the master trusts that are available, and try and work out which is the best one for their employees? Do they need to do the same one for the RSA, to do a survey to find out which is the most cost effective and which offers the best returns? If they are going to do that, it costs resources.

If they go on the unlimited choice option, they require resources initially to explain to their employees that that is what they are going to do, and make it very clear to the employees that the obligation now is on the employees, who have to make some decisions about their choice.

If they are going for the limited option, they need, particularly, resources in terms of collecting the key feature statements and they have to make sure the key feature statements are up to date, particularly as new employees come in. They have to be able to give them relevant information.

If they are on the unlimited choice option, the major additional expense or cost for them will be, in fact, the payment into, potentially, a whole variety of different funds. Essentially, I suppose, that could take up quite a lot of resources at a time when, particularly in some sectors of the economy, it is difficult because of outside sources affecting their industry. They may prefer to actually spend their resources on skilling their work force for change, or producing greater amounts of exports, or trying to deal with the other crises that occur in all particular sectors.

Mr Henderson—Part of my job has been as coordinator for STA in Western Australia, and that means going from employer to employer. The experience we have is that the first point of call for most members in relation to questions about superannuation is not actually the fund itself; it is the payroll contact for the employer. That person is the font of all wisdom, and only if they break down do they end up going to the fund or to the coordinator.

That person is going to be under huge pressure if they are dealing with a whole range of superannuation funds. They develop a relationship, particularly with the larger employers, with the funds themselves, and they get quite a thorough understanding. If they are dealing with a wider range of funds, it is just going to be much more demanding on them. But it is very important from a human resource management point of view within an employer that they have someone who is capable of dealing with people's questions in that regard. Therefore, they are going to have additional training expenses involved in that.

The other issue, of course, is insurance. At the moment, where an employer has a single fund in place, all employees have the same insurance arrangements. They may be different levels of insurance according to what they choose or according to their age, but they are generally insured from the day they start and go right through.

Employers are going to be very uneasy in a situation where people will probably no longer be covered until such time as they have exercised their choice—and, under this regime, that may be anything up to, I think, about eight weeks, during which they may have no insurance cover at all. That is a difficulty for employers because they do not want to be in that—

CHAIR—Up to eight weeks? I thought it was 28 days, wasn't it?

Mr Henderson—No, there is a 28-day period during which the employer is required to give them the information, and then there is a further period during which the employee can actually exercise a choice. It may not be quite as much as eight weeks, but it is a substantial period of time.

Ms Byrne—It is some of the smaller administrative things that actually cost. I was at a seminar for STA employers yesterday and went through the requirements of the legislation. One of the employers came up to me afterwards and said, 'I pay fortnightly. I do all of our payments fortnightly, even though we pay to STA monthly. Nobody ever joins on the first day of the month; they always join midway through. If then I have got 28 days to give them the information and they spend a certain amount of time coming back to me—we will always be accruing within our accounting system superannuation contributions for six weeks while people get sorted out in their choice—what do you suggest I do with the money?' I said, 'Well, I suppose you put it in the bank.'

There are those little items. Employers are now in a system where somebody comes on, they start work and, if the pay period is in the next week, they get paid two weeks of superannuation immediately and then they just continue on. But if there is a whole waiting period for people to make a choice—

CHAIR—What happens if they have add-ons like life assurance or trauma insurance?

Ms Byrne—That is right.

CHAIR—They would not be covered, would they?

Ms Byrne—No.

Mr Silk—Most of them are currently covered by industry funds, because we—that is, the fund—take on the liability in most cases the moment the person is employed, notwithstanding that they have not filled out an application form and it has been received by the fund. The fund takes that on in good faith because that employer's employees are members of that fund.

Under this arrangement it is a concern, and that concern has been raised with the ATO. The ATO's response has been, 'Well, we are seeking to uncouple insurance arrangements from superannuation. We recognise that that is a significant difficulty, but it is not part of our mind-set on this issue.'

CHAIR—That would be worrying.

Mr Silk—Quite frankly, that is not a very positive response because what we are talking about here is millions of Australians who are in industry funds and who have no other insurance other than the insurance they have through their fund.

CHAIR—Can you just spell out what they said they are trying to uncouple?

Mr Silk—I think ‘uncouple’ might have been the precise term they used. What they are saying is that we are focusing on superannuation per se. Insurance has historically been associated with superannuation, but there is no intrinsic reason why that should remain the case. Our focus is on superannuation. If there are unfortunate by-products relating to insurance coverage, then they should be addressed elsewhere, but they are not our, ATO, concern.

CHAIR—Sometimes that is just as important for casual employees as the final retirement benefit.

Ms Byrne—For anybody who has been a short time in the work force, and if they unfortunately die or become disabled, that is the major part of the payment that will go to either them or their dependants.

Mr Henderson—That is also threatened by the possibility of award provisions no longer being in place for frequency of payment. Awards require that superannuation payments are made monthly, normally. That means that the insurance continues because most funds operate on the basis that once a contribution is received the insurance premium is taken out and that person is insured for another 30 days. Usually, they are insured for 30 or 60 days beyond the last contribution being received. If the award goes by the board, the only requirement legislated—

CHAIR—Come back to this 12-month period.

Mr Henderson—Yes. Therefore, people’s insurance will relax if the employer does pay that. Most employers will probably continue on the existing cycles, but there will be no compulsion on them to do so, and that is a real concern.

CHAIR—If you are looking at this question of choice, would you think, therefore, we should also be looking at this question of employers being able to make only one contribution to satisfy their superannuation guarantee contribution?

Ms Byrne—We did address that in our submission, but we have not actually raised it here. We do believe that, as part of the implementation, the superannuation guarantee payment should be made monthly on the same basis as other taxation payments are made because that will then ensure that people’s coverage for insurance and other items continues.

CHAIR—It could be a bit of a jump to go from annually to monthly. What about quarterly?

Ms Byrne—Quarterly would be much better than yearly.

Mr Henderson—It certainly would be an improvement.

CHAIR—I am just thinking of the small employers. For group tax purposes small employers only have to remit quarterly. They do all their reconciliations together.

Mr Henderson—Quarterly can also be done without legislative amendment because the act already provides for quarterly payment. The annual payment is by means of exemption under the regulations. It would just be a matter of bringing the quarterly provisions of the act into effect.

In relation to the question you were asking on the figures, the very last page of the ASFA submission has some quite useful data with respect to their anticipated break-up of who fund choice will actually cover. It does not go on a state by state basis, but it does go according to state and federal award coverage and so on.

Senator CONROY—I just had a question about your section on competition and costs. You drew the committee's attention to the 18 per cent of contributions being spent on promotions and commissions in Chile. What would be the percentage on average that your members would spend on advertising at the moment, roughly? Would it be five per cent, three per cent, 10 per cent, two per cent, one per cent?

Mr Henderson—On actual advertising?

Ms Byrne—That our funds spend on advertising?

Senator CONROY—I am just looking at the possible costs. One of the arguments the government are putting forward as to why it is going to be a benefit is that costs and fees are going to go down, which I am surprised that they could credibly argue. I am just looking at what you expect and anticipate. I have talked to one industry fund that believes that their fee may go up by almost 50 per cent to cover the extra advertising and costs that are going to be involved in implementing choice.

Ms Byrne—Most industry funds have a very limited marketing budget at the moment. They provide all of the necessary information for members and employees and do marketing in various associated organisations but, if there is to be choice, obviously their marketing budgets will increase. To be able to say what it is now, Senator Conroy, and then what it may be is a bit difficult. I would say that it would be less than one per cent—perhaps less than half a per cent—of contributions that are coming in. I would say that that is probably at the highest amount.

Mr Henderson—I am certainly aware of funds that are considering at least doubling that amount.

CHAIR—Do you think many employers will then opt for the formal or informal agreements? You might like to take that in two parts?

Mr Henderson—The informal agreements matter is a very interesting question. I do not think many employers understand clearly what is intended by that at this stage. Quite

frankly, I think the legislation does not spell it out sufficiently. The implication is that an employee can give a letter to the employer and the employer can say, 'No, I won't accept' or 'I will accept your nomination and we'll go with that.' That happens a lot already. There is no doubt about it. We have members going from workplace to another small workplace and saying to the employer 'I'm with such and such a fund.' The employer says, 'Fine, we'll contribute to that fund.' To that extent that happens. The concern in relation to it is that there is a capacity for an employer to say to someone, 'Okay, you can have the job, but you've got to give me a letter saying that you're going to nominate XYZ fund.' It is choice but no choice.

Ms Byrne—I think those employers who have that formalised agreement with their work force currently probably would be interested in it. If they have a very clear enterprise agreement, they may in fact be interested. It is very difficult to say. From my discussions with them, they are unsure as to which way is the best way to go.

CHAIR—Do you think that employers' hands will be forced by the short time available and they will therefore go for the unlimited choice option?

Mr Henderson—I think for some of them that will happen simply because they will not have got around to doing anything by 1 July, if that is when it is brought in. Effectively that will mean that they have not got any choice but to take the unlimited choice option.

Mr Silk—I think that is right. If the legislation is operative from 1 July as proposed, many of them will have no option but to do that. Very few funds, if any, will have key feature statements available. They will not know what actually constitutes a key feature statement and the lead time from actually becoming aware of that to producing and distributing it to employers and for employers to distribute it to employees is such that, in a de facto sense, they will have no choice but to go the unlimited choice route, which only serves to underline that the 1 July deadline this year is absurdly unrealistic.

CHAIR—Hypothetically—and, of course, this depends on the success of the other legislation in relation to award super—would it still be possible to offer choice of fund if super remains an allowable award matter?

Mr Silk—I would have thought it was possible depending on how the legislation was constructed. The legislation could state that a particular regime would be introduced. To the extent that it conflicted with relevant award provisions, the legislation would override those award provisions. But where there was no inconsistency, the award would operate as well.

CHAIR—If the industrial relations part were to be thrown out by the Senate, for example, in relation to award super, I then ask the question: would it still be possible to offer choice of fund?

Ms Byrne—The superannuation clauses in awards actually cover many more issues than choice of funds. They cover timeliness of payments and all of those sorts of things. I think, yes, it would be able to be, as long as the choice option was constructed in an appropriate way.

Mr Henderson—Interestingly, notwithstanding the problems of the Western Australian legislation, I think their proposition is a better one in terms of dealing with that. You have still got the award provision, but you have the option for people to choose another complying fund. It is deficient in terms of information and things, but the concept is one that can work within the constraints of awards as well.

CHAIR—It may be possible—this is hypothetical—for the choice option to go through by 30 June, but for the Senate to be concerned about it and not allow the provisions in relation to award super to be passed. Therefore my question is framed in that light because you said, ‘Yes, it would be possible providing the legislation provides for it.’

Ms Byrne—I see. You would have conflicting legislation?

CHAIR—The potential for conflicting legislation exists—do you see my point?—with one getting passed and the other not getting passed.

Ms Byrne—I suppose that is not a matter that we lay people can resolve. You are suggesting that there could be conflicting legislation. There could be one legislation that actually talks about choice of fund and there is industrial—

CHAIR—If one does not get passed and the other does?

Ms Byrne—Yes.

CHAIR—That is the situation.

Mr Henderson—I will characterise it somewhat differently and say that in effect awards would be getting the same status as certified agreements. There are still a lot of people who are not employed under provisions of federal awards and, if the industrial legislation was not passed, the awards would continue to apply, so that the application of the choice legislation as it stands would presumably be restricted to people who did not have award provisions that already covered that choice of fund.

That is not to say that there could not be a proposal for a further stage to review whether or not something further needed to happen to that. The reality is that the inconsistency is already there because of the proposal to exempt workplace agreements and certified agreements. The question is whether awards are put in the same category or not.

Senator HOGG—I want to take you back to earlier in the piece where you referred to the many examples of people making uninformed choices who then found that there were difficulties placed in their path to make the change later on. What are some of those difficulties that people experience?

Ms Byrne—I can give you one example. I spoke to an employer yesterday—and I am not going to name anybody—whose company has superannuation not in an industry fund. They are with another style of fund. They have looked at and compared that fund to a range of other funds including a range of industry funds and have wanted to move all of their superannuation. There is agreement between the employer and their employees to do this;

there are about 20 people in the company. But to move their superannuation to another fund, the exit fees for them would be such that the manager himself would lose \$10,000 from his account. Therefore they are now having to weigh up whether or not there would be a long-term gain by moving to a cheaper fund, which hopefully would return more, over staying where they are and paying a higher administrative charge.

Senator HOGG—How many examples do you believe there would be of this across the—

Ms Byrne—I think there are many examples.

Senator HOGG—That is really putting a lie to the concept of choice of fund, is it not?

Ms Byrne—Yes, that is right.

Senator HOGG—You are not going to have a choice in reality.

Mr Henderson—The personal superannuation products are a classic example of people having made uninformed choices and finding they had to cop huge penalties to get out. What is happening in Britain is a great example of how mis-selling through commission based sales has led to a disaster which is going to cost them £4 billion to get out of, where people have bought products that make them worse off than they would have been if they had stayed where they were.

I do not think it necessarily destroys the concept of choice, but it shows how important it is that there be education and information available and a protection mechanism for people to make sure that it cannot happen to them.

Senator HOGG—On the issue of education, could you take me back to the ABS figures that you supplied us with? As I understood from what you said, it projected that there was somewhere in the order of 2.5 million at the level 1 and level 2?

Mr Silk—No, 2.5 million adult Australians are level 1 and 48 per cent—just on half—are combined level 1 and level 2. That is to say that half the adult population essentially has defective literacy and numeracy skills.

Senator HOGG—This would impair their ability to make a reasonable judgment in terms of choice of funds?

Ms Byrne—That is our contention, yes. If what Ian said before is correct—that level 1 is the ability to read a bus ticket—then people with that level will find it very difficult to compare the costs and returns on funds.

Mr Silk—We all talk about informed choice but what does that mean? It means obviously that people can make an informed decision and that the means by which they would seek to do that, in a choice model, is to have a range of key feature statements—this is the way the system is intended to operate—before them so that they can make an intelligent comparison between those documents and then select the appropriate one.

Senator HOGG—But they cannot read them intelligibly enough to be able to make an informed choice. Therefore, what sort of education campaign is necessary and over what period of time? Even if the figure is blown out and 48 per cent is not truly representative—even if it is 33 $\frac{1}{3}$ per cent, say, which is substantially lower than the ABS statistics show—it is a substantial part of our work force.

Mr Silk—This is the point on which I wanted to conclude. We have dealt in the latter part of our discussion with some of the shortcomings of the bill as it stands. In our submission we have sought to address those shortcomings and we believe that we have put a very constructive set of recommendations which, if implemented, would enhance the implementation and operation of the system.

But the key issue that we have dealt with is the one you have raised, Senator, and that is the need to defer the implementation of the legislation—which is different from deferring the passage of the legislation—so that a very comprehensive campaign can be directed to employers, for the reasons that we have set out, as well as employees. If that campaign does not occur then, apart from the government having a lot of egg on its face because the system will have been a disaster, the industry will have egg on its face, and, in particular—this is the real bottom line here—individual members of superannuation funds will be worse off as a result of the introduction of this legislation.

That is not to say that the legislation should not proceed but it is to say that the information and education campaign must occur and it must occur not subsequent to, or even at the same time as, but prior to the introduction of the legislation so that people have appropriate information and terms of reference so that they can assess the choices before them and make an informed choice.

Senator HOGG—Taking that on board then, how does one determine what form the education should take? I am looking for some guidance from you here because if we are dealing with people with literacy and numeracy problems there will also be people who come from non-English speaking backgrounds. Do you have a format for the type of campaign needed? One is tempted in these circumstances to run a full page ad in the *Telegraph* or the *Sun-Herald* and a couple of advertisements on TV, which are invariably 30-second or one-minute grabs, to say that we have run the education campaign and people should therefore know what it is about. What is your format?

Mr Silk—The Australian Taxation Office has a working party dealing with the type of education campaign that should be conducted. That comprises representatives of the ATO together with a pretty good cross-section of industry representatives. The Industry Funds Forum, together with many other industry participants, is involved in that working party and has had the opportunity to address them on the precise issues that you have discussed.

CHAIR—Including the staff update?

Mr Silk—In our submission to them we said that the first thing that needs to occur is for the implementation date to be put back so that the education campaign can be meaningful. The submission we made was that you can run a campaign but if it is light on resources and incorrectly targeted then it is a waste of money. Do not walk away with a warm fuzzy

feeling that you have done the job, because you will not have done the job. The campaign needs to be directed, quite frankly, at level 1. The level 5 people will pick it up along the way. If it is getting through to level 1 it will get through to the rest.

This sort of campaign is difficult to draw any historical parallels with. Decimal currency is one sort of parallel but that was a much less complex issue than the sort of thing we are talking about here. The concern we have is that the government and the industry participants will pour resources into this but it will not be correctly targeted. They will walk away saying, 'We spent X dollars. We couldn't have done much more.' It really has to be directed to the level 1 and level 2 people so that they walk away with information that will enable them to make that informed choice.

CHAIR—Okay.

Senator HOGG—I have one other question, with the indulgence of the chair. It is an important issue, the issue of turnover. You mentioned staff turnover. The legislation, as constructed, is looking to apply to new employees. Even if one might consider that the current target date for new employees is too soon and that it really might be pushed out another six months, do you have any idea of the turnover rates in various industry funds and how this decision will impact on the various industry funds? Will it be the same, for example, across industry funds? Will it vary from fund to fund? Will some funds therefore be faced with a heavier burden than others?

Ms Byrne—I can only speak generally and say that different funds have different turnover rates, as you suggest. Industries that employ more part-time, casual or transient people may have greater turnover rates than those industries that are in sectors of the community where people tend to stay in their jobs longer. We could ask the members of the Industry Funds Forum if they could provide us with that information, if you like.

Senator HOGG—I would appreciate that.

CHAIR—Cleaners, for example, would have a very high turnover rate.

Ms Byrne—That is right, and I imagine the hospitality industry would have a very high turnover rate too. I imagine in the manufacturing sector it is a little less. Would you like us to—

Senator HOGG—Yes please, and it raises another issue. Is a casual considered a new employee for the purposes of this act?

Ms Byrne—I do not know.

Mr Silk—It depends on the contract of employment, I would imagine.

Senator HOGG—A casual, by definition, is a day-to-day employee or, in many instances, an hour-to-hour employee.

Ms Byrne—Therefore, every time they come to work they are a new employee. Is that what you are saying?

Senator HOGG—I am not trying to be smart; I am just trying to see if those people are covered, and how.

Mr Henderson—It is an interesting question. Generally speaking, they will probably fall under the exemption levels anyhow but they may be covered by an award.

Senator HOGG—Not necessarily. Some industries are highly casualised. In the retail industry, the fast food industry and the hospitality industry, you are looking at fairly high numbers of casual employment there. If we could have a response from you on that I would appreciate it as well.

Ms Byrne—All right.

CHAIR—Thank you very much. We have gone well over time and we must respect the next witness. Thank you very much for what you have said in coming before us today. It has been very valuable.

Ms Byrne—Thank you for your time.

[12.30 p.m.]

O’SULLIVAN, Mr Michael, National Executive President, Australian Services Union, Level 2, 116-124 Queensberry Street, Carlton South, Victoria 3053

CHAIR—Mr O’Sullivan, this is the first time you have appeared before our committee, is it?

Mr O’Sullivan—Yes, Senator.

CHAIR—Thank you very much for giving evidence and coming before us today. Not only do we invite you to speak to your submission but also I would be very pleased if you would comment on matters that have been raised during the day. There could be matters where you agree or disagree. The purpose of our inquiry is to make sure the legislation is fair and can work equitably. We want to make sure that, if there are any bugs or problems, we iron them out at the earliest possible opportunity. The floor is yours, Mr O’Sullivan.

Mr O’Sullivan—Thank you, Mr Chairman. I would have to say I am speaking on behalf of the union and not on behalf of any particular fund or group of funds. I point out that the union has about 180,000 members and that they are in all sorts of funds, including the Commonwealth funds, all of the state funds, all of the local government funds, a whole lot of corporate funds and industry funds, and some of them in the smaller employment area are in master trusts, which were largely chosen for them by their employer rather than by them. They would be a tiny minority, compared with the others that I mentioned.

What we would say about the choice legislation and the amendment to the Workplace Relations Act, is that both are misconceived. We say they do not arise from any visible demand from employers or employees, and they are likely to operate against the interests of both employers and employees. They seem to us to stem from two things. Firstly, the government appears to be very unhappy with the present superannuation regime and especially industry funds. We believe that that is a misplaced hostility and that a misunderstanding of the nature of industry funds has led it to the position that it has taken on choice.

Secondly, the legislation seems, to us anyway, to be manifestly the result of successful lobbying by banks and life offices for an increased share in the control of retirement savings. It is not as if the superannuation system in Australia is failing. It is in fact succeeding and it is succeeding so well that these commercial and profit-making interests want a greater share of the pie. That seems to be driving the choice legislation.

There seems to us again to be two things that are happening at once—both of them unfortunate, in our view. The first is that a part of employees’ remuneration is being removed from the jurisdiction of the Industrial Relations Commission. If you take the present SGC minimum amount of six per cent, the other 94 per cent of their income is under the jurisdiction of the commission and remains under its jurisdiction; but, for reasons which are completely obscure to us, six per cent of it is excised from the commission’s jurisdiction. I will come to that in a little more detail, and I have tried to cover it in our submission in some more detail than I have time to take you to today.

The second is to force open the settled arrangements for superannuation as they presently stand and allow the entry of banks and life offices—which to us, predictably and almost with certainty, will lead to worse retirement outcomes both for our members, for those eligible to join our union, and for employees generally. They open the gate to mis-selling. They open the gate to commissions. They open the gate to increased fees and charges of entry and exit, and they artificially impose marketing and advertising costs on an industry which largely is without them at the present time—and a host of other negative factors, all of which cannot be dealt with but some of which are in our submission.

We see the Senate as the last hope of the side, quite frankly. We see absolutely no prospect of the government changing its mind very substantially on any of these questions and therefore we regard the Senate as our last hope and this committee as being key to the shaping of the Senate's view of the two pieces of legislation which they have to determine. Given the make-up of the committee, we expect the committee's reports and views to be extremely important in forming the mind of the Senate, as has been the case in the past.

The submission tries to deal briefly with the issues of award superannuation with choice of fund generally; the particulars that we see wrong with limited choice and unlimited choice; the issue that I know you are well aware of, choice education; the way in which these two pieces of legislation impact upon the present funds, including corporate and industry funds but not only them; and the role of industrial agreements. Then we tried to make some conclusions and temerarily tried to lead you to share them with us.

I do want to spend a couple of minutes following up some of the things I heard being discussed, while I was waiting to have this opportunity, in relation to award superannuation. I emphasise that the allowable matters at the moment in section 89A(ii) provide at subclause (c) for rates of pay to be allowable—there is no prospect of that becoming non-allowable—and allowances, that is, any payment in respect of something other than the wage itself, are allowable. I will not give you all the clause numbers because I do not think there is any dispute about this. Overtime, shift penalties and casual rates are all allowable and the government's stated intention is to allow that to continue. And penalty rates are allowable. Those four subsections of allowable matters embrace 100 per cent of what can be superannuated.

So, as I said earlier, one would require an enormous amount of credulity to believe that there is merit in taking away from the commission the part of wages which is deferred and paid by the employer into superannuation funds or the part of wages which is deferred by the employee and paid into superannuation funds.

We stress that it is our view that employees own that money. It does not belong to the employer; it belongs to our people. I would remind the committee, if it needs to be reminded—I am certain this committee does not because I understand how well all of you have been involved—that award superannuation was our solution to the problem of the consistent failure of successive governments, beginning with the Chifley government, to do anything about a national contributory superannuation scheme. The only Treasurer—I may be wrong about this—who got anywhere near the mark was Frank Crean and that is a long time ago. Since that point, every government of any persuasion has failed in its duty to do something about superannuation.

So we took the matter into our own hands. As you know, we had a lot of trouble establishing superannuation as an industrial matter in the first place. There were lots of industrial disputes, strikes, bans and limitations over it. Finally, the High Court became involved in determining that it was an industrial matter. From that point we were able to secure award provisions which, as you have already heard from others, are quite various in their nature but at least all of them prescribe some kind of minimum quantum and the allocation of a quantum to, usually, a regulated fund or a fund which satisfies what is now the SIS legislation. So there is protection about where the money can go.

We see the employer contribution as very much a part of the remuneration. If you take it out of the commission's jurisdiction, you are not just prohibiting choice; you are prohibiting a lot of other things. Senator Watson raised the dilemma about what happens if the Senate refuses to pass the workplace act amendment but does pass choice. One thing you can do—and I do not favour it—is, as Mr Reith has done in relation to this act, prohibit the commission from making awards in relation to superannuation about choice. But that is no reason to prohibit the commission from dealing with superannuation in any of its other aspects, because choice of fund is only one of the industrial matters about which you can have a dispute in relation to superannuation.

The other thing we would say, and have said in the submission, is that we believe that the government made a commitment before the last election to implement what was largely a Keating government construction to support a phased increase of three per cent contribution by employees matched by a co-payment by the government.

These are the sorts of things that will be insoluble—that is, if the workplace amendment legislation is carried—if we want to make a claim, as I think we will have to do, to increase the employer contribution to 10 per cent, for example, and persuade our own people—sometimes with difficulty when they are young—to contribute on a phased basis their own income, we cannot have the disputes that arise arbitrated.

At the moment there can, of course, be disputes about choice, and I will say for the record that there is a complete misunderstanding—not on this committee—about the flexibility of award provisions in relation to superannuation. It is true that many award superannuation clauses prescribe a limited number of funds or a single fund, but almost every award has what is called an enterprise flexibility clause or an award modernisation clause which says, in effect, that any clause in the award can be varied by agreement between any individual employer covered by the award and his or her employees. They used to be in terms which meant that unions had to agree to those changes and that unions could not unreasonably withhold their consent to such arrangements as long as they were genuinely consensual.

Most of them do not even say that any more; they are capable of being made ex-parte the union. Equally, they are available to any employer on application. It is a feature of the act to encourage them. There is no way known that in the commission there would be any success on the part of a union or any other party to prevent such a clause going into any of the few awards where it is not already present. That means there is already within the award system absolute flexibility in relation to superannuation and that what the actual super clause says is not absolutely prescriptive if it does not suit the needs of an employer and/or his or

her employees. That is an important thing. I am sure it is clear in this room, but I am not sure that it is really clear outside it. It has not been given very much ventilation in the course of this debate.

The other thing that people lose if you do not have an award clause is the cheapest possible form of enforceability of their rights. At the moment it does not cost you anything to have an award enforced in your favour, but if you take it out you then have to resort to some other legal process at your own expense to have your rights enforced, assuming you have any rights at all left. But if you do have rights arising from some agreement that you have given, you have got to pursue them individually and at your own expense. Again, it seems to us to be a ridiculous thing that, as for six per cent of your income, your rights in relation to it have to be pursued outside of the jurisdiction of the place where for nothing you can have your rights enforced for the other 94 per cent.

This legislation also takes the issue of superannuation in all of its manifestations out of the hands of the two parties and the independent tribunal and places it in the hands of the employer alone. So the employer now is absolute master of the choice process. He can choose to give limited or unlimited choice. If it is limited, he chooses the funds and there is nothing anybody can do to limit the way in which he exercises his limited choices, save that he does not break this law which allows you to drive a truck through this. If he chooses unlimited choice and he allows his employees to write to him and beg for permission to have their own money forwarded to the place they want it to go to, he can either agree or not agree. So everything is in the hands of one of the industrial parties and virtually none of it is within the power of the other party, and the independent umpire is excluded from any ability to conciliate or arbitrate especially those kinds of disputations as they might arise.

It also inhibits agreement making—you talked earlier about this, and I will come back to the issue of agreement making in relation to super. Some of the superannuation clauses in awards and some in expiring agreements are better than what is offered under the SGC legislation. Either the quantum is more, the number of people covered is more, the definition of ordinary time earnings is higher, or there is some other reason.

All of those things drop out when the award clause drops out. You go to the employer and say, 'We want you to agree to do what you have been doing in the past by way of a certified agreement.' He says, 'No.' There is nothing you can do about that—you can have a bargaining period, you can have protected action, and you can take him to the commission but the commission will say, 'I'm sorry, we have no jurisdiction.' So, notwithstanding that there is a manifest breakdown—there is an impossibility of the dispute being settled by the parties, and all the other things that have to be satisfied before the commission can arbitrate—when the agreement making process breaks down on this issue—

CHAIR—So you are suggesting that aggressive employers may reduce the real wage package, which would include superannuation?

Mr O'Sullivan—They do not have to be all that aggressive. They just have to be advised by their learned accountant or some other wise person that, if they sit on their hands, their superannuation bill will go down from nine per cent of ordinary time earnings to six

per cent or whatever it was before. They have to do nothing, and doing nothing is something that some of them are excellent at doing. Anyway, that is a horse of another colour.

One of the great things about agreement making is that it requires both parties to agree to make an agreement in good faith. The failure of one party to want to make an agreement is sufficient to stop it happening. In every other case, you can go through that process and at the end of the day that employer has to look the commission in the eye and fend off arbitration of the issues. But in this case that resort will not be there. That, as I said earlier, seems to cover anything whatsoever to do with superannuation, not just choice, so it is not just choice of fund but anything whatsoever.

The other thing that has been touched on, and I will not repeat it unduly, is that the awards provide for superannuation contributions to be made with frequency—usually monthly—for each pay period. We have some—I will not say a lot—very sad experiences of companies who go bankrupt or become insolvent. We stand, unfortunately, well back behind the Crown as far as our members are concerned and what claims they can make. Anyway, if the place has got no money left and if you have a system of annual payment, people not only do not get their money; they also do not get the interest that they had failed to earn because they were paid only annually instead of monthly, and the chances are they will not get their money at all.

CHAIR—So superannuation is not a preferred creditor in the same sense that wages are?

Mr O'Sullivan—No. It stands in the same queue but, if the money is not there, you are not going to get it.

CHAIR—Is it equal to or behind wages?

Mr O'Sullivan—I am not certain but I suspect it is behind; wages are first.

CHAIR—Could you find that out for us?

Mr O'Sullivan—Yes. There have been some nice old dust-ups about that.

I have mentioned the enterprise flexibility agreements, which make awards as flexible as the parties want them to be—that is, if employees desire a range of choice, they can create it and, if the employer desires to offer it, he can create that opportunity.

You mentioned state and federal awards. I do not have any better figures. It is true there are plenty of them, for example, in private sector offices. Many of our members are in the office of a metal trades institution, and a manufacturing institution will be covered by state awards whereas the great majority of the production workers are covered by a federal award. So there is going to be inevitable confusion on every side as to what it all means and how it is all to be implemented. So that is a source of confusion. I might take the liberty of correcting something that Senator Hogg said.

Senator HOGG—Feel free.

Mr O'Sullivan—I have never done this before!

Senator CONROY—I do it all the time!

Mr O'Sullivan—Not since he has become a senator, anyway! It is not true to say that all Victorians are covered by federal awards. That is not true. Only those Victorians covered by employers who are respondents to federal awards are covered by federal awards. There are hundreds of thousands of others who are award free and who are subject only to these minimum rates orders, the jurisdiction of which is vested in the federal commission instead of formerly the Employee Relations Commission of Victoria.

They have only their minimum rates of pay protected, nothing else, and certainly no superannuation protection. They are just running around relying on the SGC, because the Victorian transfer of powers made no arrangements for them in relation to their former award protection in superannuation. There is a very esoteric argument, which I will not take you to, that the posthumous Victorian awards—which died in, I think, 1992—are still in force unless somebody has signed away their rights under them, but that would be almost impossible to enforce and even more esoteric to argue than I would take you to.

The other important thing about the awards is that seasonal workers, casual workers and low wage earners are frequently covered for superannuation by awards, whereas they would not be in terms of the SGC. As to the idea that the employers are going to give them a six per cent wage increase instead of their superannuation contribution, I would not insult your intelligence by asking you to believe that that is likely to happen.

Suppose the worst happened and the Workplace Relations Act was amended. I am not sure whether one thing that I was going to do is really appropriate since Senator Allison is not here. But I might, if it is possible, just take you very briefly to the letter that the then Leader of the Australian Democrats wrote to Mr Reith on 18 October 1996, in relation to why the Democrats, along with the rest of what subsequently formed a majority of the Senate, refused to take superannuation out of awards in 1996 and ruled that it continue as an allowable matter. The Democrats said:

We are aware that the Government will be introducing legislation to establish a "freedom of choice" regime for employees . . .

Even your reference to this committee is called a freedom of choice regime for 'employers', which is what it is. I congratulate you on the accuracy of your terms of reference. There is still no regime established, so the first hurdle in the Democrats' letter as a condition of changing their mind has not been achieved. They said:

. . . if fully implemented would override award provisions.

It is not clear from the questioning already whether or not that would override award provisions, even if it was only overriding them as limited to choice. Unless the Workplace Relations Act was amended again, that would not be the case. They said also:

Such legislation must ensure that workers are not made worse off as a result of any overriding or repeal of award superannuation clauses.

It will be our submission that they inevitably will be made worse off unless they stick with the ones they are in. The letter continued:

The legislation should also not be used to undermine the industry superannuation funds, which we believe have provided good value for money for workers . . .

We would argue that one of the precise purposes of the amendment is to undermine the industry funds.

CHAIR—Do you really believe that people will opt out of a good industry fund?

Senator CONROY—Employees might not.

Mr O’Sullivan—If you applied commonsense you would say no, but if you looked at the English example you would say yes. People opted out of excellent funds in the United Kingdom, even defined benefit funds, into very inferior funds because they were mis-sold them by people that they apparently trusted.

CHAIR—But we have got a better history. A lot has happened since the mid-1980s, hasn’t it, particularly in this country.

Mr O’Sullivan—But you hear those statistics about literacy, numeracy, comprehension and all that. You do not need legislation at all if everybody is going to behave well. There is no need to have a law saying that you are going to drive down the left hand side of the road if everybody is going to do it anyway. The only reason you have legislation to protect people’s superannuation arrangements is that some people are likely to break it.

Our experience of the need for awards is that, if you did not have them, people would pay less. When they abolished awards in Victoria, my son, who was then 21, was offered \$5 an hour to work in a liquor store from 6 o’clock at night till 10 o’clock at night—\$5 an hour, when the rate established by Senator Sherry’s former organisation would have been about \$15 an hour for that time of the night. All that person had to do was sign a piece of paper. I am afraid to say that I have been in the union movement for 30 years—I hate to admit it—and the altruism, which your remarks remind me I used to have, has almost vanished.

CHAIR—Sometimes I have got to play the devil’s advocate here!

Mr O’Sullivan—I wish it were true but I do not believe it is. Suppose you are on a commission to sell something to someone. People have been selling other people encyclopaedias that they have never opened. They have probably used the vacuum cleaners they have been sold, but, though I hesitate to say so, they may have been sold Bibles that they never opened. People have been sold things that they did not need or want, or that were inappropriate to their needs. I might just say in passing that the alleged protection against mis-selling is that you are not allowed in this legislation to offer misleading or false information about your product. I do not think that was what was being done in Britain; what was being done in Britain was fitting people up with the wrong product, just as we would argue, as somebody earlier said, that selling an RSA to a 25-year-old is almost a

criminal offence. No respectable financial adviser would recommend an RSA to a young person.

Senator CONROY—No, just banks!

Mr O’Sullivan—They have a lot to answer for.

CHAIR—It is possible that in certain times of the business cycle, when interest rates might be very high, sometimes RSAs could provide a higher return, statistically. But in the long run I agree with you.

Mr O’Sullivan—The purpose of superannuation is to try to encourage people to make working life investments over a 40-year period. Admittedly, whenever you start you are starting towards the end of somebody’s life and the beginning of another. But, if the whole scheme of things is a 40-year contribution cycle, then to offer an RSA to anybody over that cycle is pretty ordinary advice. I would like to find any licensed financial adviser who would advise it. Anyway, sorry, I was—

CHAIR—That was my fault—sorry.

Mr O’Sullivan—Not at all. I realise that the purpose of these is to try to answer the questions that you have, but I am really wanting to put on the record—and I will stop doing it, because Senator Allison is not with us—that there are five tests in the Democrats’ letter which say, ‘These are the terms and conditions under which we will change our mind’ and, I submit, this legislation fails all five of them. But I will try and make sure that there is an opportunity some time to discuss that with her personally as well as before this committee.

The other thing about awards is that the new act provides for what is called exceptional matters. I do not know whether you have had your attention drawn to this before, but in the same section 89A, subclause (vii), there is a capacity for the commission to arbitrate, to settle an industrial dispute about any matter, even if it is not an allowable matter, provided the circumstances are exceptional. There are a lot of hurdles put in front of the commission before it can exercise that jurisdiction.

First of all, if it applies to more than a single business it has to be exercised by a full bench. The order can only last for two years. There has to be a public interest test, and there has to be an appropriateness test. Those things are all in play before the commission can consider the particulars of the matters in dispute.

Then there are five of what you might call ordinary hurdles which have to be jumped. The first three are jurisdictional; these are discretionary. There has to have been evidence of a genuine attempt to settle the dispute by the parties. The commission has to exercise its discretion there. Secondly, the commission has to come to the view that there is no reasonable prospect of settlement. Thirdly, the commission has to come to the view that it should settle the issue by arbitration. Fourthly, the commission has to come to a view that the issues themselves are exceptional. The final one is that ‘a harsh or unjust outcome would apply if the industrial dispute were not to include the exceptional matter’.

Even if we fail in our argument that you should maintain superannuation as an allowable matter, it seems to us to be unarguable that you should permit it to be an exceptional matter. The Workplace Relations Act amendment introduced by Mr Reith knocks out both. It knocks it out of being allowable, and then it is the only issue in the universe of industrial matters which cannot be an exceptional matter. There is again no valid reason for that to occur. That would be very much a second best position but better than nothing.

Bearing in mind that all the decisions of the commission are made in public, that they are all open to scrutiny and all open to appeal, the commission represents, in our judgment, a much more appropriate place to resolve disputes about six per cent of remuneration, because it is concerning itself with the other 94 per cent all of the time, than would be the Superannuation Complaints Tribunal. I do not have any brief against the tribunal, but I do not see that as being a role which they have any expertise in whatsoever. Some of their members may coincidentally have had some experience in industrial relations, but that would be coincidental and not part of the ordinary reasons for being selected for the tribunal, and these are effectively industrial disputes that you raised with a previous speaker as to their settlement; they are not disputes between the trustee and the member, for which they clearly have expertise, although lacking a little jurisdiction, as I understand it.

On the choice of fund, we have already said that we do not believe that the legislation is bona fide for the purposes of improving the retirement savings of employees. The choice is with the employer, not the employee. It is clearly designed to give banks and life offices a share of what is a very substantial and growing cake. We have been advised that there is now more money in superannuation than there is in banks. Clearly, that loss of market share is of concern to the banks and they have made a submission to you, so I read, that they think it is a great idea.

If these things are to happen, there are a couple of things that we would like to make sure are part of it. They are as follows. The default fund, in either form of choice, should be the award fund. There are some difficulties about award funds. In many workplaces, there are several awards operating side by side—the professional engineers and professional staff are covered by awards that are usually different awards from those for the technical staff, the clerical staff, the tradesmen staff and the production staff.

True it is that the technical and trades may be under one award, or even that the trades and the production staff may be under one award. But if you are looking at, for example, a paper factory, the paper workers are under one award, the metal industry and electrical industry maintenance people are under a different award, the front office is under a different award and the engineers, if they have them, and the technical and design people are under two other different awards, each of which prescribes different industry funds and has a different set of families that it caters for in respect of superannuation.

CHAIR—You are saying that the fourth option has to be the one nominated under the award, but what happens if they have two alternatives?

Mr O'Sullivan—I was just saying that they might have in place six industry awards, one at least for each class of employee. If they have two, then both should be offered. If they have two for the same class—

CHAIR—As the fourth option?

Mr O’Sullivan—But what we are concerned about is the employers just rounding up, saying, ‘Well here is my chance to knock some out. There are not so many engineers, not so many draftspersons, not so many clerks, so we will round them all up and put them in the one that the majority group, which is the production force, are in, without them having any possibility of undoing that decision.’ So he makes that decision; even if he says, ‘I have got five award funds and I will choose one,’ it is his choice.

CHAIR—What is your recommendation if there is no award?

Mr O’Sullivan—If there is no award?

CHAIR—Yes.

Mr O’Sullivan—Like, for example, in Victoria? Then the fund which most closely relates; there are comparable classes of employees always involved. It is a bit like the situation that the commission finds itself in in having to designate an award, where there is not a federal award, for the purposes of applying the no disadvantage test. I gather you would all be familiar with the fact that you cannot make an agreement which is substandard an award. If there is not an award, the commission has to look for an award set which prescribes the minimum rates and conditions for comparable employees and use that as the benchmark.

CHAIR—Do you think all small employers would be capable of doing that?

Mr O’Sullivan—No, I do not believe they are capable of doing that. That capability issue is very real, because you are putting an enormous onus on people who have absolutely no interest, or history of interest, or likely future interest in this issue. It all depends on them acting intelligently, diligently and fairly. And their failure to do it is apparently indemnified absolutely.

I understand that the employer organisations came to the government and said, ‘If we are placed in the position of giving de facto financial advice by selecting the funds to be chosen, limiting the choice to four or five, we are going to be responsible at common law possibly, and in other ways, for the consequences of the choices that we forced them to make—and we do not like that.’ The government’s response was to indemnify them in this legislation against any act that they commit in accordance with putting the legislation into effect. The other response was to open up the unlimited choice option, which—I agree with you, Senator—will be the majority choice overwhelmingly, because why would you put yourself through all the hassles of limited choice if you can simply offer unlimited choice?

The unlimited choice is supposed to be the response to the small business lobby; it is the small business option. The big business option was to give them an indemnity if they run a controlled choice, limited choice program, which they have the resources, presumably, to do or to outsource to have done for them, which I think will happen in the majority of cases.

As to the education and training issue, I do not think it bears any further repetition, but I am confirming that it is my view that most employers are not ready or willing or capable of putting their role in the legislation into effect. I am certain that most employees are not ready, willing and capable of making the informed choices. So it is necessary that there be a properly funded—and it is going to be quite expensive—education and training program involving all kinds of things and run by somebody who is truly independent of the interested parties. There will be absolutely deluges of offers from the life offices, the banks and other interested commercial parties who will offer investor education seminars, as they presently do, in order to foster loyalty to their own products. It really would be quite unfortunate, to say the least, if we have to rely on the providers to carry out the education.

CHAIR—If employers go down the unlimited choice option, do you think there should be some sort of restriction as to the maximum amount of exit fees? Disclosure is one thing, but what then if people are not going to read their documents? You would have a \$50 or \$100 maximum exit fee, wouldn't you?

Mr O'Sullivan—I do not know what—

CHAIR—Should we be recommending some sort of figure to protect employees in relation to exit charges? It is all very well to say that you have got to state what they are, but if these people cannot read or write or cannot understand the document, should we be going down that track? We have had a pretty strong stand on this over the years, as Senator Sherry would realise, and not always been the closest friend of some of the life companies during the process.

Mr O'Sullivan—I suppose the best view would be that there be no exit fees at all; that if there are going to be—

CHAIR—There is always some administrative cost, though, isn't there?

Mr O'Sullivan—There is, but there are increased administrative ones being built into this. If an exit fee has to exist in order to defray the actual cost of processing the exit then, as you say, it ought to be able to be limited to a small financial amount, a fixed cost.

CHAIR—Such as?

Mr O'Sullivan—I would have thought \$25, \$30—that sort of amount—but it should bear absolutely no relationship to the amount that is being taken out. It does not cost any more to process the evacuation of \$100,000 or \$10. All the processes are the same.

CHAIR—That would be a real protection, though, wouldn't it?

Mr O'Sullivan—It would be one protection that is certainly not there now and not proposed to be there in this legislation at the moment. We have a concern about commission agents switching for a split commission. Why wouldn't you? You have it in Chile, where all the funds are the same—I do not know why they have so many, because they are all practically imitations of each other. A fellow comes around and says, 'If you switch your fund—you are allowed to switch on such and such a date—I'll give you a mobile phone or a

personal computer,' or 'I'll give you half of what I get,' depending on how well he knows you. He knows that, effectively, you will not be severely damaged in your ultimate result, so he gets away with it. I do not know whether it is going to be a feature of this system, but people on commission are going to go for switching as a way of making money. It must be attractive to them.

CHAIR—It is a potential problem, isn't it?

Mr O'Sullivan—It must be attractive to them. Everybody in the target market is already in a superannuation fund of one kind or another, give or take a handful of people—there are 15 million accounts and eight million workers. People are in at least one, if not two, and you have got to get them out of the one they are in and into yours. If you are on a substantial commission and a trailing commission, it is well worth your while sacrificing something of your first year's commission to make the sale and either split it with the employer—there is nothing to stop them splitting it with the employer—or with the employee.

There is nothing in the unlimited choice provision to stop an employer having on his table, where he employs you, a form drafted by a lawyer which says, 'I'm aware that I have all these rights to do this, that and the other thing under the legislation and I opt for X fund,' which is the fund the employer wants. He makes X fund his default fund in unlimited choice, knowing that most of them will default into his choice anyway, because they do not know any better. He offers all new employees a pre-set pro forma to sign—as he does with his Australian workplace agreements and many other things—'Here is the social club, here's your workplace agreement, here's the Christmas club, here's your superannuation. Sign all those four things and you have got the job. If you do not want to sign those, you do not have to work here. It is not compulsory to work here, just as it is not compulsory to sign the forms.'

It would not take a genius to work out a form which satisfied this legislation and you could just run off as many as you needed. There is nothing in those unlimited choice arrangements as they presently stand, unless you actually give them a misleading thing about one of the funds. Then the fault is primarily with the fund for issuing it, or authorising its issue, rather than with the employer for handing it out in good faith.

I suppose unions are accused of being a bit cynical, but it is based on real life on the ground experience of what actually happens, as opposed to what the law says. If the law does not prohibit something happening, it will happen. I think we have touched on, and I know others will deal with in detail, the British and Chilean experience, and others.

The cost of all of this is ultimately borne by the members of the funds. We are concerned about short termism. There is already concern in the media in all countries about the pressure that institutional investors put on companies to produce short-term results, both in terms of yield and share price.

CHAIR—We know that in Tasmania with Amcor.

Mr O'Sullivan—People are under pressure to produce results which really are not in the objective best interests of the long-term good governance of the company concerned. I use

that only to illustrate that superannuation funds in competition are going to be subject to the same kinds of short termism, which means they are going to allocate their assets more conservatively, in order not to have highly volatile fluctuations and no negative years.

CHAIR—I must point out, though, that some of those superannuation funds are the worst offenders in putting pressure on companies to perform.

Mr O’Sullivan—Absolutely. I agree that it is the mutually invested funds of all kinds that put the pressure through the institutions, through their managers. It is not really the funds themselves so much as those who manage their funds. There is a chain of responsibility back; and I agree with that. I only mention it here to illustrate the point I was trying to get to; and I do not suppose we should go down that track.

CHAIR—No.

Mr O’Sullivan—But it is of concern. There is no question about that. The other thing is that if you go into an environment of switching, or even if you anticipate that you are in an environment of switching, you are going to have to hold more funds in cash. So, necessarily, your asset allocation to cash is going to be affected by your judgment from time to time as to how much dough you have to have on hand in order to manage people rolling out or switching out of your fund.

The other thing about that, by the way—as I read the legislation, unless I am mistaken—is that the choice applies to future contributions and not to past accumulations so that you are going to have a situation as you have already got. You have got 15 million accounts for eight million people now—God knows how many you are going to have in the future—with all of them being eaten away by administrative charges until member protection cuts in. You are going to have great inefficiencies in terms of the loss of insurance, gaining insurance, insurance here being not as good as previously and all that sort of thing which you have already touched on.

CHAIR—It should be part of the key feature statement warnings?

Mr O’Sullivan—I would have to say that we are very suspicious, and we may be overly suspicious about this, but there is nothing much in the legislation about the way in which funds will be compared. It is left to the regulations, which we have not seen, and that makes us very suspicious, as I say. What we have suggested in our submission, which I guess is going to come to you from many people, is that there should be a template and it should be line by line. The key feature statement, which is presently arranged for public offer funds, can be used as the model, but I do not say it is the only one. But every fund has to answer every question in every box. So every commission and every subcommission or form of commission or splitting of commissions has to be answered so that there is absolute apples with apples, line by line—not just in the broad.

As you said earlier in another series of questions, Senator, how do large institutions show they are cross-subsidising their superannuation product? It would be our view that they absolutely have to show everything that they are going to charge to the income or the contributions or the earnings of the members, no matter what it is. Even if it is notional,

even if it is like depreciation, they have got to show it and they have got to be mandated to show it. There ought to be a box that they have to fill in and, if necessary, they have to say that they will not disclose it. But they at least have to fess up to where they are on it.

The last thing I want to touch on—and I realise that time is pressing—is this question of industrial agreements. If this regime comes in—and we hope that it does not—we are comfortable with certified agreements exempting the employers covered by them from this regime. We are also comfortable enough for Australian workplace agreements to exempt employers covered by them from having to meet these requirements because, in both cases, people have made their choices by agreement.

As to the individual agreements, informal agreements, it is obviously okay with us, I guess, if an individual asks his employer to pay the money to the fund of his choice, and the employer agrees, that that overrides any further need to go down this path.

The thing that is not there that we believe the Commonwealth has power to do is to provide for collective informal agreements. It is one thing to say that individuals can make an agreement, but it would be much more efficient and better and would certainly give unions the opportunity of playing a constructive role if you could make collective informal agreements. There are advantages for us in that, and for the system. At the moment there is a temptation for employers, when they are acting in good faith, to go and want to make certified agreements about superannuation as a single issue. If they do that, and that certified agreement comes into force, during its life you can make certified agreements about matters not covered in that agreement, but you cannot obtain a bargaining period or protected action to pursue your claims, which is part of the scheme of the act.

So making side by side certified agreements has disadvantages. It is unnecessary if you bring this informal thing into play, because an informal agreement between individuals would obviate that, so why not between a group of individuals?

With the AWAs, there is a temptation by some employers, which I think the employer organisations are correcting—certainly the MTIA to my certain knowledge—to feel that the way around this problem posed by the legislation would be to make Australian workplace agreements about superannuation only.

The danger with that is that any AWA obliterates all other rights under the award. You might not intend that to happen but that is juridically what does happen. If you make an AWA about the use of paperclips, it obviates everything else. You no longer have any enforceable annual leave, long service leave, wages—anything at all. The argument against my position on that would be, ‘Oh yes, but the Employment Advocate would not approve such an AWA on the grounds that it did not meet the no disadvantage test.’

I would be very comfortable, much more comfortable than we are now, if this committee would make its own inquiries about whether or not the Employment Advocate would do that—and perhaps even ask him if that is within your writ to ask people of that kind. I think that is a very important point to establish; otherwise people are wiping out their other entitlements without meaning to, even when the employer does not mean to.

However, the main thing in relation to that was to check out the Employment Advocate's likely role in relation to the no disadvantage test with single purpose AWAs which are designed to get around this. I know that some advice has been given to some employers already by what you might call industrial-relations-illiterate advisers, who are their accountants or whatever, who do not mean or intend that to happen, but that would be the consequence if their advice was put into effect.

The other thing was to ask you to consider amending the legislation so as to make it possible for a union, or a group of employees acting as a group, to negotiate these informal agreements which are open to individuals. The argument that these agreements would have to be agreed to individually runs counter to the fact that every other agreement about, as I said earlier, the other 96 per cent of their income can be made by majority decision. That is the only requirement in the act for a certified agreement presently.

However, we would not mind if the majority had to be more stringent, but it would enable you to have, if you like, common law agreements and informal agreements about superannuation choice which would not impede either the unions', the employees' or the employers' rights under the Workplace Relations Act to pursue other matters by either Australian workplace agreements or certified agreements during the life of the informal agreement, because it would not have that obliterating effect that certified agreements and AWAs have. I am conscious very much that you have given me a lot of time, Mr Chairman.

CHAIR—Thank you very much, Mr O'Sullivan. You have certainly covered a wide expanse of issues, including matters outside our terms of reference, but I think it is valuable and that is why I allowed you to go on. It certainly enabled us to put this whole question of choice in an overall context. It is quite possible that this question of the change to the industrial relations legislation may either be referred to this committee or another committee, and no doubt you may get called again because that may well be the subject of a separate inquiry by the Senate and a separate report, either by this committee or another committee depending on what the Senate chooses. Senator Hogg, have you any quick questions?

Senator HOGG—I have one or two questions surrounding the date of implementation under the legislation. It is proposed to be 1 July for new employees. Given the issue of education that you have raised, and that others have raised before us, do you see 1 July as being a practical date for the implementation for new employees, and also then the future date for existing employees being 12 months later?

Mr O'Sullivan—I suppose we have serious reservations about the amount of funds and therefore the amount of resources that will be available for public employee and employer education anyway. If it is an inadequately resourced education program then it may as well not be begun. But, if it is begun in good faith and with reasonable resources, we would regard a two-year period as a minimum. It is not for me to say that you should get the legislation through quickly. I hope you never pass it but, if you do pass it just in time for an implementation date in 1998, with that implementation date intact, I think you just commit a lot of people to a lot of costly mistakes.

I would have thought the year 2000 is the earliest possible date that you could sensibly contemplate implementing choice. I am aware that it is a date that is finding favour with

other people who are trying to make decisions and suggestions about the issue. The education process is pretty substantial. The concern is not just about the time allowed for it but that it would be resourced and would be independently conducted.

CHAIR—Thank you very much, Mr O’Sullivan. We will now adjourn for lunch.

Proceedings suspended from 1.26 p.m. to 2.05 p.m.

WELLS, Mr Anthony Cardale, Director, Superchoice Software Pty Ltd, Level 5, 492 St Kilda Road, Melbourne, Victoria 3004

CHAIR—The committee will resume the taking of evidence and it is now my pleasure to welcome Mr Tony Wells, a director of Superchoice Software, and no doubt he will be able to bring a new perspective, through IT, to some of the issues that the committee should take note of in relation to superannuation, and particularly the question of choice.

Mr Wells, we invite you to make a submission. Just ensure we have a little bit of time to enable us to question you. We apologise for the delay. It often happens with our committee. When we get informed witnesses, rather than call them back later on we sometimes run over time. We do apologise to you and to subsequent witnesses who have been inconvenienced in any way. Please do not feel you have to rush your submission, or paraphrase it. The floor is yours.

Mr Wells—Thank you, Mr Chairman, and thank you for inviting me to speak to your committee. In the notes I have offered to members of your committee, I thought it was important, since we are fairly unknown outside Melbourne, that I should at least explain why we feel we have some credentials in this matter.

We are a relatively small firm but we are an experienced firm of independent superannuation consultants and not attached, beholden or answerable to any particular fund, fund sector or financial institution. We have a widely diversified corporate and private client base. We talk to people about many different aspects of superannuation. Our work includes employee benefit consulting, full fund administration for clients, and we also help clients manage their affairs in using public offer funds, industry funds and group insurance arrangements, stand alone and then master trusts and so on. So I believe we have a reasonable understanding of the industry.

In the 36 years since I joined the industry through the AMP, from an accounting background, I have seen many changes, obviously, in the industry. Even though I am here representing Superchoice Software, I respect that this is neither the time nor the place for me to make any attempt at a singing commercial for our product. However, I would be happy to answer any questions that the committee may wish to direct to me later on.

I will try to be objective about the terms of reference of this committee, and particularly fund choice. I guess I have seen three distinct periods of superannuation. Pre-1983 was the period of autocracy, I guess, where superannuation was there for the privileged few. Employers had to be persuaded to offer superannuation for their employees and very few people, as a percentage of the work force, enjoyed superannuation benefits, as you would be aware, of course.

From 1983 to 1997 the whole industry has been turned completely upside down. It has been greatly improved. Through a lot of government and union initiatives, superannuation in that period became available to a much wider group, to the extent where the vast majority of employees are now in a fund or funds.

Information for members has been dramatically improved under the disclosure requirements. The industry, where it was fairly slaphappy in regulation before 1983, was pretty much a tax arrangement. Now the regulation is very much tighter, and I believe that is a great improvement and benefit for members. We have also seen compulsory contributions come in in that period.

Regretfully, we have also seen a somewhat unfortunate plundering of the superannuation dollar which has been a pretty soft target for the tax man. I think that is a disappointing development over those years. We really hope that does not continue, because I believe it is counterproductive to the retirement income aims of the government of the day.

CHAIR—What do you think of the concept of the transferring from the ISC to the tax office of supervision of excluded funds?

Mr Wells—I think that is very relevant. I believe the trustees of excluded funds are pretty much in control of funds for their own private benefit. Gumming up the works of the ISC in that situation is probably not necessary. I believe the ISC's involvement should be more for the protection of members' benefits where managers and trustees are at arm's length from the employee—but excluded fund control.

CHAIR—With the tax office taking over that jurisdiction, do you see some problems or changes?

Mr Wells—I do not personally see any problems. We manage a number of excluded funds.

CHAIR—You are not worried that it might be too tax driven?

Mr Wells—I believe that excluded funds will always be tax driven.

CHAIR—I mean the new regulator might be too tax driven, compared with the ISC.

Mr Wells—I do not believe so. I think it is necessary for excluded funds to be substantially tax driven; it is regulation. Definitely. I think if people in the excluded funds—trustees—make poor decisions, it is usually the same people as the members anyway. There are not the same concerns of looking after members' benefits as there are with public offer funds, corporate funds and so on.

From 1998 onwards, this current period that we are in, we have seen choice of funds come in. But I believe that choice of funds is arguably the most radical change to the superannuation industry that has ever been conceived. I think moving from the old autocratic arrangement right through the 1983 to 1997 period into a situation of free market and freedom of choice sees us entering a period that is totally different in many respects. We believe it is quite exciting, if managed properly.

We are moving into a deregulated market which will require self-reliance on the part of fund members or employees. It will encourage self-reliance. It will see, we believe, quite a rationalisation of public offer and corporate funds, where the big will get bigger and stronger

and the small ones will drop off the twig. We will also see a continuation of a rapid growth in excluded funds—do-it-yourself funds—which, as you would be aware, now constitute the vast majority of registered super funds. I believe the figure for them is about 173,000-odd out of 180,000. I believe excluded funds should always be a very important part of the superannuation industry in any deliberation by government.

CHAIR—Do you think employees not at arm's length should be part of an excluded fund?

Mr Wells—I believe so.

CHAIR—You think they should not be in that fund?

Mr Wells—If an employee requests an employer to pay into an excluded fund of which he is a trustee and a member, I do not have a problem with that.

CHAIR—I am referring to the employer's excluded fund.

Mr Wells—Employer's excluded fund?

CHAIR—Yes. Should that be open to membership for employees at arm's length to the employer?

Mr Wells—I do not believe there should be any compulsion for that to be open to employees other than, if you like, members of the family that own the company in practice. I believe that would see the closure of a lot of excluded funds if that happened.

We believe that choice of funds brings with it distinct benefits for employees. It is difficult to argue with freedom of choice. It is difficult to argue with greater control of one's own investments and superannuation affairs. And, subject to concerns about disclosure—which were covered by earlier speakers today and which I would like to refer to a little bit later—I believe an open, competitive superannuation industry should, if properly controlled, bring about better benefits for members by the sheer pressures of competition, provided the products are very carefully disclosed or the details of the products are disclosed properly. There cannot be any underhand activities or misleading information. That is a very big proviso which I realise your committee is very well aware of.

We also believe there will be benefits for employers in the choice of fund environment. There is an opportunity for improved employer relations and happier employees and, interestingly enough, we believe open competition will force fund providers and fund managers, those who have been in a comfort zone and have not really worried too much about service, to improve their service. I believe that will be of benefit to employers who, in our experience, often complain about how much time they have to spend repairing mistakes by fund administrators in some cases.

We also believe that in the fund choice environment, because it will be necessary for innovative administrative systems to appear in the marketplace to help employers cope with contributions across a range of funds, will lift the quality of administration systems general-

ly, particularly systems that are designed to talk to each other in computer language, and thereby lighten the administrative load for the employer. We do not see the employer being worse off administratively. We believe in a fairly short space of time the employer will be better off.

The principal danger we see for employees is the obvious danger of making an inappropriate or bad choice of fund—jumping out of the frying pan and into the fire when changing from one fund to another. We agree completely with the comments made about education requirements, which I will refer to a little bit later, to try to prevent this. There is one factor, though, that has not been mentioned this morning and that is that, where employees have a right to request or the employer has an obligation to offer a choice once a year, there is a safety valve to a degree for an employee who finds he has made a bad decision. In other words, he is not stuck in the fund for a lifetime. If he finds, in hindsight, that he has made an inappropriate decision, he has got another chance to change his mind, subject again to making sure that there are not any nasty clawbacks or exit fees and so on. There is a bit of a safety valve there for employees who may have regretted a decision they have made.

The dangers for employers have been written about a lot. It would be no surprise to your committee that people would be very courageous to rely too much on the section 32V ‘she’ll be right, mate’ clause, as we all call it, in the bill. It is not an opportunity for employers to be careless.

Another danger is the inappropriate offering of investment advice. Employers need to be very careful about that. That is something that I am sure has been well publicised.

We also believe that there are possibilities of industrial unrest and complaints of discrimination in certain situations where an employer may use all of the options available to it and have some employees in workplace or enterprise agreements, some with a choice of four funds and some with unlimited choice. A lot of employers, in our experience, are talking about using all of the options concurrently. I double-checked with Senator Kemp’s office recently to make sure that there is nothing in the bill that prevents that. I believe that that is to be allowed in the spirit of the legislation also and I believe it will be quite appropriate for many employers.

We have split our suggested prerequisites into vital prerequisites and not so vital prerequisites. Subject to certain vital prerequisites, we believe implementation of the fund choice legislation in July 1998 is perfectly feasible. We believe there is plenty of time to attend to those vital prerequisites. An overriding prerequisite is government and private sector cooperation in bringing it about by understanding each other’s problems and working together in a long-term commitment to ensure mechanisms that bring about informed choice for employees.

We believe as one of these vital prerequisites the best method of a reasonably satisfactory general education program for general public awareness would be an electronic and printed mass media program pitched for April through July initially. I do not mean saturation advertising. I believe it does not need to be very heavy as long as it is a consistent reminder of this.

CHAIR—Do you think the regulations will be out in time for that?

Mr Wells—I do not believe it would matter really because the educational content required would only need to be very basic. I do not believe employees would really be very concerned, if I could paraphrase it, whether an employer has to wear blue socks or yellow socks when he offers a choice. I think those sorts of details are totally irrelevant to educating employees on fund choice. The information, I believe, needs to be very basic in the general public awareness area.

Senator HOGG—What do you mean by basic? Could you give us some idea of that?

Mr Wells—I have made some notes here on it. I cannot find them but off the top of my head—

Senator HOGG—You can take it on notice and give it to us later.

Mr Wells—I can easily do it. What we mean is: here is Joe Public who has never heard of all this and does not know what it is all about. Here is his employer sitting next to him and he has never heard about it either. The basic information needs to be who is affected by it, what you should do when you are offered a choice and what you should not do when you are offered a choice—the dos and don'ts in other words. Basic information is needed on investment sectors, how to make prudent investment decisions, how to read a key feature statement, what to look for and where to get further advice if you need it.

I have seen some material that has been written like that and it is pretty useful stuff. Obviously, the information does not need to contain any technical detail; it just needs to be basic advice and basic awareness of what is going on, who is affected by it and, as an employee, what you should do and what you should not do. As an employer, you need to know what you should do and what you should not do in very summarised form.

Hot on the heels of that, I believe that by late April 1998 a vital prerequisite is a choice of fund manual, preferably loose leaf and readily updatable, for employers. Hopefully, this could be produced at a cost that would be fairly nominal for employers.

CHAIR—Who would produce the loose leaf?

Mr Wells—I do not know. I am not in that business, but obviously people or associations—

CHAIR—You are not suggesting the tax office or the ISC do it?

Mr Wells—I believe the private sector would be pretty pleased to do it. I was in the office of one of the larger life companies the other day and since last May they have been working on employer manuals and employee information which is really top quality stuff. They have printed drafts and they are ready to roll in early April. It is magnificent quality stuff; they have been to America, England and all over the place researching this. Obviously, it has got their logo all over it and all that stuff but the content of the material is really first class.

CHAIR—Do they intend to issue it free of charge or are they going to charge?

Mr Wells—I believe so. Yes, it would be from their promotional costs, I guess. I am sure they are not selling it or anything; they will just give it away as an advertising exercise, but it is really useful information. It can be done and I think they have probably invested quite a lot in this.

Senator HOGG—Where will the cost of that be attributed?

Mr Wells—I guess it will come out of their advertising budget, which is very big already.

Senator HOGG—It will be an increased cost to them, won't it? Do we know how significant an increased cost?

Mr Wells—It would be interesting. I cannot answer for large companies; I do not work for one. But I would imagine there would be a move from commission payments across to mass media advertising in the fund choice environment. I can see that happening. I think the commission agent is going to become very much on the outside when fund choice develops more. I think that would be a very good thing too.

CHAIR—So you cannot see a lot of agents going around selling different superannuation products for a commission.

Mr Wells—In a fund choice environment that would be demonstrably inappropriate.

CHAIR—Don't you think there is the opportunity there, though?

Mr Wells—Yes. There are two components of commissionable business, if you like, where opportunity would arise. One is a commission where the fund or the life office would pay for a guaranteed cash flow; in other words, a contribution commission like those horrible products in the old days that had clawbacks, foundation accounts and terrible, horrible contracts. They have mostly disappeared now. The other factor is transferring accumulated benefits where a commission can be triggered by transferring from one fund to another. This is where I agree with the comments of Michael O'Sullivan and Sharon Barker about a templated disclosure document where nothing can escape attention, as far as fees, charges and commissions are concerned.

Coming back to the employer choice manual, I believe that that is a terribly important thing and that its publication is urgent. It should be on employers' desks by late April 1988 to be fair to them. In addition to that, a vital prerequisite is that, by late May 1998—which I think would be early enough, assuming the legislation is passed in early April 1998—there should be 10 million employee multilingual pamphlets, published at government expense to make sure they are generic and do not refer to any product, giving basic advice on the dos and don'ts of choosing or changing a super fund and on what they should do and what they should not do. Quantities of these pamphlets should be made available to employers for distribution to employees, with no bias towards any product at all but giving very basic advice on how to make sure, as far as possible, they make an informed decision. A decision

would have to be made on the languages the pamphlets are to be printed in, apart from English. I have seen pamphlets before, as no doubt you have, in various government instrumentalities in various languages. I presume somebody has worked out what languages give a reasonable coverage.

In summary, we are suggesting that the vital prerequisites are: general—but not saturation—mass media advertising for general awareness; an employer manual, loose leaf and readily updatable to be useful because we have all come to learn that there are now three things that are certain in life—death, taxes and changes to superannuation regulations, which is a little joke in our office; and the employee pamphlet as the first opportunity for an employee to take something and read it to at least get a basic understanding of what is going on.

Any call to delay implementation because there is not enough time to educate employees is, with respect, Mr Chairman, a nonsense. If the education process—mass media, pamphlets, seminars, which, hopefully, would be conducted by the financial planning industry in conjunction with employers, and so on—is too far out from the implementation date then, from our experience in running a few award funds and in dealing with employees, who are generally uninterested and apathetic about the whole thing anyway and have a pretty short concentration span, it will lose its punch.

If you triggered an education program too far out from the implementation date it would lose a lot of its punch. I believe it needs to be fairly intense and fairly current and topical for them to sit up and take notice and say, ‘This is going to happen next month. I had better read it.’ If it is happening seven months down the track, it will be forgotten. I do not believe the argument that a short time frame for an education program is any problem for implementation.

Apart from that, to assist employers there needs to be an Internet fund library that can list and provide information about all public offer funds available in the market, and RSAs, so that people can look them up, find out about them and so on. As you would be aware, that is already well in hand. I believe it will be available from early April. That is well in hand and is organised by the Association of Superannuation Funds of Australia. That is one initiative that will be up and running and working.

The other prerequisite is to make sure employers do not get their financial affairs in a mess. There must be a purpose-built software program for employers that will make it easy for them to manage and control contributions across a range of funds.

CHAIR—Can you describe some features of that software program?

Mr Wells—With all due modesty, Mr Chairman, we have done that, and that will be available at the end of this month, and it works. It has been tested by some friendly large employers and it seems to be working very well. It is a sophisticated software program, purpose driven for fund choice, and it is very simple. The operator needs to maintain a screen page for each employee, record all relevant superannuation details for that employee, and trigger every month or every fortnight or every pay period—it does not matter; it can handle any pay period—matters relevant to superannuation contributions.

An employee can belong to 17 different funds with 48 different investment streams and two different types of insurance and SG contributions, award contributions, salary sacrifice—anything. It can handle anything. Having driven this into the page, if there is no change next month, just press the button and it is just the same as last month.

From that entry is driven the rest of the programs. He or she only needs to enter it into the screen page for the employee for it to print out all sorts of reports and reconciliations flowing from that. It can handle an unlimited number of different funds but at the end of the day, at the end of any period or any time, it can print out running creditor accounts for money payable to any fund.

The only entry in addition to the screen page for the employee that needs to be acted upon is when payments are made to a fund. An employer can say, 'We owe the C Plus Bus Fund at the end of August \$170,304. Give them \$100,000.' That will record that, keep it running, or he can pay it in full. It does not matter; it is up to him. But at the end of the year, obviously, he will be wanting to make sure that he has paid all funds the up-to-date amounts.

It is a tamper-proof program. Once an entry is made, you cannot delete it. It has to be journalled out with a reverse entry. It is very secure and it has—

CHAIR—That worries me a little bit. Do many employers do that—not pay the correct amount each quarter or each month and then adjust it correctly at the end of the year?

Mr Wells—Regrettably, Mr Chairman, we have a number of clients who struggle to pay. They feed funds with \$5,000 here and \$10,000 there. We are on the phone to them towards the end of the year saying, 'Catch up.' But that is easy to administer.

CHAIR—It would be very hard, particularly if you have shearers who get monies paid into their fund from a number of employers, to be able to do a reconciliation under those circumstances? How would the employee know that he has had the correct amount paid in? He has got a pretty good idea if he gets a statement every quarter but, if he has to wait for 12 months and he has worked in a number of sheds, it would be very hard for him to know whether employers had put in the correct amount.

Mr Wells—An employee can request at any time, and get, information about his own screen page, which will show the accrual of contributions. The employer, on the other hand, may not be prepared to show him whether they have actually been paid or not.

Senator CONROY—I have been shown cheque butts many times when I used to go around chasing employers.

Mr Wells—I believe most employers would let the employee see his own print-out from his own screen page. Some employers are struggling to pay, and a few of our clients have that problem in various industries. The software has been designed to make sure that every possible profile of this fund choice can be coped with, even to the extent of having intranet arrangements and so on. I am sorry, Mr Chairman, I do not understand all the technicalities, but I have seen it work. Does that help you?

CHAIR—Yes, thank you.

Mr Wells—There are many other things on our wish list of prerequisites before implementation but we do not believe they are of vital importance. However, it is important they be finalised as soon as possible.

Over the last few years there has been in place quite an effective education program for employees. The high quality annual reports put out by some of the industry funds and corporate funds are really good material. If employees have any interest in the super fund they are in, I am sure they would learn a lot from that. I think you would agree, Mr Chairman, that the quality of a lot of that material is very good. For anyone to say that employees do not know anything about superannuation is a nonsense, because there has been a lot of very good material put out to members of funds, particularly in the last few years. I believe ASFA even awards prizes for this sort of thing, which is good.

Seminars at employer locations would be extremely helpful and I would ask government to encourage those. I would also hope that the FPA and organisations like that would seek to get involved in that so that employees can ask and have questions answered.

Obviously, a very important prerequisite, and fairly urgent, would be for the regulations to address a detailed standard, statutory, template format for key feature statements. Our friend Michael O'Sullivan made a very good point earlier today when he said that this format should be such that each and every possible question about fees and charges must be answered. As we all know, you can have an installation charge, an annual charge, a trustee charge, a contribution charge, an asset charge, commissions—you name it; it goes on and on and on. If you researched all the funds around you could find 17 or 18 different types of charges.

Of course, there are also charges by stealth where the visible charges are subsidised by invisible charges creamed off from the earning rate.

Senator HOGG—How do we find those out?

Mr Wells—Fairly easily. If we ask, in the key features statement, for earning rates before and after charges to be revealed—for example, from the last year, averaged over the last three years, and averaged over the last five and seven years, to give a reasonable run—and if that question is tightly designed, it will show whether in fact there has been any subsidisation of administrative fees across the fund. It is easy for somebody to say, 'We will go cheap. We will charge you \$35 per year to administer the fund per member', and then to cream off \$150,000 out of the earning rate, just by declaring a smaller earning rate.

Senator HOGG—How does the average person who has to make the choice of fund discern all these nuances that you are talking about?

Mr Wells—At the moment, he or she could not, really, without seeing a full set of accounts.

Senator HOGG—Not even with the key features statement?

Mr Wells—We could express it as percentages: the gross return of the fund and then the declared rate of the fund after allocation to reserve. In other words, what is the difference? What is the expense factor? The key features statement, I believe, would need to show that, in order to pick up every type of charge—visible or invisible—to make sure, as was said before, that we are comparing apples with apples.

It could be said that in our experience a smallish fund can cost anything up to \$130 or \$140 per member to administer properly; yet some administrators will say, ‘No, look, we will do it for \$50 per year.’ But there are no free lunches, and they are obviously getting the money from somewhere else. In other words, they are debiting it against the earning rate before it is declared. We believe that the key features statement format is critical to making sure as far as possible that people can make an informed choice when they are choosing between different funds or different types of funds.

Obviously, another thing on our wish list, as on everybody else’s, would be the publication of the detailed regulations, including clarification of such things as the informal workplace agreement and its relation with the chosen fund; tighter definitions of industry and default funds; and compliance policing—and nobody is quite sure how that is going to happen.

Senator HOGG—How should it happen?

Mr Wells—Not being a policeman, I do not know.

Senator HOGG—I would be interested in your view.

Mr Wells—I guess it would have to be self-assessment, backed up by—

Senator HOGG—This is going to directly impact on fees and charges.

Mr Wells—Yes.

Senator HOGG—If you do not have some sort of compliance testing, how are you going to know that—

Mr Wells—Presumably the only cost-effective way would be self-assessment, with occasional unannounced visits from the little man with the black bag.

Senator HOGG—I think that would be like putting Dracula in charge of the blood bank.

Mr Wells—Do you think so?

Senator HOGG—Yes.

Mr Wells—I am sorry; I cannot advise you, not having experience in that. Another factor that concerns us is accrued benefit transfers. I know they are not addressed by the legislation but, then again, do we want to finish up with 10 million people and 15 million accounts or 55 million accounts, which is very inefficient? And should that be encouraged?

If so, once again, can we make sure that benefits are not compromised by inappropriate commission payments and switching fees and all that sort of thing, because that would be quite counterproductive?

A subject I have not mentioned so far is safety net insurance arrangements. Insurance arrangements are a big problem with fund choice. I believe that in our experience a lot of employers are starting to get more and more concerned about that. Quite apart from the fact that, with medium to larger employers, in many cases employees currently enjoy automatic acceptance levels that they could never achieve as individual policyholders and also very cheap unit rate premiums such as they could not possibly enjoy outside—many of them would be uninsurable outside the automatic acceptance arrangements—if they were to jump out of that into some other fund, they could finish up with no cover, in many cases.

If it happened that an employee were disabled or died in the middle of the fund choice procedure, and he fell between two insurance chairs in the middle of all of this, and his widow were to front up to the employer and say, 'When I read the last member booklet that Fred got at the last balance date, he was insured for \$180,000. Where is the money? I have got three starving kids,' his employer would say, 'I am sorry, but he went through this fund choice thing and he has not got any cover.' That would be a horrible situation, to be avoided at all costs. It could happen, and it could happen through either misunderstanding or even insurance risk underwriting delays that occur or the 28-day delays happening with fund choice, and so on.

Senator HOGG—Does that mean you need a set of procedures in place to ensure that that sort of thing does not happen? If so, are those procedures going to be costly?

Mr Wells—I guess it is up to the employer, who would have the greatest concern about that, initially, being in that most unfortunate situation. Our recommendation to employers is that, if they are concerned about that, they should revisit their whole superannuation insurance arrangement, pick it all up and dump it into a stand-alone group risk master trust—structured the way they want it for their various employees, with multiples of salary, or whatever—and then say to their employees, 'You have got unlimited choice, or four-funds choice—or whatever it is—so go forth and do your thing with your investments; but, while you do all that, you are covered.' The employer can then keep control of that.

Regrettably, there are no such products, yet, on the market. I know the life industry is a reactive industry generally, but we are doing our best to try and encourage them to put a range of group risk master trusts on the market, and I was pleased to note that ASFA has agreed to open on their Internet site a section for employers that want to use that facility. Hopefully, with an open section with nothing on it, some of the life companies will actually do something about it. It is simple enough to do.

CHAIR—With master trusts, is there an exit fee?

Mr Wells—Not with life insurance, no—not normally.

CHAIR—Not with a master trust?

Mr Wells—No. It has got nothing to do with investments at all. It is purely risk insurance: death, disability, and stuff like that. Hopefully, within a fairly short period, employers will have that opportunity to solve the problem by saying, ‘The minute Joe Employee joins our company, he is automatically covered. All this fund choice and everything else can follow along, and his cover will not be affected.’ We believe it would be a good move to encourage employers to do that.

We believe that, in the context of implementation of fund choice, employers are the most important factor in making the system work. If employers have problems in making it work, the whole thing collapses. We do believe that user-friendly information and support for employers, particularly from now on—between now and July—is critical. We would ask your committee to encourage the government to bear that in mind.

Obviously there is a whole string of questions that employers would consider. I will briefly run over those I have listed. Who among our employees is or will be covered under state awards and so on and therefore be exempt? Should we revisit these agreements and try and renegotiate them? Are they still relevant? In the case of our own company fund, do we want to keep it going or do we want to close it down? Is it all too hard? Are we going to compete with key feature statements—that is a question they would ask themselves if they have a corporate fund—or will they just handball it to a master fund?

With respect to employees to whom we must offer a choice—new ones in July 1988 and existing in July 2000—would it not be better for us to offer orderly choice arrangements to everybody up-front? The idea there is that new employees must be offered choice within 28 days of joining, but some employers we have spoken to have said, ‘We think it would be a lot easier if we just have everybody under the same system, and on 1 March and on 1 September every year we will just announce that this is a fund choice date for existing employees. If you don’t want to make a choice, wait until the next one, but we are only going to offer it twice a year because we do not want people running in and out’—or something like that. In other words, an orderly system seems to be currying quite a bit of favour.

Obviously the question is which of the three statutory compulsory choices—I think ‘compulsory choice’ is an interesting phrase, Mr Chairman—should we adopt or should we use all three concurrently? Quite a few employers, in our experience, are saying that, even though this could mean four separate arrangements—some in enterprise or workplace agreements, some in limited choice of four funds, some in informal agreements and some with unlimited choice, which really gives quite a lot of flexibility for an employer. Many employers, as you would know, Mr Chairman, have been for many years in the practice of differentiating between different groups of employees in various ways in their remuneration.

If we include limited choice as an option, are we prepared to be responsible for researching and selecting the list of funds ourselves or should we seek professional advice? That is obviously a question they will ask. Which fund should we nominate as our default fund? From the comments this morning, Mr Chairman, I have certainly learnt something. I believe that, when we are considering people that may have problems with literacy and numeracy—and this came home to me when I was listening to those people this morning—the decision about a default fund is extremely important. Hopefully, it would be a fund that would cater

for different investment streams, where the employer, in consultation perhaps with his employees, could nominate this default fund and say, 'Righto, we will have aggressive investments by default up to age 45, middle of the road to 55 and conservative from 55 on, or something.' So even if the employee says, 'I am sorry, I cannot speak English, I don't want to know, I can't understand'—all that stuff—at least he is reasonably well looked after in spite of the fact that he has never made a decision. We believe that is pretty important.

I alluded before to group fragmentation for insurance. We believe that will not be an urgent problem but it will be a growing problem as groups fragment gradually. There was one point made this morning which I disagreed with. I think one of the speakers said that an employer may disagree with a chosen fund under an unlimited choice option. My understanding of the law as it is couched so far is that, if the employer offers unlimited choice, he must agree with the fund requested, provided it is a regulated fund. I do not think you can have it both ways. In an informal workplace agreement he can disagree.

CHAIR—I think we would want to take advice on that.

Mr Wells—Our reading of it is that if I am your employee and I say, 'Boss, I would like to go into the BT Managed Fund,' you are obliged to accept that if you have offered me unlimited choice, as long as you are satisfied that it is a regulated fund. I believe that is true. I also agree with an earlier speaker that it would be in the interests of fund members if the government considered, in the fund choice environment, imposing a maximum exit fee on funds and maximum ingoing fees and/or commissions and that these are emphasised, whatever they are, on the key features statement.

In summary, we believe fund choice will be good for employees and employers for the reasons stated. We believe it brings challenge and opportunity to an already well-resourced superannuation industry—trustees and administrators alike. And we believe it can be satisfactorily implemented in July 1998, subject to the vital prerequisites mentioned above. Thank you.

CHAIR—Thank you.

Senator HOGG—Could I have clarification on the issue of the basic information that you want provided to people through these 10 million pamphlets? That is the basic information. When do they get the information that will enable them to make an informed decision? I presume there are two stages: one is a basic information pamphlet, and the other is to enable them to make an informed decision.

Mr Wells—I do not believe that the pamphlet we envisage would try to go into any sort of detail or—

Senator HOGG—Therefore, your pamphlet would not enable them to make an informed decision. It would make open to them what the whole state of play is, what this is about.

Mr Wells—Indeed—what procedure they should follow.

Senator HOGG—Yes. But then there would be another step, which would be necessary to make an informed decision, based on the issuing of a proper key features statement that had the template and so on all lined up.

Mr Wells—Yes.

Senator HOGG—But, without getting into the nitty-gritty of it, it seems to me that yours is a two-stage process which really blows completely out of the water the time line of 1 July for new employees. Just the printing of that number of pamphlets and then the distribution of that number of pamphlets in itself is an enormous task.

Mr Wells—Indeed.

Senator HOGG—I am not trying to be negative. I am just saying that I think your support for 1 July has a lot of warts attached to it. I do not know if you have thought that through as well as being in the position to provide people with literature that will provide them with an informed decision, as opposed to knowing the basic parameters of what is happening. I will leave it at that.

CHAIR—As there are no further questions, thank you very much, Mr Wells. You have provided a very informed input to the committee. I am sorry we kept you waiting.

[3.05 p.m.]

KNIGHT, Mr David John, Compensation and Benefits Manager, Coles Myer Ltd, 800 Toorak Road, Tooronga, Victoria 3146

THOMPSON, Mr Peter James, Employee Relations Manager—CML Stores, Coles Myer Ltd, 800 Toorak Road, Tooronga, Victoria 3146

CHAIR—I would like to take this opportunity of welcoming each of you. You bring the view of a large retail employer, with a lot of casual people, and of the retail sector. It is certainly a different perspective. We invite you to speak to your submission, and following that we will ask you a number of questions.

Mr Knight—Thank you, Senator and members of your committee. I am accompanied today by my colleague Mr Peter Thompson, who is an employee relations specialist within our organisation. I do not have specialisation in that area or experience, so he will accompany me, and together we will endeavour to answer any questions that your committee may have.

I have been employed by Myer, and subsequently Coles Myer, for nearly 30 years. During that time, I have held a number of accounting, administrative and human resources positions, including the management of the Coles Myer employee share plan. I have been involved in superannuation in Myer and Coles Myer for over 20 years. This experience has been at different levels, ranging from fund accountant to having responsibility for the total management of one or more superannuation funds, and to being a trustee of one or more Coles Myer funds.

My current role involves responsibility for superannuation strategy in Coles Myer, the management of two internal superannuation funds and the role of trustee director of the larger of those two funds. I was also involved in the establishment of the industry fund Retail Employees Superannuation Trust, known as REST, and served as a director there for several years. I recognise Senator John Hogg, who at one time served with me on that trustee board.

Coles Myer is the largest private sector employer in Australia, with around 150,000 employees. It currently operates two internal superannuation funds. The Coles Myer Superannuation Fund has 16,000 members and assets of \$800 million, and is thus a large fund by Australian standards. The fund has three defined benefit sections and three accumulation sections. We have an internal administration, with a total staffing of 12.

The second internal fund is the Coles Myer Employees Benefit Fund, with 7,000 members and \$60 million of assets. This is an accumulation fund which was offered as an alternative to REST for employees in certain states. However, this fund has been closed to new entrants for some years.

The majority of Coles Myer employees are in industry funds. We would have 100,000 employees in REST. We also have employees who are members of LUCRF and smaller

numbers of employees in other industry funds. These arrangements are governed by state and federal awards and agreements.

I hope that this background information assists the committee in understanding the current position regarding superannuation in Coles Myer.

With regard to choice of fund, Coles Myer has not yet decided how to implement the concept. We see the current situation as fluid and we would like clarity on a number of issues. For example, Western Australia has introduced its own version of choice of fund, but there appear to be a number of legal queries regarding the status of that legislation and the application of it.

With respect to the federal bill, the legal fraternity has raised a large range of technical issues that we would like to see resolved. At this stage we are talking to people to obtain views, and considering the implementation issues that affect us. Coles Myer operates in a highly competitive environment so we need to ensure that our proposed strategy does not put us at a cost disadvantage compared with our competitors.

To turn now to our submission: Coles Myer supports the concept of choice of fund. If successfully implemented, the concept has the ability to heighten awareness of superannuation and the need for individuals to plan for their retirement. Clearly, the success of freedom of choice depends on high quality communication material.

In our submission we refer to the large number of workplaces across Australia and the need to train people who will be responsible for the communication process. In view of the importance of this process, we question the appropriateness of a 1 July 1998 start date. In our view, it is more important to do a good job than to meet what will be a very tight time frame.

The second issue in our submission refers to the need to amend our accounting and payroll systems. In our submission we indicate that we have currently 13 different systems across Australia. We also refer to the fact that our IT resources are short and the task before us is huge in the time available. It may well be impossible for us to meet a 1 July 1998 start date.

So, Chairman and members of the committee, we present to you our submission, which says that we would prefer to see and press for your committee to recommend the deferment of the implementation for 12 months.

CHAIR—What would be the consequences for Coles Myer of not meeting that deadline?

Mr Knight—If at the end of the day we have to meet that deadline we will have to cut corners in terms of the communication program, in implementing temporary systems to meet the date.

Senator CONROY—It is almost a plea for commonsense.

Mr Knight—Yes, a plea for commonsense. Thank you, Senator. So that is our submission.

CHAIR—Mr Thompson, would you like to add to that?

Mr Thompson—I really do not have anything to add unless there is anything in particular you wish to question about the agreements.

CHAIR—If it is not confidential, can you tell us the reason why you discontinued one of those funds for quite a large number of your employees.

Mr Knight—The Coles Myer Employees Benefit Fund?

CHAIR—Yes.

Mr Knight—Simply, the success or the continuation of that fund was predicated on its recognition in a number of federal and state awards. In a large number of award decisions, REST or another fund was designated as the approved fund, and Coles Myer Employees Benefit Fund was not approved. Under that set of circumstances, what would have been potentially a very large fund, in terms of numbers of employees, with a potential membership of over 100,000 employees in Coles Myer, ended up as a relatively small fund with a very limited eligible population.

CHAIR—How do you intend to communicate with your new employees? Can you give us something on that?

Mr Knight—As I have indicated in my comments, Senator, we certainly are nowhere near understanding how we will do that. We would propose a combination of written material, supported by presentations. Our training and roll-out of information programs to our employees across Australia follows a fairly standard process of people called trainers presenting to groups of employees, imparting whatever message it is that is necessary for them, whether it is to do with company policy or employment regulations or requirements. We have a presentation where people come along, see a slide presentation followed by questions and answers, and are given some written material to take away. That is our standard format of a roll-out.

CHAIR—Do you intend that sort of format to apply to part-time, say, school children who come in after school and just restock your shelves?

Mr Knight—If it is necessary for those in our business for that to happen, it does. We then obviously need to schedule those sessions at times that will enable us to capture the whole of our population, particularly in our supermarket business. We are in two states; we trade in many stores 24 hours a day. Therefore the logistics of ensuring that all employees at a certain work location have received a message and been given the necessary information poses quite a task and would involve presentations over a number of days at different hours to capture different groups of the population.

CHAIR—You mentioned that you would like it deferred for 12 months. If that was possible, would you like the same commencement date to apply to all employees or do you still want that one deferred?

Mr Knight—Our preference would be to implement with new employees in the first instance. By working with a relatively smaller population than the total number we can see if there are any difficulties or any problems in the message or the communication process that can be finetuned for the larger population. So let us start with a small group, see how it works, adjust it where necessary and then roll it out in a further 12 months to the total employee population.

CHAIR—Should the committee recommend a common date, say of 1 July 1999? Would that cause you the sorts of insuperable problems you are talking about of a commencement date for new employees of 1998?

Mr Knight—It certainly would not be our preferred position.

Senator ALLISON—Mr Knight and Mr Thompson, you presumably heard the witness before you today saying that the computer packages that could produce the leaflets and the like were ready to go. Did you listen to that? Is your position still the same, having heard it?

Mr Knight—Senator Allison, I will be seeing Mr Wells at the completion of this session. If I can buy from him the product for, I think it was, \$995 it will save us what we believe to be literally tens, probably hundreds, of thousands of dollars of work in modifying 13 systems. If I can get that product for less than \$1,000 I will be very happy and my time in front of this committee will have been very well spent.

Senator ALLISON—Perhaps you can let us know whether it turns out to be suitable for your needs.

Mr Knight—I would be happy to do so.

Senator ALLISON—What exactly would be your response to the 1 July this year deadline? What sorts of shortcuts would you be forced to take if you were to comply?

Mr Knight—They are twofold. First of all, the communication program is going to have to be adjusted to fit the time available. That will be a second-best or a third-rate quality program. That is regrettable because, as I indicated, Coles Myer believe and I genuinely believe that freedom of choice presents an opportunity in the Australian community, if it is done well, for us to raise awareness about the importance of planning people's retirement incomes. If it is done poorly we are just going backwards.

In the first instance we are going to have to curtail the communication program to something quick and simple that will meet the minimum requirements and that we can fit in whatever the time available. Secondly, if we cannot complete the amendment to our computer and accounting systems we are going to have to implement, for a period of time, additional manual systems to cope with that situation. That is obviously going to be at an increased internal cost to the organisation.

Senator ALLISON—Do you see choice of funds being a factor? Or do you see yourself being limited in any way in what you would like to offer to your employees?

Mr Knight—I cannot answer that. It may well be but I cannot speculate on that.

Senator ALLISON—Do you think there is an opportunity through this choice? From your knowledge of your own employees, what do you think their views might be about choice of investment type?

Mr Knight—My observation is that there is not currently, amongst Coles Myer employees, a high degree of understanding of the different sorts of investment choices or the implications that flow from differing investment profiles. I think that is a key issue in the education process.

Senator ALLISON—Do you see yourself using AWAs, or other agreements, to satisfy the requirements of this legislation?

Mr Knight—I will pass that question to my colleague.

Mr Thompson—That is an option that is available, I suppose, but really the issue of choice of funds is separated from the issue of what industrial agreements are used within the corporation and how that might impact on the issue of superannuation. At this stage, AWAs in particular do not appeal for that reason, but there are a range of agreement choices which may, in fact, interact with the choice of funds, or in fact enable the corporation to make a selection of a particular fund through agreement with individuals or with collective groups of employees. So we really have not determined what strategy we may adopt in terms of defining what choice of funds may be directed through the implementation of certain agreements.

Senator ALLISON—Are you in a position to say whether or not you think that would be an easier option for the organisation?

Mr Thompson—AWAs certainly would not be, because of the process involved with those. But the option of utilising industrial agreements as a mechanism to determine what the majority of the employee's superannuation arrangements will be certainly could be attractive.

Senator HOGG—Is it not true, though, that most of your enterprise agreements have as a feature of them a superannuation clause involving the REST fund?

Mr Thompson—Most do. However, most—

Senator HOGG—Or other industry funds as well?

Mr Thompson—Yes, that is right; there is a choice of funds available. The majority of employees would be engaged in REST, as Mr Knight has indicated. A number of those agreements may deal with the issue of superannuation, a number may incorporate award terms as part of the agreement and a number may refer separately to award requirements in respect of superannuation. There are also employees covered by state awards and also by

federal awards, as opposed to agreements. So there is an array of different mechanisms out there.

Notwithstanding the fact that the agreements deal with the issue of superannuation, it is more the way in which they deal with superannuation that may determine what we need to do beyond July this year in respect of proposed changes for agreements, notwithstanding the implementation of a choice of funds legislation at the same time.

Senator HOGG—There was an award made at one stage with Coles Myer, which concentrated solely on the issue of superannuation. Is that correct?

Mr Thompson—That is correct, yes.

Senator HOGG—Is that still in existence?

Mr Thompson—That is still in existence. The enforcement of that award beyond 1 July is subject to question now, pending changes elsewhere.

Senator HOGG—So you are saying that, if superannuation ceases to be an allowable matter, that will place in jeopardy arrangements which have been in place for some substantial period of time?

Mr Thompson—It will not place them in jeopardy; it means that the arrangements may need to be looked at in some other way, provided that award is regarded as a separate award, as opposed to being incorporated as part of a certified agreement and therefore remaining enforceable as the terms of an agreement, as opposed to an award.

Senator HOGG—In your submission you note that you expect some 17,000 new employees in the first year of operation, out of 150,000. That is not as high a turnover rate as I would otherwise have expected. Does that mask the fact that in some areas of your business there are high turnover rates and that in other parts of your business there are lower turnover rates of staff? If so, does that make a difference to how you would approach this issue?

Mr Knight—The turnover rate implicit in that 17,000 is our average turnover rate and certainly, as would be quite obvious in the retail industry, we do have quite differing profiles of turnover between our casual employees and our full-time employees.

By observation, any shopper will know that the retail industry relies quite heavily on casual employees, young people and students who see the retail industry as an opportunity for a part-time or casual job for a number of years while they are studying. Typically, when they have completed their studies, they go off into their chosen career path. That group of employees, as a result, has a relatively high turnover rate.

Our full-time, long-term career people have a much lower turnover rate. That is quite understandable. It does not necessarily have any significant implications in terms of implementation of choice of fund. I think it is a fact of life in our organisation that we have dealt with for many years and we live with that.

Senator HOGG—You mentioned casual employees specifically. How do you think casual employees will be treated under the terms of this piece of legislation? As I understand it, casual employees are new employees on a day-to-day basis—without being too pedantic about it. Therefore, one would think that they are going to be caught up in this legislation. Does that change your perspective of how you would need to apply this legislation, if they are in effect to be treated as new employees?

Mr Knight—I would have to say that—

Senator HOGG—You had not thought about that one.

Mr Knight—That is one I had not contemplated and have not thought through until now.

Senator HOGG—It is not in the legislation, though.

Mr Knight—No; I understand.

Senator HOGG—There is no exemption.

Mr Knight—I understand precisely the point you are making, and I really cannot respond except to say you have given me food for thought.

Senator HOGG—Instead of addressing 17,000 employees, you may well have to address 120,000 employees if that happens to be the number of casual employees.

Mr Knight—Yes.

Senator HOGG—So your problem is magnified overnight and you may well wish to review the 12-month grace that you seek. It may be in your best interests to even seek a further extension, or to have some changes made in terms of casual employees.

Mr Knight—I think you have put your finger on an issue that we would like to examine and perhaps consider some further submission at a later time. Thank you.

Senator ALLISON—Mr Knight, as an employer, do you have any concerns about the legislation in respect of the liability of employers for the consequences of the choices which are put to employees? Is that something that you have had a chance to think about?

Mr Knight—No. I can only comment as an individual. I think that the issue is of some concern, but to me it is not a primary issue; it is a second order level of concern. My view is that in reality people who have received regular communications from their fund should not really expect at some lengthy period of time subsequently to come back and say they have made the wrong choice. I find it possible, but not very likely, that that is going to happen. I do not think that is going to cause us any loss of sleep.

Senator CONROY—The debate that we were having this morning before lunch was mainly to do with a public education campaign. Would it be right to say that, irrespective of

a public education campaign, you would still be doing all the things that you have been referring to anyway in terms of your training program for your new employees?

Mr Knight—To the extent that there was a public awareness campaign or a communication program of some sort, clearly we would like our materials to be supportive of that so that there is consistency of message. Obviously, the sooner the details of that are available, the sooner Coles Myer material can be modelled so that it is consistent with that, and integrates with it, so we are getting consistency and repetition of a standard message, not messages that are somewhat similar, but different, if I can use that expression. I think that would be very helpful and we would obviously use that to good effect to build our own program around that.

Senator CONROY—Many of the submissions this morning have suggested that it would be more than just helpful, it should be almost mandatory, for the public education campaign—a substantial one at that—to take place before the introduction of choice on 1 July. Would you have a strong view on that, one way or the other?

Mr Knight—Yes. I would not be able to speak for Coles Myer—and Coles Myer would not have a point of view on that issue—but as an individual with some experience in this area I think that is quite right: it is absolutely critical. I think that quality of education as a generalisation is going to be what makes or breaks a choice of fund as something that is good for the Australian population or at best a waste of money and with little or no outcomes of any value for the population.

Senator HOGG—How well do you believe existing employees understand superannuation within the Coles Myer organisation, given that superannuation has been a feature in the company for everyone for a number of years? Do you have any view?

Mr Knight—Yes I do. I would say that understanding is at two levels. First of all, our employees generally understand that they are in a superannuation fund and that they receive communications from that fund, whether it be REST or LUCRF or the Coles Myer super fund. They receive those communications and their account balances on an annual basis. I think there is certainly that level of understanding. There is a level of understanding that says, ‘Yes. That is the money that is being put aside for my retirement, whenever that might be.’

Beyond that, I think there is very limited understanding, which probably relates to the degree of change in the superannuation industry particularly since 1983, where we now have such complications as preservation and a whole raft of things at different levels such as reasonable benefit limits. I could go on and explain all of those things that have happened which add degrees of complexity—layers and layers of complexities. Beyond the simple understanding, there is a high degree of lack of understanding as to matters of detail.

Senator HOGG—Yet quite a number of these people would now have substantial holdings in superannuation as a result of award superannuation over a period of time. It therefore surprises me that people are not showing a greater interest in something which is obviously fairly important to them in their retirement. It raises with me the concern about the education program that we are considering. If people are not showing the interest now when

they have got a reasonable stake in it, how are we going to generate the interest when it comes down to the matter of choice of fund? Are we going to have to reinvent the wheel to make these people learn what they should have known from the start?

Mr Knight—My personal view is that the education process is cumulative. I think we are in a far better position today than we were in in 1986 when three per cent superannuation first came in, and we will be in a better position again in five years from now.

I think that the people whom you are referring to who have, by now, accumulated substantial balances certainly do recognise the value of what has been put aside for them. I think the key issue that needs to be addressed in some instances is whether that is going to be enough to provide for them in retirement.

For Coles Myer, as I have indicated, we have a very high proportion of young people who stay with us a relatively short period of time. Those people do not have the accumulated balances that you refer to. I think the overriding point is that we do need to shift perceptions about and the understanding of superannuation. One of the things that we have to do is to get young people—people from 18 through to 30-odd—really understanding that they have to take some key decisions in respect of their retirement benefits.

My experience indicates that it is only from about 45, perhaps a bit less, that people start to think about what their superannuation benefits are likely to look like in retirement and they start to think, ‘Have I got enough money?’ For many people, at that stage, it is too late to accumulate the necessary funds. We have to look towards a mind-shift in attitudes so that people in their early 20s understand that they have to provide for their retirement. With our ageing population, profiles changing—I am sure I am preaching to the converted here—there is not going to be enough money in the social security system to fund the retirement that these people would hope for. If we do not achieve that mind-set, we are going to be, as a nation, in strife.

Senator CONROY—Are you able to tell us what the average balance in REST accounts would be? Is it \$5,000 or is it \$7,000?

Mr Knight—For Coles Myer, it would be a lot less, given that we have a lot of people who come in for a period of two or three years and then leave. They might take away \$800 or \$1,000 dollars. So it would be a lot less.

Senator HOGG—With respect to the issue of choice of fund, will that become an industrial relations issue? Will the relevant unions in your industry seek discussions with you to have equal time to talk to what they see as their members and what you see as your employees about that issue? Does it potentially move to that level?

Mr Knight—I will respond and give a personal view, and then Mr Thompson may have an alternative or a complementary point of view. If equal time was requested or our unions wanted to be involved and have some influence in the communication program, I would not see that as a difficulty. At the end of the day, we are interested in doing a good job and if people who represent our employees, through their union movement, want to be involved in that that would be fine by us.

Mr Thompson—I think there is no doubt it will be regarded potentially as an industrial issue, not a negative issue. I think if the company chooses to deal with the matter for the majority of employees through agreements then, in the majority of cases, it will be done through a consultative process that involves both the employer and the unions. That is typically the way in which we have put our agreements together and I do not see this being any different.

CHAIR—Thank you. It has been a very informed presentation.

[3.44 p.m.]

BLAKE, Mr Nick, Industrial Officer, Australian Nursing Federation, 373-375 St Georges Road, North Fitzroy, Victoria 3058

JONES, Mr Denis Michael, Assistant Federal Secretary, Australian Nursing Federation, 373-375 St Georges Road, North Fitzroy, Victoria 3058

CHAIR—Welcome. I think this is your first appearance before the committee, is it?

Mr Jones—Yes, and we welcome the opportunity. I should say at the outset that I am a registered nurse by profession so, when I talk about the nursing work force, I do have a knowledge of it, even though I am now a full-time elected official and have been for some time. I am also a trustee of the HESTA superannuation board, which is of course a joint employer/employee fund.

CHAIR—You might like to give us a bit of further background and also speak to your submission.

Mr Jones—I have been an elected official for some 15 years, firstly in Queensland and in the last three years in the national organisation. I take a particular interest in the nursing home section, which I will allude to in a moment.

With me is Nick Blake, our federal industrial officer. The reason he is here is that we regard superannuation as a condition of employment. We think that it is a fundamental aspect of one's employment. We have the view that we are talking about retirement savings. I think that is the key aspect of this bill and whatever may occur out of choice. We are talking about people's long-term savings and long-term quality of life and how choice is introduced, utilised and scrutinised would have a considerable bearing upon the quality of retirement.

I do not regard choice as a simple matter. I have been on the HESTA superannuation board for the last two years. I have found it necessary to undertake university studies in managerial finance. I have done one semester and I have two more to go. I can only say that it humbles one. It is far more difficult than some of my other previous tertiary studies which were primarily in industrial relations and other aspects of an MBA which I am studying. I do not underestimate the difficulty associated with the investment of people's money, which is what this is about. The vehicle is a matter for discussion in the bill and is a question of choice.

I would wish to emphasise that the nursing work force is, as we allude to in our submission, predominantly women. Most of HESTA's 320,000 members have balances of around \$6,000. There are other categories where there are higher holdings, but that reflects the fact that superannuation has only been accessible to women in particular in real terms for the last decade. I think that emphasises the importance of it. Women usually live longer and

therefore they have a greater interest in some ways in terms of the outcome of how their funds are invested.

The health industry is divided up into the public hospital sector and the private sector when one talks of size, of magnitude, and then there is the nursing home sector. That one will represent a great deal of difficulty for the use of choice. There are some 3,000 facilities, hostels and nursing homes. They are usually small—30-bed size up to maybe 90 beds. They do not have a great number of employees, but a key aspect of the use of choice and the consideration by this committee about choice is that the great percentage of them are part time and casual. They may work in one nursing home or they may work in several to supplement income, and it could also be their second job; they may work in another part of the field. Bringing about an informed choice, which is the emphasis that should be considered, will be particularly difficult in that area.

The other feature of nursing is that it is notorious for high wastage, high turnover and mobility across the sectors, from working in a private hospital to working in a nursing home, then moving across from the private sector into the public sector. Often that is done for personal income, job security or for the purpose of professional advancement. Nurses have to acquire specialised skills in their chosen field or they have to aggregate experience across the range, so they are quite mobile.

It is important therefore that national industry funds remain in the choice menu, should it come about, so that nurses can take their funds with them. It is an interesting aspect of the superannuation industry in my experience that choice does not apply in the state public sector. Most state governments, until recently, have restricted access to a fund to the state government sponsored fund, whether that be accumulation or defined benefit type. It was particularly the case in Queensland in the 1980s and remains so. I believe it is the case in a lot of other states.

If choice is to be considered it should not be restricted. If we are to have choice, and therefore have competition of a type, then it should also apply to state governments. I say that for all the reasons one may want to have choice or competition, but particularly so nurses can take their funds with them.

We have the view that the Industrial Relations Commission should still retain a role and we are not attracted to the idea that awards should be removed from the allowable list. We are also concerned about the prospect that insurance may become a problem of risk to the employee. At the moment insurance for death and disability, in the case of HESTA, applies to an employee on the first day that they start. I understand that, under choice, this may not be the case because insurers will not necessarily underwrite employees to the same extent they are, and I see that has been alluded to in a number of submissions. In essence, those are the issues that we wish to emphasise. We are particularly concerned about the impact on women.

CHAIR—Thank you very much.

Senator ALLISON—I would like you to expand on one point. I am not clear about what you meant by availability at the state government level. Are you saying that choice ought to be available at state government level?

Mr Jones—Yes.

Senator ALLISON—Is that where most of your employees are?

Mr Jones—The public sector, as you would appreciate, is the major employer, and then it moves across. Under the current arrangements, the state government funds exclude any competition or any choice. As I understand it, they certainly did in Queensland, with a fund called GoSuper, and I believe that applies in most other states although I believe Western Australia may have changed that.

So choice, as it stands in a number of states—including the key eastern states, which are major employers—is restricted although there is some movement maybe in the Victorian sector. But it ought to be explicit because it is a barrier to mobility, it is a barrier to choice and it is a barrier to nurses retaining the fund they wish to have choice in—being in the one fund.

It is common, in my experience, for nurses to quite easily be in three or four funds. Of course, some nurses even have personal superannuation from the days before the industry's superannuation came in—so we have got a couple of private funds trailing along with high charges, high exit charges and whatever—and then they may have moved across a couple of sectors as they have progressed. This circumstance certainly applies to the career nurse—a nurse who may be in her 30s or usually higher than that—who holds a middle level position. Such nurses have advanced up and across the sectors and back and forth interstate and intrastate—we have that sort of complication.

Senator ALLISON—So you are not opposed in principle to the choice regime as being proposed?

Mr Jones—Not if it is properly implemented. I would have to qualify that by saying we are not opposed to choice in principle. It is the implementation of it. Is it informed choice? Is the access to informed choice fair? It becomes quite different when choice is offered at a small nursing home on the north coast of New South Wales or western Queensland. It remains to be seen what the controls will be and what supports choice. I have no other response other than to say that this is a matter of some seriousness.

Senator ALLISON—Have you had a chance to think about what sort of minimum information would be required to fulfil that requirement for informed choice?

Mr Jones—I did briefly allude in my submission to the sorts of things that I thought an employee ought to know. Certainly they ought to be able to understand what the nature of a key feature statement ought to be and have some idea of what types of investment might be offered because, as you know, it varies across the scale of risk—if it is all in cash or bonds, it is very safe, and what if it moves up.

So they should be able to understand what a fund may offer in terms of the types of investment. They should have some idea as to how they may hold a fund accountable for performance—what rights they have to say, ‘We are not getting good performance.’ There is the menu of choice and what it means. I do not know that that is necessarily so complicated, but it is going to take a few hours and it may have to be repeated because the field is, of necessity, complex, but I do not know how you can avoid that.

The other point we make in our submission is that choice changes the current system where the trustees bear the primary responsibility. It has now been placed, to a large extent, on the individual to exercise what the investment return might be. Admittedly, a fund will still have trustees but they are actually selecting the fund. At the moment, it is somewhat different. I think that changes the emphasis.

CHAIR—Given that there is a high turnover and that people are moving across sectors, from one hospital to another and that sort of thing, will you be circularising all your members to tell them about the choices that will be offered and also so that people coming into it after 1 July are aware of this concept of choice? How much will that cost you in up-front fees?

Mr Jones—If you are talking from the point of view of the federation, it has a national journal that it produces monthly, *The Australian Nursing Federation*. That has a circulation of some 56,000. There are also two state journals.

CHAIR—So you will put it in your journal?

Mr Jones—Because I am representing the Nursing Federation, we would clearly outline, as best we could, what the choice meant, if it comes in from 1 July this year. We would think the logistics would be very formidable. But, nonetheless, we would use the journal and, of course, HESTA would, I am sure, do the same as any other industry superannuation fund would do. You would then have to invite members to seek further information because it is not possible to encapsulate everything in a journal article. People just do not have the attention.

CHAIR—Because a lot of people would not necessarily read journals, because of the time constraints and a lot of people have families, would it not be better to have a direct mail-out to all?

Mr Jones—That would be a major impost on the super fund and the union. In our case, we would have to utilise the journal. We could not do it as a separate event because the cost would be prohibitive. There would have to be 110,000 or you would have to double that probably. So it would be \$200,000. It would be a major impost on our union and a superannuation fund of 300,000-odd. Then you would want to reinforce it so it would present some real difficulties in terms of cost and impact.

CHAIR—What about the commencement date then, given that you have to get it into a journal? You have about a month’s delay between the time you write your articles and the time the journal is printed and then it has got to get out by 1 July.

Mr Jones—If this were to become legislation in April or May, we would never be able to make that 1 July deadline. We could not because the journal is always at least a month in advance.

CHAIR—That is right.

Mr Jones—It would simply not be possible to utilise the existing communication vehicle such as the journal.

CHAIR—Has the union got any sort of program in place for notifying your members through your journal? Have you worked out a logistics program of the dates that you have got to get information into peoples' hands so that if they take on a new job they are aware of a few of the pitfalls and advantages of going one way or the other?

Mr Jones—No, we have not because what we have before us is still a bill and some related legislation. We want to see the final outcome before we respond. From the moment we saw the final legislation, in the best circumstances, there would be a lag of about three months to do it responsibly. Even though the superannuation funds will do it of necessity, the union has to be very careful about what it relays to its members too because it is still has a contractual obligation to its members to inform them accurately. We would need time too.

CHAIR—Coles Myer have indicated that they are going to have some logistical problems because of their large numbers and the sorts of people who work there.

Mr Jones—I listened to the Coles Myer presentation. If it presents problems for Coles Myer with the considerable resources that they have at their behest—their technology, their current systems, the high levels of staff, personnel, and a centralised unit that deals with superannuation; they say they do their internal administration—then the position is much more difficult for a union which, of course, is limited, essentially, to its membership subscriptions. There is a major difference in capacity. So if it is difficult for them, it is even more difficult for us.

Senator ALLISON—Are you saying that you would wait for the employer to establish their choice of four and then you would give a view about that to your members?

Mr Jones—No, what I meant was that, because it is a bill and the final content is not settled, we need to wait for that. We obviously have a preferred position and, to a large extent, that is obviously industry funds. We would want to inform our members from that perspective and then we would move on to say what choice would mean if they were to do other things.

Senator ALLISON—Yes, that is my point. Before you were in a position to say the industry fund is still the one for you, would you feel obliged to properly examine the other options?

Mr Jones—We would not be passive about it.

Senator ALLISON—What are your legal obligations in this respect? If you advocate an industry fund which does not perform so well as one of the other options, does that leave you open for some criticism at least?

Mr Jones—It is a very interesting point. I wish I was a lawyer. If you are elected to the union, the members can take it out on you every four years. It is a bit like a senator or a member of the House of Reps—the electorate is about the same size as that for members of the House of Representatives. The first obligation is to lay out our policy position, which is industry funds, and the reasons. But we would be obliged to spell out in factual detail what the other choices would mean. We would be particularly interested in making sure that the members knew, if they took a choice other than the industry fund, how they could make sure their investment or their retirement savings were viable. I would take that view because I feel, as a trustee, that investment performance is a key aspect and I would try to steer them that way.

Senator ALLISON—If you found that one of the other options offered a better return, lower fees or whatever, would that put you in a difficult situation?

Mr Jones—As things stand, I think the industry funds are essentially holding their own. I am not aware of a great deal of difference on that point. It is fairly well known that it is very difficult to try to do cross-comparisons between corporate funds, retail funds and industry funds to get a proper measurement because corporate funds, or other types such as master trusts, have the problem measuring the entry fees, exit fees and charges.

Senator ALLISON—So if you have the problem—

Mr Jones—Yes, that is true. You could not say that, other than, say, HESTA, outside industry funds might perform better. ASFA and AISTI have started to do work on cross-comparisons but the methodology is not well formed at this stage so it does present some difficulties.

Senator ALLISON—Are you suggesting that the disclosure requirements, whatever they are, are not going to be especially accurate?

Mr Jones—Let us say an industry fund had a return on one of its choices, and it was 20 per cent—for example, Tyndall's have a number of superannuation funds and anybody can be in those. They will turn up in the *Financial Review* at 26 per cent, Tyndall's Australian equity. But what is loaded into that, in terms of the final return to the investor, is very difficult to cross-compare. There are those problems. Measuring performance is very difficult.

Senator ALLISON—What does that leave us to call for in the disclosure requirements?

Mr Jones—I think you will have to talk to those who base their lives around trying to work out the question of comparable performance. I am afraid that I still have a little way to travel on that.

Senator HOGG—If you cannot figure it out, what is the ordinary punter's chance of figuring it out?

Mr Jones—I feel for them. The point of my university research is to try and find out how hard it is to try and get to that question—what determines performance. I am still working at that, and there are others that are more capable than me. Yes, it has got to be very difficult because the measures are different, the methodology is different. I feel very uncomfortable about elaborating on that. I think you would have to get expert advice.

CHAIR—I was thinking maybe the union should get some legal advice. If it is going to be in the position of making suggestions about one fund compared with another, as I read the law at the moment you would probably need to have a brokers certificate or something like that.

Mr Jones—A dealers licence.

CHAIR—A dealers licence, sorry. Therefore it does have some pretty wide ramifications because it could quite easily be in breach of another statute. I think that is possibly something that we want to take on board ourselves because the employer is protected provided he acts within those parameters and is not negligent. Some legal opinion differs a little bit but, in terms of the union that has obviously got a vested interest, it is maybe a matter that we might have to give some consideration to.

Senator ALLISON—Today we have heard a number of witnesses suggest that the government needs to come out on an all-out campaign on television and in the media generally in order to set the scene for well-informed employees. Given that there is all of this doubt about comparing apples with apples, so to speak, would you have any concerns about a government funded and government generated program, given the ideology that is behind this legislation?

Mr Jones—It again depends on what they seek to do. If they seek to steer people to where they can get good advice or to help them to indicate that there is some well-balanced education being conducted by one of the statutory authorities that has an interest in superannuation, that is well and good. If it has an emphasis on or seeks to close choice of fund in a particular way, then I think that is particularly unhelpful. I think you can raise awareness with TV and radio advertisements, but you cannot substitute it for people having the right information in front of them and attending or having the opportunity to attend either workplace training or education sessions or to go to some point where courses are being conducted. There is no substitute for people having information and being able to work through and ask questions.

Senator ALLISON—Whose responsibility is that, in your view?

Mr Jones—If government is bringing in a regime of choice which spans a whole range of investment forms for one's superannuation contribution, then it very heavily rests on a government because they are the ones who are changing the structure quite significantly, so I would have thought it starts with them. You have got to start there because they are the ones

seeking to change the legislation, the structure, the mechanisms and the responsibilities to shift it. So one would think that they would have to bear a fair bit of the responsibility.

Senator ALLISON—If this committee were to recommend to the government some guidelines for such an advertising campaign—and this may be a question for you to think about and come back to the committee—what sorts of things would you like to see in those guidelines?

Mr Jones—On the assumption that the legislation takes the same form as it is now, then the first thing is to clearly explain what is meant by the legislation; what the menu is of choice; where people can get the information—perhaps from their employer, if the employer is going to be a vehicle for that; what are the alternative avenues for getting sound information, and where they can go if they wish to have some form of interactive education on the issue. There are plenty of cases where that happens—the stock market does it, the ASC does it to some extent, and so on. We are happy to come and consider that a bit more deeply in terms of how it might apply to our members. We are rather anxious about that aspect.

Senator HOGG—In your submission you raise the fact that you are uncertain as to whether the proposed legislation will enable nurses to remain in their national based industry fund. Could you expand on that for me? Why?

Mr Jones—Currently, it is not the only fund to have choice. The main one is HESTA. It was set up in the mid-1980s for that primary purpose—because of the mobility of nurses and the nature of the nursing work force. It was based around the federation as it was then and two of the other main state nurses unions in Queensland and New South Wales. The awards stipulate HESTA as either the fund or one of a number of funds. In Queensland in many of the private sector awards there are usually two or three funds.

Senator HOGG—Was that an arbitrated decision?

Mr Jones—No. We negotiated that. In most circumstances from memory—certainly in Queensland—employers had a couple of preferred funds. Catholics, for instance, in Mater hospitals had an Australian Catholic health fund. We, of course, said, ‘Fine, but we want HESTA there too.’ We agreed that the choice would be informed, and there often were up to three or four depending on the award. HESTA is usually, or is, the nominated fund in all federal awards.

Senator HOGG—The other question relates to one of the recommendations you have made in your submission where you refer to the role of the Australian Industrial Relations Commission in resolving disputes on superannuation. In another piece of legislation, if superannuation is no longer an allowable matter, then where do you see disputes in respect of superannuation being resolved?

Mr Jones—I might let the federal industrial officer answer that. He might deal with that with a little more exactitude than I could.

Mr Blake—We have always maintained the view that occupational superannuation should be seen as being part of the award safety net, other than for a very small minority of

award-free employees or employees who earn less than a set amount per month. It is a universal entitlement in federal and state awards. We maintain the view that that should continue.

It is somewhat unclear in respect of the nursing profession where there is, in the Workplace Relations Act, the ability for the commission to continue paid rates award structures for those people such as nurses who have been covered by paid rates awards and cannot reach agreements. We expect, as Denis Jones has pointed out earlier, problems may arise in the aged care sector where we do not have certified agreements or collective agreements, and we do not envisage we will have for some time. The issue of choice, we believe, will raise industrial problems in those types of workplaces.

Senator HOGG—If it is not an allowable industrial matter, where do you see the issue being resolved, or does it just hang around out there unresolvable?

Mr Blake—It does in respect of seeking the commission to make an order binding the employer or the employee to do so in relation to superannuation, but certainly we envisage that, in respect of the disputes and grievance procedures currently in awards, the issue of occupational superannuation will become an issue that we will be seeking the commission's assistance on through its conciliation powers.

CHAIR—Thank you very much. You have certainly brought a couple of new perspectives to the committee's attention. Thank you very much for that.

Mr Jones—Thank you. We will take note of a couple of things that we should get back to you on. We appreciate the opportunity to assist the Senate.

[4.16 p.m.]

COOK, Mr Geoffrey, President, Australian Institute of Superannuation Trustees, Level 12, 313 Latrobe Street, Melbourne, Victoria 3000

GIBBS, Mr Stephen Phillip, Executive Officer, Australian Institute of Superannuation Trustees, Level 12, 313 Latrobe Street, Melbourne, Victoria 3000

CHAIR—May I take this opportunity of welcoming the representatives from the Australian Institute of Superannuation Trustees. Thank you very much for responding to our inquiry and for your submission. It is very important. I would like to take this opportunity of congratulating the institute on the quality of the educational material that it distributes to the members. It has obviously been of a high standard and very invaluable to trustees. No doubt you will take a similar high profile role in relation to educating people about choice. I will now give you the floor if you will tell us how you are going to do it.

Mr Cook—What I would like to do is to talk for perhaps five or six minutes and then hand over to my colleague Steve Gibbs to also talk for that period of time, leaving the remaining time available for questions. In particular, we would like to focus on five major issues affecting trustees, because that is who we are representing today.

CHAIR—We are interested in timing, too—the timing of the introduction and any particular problems. I am referring to the 1 July timing

Mr Cook—I will leave Mr Gibbs to pick that one up. While I give the initial comments, he can meet some of these issues. As far as my own background is concerned, I will not go into it in detail except to say that in the superannuation field I have served for periods as chairman of the John Holland Fund in the corporate area, the SEC Fund in the public sector area and the Telstra Fund. I was foundation director of the C+Bus scheme, so I know the industry superannuation schemes very well, having served on them for some 12 years.

I have subsequently become the president of the Institute of Superannuation Trustees. That institute has almost 1,000 trustee members. It is bipartisan in its approach, similar to the committee in front of us today. We—as we represent the trustees and the trustees in turn represent the members—see ourselves expressing the views of some five million members for whom we are a mouthpiece. We have members who belong to some 350 funds. All the industry funds are represented. Most of the large corporate funds are represented and most of the public service funds, so we have a very strong interest in the outcome of the proceedings of this committee.

There are five points, as I said earlier, that we would like to make regarding trustees. The first is the education of members. I must point out that a very large number of our members have great difficulty in understanding the issues surrounding superannuation today. It has become extremely confusing to them. They have to try to get their minds around the risk and return equation; they have to look at the fees and commissions. Indeed, I saw a submission from a financial adviser to an individual the other day and, frankly, you certainly needed a tertiary qualification to understand how those fees were arrived at. It has become incredibly complex and we should not underestimate that by any means. There is a multicul-

tural aspect and the question of language. Coming as I do out of the construction industry, I am well aware of the fact that 15 per cent of the members who work in the construction industry cannot read or write in English. That is the start of the sort of communication problem that we have. The sheer complexity of it, I feel, is quite mind-boggling.

There is the problem of location. In a construction industry, how do we communicate with people who come onto a project and are building, for example, a bridge on the Finke River in the Northern Territory? How do we get information to them? How do we get it back? Again, those practical issues, I feel, are all too often forgotten, or certainly are not given enough priority, by the people who are framing the legislation.

I believe to overcome this problem will require a huge training program. There is certainly in my view no guarantee that such a program will be successful. It worries me when people say, 'Oh, yes, we can do this on television.' Television is just a mere snapshot of what they require. You can only get through the basic concept that there is a lot more work to be done. The first point is that this education is a very major problem and I think it is a high risk. I think the chance of success in it is not high but the amount of money you have to invest in it is enormous.

The second area is the comparative information area where we are looking at things like key feature statements. They have got to be very clear and precise and as you get into examining the detail of this—and perhaps Steve will touch on that; he is much more familiar with it than I am—it becomes more and more complex.

We have to look at things over what horizon. Do we look at returns? Typically many organisations select a three-month period which is on the part of the curve that best suits them but we in the industry believe that the period needs to be a minimum of three years and probably five years because we are talking of lifetime investments.

The third area I would like to touch on is the cost to members. After all, the costs you are talking about in so many of these things affecting superannuation are not coming out of the public purse but coming out of the purse and private savings of our members. All the time we see more and more costs being put into this area.

The additional costs I will identify will be marketing. The marketing costs are going to go up very materially. For example, in the industry schemes in the past they have been able to integrate it with a lot of the other correspondence that goes to the members. Now they will have to go out and institute major marketing campaigns and these, if you know much about marketing, have to be very expensive to be effective.

There is a question of transfer of members and the regular transfer that will take place—an additional administrative cost. And, as was touched on in the previous submission in front of you, there are the legal costs and the legal aspects that will be involved. All of these add up to more and more dollars which are going to be paid by our members out there.

In my view the implication that costs are going to drop is totally wrong. My view, and certainly the view of most of our members, is that costs are going to rise. The arrangements are going to be to the disadvantage of those members. I believe, to be honest with you, that

much of the fiddling that goes on is perhaps to satisfy political ideology. There is a high risk to members in making the wrong choice and we only have to look at the experiences, of which you are well aware, that took place in England of very slick salesmen using sophisticated sales techniques to persuade people to change from one fund to another. The costs associated with this are significant but they can often be persuaded to go from a better fund to a worse fund. Indeed, I must say I have some insight into that because amongst some of my other roles I am the deputy chairman of the Over 50's Friendly Society where we do sell investment products so I am aware of some of the techniques that take place in this area and they do disturb me. I am concerned—and our members, and the members that they in turn represent—are very concerned about this whole question of making the wrong choice.

The final point I would like to raise is the question of insurance. I have seen very little publicity in this area but the whole area of insurance, I think, is a minefield which has hardly been touched upon. One of the great achievements, I believe, of the superannuation funds today, and particularly the industry superannuation funds, is the insurance they have been able to provide for death and disability cover.

I suspect that none of you have had the unfortunate experience that I have had of having to go to a home of an individual and advise them that the wage earner has been killed or seriously injured. That is certainly a very sobering experience. These insurance funds are one of the great hidden achievements that have not been recognised by the bulk of the population. I think it is a key area which we should be looking at.

I have been involved with C+Bus, where we just changed insurer, from one insurer to another. That was a minefield in itself—just changing from one insurer to another. Who took the responsibility for particular accidents that took place some time ago but where the symptoms did not develop until after the insurer had changed? Those are the sorts of issues that come up in changing from one fund to another. I can just imagine how the problems we had in that fund would be magnified many times over in the concept of choice of funds that is presently being floated around.

Those are just a few of the comments I would like to make concerning the issues which are concerning our trustees. I would now like Steve to perhaps pick up on a few of those points in detail. Thank you.

CHAIR—Would you like questions now, or after Mr Gibbs's statement?

Mr Cook—I would suggest we take questions after.

CHAIR—Whatever is best for you.

Mr Gibbs—I suggest we take questions together and we will field them as we think fit. My background is that I am the former trustee of a small industry fund. I have been the fund secretary of an in-house fund. I am a former union official and I am also a non-executive director of Boeing Australia and a couple of its subsidiaries. So I have seen superannuation from all sides of the fence, so to speak.

I will just pick up on a couple of things and not take much of your valuable time. In terms of the education campaign, as our submission says—and I would like to highlight this—it is very important that the campaign promote choice and understanding of superannuation and not change. I think there will be a great disservice if people are given to believe that they have to change in this environment—and it is a fine line between promoting understanding and what choice is about, and being seen to promote change.

We are very concerned as well with a view that people must get financial advice. With the greatest respect to financial advisers, I cannot imagine many of them telling people that they are quite okay where they are, thanks very much, and that they do not need to make any change, particularly when we know that the great bulk of any income that financial advisers receive is by way of commissions and the like from products that their clients ultimately take up. They are two key issues in the area of an education campaign.

Also, as we say in the submission, understandably—and we do not wish to detract from this—there will be a great deal of emphasis on a campaign leading up to the introduction of choice. If choice is going to happen, we believe that a medium- and longer-term view should be taken as well. We would be advocating that steps be taken to see if superannuation and an understanding of the basic concepts of superannuation, of compounding and of the long-term nature of the products, can be introduced into the school system, perhaps at year 10 in conjunction with the introduction of the world of work and work experience.

As a little plug for us, we have already worked in Victoria and developed some very good materials for teachers for the VCE year accounting, for students to understand superannuation and to be able to interact, via software, to gain an understanding of the impact of different levels of risk and different levels of fees and charges, and to understand how much money they might need to put away to gain a reasonable retirement income. That is very possible and we recommend that the government seek discussions with the states to try to develop the curriculum in those areas.

In terms of disclosure, we say that there should be consistent and common disclosure rules for all. At the moment there are different disclosure rules already. Retirement savings accounts have a different basic disclosure requirement from, for example, a public offer fund. With a public offer fund, the trustees are required to disclose everything that a person reasonably needs to understand the main features of the fund, its financial condition and investment performance.

An RSA provider is not under any general requirement to disclose all information that a person would reasonably need to know about the RSA. So there are already two different standards of disclosure. A discussion paper earlier this year from the ISC indicates that their view is that there should be a third standard for what are now basic employer sponsored superannuation funds that might appear on a limited choice menu. They go further and say that excluded funds should not have any disclosure requirements at all.

We can see that it is not inconceivable that an individual might be faced with the four choices under the limited choice option—an RSA, a public offer fund, another fund, say, an industry fund, and even an excluded fund—and every one of those would be subject to a different disclosure regime. How can an individual hope to validly and properly compare

them when each of the disclosure regimes that the funds are under is different to start with, let alone the idea that there are no standards at all for disclosing investment returns and fees and charges?

We all know there are umpteen different ways that one can calculate a return, depending on the time period, on whether it is time weighted or money weighted, on whether it is net of all fees and charges, or whatever—the permutations go on and on. So we are advocating that, before choice is introduced, there should be a total review of disclosure requirements, there should be one set of disclosure requirements that are common to all, and they should be clear and concise.

CHAIR—That is in the key features statement?

Mr Gibbs—The key features statement—but the rules of what goes in the key features statement should be common to all and not vary as between them.

We make the point in the submission that we think there are what I might call technical defects, particularly in the limited choice provisions of the bill. There is no requirement for the default fund to be one of the options. There is no requirement where there is one fund in a workplace now for that fund to be even one of the options—no requirement at all. Of course, a person can choose to stay where they are, if they are an existing employee, because the current fund is the default fund. But it seems a funny way to introduce choice—you can choose to stay where you are by not making a choice at all.

Perhaps most importantly, what we advocate is that a way to overcome many of the problems that have been raised in terms of the employer responsibilities and the administrative burden, and in terms of the potential for people to be mis-sold products or to be convinced to change when they should not, is to perhaps have an initial step where an employee is asked, ‘Do you want to change? Do you want a choice?’ If you do not, then nothing happens. If you do, then the options that are currently in the bill are available to the employer to then go forward. This will overcome the problem of a whole lot of people knocking on employees’ doors, so to speak, and trying to convince them to do something that they really do not feel any need to do at all.

Finally, in terms of the commencement date, as we say in the submission we think that for there to be anything like an effective public education campaign, anything like the time for all of the people involved in the industry to put in place the procedures and the systems necessary, and anything like the time to have the disclosure rules properly reviewed and implemented, if the date is 1 July this year, and even if legislation is passed in April, then there is just nowhere near enough time. It is a disaster waiting to happen, in our view. There should be a minimum period of 12 months from the carriage of the legislation to its implementation, if not longer, to get all of those matters properly in place for choice to work, if that is to be the regime.

CHAIR—Thank you.

Mr Gibbs—Thank you. I probably took longer than I should have. I apologise.

CHAIR—No, that was very good. Mr Cook, if you were able to put on your C+Bus hat, do you think many of your members would be exercising choice to get out of the industry fund?

Mr Cook—Bear in mind that I stepped down as a director of C+Bus, after 12 years, some 15 months ago so I am not in direct contact with the members of that particular fund, as I used to be. But my view is that there would be a percentage. I do not believe it would be a large percentage because it has been a very well performing fund and I believe the members as a whole are very satisfied with it, but I have no doubt there would be a few members who, for particular personal reasons, may wish to change.

CHAIR—Wouldn't C+Bus be circularising its members, saying, 'Think very carefully before you exercise choice'?

Mr Cook—Yes; I am sure that the funds will do exactly that; they will be getting the message across. That will be one form of communication. It is one form of their marketing plan. Their marketing strategy obviously will be to hold as many of the members as they can. I believe, in their case, they have to do no more than look at their record extending back over some 14 years. But I still believe there will always be a percentage of people who, for other reasons, may wish to change. Whether that is two per cent or 10 per cent I would not know. I would be extremely surprised if, in that case, it was as high as 10 per cent, but I believe there would be some.

CHAIR—I asked the previous witness: if a union gives advice, does that put it in a position of requiring a dealer's licence or a financial adviser's licence? What is your answer?

Mr Cook—If it is going to give financial advice as such, then yes, it would have to have a dealer's licence to be able to advise on that.

CHAIR—They are not easy to procure though, are they?

Mr Cook—Why?

CHAIR—You have got to have experience in the industry.

Mr Cook—I had one.

CHAIR—You have one?

Mr Cook—I had one, but I have let it lapse.

CHAIR—Would that be an impediment?

Mr Cook—Obviously, there are going to be a number of legal impediments.

CHAIR—There is a crossover between the SIS rules and the ASC requirements here. I was just trying to get your reaction to the possible interaction.

Mr Cook—My background is in construction. I am not a lawyer, but I could certainly see in a number of these areas a number of legal obstacles in front of us in invoking the option of choice.

CHAIR—I pointed out to the previous witness that there are protections under this proposed legislation for employers, but for nobody else.

Mr Cook—Of course, our trustees are extremely concerned that every time there is a change—

CHAIR—It happens before the trustees come into it though, doesn't it?

Mr Cook—then invariably it does increase in some way the risks that they are carrying. You have got to bear in mind that the majority of these trustees are doing it part time with very little reward or remuneration and yet, continually, the risks that are being imposed on them are increasing.

CHAIR—Did you attend the ATO seminar in January?

Mr Cook—Steve attended on behalf of the AIST.

CHAIR—Mr Gibbs, you might be able to help the committee. Was there a suggestion there that maybe the tax office was interested in separating superannuation from life cover?

Mr Gibbs—It may have been alluded to at the seminar. The seminar was really about communication of superannuation information, but I have heard that mentioned on a number of occasions in the recent past.

CHAIR—Would you spell that out?

Mr Gibbs—Frankly, I do not know how it is proposed to work. If what one is interested in is some sort of universal death and disability coverage, if it is going to be divorced from superannuation, then I can only see perhaps two or three options. One option would be the government providing it. A second option would be all employers being made to provide it and therefore having to have some requirement. As for the third option, there could be a mixture where there is some central scheme to which employers pay a premium. I cannot see, as a concept, how you could effect a universal death and disability coverage any other way.

Mr Cook—I would like to make the comment, 'If it ain't broke, why fix it?' In fact, the system has settled down well. It has taken a long time, but overall the existing system is working very well now. It seems to me that another change will add more confusion to what we have at the moment. The one thing this industry needs is some stability brought into it, and it is not what we are getting from successive governments.

CHAIR—Do you see any virtue, in a situation of complete flexibility or unlimited choice, in the need to protect the members, for example, by limiting the amount of exit charges, or can funds get around that?

Mr Gibbs—I do not know how they would get around it if it was proscribed. If the levying of exit charges was proscribed, I do not know how they would get around it. Certainly, if there is unlimited choice and also the unfettered ability to move money from one fund to another as you choose, not just future contributions but past years—

CHAIR—To overcome the English experience.

Mr Gibbs—Yes, and exit charges would certainly be one way of doing it. But even if exit charges were outlawed, the ability for a product, a fund or a private provider to make it very advantageous for a salesperson to convince somebody to shift by way of up-front commissions and trailing commissions would still be possible.

My own view is that, if you want to avoid the UK experience, you simply outlaw commissions; you make it illegal for commissions to be paid for the sale of compulsory superannuation. Commissions are okay for optional personal contributions but, in terms of somebody's superannuation guarantee payments, if you want to be sure of avoiding the UK problem you simply outlaw the payment of commissions in those circumstances.

Senator HOGG—In respect of costs, you have indicated that there is a cost to members. Do you know how that will impact on the return to members on an interim basis, given that there will be substantial costs in meeting the change, but also in the longer term as funds strive to retain members?

Mr Cook—I am not aware of any precise estimates that have been done on that. However, knowing what is involved in the sale of products in other areas, and putting my Over-50s Friendly Society hat on, I could see that it could cost as much as half a per cent per annum. Steve, I do not know whether you have any more precise information than that. That figure comes from what is happening in industry at the moment and from what I know some of the friendly societies, for example, are paying on marketing.

Mr Gibbs—I do not have any numbers that I can quote to you. It would be very hard to argue against the proposition that there will be increased costs. Everyone will be forced to increase costs. Trustees have come to me and said, 'How can we spend our existing members' money in promoting a product?' My response is, 'Yes, that is a very valid question, but if you don't then you risk losing members and your cost per member will rise anyway. You will have a lower membership base over which to spread all of the costs of operating your fund.' They are damned if they do and damned if they do not.

Senator HOGG—Are marketing costs something that should be reflected in the key feature statements?

Mr Gibbs—Marketing costs can be reflected in a management expense ratio along with any other fund expense. Certainly, there are those sorts of expenses that members ought to know about.

Senator HOGG—The argument has been put to us that costs will be reduced as a result of the competition that will come about by opening up choice of fund. Your evidence seems to contradict that.

Mr Cook—I would certainly contradict that because you have to ask, ‘Where are those cost savings going to come from?’ Take a fund like C+Bus which employs a total of four staff. Although it is running a fund of some \$2 billion, it has an absolute minimum staff level. The rest of its services are contracted out where they get prices for the administration of fund management. They would probably have, at the moment, something like 20 to 24 individual fund managers where, I can assure you, the competition for those funds is absolutely intense.

For example, with the index fund that they run, the fees for that are eight percentage points. That is a very, very low fee. I cannot see the fee dropping very much below that figure. People say, ‘Because of the competition it is going to save money’, but competition is already out there among the administrators. They will cut each other’s throats. It is very much amongst the fund managers. There is intense competition there.

I say to these people, ‘Where are the savings to come from?’ None of them can tell me. I can tell you where the money is going to go, where additional costs will come in, but I cannot see where the savings are coming from.

Mr Gibbs—Can I add to that?

Senator HOGG—Yes.

Mr Gibbs—Perhaps it is something I should have mentioned earlier. One of the flaws, particularly in the limited choice option, is that there is no requirement on the employer to offer effective choice. I could devise tomorrow four funds that would meet those requirements, and they could all be very much the same. They could all have the same investment strategy. They could all have the same cost structure. They could all be very similar products yet they could meet the RSA, public offer fund or industry fund requirements. Do not forget: an industry fund is defined in a fairly broad way.

It is not in the legislation but the announcement was that a single provider will be able to provide all four choices. When you get that you get the potential where the individual has no choice at all. Therefore, where is the competition when there is no effective choosing between different investment strategies, different fees and charges and so on?

Senator HOGG—So what should the real purpose of choice be: to give people in a range of age brackets a choice of investment strategy, so to speak, so that you have a volatile fund for those who are young and who have a long way to retirement, whereas those at the other end, who are near retirement, can go into something a lot more stable? Is that the sort of proposition you are putting forward?

Mr Gibbs—Young people might choose—and it might not be seen to be in their interest—a less risky fund because that is what they are comfortable with. I am really saying that, if choice is going to be introduced, real options ought to be available to people so that they can choose a low risk fund or a high risk fund—and there might be one or two in the middle—so that at least they can make up their own mind about what it is, rather than having all the choices look alike. Of course, it is the same with fees and charges, because the difference in the fees and charges of some products and funds is quite enormous.

Mr Cook—If I can add to those comments, certainly, we fully support the option of investment choice within the funds, and that has already been picked up by most of the funds. As the funds, particularly the industry funds, are maturing, the majority of them are now offering investment choice. You can go from a low risk secure fund to a high risk growth fund. The funds themselves are doing that, so the marketplace is responding to it.

Senator HOGG—Just to pick up on the other comment you made about the definition of industry based funds being too wide, do you have a preferred definition as to what it should be in the legislation?

Mr Gibbs—The submission indicates—and I know you have heard from the Industry Funds Forum—that what we are saying is very much in line with what the Industry Funds Forum is saying: the two criteria should be equal representation and not for profit. If those two criteria are in the definition—

Senator HOGG—And they said two or more employers.

Mr Gibbs—Sorry, and two or more employers—that is right.

Senator HOGG—Just on another tack, briefly, what do you see as being the minimum information that employees would require to make an informed choice? It seems a fairly wide-ranging question, but what period of time would they need to have available to them to assimilate the information that has been given to them?

Mr Gibbs—I will respond off the top of my head, but I would like to take the opportunity to respond in writing to that question, if I may.

Senator HOGG—Yes, if you will take that on notice I would be pleased. This gets down to the implementation period that you have already mentioned, so that is an important issue.

Mr Gibbs—Can I just briefly say that there are things like the investment strategy in the fund; returns over a rolling five-year period calculated in accordance with some determined method; all fees and charges; the nature of the fund itself—its structure; whether it is managed by trustees, representative trustees or by a core profit company; and whether there is death and disability insurance and, if there is, what is the cost, what are the benefits, what are the qualifying periods and when might it cease. They are, off the top of my head, the five or six key things, but if you want me to respond—which I think I should—in a very considered way, I would prefer to do that in writing.

Senator HOGG—All right. What period of time is necessary so that people can make an informed choice? It is one thing to put it on a piece of paper, thrust it under a person's nose and then say, 'Look, there you are. Sniff that and make your choice.'

Mr Gibbs—I think there has to be a reasonable period of time. I am not one that really says that 28 days is necessarily too short. The problem with having it much longer is that you have this limbo situation and there is always a trade-off between too much time and

having somebody effectively in limbo, particularly for death and disability cover. That is a real problem.

CHAIR—There is a bit too much information. Could you get all this in under two pages?

Mr Gibbs—In my view there is no way you can get the information necessary in under two pages. I would love to think there was.

Senator ALLISON—What about the 30-second TV ad?

Mr Gibbs—All I can say about the 30-second TV ad is to be very careful. I cannot imagine what else it can say.

Senator HOGG—How do you do it for a large proportion of the population who suffer literacy and numeracy problems? We heard this morning that, in an ABS survey done in 1996, something like 48 per cent of the population are in level 1 or level 2, which are the lowest levels of literacy and numeracy, as opposed to level 5? Even if that 48 per cent figure is too high, even if it is 10 per cent out, you are still looking at over a third of the population. How do we deal with those people?

Mr Gibbs—I frankly do not know. I do not have the answer to that. I think it is going to be extremely difficult to deal with that. If it is going to happen, then a compulsory cooling off period may be something that ought to be looked at. I know it applies now in the public offer fund for someone who signs up in the heat of the moment or something and then wishes they had not, having got more information. I think there ought to be some ability for people to—

CHAIR—How long should that be; 14 days?

Mr Gibbs—I would have thought at least that, Senator. But it is something that might be worth this committee's consideration. Again, you will inevitably have the sales people there; there is nothing more certain in our mind. When somebody else makes money out of somebody changing funds, people will be convinced to change funds when they should not—inevitably, in my view. There has to be some mechanism so that can be addressed.

Mr Cook—Just to pick up on that point you are asking: on the question of timing, one of the factors you need to take into account—certainly coming from my construction background—is the difficulty of getting the information in the hands of the individual. Take the case of the fettle on a railway line at the back of Port Hedland out on a railway camp. Just getting the information to him can well take a week or 10 days and getting the information back can take another week. You are thinking that he has the information on day 1 and he has to have his answer on day 28, but in his case this is probably reduced to only 10 days, if you look at the 28-day horizon. So there is an issue there which I think needs to be carefully considered.

Senator ALLISON—Where, in your view, will employers get their advice from?

Mr Gibbs—That is a very hard question to answer in a definitive way because I think there will be a range of sources of information to employers. Clearly, they will get some information from employer organisations. I would have thought it would be more likely that they will get their advice from a service provider who comes along and says, ‘Don’t worry about it. We’ll do it all for you. We’ll take it off your hands. We’ll make sure there is no responsibility left for you. Sign here.’ I would have thought a lot of employers would say, ‘Quickly, where do I sign? Just take it off my hands. I don’t want to worry about it. It’s not my business.’

CHAIR—That will cost a bit of money though.

Senator ALLISON—So what are the implications?

Mr Gibbs—It will indeed cost money. However, I am not an employer and have not been one, but I would have thought a lot of employers would be prepared to pay just to get rid of the burden.

Mr Cook—If I could put my employer hat on—I come very much from the employers’ side of the industry—I would have to agree with Steve. I think what is going to happen is that many employers will review the whole approach to superannuation and say, ‘With this employer choice the whole issue is getting harder and harder; I’m going to wind up the company fund; I’m going to get a service provider, and I will outsource.’ This is what industry are doing with everything they can these days—outsourcing services. I think they will outsource it, as they do most other services.

Senator ALLISON—Is this another level of costs that will be superimposed on employers, in this case?

Mr Cook—That would be a cost on the employer, not on—

Senator ALLISON—You will have a whole level of consultants or other people who will contract to do this work on behalf of employees.

Senator HOGG—Create a new industry.

Senator ALLISON—A new industry, new employment. Mr Cook, you said earlier that you thought there was a need for a total review of disclosure requirements. Would you just expand on that. Do you think that is necessary here and now, or at what stage in our deliberations should this review take place?

Mr Cook—I think it was Steve who made that comment.

Mr Gibbs—My view is that it would be a very bad move to introduce such a fundamental change of choice with different disclosure requirements and just adding to them, and then to have a review and potentially change them all, down the track. I think it is going to be hard enough now, but it will be worse if you tack on a few extra disclosure requirements. There is no requirement now for a member of a standard employer sponsored fund to receive information before they become a member; there is after, but with a choice they will have to

get it before. There will then have to be new disclosure requirements. I am not advocating that the current disclosure requirements for public offer funds be those requirements, because I think that would be ridiculous. So there will inevitably be another set. And then if it is all thrown into the melting pot and it is reviewed, and we change all over again, I just think there is potential again for a disaster.

The institute advocates that, following any legislation if it is carried, but before its implementation, there should be a fundamental review of disclosure requirements and a new common set of disclosure requirements introduced for the whole industry to operate from the same time—common and identical across all of the different types of superannuation funds and products.

CHAIR—The ISC has been critical of trustees for their lack of preparation for the introduction of choice. Would you like to comment?

Mr Gibbs—Have they? I would have thought, with the greatest respect to the ISC, that the recent events relating to the superannuation surcharge and the changes to early release of superannuation benefits that were announced and then amended would be ample evidence to show that trustees should not be criticised. They should be commended for being cautious about not moving along a path before the final rules are known.

CHAIR—Some of those changes were due to this committee's deliberations.

Mr Gibbs—Yes. I am not criticising the changes; I am merely saying that there have been a number of announcements that have subsequently been implemented in a different way and I think trustees are justifiably cautious about moving in terms of something that is proposed before they know the final rules.

CHAIR—Could you outline for us the actions that trustees have to take to prepare for and implement the choice of fund, and why they have been apparently reluctant to take action so far. You have probably partially answered that.

Mr Gibbs—I think I have partially answered it. Sorry, could you repeat the first part of the question.

CHAIR—Could you outline for the committee the actions that trustees have to take to prepare for and implement choice of fund. We are putting a bit of emphasis on the trustee side now.

Mr Cook—One issue that has confused the trustees, obviously, has been the government's change from what was announced in the budget that they were proposing to do. When the draft legislation came out it was different. You have got to bear in mind that the trustees are part time—it is not their full-time role—and often they are doing it for very, very little reward. They are doing it because they wish to provide a service to their members; therefore, we have not got huge resources that can be put into that area.

They are certainly very conscious of the changes. We keep them well informed, they provide feedback through to us and we, in turn, are feeding it through to people like you.

We have had direct meetings with some of the other ministers and we are lobbying in whatever way we can to get the views that we have expressed to date across to you.

Mr Gibbs—I am not prepared to say that this is definitive, but I can say some of the things that, clearly, trustees have to do. They would have to prepare the key feature statement—of course, they cannot do that until they know what the requirements are. They would have to look at their administrative systems, in dealing with people who might be transferring in and out. Importantly, I think they would have to review their death and disability insurance arrangements. Many funds have arrangements with insurers that guarantee coverage from day one, even though no contributions have been received, because it is certain that they will be. In a choice environment, it is no longer certain that somebody will become a member, and whether the insurer will in effect provide that universal coverage from commencement of employment is something a trustee would have to review.

CHAIR—A lot of companies do not accept risk until the first premium has been received.

Mr Gibbs—That is true also. I agree with that: some of them do not. Some of them, however, do.

Mr Cook—There are two other issues there, if I may add to that list. Obviously, they are going to have to look at their marketing arrangements and develop a marketing strategy. They are certainly going to have to look at the legal aspects, and what legal exposure the proposed legislation will bring on them. Those are just a couple of additional ones off the top of our heads.

Senator ALLISON—I have one quick question. You referred earlier to the funds' response to people's needs for choice in investment. Do you think that has gone far enough? In your view, are people interested in even more choice with an investment, for instance to invest their money in Australia as opposed to overseas?

Mr Cook—I think it has been running at a reasonable pace. There is a whole educational aspect associated with this and I think the industry funds with which I am familiar are running fast enough to keep up with the ability of the majority of their members to understand what they are doing. I think that they are running along quite nicely at the moment. As we get further down the track it will get more and more sophisticated, but I think the two are now running reasonably well in parallel. I hear no significant complaints about that at all.

The number of members availing themselves of alternatives at the moment over the funds' balanced choice is relatively small but it is increasing. If you go into a mess shed on the construction sites, as I do from time to time, and talk to men, frankly I think you will find that only about five to eight per cent of the people in those sheds will really sit round and talk with great interest about the way in which the fund is investing. The majority say, 'She's right, mate. That's okay. We're getting good returns and we don't want to hear anything else.' But there is that small group of five to eight per cent who are very interested and will talk with quite considerable knowledge. It is quite surprising, the knowledge that some of the construction workers have of the investments.

CHAIR—If you were an employer and you were offering unrestricted choice, do you think you would have any obligations to check out to ensure that the fund was a bona fide regulated superannuation fund?

Mr Cook—Unrestricted choice so that any employee has the ability to choose his or her own fund?

CHAIR—That is right.

Mr Cook—No, I do not think so. I believe that you would caution them or provide a list of the issues that they need to consider in selecting the particular fund, but I do not believe that you would go any further than that.

CHAIR—It has got to be a regulated fund. I foresee the possibility, with bundled products and a few astute salesmen, that you would have a collective investment, even, or a bundled fund which might not meet the criteria for what is known as a regulated fund, to meet the requirements of the superannuation guarantee charge. If the employer does not pay the money into a regulated fund, then surely, under the act at the moment for the superannuation guarantee charge, he has got responsibilities. That is the light in which I frame the question to you.

Mr Cook—I had not thought of it in that light. I think one of the things he would need to do is draw the employee's attention to the fact that that is a requirement and to satisfy himself that that is the case.

CHAIR—And to satisfy himself?

Mr Cook—When he nominates and says, 'I'm going with XYZ fund', then he can merely just go down and assure himself that is an appropriate fund.

CHAIR—What sort of assurance? Does he get a letter from the fund to say that it is a regulated fund?

Mr Cook—I have no idea. I have not thought of these things. They are issues of detail.

CHAIR—You might like to take it on notice.

Mr Gibbs—Actually, we will take it on notice. That is an interesting question. Even though the employee has nominated the fund, if the employer pays and it is not a regulated fund then of course the employer is subject to the superannuation guarantee charge, which is a substantial penalty. In fact, he might be subject to not only the charge but also the penalty for not complying with choice, because he did not pay into a regulated fund. So you would think a prudent employer would ensure that wherever they are paying their money they are not going to be subject to those charges. We will take that on notice.

CHAIR—Are they going to be told these sorts of things? This is the question.

Mr Gibbs—It is a very interesting question.

Mr Cook—It is these very things that are imposing additional costs on the employer. They are only minor but if he has got to go through and check all of these up—someone has got to do it—there are man hours going to be spent on that activity.

CHAIR—There being no further questions, I thank you very much. It has been very interesting. Congratulations on the way you both interacted. It was very entertaining.

Mr Gibbs—Thank you, and thank you very much for the compliment you paid us, at the start, about our training courses. We appreciated that very much.

CHAIR—It is true.

Committee adjourned at 5.05 p.m.