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SENATE

SELECT COMMITTEE ON SUPERANNUATION

Reference: Three bills relating to choice, co-contribution and surcharge

TUESDAY, 3 SEPTEMBER 2002

MELBOURNE

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SENATE

SELECT COMMITTEE ON SUPERANNUATION

Tuesday, 3 September 2002

Members: Senator Watson *(Chair)*, Senator Sherry *(Deputy Chair)*, Senators Buckland, Chapman, Cherry, Hogg and Lightfoot

Senators in attendance: Senators Buckland, Hogg, Sherry and Watson

Terms of reference for the inquiry:

On 21 August 2002 the provisions of the following bills were referred to the Select Committee on Superannuation for inquiry and report on 26 September 2002:

- Superannuation (Government Co-contribution for Low Income Earners) Bill 2002
- Superannuation Legislation Amendment Bill 2002
- Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2002

WITNESSES

ANDERSON, Dr Michaela, Director, Policy and Research, Association of Superannuation Funds of Australia Ltd 142

ANDERSON, Mr Peter Christian, Director, Workplace Policy, Australian Chamber of Commerce and Industry 179

BROOKES, Mr Nicholas Duncan Jeremy, Chief Executive Officer, Corporate Superannuation Association 109

CERCHE, Mr Mark Nicholas, Chairman, Corporate Superannuation Association 109

DYSON, Ms Helen, Vice-President, Australian Institute of Superannuation Trustees 170

GODDARD, Mrs Elizabeth Jane, Head of Research, Corporate Superannuation Association 109

JONES, Mr John Richard, National Manager, Marketing and Business Development, Motor Trades Association of Australia Superannuation Fund 132

KATES, Dr Steven Ian, Chief Economist, Australian Chamber of Commerce and Industry 179

PRAGNELL, Dr Bradley John, Principal Policy Adviser, Association of Superannuation Funds of Australia Ltd 142

RUBINSTEIN, Ms Linda Esther, Senior Industrial Officer, Australian Council of Trade Unions 121

SMITH, Ms Barbara Mary, Technical Director, Taxpayers Australia Inc.; and Executive Director, Superannuation Australia 155

WATSON, Mr Paul, Executive Officer (Superannuation), Motor Trades Association of Australia Superannuation Fund 132

Committee met at 9.00 a.m.

BROOKES, Mr Nicholas Duncan Jeremy, Chief Executive Officer, Corporate Superannuation Association

CERCHE, Mr Mark Nicholas, Chairman, Corporate Superannuation Association

GODDARD, Mrs Elizabeth Jane, Head of Research, Corporate Superannuation Association

CHAIR—I declare open this public hearing of the Senate Select Committee on Superannuation, which is inquiring into the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2002, the Superannuation (Government Co-contribution for Low Income Earners) Bill 2002 and the Superannuation Legislation Amendment Bill 2002. The Senate referred these bills to the Senate Select Committee on Superannuation on 21 August for inquiry and report by 26 September. The first bill is designed to allow employees to choose where their superannuation contributions are paid. The other bills are designed to establish the arrangements for the government to pay superannuation co-contributions to eligible low-income earners as well as to lower the surcharge rates over three years.

The committee today will hear from representatives from a range of organisations including peak employer and employee groups, superannuation associations and the Australian Institute of Superannuation Trustees. I thank all witnesses here for agreeing to provide evidence at today's hearing. All witnesses are protected before the committee through parliamentary privilege with respect to the evidence that is given. This means that witnesses are given broad protection from action arising from what is said. The Senate has the power to protect all witnesses from any action which could disadvantage them on account of evidence given before the committee. The committee prefers to conduct its hearings in public; however, if there are any matters that you wish to discuss with the committee in private, we will consider your request. We welcome representatives from the Corporate Superannuation Association: Mr Mark Cerche, Mr Nicholas Brookes and Mrs Liz Goddard. You have all appeared before the committee on previous occasions; thank you for your continuing interest in appearing before the committee and providing evidence to us.

Before I ask any questions about the bills, there are a couple of matters that you might like to clarify. APRA have made some extraordinary statements in the last week and seem to be focusing on defined benefit funds. Would you like to comment on whether there is any justification for what they are saying. It is leading to a loss of confidence in the industry, and that is something that does worry me.

Mr Cerche—I have seen some observations about those comments. This morning's *Financial Review* contains a similar piece about APRA's concerns about defined benefit funds. I expect what is driving this is that the adverse investment return in the last little while may have exposed some thinly-funded funds to the possibility of being underfunded. This is not new; it happens every time there are negative returns—every 10 or 12 years. Funds which are funded to 105 per cent, which is regarded as a very generous funding level, suddenly find themselves funded to 98 per cent because of a negative seven per cent return. Arithmetic is arithmetic: if all the liabilities of the fund accrued on that day, there would be a deficiency but, over time, one

would expect the investment returns to tend upwards. With the careful governance of the trustee, the active work of the actuary and other advisers and the continued solvency of the employer sponsor, one would expect these funds to return to positive territory within a very short time.

My observations of APRA's comments are tainted by my concern about that body and the way they go about their business. I feel that at this present point in Australian history, anything that APRA can do that would persuade the legislators to give them more power would lead them to take it as an advantage to themselves as an institution. It is an increasing trend for regulators to seek publicity and to seek to have more powers as a result of their own publicity. That is a trend which, bluntly, irritates me. In this particular area of defined benefit funds I perceive that there is no real need for concern. Whenever there are negative returns, action needs to be taken, and I am sure that action will be taken.

Mrs Goddard—I think the other matter for concern is that the press reporting does not specifically—until today, I gather—mention the negative investment returns. The APRA statements seem to have been phrased in rather more general terms but they are not specific enough to enable the corporate funds to find out precisely what is supposed to be amiss and therefore address the concerns. We would like to know exactly what, if anything other than the negative investment returns, is at issue.

CHAIR—What is the usual practice in the industry when you have a negative return? Do you act immediately? Do you wait a couple of quarters to see whether the market is turned around or whether it is going lower? When these sorts of things happen, do you change your investment strategy, and over what time period?

Mr Cerche—Typically, we do not. The worst thing you can do is to sell out into a falling market.

CHAIR—I was not thinking so much of selling out but of putting extra moneys in.

Mr Cerche—There is a regulation which requires a funding deficiency to be addressed over time.

CHAIR—That is the question I am asking: what is the usual time frame?

Mr Cerche—Usually these investments are considered long term. The legislation talks about a five-year period to address a deficiency, but most trustees would be uncomfortable with that type of time frame and they would move aggressively to at least put the fund into balance. By that I mean that typically they would be consulting with the actuary on a regular basis and would be dealing with the employer sponsor if there were a real concern.

CHAIR—What do you call a 'real concern'? You are saying that typically you fund up to 105 per cent.

Mr Cerche—That would be regarded as very healthy.

CHAIR—What about when it drops to 90 per cent or 80 per cent? When do you start to press the panic button?

Mr Cerche—If you got to 95 per cent of vested benefits, the alarm bells would be well and truly ringing. The way the typical arrangement works is that the actuary does a full actuarial review each three years. Arising out of that actuarial review a contribution rate is determined and, for the next three years, that contribution rate is the one that applies. It is subject to intervention. You can bring forward an actuarial review in a typical case and seek to alter the contribution rate within that three-year period. I would expect, except in rare cases where the fund was not well funded and there was a significant deficiency in returns, that action would be taken more proximately. But in the well-funded, well-run arrangement, I think the trustees would be looking at a position of perhaps being in balance—perhaps being 99 per cent or 98 per cent—and would, at this point, be taking a reasonably relaxed view about it. It would be different if there were a significant retrenchment benefit in the trustee; then, a la Ansett, the trustee may well want to lift the vested benefit liability ratio. But, with most of our clients—our clients being our members—we would look to be resuming contributions in the next 10 years or so.

Mr Brookes—I had a useful call yesterday from APRA, advising us that they would be writing to the defined benefit funds—the corporate funds—inquiring as to the measures they are taking to address this issue. The surprising thing about the call yesterday was that we had their press release last week sensationalising the fact that there are corporate funds on the slide. Our chairman made that point earlier.

CHAIR—That is why I expressed concern. I thought you would be the best people to give the committee certain assurances and clarifications, and I thank you for that. We now invite you to make an opening statement on the bill.

Mr Cerche—Before we move on, I should point out that one of the benefits of defined benefit funds is that the employees and members do not suffer the negative returns which are being endured at the moment by the accumulation funds. While there may be a deficiency in an actuarial sense, the risk of that falling down to individual employees in the regulatory regime which exists is rather remote, in my opinion.

We are here today to talk about choice, and we thank you for the invitation. As you know, the Corporate Superannuation Association now represents $60 billion worth of assets and 85 per cent of the corporate superannuation market in Australia. We represent funds which cover the spectrum of corporate arrangements. Typically, we represent employer sponsors who still believe the delivery of corporate superannuation is the preferred model and in the interests of their employees and, despite obstacles which are put in their path, they continue to provide superannuation via these arrangements.

The choice legislation is not greatly welcomed by the Corporate Superannuation Association. This legislation has been around for quite some time now. Its logical targets are those people who have assets under management which are not available to the service providers and for-profit organisations, and the Corporate Superannuation Association is by far the largest target in that crosshair. We are not really concerned about the competitive nature of this. We believe that we deliver a better product at a cheaper cost and typically enjoy higher returns than the publicly offered products because we are not hamstrung by allegiances to our owners.

One of the real issues facing the Australian superannuation industry at the moment is the concentration of ownership of funds management businesses and financial advisory services within a very small ownership structure. Very few independent financial planners and fund managers out there now are independent of the major financial institutions. It is a growing trend. It is public knowledge that Westpac Banking Corporation—a very fine bank—recently acquired BT Funds Management and Hastings Funds Management. There is certainly nothing wrong with the acquisition of those bodies by Westpac; it is just indicative of the consolidation—rationalisation, if you like—of how the large financial institutions are controlling the offering of these products and, more worryingly, the advice concerning these products. Our concern at that level relates to the way in which we are hamstrung by legislation. We are not in a position to provide financial advice to our members because we are not licensed, and it is quite an expensive process to get licensed.

We have asked in other places that we be free to provide information about our product without it being financial product advice, but we have received very cold comfort in that regard. We would like to be free, as an employer, to tell our members that the fund we sponsor provides this level of life cover and we pay for it, but that could be construed as financial product advice under the financial services reform legislation. It is not financial advice; it is simply information. But the regulator—and indeed some of the definitions in the legislation—would indicate that you are at risk if you do that. In the competitive environment that choice promises, we will be hamstrung in being able to provide information about our product to our members, which is pretty ordinary.

I will turn to the technical issues with this bill—and there are some. From the employer sponsor's point of view, there is a real risk of an employer being caught twice for superannuation under this legislation. At the moment, if you take the classic defined benefit arrangement, the member is admitted to membership as a condition of employment; the employer support ranges from 11 to 18 per cent and it bubbles along. Under this legislation, the employer sponsor is required to offer choice in respect of nine per cent of ordinary time earnings to the member, and the member can, under this legislation, elect to have that amount contributed to another fund. But there is nothing in the legislation or elsewhere which says that the employer sponsor is not required to continue to support the member in the defined benefit fund. There is simply nothing.

Senator BUCKLAND—Could you expand on that a little bit for me?

CHAIR—Yes, just explain that a little bit more clearly.

Mr Cerche—Certainly. A member of a superannuation fund is typically a member until they cease to be an employee, or consent to a transfer out of the fund, or a successor fund which provides equivalent rights to benefits. There is no other mechanism for the employer sponsor, short of terminating the fund, of getting the member out of the fund. There is nothing in this legislation which precludes an employee saying to the employer, 'I want nine per cent of ordinary time earnings contributed to fund A.' When the employer says, 'Hold on. You are already in this fund and I am contributing 18 per cent,' the well-advised employee—and there are a lot of advisers out there—might well say, 'Thank you, that is very kind.' But where in this legislation is the facility for the employer sponsor or the trustee to eject the member from the fund? It is not there.

CHAIR—I refer you to 32G(3) in the bill:

A fund cannot become a chosen fund for an employee under this section if, immediately before the employee gave the written notice to the employer, either:

(a) a defined benefit superannuation scheme of which the employee was a defined benefits member was a chosen fund for the employee; or

(b) there was no chosen fund ...

That default clause means that the corporate fund is the default fund and also that a person does not have a right to choose his own fund if he is in a defined benefit fund.

Mr Cerche—It does not necessarily have to be a defined benefit fund.

CHAIR—It talks about a defined benefit fund.

Mr Cerche—Thank you for drawing it to my attention—

CHAIR—It says ‘defined benefit fund’ in (a).

Mrs Goddard—It suggests that in order for that clause to apply it would have to have been chosen by the employee on a previous occasion. So they would have to have exercised a choice on a previous occasion to remain in that fund.

Mr Cerche—That is the point.

CHAIR—But the person would have been in the fund.

Mrs Goddard—But they would not only have been in the fund but have chosen to be in it.

CHAIR—But a fund cannot be a chosen fund—that is where the person makes his election; where previously he was a member of a defined benefit fund.

Mrs Goddard—No, he has to be a member of a defined benefit fund which was a chosen fund—that is, chosen by him.

Mr Cerche—If you look at the words, Chair, in order to be a qualifying arrangement the defined benefit superannuation scheme has to be a chosen fund.

Mrs Goddard—This is in paragraph (a).

CHAIR—It says if it ‘was a chosen fund for the employee’. So the employer has chosen this—a defined benefit fund—for the employee.

Mrs Goddard—No, by definition ‘chosen’ would mean chosen by the employee.

CHAIR—But it says ‘a chosen fund for the employee’, not ‘a chosen fund by the employee’.

Mrs Goddard—I think there is something in the definitions which would render ‘chosen fund’ a matter of employee choice rather than employer choice.

CHAIR—So the definition is:

A fund is a chosen fund for an employee if the employee has selected the fund in accordance with the choice process set out in Division 6.

Perhaps you could take that issue on notice for us.

Mr Cerche—We will, but we went through it before. Section 32F is the key. It says:

A fund is a chosen fund for an employee if the employee has selected the fund in accordance with the choice process ...

So when you apply that to section 32G—

CHAIR—But that is a chosen fund. It says that a fund cannot be a chosen fund if he is a member of a defined benefit fund.

Mrs Goddard—No, only if he is a member of a defined benefit fund which he has chosen to belong to, and that would be under the formal choice process.

CHAIR—Mr Cerche, perhaps you would like to give us your opinion about that.

Mr Cerche—Okay, we will do a bit of an analysis of it for you. It applies equally to an accumulation fund.

Senator SHERRY—It is an important issue, but it is a technical issue and there are other matters that we should give attention to. But we can follow it through.

CHAIR—But it certainly would be good if you could take that on notice.

Mr Cerche—We have raised it in another place and it is being looked at.

CHAIR—Have you? Could you give us the benefit of that?

Mr Cerche—Yes, we will do the steps. So when you work through the definitions you find that it does not quite work? That is important, because there will be people who are prepared to take advantage of it.

CHAIR—Absolutely. It is critical that we get it right, so that it is beyond doubt.

Mr Cerche—The other aspect of this legislation which concerns us as representatives of employer sponsors is the provision which imposes a fine for an employer sponsor which does not comply with this legislation. Our concern about that is that it goes beyond the taxation power of the Commonwealth. Chair, you might recall that this legislation—the superannuation guarantee legislation—hangs under the Commonwealth taxation power and that typically the penalty for failing to comply with tax law is to pay tax, so it is a double jeopardy. Therefore, I would draw

the committee's attention to our concern in that regard. 'If you pay your taxes, you don't get fined' is essentially the principle, and under this legislation you seem to be saying, 'Even if you pay your taxes, you can be fined.'

Senator SHERRY—Isn't the argument that it is the way you pay your taxes in this case, the conduit through which they are paid?

Mr Cerche—No. With great respect, under this legislation before this provision was introduced, you could make a contribution to a complying superannuation fund in respect of an employee or you could pay a tax. Under this legislation now, you can comply with choice and make a contribution in accordance with that procedure or you pay a fine and you pay your tax.

Senator SHERRY—But the fine is there to force the employer; it provides a mechanism, an additional financial penalty, if the employer does not comply with this legislation—and quite a substantial one, from my reading of it.

Mr Cerche—Exactly. Why can't the employer just pay the tax? It could under the old law.

Senator SHERRY—I understand your argument but, presumably, the employer could ignore the legislation if there was not an additional penalty, which is why the penalty is being put in.

Mr Cerche—That is unfortunately the limitation on the Commonwealth's legislative power.

Senator SHERRY—Are you saying that the penalty provision in here—I think it is at $6,600 per breach per employee, which is not insignificant if it happened—

Mr Cerche—Absolutely.

Senator SHERRY—is unconstitutional?

Mr Cerche—Yes.

Senator SHERRY—Do you have any advice on that?

Mr Cerche—In another place, as a member of the Law Council's superannuation committee, we have got a grant from that august body to get a senior counsel's opinion. We have deferred doing that because we have raised this point with the government. But the essential point is that this is a tax act because the Commonwealth could not do it any other way. You cannot do something through your tax power through another coercive power; the only ability you have got is to tax.

Senator HOGG—You said that you have raised this with the government.

Mr Cerche—Correct.

Senator HOGG—What response have they given you?

Mr Cerche—Shall we go in camera or should I be blunt?

Senator HOGG—Neither of the above.

Mr Cerche—The response was: 'Thank you. We will look at it.' It is typical for these laws to be reviewed from a constitutional point of view before they are introduced into the house.

Senator HOGG—So they did not outright say you were wrong?

Mr Cerche—No. They cannot say that: we are right. This is as plain as a pikestaff.

Senator SHERRY—Could you give us additional written material to this point, because it is an important issue.

Mr Cerche—Sure. We can do that. With your indulgence, what I might do, to save us a bit of time, is touch base with the people I have been speaking with in the other place to see whether they have changed their mind or what they are doing about it so that we do not double up. I have no desire to spend $20,000 of the Law Council superannuation committee's money if in fact the government realises the problem.

Senator SHERRY—Would it help if the committee asked the government to provide it with the legal advice that it has on this and other controversial legal aspects of the legislation?

Mr Cerche—Yes, it would be helpful. We have no desire to be troublesome here, but we feel that we would not be representing our employer sponsors if we let something go through like this without raising the issue. It is not much good the government thinking it can fine people when, after finally being challenged, it cannot.

CHAIR—Constitutionally, for each taxation item raised there must be a separate bill. But that does not suggest that there cannot be penalties for failure to comply.

Mr Cerche—Absolutely. If you fail to lodge a tax return—

CHAIR—So here we are imposing one hit of tax with a separate act and accompanying that are certain penalties for failures to comply.

Mr Cerche—No, that is the little slip that has occurred here. The tax aspects of this legislation are: if you have not made a contribution to a complying superannuation fund, you file a return and within 14 days of the relevant date you pay your tax. The Commonwealth accepted, when it introduced the choice legislation, that it could not do it directly because it was relying on the tax power.

CHAIR—Yes, that is right.

Mr Cerche—Now the Commonwealth are saying, 'If you do not do this then we are going to fine you and also tax you.' They cannot fine you because they are compelling you by fine to do something that they could not do outside the tax power. So the only remedy that the Commonwealth have if you fail to comply with this legislation is to collect the tax. If you fail to lodge your return on which you pay tax then they can fine you because that is a fine for failing

to honour the tax obligations that the tax imposes. But this is quite different; they are using Commonwealth tax power—

CHAIR—So, under the superannuation guarantee, you either pay the liability or pay almost double the liability into a special account, if you like.

Mr Cerche—That is your choice. Under the legislation the employer sponsor may well say, ‘I am in loss so it does not matter; I will pay it.’ But now they are saying you have to pay a fine as well.

CHAIR—We will follow that through with our Treasury representatives.

Mr Cerche—Thank you very much. Senator Sherry, if our discussions fail to satisfy you, I will put another paper to this committee. A corollary aspect of this that we will point out to the committee—and here we are being a bit like Caesar’s wife—is that there is a provision in this legislation that purports to exculpate the employer sponsor from liability if they comply with this legislation. Again, that goes beyond the Constitution as a Commonwealth taxation power. It is purporting to affect the rights of employers and employees and relying on the Commonwealth’s tax power to do that. We think that, again, is beyond the constitutional powers of the Commonwealth. There is a similar concern I will advert to about the ability for the award provisions to be overridden in the way which provision 32Z purports to do. In our submission, tax power gives you the right to tax or it gives you the right to avoid a tax if you voluntarily pursue another course.

Turning now to this legislation, the vice that we see in it from a retirement income policy perspective is that it opens up the opportunity for unscrupulous employers—not of course represented by this association—to reduce the level of superannuation that they currently provide. It is somewhat surprising, to me at least, that legislation would purport to have that effect. It is, in fact, 32Z where that opportunity arises, as well as generally. If, contrary to the view we have expressed, it is possible for an employer sponsor to kick out an employee who elects to have nine per cent contributed to another fund, there does not seem to be any advantage to the employer sponsor contributing any amount in excess of that for the employee.

Senator SHERRY—Even where the employer is contributing something in excess at the present time into the corporate fund?

Mr Cerche—Correct. From our point of view, the concern there is that we could be required to pay nine per cent and we could not satisfactorily remove the person out of the existing fund if they elected to go somewhere else; we do not want to pay twice. That is one aspect of the issue. The next aspect of the issue is that there is an additional amount above that and the unscrupulous employer will take the opportunity to reduce their costs by not paying that. This is brought very sharply into focus when you look at this provision—in another place I am likely to be shot for what I am about to say. Here the productivity three per cent contributions which were typically added onto an employee’s salary as deferred pay back in the eighties have continued. A lot of corporate sponsors maintain their own superannuation fund, and have forever. When there was the three per cent productivity obligation, the employers, with the encouragement of the then Treasurer and Prime Minister, decided that they would play the game and pay three per cent of deferred pay into an industry fund at the time, and those arrangements

continue. So in a lot of cases the employer sponsor contributes X per cent to their own fund and, as a deferred pay issue, continues to pay the three per cent, or $12.70, or whatever it is into an industry fund in respect of their employees.

Senator HOGG—How widespread is that?

Mr Cerche—It is not narrow. Certainly I could not say that everybody does it, but a significant proportion do. It was, as you will recall, a deferred pay—

Senator HOGG—That it is a significant proportion is what I wanted to establish.

Mr Cerche—Yes, we would say so. And 32Z—if it works, if it is constitutional—allows an employer to simply cease contributing that three per cent as well as the additional amount. So it regresses to the mean. This legislation in a way enables the unscrupulous employer to go from where they are to nine per cent of ordinary time earnings. I am going to be met with the suggestion, 'Well, so what?' From a retirement incomes policy point of view, I think it is a very significant 'so what'. You have got a large section of responsible employers contributing more than the minimum and doing so happily because they believe it is appropriate that their employees be superannuated at the end. But they are going to lose the impetus to do that, for a whole range of reasons. FSA, licensing and capital adequacy are all issues which touch on this but are outside the route of this committee's inquiry at this point—but choice, you are almost asking them to do it. So be it on the parliament's head. That is all I need to say.

Senator SHERRY—On this last issue, at a previous hearing I asked Mrs Goddard to send some additional information about the level of additional contributions over and above SG. I know from the committee secretariat that we have received that. Could you submit that to us for the purposes of this hearing?

Mr Cerche—Yes.

Senator SHERRY—That brings me to the last point that you made, which is probably of the greatest concern to me in terms of corporate super. If this legislation becomes law, it just adds to the additional pressure for corporate funds to cease to exist or to contract back to minimum SG nine per cent.

Mr Cerche—It almost encourages it. As you know, we have been quite resistant to increasing our cost structures, because we regard ourselves as reasonably prudent and because of the equal representation rules, which in the area of superannuation represented by our association are alive and well. Our equal representation boards do function as such and are very mindful of their obligations. With great interest, they do watch the service providers and change them if they do not perform. They do their job, and they do their job because it is their money they are looking after.

Senator SHERRY—But, from the previous hearing, my understanding is that a clear majority of corporate super funds' members, which is in the hundreds of thousands, pay over and above the nine per cent minimum.

Mr Cerche—Correct.

Senator SHERRY—They also in a significant number of cases pay the administration and insurance costs.

Mr Cerche—Correct.

Senator SHERRY—Effectively, that is a significant additional contribution to savings, isn't it?

Mr Cerche—Absolutely. We think it is in the order of 13½ per cent of ordinary time earnings on average.

Senator SHERRY—Do you think it is the straw that breaks the camel's back for a lot of corporate funds? There has been increasing pressure.

Mr Cerche—It is hard to say; we have had a lot of straws over the years. Yes, it has to be, because it legitimises that which the finance directors have been trying to do for some time.

Senator SHERRY—So the irony is that, for a significant number in the Australian work force, the consequence of this bill, on top of other pieces of legislation, will be a reduction in retirement savings for those individuals and for the nation.

Mr Cerche—Exactly. We have done some arithmetic on this, which I know is not uncontroversial. We are looking at going from 13½ per cent to nine per cent, with a lesser return of 25 per cent. The additional cost represents 25 per cent of end benefit. To a well run fund, that is—

CHAIR—That would only apply if your interpretation is right, rather than what we believe to be the case, because there is no additional straw to break the camel's back, as we read it; but, as you read it, there would be, because there could be two funds that they have to put into.

Senator SHERRY—What I am getting at is that the additional compliance burden of a corporate having to offer choice and presumably having to pay into numerous different funds—

CHAIR—The point is that they do not offer choice if they have a defined benefit fund.

Senator SHERRY—My understanding is that they do. Corporates cannot get out of offering choice. Let us assume that corporates can get out of offering choice—

CHAIR—As long as they have a defined benefit fund.

Senator SHERRY—Yes. Let us assume they have a defined benefit fund and they can get out of offering choice—how is that choice? It seems to me to be contradictory: you either have choice—

Mr Cerche—From my understanding of how the legislation works—Senator Sherry, I am with you on this—Senator Watson, I think the question which I was talking to was a slightly different one, and I was talking more of the increased costs which are suffered by people who are not in a mutual arrangement. As I said, we have done some analysis of this, which,

admittedly, could be right or could be wrong within a margin. We say that the increased cost to the employee is one per cent, which is certainly on average the differential between the publicly offered product and the product which we offer—I am starting to talk in the language that the regulators want me to talk in. We offer an employer promise to an employee, which, if we contributed the same amounts, at the end of a 35-year period exceeds the publicly offered product by 25 per cent. When you do the arithmetic of 13½ per cent and put that into a publicly offered product, then the reduction is 25 per cent of a bigger amount; but when you reduce back to nine per cent into a publicly offered product and reduce that by 25 per cent, the accumulated effect of that on the employee who has the benefit of these arrangements is very substantial indeed.

Senator SHERRY—As the bottom line, would you prefer not to have this legislation?

Mr Cerche—Absolutely.

CHAIR—Thank you very much. I think you have bamboozled us all with science.

Mr Cerche—I have done some good!

CHAIR—Thank you for appearing before the committee today and for the information that you have given to us and the reassurances that were given earlier.

Mr Cerche—I will drop a short note to the secretary going through the definitional issues we have with the possibility of being called twice, which has been accepted as a possibility by the government, on analysis. In relation to Senator Sherry's request, I will let the secretary know from time to time where we are at in our discussions with the government. If, as I suspect will be the case, there will be some recognition of our position, then it may be unnecessary to trouble this committee further. If, on the other hand, we fail to achieve what we believe to be the right outcome of that process we will obtain a senior counsel's opinion and provide it to the committee.

[9.47 a.m.]

RUBINSTEIN, Ms Linda Esther, Senior Industrial Officer, Australian Council of Trade Unions

ACTING CHAIR (Senator Sherry)—Good morning, Ms Rubinstein. Would you like to make an opening statement, hopefully for not longer than seven to 10 minutes so that we will have sufficient time for questions.

Ms Rubinstein—Thank you for the opportunity to give evidence to this inquiry. I will make a short opening statement and try not to exceed the time limit. I think it would be fair to say that there is not a great deal of new material in the ACTU's submission, because these issues have already been before the committee either as part of its general inquiry into retirement incomes or when it has inquired into specific legislation.

I open by repeating what I said last time that I appeared before the committee, and that is that the government has a very clear agenda in respect of superannuation. It has two key elements: firstly, to increase opportunities for high-income earners to receive taxation and other benefits by contributing to superannuation either in their own name or in the names of their spouses and children and, secondly, to facilitate a shift of the nation's superannuation savings from the not-for-profit sector—industry funds and corporate and public sector funds—to high-fee retail products offered by the banks and the life companies.

The ACTU's submission needs to be seen in the context of our understanding of the government's agenda. The first issue we deal with is that of the co-contributions, which, as you know, is a proposal to match superannuation contributions from after tax income by low-income people. Although statistical evidence on all of these issues is difficult—statistics vary and different assumptions are made—it can be seen that one in three job holders whose income is below $20,000 a year have no superannuation. So one in three of the key target group are ruled out straightaway. We can also see, not surprisingly—it is self-evident—that the lower your income the less likely it is that you will make personal contributions to superannuation. Obviously, you do not have the money to do that. Fewer than one in 10 job holders with income below $20,000 make personal contributions, and that is less than a quarter of those with income up to $40,000. That is well in excess of the cut-off point for this proposal. Overwhelmingly, the main reason people give as to why they do not make personal contributions is that they cannot afford it. Over a third—almost 40 per cent—say that. Seventeen per cent say they cannot be bothered or they do not think about it. Inadequate tax concessions was given as a reason by fewer than one per cent of job holders.

ACTING CHAIR—Before you go any further, on the stats—and I have looked for this but have not been able to find it—of the one in four whose income is less than $40,000 who make a personal contribution, have you been able to find any breakdown as to the number of people for whom it is compulsory, as distinct from voluntary, to make an employee contribution?

Ms Rubinstein—No, we have not. In the submission we deal with that. These figures are not broken down by income. It would be possible to get that from the ABS. We would have to pay

for it; I do not know whether you would. Around a third of those making voluntary contributions are managers; tradespeople make up a quarter; and only one per cent of labourers make contributions.

ACTING CHAIR—We might get the committee to raise that with the ABS.

Ms Rubinstein—Can you see whether you can get further breakdowns, which we would be grateful to have access to as well. Going to your issue, many of the employees who make personal contributions are members of defined benefit funds, where it is compulsory to do so, or even possibly some accumulation funds—for example, UniSuper, the fund that operates in the tertiary education sector. We have not done a matching—I do not know whether we can—of income related to defined benefit funds and so on, but certainly 14 per cent of total member accounts in this country are in defined benefit or hybrid funds. But not all of those are active. It is very hard to figure it out. On the statistics that I have seen, I do not believe that whether or not so-called voluntary, or personal, contributions are compulsory is measured, but perhaps it is.

It is interesting to note that our experience with employees, particularly those on lower and middle incomes, who are required to make compulsory contributions is that they do not want to do so, particularly those who are in their 20s, 30s and even 40s, which is the time when they need to be saving for retirement but also a time of economic need. I had a meeting with quite a number of delegates from the vehicle industry about their superannuation, and the first question I was asked was: ‘Can I get it to renovate my house?’ The answer, of course, is no. But that is what a number of people who are making compulsory contributions actually feel about it. It is well known that many employees given a choice between a defined benefit fund with compulsory contributions and a relatively high level of employer contributions and an accumulation fund where they do not have to make contributions but there is also a significantly lower level of employer contributions will choose the latter simply to increase their take home income.

What all of that means, summed up, is that it is not in our view very likely that low-income wage-earners will take advantage of this proposal. That is not to say that nobody will take advantage of it. Clearly people who can afford to do so and who have a child working at McDonald’s or a spouse working a few hours a week here or there will make those superannuation contributions. You would be crazy not to if you could afford it because it is a guaranteed 100 per cent return. But it does not mean that it is targeted to the people that government assistance in our view ought to be targeted to. A sum of $85 million has been allocated for this. Presumably it is assumed that at least 85,000 employees will be covered by it. It could be greater than that, of course. If, first of all, people earning up to $32,000 a year actually contribute or even if people earning under $20,000 a year contribute less than $1,000 year, more people could come into that 85,000. However, when you bear in mind that there are over one million job holders with a cash income up to $20,000 or almost four million who have superannuation and incomes up to $40,000, you realise that even in the government’s own mind this is a drop in the ocean. The ACTU is not saying that making contributions that relatively high-income people make in superannuation contributions on behalf of family members is a bad thing; it is a good thing. But whether that is where government assistance ought to be targeted is a completely different question, and we would say it ought not to be.

The second issue is the surcharge reduction, on which I believe the ACTU has addressed the committee before. The ACTU is opposed to the government proposal to reduce the surcharge, which applies to approximately three per cent of the highest earning employees. We support the alternative proposition put by the Labor Party to reduce the contributions tax as a far more equitable way of spreading government assistance. When the surcharge was introduced in 1997, the ACTU, along with much of the industry, warned that the cost of collecting it through the superannuation system would far exceed what was acceptable in terms of the benefits of the tax. Experience has shown that view to be correct. Even the government senators acknowledged in the June 2002 report on the consideration of this same issue that the surcharge is administratively costly and that this cost is borne by all members. It seems to us that reducing the surcharge simply leaves the lower- and middle-income earners also paying for the costs of collection but reducing even further—

ACTING CHAIR—Sorry, we will just wait until that noise stops.

Ms Rubinstein—If the surcharge is reduced, the actual costs of collecting it remain the same, so the disproportion between the cost of collection and the revenue received by the government in fact becomes even more unbalanced. The key argument of those in favour of the surcharge, as far as the members of this committee are concerned, seems to be that any reduction in the front-end superannuation tax should be supported, simply because front-end superannuation taxes are not a good idea. But in our view, if there is a capacity to reduce front-end taxes then the top three per cent of income earners ought not to be the first priority. We cannot see how that can be justified and we urge the committee to recommend accordingly.

The final issue we address is choice of fund. We say, first of all, that there is simply no evidence that the proposed legislation is a response to any demand from employees—or even from employers, assuming one believes they should have a say in it—for a greater choice of superannuation fund or dissatisfaction with the present system. The conclusion we draw is that the government is responding to a desire of the banks and the life companies for a greater share of the superannuation business arising from the operation of the SG. We believe that the intention is to shift superannuation into higher-fee retail products and that that will be damaging to the Australian economy and superannuation funds in general, as it will push up fees and charges, particularly through advertising and attempts to build strong brands.

There is strong evidence about the effects of higher fees and charges on retirement incomes. Ross Christie, a financial planner with a long involvement in superannuation, I think gave evidence to this committee that over 40 years, given a $40,000 salary and various other assumptions, a person in a typical not-for-profit fund would be almost a quarter of a million dollars better off in retirement than a member of a typical retail fund. Equally interesting was a recent article in *Money Management* magazine, and I have brought some copies of that for members of the committee.

ACTING CHAIR—Thank you. We will table that.

Ms Rubinstein—The article is written by Tom Collins, who has a very long experience in the financial industry and, I understand, owned financial planning companies and runs a consultancy offering research and advisory services to the financial services industry, including financial planners. *Money Management* is a magazine directed at financial planners. In that

article, Tom Collins addresses himself to financial planners, saying that they really need to get their act together. He makes it clear that under the current system—the system which this government is doing nothing to change—all of the motivators for financial planners go to, first of all, churning, which is encouraging clients to change the arrangements that they make with their superannuation, because the fees are related to implementation. If you go and see a financial planner and they say that everything you are doing seems right, and you go away, they do not get paid, because they almost entirely get paid on a commission basis.

The second thing that Mr Collins points out is that the commission based remuneration for planners is comparable to bulk-billing—it is invisible, so the clients do not receive invoices. They think that they are changing their arrangements at no cost to themselves, but they are often going into more expensive funds, particularly with trailing commissions. Most of the growth in the financial planning industry, according to Mr Collins, has come about as a result of the compulsory superannuation guarantee. He says the 'industry would be a mere shadow of itself without the SG.'

Senator BUCKLAND—The financial sector, though, would be rubbing their hands together with glee at the thought, wouldn't they?

Ms Rubinstein—The financial planning industry are rubbing their hands together with glee at the thought of choice coming in, because of the opportunities it gives to make money from commissions. But one person associated with that industry, with really quite remarkable honesty, is saying that that is not right. He is saying that it is scandalous and that, unless financial planners deal with it themselves, government regulation will need to do that. What I say to that is that financial planners are most unlikely to deal with it by themselves, and there is absolutely no sign that the government is prepared to do what would be the minimal requirement, which is, first of all, to prohibit the charging of commissions in relation to mandatory SG contributions and, secondly, to have full and transparent disclosure of all fees and charges.

The first point we make is about fees and charges. The second point is about award superannuation provision. The ACTU are opposed to a choice regime which overrides award specified superannuation funds. We do that because we believe that it is a very important source of protection for employees. The Industrial Relations Commission in specifying funds makes it clear that, unless there are corporate funds already in existence—in which case they tend to be specified in awards—multi-employer joint trusteed funds, employer-employee trustee funds, are the commission's preference. We believe that that is the best protection for employees. The reality is that there has not been a case of superannuation failure, a fund that APRA has found has not met its obligation in a proper way, where there has been either union appointed member representatives or effective directly elected employee representatives—that is, not chosen by management and effectively snowed by them. It should also be noted that many awards do provide that more than one fund can be utilised, and provide choice in that way. Some awards, where it is appropriate, also provide that, in addition, a fund agreed between employers and employees could be utilised as well.

So the ACTU submits that the commission processes are the appropriate mechanism by which to seek greater flexibility of superannuation fund and that that can be done within existing legislation rather than using legislation to override awards, as is being proposed. In that

context, I would raise a specific concern about the bill, which provides at proposed section 32K that a default fund can be a fund prescribed in an industrial award but seems to exempt from that award specified funds where the award also provides that the employee can choose the fund provided that the employer agrees to such a choice. The concern we have about that is that it is a very great incentive both for some employers and for some providers to seek to replace the award specified fund with some other fund that could be used as the default fund and would then apply from then on. That is a technical concern. We are not sure if that is the intention of the bill, but there is a concern about that.

CHAIR—If the majority of members suddenly switched to a new fund then the default fund is the union fund which has the majority of the members. So there can be that movement where people exercise choice.

Senator SHERRY—Chair, there is no such thing as a union fund.

CHAIR—An industry fund.

Senator SHERRY—Yes; it is not a union fund.

Ms Rubinstein—It might be an industry fund, it might be a corporate fund or it might be a public sector fund.

CHAIR—That is the situation that 32K covers, isn’t it?

Ms Rubinstein—We say that could be an issue where you build in incentives so people actually lose that protection of the award specified fund. It is perhaps not so much an issue now if you took a snapshot and said, ‘We will work on the majority fund.’ But, once you create incentives to change that situation, that could be a problem. We simply raise it for that reason. We are opposed in any event to overriding awards and, of course, agreements, although that is not proposed in this bill.

Senator HOGG—In terms of the award superannuation—and I was associated with it, as you would know from my background—my recollection is that it was a fairly rigorous process, with lengthy debate before an independent tribunal, the Industrial Relations Commission, as to which superannuation would be recognised for the purpose of the award. That is correct, isn’t it?

Ms Rubinstein—Yes, that is correct.

Senator HOGG—My recollection also is that, in the very early days, the life and superannuation companies, in particular, tried to get access to award superannuation but were ruled out of the process by the industrial commission. In some instances, there was agreement between the employers and the unions as to what funds would be recognised as eligible funds under an award, and some times that meant a multiple number of funds. Is that correct?

Ms Rubinstein—That is correct.

Senator HOGG—This is really clawback time for the life funds and for the banks in this case in trying to get their hands on superannuation.

Ms Rubinstein—That is the submission we are making. The problem with the products of the life companies and the banks is, firstly, the trailing commissions, in particular, and the higher costs; and, secondly, the absence of a joint governance structure. Those funds are run essentially in the interests of shareholders; they are not under a trustee structure for the sole benefit of the members of the funds, as is the case in the not-for-profit sector.

I have a couple of other very quick points. We believe that the bill does not provide sufficient protection for employees. It provides too much possibility for employers to influence the choice. For example, employers could give people these choice forms and say, 'Why don't you just fill this in?' People will do that, young people in particular will do that, and new employees of course will do that because they will see that as getting the job.

There are issues to do with insurance. In fact, employers are also vulnerable in that regard. If people change to arrangements which do not give them adequate insurance, employers could find themselves the subject of litigation, as they could if employees were otherwise disadvantaged and were able to pin that on the lack of adequate explanation or consultation or the excessive pressure or whatever from their employers. I am sorry, I think I have gone over time with my opening statement, but there were a few questions on the way through.

CHAIR—What if one of your employers has a defined benefit fund? Some of the big companies offer defined benefit funds. Do you believe they have to offer choice under the bill? If you do not know, it does not matter. We are currently getting it checked out.

Ms Rubinstein—Do I believe they would have to offer choice?

CHAIR—Yes.

Ms Rubinstein—Yes, with some safeguards. That was my reading of it.

Senator BUCKLAND—We are more interested in your interpretation of what the bill is saying.

Ms Rubinstein—That is what I am saying. My interpretation of the bill is that, yes, they would, but they would have to offer additional information and protection where they had a defined benefit fund. That might be wrong.

CHAIR—The advice we got from Treasury is that, yes, you do have to provide choice, except in circumstances where you have got a surplus or where you have already reached your maximum limit.

Ms Rubinstein—Yes, that was how we saw it.

CHAIR—That was Treasury's advice to us. But there does seem to be some degree of confusion out there which we had to clarify.

Senator SHERRY—Can we go back to that issue you raised earlier about the provision to mean that if an award offers choice—and certainly many awards do offer choice—the award cannot be used in determining a default fund. Have you got any legal advice on your interpretation of that provision?

Ms Rubinstein—No, we have not.

Senator SHERRY—As a suggestion, wouldn't it be appropriate that where an award does offer choice—and many do, although I am not sure of the proportion—they be exempt from the provisions of this legislation?

Ms Rubinstein—We would say that where an award dealt with specification of fund it ought to be exempt from this legislation. However, as a second position we would say that that ought to be the case. An award may have a number of funds or you may have situations where people are covered by different awards and different funds—that is what is occurring. We believe that all of those protections ought to remain in place. Where the awards have choice processes in them, the details of those have been determined by the commission, often in contested proceedings, and we believe that those processes ought to work themselves through. That would absolutely be the case should our primary submission that the bill not apply at all to the award covered sector not be ultimately successful.

Senator HOGG—But the important thing is that the outcome of those proceedings has been accepted by both the employer and the employees and it has led to an efficient and effective way in which to organise the business of that particular organisation.

Ms Rubinstein—When the superannuation guarantee—and award based superannuation, in particular—first came in, there were many disputes about the fund. The only disputes about the fund that I am aware of these days are about corporate funds versus industry funds, particularly where employers—the BHP example is a good one—unilaterally determine to outsource their superannuation arrangements and decide how that will be done. In those cases, there are disputes. They are not disputes about choice of funds but disputes about the future of people's superannuation arrangements. So I would have to agree with you that there have been very few disputes, and certainly none about choice of fund per se, that I have been aware of in recent times.

ACTING CHAIR (Senator Sherry)—On the issue of fees and charges, some employees do have so-called choice at the moment—award-free employees would have that choice; self-employed people obviously have choice, because they are not employees—and there is virtually full choice in operation when a person retires.

Ms Rubinstein—Yes.

ACTING CHAIR—All the evidence we have had is that where there is a regulated retail environment the fees and charges are generally greater than where a person does not have choice. Do you have any suggestions about what our approach should be on fees and charges where choice exists at the present time?

Ms Rubinstein—It is one of the most unfortunate, if not scandalous, situations that people can be in a low-fee fund and high-performing fund—often for many years; public sector funds are as good an example of that as any other—and when they retire they go to financial planners and end up in retail products that are charging them high fees and not necessarily even performing well. There are huge problems with that. I read an article recently which said that one of the problems is that, post retirement, personal investors actually leave their money in poor returning vehicles simply because they do not have the knowledge and so on or because they rely on their planners, who are getting the commissions and have no reason to change that. I think that is a problem.

Our proposal goes first of all to SG contributions and to commissions in that area, because we think that is the most scandalous of all. But we do believe that there ought to be encouragement for the creation of post-retirement vehicles for investment. There are some. There are products that are relatively low fee, but they do not have the advertising budget and, more importantly, they do not pay commissions. We know that financial planners will not recommend products that do not pay commissions. In a free market, that is a very difficult situation. Where you basically have a wholesale distribution system through the workplace, as we do with industry funds, public sector funds and so on, that is fine, but, once you operate a retail model, which is what this legislation is all about, then people will go to financial planners, and financial planners will not recommend non-commission-paying products. It would be irrational for them to do so. Certainly you can say to people, ‘You should go to financial planners who charge a fee for service,’ and there are planners who do that, but people see financial planning as something that you should not have you pay for. They do not understand that they are paying many times the cost of the $500 or whatever it might be to pay for that advice up-front. That is a key problem.

ACTING CHAIR—On this issue of financial planners and why people go to financial planners—and you have mentioned earlier discussions you have had with delegates and their attitude to early access—from your observations, what is the level of understanding of superannuation in the broader work force, amongst the eight million working Australians? Are they able to make these decisions about the structure, nature and impact of fees and the technical issues relating to financial investment?

Ms Rubinstein—It is not our view that, by and large, people are. That is not what the surveys and other research that have been done show. They show a very deep level of ignorance about this. We are seeing now that people do not understand that, when their funds have negative returns, it means not that there is something wrong with their funds but, rather, that it is a result of the markets. I have talked to a group of young people, who are casuals in the hospitality industry and members of an industry fund, who believe that their superannuation is being eaten up by fees, that it is just like the banks, even though there is member protection in place and that is not the case.

Generally, I think young people would prefer to have the money now. One of the interesting tests is to say to a young person: ‘I will give you $50 now or $5,000 in five years time. What would you prefer?’ Ask your own teenage children, if you have got them. They will want the $50 now. You can play those games—$5 now and $5 million sort of thing—and that is when you start talking. By and large, that is what young people want. Even older people raising families will want the money now if they can have it. That might be an argument for not having su-

perannuation at all, but, if we believe that we need to build a strong retirement income system, then we have to look at protection of mandatory contributions in particular. It is certainly not about feathering the nests of the financial planning industry, which—as you will see Mr Collins says in his article—has grown hugely as a result of the SG. That is really outrageous.

ACTING CHAIR—You have raised the issue of the SG in particular. How do you distinguish the SG, in policy terms, from other superannuation contributions, and why? Secondly—and I have discussed this issue with industry, following on from your comments at a previous committee hearing—practically, how do you differentiate between SG contributions, when they are paid, and non-SG contributions?

Ms Rubinstein—There can be some difficulties in doing that, although I believe that most administrators' IT systems allow them to make that differentiation. I make the distinction—and I should say that it is as a minimum position—because it is mandatory. If people are voluntarily, one way or another, putting money into superannuation, as long as they are completely aware of what they are doing and the fees they are paying, that is their choice, although I would suggest that if commissions were not allowed on SG then people would start to ask, 'Why should commissions be paid on this amount?' It would actually help to increase the knowledge much more in the financial planning area if fees had to be paid up front. The reality is that the advice that people would mostly get would be to pay off their mortgage if they had spare money outside of superannuation, or it would be quite different. To have this industry, which is simply about taking some of people's superannuation guarantee contributions, giving people advice that is going to cost them more money seems appalling. There cannot be a justification for it.

Senator BUCKLAND—I have a rather important question. Are you aware of any—I know the ACTU has not; I am not aware whether unions have—surveys that have been done by industry groups? I will be asking that question later today as well.

Ms Rubinstein—ASFA is the organisation that I am most aware of that has—

Senator BUCKLAND—What was their survey?

Ms Rubinstein—They have conducted a lot of surveys about quite a number of issues like—

Senator BUCKLAND—Can I confine that to the one issue of the views of their membership as to choice, as to whether it is a good option or a poor option?

Ms Rubinstein—I know ASFA have had serious concerns about previous bills. I have just picked up their submission on this particular bill, so I have not read it yet. I believe they will be giving evidence and will tell you themselves what their view is, but certainly I know that ASFA are concerned about levels of disclosure and so on. One of the issues for ASFA is that their membership makes up a varied group of bodies within the financial services industry, so there will be different views. I think it is probably best to talk to them. The surveys I was talking about were not so much surveys of ASFA's own membership, which is superannuation funds and funds managers and the like, but rather surveys of consumers—of employees and superannuation fund members—and the community generally.

Senator HOGG—There is an issue that arose yesterday, raised by Mr Rosario from Westscheme Superannuation Fund in Western Australia in speaking to the committee, and that was the issue of cross-selling. He expected that cross-selling may well arise as a result of moving to choice of fund and that employees would find themselves being pressured by the employer to go into substandard schemes purely and simply because the banks might offer a reduced interest rate to the employer in some other environment.

Ms Rubinstein—There are two ways that can be an issue. One is that superannuation providers offer a range of products to the employer as an incentive to the employer to get people into a particular set of arrangements, and that is obviously a concern. The other way is even more complex. For example, there are a number of superannuation fund administrators—there is one large one in the not-for-profit sector, which is Citistreet, but there are other smaller ones that do corporate funds and so on—which also have investment products, master trusts and so on and are in a position to offer employers a clearing house facility. That means that the employees are in 20 different funds but in fact the employer sends one cheque to that administrator, who then farms it out to the 20 different funds. But it gives that administrator access to all those people with their products, and it can be used in that way. It is not just that the employer is vulnerable to these sorts of blandishments but also that it will also happen directly from the superannuation providers and even from the administrators, who have an interest in selling these other products because that is where the money is made; it is not made out of simple administration, which is a very low margin business.

ACTING CHAIR—One last point: the argument we get all the time for this legislation is that it increases competition in fees and charges—costs come down. That seems to me to be a mantra that is repeated over and over again without any explanation other than that it is ‘competitive forces’, without going into any more detail than that. You are suggesting that fees and charges go up as a consequence. Can you explain why?

Ms Rubinstein—Yes. Costs go down, and costs did go down, particularly in superannuation fund administration as a result of the growth of the not-for-profit sector, particularly the industry funds in the 1980s. That is because those funds had a much lower cost structure as a result of a wholesale workplace award related distribution system—no need to advertise, no need to provide all sorts of silly bells and whistles, a commitment to a low cost structure, being not-for-profit and so on. That did drive down administration charges, although commissions remain an issue. It certainly did have that effect.

This sort of choice model is actually a ‘retailisation’—a dreadful word. It is encouraging a retail distribution system, and that has to drive up costs because it becomes based on branding and advertising and offering people all kinds of silly things. For example, it seems that offering 100 investment choices is better than offering 30, and offering 30 is better than offering five—what does that mean?—yet the costs of providing 100 investment choices is spread to the 98 per cent of superannuation fund members, or whatever it is, that are not going to make a choice.

That kind of retail model simply has to have that effect, in our view, particularly if the not-for-profit sector actually tries to compete in that market, which I suspect a significant proportion of it will do, so it will drive up its costs as well. Essentially, the very successful not-for-profit sector is being told that, in order to compete, it has to be like a master trust. You see the problem straightaway. There is already one industry fund, Asset in South Australia, which has said, ‘We

can’t promote our product through financial planners because we don’t pay commissions, so we’re going to set up a master trust and pay commissions.’ So the not-for-profit products are being forced to be just like the master trusts, and I think that is very regrettable.

ACTING CHAIR—Thank you very much for your time.

Proceedings suspended from 10.34 a.m. to 10.57 a.m.

JONES, Mr John Richard, National Manager, Marketing and Business Development, Motor Trades Association of Australia Superannuation Fund

WATSON, Mr Paul, Executive Officer (Superannuation), Motor Trades Association of Australia Superannuation Fund

CHAIR—Welcome. I invite you to make a short opening address.

Mr Watson—The MTAA Superannuation Fund welcomes the opportunity to provide a submission to the committee in respect of its inquiry into the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2002, which is presently before the committee. MTAA super's submission focuses particularly on elements of the bill that it considers to be critical to the welfare and retirement income interests of its members and their employer sponsors insofar as elements contained in the bill, if passed into law, may adversely affect these interests.

The Motor Trades Association of Australia Superannuation Fund is the national industry superannuation fund for the retail motor trades in Australia. As such, it is the predominant industry fund for motor vehicle repairers and dealers, petrol outlets and tyre, brake and kindred motor vehicle service and repair shops throughout Australia. The fund is sponsored by the Motor Trades Association of Australia, which is the national peak representative body for the retail and service repair sectors of the Australian automotive industry. Our fund has over 200,000 members and some 32,500 employer sponsors, of which just under 14,000 are presently contributing regularly on behalf of their employees. The fund has approximately $1.4 billion in assets under management. It became a public offer fund in 1998, and therefore accepts self-employed people in the general public as members. The fund remains focused on its core responsibility of providing employers and employees within the retail motor trades with a high-quality, cost-effective superannuation fund. MTAA super seeks to maximise its members' ultimate retirement income benefits as well as provide them and their families with competitive death and disability benefits and other value-adding services and products during their working lives.

I must state at the outset that the MTAA Superannuation Fund supports the objective that all Australians should be members of superannuation funds which are appropriate to their needs and for their retirement savings. We also believe that in an effective market environment choice already effectively exists. That said, MTAA super equally believes that the earlier rejections of the various iterations of the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2002 since 1997 have been for good public policy and procedural reasons that we have largely supported. Unfortunately, a number of the previous disconcerting elements of those previous bills still remain in the current bill before the committee today. MTAA super particularly believe that the consumer education and protection elements required to precede the introduction of any measures of choice contained in the bill fall under this general criticism.

MTAA super concur with the general view of a number of industry stakeholders in recommending that before the choice of fund bill can be properly considered by the parliament, a number of issues remain to be adequately addressed so that fund members can better

understand and benefit from the choice of options they already have before an unlimited choice of funds is foisted upon them. In particular, MTAA super believe that the following are high priorities in the general debate surrounding the improvement of members' retirement incomes and are either not addressed by this bill or are done so unsatisfactorily: the need to provide fund members with information and education to enable informed member investment choice, which is already offered by most quality superannuation funds and which arguably plays a greater role in determining the final accumulation benefit payable to a member rather than fund hopping, fees and charges or taxation; and ensuring that all material provided to prospective fund members provides appropriate and effective disclosure of benefit characteristics, investment returns, all relevant fees and charges including entry and exit fees, commissions, soft dollar inducements to third parties and ongoing management fees on a like-for-like basis.

Our fund encourages the government to insulate Australians from the adverse experiences identified previously in the UK, Chile and several other jurisdictions, about which this committee has received much evidence during past inquiries in respect of inappropriate product marketing. MTAA super recommend that the government do this by determining and enshrining in the choice of fund bill certain prescribed benchmarks or standards that all complying and licensed superannuation funds must subscribe to and maintain in order to qualify as a default fund for the purposes of receiving mandated superannuation contributions. Such elements should include, but not necessarily be limited to: ensuring that members of all funds receiving mandated superannuation have access to appropriate, cost-effective group life coverage with adequate disclosure of fees, charges and any profit-sharing arrangements that might attach to such policies; requiring that in respect of mandated superannuation a ban be imposed on commission based selling of superannuation products where the taking of such a product would involve the payment from such contributions or the rollover of existing mandated superannuation to such a product, where the ongoing management fee charges exceed that of the fund or plan that the member's mandated contributions are already in—in other words, they should not be transferring to a fund that is going to be detrimental to them compared to the fund that they may already be in; ensuring that where a fund is to be a default fund, as defined in the bill, it be restricted in the overall fees and charges and ongoing management fees it may charge in respect of any account that contains mandated superannuation; and obligating all mandated contribution-accepting funds to have an appropriate—and where externally structured at suitable arm's length—and effective identification and collection mechanism for superannuation contribution arrears. Our submission contains several recommendations, some of which I have touched on and some, at the conclusion of our submission, I have not. Unless you wish me to read those into *Hansard*, I will leave it at that point.

Senator SHERRY—First, I congratulate you on the depth of your submission. Whether or not we agree with all of the suggestions, it is very well put together. Just on the issue of fees and charges, I noticed that your fee dropped from, I think, $4 per week per member to around $1 today. Let us assume that this legislation that we are considering passed. Would your fees and charges go down as a consequence if you had to operate under this new legislation?

Mr Watson—In short, my experience would tell me that the answer to that would be no, primarily for a combination of reasons. The first is, as you have probably heard from earlier witnesses who had more of an administrative bent on that subject matter yesterday, there would be a number of costs that would be incurred by superannuation funds in the implementation of choice, not to mention the fact that simply if you have a fund that is a rather successful fund,

you will be producing a lot of written material in terms of product disclosure statements or key features statements and the like, as there will be quite a few people who will want to compare your product with other products in making that informed decision. That is quite a cost to a superannuation fund.

Other elements which are not necessarily part of the straight administration fee but which members do pay for, and which I hold grave fears for increasing should the bill proceed as it is, relate greatly to the group life insurance arrangements. Our fund, for instance, has just completed a triennial review of its group life insurance arrangements. In doing that, we were able to secure from the market substantial increases of benefits for members for no additional premium. That was largely done on the back of the pool of membership that we have and the good record of our fund in terms of claims administration and claims history. Were we to negotiate that insurance contract under a choice of fund arrangement, particularly as a default fund where there could be quite some churning of membership annually, insurers have told me—and I have no reason to disbelieve them—that the premiums would be nothing like those we are receiving at the moment; they would be factored quite a deal more highly to take into account the destabilisation of the population of the membership and also every actuary within an insurance company's greatest fear of having selection against that particular insurer and, therefore, against our fund.

I also, from anecdotal evidence in talking to members and employers, believe that some people would shop around superannuation funds to cherry pick certain benefits from funds, and they may split their superannuation between several funds—maybe to pursue the life insurance arrangements of one fund, possibly the investment strategies of another, possibly an ancillary benefit offered by another.

Senator SHERRY—That is an interesting issue that I have not had raised so far. Are you saying that this bill would allow a person to split their superannuation? Let us just take SG: could an individual require an employer to split their SG, say, three ways, 30 per cent into three different funds?

Mr Watson—It could occur at that level. Again, that would probably require the cooperation of the employer not to play hard ball in terms of saying, 'The black letter of the law suggests that I only need to contribute to a fund and on a certain basis.'

Senator SHERRY—The legislation says 'a fund'; it does not preclude 'to more than one fund'.

Mr Watson—Exactly. That is my interpretation of it as well. Even so, downstream from those arrangements there is nothing that prevents a person having mandated superannuation—for instance, SG superannuation—contributed to a fund and to in turn then roll money from that fund, partial rollovers, to other funds. Of course, what comes into play there is the nine-tenths of the iceberg that is not seen in the glossy brochures, that being the cumulative effect of paying more fees on several funds. We see that as something that will be detrimental to retirement incomes policy generally.

Coming back to your central question about the fee increase, our expectation, having just in a very detailed way examined our fees, would be that our fees would increase under choice of

funds simply because of known factors such as printing costs, in terms of producing far more material than we do at the moment because of the demand that would ensue, and also in terms of the administration costs, the insurance costs. We would probably need to increase the size of the fund's resources in terms of its secretariat management to cover off issues that are ancillary to the bill.

Senator SHERRY—Would you see it that, in response to this legislation, your fund would have to engage in a greater level of promotion, if not advertising, to both members and employers, to try and ensure that you maintain the base of membership?

Mr Watson—Again, I think that would be an inevitable outcome. We probably have to only look back to about 1997, when it was thought that the choice of fund bill would be enacted. Several advertising campaigns of not insignificant resource swung into effect from several household financial service entities. They were saturation campaigns. They collectively cost many millions of dollars and disappeared shortly after it was known to everyone that the bill was not going to be passed at that point in time. We caught a glimpse of 'Christmas future' in terms of what we can expect, particularly in the early days of any unlimited choice of fund being brought about—mainly because there would be a certain amount of churning that would occur, I would imagine, within the first 12 months of such an occurrence. Part of that churning may be people who are actively leaving funds which are not suiting their needs, and I think that is quite appropriate. But there will also be many people who will react and be coerced and be influenced by the glossy campaigns, possibly to the detriment of their long-term financial retirement savings. That is also the case for defined benefit funds. Our fund is not a defined benefit fund. Certainly, there are many well-run defined benefit funds, and people should fully understand the ramifications of the risk transfer in terms of leaving such arrangements, maybe as part of being enticed by a campaign.

Senator SHERRY—We are constantly assured, by some people at least, that this bill will lead to greater competition and therefore fees and charges will come down. But many practitioners in the area—and you are one of them—have said, 'No, fees and charges will go up.' How do you reconcile these different claims that are made about fees and charges going down?

Mr Watson—I can only assume that those who claim that fees and charges will reduce are those whose internal unit costs would probably reduce if they grew their pool of superannuation members. In terms of my sector of the industry, the not-for-profit sector, as I said, our costs are very keenly tuned so as to deliver the services or the benefits that we need to, but without the requirement to make a profit for shareholders or other stakeholders. I cannot see in any way, shape or form not-for-profit funds, corporate funds, industry funds and the like—and, in some respects, some public sector funds—having their costs go anywhere other than up under such a market circumstance.

Senator SHERRY—What is the wage and salary range for people that are in the fund?

Mr Watson—In our fund, the majority of our members earn AWOTE or less, and their superannuation savings—I cannot recall the exact statistic; my colleague might be able to assist me. Predominantly their superannuation is superannuation guarantee and possibly some other superannuation that they may have accumulated along the way. But largely it is SG and we are

talking below average weekly earnings for the majority of our rank-and-file employees in the retail motor trades.

Senator HOGG—And what is the average balance?

Mr Jones—The average account balance is a little below $7,000.

Senator SHERRY—Your views are interesting in the sense that you represent an employer organisation. What do you think the reaction of employers would be to the outcome of this legislation, where an employer who has 20 employees could, quite possibly, be paying into 20 different funds? Isn't there going to be an additional administrative compliance cost to an employer who will be in that situation?

Mr Watson—Again, in our experience, the short answer is yes. We base that on the experience of our current employer sponsors—as I imagine you would have heard yesterday from Howard Rosario from Westscheme—particularly where choice of fund effectively operates in a state environment within Western Australia. In that environment, unless an employer can attain an external clearing house facility through which they can pay multiple amounts of superannuation to multiple funds—which I must emphasise comes at a cost, whether it is borne by the default fund that may take on that task initially for the employer or by an external payroll agency for the employer—there is an increase in the cost and there is certainly an increase in the red tape. And by that I mean the administrative burden of the compliance paper trail that is required in terms of superannuation—

Senator SHERRY—The employer has to write a letter to everyone and get responses in writing. That is an increased compliance, isn't it?

Mr Watson—Absolutely. Employers tell us that they are frightfully scared of the compliance issues that go with such a task—marking a calendar to remember that something—a choice option—was provided 28 days ago or is required back within 28 days, or marking a calendar to remember that this is required to be paid to this fund on this timetable but to another fund on another timetable, is very worrying to them. Again, I will go back several years to the introduction of the first bills. The Motor Trades Association of Australia, which is effectively a union of employers, basically said to the peak body and to the superannuation fund, almost unanimously, that under that iteration of the bill they would all be seeking the informal workplace agreement as the simplest way to deal with the administration of superannuation. That was several bills ago. That just gives you an indication of employers' reactions to an area that is quite a concern to them.

Senator SHERRY—So practically the employers that you would represent do not want to pay into more than one fund?

Mr Watson—That is not to say that every one of them might not—several of them do at the moment. It comes back to my premise at the start: that choice effectively operates in this marketplace. For instance, whether employees are employed under the RS&R award, which applies to the retail motor trades, or not, if a member or an employer thinks a fund is not delivering the benefits—generally it is a consensus—they will vote with their money. And I think that they should. Our employers tell us that anything above several funds is an

administrative burden, and it is a burden that they do not want to take on for the compliance issues. They are worried about the penalties that might ensue from that as well.

Senator SHERRY—It is forced choice. This bill means that every employer is required to go through the process that is outlined in the legislation.

Mr Watson—Indeed, that is correct, Senator. Another piece of anecdotal commentary would be that the Motor Trades Association of Australia is also part of the Small Business Coalition. Choice was discussed at that forum and will be discussed fairly regularly while this bill is alive, and the recurring question is: where is the driver for this legislation coming from? They represent a very large part of the economy and of the work force in Australia. When you have some of the largest small business organisations in one room asking, ‘Where is the driver for this?’ and we have our membership asking, ‘Where is the driver for this?’ we can only tell them that it is coming from somewhere else.

Senator HOGG—It is the banks.

Senator SHERRY—We do know it is not coming from small business employers or their organisations.

Mr Watson—As a representative of small business, we would say that this bill cuts right across the government’s tenet, when elected, that small business red tape should be cut and cut heavily to the extent that it was planned to be. This, again, builds that burden up. Personally speaking, from a family that is involved in small business, the hours spent on taxation, superannuation or other compliancy needs are huge.

Senator SHERRY—Earlier you were touching on fund administrative costs. What would be the impact of this legislation’s so-called choice on the investment profile of the fund itself? Would it need to invest in more cash in order to be more liquid because of an improved volatility? Also what would be the impact of the issues relating to short-term versus long-term investment?

Mr Watson—That is of concern to funds generally and to our fund particularly. We do believe that a fund would have to carefully monitor the market situation, as I said, shortly after any such unlimited choice of funds was enacted. In doing so, I think trustees would be derelict in their duties not have one eye on their asset allocations in ensuring that they were able to meet benefit payments or, in this case, rollovers as and when they fell due. While the SIS legislation, of course, provides for situations where trustees may have recourse to other short-term mechanisms for such things, I think that the writing would be on the wall in terms of suggesting that funds would need to ratchet up short-term investments, which might be cash, enhanced cash or other instruments that could be liquidated or remain liquid.

For our fund particularly we are concerned about this because we are a fund that is very bullish on long-term patient capital investment. We have what we call our target return portfolio part of our fund, which equates to about 40 per cent of our fund, invested in long-term patient capital investments such as roads, transport, airports, major buildings, ports—these are often 20 year, 30 year or 50 year plus investments. I do note that this committee inquired into the

situation of reinvestment within regional and rural Australia in terms of superannuation. A number of our investments are in those sectors of Australia.

We would be concerned as to how much of that portfolio we could continue to grow where we needed to maintain one eye on effectively higher, more liquid balances in the case of a choice of fund environment. If the fund, for instance, had a poor year, under choice of funds we could again see that situation where there might be some element of the membership that would be shopping for last year's return. In a reverse situation we are seeing that already today, in that our fund is one of only a handful that credited a positive rate last year. Only yesterday our call centre statistics showed us that people are ringing—cold-calling us—to request information about what our fund's returns have been so that they can compare them to their own. Even on the basis of just being told what the rate was, they are ordering key feature statements and the like. I hope that they are reading those, because I would hate to think that people are just shopping for last year's return. But I also understand why they are doing that, depending on where they are coming from. Again, funds in that situation will definitely have to consider short-term tactical asset allocations that are more skewed toward liquid investments to protect them where they need to. Of course, you must always have one eye on the equity issues for the other members involved.

Senator SHERRY—That is an interesting area which we have not really explored in any great detail so far.

Senator HOGG—How long has the fund been in existence?

Mr Watson—The fund as a national fund was created in 1989. It was created by the convergence of several state based superannuation funds at the time—for instance, the VACC Fund in Victoria or the MTA-Q Fund in Queensland. They amalgamated to create a national fund.

Senator HOGG—With regard to the funds that came together to form that fund, how were they formed in the first instance?

Mr Watson—They were largely born out of the award superannuation requirements of the early to mid-eighties—the productivity superannuation area.

Senator HOGG—Most of those funds would have been the subject of some lengthy debate before the industrial commission at that time, I would presume?

Mr Watson—Absolutely—and internally within the federation that was and is the motor trades federation. Indeed, the primary driver for creating the national fund was, to put it bluntly, that if the trades themselves did not do that and look after their own on a not-for-profit basis and deliver good sustainable returns for a good price then the membership would be scattered to the four winds and be at the whim of the larger for-profit market. That was an overriding imperative in the federation—pulling the funds together to create a national industry superannuation fund at the time.

Senator HOGG—Going back to the precursors to the existing fund, when the final decision was brought down in the various tribunals, was that fund the only fund or was there a choice of

funds granted by the commission? What is the case today? Are there funds competing under the various awards?

Mr Watson—There was, there is and there are. At the time, since and up to this day the federal award that governs the retail motor trades in Australia, in terms of the delivery of mandated superannuation to funds, names several funds. The Motor Trades Association of Australia Superannuation Fund is one; the Superannuation Trust of Australia, another multi-employer not-for-profit fund, is another; and the Australian Retirement Fund is a third. For a time, I think—my memory has failed me for the moment—there is a provision that there could be other funds at the agreement of the employees and the employers.

Senator HOGG—I presume that would be under the RS&R award.

Mr Watson—That is correct.

Senator HOGG—So, under the RS&R award, there are currently three major—

Mr Watson—At least.

Senator HOGG—funds that people in the motor trades industry can select to go to. Is that correct?

Mr Watson—That is correct.

Senator HOGG—Under the current legislation, which of those would be the default fund?

Mr Watson—This is an interesting area. I am not sure how I should respond to that because of my interpretation of section 32K—I think that is the section. Given that under the RS&R award three funds are named, there is, in my mind, confusion as to whether any of those could be a default fund. Each fund is named as one of a number that could be selected from, rather than having one named solely.

Senator HOGG—So that would lead to uncertainty for your fund?

Mr Watson—It would. That is an area that we need to put under the microscope and have a far better look at. That is certainly one element for which a flag has popped up for us in interpreting that particular section—and, from there, where that goes in terms of, say, the majority fund in a workplace and other issues that are covered in the bill. To us, it is not clear, and I do not feel that the explanatory memorandum makes it clear either. There is general confusion about that in our sector.

Senator HOGG—On what basis, in your experience, is fund choice exercised currently under the RS&R award?

Mr Watson—It is exercised every day. In terms of our field staff, we have business development managers in each state, and those business development managers are out there talking to employers daily. In fact, a predominant amount of their work is actually responding to employers' requests to come in and discuss the fund and its current offerings and compare it with

one of the other funds within the award or with funds, particularly for-profit funds, that exist external to the award. We welcome those requests and we are always happy to do that. I must admit that, in those circumstances, we retain more business than we lose.

There is another issue there about level playing fields but, as to whether choice effectively operates in the workplace today, both within and outside the award the answer is absolutely and undeniably yes. It comes back to my point that the bill we are now discussing had its origins some six years ago. Between the market that existed six years ago and the market today there has been a quantum change. Any funds that were not up to scratch at that time have either lifted their game or are getting out of the game. Good quality funds continue to operate well and compete in the marketplace as if choice were effectively black-letter law. Ultimately, we do not see a particular need for this bill. The comments I made at the start are all downstream from that. If a bill such as this were enacted, we would need to do it properly, get the playing field properly levelled and make sure that the members, who have the most at stake in this situation, benefit from the outcome of any legislation.

Senator HOGG—Under the current circumstances, where there are three different funds operating, what degree of churning is there? Is it great?

Mr Watson—Anecdotally, if we had 10 employers in a given period choosing to leave our fund for another fund, one or two of those funds might be one of those other three named funds.

Senator HOGG—I will just stop you there. Is it the employer who chooses to swap funds, or is it the employees?

Mr Watson—It is an amalgam. We see every situation. There are situations where employers will initiate the discussion and make the choice but at the moment, in the workplaces we are involved in, those are far more often community decisions within the workplace. Most employers, particularly larger employers like the motor traders and manufacturers—speaking for our sector of the industry—will say, ‘It has to get past the members and the staff first, before I consider whether to direct my administration to pay contributions to another fund.’ So we find that it is more often a collective decision. Failing that, in larger workplaces it is generally left to employers to determine their destiny in terms of superannuation arrangements. In smaller workplaces—I am talking about microbusinesses, which are generally family arrangements or have one or two people employed outside the family—decisions about moving are caucus decisions. The only workplaces I can think of where the decisions are rarely left to the employees are those that are tapped into multinational businesses, where overall directives about the company’s superannuation usually come from higher up. For example, in our sector we have seen a lot of small business service stations returning to the oil companies and multifranchising, and the companies taking back a lot of the service stations. Such companies will make a general decision about superannuation that will apply to those stations.

Senator HOGG—How will they be affected by the operation of this current proposal?

Mr Watson—I think employers will see it as interference, or at least as red tape that they will have to comply with. At the other end of the spectrum, in small businesses and workplaces where there is a collective decision, whether or not legislation is enacted that says, ‘The member shall have the choice and shall provide that to the employer,’ 90 per cent of the

workplaces that we are involved in will see no effective change; they already believe that they select ‘best of breed’. Whether that is us or someone else, that is a decision they take at the moment and, as I said, we have been more than happy to compete on such a basis with everyone else in the market.

Senator BUCKLAND—I wanted to echo the comments of Senator Sherry regarding the depth of your submission; I found it very interesting and helpful. I also congratulate MTAA on their philosophy in relation to their investments. I am very encouraged to hear that.

Mr Watson—We truly believe that we are in it for the long run and our investment philosophy is structured as such.

CHAIR—It has helped the committee that you put your submission in so early.

Mr Watson—It is a very important bill before the committee and we were most happy to do so. If I may make just one more brief point that touches on Senator Hogg’s queries, there is another element of the bill that concerns the fund and the association. The fund believes that it is inconsistent practice, in an industrial relations sense, that there be processes within the bill that allow the override of choice of funds. I am talking now particularly about Australian workplace agreements or certified agreements, which are a product of the industrial relations process, that can override that choice. However, awards—which have been a very effective vehicle to date for the delivery of superannuation to members such as ours—are not permitted to do so. We believe that there needs to be either a uniform application of the overriding provision of the bill or none at all. It should not be the case that one part of the industrial relations system in this context gets a free kick while the other gets a kick in the head. To us it just seems to be that disconnected.

Senator SHERRY—It is effectively a contradictory position, isn’t it—not your position but the position of the bill?

Mr Watson—We do read it as a contradictory position that, as I said, all elements are born of the industrial relations system, yet some would be allowed under this particular bill as it stands to override that choice while others would, in fact, be overridden by choice.

CHAIR—Thank you very much.

[11.39 a.m.]

ANDERSON, Dr Michaela, Director, Policy and Research, Association of Superannuation Funds of Australia Ltd

PRAGNELL, Dr Bradley John, Principal Policy Adviser, Association of Superannuation Funds of Australia Ltd

CHAIR—Welcome. You are both well known. Is this the first time you are appearing for ASFA, Brad, or was it once before? Before it has been for the CPAs, hasn't it?

Dr Pragnell—I appeared before the Joint Committee on Corporations and Securities, on the FSR Bill. This will be my first appearance before this committee with ASFA.

CHAIR—Dr Anderson, can you talk on the three bills together in your opening statement.

Dr Anderson—In relation to the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2002, ASFA certainly supports the abandonment of the limited choice model of earlier bills. That model was fraught with complexities, particularly for employers. However, the proposed regime will not be easy for them to understand. If you want any information on the hoops that the employers must jump through then Dr Pragnell has a beautiful chart here that he has developed. Having said that, a regime that provides unlimited choice to employees but with strong default fund requirements, quality disclosure and public education would help avoid the excesses experienced in the UK mis-selling scandal, which is of course what we want to avoid, as well as making this a useful process for all Australians with superannuation.

In relation to the default fund, ASFA believes that the current proposal for default fund selection better respects the existing practices than previous attempts to establish a default fund mechanism. We support the proposed minimum standards for a default fund to provide insurance cover for death benefits. However, we believe that there may be room there for further criteria for the default fund.

CHAIR—Such as?

Dr Anderson—We have particularly put forward a balanced portfolio for the default investment strategy. We believe that portability is critical if choice is to work properly, and we await the proposed Treasury discussion paper on this topic. Our main concern is that, while we support the prescribed disclosure regime for superannuation, we believe that the fee disclosure needs some fixing. In particular, the OMC does not currently fulfil its very laudable objective to provide a means for consumers to compare fees and charges, which we believe is essential in a choice regime. We have made recommendations about how this can be handled going forward.

The other element that we see as essential is education. We recommend close consultation with industry on the development of any education campaign by the ATO. We would caution against either a feelgood reform campaign along the lines of the 'unchain my heart' campaign

for tax reform or a campaign chiefly focused on employer compliance. In relation to timing, ASFA support a 12-month period after the passage of the legislation or the commencement of provisions that replace the OMC, whichever is later. Before the commencement of any choice, the OMC and the provision for people to properly compare fees must be fixed. This would permit time for public education and to enable superannuation funds and employers to make the necessary changes.

Turning to the government's co-contribution for low-income earners, ASFA welcome the government's proposal to replace the current very modest tax rebate for personal superannuation contributions by low-income earners with a more generous co-contribution. This initiative, we feel, has real merit as a means to improve the adequacy of retirement savings. Having said that, we believe that the target group for assistance is very limited. The receipt of the proposed co-contribution is dependent on a personal contribution being made and the low-income earner also having contributions being made by an employer. Not all low-income earners will be able to afford to make such a payment. The self-employed and those who are not in the paid work force will miss out entirely.

We have provided in our submission some figures about the number of people who would be able to obtain this benefit as it currently stands, but in our view there are grounds for expanding the number of potential recipients of the co-contributions while at the same time focusing more closely on low- to middle-income family units. We have provided some suggestions for how that might be done and how to contain costs for government.

On the superannuation surcharge proposed amendment, ASFA support any move that reduces the up-front taxes imposed on superannuation and therefore we support this. As an aside, I think this tax continues to grow in its absurdity. I had before me only this morning a person who had retired nearly four years ago and who had received in the mail five separate pieces of paper showing changes that had been made to superannuation assessments nearly four years ago. Arriving with these papers was a bill for a considerable amount of money. This was for the financial year 1997-98. Leaving aside whether this tax is right or wrong—and we have a firm view on that—I was left rather speechless by the stupidity of the administration and also by the almost incomprehensible stack of papers that this person received. I had to say to my husband, 'I will look at it later, dear'!

CHAIR—If I could interpose, we had a case yesterday where one of the witnesses claimed that for an extra $1 in contribution they incurred an extra $7,000 in surcharge tax. You mentioned the delay of the bill until 12 months after the general management charge came into effect. It was put to us yesterday—and I think this has a lot of merit—that that figure does not have a lot of relevance for the ordinary member. If you want to prepare that figure then do so, but what is more meaningful to the member are those fees and charges that actually reduce their fund balance. It was put to us that an amendment is required, in terms of a meaningful application to an ordinary member, which reflects that the only figure that that member is really interested in to determine whether he is going to swap funds is the amount of fees and charges that actually affect his account as such and which are visible. Would you like to comment on that?

Dr Pragnell—I think ASFA have been very consistent in pointing out the shortcomings of the ongoing management charge and we have consistently argued that its location in the PDS

requirement for superannuation funds, and the requirement for basically all funds to produce it, is an impost on the funds. We would also question the ability of consumers to be able to comprehend that figure. We are currently undertaking some consumer testing, which is probably happening as I speak, where we have drafted up mock PDSs which are totally in line with the current requirements, including the ongoing management charge requirement. We are currently having those tested with ordinary citizens. We are going to be doing a second round of testing in about a month or so, and hopefully we will have the results available in November. So, as it currently goes, I think we are going to have a better sense of what people make of the ongoing management charge. I do not think our expectations are very high. As well, we are looking at the development of alternative measures which will allow comparability.

On the issue of fees and charges, I think everyone supports full disclosure. It is a bit like motherhood: it is something that no-one is against. While full disclosure is not necessarily enough, I think what we would be pushing for is a need to have something which is comprehendible by the ordinary person, and that means it has to be market tested. You have to go out and run Senator Sherry's pub test on a wider scale; you actually have to present these documents to ordinary people to see whether they can make sense of them.

The other issue we have been on about is comparability. Comparability is critical as well, which is difficult because funds have different fee structures. But, in terms of our research that we have been pushing over the past couple of years, we think we are getting closer to finding something that will actually break through.

Senator HOGG—What if there is no solution? And that is a reality, isn't it?

Dr Pragnell—Yes. I think where we are coming from is that ultimately, whatever standard expense measure you come up with, you are giving up something to get something else. The thing is to try to come up with something which is as fair as possible to the providers, something which is realistic, something which is meaningful, something which is understandable. You have the pros and cons on various sides. If you come up with something which attempts to provide a magic number along the lines that I think Hazel Bateman from the University of New South Wales was proposing, the problem is that there is a bit of a black box sitting behind that. Something that ordinary consumers might not understand is: what are the numbers that go into the black box? If you come up with illustration tables that try to demonstrate the impact of fees and charges on the final benefit—which I know this committee has been looking at—you have the possibility of maybe developing something which is a bit more understandable, but you have to make sure that people genuinely understand it, that when they see an illustration they do not assume that the figure at the bottom is a promise of their final benefit. They do not assume, if you do a 40-year projection, that that is what they are going to get, that they are going to get $1.1 million or something like that. That is always something you have to keep in mind when you are doing those benefit projection illustration rates. So we are trying to look at those options. We are also looking at other alternatives at the moment, but that is what we are investigating right now.

Dr Anderson—The problem at the moment is that what is there is very misleading, so you would be better off not having it than just having something that is misleading—although the objective of showing people the effect of the fees and charges is a good one. So it is a matter of

striving to get it as close as possible without being misleading—that is something which is useful.

Dr Pragnell—I think the final impact, as Senator Watson mentioned, is something that we would be working towards in terms of what the model would actually do.

CHAIR—Yesterday, when questioning a financial planner, we raised that question of transparency and the importance to the financial planner of trail commissions. The response was that trail commissions effectively underpinned their business. Would you like to comment on that?

Dr Anderson—We are talking commissions here, and I think we have some difficulty with trailing commissions. I think we would support a fee which was very obvious and did not last for a very long time.

Dr Pragnell—I guess commissions on SG products is really what we would be looking at. Generally you would be looking at the trails more than likely being on individual personal products, which may not necessarily be SG. I think our main concern is about the impact of both upfronts and trails on SG.

Senator SHERRY—But it does happen.

Dr Pragnell—It does happen—that is right. And we would be very concerned about that.

Senator SHERRY—And the consequence of this legislation is that it is more likely to happen, isn't it?

Dr Pragnell—That is a possible outcome, yes.

Senator SHERRY—Is it a likelihood or a possibility?

Dr Pragnell—It depends on how the market actually responds, I suspect.

Senator SHERRY—In your valued and expert opinion, how will the market respond? Surely there would be commission agents seeking SG contributions?

Dr Pragnell—I think there would be some who would. Generally, I would suspect that you would see more intensive competition involving the multi-employer providers more than necessarily financial planners providing individual products. Because of the economies of scale, you are still going to see more aggressive marketing by multi-employer funds, be they industry funds or master trust providers. The possibility of abuses by commission agents is something that we definitely have to guard against.

Senator SHERRY—Does ASFA agree or disagree with commissions on SG?

Dr Anderson—No, we do not.

Dr Pragnell—We do not support commissions on SG.

Senator SHERRY—What about entry and exit fees?

Dr Pragnell—We are looking at that issue right now. One thing that we do have a concern about is how any restrictions on those types of fees might affect some product design. There are certain genuine capital guaranteed products, for instance, out there that are reliant upon the money basically staying put for a set period of time—very similar to how a term deposit functions—which would levy a penalty on the person if they chose to move that money out. We have to think very carefully about the construction of any kinds of restrictions on those kinds of entry and exit fees, because it could impact on the types of products that are actually offered. Our position has generally been that we support disclosure over fee regulation if possible.

Senator SHERRY—We have dealt with the issue of ongoing commissions, and if you do not agree with them the only way to get rid of them is to prescribe them. That is right, isn't it?

Dr Pragnell—Yes. If that is of genuine concern—which I think it is—it is something that we would support.

Senator SHERRY—The theory of choice—and I stress the word 'theory'—is that people are able to move their superannuation savings from one product to another as they deem fit. How can you have barriers—and entry and exit fees are a form of barrier—in that theoretical superannuation model?

Dr Anderson—You would probably have to be very careful that you are not, as Brad said, restricting products. Having said that, though, the question of entry and exit fees does remain an issue if you are going to have real choice.

Dr Pragnell—Portability is critical. You are right: in terms of giving you that ownership it is not just a matter of ticking the box when you get your standard choice form; it is also your ability to move as a member. And things like exit fees—

Senator SHERRY—They consolidate too.

Dr Pragnell—Yes. They do set up barriers that do act against that intent. Obviously, that is something that needs to be looked at.

Dr Anderson—Which is why we are really waiting for the Treasury's paper to see the form it is taking, because we think it is probably as crucial as the legislation that is currently—

Senator SHERRY—Which Treasury paper are you referring to?

Dr Anderson—Portability. The issue of exit and entry fees will be very much highlighted when we move to portability, and that has not become a major focus yet.

Senator HOGG—On entry and exit fees, do you see the buy and sell prices in the same light, because the committee had the view put to it yesterday that some people did not see the buy and sell prices of some products in the same light as entry and exit fees?

Dr Pragnell—They function very similarly. Depending on how they are structured, they act in a similar fashion sometimes.

CHAIR—It is a reduction in value, isn't it?

Dr Pragnell—Yes, that is right.

Senator HOGG—I agree with what you have said, but we had a contrary view to that yesterday.

Dr Anderson—There have been contrary views within the industry about what exactly those buy-sell figures mean. I think we will see more of that when we see portability.

Senator SHERRY—While we are on the issue of portability, this so-called choice legislation does not ensure portability, does it?

Dr Anderson—No.

Senator SHERRY—Putting aside the fees and charges issue, I want to highlight a couple of issues. It can be over-ridden by an AWA or an industrial agreement—so if you are an employee in one fund, your choice is over-ridden—and it applies to the federal jurisdiction and not the state jurisdiction. So this piece of legislation does not provide for portability, does it?

Dr Pragnell—In our submission, we noted that things need to be done before choice is able to work. These include portability, disclosure and public education, which are part of the fundamental building blocks or preconditions for choice to function properly.

Senator SHERRY—You got to the point I was going to: should the bill be passed in its current form?

Dr Anderson—We would expect that the issue of disclosure would be fixed before it could be agreed to.

Senator SHERRY—So if that issue is not fixed, do not pass the bill; is that what you are saying?

Dr Anderson—I think that would be our position. We feel reasonably hopeful that there will be some movement on the particular part of the disclosure that causes concern.

Senator SHERRY—But what about the issues that we were discussing earlier about commissions, entry and exit fees and those sorts of issues?

Dr Pragnell—I think that ties in with portability. From our point of view, any addressing of portability as part of the preconditions, hopefully, would be examined and addressed.

Senator SHERRY—It is essential to this bill. We get this claim all the time that this ensures portability and that choice is all about portability.

Dr Anderson—It is actually only about where your future contributions are paid. To us, portability has a meaning of being able to move your current balances. So, if you do not get those in line, you are going to have a very large number of accounts out there.

Senator SHERRY—There are some who assert that the passage of this legislation results in greater competition and lower fees and charges. Do you agree? If not, why not?

Dr Anderson—I think you would have to say that there will be greater need for funds to promote themselves. I cannot see how that will not increase their expenses. Whether that is absorbed by some funds that are able to absorb it or whether it is passed on to members, we cannot say but I think you would be quite blind—

Senator SHERRY—You are an expert in the area. Your organisation represents a significant number of funds. You must be able to indicate to the committee from your knowledge whether the fund is going to absorb the cost or pass it on via higher fees and charges.

Dr Anderson—If you are a not-for-profit organisation, you are in real trouble because you have not got anywhere else where you can get that expense paid.

Senator SHERRY—So in that sector it would be passed on?

Dr Anderson—I think so. I think you have to say that that sector, by and large, is pretty low in cost, as it is now, and does not have very much padding to pay for marketing.

Dr Pragnell—In terms of how it actually works, regardless, you are going to see a bulge in cost. If this becomes law and implemented, lots of money will be spent in marketing, for instance, in the lead-up to this, so you will get a bulge. Some of that will be passed on in the form of fees and charges. It comes down to whether, once we get over the bulge, we actually see the proper working of competition and whether people are able to make those decisions based on the information they are presented. That means disclosure has to be correct and people have to be educated so that they can make decisions on a wide range of issues—not merely because of brand names and last year's investment returns but on things such as cost. If people are able to make decisions on the basis of things such as cost, there is a chance that market forces could come into effect. But, if you do not have those proper information flows, it is not going to work.

Senator SHERRY—Let me talk about education and information flows and informed consumers. There are just over eight million people who are covered by superannuation, compulsory or otherwise. How, for instance, do we ensure that people who are functionally illiterate, who make up 15 per cent of that group, can make an informed decision? How do we educate them?

Dr Anderson—I do not think we ever will educate everybody. I think this is why the default scheme is so important—that you get it right. There will be a lot of people who will be in the default scheme for a lot of reasons—they think it is the best scheme; they cannot be bothered making a choice; they cannot make a choice—and that is why the default scheme is so very important.

Senator HOGG—And they are, by and large, industry funds. Their costs go up so the fees and charges go up, so how are those people better off?

Dr Anderson—It is a difficult question.

Senator HOGG—Those people—the people Senator Sherry is talking about—are the people who are most vulnerable. They are the people who will not be protected by this bill.

Dr Pragnell—I think their vulnerability will come through the form of certified agreements and things like that. Whether or not their unions are active and able to protect their interests collectively, it will be, I guess, the less unionised parts of the economy where you will probably see less ability for those people to be protected. It will come down to the ability of unions to negotiate collective arrangements within certified agreements. That will be the crunch issue for that portion of the population which is potentially vulnerable.

Senator BUCKLAND—Surely it is broader than that. You must be getting some reports back from your own member funds that there is a greater part awareness of fund members. Everyone knows a financial planner down the street or in town somewhere, and there is a lot more questioning by fund members about their superannuation and the options they have. They think they know a lot but they are generally people who know less than I do about superannuation. Those people are entitled to be protected as well, because some very unwise choices can be made unless there is an education program to protect them. How do you do that?

Dr Anderson—We would agree that an education program is necessary. As I said at the outset, I do not think an education program based on saying, ‘You have freedom of choice and here is how you go about it; you take this form to your employer’ is actually going to get us anywhere. An education program has to look at making people better understand the investment decisions they are going to make. Those who cannot understand it will always be reliant on a reasonable default mechanism within this legislation.

Senator BUCKLAND—If this bill were enacted, would you think that the $28 million is enough for the education program? If you do not think it is enough, do you have a figure that you think would be more suitable?

Dr Anderson—I am always amazed at the cost of a campaign, and I do not think $28 million would go very far in a campaign that would catch most people.

Senator HOGG—And that is over four years.

Dr Anderson—Yes, over four years it will go absolutely nowhere. I think we have to remember that we are going to be educating employees about making choices and we are going to be educating employers about their obligations. That $28 million over four years is not going to stretch very far when you look at the different campaigns that are necessary there.

Senator BUCKLAND—Do you think the employers could be at greater risk than employees even?

Dr Anderson—I said at the start that I thought employers actually will have a fairly hard job in this. I guess this relates back to Brad's chart.

Dr Pragnell—I guess employers are really confronted with two sets of questions for each employee. Firstly, who has to be given choice and, secondly, what is their default fund? For both of those processes there is going to be quite a bit of work for the employer in determining things like their award coverage and so forth. I think particularly when you start to get to smaller employers, who may have less formalised industrial relations arrangements, they are going to be in some pretty murky water in terms of coverage and in even murkier water in terms of what the default fund actually is. I think that when you start to deal with larger employers with more sophisticated industrial relations arrangements it is going to be more straightforward. They have certified agreements, they have formal HR and IR functions within the organisation and they deal regularly with the unions. They know who is who and who is covered by what. I think when you start to get down to smaller employers it gets really difficult, particularly the default fund in 32K. It gets very messy for employers because they have to start determining the actual functioning of the superannuation provisions in the award to determine whether or not the funds named in the award function as a default fund or not.

Senator BUCKLAND—You are a great advocate for the unions, and I appreciate that.

Senator SHERRY—I would like to speak on that issue. Parliament has a responsibility to ensure the protection of the entire workforce, doesn't it?

Dr Pragnell—Yes, that is correct. I agree.

Senator BUCKLAND—Do you think this bill could leave some fund members vulnerable to loss of entitlements if they have this open free market choice regime?

Dr Anderson—Again, it comes back to how well they are informed and how well their employer is informed. On the face of it, if the default fund worked well then that would protect some of them. If in fact they have been well informed and can make the choices then that would protect some of them. I have no doubt that some may fall through the cracks, but how you give some people choice—because you do not give everybody choice in this—and protect them at the same time is really what we are talking about.

Senator SHERRY—I note that the Australian Chamber of Commerce and Industry have estimated in their submission that there will be 654,000 employers subject to this legislation—I do not know whether that figure is accurate or not—and a significant number of those will be small business. Have you looked at the proposed prescription for employers in terms of the process in this bill?

Dr Pragnell—That is my scribbled up chart, which I might try to type up.

Senator SHERRY—That would be useful.

Senator HOGG—I thought you were going to give that to us today.

Dr Pragnell—That is what it looks like, if you can read my little chicken scratches.

CHAIR—Could you have that typed out and then submit it to the committee?

Dr Anderson—Yes.

CHAIR—This is the table of hoops that employers have to go through that you referred to earlier?

Dr Pragnell—Yes. I have that all written up here.

CHAIR—Could you have that typed out and then submit it to the committee?

Dr Pragnell—I definitely would be happy to do that.

Senator HOGG—Could you give us an outline of it now, as to how many hoops there are?

Dr Pragnell—Yes. In terms of coverage—this is a simplified version of the flow chart—you have who is covered and what is the default. Employers would have to do this for each individual employee, and so it is not on a collective but on an individual employee basis. Basically, the employer would have to go through items (3) through (10) in 32C—contributions to CSS and PSS, contributions under the Superannuation (Productivity Benefit) Act et cetera. The main things that employers would need to be aware of would be state award coverage, coverage by an award or an AWA, or coverage under Victorian agreements under the old act.

Senator SHERRY—Multiple award coverage in some cases, state and federal?

Dr Pragnell—There could be. I guess part of the problem comes down to state awards and how they function in terms of common rules. When you start to get down to micro, very small, employers, a lot of them would probably still be unclear about their award coverage and whether or not they are required to make a contribution under the state award; they may not necessarily be sure about that. They may not even be aware of their state award coverage but, in terms of determining who is covered, they would have to clarify that. So it would be state award, agreements, other exclusions and so on.

Then you say, ‘Okay, these people have to be offered choice.’ Either they are given the standard choice form and the 32Q notice or you have an individual written agreement. If that process is followed, then you have the chosen fund. If not, you go across to the default fund and then, first off, you have to look at the Commonwealth or territory award coverage. Again, in terms of the award, that is very murky, with certain funds being knocked out or being considered the default funds in terms of the actual functioning of the award. You spoke earlier about 32K, and I think (5) in particular is the one that employers would have to look at very closely and make a judgment about as to whether or not the fund in the award does or does not meet those tests.

Dr Anderson—Having said that in connection with how difficult it is for the employer, I think it would be fair to say that a default that has gone through a collective process is what we favour.

Senator SHERRY—It is not so much the default issue—although there are obviously some issues there—but the process by which the employer has to offer the choice to each employee that I was concerned about.

Dr Pragnell—In terms of providing the standard choice for them.

Senator SHERRY—Yes.

Dr Pragnell—There is a trade-off, and obviously there is going to be—

Senator SHERRY—I am not talking about trade-offs. The employer has an outline—and they are required or forced to do this by law—in 32P, 32Q and 32R. There is a series of prescriptions; there are letters to be written, responses to be received in writing; there are time frames, such as 28 days, and so on. At the end of the day, if you get it wrong—and it is strict liability under the Criminal Code—it is over $6,000 for each employee. That is all new for the employer, isn't it?

Dr Pragnell—Yes. It does expose employers to some pretty severe penalties and it is a pretty labour intensive process. But, if you are going to offer choice—

Senator SHERRY—But we have not got to that yet. Just dealing with employers, these are additional requirements over and above what they currently have to do.

Dr Pragnell—Correct.

Senator SHERRY—When they have gone through all of this, there is an additional compliance in the sense that, if they have 20 employees, they may be paying to 10, 15 or 20 different funds. That is an additional compliance burden also, isn't it?

Dr Pragnell—Correct.

Senator HOGG—One issue that is of concern to me is where the employees would get their advice from. They are being asked to make a choice.

Dr Anderson—I would think they would go where they have usually gone for their advice—small employers, anyway—which is their accountants.

Senator HOGG—The employees would go to their accountants?

Dr Anderson—No, their employers would go to their accountants for advice.

Senator HOGG—I asked where, in those circumstances, the employees would go for their advice.

Dr Anderson—Financial planners generally do not want to look at people who do not have large amounts of money to invest, so people just getting SG would not generally be the clients of financial planners.

Senator HOGG—Under those circumstances, how are these people going to make an informed choice? That gets to the very heart of what it is about.

Dr Pragnell—Without getting the advice.

Senator HOGG—Perhaps I can further pose one other problem on that, and that is the issue of cross-selling. You have these people, who are the most vulnerable, then being set up. They will not go to financial planners. They are in a small enterprise, and the small enterprise is more likely to be subject to cross-selling. Clearly, these people are going to end up being targeted as a source to be exploited.

Dr Anderson—Some of them will throw up their hands and say, 'You tell me,' which gets back to the default.

Senator HOGG—That is right. That then brings up the issue of the liability of the employer, who has led them down that path in the first instance.

Dr Anderson—And the question also of who advises the employer through this maze of—

CHAIR—Hoops.

Dr Anderson—Yes.

Dr Pragnell—And we have not even touched on FSR.

Senator HOGG—And you have not drawn that diagram yet, Dr Pragnell. I am looking forward to that diagram, I can assure you.

Senator SHERRY—That is a bit unreasonable, Senator Hogg! I think he can give it due consideration. Just going back, Dr Anderson, you say it would not be worth it for an adviser. Let us take a person who currently does not receive advice from a financial adviser. If a person is on, say, average weekly earnings, which annually are just over $40,000, and makes SG contributions of nine per cent—and that is all they do—that comes to approximately $3,600 a year in contributions. Choice comes in. That person can make neither head nor tail of it; they just cannot understand it. They get a product disclosure document of 50 or 60 pages and, through either a friend or being approached by or going to a financial adviser, they get advice. Why wouldn't a financial adviser hit them with a commission for the advice? On an SG of $3,600, a financial adviser could pick up $1,000 a year for 20 or 30 years; or by charging 10 per cent they could pick up $360 a year. That would be worth their while, wouldn't it?

Dr Anderson—I do not know whether financial planners would find that a lucrative business or not. I imagine that there will be a growth in advice out there for just this, and there may be a different focus of advice just on small players. You are quite right; it could happen.

Dr Pragnell—We did express concerns about commissions earlier. I think that there are genuine concerns there. Our concern is that in this situation the advice is going to be sought from a next-door neighbour, family member or friend down the street—that is probably where people are going to solicit their advice from more often than not; they are not going to go off to

their accountant or financial planner. Because it is not a problem and they have to make a decision in 28 days, they are going to either forget about it or pick it on the basis of something like brand or last year's investment performance or an ad they saw in the newspaper. That is our concern in terms of worst-case scenario.

Senator SHERRY—That is not very reassuring for the future of the retirement savings of an individual in a company, is it?

Dr Pragnell—No. That is where genuine disclosure and genuine public education are critical for it to work.

Senator SHERRY—It seems to me that if we were going to minimise these problems we would need a very long-term public education campaign. We would have to be getting to young people in schools to make them financially literate. Shouldn't we be running the education campaign and monitoring its success or otherwise before we pass the legislation?

Dr Pragnell—I think that is a good idea.

Dr Anderson—But I do not know how you would monitor its success. How you would monitor success in an education campaign is another issue.

Senator SHERRY—I am sure ASFA—or some relatively independent body other than Treasury—could monitor the success or otherwise of our attempts to be the first country in the world to make eight million Australians financially literate.

Dr Anderson—I think we might fail in that—

Senator SHERRY—That is disappointing.

Dr Anderson—which is why we have put emphasis on the need for a very good default fund, the need for useful disclosure and the need for education—the three going together is the only way forward.

CHAIR—Thank you very much for your submissions.

Proceedings suspended from 12.27 p.m. to 1.48 p.m.

SMITH, Ms Barbara Mary, Technical Director, Taxpayers Australia Inc.; and Executive Director, Superannuation Australia

CHAIR—Welcome. Please make some opening comments.

Ms Smith—Firstly, with respect to choice of funds, our association supports the proposed choice of funds legislation. We believe that employees must be given the choice of which superannuation fund receives their employer contributions. We have supported this since the government first announced it before the 1998 election. We have never had anybody contact our association and disagree with our view, and I can assure you that I do get plenty of people disagreeing with my view and they certainly would let me know if there was anything that they disagreed with. There was concern with the first piece of legislation about the choice of—

CHAIR—If I may interrupt you quickly, you have heard the evidence given here today and people are asking, 'What is driving this choice of legislation?' You are saying that it is a great thing. Have you been listening to the evidence given this morning? The evidence seemed to be pretty strongly against it, didn't it, because of all the problems associated with it?

Ms Smith—People are driving it. Our association gets phone calls every day of the week from employees who say, 'My employer has my money in an inappropriate fund for me and I would like my money to go into a self-managed fund or into another fund. I have two different funds: one is performing very badly, which happens to be the employer fund, and I also have another fund.' I was talking to someone yesterday who has money in HESTA, which has been a good performing industry fund. Her current employer is putting the money into a different fund, which is performing very poorly. She has asked for that money to go into HESTA and her employer has denied her that opportunity. So she has two funds.

A lot has also been said about costs. The cost of administration charges to two different accounts is double the amount of charges to one account, and people are forced to have more than one account at the moment. I have three different super fund accounts, two of them because of work that I did for organisations that would not pay into my self-managed fund. My own employer does pay into my self-managed fund. Also on charges, the talk this morning almost made it sound as if there were currently no charges. That is not the case; charges are already incurred when you set up an account for an employee.

CHAIR—The point I was making—which you have answered fairly well—is that the Corporate Superannuation Association, the ACTU, the Motor Trades Association and even ASFA hardly gave us the overwhelming support that you are giving. How did you react to that evidence, given that people are ringing you up and saying, 'We've got all these problems; we want choice'?

Ms Smith—The bodies that you have spoken to this morning all represent either employer groups or super fund groups. Our membership is much wider ranging, spreading across small employers, large employers, employees and small super funds. We also get a lot of feedback from nonmembers. We sell a number of books on superannuation and tax, in which we invite,

and get, feedback from people. For example, we have sold 25,000 copies of our *Taxpayers Guide* each year and we get feedback from those readers.

CHAIR—The *Taxpayers Guide* that you produce each year is a very good presentation.

Ms Smith—Our *Superannuation in a Nutshell* has sold over 30,000 copies—it is a business book bestseller, which has amazed me. I think the government should buy eight million copies and send them out to all of the individual employees to let them understand super fully.

CHAIR—Have we got a copy of that book?

Ms Smith—You can have a copy of it.

CHAIR—Thank you.

Ms Smith—That shows the interest in superannuation. The book only came out in May this year, and over 30,000 copies have been sold. It shows that there is a current interest in super beyond what people are saying exists. We contact a lot of people because we have a self-managed super fund service and provide a manual. We hear from a lot of people who have a self-managed super fund and also have their employer contributing into some other fund who would sooner have all the money amalgamated in their own fund. The important thing is that, while employees are not given choice, some are in very good funds and some are in very bad funds. We are talking about choice. No employee should be told, ‘You have to choose something different from what you’ve got,’ whereas at the moment they are taken by the scruff of the neck and told, ‘This is your fund and that’s it—that’s the one you’re in.’ That is why we support choice. It is like telling people which house they have to buy. Superannuation is often people’s second largest asset—if we are talking about Tasmanian housing, it may be their largest asset; in Melbourne it is their second largest asset—and they get no say in where it goes and where it is invested, unless their employer has the good-heartedness to do it, and there is nothing to say that employers have any ability to select a good fund.

Senator SHERRY—Hang on a minute; that is not right.

Ms Smith—Can I just finish what I am saying?

Senator SHERRY—You are going along in a great monologue and I disagree with some of the comments you are making. You say that employees get no say about where their money is invested. How is that correct? What about investment choice, which 80 per cent of superannuation funds have, where an employee can pick an investment category?

Ms Smith—I continue to say that, unless the employer chooses to give them that option—

Senator SHERRY—That is not right. The employer does not choose; it is the fund trustees who determine whether an investment choice menu is available. As I understand, it is a matter of fact that 80 per cent of funds offer an investment choice menu from which—

Ms Smith—But 20 per cent do not.

Senator SHERRY—Yes, that is right, so we make it compulsory then. But you are wrong when you say that employees get no say. At least 80 per cent have investment choice menus to pick from and in many cases five or more investors, so some employees, at least a majority, do have that choice before them.

Ms Smith—I did say that, unless the employer chooses to offer that option, there are a lot of employees who are extremely happy with their current fund, and I would say that probably 90 per cent will not change.

Senator SHERRY—You are wrong when you say the employer offers. The employer does not offer; it is the trustees of the fund who determine whether or not there is investment choice. You are incorrect to say that employees do not have any say, because at least 80 per cent have investment choice before them from which they can select a category of investment options.

Ms Smith—I fully agree with that statement.

Senator SHERRY—Thank you, but that is not what you said earlier.

Ms Smith—It is what I said. I fully agree, and if you would like to replay the tape to check it that is fine. But what I am saying is that, unless the employer arranges to go into a fund where there is investment choice, or some choice, there is no choice for that small number of employees—maybe 20 per cent. I would say that if you introduced choice probably 80 to 90 per cent of people will not move, but you have 10 to 20 per cent who are unhappy with their current funds. Their employer has chosen a fund for them which is easy administratively and they have chosen to shove it into a company fund which is managed elsewhere. Those managers change constantly while they change their books and sell those funds and those employees do not have a say in it. You will find that the employers themselves are not members of those funds. They will be in a separate fund, an executive fund, which provides far better arrangements for them—or, if they are not members of those funds, some of them have a cherry picker type scheme where, when employees have not been there for five years or more, they lose up to 25 per cent of their account balance.

Senator SHERRY—How many people with superannuation guarantee contributions are in that sort of fund you have just referred to? You are generalising again.

Ms Smith—I have no idea but I know some are and I hear from them, and I have seen documentation which would back up what I am saying. Overall, I would say that the industry funds are well managed. I am talking about the ones that the employers set up with a manager and the employers have some say in what happens.

Senator SHERRY—The corporate funds?

Ms Smith—Yes, some small corporate funds.

Senator SHERRY—Some small corporate funds?

Ms Smith—Yes, and some larger corporate funds.

Senator SHERRY—So your support for so-called choice is predicated on the practice of some small corporate funds?

Ms Smith—No, my support for choice is that when we are talking about people's retirement savings they should have the right to say where that money goes.

Senator SHERRY—Do they have the right to be protected from excessive fees and charges?

Ms Smith—Yes, I believe that they do. I believe that what is currently termed as 'negative returns' has actually given people a wake-up call about superannuation, perhaps for the first time. 'Negative returns' is a very sanitised term. Negative returns means that you have probably received no income and the capital value has fallen, so you have lost some of your retirement savings.

Senator SHERRY—But that is a function of a capitalist market.

CHAIR—Senator Sherry, I did allow you to intervene.

Senator SHERRY—But Ms Smith is generalising.

CHAIR—Ms Smith is reflecting a constituency. Admittedly it might not be the majority of the community—

Senator SHERRY—It is a small minority by the sound of it.

CHAIR—but it is a constituency whose voice does need to be heard.

Senator SHERRY—I am quite happy to hear it; I am happy to pick her up on points as well.

CHAIR—I think that Ms Smith is entitled now to finish her opening comment—I was probably remiss in stopping her during her speech anyway—because I think it needs to be on the public record.

Ms Smith—If you do not agree with me, Senator Sherry, I think that you should still give me the time to actually say what I am saying because some of the things I am saying follow up—

Senator SHERRY—Of course, but the chair did ask you the first question.

CHAIR—You will have the time to finish.

Ms Smith—As I said, many employees—and I am talking about telephone calls coming into our organisation every week—contact us to say that they should be able to choose where their superannuation contributions go. It is like all things: nobody rings us up when they are happy; people ring us up when they are not happy. I appreciate that there are a lot of people out there who are happy and are not ringing us—and we do not want to hear from them either. But we do get an ongoing number of people who are very unhappy.

It becomes particularly important when the accumulated superannuation increases, and as the SGC has gone up people are now accumulating more and more in super funds. We therefore favour the proposed legislation. We think it is much simpler than the legislation that was rejected, because it does not have the interference of the four funds or the open choice. It just provides employees with complete choice. We also consider that the default rules are sensible and straightforward insofar as the majority fund or the current industry fund will continue to be the fund for the majority of employees in an organisation. One of the problems with super is that many employers are now outsourcing their obligation to provide super for employees and sometimes this is outsourced to an inappropriate master trust or fund with high fees and charges. They have got rid of the burden but the employees are bearing it.

The blocking of the choice of super funds legislation has denied Australian workers the right to decide where their super goes and this inquiry, I hope, will realise that employees who want to should be able to choose where their superannuation goes. I think that what has to be provided by the government is a proper education program which provides practical information, not just rubbish. ASFA gave one example of an advert for super. The money tree ad of a few years ago for super is another example. This ad showed a money tree exploding. That does not explain what choice is about. What choice is about is making an informed decision after you have looked at the costs and charges, the types of options of investments that are available and whether you should stay in your current fund or not.

The reduction of the surcharge was the next issue to address. I am probably well known for my opposition to this surcharge. I think it is an insidious tax, because we already have a ceiling that stops people having above a certain level of concessionally taxed super. That is called the reasonable benefit limit. Once you go over that amount you are going to pay a much higher rate of tax when you draw down that money. The government has recognised, in a couple of changes that it has proposed and that have been made, that in fact some people are paying up to about 65 per cent tax on the super if they go over the reasonable benefit limit. That is as an interaction of the surcharge tax and the reasonable benefit limit. We, of course, would support the government on this.

I think the surcharge does discriminate against a number of people. Small business owners have fluctuating income. One year they may find that they have a low income and they have not got the money to put away into superannuation. The following year they make good money so they do have money to put into super but they are immediately hit with 30 per cent tax. It has not been recognised in any of the debates that I have seen that people generally do not earn a very high income for many years of their life in small business. For example, I know a man who made about $140,000 last year; this year, because of a loss of a large contract, he will be lucky to make $20,000, so he might get the co-contribution this year. But last year he only put the bare minimum into super because of the surcharge. He would have liked to have put more away to reduce his tax liability but he did not, because of the surcharge.

The surcharge also does not ever look at the adequacy or inadequacy of the amount of super that people have already got. I do not object to having the reasonable benefit limit. I think that it is a good ceiling capping what everybody can get as concessionally taxed super. What I object to is the surcharge if you do have fluctuating income or broken working patterns—for example, women who take time out of the work force, or work for small amounts of time, while their children are small and try to catch up later on by getting a job that does pay a high wage. A

number of women in their 50s are in this situation, where perhaps 10 years ago they were earning $10,000 a year and now they are earning $100,000—their retirement savings are totally inadequate.

A friend of mine was widowed when her youngest child was a few weeks old and she went back to university because she had to raise these children. She got a degree. She now earns about $120,000 a year. She has only done so for the last two years, and she has worked extremely hard to reach that position. Her superannuation is just over $100,000, and she is in her mid-50s. She is never going to build up anywhere near the reasonable benefit limit, yet she is paying 30 per cent on her super as it enters the fund. There are a number of points that I have made in my submission about the fact that people on a higher income do, in fact, pay higher tax in those years as well.

I have also pointed out that the surcharge affects people in the year that they retire. If they get accumulated long service leave and annual leave added onto their taxable income in that year, they will suddenly find that after they have retired there is a bill for surcharge where they have never paid surcharge in the past. I do not think that is what the surcharge was aimed at. I think that the reasonable benefit limit cap was really good legislation to actually cap for everybody the amount that they could have in concessionally taxed super. I have given you a few examples about that in my submission.

The surcharge also can discriminate against people when they are actually paid a pension, because the taxing on pensions only allows a 15 per cent rebate up to the RBL. Over that, there is no rebate, yet they have paid 30 per cent on that money going into super and then they are paying the marginal tax rate on it coming out. I have given you a number of examples which were part of publications that we put in our journals earlier on and which you will be able to look at and look at the figures. As I said, we do support the reduction in the surcharge. We think it is a very important change.

The government co-contribution replaces the $100 tax offset with a $1,000 co-contribution. It is based on assessable income plus reportable fringe benefits, not taxable income, as ASFA said earlier on. If we look at people's assessable income before they can claim any tax deductions at all plus any reportable fringe benefits, the co-contribution will not be available to many people. But is it targeted correctly? We are unsure about this one because it is not being targeted just at people with low levels of super. You could have someone who has a very high super account balance who happens to earn a low income in one year, and they can put $1,000 into superannuation and get a $1,000 co-contribution. We would like it to be spread out to people earning an income of up to $40,000 per annum and perhaps be less generous. It is hard to actually oppose something that is good for people. We do not oppose it; we just wonder whether it could be targeted better to a larger group of people.

The other thing that we are concerned about is the way that the co-contribution will be paid to people's superannuation account. It will cost superannuation funds more to provide additional information about a person. They have to provide details of personal contributions and employers' support contributions. Then the tax office has to get together the assessable income and reportable fringe benefit. The super fund will need to define, presumably, whether it is a child contribution, which is not eligible for a co-contribution. A person aged over 70 is not eligible for a co-contribution. So there are a number of people who are not eligible. We have

some concerns whether it is—although it is going to be providing benefits to perhaps 85,000 to 90,000 people—well targeted or whether some people will be actually squeezing their incomes below $20,000 in order to be able to get it, even though they do not need assistance to have an adequately funded retirement.

The other comment that I will make on the Superannuation Legislation Amendment Bill is that the $200 which you can get released out of super if your account balance is less than $200 also requires that interest accrued on deposits made under the co-contribution rules will not be eligible for release. Someone who has less than $200 in their superannuation account presumably will not have had a $100 or more co-contribution, yet this legislation requires the trustee to track the earnings on less than $100 to say, 'You can't get that released and you can't get the less than $100 released.' I think the cost-benefit analysis of that for trustees will be rather excessive, especially in relation to the earnings. I can live with the less than $200 and you keep the co-contribution but, when you as a trustee have to track the earnings on that, that is getting beyond the ridiculous. As I said, we do have concerns about additional costs to super funds. We are also of the opinion that the co-contribution may be too generous and may result in people being able to retain income in other structures, such as companies, and access a co-contribution, as opposed to the group that the government is very generously trying to target.

CHAIR—It was suggested to us the other day that, rather than reduce it by 1.5 percentage points for each of three years, it would be better to lift the limit at which the surcharge becomes payable. It was suggested that it would be administratively simpler to do it that way. Also, the surcharge would tend to miss more of the more vulnerable people that you seem to be concerned about. What is your view?

Ms Smith—So the suggestion is to take the limit up higher than its current level?

CHAIR—Yes; to have a higher threshold.

Ms Smith—That is an option. The only problem I have is that you are not saying, 'Has the person got adequate superannuation before we surcharge them?' So someone who may have had very inadequate earnings and income all of their life but suddenly finds themself with a higher income for two or three years of their life immediately gets slugged by the 30 per cent. I think that that is an option, but I think that—

CHAIR—You also need to address the other issue.

Ms Smith—If you do not want people to have more than the reasonable benefit limit, just cap the contribution so they cannot put in any more contributions which get any tax deductions at all once you have passed your pension RBL. That is another option, because you do already have that ceiling in place. What you have is two ceilings in place: you have one and another one. The interaction is bad and the government has recognised that it is bad by announcing that excessive benefits will not be taxed at more than 48.5 per cent in total but forgetting about the surcharge that has already happened, so the tax rate is nearly 65 per cent.

CHAIR—How many calls a year would you get, approximately, in terms of people who have worries about the performance of their superannuation?

Ms Smith—It depends. If we advertise, we get probably 10 a day. Normally, we probably get one or two a day. It goes in waves, depending on what is in the newspaper and whether somebody has talked about choice or the unfairness of super, but it is quite a substantial number of our calls.

Senator HOGG—Is that Australia wide?

Ms Smith—Yes, we are Australia wide.

Senator HOGG—When you say '10 a day' is that Australia wide?

Ms Smith—We advertise only in Melbourne and Sydney, because we are a not-for-profit organisation and we do not receive any government funding whatsoever so we have a very limited advert budget. But, yes, it would be Australia wide. We also get letters about it from time to time. At times we get quite sad letters which show us how inadequate it is or how much people's money has fallen. I am not at the coalface answering the telephone, obviously, but I do answer some calls.

Senator BUCKLAND—Are you suggesting that members in corporate or industry funds should be offered choice as well, or are you only really talking about those who are in small funds?

Ms Smith—No, I am talking about all funds. I think that a lot of the industry funds are very well run. I wrote a book about four years ago called *Superannuation: Choice of Funds*, which was not a bestseller as the legislation never passed. If you look at that book, you will see that I analysed four industry funds and said that they were all very good funds and that people should use those as a benchmark before they change funds.

Senator BUCKLAND—If that is the case and you advocate that, how then would you advocate people having a choice to get out of those funds?

Ms Smith—Because people should have a choice of where their retirement savings are. It is like your boss saying that you have to have your money in the Commonwealth Bank. The Commonwealth Bank might be the best bank in the world, but you should still be able to have a look at the other banks and ask, 'Would I prefer to be with this bank?' Most people would say, 'No, I'll stay—

Senator BUCKLAND—That is fine, but we are talking about something different from banks, aren't we? I would agree with you on one thing, that it is either the largest or the second largest asset that the majority of Australians have. I find difficulty, though, in advocating that people should have a choice to get out of what is seen as a secure fund and expose themselves to less secure funds. For most people we are talking about a lot of money. It certainly is for me. Superannuation is a big component of my family's security. I have real difficulty and I really struggle with that suggestion that choice should be made available to those who are in the industry and corporate funds that are properly managed.

Ms Smith—People will not be getting out of a fund that is properly managed—or very few will. Some people will take that option.

Senator BUCKLAND—I understand that. I have been through a process where people did try to opt out because they thought their money may become less secure. It really comes down to education, doesn't it? How much of your time is spent on how the membership should be educated in relation to this?

Ms Smith—Our association?

Senator BUCKLAND—Yes.

Ms Smith—I spend 90 per cent of my time either writing material or out on the road providing unbiased educational information.

Senator BUCKLAND—But people make some very unwise choices in life, particularly when it comes to money. They hear someone across the back fence or they go down to the pub or the coffee shop with their girlfriends or whatever, and they say things like: 'She's getting more than me. Maybe I'd better jump ship and go somewhere else.' That is not education; that is unwise choices. I struggle with some of your concepts.

Senator HOGG—Following on from that, when this committee was in another form we had a stream of people come before it who were quite intelligent people who had had advice and everything else but had erred in their investment profiles.

Ms Smith—I think everybody at some point has erred somewhere. If you never make any decisions, you never make a mistake. But currently the employer is in many cases the person who chooses the fund, and some of those funds are not good and a lot of people have lost a lot of money in funds that have been established by the employer.

Senator BUCKLAND—Yes, I understand that, and I believe there could be a degree of coercion as well to get the employer to be in a particular scheme. That being the case, I am worried at this point about those who are in what are considered safe schemes—that is, large industry or corporate schemes—and why they should be offered that choice in the first place. People will want to move because they do not happen to like the employer or the job on the day. People make choices very rashly.

CHAIR—And irrationally.

Ms Smith—Choice of funds has been available in WA for quite a while now, and that has worked very well in WA.

Senator BUCKLAND—We had evidence regarding that, and I think the committee will take that on board. Maybe I should not pursue this, because I struggle with the concept of offering choice on such an important element of our financial structure into the future. We are offering people who are really not educated in the money market the ability to make a choice as to where their money will go. I think the choice should be the best scheme going, and the corporate and the industry funds seem to be extremely well managed and performing better than most others.

Ms Smith—Some are and some are not, and the people in a well managed fund will stay there.

Senator SHERRY—Can you name for us some corporate funds that are not well managed, that have had on average a poor long-term return and average high fees?

Ms Smith—I can give you one, but I would prefer not to mention it in public.

Senator SHERRY—Okay, could you send the material to the committee secretariat. But one is not thousands, and—

Ms Smith—I did not say thousands. Senator Sherry, you are misinterpreting some of my words.

Senator SHERRY—You were making sweeping generalisations, and I have asked you to provide us with evidence—perhaps some sort of comprehensive survey—about the number of people who are disadvantaged in, on average, long-term poorly performing funds with high fees and charges. Do you have a survey you can show me?

Ms Smith—No, I do not have a survey. I can provide you the returns on all superannuation funds in the different sectors over the last 12 months.

Senator SHERRY—What about the last 12 years?

Ms Smith—I could, but can you provide me with a grant to do that? We do not have the funds to be able to do it.

Senator SHERRY—No. What I am highlighting is that you are making sweeping generalisations apparently based on one case that you can give us.

Ms Smith—No, there is a lot more.

Senator SHERRY—If you make a sweeping generalisation—

Ms Smith—You asked me to name a fund and I said that I can name one, but I am not—

Senator SHERRY—Exactly: one fund. How many others can you name?

Ms Smith—I can go through and find a number of funds.

Senator SHERRY—Good. I would appreciate that.

Ms Smith—But, Senator Sherry, I already work 60 hours a week because of inadequate resources in the place that I work and I do not have the time—

Senator SHERRY—I appreciate that. I would appreciate it if you would answer the question. If you come here and you make sweeping generalisations, then you have to expect to be tested on the evidence, and I want to see the evidence for your generalisations. I would be pleased if you could send to the committee the details confidentially—I understand the need for that—of the number of funds that you have had complaints about and the specifics of the prob-

lems on which you base your generalisation. That is what I would like. Can I turn to the issue of the cost of—

Ms Smith—Can I just answer that. We do not keep records of the details of the phone calls that we are getting as far as writing down the fund names and who they are. Therefore, I do not have a lot of information at my fingertips to provide you with the level of evidence that you are asking for.

Senator SHERRY—The evidence that you have would be sufficient.

Ms Smith—Commercial Nominees is one.

Senator SHERRY—As we are well aware.

Senator HOGG—That is what I was referring to before.

Ms Smith—That is not the one I was talking about.

Senator HOGG—This committee, at another time under another name, looked at Commercial Nominees.

Senator SHERRY—Are you aware that in the case of Commercial Nominees a substantial number of the members of the fund who lost money actually chose to go into the fund?

Ms Smith—Of course.

Senator SHERRY—It was choice, and it did not do them much good in that case, did it?

Ms Smith—No. But it was an approved trustee of a government appointed body—APRA—and, therefore, people chose thinking that it was an approved trustee.

Senator SHERRY—I understand that it was an approved trustee, but people did have a choice and certainly a significant number of people chose to go into the fund and got badly burnt, didn’t they?

Ms Smith—If you look back a few years—

Senator SHERRY—I am putting a question to you and I would like an answer to the question I have put. A significant number of the members of Commercial Nominees had choice, didn’t they?

Ms Smith—I do not have that information. You may have it because you have received it in evidence; I do not have sufficient information to be able to answer whether a significant number did or did not. You know that, but I do not.

Senator SHERRY—I would say to you that in the case of Commercial Nominees, as a matter of fact, a significant proportion of those people in that fund chose to go into the fund.

There was no employer coercion, there was no industrial award prescription and the fact is that they got badly ripped off, didn't they?

Ms Smith—They lost a lot of money. Whether they got badly ripped off or whether bad investment decisions were made I cannot comment, because I do not have the full facts.

Senator HOGG—Some of those people went into that on the basis of advice from financial planners.

Ms Smith—There was also a Queensland—or northern New South Wales—industry fund that lost a lot of money. There is one that the government has just given a grant to in WA.

Senator SHERRY—Can you give us the name of these funds? I have never heard of this thing in WA.

Ms Smith—It was in a press release by Senator Coonan, so you just need to look back at her recent press releases. I think it was in June. I did not come prepared to answer questions about specific funds. If you had notified me that I needed to have that information at my fingertips—

Senator SHERRY—When you make a statement before a committee it is customary to ask for evidence to back it up. You have made a stream of very general assertions, so I am specifically asking for the evidence to test your assertions to see what they are based on and whether they are representative of the eight million people who are in superannuation. On the issue of multiple funds, and we know that there are—

CHAIR—With respect, I think you are being very hard on the witness. You and I and others have had phone calls from time to time about poorly performing funds. The issue is whether they are the majority or the minority. We take it for granted that there are a few funds out there that are performing badly. I do not think that Ms Smith can be expected to name the poorly performing funds that people have rung her up about. I would not be able to recall the names of all of the ones people have rung me up about. I think we have to respect the position from which the witness comes.

Senator SHERRY—We give due weight to the evidence presented to us. It is as simple as that.

Ms Smith—I also prefaced it by saying that the vast majority of funds are okay.

Senator SHERRY—Can we go to the issue of multiple funds and multiple fees and charges. This bill does not prohibit entry and exit fees, which is a matter of fact, and they are barriers to portability. This bill provides for AWAs and industrial agreements to override an employee choice, and this bill also only applies to the federal jurisdiction—about 50 per cent of the Australian work force. How do we overcome this problem of multiple accounts? This bill does not do it.

Ms Smith—It starts to deal with it. It starts to address it.

Senator SHERRY—How?

Ms Smith—If you look at the number of accounts people have, a lot of them are because they have left one employer, gone to another employer and then gone to another employer.

Senator SHERRY—Correct.

Ms Smith—Either this employer will not accept the earlier amounts or the employee does not want to put that money in there because they would sooner have it in this one. I gave you an example of someone with a HESTA account where their current employer has refused to pay their money into the HESTA fund; they have paid it into their own small company account.

Senator SHERRY—Presumably the employer in this case can use AWAs or industrial agreements, can't they?

Ms Smith—I am not familiar with that particular employer's working agreements for those employees.

Senator SHERRY—Do you think we should permit entry and exit fees?

Ms Smith—I think you have to be realistic and realise that there are some costs involved in setting up a new account, there are some costs with administering a member while they are a member and there are certain costs involved with releasing the money to the next super fund because the surcharge legislation and so on require certain information to be provided. Funds have to employ people to be able to deal with those things.

Senator SHERRY—Let us take non-surcharge people, who are about 95 per cent or 96 per cent of the working population. We have seen examples of exit fees that run to thousands of dollars. How does that reflect the true cost of exiting a fund?

Ms Smith—It absolutely does not. Organisations that enter into those practices only do so because of inadequate legislation and, in my opinion, they should be stopped from handling superannuation guarantee or any other superannuation money because it is totally unjustified.

Senator HOGG—So fees and charges should be capped?

Ms Smith—Yes.

Senator HOGG—Do you have a level?

Ms Smith—No, I do not, because you have to employ people to carry out certain tasks; they cost money. You have to have premises for the administrators to operate from, you have to have an audit and you have to have actuaries if pensions are being paid. So there are certain levels of costs incurred by each trustee, and it will vary from trustee to trustee. Some super funds employ people who will give proper advice to the members; others just take the money and invest it and do not have anything to do with the members. So I would not like to propose a figure, but it should be a maximum figure way below the thousands of dollars that some people pay.

Senator HOGG—Should it be a percentage?

Ms Smith—That is an option, but it means that maybe—

Senator HOGG—It has been suggested to us that there should be a cap of, say, 1.2 per cent.

Ms Smith—That would seem to be a reasonable cap.

Senator SHERRY—The bulk of your submission is about the surcharge. When we look at tax cuts on superannuation contributions—and the proposed reduction in the surcharge is a tax cut for a small percentage of Australian taxpayers who have superannuation because it applies to people with a surchargeable tax income of more than $90,500; it commences at that point—surely our priority should be looking to advantage people on a lower income than that by cutting the general contributions tax that applies to all fund members or almost all fund members.

Ms Smith—I would support that, too, but what is the cost of it?

Senator SHERRY—Yes.

Ms Smith—You also have to realise that people who earn over $90,000 in a year have paid about $30,000 of that $90,000 in tax already. Then, if they are putting money into super, they are paying another 30 per cent tax going in there. So they are, in fact, providing the government with a lot of revenue.

Senator SHERRY—But you put an argument about people having fluctuating incomes during their working lives. You gave a couple of practical examples, some relating to women and some to small business. If you accept the principle you argued, that they might have $40,000 one year and $100,000 the next, don’t you have the same problem with the income tax system? Some people will earn $40,000 and be taxed at a lower rate in one year, and the next year they might earn $100,000 and be taxed at a higher rate.

Ms Smith—They are paying a higher rate of tax, but then they cannot put their retirement income. A public servant who probably earns the same amount this year plus a percentage increase next year over two years either will be surchargeable or will not be, depending on whether their income has gone over that level. But small business people and people working on commissions and so on do not get that level of stability in their income.

Senator SHERRY—How many small business people and, for that matter, how many women in this country would earn more than $90,500 surchargeable tax income a year?

Ms Smith—Some women in their 50s who have raised children and go back into a career find themselves in the position where they are earning over that amount.

Senator SHERRY—Of course some would—I accept that. We do not know how many, but I would suggest to you that it is a relatively small proportion of the female population.

Ms Smith—It is. If they were not hit by the surcharge, those women could possibly self-fund their retirement, but they just give up and say, ‘I’m not even going to bother to try.’

Senator SHERRY—They would self-fund their retirement if they earnt more than $90,500 for a few years of their working life?

Ms Smith—Yes, they would go a lot more adequately to self-funding it.

Senator SHERRY—But why shouldn't the priority be the people who are earning less than $90,500 for the whole of their working life, which is the considerable majority of the working population?

Ms Smith—Again, you have the reasonable benefit limit capped there. You cannot have two ceilings. What you have now is two ceilings. As I said earlier, I support the reasonable benefit limit cap. It is a fair cap that says nobody over this level can get concessional benefits from super. There is nothing to say whether the contributions of people over that cap are surcharged or not. It is not a well thought out tax.

CHAIR—I agree with you. It comes off the—

Senator SHERRY—We agree with you that it is not a well-designed tax, but a reduction in the rate does not fix that problem, does it?

Ms Smith—No. Well, stop it then!

Senator SHERRY—You talk to the government that introduced it.

CHAIR—Thank you, Ms Smith, for your presentation this afternoon. We always welcome your contribution. It is a constituency that has got to be represented.

[2.38 p.m.]

DYSON, Ms Helen, Vice-President, Australian Institute of Superannuation Trustees

CHAIR—Is this the first time you have appeared before the committee, Ms Dyson?

Ms Dyson—No.

CHAIR—Welcome all the same. We invite you to make an opening statement.

Ms Dyson—To summarise our submission, firstly, AIST support the concept of choice of fund because we believe that employees should not be locked into a poorly performing fund. However, we believe that for choice of fund to be effective there needs to be greater consumer protection than is currently provided in the bill. Secondly, we would suggest that the legislation should look at prescribing information—

Senator HOGG—Can I stop you there for a moment. Are you going to expand on the greater consumer protection in your opening statement?

Ms Dyson—Yes.

Senator HOGG—Thank you.

Ms Dyson—In terms of information, we would like to see the statement that is provided to employees which allows them to choose their fund to contain a checklist of points that they should be considering when exercising that choice. We think that would be very useful. It would be a guideline for employees, because many people—

CHAIR—When did you say it is issued to employees—at what stage?

Ms Dyson—In the choice of fund form that employees will be given post 1 July 2004. We would like to see that form having a checklist of issues that they need to consider when exercising their choice.

CHAIR—Good. We have noted that.

Ms Dyson—Thirdly, based on the experience in the UK and also in Chile, we believe that the legislation should consider mandating certain requirements for regulators in administering this choice of fund regime. This is really driven by the experience in the UK and Chile, where it was virtually unregulated, and we had a situation where many people exercised a choice without proper knowledge. You had the investment advisers churning people, moving them from fund to fund just for the benefit of the adviser, not for the benefit of the employee. So we would like to see a regulatory regime that recognised that the regulators would have to perhaps take a greater role.

The last point is on education. I know that the bill is looking at setting aside some money for education of the key stakeholders, but at this stage it does not really mention the position of trustees. They will need to make more information available to members about their fund and they cannot give them investment advice—so trustees might be walking a bit of tightrope here. We believe that there should be some money set aside for trustee education, and obviously AIST would be quite happy to assist in that regard. That is the summary at this point.

CHAIR—How do you view the surcharge reduction from a trustee point of view?

Ms Dyson—From a trustee point of view, it is good for some members, but the reality is that the surcharge imposes a cost on all members. I think we have submitted previously to this committee that we believe it would be preferable if the surcharge were actually administered by the Australian Taxation Office. At the moment the compliance burden, which is borne by all fund members whether or not they are subject to the surcharge, is the problem as far as trustees are concerned. It is quite a significant compliance burden and it does impose a cost on the membership.

CHAIR—Do you have any examples where you think, for instance, the surcharge has worked in a penal type fashion? We had evidence yesterday where a $1 increase in income or reportable payments resulted in a $7,000 increase in tax. We had a case this morning where a person who was in their fourth year of retirement got four reassessment notices. In terms of certainty, it does not help people’s confidence in a tax when it produces those sorts of outcomes.

Ms Dyson—I would certainly agree with you.

CHAIR—From your position as trustees, can you share some of the surcharge problems that come across your desk?

Ms Dyson—I have not personally experienced that problem—I had it drawn to my attention—but I do understand that some of those issues do exist. Certainly, when people are retiring, to suddenly be hit with a large surcharge bill is not always something—

CHAIR—Especially four years after they have retired.

Ms Dyson—I think part of the problem is that a lot of people do not understand the surcharge and its impact on them, so it is certainly an education issue. But it appears there are some inequities in the way it is applied, and I would suggest that it should be looked at.

CHAIR—Yes, we will certainly do that.

Senator SHERRY—You did not expand on the regulatory regime, but I would like your response with respect to fees and charges, particularly entry and exit fees, which are barriers; ongoing commissions, which are charged usually at the rate of one to two to three per cent—in some cases for the life of the product; and then, generally, the level of fees and charges and whether they should be regulated, which includes the general level of administration and funds management fees. So really there are three areas, if you could comment.

Ms Dyson—We would like to see all fees and charges set out in the material an employee receives so that they can make a comparison. We suggest that it should be a dollar amount, because that is often easier for members to come to grips with than a percentage. We believe entry and exit fees should be prohibited—there should be no entry and exit fees.

Senator HOGG—Does that include a buying and selling price?

Ms Dyson—No. We are talking about the fees that sometimes—

Senator HOGG—Yes, I understand; I just wanted that clarified.

Ms Dyson—We recognise that there is a cost of administering a person exiting a fund—processing paperwork and the benefit payment—and we would not be against that fee being applied. An amount of, say, $50 to process the exit does not seem unreasonable, but some of the exit fees that have been applied in the retail context result in people being charged thousands of dollars to exit from one superannuation arrangement and move to another—a lot of which represents the trailing commission to the advisers. We certainly think those sorts of fees should be prohibited.

I do not know whether the government is able to legislate on financial adviser fees, but we would like to see the message generally driven home that advisers receiving commissions and inducements to get people to switch is not sanctioned. That was the problem in Chile and the UK: unscrupulous advisers churning people because they earn commissions. If a fund performs badly one year, they say to the employee, ‘We can get you into a better performing fund,’ and their incentive is that they get a fee out of this. In our view, that is not appropriate. It is particularly inappropriate in relation to SG contributions, which are mandated. It seems totally inappropriate that they should be receiving any commission in relation to those.

CHAIR—You say that they should not receive a commission, but do you also mean that they should not receive a fee?

Ms Dyson—An up-front fee for service—for the financial adviser to review the various funds available and provide advice to the client—is fine, but not the trailing commissions and the commission structure.

CHAIR—So there should be no commission at all, but maybe an up-front transparent fee?

Ms Dyson—It should be an up-front fee for service. Those sorts of fees have to be disclosed at the time when the client goes in for advice, and people would know that there is an up-front fee for preparing that advice in relation to their superannuation. It is usually a dollar amount. Sometimes it might be a percentage, but our preference is for a dollar amount so that people know they will be charged $X for their plan for what to do with their superannuation.

Senator SHERRY—What about ongoing administration and funds management costs—particularly on the SG component, which is the compulsory element you have referred to?

Ms Dyson—Our submission does not consider that, but I would suggest that you could consult with the industry and get some idea of the level of costs. Certainly a lot of it is scale

driven, as you are no doubt aware—the greater the scale, the lower the investment management fees tend to be.

Senator SHERRY—There are some funds surveys about—ASFA and IFSA have done some—which show that the considerable majority of members in large corporate master trusts, industry funds and public service funds are paying 1.2 per cent or less. The argument, apparently, is that choice will mean a reduction in fees and charges. So if the cap were set at a reasonable level, if fees and charges did go down, a cap would do no harm, would it?

Ms Dyson—No, a cap would do no harm. In fact, I think our submission does suggest that there should be a cap in relation to fees and that, after consultation with some of the providers in the industry, ASIC could come up with some guidelines in terms of what the cap should be. I certainly think industry trends are moving towards consolidation. We have to recognise that that is what is happening. Many corporate funds are moving to master trusts and the industry funds are getting bigger. Smaller funds are gradually moving to master trusts. So you are getting that consolidation in the industry, which should hopefully, over time, allow fees to be reduced.

Senator SHERRY—What was interesting from the two fee surveys I have mentioned—and I think there was the Hazel Bateman University of New South Wales study as well—was that fees and charges had generally declined in the sectors I have mentioned, but in respect of individual personal superannuation they had actually moved up a fraction. Does that surprise you?

Ms Dyson—No, it does not surprise me because, from my experience, service providers charge that because they get away with it, and they get away with it because there is no cap. You can see that even in master trusts—the way their charges operate. In the corporate element of the plan there is X dollars but if an employee leaves their employer and they leave their money in the master trust and it moves into the personal section, the fees go up, quite significantly sometimes.

Senator SHERRY—Those surveys showed that personal super and the banks were roughly double the cost of other products. I think they make the point in those surveys that super fees and charges are very much a reflection of an economy of scale—very large numbers of members where the trustees drive down the investment charges and the general administration charges.

Ms Dyson—That is definitely true but I think that, in the case of these personal super arrangements within master trusts and things, they charge it because of the market bear effect; nobody is negotiating on behalf of the individual to reduce those fees. There is not the market pressure to keep those fees down.

Senator SHERRY—Do you think individuals front up to any large life companies and attempt to negotiate directly for lower fees and charges? Do you think that happens in real life?

Ms Dyson—No, I do not think it happens at all. What happens is that those service providers effectively use that part of their fund—the personal division or the allocated pension division—to subsidise costs for the corporate division, for other divisions. It is a cost subsidisation exercise. They charge those costs because they are currently getting away with it and there is no pressure on them to reduce those fees.

Senator HOGG—On the issue of great consumer protection, which you raised earlier, what particularly did you have in mind in relation to this piece of legislation?

Ms Dyson—Certainly one of the things would be that the fees and charges must be set out in terms of the information that is provided—a dollar amount—so that it makes it easier for comparison. We would also like to see the cap on the fees with some guidelines that ASIC could administer. We believe that ASIC and the ACCC could have a monitoring role in relation to the marketing material that is put out. If they believe marketing material is misleading, deceptive or does not contain sufficient information, they should be acting to ensure that the material is appropriate. I guess it is really extending some of the SFR regime and being proactive in terms of the disclosures that are made for employees to ensure that the information they receive—

Senator HOGG—You mentioned ASIC. Where would that cross over with the ACCC and what they might do?

Ms Dyson—The ACCC has a role in ensuring that entities are not engaging in misleading and deceptive conduct. As you would be aware, they take an active role in monitoring the advertising by various organisations, and that is where we see the ACCC perhaps having a role.

Senator HOGG—That is why I asked. Is there a danger under that regime that the left hand would not know what the right hand was doing? One is dealing with a fairly precise product—superannuation—and therefore the protection that you are advocating might not come about.

Ms Dyson—There is a danger that the regulators might not talk to each other, and I think that already happens at the moment. However, the ACCC does have experience in comparative advertising. It has guidelines for when organisations engage in comparative advertising. So I would suggest that the ACCC, with its experience in these matters, could certainly play a role if it was thought appropriate.

Senator HOGG—Do you have anything to add in the area of consumer protection?

Ms Dyson—I would like to return to the point we made earlier that the choice form that is provided by employers to employees should contain a checklist of information that people need to consider. This should include items such as comparison of fees; what insurance, such as disability or death insurance, is offered by the fund; the cost to the employee of changing funds; whether the fund they may be going into is a not-for-profit fund or a for-profit fund, and perhaps a bit of an explanation of the differences between the two.

In the case of employees that may be considering leaving a defined benefit fund, we think there needs to be an acknowledgment that the employee understands the difference between a defined benefit fund and an accumulation style benefit—in other words, they understand that in the defined benefit fund the employer bears the best investment risk and, in effect, the benefit is underwritten, whereas if they move to an accumulation plan the employee bears the investment risk. In that instance, we think the employee should acknowledge in writing that they understand the consequences of making that choice.

Senator HOGG—On that note, I raise an important issue that I have pursued throughout this inquiry in respect of the literacy and numeracy skills of Australians. The Parliamentary Library

informed me the other day, by way of a memo, about a 1997 ABS publication entitled *Aspects of Literacy: assessed skill levels Australia 1996.* That is the best data that is available. The first dot point on literacy says:

- 19.7 per cent (approx. 2.6 million people) had very poor prose literacy skills that could be expected to create significant difficulties in dealing with many of the printed materials found in daily life.

We are talking about adults, not people who are still at school. The same survey went on to say:

- The findings of the survey indicate that over 6 million Australians could have some difficulty adequately reading and understanding text and embedded mathematics.

- 2.5 million Australians—

which is close to the 2.6 million, so it is in the order of 19.7 per cent of those surveyed—

were estimated to be in the lowest level of skills for quantitative literacy.

Given that you are advocating a better consumer protection regime, how are these people who are 20 per cent of the population, who are likely to be in the work force and who are likely to be participating in some sort of fund to make an informed choice on their superannuation under this bill? It is not a criticism of you; it is just a practicality that we are confronted with.

Ms Dyson—I hear what you are saying in terms of written materials. Many funds would need to consider the composition of their membership. For example, if they had a membership that had quite a diverse ethnic base, they would need to put out materials in different languages, and I think many funds do that at the moment.

Senator HOGG—Yes, but these are people who do not even have the skill of reading. We are not talking about the skill to have some great comprehension of what is happening; they do not have the very fundamental skill that all of us here have, I presume, been blessed with. We have the capability to at least read the letters and understand what the letters are.

Regardless of whether they are from a non-English speaking background or another sort of background, that is the sort of problem we are confronted with. This bill places the onus and the responsibility upon the employee to make the choice. Obviously, there is also the option of going to the default fund but the responsibility is there. My concern is that these will be the people who will be vulnerable in the process. These are not the people who can read a bit and then get some advice. These will be the people whom those out there prey upon. It is as simple as that.

Ms Dyson—In terms of your proposals regarding education, maybe that is something that needs to be considered. In addition to written materials, perhaps there needs to be videos made available in employees' workplaces so that people have not only reading material but also something presented to them visually. I know that is not a panacea but it is an option. One needs to think creatively about the educational materials that could be made available. I know there has been a proposal to use the tax office but it would be worth while talking to some communication consultants to work out the best way to reach those sorts of people. It may be the visual stuff.

Senator HOGG—It may well be that, even with the best of intention, one will not reach them; one will not allow them to make an informed choice. That is the problem.

Ms Dyson—That is a risk; however, that information will be made available to employees generally. In my experience, people who do not speak English very well often go to their families for help.

Senator HOGG—The key words in this are ‘making an informed choice’ and they are not making an informed choice. I understand that they will lean on family and friends and other networks throughout the community but, even if they lean on a financial adviser, they still may not be able to make an informed choice because they do not have the capacity to make that informed choice.

Ms Dyson—It is certainly a risk. The only thing we can do is look at a range of different options to make these educational materials available, recognising that we cannot protect everyone, unfortunately.

Senator HOGG—That does not necessarily mean that opening it up to unfettered choice is justified purely on that basis. It may well be that the sort of issue you raised about greater consumer protection needs to be a barrier that has to be jumped before the issue of choice is made freely available.

Ms Dyson—We would certainly recommend that before the choice legislation proceeds these consumer protection aspects are considered in some detail.

Senator HOGG—But it may well be that those consumer protection issues have to be fully satisfied before one even proceeds with the bill. When one is satisfied that that hurdle has been overcome—and I am not advocating that the bill pass, obviously—then one might be in a position to consider it. But it is silly if, once the bill is passed, we are running around trying to fiddle around with a few consumer protection things. I know what will happen: the reality is that people will say, ‘That’s nice; we’ll deal with that in the fullness of time.’

Ms Dyson—We would put the case that the bill not pass without these consumer protection issues being addressed. As you pointed out, Senator Hogg, it is too late once the horse has bolted to then try to deal with all the consumer protection aspects. It really should be a package—very much so—because the legislation currently provides that from 1 July employees who are currently with an employer will be given a choice of fund notice. If the consumer protection measures are not in place then the horse has bolted, because that is when most of the material is going out to people who are existing members of a fund.

Senator HOGG—So it may well be that consumer protection and a number of issues, if the government are going to proceed with the legislation, may act as triggers before the legislation even has a chance of succeeding. That could be a possibility. I have one last question. I have been a trustee of a superannuation fund myself in a previous life and served as an alternate trustee on a major superannuation fund. You raised the issue of education of trustees, and I think that is terribly important. The government have allocated $28.7 million over four years for education. It is not very explicit as to how that is to be spent, but we have been urged by some people before the committee that it not be a glossy campaign just to say that choice is here—if

choice does come about—and really that that is a nothing campaign anyway. What would you see as being a reasonable allocation for the education of trustees in this process? Do you have a figure in mind? Do you know what it would cost to provide adequate education?

Ms Dyson—I do not currently have that information with me, but I can certainly undertake to get back to you with it.

Senator HOGG—Could you take that on notice and give us some idea of what you believe would be a reasonable amount of money, because money is one thing. Another thing is, given the large number of superannuation funds that exist in Australia, how long, in practical terms, do you believe it would take for that education process to be, firstly, put together and, secondly, implemented such that the majority of trustees were caught up prior to the implementation? Again, it is not much use having an education program that stretches over 10 years if, in the first year of that process, the bill has been put into operation and these people are not getting any real benefits by way of education. Could you do that as well?

Ms Dyson—Yes, I could certainly do that. We do see the education process as being ongoing.

Senator HOGG—I accept that but I am talking about initially, because there would be a need for some real education in terms of the people that were trustees of the various funds. If I am not misunderstanding you—and please correct me if I am—that is what you were getting at, isn't it?

Ms Dyson—Yes, definitely. Obviously with the introduction of choice we would need to have quite a concerted education campaign.

Senator HOGG—I would like to know how long that campaign would take and what it would cost in terms of the practical implementation.

Ms Dyson—Okay.

Senator HOGG—Also, is there an argument, if choice were to come about, that the industry should put some money into the education process itself?

Ms Dyson—My view is that they should because, after all, they are going to be the ultimate beneficiaries.

Senator HOGG—Do you have a figure in mind?

Ms Dyson—I will have to take that on notice.

Senator HOGG—Again, if you could give us some idea, that would be interesting. Thank you.

CHAIR—In your presentation you referred to a submission. We do not seem to have a submission. Did you put one in?

Ms Dyson—You do not have the submission?

CHAIR—No.

Ms Dyson—I will make sure that it is provided. Unless there is a photocopying facility, I can leave you with the one copy I have here.

CHAIR—That would be fine. Thank you very much

Ms Dyson—I apologise for you not receiving the submission.

CHAIR—Thank you very much for appearing before the committee this afternoon. You have made some good suggestions to us.

Ms Dyson—Thank you.

[3.16 p.m.]

ANDERSON, Mr Peter Christian, Director, Workplace Policy, Australian Chamber of Commerce and Industry

KATES, Dr Steven Ian, Chief Economist, Australian Chamber of Commerce and Industry

CHAIR—Many years ago I was a Tasmanian representative of an organisation that came together with other organisations to form ACCI. It is a very important lobby group in the system. Having declared an interest from some decades and decades ago, on behalf of the Senate Select Committee on Superannuation I welcome the witnesses from the Australian Chamber of Commerce and Industry and thank you very much for your submission. I invite you to make an opening statement. Are you going to address each of the bills?

Mr Anderson—Thank you, Mr Chairman. Our submission deals principally with the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2002. We welcome the opportunity to make this submission to the committee on the 2002 choice bill, as I will refer to it in the course of my comments. Our written submission and our comments today are our preliminary submission on the content of the 2002 bill. For reasons that may become apparent as we discuss some of the key issues that our submission raises, additional matters or material may arise, particularly as we consult further with employers on the issue, which may be relevant for the purpose of the committee and, indeed, for parliamentary consideration of the bill.

This is obviously not the first examination by either ACCI or a Senate committee on the issue of choice of funds in superannuation. We are obviously cognisant of the fact that, during the second term of the current government, legislation for similar purposes was introduced into the parliament which ultimately did not pass but which was considered by a Senate committee and was subject to a submission and an assessment by ACCI. Our submission does not traverse all of the ground of some of the previous comments we have made in respect of choice of funds, but it is relevant to matters that we will raise today and to our views on the 2002 bill.

In broad terms, we very much support the introduction of the bill, and we advocate the passage of a legislative scheme to give effect to employee choice of fund. As we indicated in our submission, we do consider there to be a number of benefits to the economy broadly and to the superannuation industry as a result of choice of funds, principally the efficiency and the competition that they could bring to bear with respect to superannuation in Australia and occupational superannuation in particular.

There are, however, complex interactions between a choice of funds proposal and both superannuation issues and other areas of public policy—particularly industrial and workplace relations policy—because in this debate we are drawing the obligations off the employers to make contributions in respect of relevant employees. We are drawing those obligations into the superannuation context. Those obligations arise, as is clear from our submission, not just from the superannuation guarantee legislation but also from the industrial system. Indeed, the industrial system was a predecessor to the super guarantee legislation in this regard.

By way of general comment, one could simply ask: what is an employer's interest in the issue of an employee choice policy? Obviously, employers fund the moneys which are being designated for the purposes of superannuation choice. From 1 July this year, that obligation is nine per cent of earnings, and that is a considerable impost on employers. Industry, for the purposes of this debate, is not just the superannuation industry—and I am sure this committee is receiving submissions from the superannuation industry per se. Industry extends very much to those in industry who pay—that is, the employers—because in this area employers are effectively an intermediary between the employee on the one hand and the superannuation fund on the other under this proposal in the legislation. If choice is to be given effect to, it is effectively given effect to in the context of the employer sitting between the employee and the fund. That is not necessarily a position that we as employers would enjoy being in, but it is a reality of life given that we are making the contributions and therefore have significant interests in the regulatory design of these proposals.

As we indicate in our submission, there is benefit as a whole as a result of superannuation choice, but for many individual employers they may see the imposition of superannuation choice as a regulatory impost. They may see very little direct benefit to themselves in their businesses as a result of superannuation choice, albeit they may be strongly behind the principle. As we indicate in our submission, the fact that by and large the beneficial aspects of this legislation are for the purposes of employees, there is a real need to ensure that the administrative obligations on employers are as 'light touch' as possible. That is particularly so given the wide coverage the legislation would have and the occupational superannuation obligations on employers. As the explanatory memorandum to the submission indicates, there are potentially some 654,000 employers who would be brought into the obligations under this legislation.

The final point in my opening comments is to indicate that, whilst we have been actively involved in discussions during consideration of the 1998 bill—and many of the amendments that were proposed to the 1998 bill arose out of representations that the ACCI made to the government at the time—and whilst many of those matters appear to be reflected in the terms of the current 2002 bill, there are some differences between the 1998 proposals as they evolved and the 2002 choice bill. The major areas that have caught our attention at this stage relate to the default fund provisions and the proposed enforcement provisions, and our submission touches on both of those. In the interests of time, I will conclude my opening comments at that point.

CHAIR—Does it worry you that the default fund has moved away from the employer to the union fund?

Mr Anderson—Yes, it does.

Senator SHERRY—What union fund?

CHAIR—The industry fund.

Senator SHERRY—Or corporate fund, for that matter.

Mr Anderson—The industry award funds.

Senator SHERRY—And a corporate fund.

Mr Anderson—Yes. Our view here is that the choice regime ought to be as straightforward to apply as possible. Our preference is for the default fund in this regulatory regime to be a complying fund under the superannuation guarantee regime. The concept of introducing the award based funds into the legislative regime as the default funds has two problems. Firstly, it introduces a rigidity into legislation which is designed to implement a more open choice and a broader range of funds which can be used as the vehicle for occupational superannuation and, to that extent, may defeat some of the objectives the legislation has both for employee benefit and for regulation and competitiveness within the superannuation industry.

Senator HOGG—What is the rigidity that would not be introduced with another fund?

Mr Anderson—The rigidity is that, under the occupational superannuation arrangements running through the industrial award systems, some awards regulate—in fact, many awards regulate funds for the purpose of employer contributions. That is a rigidity. If you are accepting the proposition in this bill—

Senator HOGG—But there might be five funds nominated. How is that a rigidity?

Mr Anderson—In awards?

Senator HOGG—Yes.

Mr Anderson—That would be a rigidity because it restricts the application of any other funds as default funds, where those funds may be complying with the superannuation guarantee legislation and be approved funds.

Senator SHERRY—Who would pick the default fund? How would you get a default fund, assuming that some people would not pick a fund?

Mr Anderson—Our view is that, when you get to the default stage—bearing in mind default is where no choice has been exercised by the employee, so there has been a failure of choice in that sense—the default fund should be selected by the employer.

Senator SHERRY—That is outrageous.

Senator HOGG—Why?

Mr Anderson—Because the employer, having offered choice to the employee and the employee not having elected to exercise that choice, ought simply to be required to meet the obligations they have under the superannuation guarantee legislation.

Senator HOGG—It is not the employer's money, though.

Mr Anderson—No.

Senator HOGG—So why should the employer have the right to choose the default fund?

Mr Anderson—The superannuation guarantee legislation does not compel employers to make contributions into a nominated fund. The superannuation guarantee legislation requires employers to make contributions into funds which are approved funds for the purposes of that legislation—complying funds.

Senator SHERRY—But who would test whether the complying fund chosen by the employer as the default fund was a fund that delivers reasonable value in terms of fees and charges, that there are not backhand commissions and bundling of products together? How would all of that be scrutinised?

Mr Anderson—That is exactly the same context in which some employers—employers who are not bound by restrictions in awards—can already make contributions into complying funds.

Senator SHERRY—But the current award provisions are at least tested by an independent commission, aren't they?

Mr Anderson—The commission has prescribed those.

Senator HOGG—In many instances by long arbitration—and tested by both unions and employers.

Mr Anderson—That is right.

Senator HOGG—I am just trying to establish how the award fund, as a default fund, is imposing a rigidity—you use the word rigidity—that is not imposed by some other circumstance. That is what I fail to see.

Mr Anderson—It is a rigidity because this bill was designed to move away from rigid prescription of superannuation funds. It is designed to provide employee choice.

Senator HOGG—This is the default fund, in the first instance. This is not imposing rigidity. As I understand it—correct me if I am wrong—if the employee chooses not to go into another fund, the money would go into the default fund.

Mr Anderson—Yes, and that is not a fund that the employee has selected—or may not have selected. Obviously, there has been a failure of choice, because you have got to the default stage.

Senator HOGG—But at least it has been through some rigorous process in an independent system where the Industrial Commission have determined what funds are in effect the award funds. The reason I raise that is that we had a case this morning or yesterday where there were at least five funds in an award—which were complying funds—to which employers had to make the contribution in terms of the SG. There was no problem at all with those funds. The employers had been down to the commission, had had it arbitrated. The commission had heard, obviously, the pros and cons raised by both the employer organisations and the unions, and the employees had the option, on joining that particular industry, to make a contribution to any one of five funds. No rigidity. No problem. That is not the case in all industries, and I will concede

that. In some industries, the arbitration has led to a single industry fund, but that is not the case in all industries. I just cannot accept your argument about rigidity.

Mr Anderson—I cannot put it more simply. If an award prescribes one fund, there is a rigidity because you obviously cannot go outside one fund. If the award prescribes five funds, there is more flexibility than just prescribing one but there is still a rigidity because there are other complying funds, for the purposes of the superannuation guarantee legislation, which would not in those circumstances be available for the payment of the employer's contributions. That is how we see it.

Senator HOGG—I accept that.

Mr Anderson—That is where the rigidity lies.

Senator SHERRY—It is pretty rigid, though, if the employer chooses the default fund, isn't it?

Mr Anderson—No, it is not, because that only arises where there is choice exercised by the employee. Either the employee, having had the right to exercise choice, has wished to not exercise choice, or the choice that they have exercised is failing for some reason.

Senator SHERRY—How do we test whether the fund chosen as the default fund by the employer is an appropriate fund? Is it in terms of fees and charges, ongoing commissions or bundling of other financial products for the employer? How do we test all of that?

Mr Anderson—That is a fair question. You test that in two ways. Firstly, the superannuation guarantee legislation requires funds to be funds that comply for the purposes of that enactment.

Senator SHERRY—Yes, but that does not require a test in respect of the level of fees and charges, it does not require a test in respect of exit and entry fees, which are barriers to choice, it does not require a test in respect of the bundling of products—super with other products that could suit the employer—and it does not provide a whole range of protections that you simply say the employer should determine.

Mr Anderson—I was going to say that the second limb to the testing process is that, obviously, an employee who sees their contributions going into a fund which they think is not commercially wise has the right, under the legislative scheme, to exercise choice to have their funds moved into a fund of their choice. To me, that is a fair outcome.

Senator SHERRY—Which brings us to the whole ethos underlying the legislation: how do eight million Australians make an informed choice? Have you ever seen one of these product disclosure documents that will be the basis for choice?

Mr Anderson—I have not seen that one, but I have seen some.

Senator SHERRY—This one is some 50-odd pages long. What hope do you think a lot of employees have of making an informed choice?

Mr Anderson—That is a significant issue for the purpose of this legislation. But that is a consequence of there being a right for all employees who are eligible under the superannuation guarantee legislation to have payments made on their behalf. That is a fair question, but it has arisen since the superannuation guarantee legislation was introduced.

Senator SHERRY—Since choice legislation was first mooted.

Mr Anderson—No, I would not say that—since the super guarantee legislation was introduced, because that did not prescribe funds for the purposes of the legislation.

Senator SHERRY—Perhaps it should.

Mr Anderson—That would be going in completely the opposite direction to this legislative scheme.

Senator SHERRY—Don't we have choice at the moment?

Mr Anderson—No, we do not.

Senator SHERRY—What about investment choice?

Mr Anderson—That is not choice of fund per se.

Senator SHERRY—But it is investment choice. In your comment here you talk about the theory of choice. Eighty per cent of funds have investment choice. Surely you are aware of those funds where the individual has the capacity to pick different categories from a menu. They can pick overseas equities, property, Australian shares; they can do all sorts of fancy things, from what I have seen. That is investment choice, isn't it?

Mr Anderson—Yes. It is not fund choice though.

Senator SHERRY—But it is investment choice.

Mr Anderson—That is a subset of choice, but it is not—

Senator SHERRY—It is a pretty significant subset, isn't it?

Mr Anderson—It is, but it is, nonetheless, within the framework of a prescriptive or rigid requirement—that is, contributions must be paid in respect of a particular fund—and then it is up to the administrators of that fund to advise with respect to the investments of that fund.

Senator SHERRY—Your wording in paragraph 31 is pretty careful. It says:

Where there is an environment of genuine competition there will be pressure on funds to keep their costs down and to perform in the marketplace. Fund choice is one of the prerequisites to having a more competitive superannuation fund market.

However, you do not say that fees and charges will come down as a consequence. Do you argue that fees and charges will come down?

Mr Anderson—We are not appraised sufficiently to be able to answer that question specifically. But if you take the broad principles that underpin a competitive marketplace, then one would reasonably expect that in a competitive marketplace, where there is more choice available, there would be downward pressure on fees and charges.

Senator SHERRY—Super is compulsory for employees subject to the cut-off point. There are eight million people in superannuation funds. Can you explain to the committee exactly what these competitive pressures are in practice in terms of superannuation that will see fees and charges come down. You would be aware of the funds; many of your members sit as trustees on many of the superannuation funds. Have you asked them how the fees and charges are going to come down as a result of these changes?

Mr Anderson—There would be a range of factors—we are advocates of employers and not funds—which would impact on the determination of fees and charges.

Senator SHERRY—Such as?

Mr Anderson—Many of those factors would be competitive.

Senator SHERRY—Such as? I would like to know how the fees and charges will come down. What cost savings are going to result in a fund, many of which your members sit on as trustees, reducing the current operating costs?

Mr Anderson—Obviously, economies of scale are one factor in determining fees and charges, but the extent to which there are alternatives available for the direction of those moneys will also regulate the level of fees and charges. It is for the funds and for the superannuation industry, not for us, to put submissions to the committee about what would, could or may happen to fees and charges.

Senator SHERRY—But you are a proponent of a theory—the theory of choice—as it will work in superannuation. I am testing your assertion about the pressure on funds to keep their costs down and to perform in the marketplace and that fund choice is one of the prerequisites for a more competitive superannuation fund market. Claims are constantly made that fees and charges will go down. You have been very careful: you have not said that fees and charges will go down; you have implied it but you have not said it.

Mr Anderson—No, we have not said it, because it is not something that is specifically within our domain of expertise to say.

Senator SHERRY—So you do not know whether fees or charges will go down?

Mr Anderson—As I said earlier, the superannuation funds and the superannuation industry are really the people who can speak authoritatively on that subject. Equally, as we indicated, an environment where there is a greater choice and greater competition with respect to the potential

direction of funds and employee contributions is the best environment in which to try to achieve lower fees and charges.

Senator SHERRY—Are you aware of what happened in the United Kingdom when this experiment was tried?

Mr Anderson—No.

Senator SHERRY—The fees and charges went up. Do you think it would be a bad thing if fees and charges went up as a result of this legislation?

Mr Anderson—We do not see in the legislation there being any expectation that fees or charges would go up.

Senator SHERRY—A lot of the witnesses have said that.

Mr Anderson—It would be bad for there to be as a result of this legislative debate, in an environment where choice is to be introduced, rigidities built into the exercise of choice which did not create the best environment for fees and charges to be as competitively priced.

Senator SHERRY—Why should the legislation permit AWAs and industrial agreements to override choice? That is a rigidity.

Mr Anderson—It is not a rigidity.

Senator SHERRY—Why should they?

Mr Anderson—It is not a rigidity in this sense: the scheme of the legislation, which in its current form with default fund provisions goes back to industrial instruments—awards; if you are going to include awards, then you need to include all of the industrial instruments.

Senator SHERRY—But that is a default. Why should an AWA and an industrial agreement, as provided by the legislation, override an employee's choice? If an employee works for employer A, Jack Smith, and leaves that employer and goes to work for employer B, where there is an AWA or an industrial agreement, they might want to bring their fund from one employer over to the new employer, and they are prevented, aren't they?

Mr Anderson—An AWA is an agreement. It is a reflection of choice.

Senator SHERRY—What about an industrial agreement?

Mr Anderson—A certified agreement is too.

Senator SHERRY—What about new employees who come in and work for that employer after the agreements are struck? They are bound by them, aren't they?

Mr Anderson—Yes. As we read the legislative scheme, they would have the opportunity to exercise choice and the agreement provisions would apply in the default fund context. A

certified agreement is no different from an industrial award in the sense that it is an industrial instrument that regulates terms and conditions of employment for a group of employees.

Senator SHERRY—But it overrides choice. It overrides this great economic theory that the employee has the fundamental right to choose what they want to do with their money. If the employee does not choose anything, there is a default provision. You do not agree with the default provision, and I understand the argument; I do not agree with it, but I understand it. Why should an employee who starts at a workplace and wants to contribute to a fund they have been in for 10 or 15 years or whatever have their choice overridden by an AWA or an industrial agreement?

Mr Anderson—It would not be overridden by an AWA, because an AWA is an individual agreement. So if they have an AWA with their new employer then, assumedly, it contains terms and conditions they agree with.

Senator SHERRY—Why is it in the legislation then?

Mr Anderson—The government can answer that question. We support it being there because it is an industrial instrument that regulates terms and conditions of employment.

Senator SHERRY—Yes, and it overrides choice.

Mr Anderson—Which is exactly the point we were making earlier. You do not actually need to prescribe industrial instruments for the purposes of the default funds, because it overrides choice. If you do prescribe industrial instruments for the purpose of default funds, then you should prescribe all of the industrial instruments.

CHAIR—I have a question about the long-term consequences after 2004. I am referring to the default fund and the special rule for employees after 1 July 2004. That is where the default falls back to the industry fund, essentially. With all new employees coming into the industry fund, do you see the employers suddenly asking what is the purpose of keeping their own default fund? What are the long-term consequences of this? I am trying to look at the long-term consequences—structural changes—as a result of this bill. I have one view, and I am asking you for yours.

Mr Anderson—Obviously, there are long-term consequences for the superannuation industry. They are not matters in which we have a particular expertise, and we could not comment on those. But the long-term consequences are not direct for employers, because, as I said earlier, they sit as the intermediary between the employee and the fund.

CHAIR—But don’t you think there is a possibility that it may drive them out of providing the original default fund? Given the high turnover in work forces, with all new employees going into the industry fund as the default fund after 2004, what is the incentive for employers to continue their old default fund in respect of employees prior to 2004, because they will be a diminishing breed?

Mr Anderson—I think you make a fair point. There may not be an incentive to maintain the former default fund if the rules in respect of default funds change after 2004.

CHAIR—My next question is about item 10, point 3 on page 5 of your submission, which says:

3. the special problems raised by Defined Benefit Schemes require that they be exempted from the choice legislation ...

Could you articulate that for me?

Mr Anderson—This was a view that we put to the government, as I understand it, during the course of the discussions on the 1998 bill. As we understand it, as a result of those discussions there were some mechanisms for defined benefit schemes to be included in the scheme of the legislation. As we read the 2002 bill, that is the case as well.

CHAIR—What do you mean by that?

Mr Anderson—There are specific provisions in the 2002 bill which refer to defined benefit schemes. There are some specific clauses in the bill that refer to the specific circumstances of defined benefit schemes.

CHAIR—That is what we wanted you to spell out to the committee.

Mr Anderson—We have not examined those in detail to see whether or not they address some of the concerns that we had back in the 1998 period.

CHAIR—I think I can tell you what the new provisions are: that a defined benefit fund is not necessarily the default fund. In other words, if you have a defined benefit fund people can exercise choice to opt out of it providing the employer gives certain information in relation to insurance et cetera. However, if you are in a surplus position you do not have to comply or if you have a fully vested benefit you cannot exercise choice under those arrangements. Given the fact that actuaries will tend to fund it up to a vested benefit of 105 per cent, are there not problems for the employer of saying, ‘I am in surplus according to the actuaries?’ Aren’t you going to have arguments on that question as to what is a surplus and how big that surplus has to be? If you are over by just $5 or $100 in a large fund, do you really have a surplus for the purpose of that definition? Can you help me with that?

Mr Anderson—That is not a question we have turned our minds to answering.

CHAIR—But it is an issue.

Mr Anderson—As you put it, it is an issue.

CHAIR—It is an issue that our committee and I have identified as a potential problem, and I am trying to get some help as to how you interpret this.

Mr Anderson—I cannot help you for the purposes of today’s hearing.

CHAIR—Would you like to take it on notice.

Mr Anderson—We will take that question on notice.

CHAIR—You call for statutory protection. What do you mean by 'statutory protection for employers'? That is not in the bill, but you think it should be.

Mr Anderson—There are two aspects to this. One is the potential for employers to somehow be brought into litigation as a result of making the choice available to employees but, down the track, that fund not bringing about adequate or sufficient returns.

CHAIR—But if the employer has no say as to what the default fund is—unless they have a defined benefit fund—and if they provide all the information about the consequences of moving to an alternative fund outside the defined benefit fund, what problem, if they have met those requirements, do they have, because all the risk now lies with the employee?

Mr Anderson—That is what we think ought to be the position but, as Senator Sherry indicated earlier, in this situation there is information that has to be provided to employees. The employer being the intermediate figure between the employee and the fund may well be looked at by the employee as a vehicle for the provision of that information from funds and the like. As employers we do not want to be in a position where, in good faith, by providing information to employees to help them exercise their choice we are subsequently, down the track, caught in a framework of litigation because prospectuses of other funds, or the like, should have been provided to employees.

Senator SHERRY—Wouldn't you open yourself up to a much greater chance of litigation if the employer chooses the default fund?

Mr Anderson—If the employer chooses the default fund, it is obviously a fund that the employer is familiar with and which the employer is experienced in dealing with. It is not a case of the employer just acting as a conduit for providing information, some of which may be complete or some of which may be incomplete. I do not see that it would expose the employer to more litigation, because they are likely to be better informed.

Senator SHERRY—But, if the employer chooses the default fund, fundamentally the employer has got to be able to justify that choice if there is some dispute, haven't they?

Mr Anderson—Yes, that is right. In those circumstances, the employer would be dealing with a fund that they were obviously familiar with.

Senator SHERRY—Not necessarily. A commission agent could come along and convince them to go into a particular product. How many employers would know the details of a superannuation fund? I am sure some would, but I am sure some would not.

Mr Anderson—That is a fair comment. In those circumstances, the employer has a duty of care in exercising those decisions, so that is not an unreasonable proposition.

Senator SHERRY—Is it reasonable for an employer to be put into that position?

Mr Anderson—If the employer has the right to determine the default fund—in the same way the employer currently under the super guarantee legislation can make payments into funds—then that is a reasonable proposition, because it is, at the end of the day, a decision the employer

en that is a reasonable proposition, because it is, at the end of the day, a decision the employer is able to make, if that was the statutory scheme.

CHAIR—In several parts of your presentation, you also mentioned—and I refer to clause 20 on page 6 as an example—superannuation being removed as an allowable matter from industrial awards. How important is that? You say in that particular clause ‘at a later date’. Has that got any bearing on choice?

Mr Anderson—Yes, it does. It bears directly on the discussion that we were having earlier with Senator Sherry and Senator Hogg about default funds in the interaction with award systems.

CHAIR—So, if superannuation were removed as an allowable matter for industrial awards, what would that do to choice?

Mr Anderson—It would facilitate the introduction of choice—there is no question about that—because it would overcome the issues that were being raised earlier about having award funds or industrial instruments prescribed as default funds.

CHAIR—They would not be prescribed in the award; they are prescribed in the choice legislation.

Mr Anderson—This is where these two propositions cross. As I said earlier, there is an interaction between two different areas of public policy here. In our view, the regulatory imposts on employers with respect to occupational superannuation ought to be as straightforward as possible. We have the undesirable situation at the moment where employers have to comply with the requirements of the super guarantee legislation and with any additional or different obligations in industrial awards. They are not identical regulatory tracts; they differ in their regulatory content. The prime example is on the issue of fund, as we discussed earlier. Many awards prescribe funds for the purposes of employer contributions. Some provide very few funds; some have a handful of funds to select from. If you are introducing a choice regime and want that to apply at large, it does not make sense to maintain a regulatory regime where industrial tribunals have determined through arbitration that there shall be funds for the purposes of occupational superannuation. There are two mechanisms of public policy regulating employer superannuation contributions, and we are saying there ought to be one. The superannuation legislation which now requires employers to make nine per cent of earning contributions to approved funds ought to be the vehicle for regulating employers’ obligations.

CHAIR—On the other hand, I might be wrong but the other side—the trade union movement, say—would probably argue that taking super out of the federal awards would have the potential to destroy industry funds. Would that be right? I am trying to look into the future.

Mr Anderson—One would have to say that there would be some impact on industry funds. But industry funds, when they were established and through the award system, have had a substantial grip on the contributions that employers have to make on behalf of employees, because of the position in which they have been placed as a result of being award recognised funds. At the same time, in a choice regime, even if super is removed as an allowable matter from the federal award system, those funds would still be operating. They obviously have a very

strong position in the marketplace at the moment, and they would be competing in the marketplace.

CHAIR—Does it really matter, provided they perform—provide reasonable returns, low cost and high service? Why would people want to opt out if they were in the sort of fund that provided those characteristics?

Mr Anderson—People would not want to opt out if they were providing those benefits and returns to the fund members. You would not need an award to prescribe those funds for that purpose.

CHAIR—Do you think they generally meet the prescription that I have just outlined?

Mr Anderson—There are industry funds which many employers are very happy to contribute to, and there are economies of scale in industry funds which assist them in the competitive environment. One would think that those economies of scale would continue to be there and those funds would still have a very large place in the industry.

Senator SHERRY—An issue we have not touched on which seems to be a major concern of yours is compliance costs. You have gone into that in some detail. I accept your concern. It seems to me that there must be an increase in compliance costs under choice of fund. We can argue the level, but you seem to take issue with the government's costing and believe that it is on the lower side.

Mr Anderson—Yes. The costing in the explanatory memorandum carries with it a couple of assumptions that we think need to be tested more thoroughly. The assumption is, I think, that it would take three hours per employer for initial compliance and two hours thereafter. That may depend very much on the capacity of the legislative scheme to be simple. If the legislative scheme is not simple, with rules about default funds or defined benefit funds—and employers would need to get across a great deal of information, at least initially—the three hours would seem to be an understatement.

Senator SHERRY—I agree with you; I think it is an understatement. But the major cost of compliance is the cost to the employer of going through the process of sending a letter, getting the written confirmation back within 28 days and then the employer paying into more than one fund. With 20 employees they might conceivably have to pay into 20 different funds. That area seems to me to be an increase in compliance burden for the employer.

Mr Anderson—Yes, that is the core of the compliance burden; but you can only do those things once you understand what your rights and obligations are. You need to understand those clearly from the start, particularly given the enforcement provisions. We have not touched on those but, as we have mentioned in our submission, there is some different treatment of liabilities and penalties that we have some concerns about.

Senator SHERRY—How can you avoid an increase in compliance costs with any form of retail membership choice of fund legislation?

Mr Anderson—You cannot avoid compliance costs with the introduction of employee choice of fund, whilst employers remain the intermediaries between the fund and the employee. The critical thing is to ensure that those compliance costs are as minimal as possible and that in turn bears some relationship to the type of legislative scheme that choice operates within.

Senator SHERRY—We had the Motor Trades Association here this morning and they are very strongly critical of, and in fact do not support, the legislation we are considering. Have you consulted with those sorts of employer organisations about their attitudes?

Mr Anderson—Through the development of our policy on retirement incomes there would be some input from representatives of the retail motor industry, but the Motor Trades Association as a national organisation is not a member of ACCI. The Victorian Automobile Chamber of Commerce is.

Senator SHERRY—So who have you consulted with? Sorry, I do not know your membership base.

Mr Anderson—I can provide the committee with a list of our members; there are some 30-odd industry organisations.

Senator SHERRY—If you could, thanks.

Mr Anderson—As we indicated in our submission, they have not specifically seen the submission that we have put into this committee. We will be taking these preliminary comments to our members, because the 2002 bill has some differences from the 1998 bill and our members were actively involved in the policy that we developed around the 1998 choice bill.

Senator SHERRY—It certainly seems to me, from reading the bill, that the compliance costs are high—letters, paying into different funds and written authorisations coming back from employees on an ongoing basis—particularly for small business with fines of 60 penalty units, which, I understand, is about $6,600 per breach. I would be surprised if employers, particularly small employers, would welcome this sort of bill.

Mr Anderson—You have to weigh the advantages of this legislation as a whole against the compliance and the administrative costs.

Senator SHERRY—What is the advantage to the employer in this bill?

Mr Anderson—As I indicated at the start, individual employers may see very little advantage because they are effectively seeing themselves as conduits for the purposes of the payment of occupational superannuation contributions. But for employers as a whole, and the economy as a whole, we do see the advantages we have mentioned.

Senator SHERRY—I would take issue with that. So employers have to be convinced that this is for the good of the country rather than for the good of their own business operations?

Mr Anderson—And for the good of the implementation of sound occupational superannuation policies and retirement income policies in Australia.

Senator SHERRY—In my reference to the good of the country I meant that in the context of the good of the retirement system as a whole.

CHAIR—Mr Anderson, you seem to indicate that you support the bill providing the government will meet certain of your demands. However, it is highly unlikely that those demands will be met. If those demands are not met, do you still support the bill?

Mr Anderson—We were quite close to having most of the issues we raised adequately dealt with when the 1998 bill eventually went through its final processes.

CHAIR—But this is a new bill.

Mr Anderson—It is slightly different now. The differences in this bill compared with how the 1998 bill ended up—

CHAIR—And they are quite substantial.

Mr Anderson—They seem to be substantial, which is why we put in our submission. We will sit down with the government and the parliamentary system as a whole and seek to work through those issues.

Senator HOGG—The chair’s question is quite specific. If your caveats are not met, are you prepared to support the bill—yes or no? I want to get out of here; I do not want a two-hour answer.

Mr Anderson—It is too early to say because it depends on just how they are or are not met. Some of the issues we have raised are very important and we would like to see them met.

CHAIR—Are you expecting or hopeful that there might be some amendments introduced?

Mr Anderson—We will be advocating some amendments to the bill and certainly will be seeking some explanation, particularly in relation to the penal provisions.

CHAIR—Thank you very much for appearing here today.

Committee adjourned at 4.06 p.m.