



COMMONWEALTH OF AUSTRALIA

SENATE

Official Committee Hansard

SELECT COMMITTEE ON SUPERANNUATION

Reference: Choice of superannuation fund

MONDAY, 2 MARCH 1998

CANBERRA

BY AUTHORITY OF THE SENATE
CANBERRA 1997

INTERNET

The Proof and Official Hansards of the Senate and the House of Representatives debates, and the Proof and Official Hansards of committee hearings are available on the Internet

<http://www.aph.gov.au/hansard>

SENATE

Monday, 2 March 1998

SELECT COMMITTEE ON SUPERANNUATION

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

Senators attending the hearing: Senators Allison, Conroy, Chris Evans, Ferguson and Sherry.

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

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

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

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

WITNESSES

BATOR, Mr Leo, Assistant Commissioner, Australian Taxation Office, 2 Constitution Avenue, Canberra, Australian Capital Territory 2608	404
CHAPMAN, Mr Keith, Acting Deputy Commissioner—Superannuation, Insurance and Superannuation Commission, 243 Northbourne Avenue, Lyneham, Australian Capital Territory 2602	404
GERATHY, Ms Deidre, Assistant Secretary, Department of the Treasury, Parkes Place, Parkes, Australian Capital Territory 2600	404
KEMP, Senator Rod, Parliament House, Canberra, Australian Capital Territory . .	404
LARKIN, Mr John, Assistant Commissioner—Policy, Insurance and Superannuation Commission, 243 Northbourne Avenue, Lyneham, Australian Capital Territory 2602	404
MONAGHAN, Mr Michael, Deputy Commissioner, Superannuation, Australian Taxation Office, 2 Constitution Avenue, Canberra, Australian Capital Territory 2608	404
OLESEN, Mr Neil, Assistant Commissioner, Australian Taxation Office, 2 Constitution Avenue, Canberra, Australian Capital Territory 2608	404

Committee met at 8 p.m.

CHAIR—Welcome. This is the fifth public hearing on the Senate's inquiry into the choice of superannuation fund. We conducted hearings in Sydney and Melbourne between 17 and 20 March, when we took evidence from a range of witnesses who had quite differing views on the choice of fund proposal. I think it is fair to say the concept of choice of fund is widely accepted. The major difference of opinion that the committee encountered related to the timing of the introduction of the proposal. We also took evidence on a range of issues such as employer liabilities, education, disclosure, standards and insurance. I consider that our hearings have achieved a good balance, as we heard from quite a range of views on all these issues.

Before we commence the taking of evidence, let me place on record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee and to the evidence which is given to the committee. Parliamentary privilege, as most of you know, means special rights and immunities attached to parliament for its members and others, necessary for the discharge of functions of the parliament without obstruction and without fear of prosecution. Any act by any person which operates to the disadvantage of a witness on account of evidence given by him or her before a Senate committee, or any other committee of the Senate, is treated as a breach of privilege; and so, accordingly, you are all protected.

I should also explain that we are today rejoined by Senator Nick Sherry, whose re-appointment to this committee took effect from 1 March. Senator Sherry attended the hearings in Sydney and Melbourne but, because of the rules of the Senate, he could not ask any questions—and I am sure that was very difficult for him. I would like to take this opportunity to formally welcome Nick back to take an active part in the proceedings.

KEMP, Senator Rod, Parliament House, Canberra, Australian Capital Territory

BATOR, Mr Leo, Assistant Commissioner, Australian Taxation Office, 2 Constitution Avenue, Canberra, Australian Capital Territory 2608

MONAGHAN, Mr Michael, Deputy Commissioner, Superannuation, Australian Taxation Office, 2 Constitution Avenue, Canberra, Australian Capital Territory 2608

OLESEN, Mr Neil, Assistant Commissioner, Australian Taxation Office, 2 Constitution Avenue, Canberra, Australian Capital Territory 2608

CHAPMAN, Mr Keith, Acting Deputy Commissioner—Superannuation, Insurance and Superannuation Commission, 243 Northbourne Avenue, Lyneham, Australian Capital Territory 2602

LARKIN, Mr John, Assistant Commissioner—Policy, Insurance and Superannuation Commission, 243 Northbourne Avenue, Lyneham, Australian Capital Territory 2602

GERATHY, Ms Deidre, Assistant Secretary, Department of the Treasury, Parkes Place, Parkes, Australian Capital Territory 2600

CHAIR—I now have the pleasure of again welcoming my colleague Senator Rod Kemp and officers from the Treasury, the ISC and the Australian Taxation Office as witnesses. Many of the officers have given evidence before, and I thank you for your continued assistance to the committee. I also apologise for imposing yet another night of hearing on you all. I am conscious that the minister and several of the officers attended late night sittings of the estimates committee last week. Unfortunately, the time constraints of the committee meant that we had little option but to meet tonight.

Minister, as you would know, several of your officers monitored the public hearings in Sydney and in Melbourne, and we thank you for that. There was a member of your staff, and there were also officers from the ISC and from the ATO. As chair, I think it is particularly good when officers follow the committee around, because it is one thing to read evidence but it is another thing to be present in the environment in which the evidence is presented. I do hope, therefore, that you will be in a position to help us resolve some of the issues that we are facing and to assist the committee to understand the government's position on this matter, so that we can table a balanced report on 24 March. Minister, I now invite you to make an opening statement.

Senator Kemp—Thank you. The government, through my staff and through members of the various departments and agencies you have mentioned, has followed the hearings of the committee with great interest. We look forward to reading the final report of the committee. In relation to choice of funds, as I will indicate later, this has been a major public policy issue on which there has been a great deal of consultation. That consultation has been very productive. Through that consultation, from my own experience I think that some people have changed their minds but I believe we have been able to reach—with the measures that we put forward, together with the enhancements—a choice of fund proposal that we think will be successful and that deals with all the major concerns that were raised. I know that,

during the hearings, other issues have been raised. We have, as I said, a variety of officers here who will be happy to answer questions.

I would like to leave here, if I may, for another meeting just after 9 p.m., if that would suit the committee. However, I do not wish to restrict in any way the hearings of the committee, and I am sure my officers will be very happy to stay to assist members of the committee.

From the government's perspective, we welcome the strong, in principle support that has been received for choice and we note that you made a similar comment in your opening remarks. It seemed to us that there was strong support for the principle of choice in the submissions to the committee. The government does take some pride in the openness of the process that has been followed with the choice legislation and, as I said, there has been a great deal of consultation with industry and other groups. We look forward to receiving the committee's report, and naturally we will look carefully and reasonably at the committee's recommendations.

We believe the employees will benefit from greater choice. We believe that it is important and that employees would wish to have greater control over their own superannuation. We believe the direct benefits of increased competition are lower costs and increase productivity. Competition does provide the spur for business to improve its performance and to develop new and better products, as well as to offer existing products at lower costs. People will have scope to choose funds that better meet their particular needs.

Choice of fund will increase competition and put pressure on superannuation funds to improve their efficiency and investment performance. The least efficient superannuation funds may merge—and this has been put to me—with more efficient funds, as is often the outcome in a competitive market environment. It is important, and the government has been very conscious of this, that we get the balance right in terms of managing choice for employees versus recognising burdens that may be placed on employers.

We agree with the views put strongly to the committee that education is vital for getting the best results from choice. I have already had some preliminary meetings with representatives from industry, and we believe that it is entirely desirable that, to the extent that we are able, we integrate government and industry in education campaigns, so that we both understand what each other is doing and we understand the essential themes that we are trying to get through. The government is looking for its agencies and the industry to maximise the leverage from their joint activities. I am interested in it being appraised, and we are still working with industry to develop a program on education.

The main target for information services will be employers and employees, superannuation funds, RSA providers and superannuation professionals, and the accountants and tax agents that advise those groups will also be targeted. The ATO has held consultations with the superannuation industry and representatives of employers and advisers, in order to gain a shared understanding of the communications task ahead and to find ways to cooperate in the dissemination of information.

A communications strategy is currently being developed by the ATO in conjunction with other agencies and industry. Briefly, this strategy will involve the use of direct mail-outs to employers, seminar presentations, Internet information and editorial and, of course, advertisements and other material in selected journals. Information will also be disseminated through peak bodies, such as chambers of commerce and industry associations. Particular emphasis will initially be given to new employees and to employees changing jobs. Research will be undertaken as a benchmark for the campaign, in order to better target key groups.

It is expected that the choice initiative will allow superannuation providers to develop new products and to compete for market share among potential contributors. Superannuation providers will play a significant role in the education process. The communication program will have special regard to the needs of women, young people and people from non-English speaking backgrounds.

The government is aware of calls for the implementation date to be deferred. The government's position is that we consider there will be sufficient time for employers and funds to make the necessary changes to administrative arrangements. Importantly, we know that the details on choice of fund were announced on 13 May 1997. The choice of fund was a pre-election commitment, and the necessary legislation was introduced on 4 December 1997. I may leave it there. As I said, I welcome the public nature of the consultation on how the policy that we put forward has been finessed, and we look forward to assisting the committee in its deliberations.

CHAIR—Thank you, Minister. Seeing that you will be going by 9 p.m., I might open the questioning with a policy issue. You have referred to it. I might briefly summarise the evidence as we have seen it to date. It probably would be generally true to say that the banks and the large insurance companies support the commencement of choice on the announced date and that they consider that, because they will obviously be first in on such a program, there will be a competitive advantage in it.

However, the evidence from other people, such as employers, trustees, and a number of other groups—particularly those who are less well represented in society—has expressed concern about being able to take advantage of the necessary educational messages, in terms of the start-up date. Their concerns are based on such factors as the need to prepare key features statements—and I will ask a question separately on that, in relation to matters that have been raised by the actuaries—and the need to put education programs in place, as well as the logistical difficulties associated with putting required administrative changes in place. In fact, those concerns went as high as Coles Myer Ltd, the largest single employer in the country, which told the committee that the physical task for amending their payroll systems is huge and that, because of this, it may well be impossible for them to meet the start-up date. They indicated that they even may have to resort to certain manual transactions.

Operators of corporate funds may also need some time to decide whether they will continue with, or close, their funds. Others had a concern as to whether there was enough time to adequately educate employees so that they could make an informed choice. Basically, I think it would be true to say that everybody is in favour of the proposals, but the concerns seem to be about whether the educational program and all the necessary key features

statement tidying-up issues can be done in sufficient time for all those groups that are outside the mainstream of the big bodies to be in position.

The question really is this: could you outline to the committee what I term the ‘compelling reasons’ that choice of fund proposals had to be implemented with the first tranche on 1 July this year? That is the announced schedule. Associated with that, is it not true that the actuaries, in evidence before us, indicated that they believe they can get a common approach in terms of being able to assess the four different types of funds’ returns, et cetera, but that it is going to take them some time and they will have to liaise with industry, and that that has to get communicated into effective statements and so on? Basically, a lot in an education program may have to be achieved in as short a time frame as six weeks. These are the sorts of issues, and I am backgrounding you in terms of the sorts of evidence that we have received.

Senator Kemp—Thank you, Mr Chairman. You are quite right. My understanding is that there was a diversity of views put on the start-up date. There are those that wish to proceed as the government announced, and there are others that would prefer the start-up to be delayed. It really is a matter for governments, in the end, to weigh in the balance. As I said, this proposal has been well known. We went to the election on it. We have hardly sprung it on the public arena. We have talked very extensively with people since the budget announcement. This has been a public policy which has been exceedingly well aired and, in the end, the government has got to make a judgment on where to strike the balance, noting that some would prefer us to delay it and some would prefer it to proceed.

The government proposes to proceed with the start date, but we will work very closely with industry to ensure that, where major problems occur, we will deal with those in a sensitive fashion. It is often the case, in my experience, that a deadline will produce these difficulties, as people wonder whether they are prepared or not. From the government’s perspective, we recognise that there is a variety of views on this. I think that we will proceed with our proposed start-up date. Perhaps Mr Monaghan might like to make some observations.

Mr Monaghan—We are obviously well aware of the calls for education of the people who have to make the decisions, as distinct from the providers; and the distinction you drew is one that we have had a number of discussions with industry about. Clearly, it is part of our role to ensure that the people who are making decisions are equipped to do so, and we are satisfied that there is still ample time for us to do that. There has been a lot of work going on in preparing us to develop actual strategies to educate people, and we do not see any reason why people who are making choices in July will not be adequately equipped with information to help them do that.

CHAIR—We are indeed pleased to hear that you have been communicating with industry. Can you indicate to us how you are communicating with the smallest of the employers around the country, including people who are not traditionally employers? Take, for example, people in the community who join together to form an association and employ a teacher for the purpose of kindergarten training, after-school care and so on: those people who are not employers in the traditional sense, many of who do not even understand the need to take out workplace cover or workers compensation insurance. These are the sorts of

vulnerable people that the committee wants to be assured that the message will get out to quite adequately.

We are not concerned about the big people. We believe that they do not have the same sorts of communication problems. If you would not mind, could you outline your strategies for getting out to people who may be regarded as disadvantaged employers: the single employer at the back of Bourke, who may know nothing about superannuation, let alone choice?

Mr Monaghan—I can answer that at one level, but we are still working out the detailed strategies. In terms of saying we will send three letters to them or whatever, we have not got to that level of detail yet. The Australian Tax Office communicates now with employers regularly, and we have the networks in place for employers in relation to their tax obligations. We can gain leverage in the message about the choice issues through existing networks that we have out there. In terms of strategies, we have in the past put a lot of effort into dealing with employers of non-English speaking backgrounds or whatever.

On a number of measures, including super guarantee, we were obviously required to communicate right out across the workplaces. We believe that, by combining our networks with the sort of cooperation we are getting from employer groups and industry groups, we can get to everyone across the community to explain what is required.

In terms of what we actually do, we have canvassed a range of different ways. The minister has mentioned a couple as examples, but there is a range now of access points and entry points that we can use. Whilst the overall education issue is very large, and I do not understate that, I think we need to be very focused in what we actually need to do, and by when. I have suggested to the industry people with whom I am working that we put effort into identifying key messages and key groups who need to be advised in a time line. I think we should be able together to successfully get the message to whoever needs it.

CHAIR—Do you have a broad outline timetable that you could give to the committee, followed up with more detail?

Mr Monaghan—We have just completed tendering for an advertising agency to undertake this work on our behalf. We cannot announce the decision now, because we are still completing the paperwork; but that is imminent. We have already undertaken considerable research. I would see that work at a general level could fairly soon start raising awareness about superannuation again. The strategy would be to do some activities to rebuild the awareness that there was around the community a few years ago. I think it would pay us to adopt an interest theme to encourage people to take more interest in their superannuation. There is a range of measures around as to why they should take an interest. My feeling is that we will be starting to develop a much more concrete strategy immediately. I am not sure when you would actually see something happening, but obviously we would start sending material out in the pretty near future.

Senator CONROY—I mentioned to some of the officers in Melbourne a request about finding out information about the last two major campaigns that you ran on superannuation.

Do you remember the pot plant and the tree growing? They were TV ads, and I am sure you remember them.

Mr Monaghan—I remember them very well.

Senator CONROY—Could you give us an indication of the costings that went into them? I think I sent the request informally up the line.

Mr Monaghan—I can provide the committee with some figures now. I have been asked this question a few times and I can give you an indicative figure of the cost of different components. It is actually difficult to cost it from start to finish because, as I am explaining in relation to the work we need to do on choice, we can get a lot of leverage through things the ATO does anyway. We would send out material as part of group employer booklets and things like that, but I can get you some figures.

Senator CONROY—I was thinking mainly of the advertising campaign in terms of TV, newspapers and those sorts of things.

Mr Monaghan—Yes, I can do that.

Senator CONROY—In today's dollars, if possible.

Mr Monaghan—In today's dollars.

Senator SHERRY—You said you have undertaken considerable research already. What sort of research has it been on this issue?

Mr Monaghan—We have not yet undertaken research directly aimed at how we communicate this message, but we have undertaken research regularly over many years now, much of which has been made available to this committee from time to time as it has become available. We have a fairly good body of material on the attitudes of people to superannuation across a range of different issues, as well as information about the best way for us to get information out into the industry system. We actually did do some research of a sort late last year. It was more a survey of the industry to get better information on how they prefer to get information from us. We are fairly well equipped with information on the capacities they have and the best way for them to get stuff to their members, so that we can help them in that way.

Senator SHERRY—On this issue, though, there will be some problems. We can argue about the size of the problem. There are different markets: there is an employer market, an industry market and the employees themselves. What problems do you envisage—in your judgment or your officers' judgment, or based on the research—employees will face in making an informed choice?

Mr Monaghan—At a general level, whilst awareness of and support for superannuation are fairly high, the depth of understanding is not high. I do not think that is any great surprise to anyone. Again, this is something that we will research to ensure that we properly understand what the issues are and how we should communicate. The issue will be one of

finding a hook to get people interested in hearing the message. That is something that we have to work on and we will. In communication terms, that would be an issue for us.

Senator SHERRY—I am not surprised that people know about superannuation, because they all get statements—that is, all those that are in employment or who have been in employment. That would not surprise anyone, I do not think. I am concerned that you cannot identify some of the specific issues that an employee would have to be aware of and that you believe that they are not aware of in particular areas, some more than others, about what they need to know to make an informed choice.

Mr Monaghan—Obviously, they need information about the choice available to them, which depends on a number of factors that we need to explain—for example, state award coverage and so on.

Senator SHERRY—Sorry. On that issue, for example, do you think that the majority of workers know whether they are covered by a state or a federal award?

Mr Monaghan—Senator, I could make my own surmise, but I am not sure that—

Senator SHERRY—You are an informed expert: you have been here, and I do have some considerable respect for your judgment. Do you think it is a majority that know if they are under a state or federal award?

Mr Monaghan—As things currently stand, awards are with the employers and unions, and often an employee would not be correctly aware.

Senator SHERRY—But you have mentioned that it is an important issue that they have to be aware of.

Mr Monaghan—Okay. It is something they have to be told about. I am not saying that they know now. I accept that that is an issue about which they could be advised. On that issue, it is certainly on our list of matters to attend to, including dealing with the Department of Workplace Relations and Small Business and state agencies, to see what we can do to help people in that area. Clearly, there are questions of choosing the sorts of things people want to know if they make a choice about costs and benefits. Again, jointly with the ISC, we are working on disclosure requirements to assist in that regard.

We are working together on key feature statements and what they should look like. Both agencies believe that some uniformity in the information there is a good idea. The ISC, no doubt, can give you more on this. They have themselves been talking to the industry about the extent of the disclosure and the nature of it. There is a range of matters that someone would want to know about, and I believe we are working on those things.

Senator SHERRY—I appreciate all of this, but would it surprise you to know that, according to surveys that I have seen, a majority of the Australian work force do not know what a percentage is or how to calculate it or what it means? I would have thought that was pretty important information when looking at issues like fees, charges and interest accrual over time. If they do not know what a percentage is, how do you start with people like that?

Mr Monaghan—Senator, I think that there are undoubtedly some broad societal issues that I do not pretend that we are going to fix through this work. I have trouble understanding a bus timetable myself.

Senator SHERRY—But you are one of the 2½ million functionally illiterate or literate—

Senator Kemp—That is a task for Dr Kemp to fix.

Senator SHERRY—Be careful, you have been in charge of the superannuation tax; it would really worry me if you admitted functional illiteracy.

Senator Kemp—This is not a consideration of this committee.

Mr Monaghan—Again, whilst these are important things, I believe that we should take care to identify those things which individuals need to know and when they need to know them. There are some important background factors around people taking more interest in their financial affairs. The Minister for Finance and Administration might have indicated today a fairly significant increase in people who own shares, which I think is known. There are reasons why people would be taking more interest in their financial affairs. I think that we need to take the research that has been done by a range of people in this area. Essentially, we need to deal with it just as, in the past, we have had to deal with a range of employers of non-English speaking background or employers out in the back of beyond, in relation to other obligations. These are things which we need to build into the program of education over the coming months.

Senator ALLISON—On that question of timing, Minister, you said that you took a judgment on balance and so forth. I think what needs to be on the record is that only the banks were in favour of the start-up time that has been given.

Senator Kemp—I think the new industry body, IFSA, also supported that start-up date.

Senator ALLISON—But is it not true to say that those are the organisations one would expect to want this to start up quickly? They are less interested in the readiness of the industry to accommodate the change, and more interested in—

Senator Kemp—The truth of the matter is they speak on their own behalf. They feel that the start-up date can be handled, and that is the position they put. Others put a different position to the committee. In a sense, governments are often faced with these on-balance decisions. There is another element, in that people often find it a bit hard to focus until there is a start-up date.

Senator ALLISON—I suppose the same could be said for your department, given that the announcement was made on 13 May and yet there are so many things still to be sorted out: the key feature statements, the program for education and the arrangements with the industry.

Senator Kemp—There are a number of things to be sorted out. But, equally, we have made it clear that there has been a lot of thinking and work done, and a lot of consultation with industry. Some two weeks ago, I attended the start of a two-day seminar held in Sydney with people from a wide range of groups in the industry in which the education campaign was started. The ATO has run a variety of campaigns on superannuation over the years. We are not starting here with a green field. We are starting here with a body of people that have been actively involved in campaigns on superannuation.

I hear what you say, Senator. We understand that there will be some groups that simply feel that they are not ready. But I would have to say that, often, people simply do not focus until they start to bump into the deadline. This policy, as I said, has been out for a long time. In the end, governments have to make these decisions. We have always indicated the start-up date. We have remained consistent on that. We will give you the assurance that we will work very closely with industry and very closely with people who have concerns, to deal with those particular concerns. But we have, as I said, an operation here which has a great deal of experience in relation to superannuation campaigns. I think those campaigns—and I am sure Mr Monaghan will agree with me—have been very successful.

Mr Monaghan—Yes.

Senator ALLISON—Can you explain to the committee why you chose to introduce the scheme in two stages, and whether, from what you have heard of the witnesses who have appeared, you agree with many of them that that actually presents some quite significant difficulties?

Senator Kemp—Again, the reason we decided when the policy was being developed to introduce it in two stages was that there was a view that rather than push the whole policy out in one fell swoop, so to speak, it was to be phased in. The first stage was to deal with new employees, and the second stage was to deal with existing employees so that, in a sense, there was not an enormous pressure from the first start date: it gave people a chance to phase in, before it had to be offered to all employees.

We thought that was a reasonable balance. We were responding to some of the concerns which were raised when this policy was developed. Looking at it again, it seemed to us to make a good deal of sense. We believe that that is the way to go. It will not suit everybody; that is true. Part of the problem is that, in a lot of these major areas of public policy, what suits one particular group will not suit another.

Senator CONROY—And the members are going to have to then make a choice, rather than the people who have to administer it.

Senator Kemp—We can tell you that, but I am just responding to the question that was raised. In the end, governments have to make judgments. We think that this was a sensible way to phase this program in, and that is still my view.

Senator FERGUSON—To follow on from Senator Allison's questions, if banks and life offices and others are ready for the start-up date and it does not pose a problem to them, doesn't that mean that those who prepare themselves for proposed legislation—which, in

fact, they have known about since last year—are ready, and that those who hope that it might all go away are not ready?

Senator Kemp—There may well be an element of that. I have not got any evidence of that. This is a very big market, and people will react in different ways. In some areas, with the evidence that has been put before your committee, the government is quietly heartened that so many people have signed on to the principle of choice and think that it is a good thing. We think it is a good thing; it makes sense. From a public policy point of view, it makes sense.

CHAIR—That is not doubted.

Senator ALLISON—Yes, it is!

Senator FERGUSON—The banks and the life offices have prepared themselves for it, because they have known it is going to come in.

Senator Kemp—Senator Ferguson reiterates the earlier point I made, Senator, that this has been known for a long period of time. I doubt whether there is any measure on which I have spent more time consulting with people than choice, with one sole exception, I would say—

Senator FERGUSON—Don't name it!

Senator Kemp—which is, thankfully, not the business of this committee tonight.

Senator CONROY—I am not actually disagreeing with Senator Ferguson or your own points in terms of the people who will be offering choice, the institutions that will be offering choice and ones that may or may not want to go away. I am more concerned about the people who will be making the choice and whether they are in a position to make an informed choice. You are accepting the need for a public education campaign. I am assuming that that means that you accept the point that people at the moment would not understand; if it just started tomorrow, and no-one said a word, people would not understand where they were going to be at.

With your Telstra calling number display, Telstra has been engaged in a public education campaign, and your government has said, 'We accept it is new; we accept there are consequences, some of them quite invasive of privacy; but we will not begin until we, the government, are comfortable that 80 per cent or so of people actually understand.' Do you see the need in this case for perhaps a test of whether your public education campaign has worked?

The worst that can happen to you if you fail to understand about the calling number is that you receive a flood of unsolicited mail. But, if you make the wrong choice because you are uninformed, the worst that can happen is that you are a couple of hundred thousand dollars worse off when you retire. My question really is about proceeding before you are confident that the people who have to make the choice are in a position to make an informed choice.

Senator Kemp—We have reiterated very strongly the belief that we have, which is reflected by industry and by the submissions that you have received, in the importance of the education campaign. It is important that people make an informed choice, and it is important that we have the strategies to get out and to reach those people. The truth of the matter is that people make a lot of very important decisions about their lives. We think that this is another important decision that people will make about their lives. We can go into the sorts of protections which are built in and the codes of practice to prevent people being exploited. The committee has probably received evidence on those sorts of things.

There will be, in any sizeable population, people who are highly well informed. This will vary across the spectrum. I think it is our task to make sure that those people who are less informed—and, you might say, more vulnerable—are reached. That will be the intention of the government's campaign. Mr Monaghan is about to give me a note, so I might just see what it adds. Yes, that is a very interesting point, Mr Monaghan, I might say—a very interesting point.

Senator CONROY—Feel free to share it with us.

Senator Kemp—I will let him make the observation, because it is a rather good one.

Senator SHERRY—He is checking it with you!

Mr Monaghan—The observation was that we should not forget that, in a range of states and state award systems, people are already making choices about their superannuation. So there has been at least—

Senator CONROY—Nobody in Western Australia has worked out what the hell is going on yet—not an employer and not an employee!

Mr Monaghan—In New South Wales, Queensland and Western Australia—

Senator Kemp—Senator Conroy, you are a Victorian, so you do not know much about Western Australia—

CHAIR—Just a minute. Please do not interrupt the witness.

Mr Monaghan—There are already people who are making choices. The work that we can do may well help them make better choices—I do not know. But we are not starting from scratch here.

CHAIR—Are there any further questions?

Senator CONROY—I want to keep going on that just for a second. Senator Kemp, how do you measure the success of a public education campaign? Should you start forcing people to make a choice, on any measurable test that you set on it, if it is 40 per cent who understand, or 60 per cent, or 50 per cent? Should there be a threshold point?

Senator Kemp—In a sense, we force people at the moment to work within a system. People are not given a choice; they are forced to work within the current system which governs the pre-choice era in superannuation. Mr Monaghan might like to—

Senator CONROY—By definition, there is no choice in the current—

Senator Kemp—That is why I said ‘pre-choice’. People are forced—

Senator CONROY—Now they are going to walk in and be told, ‘Here are four funds, four options. Pick one.’

Senator Kemp—As Mr Monaghan said, under various state awards people now, in some cases, make choices. You might like to talk about benchmarking, Mr Monaghan.

Mr Monaghan—We typically—and we would do so here—benchmark, through research, the attitudes and understanding of people on particular issues. We will benchmark people’s understanding prior to conducting any campaign work, any education work, and we will, as we do, track improvements in understanding as we go. If we find there are—

Senator CONROY—What are you going to do if you find that you have not reached your benchmark?

Mr Monaghan—I understand your point, Senator.

Senator CONROY—Because you have still got to give them the choice.

Mr Monaghan—My response to that is that we need to benchmark frequently enough to be able to redirect or re-emphasise messages to areas which seem to be not understanding to an adequate level. I do not know that you can say that there is a figure of X per cent. I am not sure what—

Senator CONROY—At what point would you consider the need to bring resources in, to redirect your resources?

Mr Monaghan—It is fairly hard to answer that, because there is such a wide range of reasons why I would do that. I certainly would redirect resources if, with people who were making choices in July-August, for example, it looked as though that audience was researching badly. I probably need assistance from the experts to tell me what is a good figure and a bad figure, so I probably do not have that off the top of my head.

Senator CONROY—Surely, if you surveyed and found that 50 per cent of people under the age of 25 were ending up in a default fund that was an RSA, you could clearly make a judgment that that was obviously not in their long-term interests.

Mr Monaghan—We would certainly make a judgment about the need to have further information made available where research was showing that people just were not understanding what they were doing. I am reluctant to commit to a figure, because I do not know that that would add much—

Senator CONROY—In the case of the Telstra calling display, the government has set 80 per cent, which I think is a reasonable figure. There is some argument about whether or not it has reached 80 per cent. But they accepted the need for a high threshold point before they introduced some piece of public policy that could adversely affect people.

Mr Monaghan—In terms of an education campaign where we are trying to assist people in making a choice about something, our research work will help us to develop appropriate measures to get to those audiences. I do not think—

Senator CONROY—I understand you will get to them. It is whether you get to them and improve their education on the issue that is the question.

Mr Monaghan—Sure.

Senator CONROY—I am sure you will find them.

Mr Monaghan—That is part of the soundness of the work we would do: we would have that information as to whether we are hitting the right people at the right time.

Senator CONROY—Would there be a point where you would turn around to the government and say, ‘We’re just not making any headway in educating people. We can’t go ahead’?

Mr Monaghan—If I felt—

Senator CONROY—Minister, is there a point where, if the research came through and said that people just were not understanding this yet—

Mr Monaghan—As in all my work, if I felt that there was a problem, I would advise the government.

Senator CONROY—My question then to the minister is this: if you received advice that said, ‘We’re not making headway; people are confused; they don’t understand,’ what would your government’s position be?

Senator Kemp—We would try harder, Senator. We would make sure. We are determined. This is a very big change.

Mr Monaghan—Absolutely.

Senator Kemp—Let me say we do not underestimate the importance of this change. It is a very big change. We will carefully research the market. We will ensure as far as we are able that people are appropriately informed and we will be carefully monitoring that. The policy is coming in and the policy will come in successfully. We will—

Senator CONROY—Everyone who has come before the committee, the committee members and you yourself are all interested in making it work successfully. It is just that a

lot of the evidence that has come forward shows a concern for how you educate people, how you make them understand these important decisions.

Senator Kemp—We hear that concern and we take those concerns seriously. A great deal of work is being done and will be done to carry this out successfully. It is important that the committee is able to ensure that we have a good debate in the Senate, but it is important also that the bill is not unduly delayed, so that people can know where they stand and make appropriate plans.

Senator CONROY—I am not sure if I heard all the ways you were going to go about your education campaign. Did you include television advertising? Was that one thing you are committed to, or did you say it was an option?

Senator Kemp—There is a range of options, but I will get Mr Monaghan to answer that.

Mr Monaghan—The key here is to find the hook to get people wanting to take an interest. We have spoken to some financial trainers who have experience in trying to get people interested in knowing about their financial affairs and we are building that knowledge into our program. We need to find a way to get people interested. We believe that in an area like this it is important to hit while the interest is up. We think that a short, sharp—

Senator SHERRY—Amongst employees?

Mr Monaghan—Sorry?

Senator SHERRY—You said ‘hit while the interest is up.’ Do you think there is much interest amongst employees out there?

Mr Monaghan—We believe that we need, through research, to identify the hooks that will get people interested, and we believe we can do that. Then, whilst we have their interest, we need to explain this. That is not to say it is not an ongoing education campaign that is required. As the committee is aware, we have been conducting ongoing education in this area for some years. We do believe it is a long-term thing, but—

Senator CONROY—Are you able to provide any evidence to show that education and knowledge are improving? Are any of your surveys showing that? This is an aside. Is there anything available to the committee?

Mr Monaghan—Do you mean as we proceed?

Senator CONROY—You said you have been conducting ongoing education campaigns. Is there any evidence you are able to give to the committee?

Mr Monaghan—We have presented the results of that work to the committee over the years, as it became available. It is obviously not recent; but we do, as material is available from the government processes, make it available publicly.

CHAIR—Minister, would the government consider a position whereby you might be able to please both the rich and powerful and those who are less able to look after themselves by having a start-up date as scheduled but having it be optional for the first 12 months, so that those who want to introduce choice—the banks and others—can do it, but others can have 12 months to decide? If people wish to proceed, they can; but, if they do not, then the legislation would be in place. Would that be practical, or is that an impractical suggestion?

Senator Kemp—I would want to think about what you have put forward. At face value it might well be confusing to a lot of people if there were an optional start-up date.

CHAIR—Would you like to take it on notice?

Senator Kemp—Senator, I am always happy to listen to your suggestions, as you know. I will certainly think about it, but let me make it clear that the government intends to proceed with the start-up date we indicated.

CHAIR—Thank you for that.

Senator ALLISON—Have you thought about the likelihood that employers may be forced into an unlimited choice situation because of this tight deadline that they have all come to us about and have said is problematic? What are the implications for that in terms of the cost to employees of what is likely to be a whole new level of consultants and people who will offer services to employers? What sort of work is being done to assess the cost of implementation of that, given the tight time lines?

Senator Kemp—In the EM, which was released with the bill, there was quite a bit of figure work done on the costs of implementation. If you are talking about the cost to the employers, we look at the compliance cost in the first part of the EM. The reason that we went for the third option in the enhancements was that we were actually responding to requests from some of the employer groups who had had a rethink and a relook at the issues involved, and also from such bodies as LISA. The fact of that matter is that options will suit different people. What will be good for one employer will be unsuitable for another. That is why we provided those three options. Frankly, it was really responding to the feedback that we received from the community. We did not have the unfettered choice option when we announced it at the budget, but that was actually in response to some of the groups that I mentioned.

Senator ALLISON—What is your estimate of the percentage of employers who will take up that unlimited choice option?

Senator Kemp—In fact I asked groups that, and it is very hard to say, actually. It is very hard to tell.

Senator ALLISON—Would the government be concerned if there were a high percentage of employers who did that, given that the onus is then back on employees to make a decision?

Senator Kemp—We have put down a variety of options and we think each of those options will deliver choice. We are happy with what the employers do to comply—

Senator ALLISON—So it would not worry you if we had a very high percentage of unlimited choice—

Senator Kemp—No. It would not concern me, because I think it is a valid option. We would not have put it in, if we did not feel that it was a valid option.

Senator SHERRY—But shouldn't the employee have the ultimate decision? Under this model, which is a hybrid, there are a range of circumstances where the employer can determine that. Why shouldn't the employee have the absolute choice?

Senator Kemp—The truth of the matter is that the employee does not have any choice at the moment. He has no choice. So the question is, how do you move from the current position where we do not—

Senator SHERRY—That is not right; not all employees have 'no choice'.

Senator Kemp—A lot of employees.

Senator SHERRY—That is not even right.

Senator FERGUSON—Yes, it is.

Senator SHERRY—If you were at the hearings, you would have seen the evidence. So you have gone for a hybrid model; it is not full choice for all employees.

Senator Kemp—I will just finish. What we sought to do, as I said in my opening remarks, was to aim to give choice to employees and to balance that against the obligations and cost to employers. In the end, we had to strike what we saw as a reasonable balance. We believe that the proposals that we put down do deliver choice and that they do so in a way which is cost-effective to employers. So it is a matter of just striking the right balance. I accept that people of goodwill will differ on that.

Senator SHERRY—I will give you an example, Senator Kemp. Let us assume that an employee is in an RSA product, and they move in their employment to a new workplace where there is an arrangement that does not allow the moneys to be paid into their RSA product and they, in effect, do not have a choice, because the employer has some sort of an arrangement at the workplace that requires it to go into some other fund. That is clearly to the disadvantage of the employee. Why shouldn't the employee's interests be paramount—in other words, freedom of choice everywhere?

Senator Kemp—Is it your view that we should be giving unlimited choice everywhere?

Senator SHERRY—I have got two views, actually.

Senator Kemp—You are coming down hard on both sides of the fence there.

Senator SHERRY—I can see a good argument for total freedom of choice and I can see a good argument for very strong regulation. I can see both ends of the system. You have come up with a hybrid system, which is the topic of examination for this committee. Do you concede that an employee would be at a disadvantage in those circumstances?

Senator Kemp—I will look closely at the example that you have given. Perhaps one of the officers might wish to make a comment, but the truth of the matter is that we have given a variety of options for employers to implement. Senator Allison was worried that too many good people would go for the unfettered choice position. You said that at least one of the two things that you support would be unfettered choice. It illustrates, I have to say, Senator, the differences that people have. It is simply a matter of striking an appropriate balance, and we have worked very hard to do that. I accept that some people will say that they would have done it in a slightly different manner. Some people would have wanted to move to an unfettered choice immediately; others would have preferred that the system not be changed. But there are, as we have noted with the committee, a lot of people that think it is a good thing, and we think it is a good thing to bring in choice. So it is a matter of striking the balance. It is not an exact science, and that is the truth.

CHAIR—Thank you very much, Minister, for being with us. We will move on to another topic.

Senator Kemp—Mr Chairman, we would be happy if there were particular matters that the committee wanted to put on notice. There will be some issues that perhaps you would want me to respond to. We will take questions on notice and we will try to respond to those questions as soon as possible. The officers are here to provide some factual basis and information for you, and we will be happy to work with the committee to see what we can produce. Thank you for your time.

CHAIR—We will now move to the next major issue, which concerns constitutionality and employer liabilities. There are two late submissions, one from Mr George Rate of Blake Dawson Waldron and the other from the chairman of the Law Council superannuation committee, which argue that section 33V—the clause in the legislation that was intended to provide employers with liability protection—may be constitutionally invalid. Has anybody looked at that issue? For example, has the ISC or Treasury got an opinion from A-G's?

Mr Olesen—Yes, Senator, we have looked at that issue in the course of drafting the legislation. We sought advice from AGS on the question of the constitutionality of that provision, in preparing the legislation, and we acted in accordance with their advice.

Senator SHERRY—Did they raise any doubts about the constitutionality?

Mr Olesen—Their advice to us was that there was a reasonable prospect that the provision would be found to be constitutionally valid.

Senator SHERRY—A reasonable prospect: are you able to provide the committee with that advice?

Mr Olesen—I think that would be a matter for the minister.

Senator SHERRY—Okay. You can take that on notice.

CHAIR—Are there any further questions on constitutionality?

Senator ALLISON—The witnesses who represented the industry funds were of the view that it would be quite difficult for them to give advice to their members in relation to choice and that they would need to be licensed dealers in order to do so. What is your view about whom employees will go to for advice about various funds? And do you see any problems associated with the liability that might come with that, even if it were, say, the shop steward? People will go to someone and ask advice. Have you looked into this question? What are the problems associated with that?

Mr Olesen—The ISC may like to add to the disclosure issues but, in terms of whom employees will turn to for advice, I think that the key features statements will indicate to employees the benefit of seeking independent advice and not seeking that advice from their employer. I would only be guessing to say where I think people will actually go for that advice.

Senator ALLISON—Yet each provider, presumably as part of their advertising and marketing campaign, will be attempting to demonstrate the ways in which their scheme is better than those others on offer. Is there not a fine line here between liability for financial advice and simply promoting your own scheme and, at the same time, commenting on those others on offer?

Mr Olesen—Our concern in the draft was to provide a level of protection to employers from any possible liability they may face for losses that employees suffer. So, on the question of employers' potential liability, we have put a provision in the bill to address that—although I would have to say that the advice we have also received is that the prospect of employers becoming liable for any damages suffered by their employees from choosing a particular fund is fairly remote in the vast majority of cases. The bill does not address liability issues broader than the liability of employers.

Senator ALLISON—Yes, I understand that the bill does not address that, but I wonder whether this is an issue which you had thought about and perhaps had any advice on.

Mr Monaghan—At a broader level, where employees go is determined not only by their natural inclination—which undoubtedly would be in many cases to go to their employer—but also by where the education work drives them. There are some decisions to be made about what we say to employees about where they should seek further information.

In some cases, as with the super guarantee, we did deliberately drive employees to their employer and then we equipped the employer to deal with the inquiries. Whether that is the right way here, we still have to decide. The way we communicate with the people can be on the basis of some prejudged information source that, together with the industry, we can make available. We can deal with their inquiries about the choice they have to make in a range of ways and not just by saying that they have to go and talk to their employer.

Senator ALLISON—Would you also be advising employers, union officials, funds managers, and so on, of their legal responsibility in regard to that advice?

Mr Monaghan—Certainly we will do what we can there. I cannot say exactly what the words would be but there are, again, examples in other initiatives where we have sent fairly detailed messages to employers about the implications of their choices. For example, in SHAR small amounts measures, we spelt out in some detail to employers the implications of their putting superannuation contributions into the holding account reserve which we operated, in a way that was designed, I suppose, to discourage them from doing that. So we can get to those people some messages about the implications of what they are doing and the limits on what they should and should not do.

Mr Larkin—In December last year the ISC released a discussion paper on disclosure issues and choice of fund. In that paper, we attached some template key features statements for discussion purposes. On the cover page, we foreshadowed that a statement could be included indicating that, if the employee had any information about the contents of the KFS, he or she should not contact the employer but rather contact the fund trustee—and the telephone number was provided—or a financial adviser. That should be a very prominent mechanism for ensuring that employees understand the channels for seeking financial advice.

Senator ALLISON—Will employers be allowed to offer excluded funds as part of the menu of four?

Mr Olesen—Yes, Senator; excluded funds may be offered as part of the offer of four.

Senator ALLISON—Mr David Connolly of Phillips Fox says that permitting excluded funds from unlimited choice imposes excessive administrative burdens on employers. Would you be able to comment on that?

Mr Olesen—Sorry, Senator, was it suggesting that including them places burdens?

Senator ALLISON—He says that permitting excluded funds under unlimited choice imposes excessive administrative burdens on employers.

Mr Monaghan—I am not too sure whether we can really add a lot to that. The idea is that there be a choice of funds of different sorts and that the principle apply across the board.

Senator CONROY—Will they have to provide a comparable key features statement?

Mr Larkin—The disclosure rules are still broadly under consideration. But, under the present rules, excluded funds are not required to provide a key features statement—because, in most cases, the trustee and the employee are one and the same person.

Senator CONROY—Absolutely.

CHAIR—They may not be. Perhaps I might be able to help you. It has been suggested that, in order for an employer to absolve his responsibilities, it will be necessary for him to

ask two questions: firstly, to ensure that he gets a certificate from the ISC that the excluded fund is indeed a regulated fund and, secondly, to get a certificate from the ATO to make sure that the fund is a complying fund. Do you agree that those two prerequisites would be necessary in order to make sure that the employer does not have any responsibilities?

Mr Larkin—It depends what the mischief is that we are trying to remedy.

CHAIR—The employer does not really know; he is given the excluded fund. What is he required to do? Does he just accept it?

Mr Chapman—We would expect the employer to check whether the excluded fund was regulated and whether it was complying. We are currently working to try and get a full list of regulated funds up on our Internet home page so that people can do that electronically. We hope to have that done in the next month. We are having a few problems with the search engine, because there are 160,000 funds and it takes a bit of time to chew through it. So we are trying to make that information available.

In relation to Senator Allison's question about excluded funds, employers decide whether they are going to offer unlimited choice, and that would be one of the factors they take into account. But, realistically, there are 5,000 non-excluded funds. If every one of those were available in an unlimited choice environment, you would probably have more choice there than if every employee chose an excluded fund, unless you had a very large work force. So the employer makes the choice.

It could be administratively expensive, but it would depend partly on who pops up in the intermediation phase to operate between an employer and the superannuation funds that people might pick. A number of the banks and payroll companies have certainly been looking at that part of the market. So, hopefully, a lot of that process for paying the superannuation from an employer to individual funds will be fairly automated by the time the measures come into force.

Senator SHERRY—On the issue of employer responsibility, could you explain to me in what way there will be a reduction in the burden of administrative responsibility for any employer as a consequence of this legislation?

Mr Chapman—I am not quite sure that I said that in those words, Senator.

Senator SHERRY—No, you did not. My question was a general question to anyone who could explain to me where the reduction in administrative burden on employers will occur as a consequence of this legislation. Where will it occur?

Mr Monaghan—The legislation meets the policy needs of choice and tries to give employers a range of different approaches they can take in meeting that requirement. There are, clearly, employers who will choose unlimited choice because they may well have a payroll company, and so it is no drama. Other employers may decide that offering a range of choices of either four funds or unlimited, does not suit them and they may well decide to have a workplace agreement of some nature. So the legislation attempts to balance those costs on employers with the flexibility to choose the best solution for them.

Senator SHERRY—In summary, your answer is that some options are worse or less costly to employers, depending on their circumstances.

Mr Bator—They may not change in any way the costs on employers, either.

Senator CONROY—So no-one will be better off with this.

Mr Bator—No; we are talking about the costs of administration on employers. Mr Monaghan referred earlier to the fact that, in three states, employers already have state obligations. The arrangements here may well fit in exactly with the arrangements the employer is already offering.

Senator SHERRY—You say ‘may’. Can you give us an example where they do fit in with the state requirements in three states?

Mr Bator—In some states you have unlimited choice arrangements, so an employer who already offers that to their state award employees may well choose that one as well.

Senator CONROY—You may have missed the point. Just because they have already moved to choice does not take away from asking the question: with the move to choice, where is any company administratively better off? With the ones which have already moved to choice, you are saying that the legislation meets what they are already doing, but that ignores the fact that they had to make administrative changes before, so the question applies equally to those who have already made that move as to the ones who are going to have to make the move to choice.

Mr Bator—That an employer would choose the best option?

Senator CONROY—Have you any evidence that any company is being made administratively better off by having to move to choice under your proposed legislation or the existing state legislation?

Mr Bator—It goes back to the fundamentals of what the choice measure is all about, and that is to provide greater choice to people.

Senator SHERRY—Which will cost more to the employer. It will either be cost neutral, or it will cost more.

Mr Bator—They will make the choice of the four options available to them.

Senator SHERRY—Which could cost more. How are they going to be better off?

Ms Gerathy—I do not think that anybody is suggesting that this measure is designed to make employers better off in an administrative sense, but the measure has been designed to balance providing greater choice for employees of superannuation funds and minimising administration costs to employers to the greatest extent.

Senator CHRIS EVANS—A cynic might say that employers are going to be charged an extra cost for giving themselves the ability to choose which funds their employees go into, so what is the point? It was conceded in evidence previously that it is not the employee's choice; it is the employer's choice.

Ms Gerathy—The option of having three particular ways of providing choice is a balance of ensuring that employers are able to choose which one of those methods best suits their own circumstances, and a lot of it will depend on their payroll systems. The overwhelming objective of the policy is to provide greater choice of superannuation funds for employees, while taking into account the costs that employers will incur.

Senator SHERRY—But the employee does not choose, under this model: the employer chooses the three streams, if you like.

Ms Gerathy—The employer chooses the method that best suits them. The employee then has a choice from that range.

Senator SHERRY—Is it a totally free choice?

Ms Gerathy—It depends on what is offered.

Senator CHRIS EVANS—Doesn't the employee choose from the choices then offered by the employer?

Ms Gerathy—Yes, that is correct. The employer chooses which ones are the three options, and the employee then chooses from them.

Senator CHRIS EVANS—But, even within those three options, doesn't the employer choose the funds within those options?

Ms Gerathy—Within the choice of four funds, yes: the employer will choose those ones, although I would imagine—

Senator CHRIS EVANS—So where is all this employee choice coming from? Sorry, we are badgering you.

Senator FERGUSON—The employer can have unlimited choice. You are only talking about three options when, in fact, there is another option.

Senator SHERRY—Let us take this issue—and I referred to it earlier: an employer chooses unlimited choice; Joe Smith is working for this employer, and it is unlimited choice with an RSA product with, say, Westpac bank—and frankly I would not advise him to take an RSA product—

CHAIR—Is it unlimited choice?

Senator SHERRY—Unlimited choice. That employee then leaves that workplace and goes to a workplace where there is not unlimited choice. There might be a company fund

that is some arrangement under an AWA agreement. They are then obliged to have the money go into that fund. How is the employee better off?

Ms Gerathy—In respect of their first employer, they had unlimited choice. In those circumstances, they chose the RSA or whatever fund suited them. When they go to the new employer there is a new set of arrangements.

Senator SHERRY—But why should they be forced—

Ms Gerathy—That new employer could very well also have unlimited choice or a workplace agreement or the choice of four funds. In all those cases, the employee could approach the employer and say, ‘I already have this fund; will it suit you if my superannuation goes into that fund?’

Senator SHERRY—What if they are under a state award—and there are a lot of workers in this country under state awards—where there is no choice and they are not covered by these provisions? There are millions of workers under state awards in this country.

Senator FERGUSON—The majority, in New South Wales.

CHAIR—They are not affected by the legislation, as yet.

Ms Gerathy—In relation to federal legislation, there are constitutional difficulties, which is why it does not apply in relation to state awards. In respect of the states, Western Australia, New South Wales and Queensland do have choice of fund. The Victorians are under the federal legislation, as are the Northern Territory and the ACT.

Senator SHERRY—But you do accept, don’t you, that when someone is in a product they can start at another workplace where they are required by the employer, as a consequence of this legislation, to be in a second fund.

Ms Gerathy—That could be the case but, at the moment, there is no choice, and this policy will provide greater choice than what is currently available.

Senator SHERRY—I think there would be many employees under that scenario. Two million people change employment in this country every year. How are they better off as a consequence of the employer-imposed choice?

Mr Monaghan—Senator, the current position is that many employees do not have a choice. I believe we have indicated that the government’s policy outcome is a balance between greater choice and obligations on employers. I suspect we cannot say that in any different way. It obviously is a balance. Currently there are a lot of employees who change jobs and put money in different funds, with no choice at all. Here we are getting greater choice for employees. Some employees will have access to that greater choice; others may not. There is a need for us to recognise that the balance of the policy is that more people will have choice and there will be more competition.

Senator CONROY—I just wanted to follow up on a point I put to a number of the witnesses. I currently work for Mayne Nickless. I am in the TWU fund. I transfer across to TNT, which runs a different industry fund. I am forced to open a new account. Wouldn't it be more sensible if you allowed—

CHAIR—That is a policy question. The minister is not here. I am not sure if I can allow that question.

Senator CONROY—Do you accept that people are going to end up with more superannuation accounts?

Mr Monaghan—No, I think that the policy is designed to encourage greater choice. Many employers will offer unlimited choice, while other employers may offer a fund of the employee's choice, even though they might be operating under a three-fund regime, which it is open to them to do. More employees will have a say in where their super goes. There is undoubtedly already a problem with employees having to open separate accounts.

Senator SHERRY—Will it go down?

Mr Monaghan—It is hard to predict totally.

Senator CONROY—It is not possible for it to go down.

Mr Monaghan—One would imagine that it will.

Senator SHERRY—You imagine it will?

Mr Monaghan—Yes, we would think so.

Senator CONROY—That there will be less accounts?

CHAIR—In time.

Mr Monaghan—Yes, in time.

Senator CONROY—In the long run, we will all be dead and there will be less accounts. Certainly, through our research, people in the community have indicated that they would like the chance to move their accounts to consolidate them in some way.

Senator CHRIS EVANS—But you are not going to let them do that?

Senator CONROY—This legislation does not achieve that.

Mr Monaghan—It is a question of balance, isn't it? It is the same answer.

Senator CHRIS EVANS—I am not trying to pick on you, Mr Monaghan, but one of my concerns about the legislation is in fact that you do not provide choice for their existing funds. If they start with a new employer, they get a choice about what they do with their

future funds, if I can use that term. In fact you are not, in this legislation, allowing them to move their existing—

Mr Monaghan—It is not compelling that, but it is flexible enough to allow it to happen.

Senator SHERRY—If the employer agrees.

Mr Monaghan—If the employer agrees.

CHAIR—Could we now move to the next topic? Senator Sherry, would you like to lead off on education? It is an important topic.

Senator SHERRY—I think we have had a fair discussion about education.

Senator FERGUSON—I was wondering if I could make a request. I have to go shortly, and there are a couple of issues I want to ask on insurance. I have been sitting very patiently here. I was wondering whether we could do insurance and then go back?

CHAIR—Yes.

Senator CHRIS EVANS—Mr Chair, I do not know what was discussed before I came, but I would rather prioritise the issues from what we get out of the officers than necessarily follow the brief you have in front of you.

Senator FERGUSON—I am just wondering whether I can ask a couple of questions. As I say, as a former life agent, I have a couple of concerns, which I do not usually have about government legislation. I am wondering whether you can clarify this issue. In relation to death and disability cover, which is an important component of superannuation and protection for workers, if an employee is going to change by choice from fund to fund, as I understand it from memory—and I do not know whether things have changed—there is a 28-day offer period and then another 28-day acceptance period outlined, for the process of the implementation of choice.

Is it possible that it means that a worker or an employee who is moving from one fund to another—and I am thinking particularly of the mining industry or the construction industry or high risk industries—under this legislation, would be 56 days without any form of death and disability cover?

CHAIR—It depends on the policy.

Senator FERGUSON—Under the current legislation, that is what I am asking about, rather than the policy: I am aware that the minister is not here.

CHAIR—Under the insurance policy?

Senator FERGUSON—Yes. Is it possible that they would be 56 days without death and disability cover?

Mr Larkin—It would depend on the circumstances but, under some scenarios, that could be the case.

Senator FERGUSON—If that is the case, is it possible in some way for that 56-day period to be alleviated, whether by amendment of the legislation or by implementation of the policy?

Mr Larkin—I think that raises a more fundamental question about whether solutions to this gap could evolve in the marketplace or whether it is something that government is expected to solve.

Senator SHERRY—It is creating the problem.

Senator CHRIS EVANS—If the government wants us to vote for the legislation, they might look at addressing the problem.

Senator FERGUSON—It is a problem that needs to be addressed. There is the problem of this period of 56 days which somehow or other we have to get over, because an employee needs to have continuous cover when changing jobs and moving into another fund.

Mr Monaghan—We are aware of that issue, and the government has indicated that they will consider that difficulty. But the position is that this legislation is really about providing greater choice of fund; it is not about resolving other market issues about the way the system operates.

Senator CONROY—This is a direct consequence of the legislation.

Mr Monaghan—It is possible under the way the legislation works for an issue to arise with death and disability insurance, just as there are now similar possibilities if, for example, with super guarantee, the employer chooses to pay at the end of the year: there are death and disability insurance issues.

Senator CHRIS EVANS—You are right. We will have to take that one up as well.

Senator CONROY—Having taken a number of companies to court over that in my former life, there were issues.

Mr Monaghan—So that is an example where the market has taken issue on it.

Senator CONROY—But the market did not fix that. The company understood that it was going to lose the court case, and they made an out of court settlement. So the market did not fix that at all. The courts fixed that. The question is whether you want the courts to be involved as a consequence of this legislation, as well.

Mr Monaghan—I think the best we can answer there is that we are aware of that issue having been raised, and it is in front of the government.

Senator CHRIS EVANS—It is one I think you ought to be aware that there is a good deal of concern about on the committee. I hope it will get a run in our report.

Senator CONROY—I am sure Senator Harradine will be interested in it, too.

Senator FERGUSON—I think it is a concern that needs to be addressed. That is the point. I am not suggesting that it is not possible to address it, but I think if it is not raised now there is a possibility that we may have a situation where employees may not be covered for death and disability for a period of nearly two months, which is too long.

Ms Gerathy—I think there are lots of difficult issues that surround this one. There is no requirement on a superannuation fund to provide death and disability cover. So I am not sure, when people talk about this issue, whether the solution they have in mind is that the government should introduce legislation requiring superannuation funds to provide death and disability cover. Obviously, if that is the solution that they have in mind, then that raises lots of other issues as well.

Senator FERGUSON—That is not the question I am really raising. The question I am raising is that there is a 28-day offer period and a 28-day acceptance period. That is the real issue. It is not whether or not it is obligatory to take insurance; but, if an employee wants death and disability cover, there is this 28-day offer period and 28-day acceptance period.

I think that, where an employee wants to retain death and disability cover, we have to overcome that period of time where it is possible that they may not be covered. I probably should have made inquiries before. I do not know whether it should be done by legislation or not. You talk about the marketplace, but in fact it needs to be highlighted somewhere so it can be corrected—and I think that is by way of legislation.

CHAIR—One solution that was put forward during our earlier discussions was to have, in the key features statement, the equivalent of a health warning—that is, that before exercising choice, employees should look to whether they will have continuing death and disability cover. Would that be a practical approach?

Mr Monaghan—John can talk about the key features statement, but we would certainly see that as being an important educational issue and an important thing to bring to employees' attention when they are making a choice. They now end up in a fund through no choice, sometimes with death and disability cover and sometimes not. So it is certainly something that they need to know about when they do make a choice.

Senator CHRIS EVANS—But it is true that lots of those people are in industry funds that have tailored their fund to suit the needs of that particular industry—in high risk industries, et cetera.

Mr Monaghan—Those people in industry funds are, yes.

Senator FERGUSON—They cannot get cost-effective cover, particularly in construction and building and truck driving.

Senator CHRIS EVANS—That has been one of the strengths of the industry area. I am not saying you are not right, but I do not think you are giving full credit to the way the current system has actually provided some protection because of the basis of those industry funds in looking at those particular things. When I was involved in the firefighters fund, we obviously looked at those issues very seriously because they were a key part of the needs of that particular occupational group. If we are moving away from that industry basis to more choice, this is a serious policy issue. Mr Chapman had a comment.

Mr Chapman—The industry base is an important point. Certainly, lots of the comments that came through on the disclosure paper stress this point as well. Certainly, we need some sort of clear health warning—or illness warning—about the death and disability arrangements in particular funds before employees pick those funds.

Mr Larkin—In particular, when cover commences and when it ceases.

Senator FERGUSON—I want to follow up on the death and disability area. I do not think it should be mandatory, because some people have private arrangements for death and disability cover. So, if they choose only to have investment in their superannuation fund, that is their choice and that is why choice should be so important. But there are a number of people, particularly in dangerous industries, who can only get that sort of cover through the group arrangements with their fund. That is why it is important that they are able to maintain that cover over that period.

Senator SHERRY—There is one issue that I would like to ask Mr Larkin and Mr Chapman about because of their experience and knowledge of fees and charges. Where will fees and charges go down to as a consequence of this legislation?

Mr Chapman—The easy answer to that is the increased competition for new business by the various funds that will be competing in a choice environment will cause fees and charges to fall. We have seen five per cent entry fees which used to exist, or eight or 10 per cent in some cases, drop down. There are a lot of zero entry fee funds. If you look at the numbers, clearly a lot of those funds have exit fees rather than entry fees. Even so, over time you can see a clear drop in the aggregate. Because of the greater competition for funds and the fact that a lot of the trustees will be looking for volume, they will need to offer people a better deal.

Senator SHERRY—Can you indicate any studies that have been done that prove the point that you are contending?

Mr Larkin—The financial system inquiry report indicated that Australia has quite high management expense ratios.

Senator SHERRY—I am not talking about management; I am talking about fees and charges on administration at the retail level. There are similar issues relating to wholesale management fees, but I am talking about the retailing of the product, that end, at the moment.

Mr Chapman—Yes, so are we: the management expense ratios are of the aggregate retail fees. The answer to your question is no, we have not done empirical studies. Certainly, our experience in the market, particularly since SIS came in and we went into a different disclosure regime, has been that the numbers are dropping.

Senator SHERRY—The fees and charges are dropping?

Mr Chapman—The aggregate amount of fees and charges, on average, is dropping.

Senator SHERRY—Could you provide the committee with some material on that, please?

Mr Larkin—We can provide you with material on operating expenses for superannuation funds at present and how they compare across different fund types.

Senator SHERRY—Are you able to disaggregate it to contribution levels?

Mr Larkin—I would have to take that on notice. We can endeavour to provide you with—

Senator SHERRY—Are you aware of what happened in the United Kingdom when there was partial deregulation, choice, in a segment of the market? Fees and charges actually went up. Are you aware of that?

Mr Chapman—Yes.

Mr Larkin—A lot of the problems in the UK stemmed from employees of generous defined benefit schemes being enticed away into personal pension plans that were sold on the basis of quite high commissions and also on the basis that the employer provided less support to the policy plan than they would have otherwise provided to the defined benefit fund.

Senator SHERRY—Are you confident that we will not see the re-emergence—it has certainly subsided in the last few years—of significant fees and commissions?

Mr Larkin—There are some important existing or foreshadowed regulatory safeguards to protect against the UK situation. Firstly, it was foreshadowed in the budget announcement on choice of fund that existing employees of defined benefit funds would be given a statement explaining the consequences of a choice to leave a defined benefit scheme. In our discussion paper released in December we foreshadowed some of the items that would be included in that disclosure statement. That would give those employees a basis for making an informed choice.

In addition, there is quite stringent regulation of financial advice in Australia. The Australian securities scheme runs a licensing system of securities dealers and investment advisers, and they are subject to rigorous disclosure requirements to disclose commissions and material conflicts under the Corporations Law. In respect of life insurance agents, the Insurance and Superannuation Commission administers a code of practice which, among

other things, requires agents to undertake an assessment of the needs of the person before they make a recommendation about particular financial products. Of course, there are quite transparent disclosure rules at present administered by the ISC and also the ASC.

Senator SHERRY—I understand the transparency issues you have outlined. Will you continue ongoing surveys of fees, commissions and charges over time?

Mr Chapman—We would not usually plan to carry out surveys anyway. But we would be aware of it through our regular industry review work of looking at the particular funds and how they operate. Under the Wallis reforms, that would become an ACFSC responsibility. If we were to continue as we are now, we would be aware of it through the review work but, under Wallis, it will become an ACFSC responsibility, rather than an ISC one.

Senator ALLISON—I want to ask about the additional cost associated with marketing and advertising. What is the experience overseas in terms of expenditure rising with choice and what would you expect to see here spent on advertising?

Mr Larkin—We have not undertaken any specific research on the impact on industry compliance costs in terms of marketing for choice of fund. My preliminary thought is that most market players would undertake their own commercial assessment of the costs and benefits of investing dollars into marketing and the likely returns against those investments.

Senator ALLISON—You are certain there will be efficiencies and yet you have not factored in this extra cost of marketing—which would have to be undertaken, one presumes, by all funds including financial institutions, banks and the like. Is that not a fairly one-sided picture?

Mr Chapman—I am not quite sure who is going to incur these additional marketing costs. The retail public offer industry already incurs those marketing costs, and I do not think they will be incurring a great deal more. They will be incurring more for this but then they incur more for other marketing initiatives as well. The majority of the large industry funds are public offer anyway, at the moment. So they are already in that—

Senator CONROY—Are you aware of any superannuation funds at the moment which advertise on television?

Mr Chapman—I am not aware of any particular fund. There are certainly a lot of generic group advertisements: the MLC egg, and so on, which they tend to do in Melbourne. Certainly, image—

Senator CONROY—You do not think anybody who currently does not do TV advertising may have to compete with the National Mutuals, the AMPs and the Commonwealth Banks, which currently do?

Mr Chapman—I am sorry. It depends what part of the fund population we are talking about and how they are marketing. Clearly, people will have to compete. In your Mayne Nickless example earlier, they will have to compete if the employer offers a choice of funds to the work force. They will have to compete with National Mutual, et cetera, but they will

be competing in a particular workplace with a particular work force. There will be avenues available for them to communicate with that work force, I would think, without them having to incur TV advertising costs, for example.

Senator CHRIS EVANS—Mr Chapman, the whole premise that you offer us—apart from the ‘choice is good; competition is good’ philosophical basis—is that this sort of competition is going to occur and is going to help drive down costs. Are you going to seriously maintain to this committee that you do not expect there to be an increased cost in that competitive market from people seeking to market themselves?

Mr Chapman—Individual funds may incur cost but, overall, the costs should drop, because they are competitive. I think people are going to compete on benefit, investment portfolios, investment returns and costs. We have heard a few comments already this evening about RSAs: ‘You would not put people into an RSA’. A lot of people are going to be attracted to RSAs initially because of the fact that they are low in cost. They are clearly understandable because they are like bank accounts and people can see how they operate.

Over the 25 years—and I think it was Senator Sherry who made the comment that people might be a couple of thousand dollars worse off—they will be, if they go into an RSA and decide to stay there. But I pretty confidently expect that the RSA providers will want them out of that product and into a different product as time goes on.

Senator SHERRY—Why? They are making a better return. Why would a bank say to a customer that is in an RSA product, ‘We want you to leave and go into a product where we are making less profits?’

Senator CONROY—Banks are suddenly becoming altruistic! These are the ones driving pensioners out because it costs too much to run an account for them—and suddenly they are getting altruistic about somebody in an RSA.

Mr Chapman—This comes back to the responsibility of the RSA provider and the trustee of the superannuation fund to implement an investment strategy or operate their fund for the benefit of the members.

Senator CONROY—Yes, but a bank is operating an RSA for the benefit of the shareholders of the bank.

Mr Chapman—I appreciate that. I confidently expect that we will see people who go into RSAs move out of RSAs into other types of funds as time goes on, and as their balance increases. We have a \$10,000—

Senator CONROY—Is not the key to long-term growth compounding interest based on putting your little bits away early? If it takes you 10 years, if you are 17 or 18, to work out that there is a better product over there, you have blown hundreds of thousand dollars down the track.

Mr Larkin—The ISC has made some public statements that it expects the choice of fund regime to reduce costs. Essentially, what we mean by costs in that regard is price competition—that is, reductions of fees and charges by individual funds.

Senator SHERRY—So you are confident that they will go down?

Mr Larkin—Yes.

Senator CHRIS EVANS—Mr Larkin, I am not doubting your word; I am sure you do believe that, and that is the ISC view. We are asking for you to test these propositions. Quite frankly, all we get is the philosophy: ‘Choice is good; competition is good.’ It is all about that. But we are trying to test those sorts of assertions, and some of the international experience worries us. We do not actually have much to support these things, and some people think that the competition in the bank industry has not necessarily delivered some of the benefits that some people claim it has. There is a whole range of assertions that we get and that we are trying to tease out in these hearings. Quite frankly, we are not being convinced that they are well supported, other than by some vague philosophical notion. I am not trying to pick on the officers. You are here do deliver your brief, but we have been trying do get at some of these assertions and how they can actually be supported.

Mr Larkin—The ISC has seen some evidence in the marketplace recently of the entry of indexed funds offered by global funds managers, funds which significantly undercut some of the active managers in the commercial marketplace and can offer a investment management service.

Senator SHERRY—Is that the wholesale investment of the moneys?

Mr Larkin—Yes, but that flows through to cheaper fees and charges for the end user, the consumer. I think these developments will gather pace as choice of fund is taken up.

Senator CHRIS EVANS—This might be a bit off the beat, and I might have missed it earlier if it was discussed before I came in. I apologise for being late. What work has been done on the cost to employers of providing choice? If it has been covered, I will read the *Hansard* but, in terms of the assertion that it will not greatly increase costs by having choice, what survey work or analytical data is available to support that?

Mr Monaghan—There was a question asked earlier, and the minister did respond to that.

Mr Olesen—There is a lot of detail on that in the impact statement and memorandum for this measure. That outlines some broad costs associated with each of the options for implementing choice of fund.

Senator CHRIS EVANS—Is that for the employer?

Mr Olesen—It includes the employer as well as fund costs.

Senator CHRIS EVANS—What is that based on?

Mr Olesen—You are stretching my memory a little, but we made some estimates of how much time we thought employers would spend under each of the options.

Senator CHRIS EVANS—Are those assumptions and the study available to us?

Mr Olesen—The study is published at the back of the explanatory memorandum.

Senator CHRIS EVANS—I will have a look at that. And were the assumptions that you used for that survey done consultation with industry?

Mr Olesen—I do not think that is the case but I am a little unsure of that. I will take it on notice.

Senator CHRIS EVANS—Yes, if you could. Are you from the ATO?

Mr Olesen—That is correct.

Senator CHRIS EVANS—What interface was there between the development of this proposal and the government's campaign to reduce small business red tape by 50 per cent? Did you work with the officers who were working on this project as part of the development of this proposal?

Mr Olesen—There was no direct interface between the development of the policy detail on this one and that general initiative.

Senator CHRIS EVANS—Does the tax office have a view as to how they are going to operate? It is obviously a key commitment of the government and a promise to small business.

Mr Olesen—We had some questions along these lines before, and nobody pretends that an outcome of this measure is a reduction in costs for employers. There will be some costs the employers will face in having to offer choice to their employees. We have attempted to spell out in broad terms what we think those costs will be overall, in the regulation impact statements.

Mr Monaghan—However, I should add that, in terms of interaction with the work that is happening for small business in other parts of the tax office, we in our business do work closely with people who are working off examples—single entry for small business—in to government. We see some of those initiatives as being able to help us to get information out to employers in a more accessible way. We are learning from the work that we are both doing.

Senator CHRIS EVANS—I run a work experience program every year. I employ six or eight young people for five or six weeks, and I have just had to organise the super myself. So I have had some recent first-hand experience of the forms and process. I have sympathy for small business in terms of what is involved—by the time you do the tax, the super and what have you—and that was bunging it all into one industry fund, I must admit. So I am not sure that I am keen on offering them choice as well. I struggled to complete it.

Senator ALLISON—I want to follow up on advertising costs. It was suggested by one of our witnesses that it might be possible to put a cap on advertising so that not too much money was wasted in this area. It might control the amount it would ultimately cost employees. What is your response to that idea?

Mr Larkin—Would it be desirable for bureaucrats to be making decisions that are normally the province of commercial operators?

Senator ALLISON—Would it be impossible to do?

Mr Larkin—It would depend very much on the particular circumstances of the institution or the fund concerned: their balance sheet and their budget considerations and pressures.

Senator ALLISON—Would you have the same view about commissions? Is there no place for the government regulating commissions, either banning them altogether or putting some sort of limit on what can be charged?

Mr Larkin—Again, commissions are an traditional and quite normal method of remunerating people who distribute financial products. They have been conventional in the life industry for decades, and the main policy objective is simply to make those methods of remuneration transparent to the consumer, so that they understand what is deducted from their premiums before they are put into their superannuation account.

Senator ALLISON—But commissions would not be deducted from their premiums, would they?

Mr Larkin—They are paid up-front out of the policy.

Senator ALLISON—Aren't commissions a problem in the UK and in Chile? Was that not part of the problem in those two countries?

Mr Larkin—Yes, but as I mentioned, in Australia we have quite strong disclosure of commissions. For example, the disclosure rules administered under the SIS regime require full disclosure of all direct and indirect commissions and adviser remuneration. Under our life insurance regime, there is commission disclosure and, indeed, benefit illustrations in respect of the impact of fees and charges on regular premium products. So there are quite stringent regulations.

Senator SHERRY—That is fine. We understand the disclosure. I will give you an example we were given about Chile, where the agent selling the product convinces the person to switch and offers them a mobile phone as an incentive to switch. Of course, the agent gets their commission and the consumer gets their mobile phone. Could that happen under this legislation? Is there anything to prevent employers or agents offering any form of inducement to the consumer to switch their product?

Mr Chapman—I think the answer would be no. We have not had many such examples in the past, although there was one quite infamous one in Melbourne where the promoter

bought lottery tickets with a portion of the commission. He might have got his \$1,000 from ten people and he bought a \$5,000 lottery ticket as a syndicate.

Senator SHERRY—Did it win?

Mr Chapman—No. If it had won, we would probably never have heard of it. The bottom line is that the only part of the market where that type of inducement has occurred in the past is in the life industry. It tends not to have occurred in the fund management industry, which is the other half of our public offer retail industry. The life insurance requirements require the actuarial basis of the commission to be shown, not the dollar amount or percentage that a person might get.

In other words, all those things are factored in to the total cost. While somebody may be getting the inducement, the cost of the commission is still fully disclosed to them, so they know that this person will get up to 20 per cent of the premium they paid, albeit the person may say that they have got something back. That is not a great deal different from what we have in the normal unit trust retail industry now, where there are any number of discount brokers who will get a 5 per cent entry fee and rebate 4 per cent back to the investor. If terms of that, as long as the total cost the person will incur is disclosed, if the agent, adviser or salesman chooses to give some of that back to the person, I do not think that is something which you can control in any disclosure sense.

Senator SHERRY—Do you think it is right to allow that to happen?

Mr Chapman—I think it is a policy question anyway. How can you stop it? It is something where you would have to pass a law that said, ‘Any reimbursement paid by a superannuation fund to a promoter, adviser or salesperson must be paid in cash. That person may not rebate that money to the prospective member . . .,’ et cetera. I think it would be an extremely draconian law which starts to buy right into commercial arrangements. In my view, as long as they are disclosed, that is probably something which there is no need to control in that fashion.

Senator ALLISON—Senator Evans has already touched on our difficulty here in coming to terms with the idea that the benefits will outweigh the costs. We have tried to get information about advertising and so on. The view was put by a witness that what is more likely to deliver any savings, if there are some to be had, would be the collapse of smaller schemes and the coming of much larger retailers and wholesalers into the market. Is that your view, too? Is this really where the savings are going to be in economies of scale? What does this mean in terms of local industry? Are there likely to be more global overseas organisations involved in superannuation in this country as a result?

Ms Gerathy—That could be the case. One of the direct consequences of competition is that the less efficient bodies or funds could very well merge with the more efficient ones.

Senator ALLISON—I suggest to you that it may not be the less efficient; it may just be the small ones that cannot afford to do the advertising. Are they necessarily less efficient? Some of the industry funds have very low fees and very high returns. Are you really suggesting that the demise of those funds will create efficiencies?

Ms Gerathy—They may or may not. Obviously, it is up to each fund to decide whether it can operate in the new choice climate.

Senator ALLISON—No matter how efficient they are, they may have to give up their business, because this regime will introduce bigger players with whom they cannot compete because of scale.

Ms Gerathy—That would suggest that they are less efficient. They decide what they do.

Senator ALLISON—Are you saying that their efficiency is based on their ability to market themselves and not on their performance?

Ms Gerathy—At the end of the day, you would expect employees and employers to choose the funds that provide the greatest benefits to employees. That will come about in two ways: from the earnings that they have and from their fees and charges. It will be a combination of both.

Senator ALLISON—It is a bit of a cyclical argument though, isn't it? That depends on education and on people really understanding the choices that they make. We come back again to that question of education.

Mr Larkin—I have a couple of comments, Senator Allison. Firstly, it is a truism that in funds management there are significant economies of scale with larger memberships. This is due to the nature of the business and its reliance on automated systems and distribution networks and so on. There could be savings generated through rationalisation in that regard. Secondly, the ISC has been observing a trend for some time of rationalisation, particularly in the corporate sector and the industry funds sector. It is not dependent on choice. It has been occurring over the past five years or so with the introduction of the superannuation guarantee charge. We have made public statements that we would expect that trend to accelerate with the introduction of choice.

Senator SHERRY—Could you provide us with that data in the wholesale funds management area?

Mr Larkin—Yes, we could endeavour to do that.

Senator FERGUSON—We have heard a lot of talk about commissions tonight. As someone who has lived off the proceeds of commissions for seven years, I cannot understand quite why a remuneration by commission is any different from remuneration by salary. One of the things that concerns me is the talk about a move to decouple commission from the products that are being offered, in order to ensure 'independent advice'. It is as though someone who is being paid by commission will not give independent advice. It brings into issue the question of how advice is going to be paid for by industry providers. For any advice, there has to be a payment of some sort to the people who are offering that advice.

One of my criticisms of some funds has been that, in the desire and the pressure to put a downward spiral on fees and charges in some cases, advice to fund members has been getting less and less or has been provided by way of pamphlet or material stuck in a pay

packet, when there is very little one-on-one advice. If we are to take the comments that have been made about people being uneducated in making choices, it would seem that there is going to be more requirement for one-on-one with employees, which means that it has to be paid for somehow. If we are not going to have commissions and we are going to decouple commissions, that raises the question of how that advice is going to be paid for.

CHAIR—You restrict the choice that is being offered.

Mr Larkin—I was not aware of any development in government circles to decouple commissions.

CHAIR—No. It was raised, and we got quite a comprehensive submission.

Senator FERGUSON—If you are going to outlaw commissions, as Senator Allison said, you would have to go back to Russia in 1950 or Romania in 1980. People selling second-hand cars make commissions, and I do not see them being legislated against. People who sell suits in a shop often get a commission.

Senator SHERRY—Except that superannuation is compulsory. It is the only product I can think of that is. There may be others. Medical insurance, housing loans and buying a suit are not compulsory.

Senator FERGUSON—It is not compulsory for self-employed people.

Senator SHERRY—We are opening up an entire market here in which people will be compelled to make a choice.

Mr Larkin—There are many sources of advice that a person can take. They may refer to friends or relatives, or they may decide to go into the marketplace. When they go into the marketplace, they could be confronted by a variety of intermediaries, some of whom are remunerated on a fee for service basis and others through commissions. In all cases, whether they are regulated by the ASC or the ISC at present, they could expect to receive advice that was based on an analysis of their needs under current regulation.

Senator FERGUSON—It is probably also fair to say that, partly because of the work of this committee but partly because of other competitive market pressures, commissions now involved in the superannuation industry are absolutely minuscule.

Mr Larkin—Yes.

CHAIR—Certain groups have put to us that superannuation advisers and those who sell on commission, et cetera, should be regulated in some form. Is there any possibility that there may be a degree of registration, regulation or something like that?

Mr Chapman—Broadly speaking, they already are regulated by the Corporations Law. SIS recognises certain types of people to whom super funds can pay commission. Generally, they are Corporations Law proper authority holders or dealers. There are some exceptions, where it is the normal ‘incidental to course of business’ for accountants and people like that.

Senator CONROY—It is the service providers in particular that I am thinking about: the little corner-shop owner that is suddenly going to have choice imposed on his two or three part-time employees. There is all this paperwork coming in, and some spiv walks in the door and says, ‘I can fix this for you. Here’s your choice of four. Just sign up here and give it to your employer.’

Mr Chapman—They are providing investment advice, and so they are breaching the Corporations Law and they risk their licence: that is my understanding of the situation.

Senator CONROY—So it is already covered. We do not need any new regulations to address anything at all like that happening?

Mr Chapman—I do not think so. That is properly a question that should be addressed to the ASC in terms of the Corporations Law, but my understanding is certainly that all those people who provide that sort of advice—they do the paperwork slightly differently, but they are providing advice on what the funds are—should be caught by the Corporations Law.

Mr Larkin—They are subject to knowing the client rules and to doing a reasonable needs analysis, and also to the requirement to disclose material conflicts of interest under sections 849 and 851 of the Corporations Law.

Senator CONROY—Is there an onus on the employer to have a look at the four? Let us say that you are a milk bar owner and a guy walks in and says, ‘Look, here are your four’. The four of them may be high cost structures but they may not be necessarily great products. They may be not incredibly expensive, but at what point does the employer not have any liability, if four bad products are included?

Mr Chapman—Mr Monaghan might like to answer that.

Mr Monaghan—I am not sure whether we have a definitive answer, because it is probably really an IR question.

Senator CONROY—It is a legal question that I am really trying to get to.

Mr Monaghan—Yes, and we probably need to explore this further for you. But our understanding is that employers are required to act generally with due care and diligence and to take some reasonable care with their dealings with their employees. As I say, we probably need to look further at the actual detail of those obligations, but employers who are acting in a normally careful way in relation to their obligations under the law, as these are—

Senator CONROY—Are there any legal test cases on what a definition is?

Mr Monaghan—There may well be. As I say, Senator, that is something we do need to have a look at for you. We do not have that detail here.

Mr Olesen—The normal rules of negligence would apply in these cases. There is plenty of case law on what you need to establish for damages to be awarded against someone. Ordinarily in these cases, what you are going to need to show is some conduct by the

employer that is sufficiently approximate to the cause of the loss that the employee suffers. The advice we have received from AGS on this issue, when we have asked for their advice on this issue, is that the possibility of that being established in these kinds of cases would be pretty remote, generally speaking.

Senator CONROY—Why? Is that advice available?

Mr Olesen—That is something I would have to put to the minister, Senator.

CHAIR—The rationale?

Mr Olesen—The rationale is that there is a pretty long gap between the conduct of an employer and the loss that is ultimately sustained through the investment of those funds by the fund. There are a couple of other issues that are subsidiary to that. In fact it is the employee that is making the choice here and not the employer. The employee is able to come back every 12 months and alter that choice, if he is not satisfied with the outcomes. Also, the employer is not the one that actually has the control over the investment of those funds but rather it is the fund managers themselves. So it is more directly the fund's manager that is reducing the result of the fund rather than it being the employer. It would be a pretty rare result, we think, where an employer would be liable for any loss sustained by an employee.

Senator SHERRY—Where the employer makes the choice, do you think the onus should be greater on the employer?

Mr Olesen—An employer will face normal common law obligations in selecting a fund for an employee, as they do at the moment and as they have done for a long time where there is not an award obligation. Those things have not changed and have always been present. To the extent that some people fear that those possible liabilities might become greater under this, we think it is pretty easy to overstate the possibility of an employer being liable for damages.

Senator CONROY—Say that I am a 17-year-old and I go along and I know absolutely nothing and I hit the default clause: the employer puts me into an RSA but, within two years, I suddenly have a bit more time to study and understand it. Your argument is not that there is no liability; it is just that there is minimal liability in terms of the damage.

Mr Olesen—Senator, as in all common law actions, it is impossible for me to say there would never be a situation where an employer would not be liable, because negligence is very much an action that depends on the facts of the case. So there may well be a case. I could not say to you that there would never be a case where an employer would not be liable. We just think that the prospect of an employer being liable in those situations is fairly slim—given that they would have provided the information required by statute to that employee, and that the employee would have made the choice based on that information and would have the option of leaving that RSA, for example, if they were dissatisfied with the performance of it. That all leads us to the conclusion generally that it would be unlikely for the employer to be liable in an action for damages by that employee.

Senator SHERRY—Even if they were, in practical terms it could be five or 10 years before an employee could prove a reasonable case that they were misled and disadvantaged.

Mr Olesen—If there are in fact active misstatements involved by the employer, if the employer is doing more than just passing on the key features statement, that may well be material in an action by the employee.

Senator SHERRY—Let us assume that is the case. In a practical sense, it may well be a significant period before the employee realises that. The employer could be out of business. He could be dead.

Mr Olesen—Indeed, and there may be other statutes and limitations that might apply ultimately down the tracks as well. But that is all in existing rules for claiming damages and negligence.

Senator SHERRY—So why place these decisions in the hands of employers—admittedly, in a somewhat restricted form?

Mr Monaghan—Mr Olesen made a point which is worth repeating. People are overlooking the fact that employers now are making choices about what superannuation fund to put their employees in, in many cases. So there is already in existence the issue you raise. We have put work into understanding what an employer's liabilities might be, as Mr Olesen has outlined, but it needs to be in the context that employers are currently now making these decisions.

Senator SHERRY—In many cases, Mr Monaghan, certainly a significant proportion of employers are required by law—for example, the award—to put moneys into a particular fund.

Mr Monaghan—My understanding is that in most cases there are a number of funds already. Awards often have more than one fund that an employer might use, and so the employer is already making a choice under the award framework. On top of that, we have many cases where employers are not covered by awards and are making those choices.

Senator SHERRY—Given that scenario, where there are awards where there is one or more funds on option, has there ever been a case of an employee suing an employer because the employer, where there has been a choice model, has put them in a particular fund that has returned over time a lower return than have other options in that choice model within the award? Are you aware of any cases?

Mr Olesen—We are not aware of any particular cases directly on a point like that.

CHAIR—I want to move to another topic. How often may employees choose funds? Section 32K(2) apparently prevents employees from seeking choice more than once a year. However, section 32K(5) allows an employer to offer a choice at any time. Does section 32K(5) of the bill mean that an employer may offer employees a choice of fund more than once a year?

Mr Olesen—Yes, Senator: it means exactly what it says. If an employer wishes to make more frequent offers, it is open for that employer to do so.

CHAIR—That could lead to a situation where you might have excessive fund switching as an unintended consequence.

Mr Olesen—I guess that is a possibility—although given, as we discussed before, that there are costs involved to employers in making these offers, I do not know that there is much incentive for an employer to be making offers more frequently than is required under the legislation.

Mr Monaghan—It is an important key message in any work to educate the community—and we and the industry are of like mind here—about when they need to exercise a choice and when they do not. So we need to make it clear that choice does not mean that you have to choose to move tomorrow. It has a different meaning for different people.

Senator SHERRY—Related to this issue is the question of casuals, which I did get someone else to ask about. Are casuals, for the purposes of this legislation, new employees?

Mr Olesen—There are certain situations in relation to a casual employee. It would be the case, where they may start and stop employment with the same employer frequently in a short time because of the nature of their casual employment relationship. Yes, strictly speaking, they are new employees each time they start a new employment relationship.

Senator SHERRY—This is interesting, because we have been told that there are about two million people who change work in the course of a year. There are a lot of casual employees, particularly in industries like hospitality. Are they, for the purposes of this legislation, new employees?

Mr Olesen—Yes, Senator. I will just make the observation that we need to make a distinction between casual employees and part-time employees.

Senator SHERRY—Yes; I know the legal distinction.

Mr Olesen—Sure: if there is at law a new employment relationship commencing, then they are new employees.

Senator SHERRY—So that means we will be dealing with many more than two million in the first year, on the basis of that.

Mr Olesen—I do not know the figures.

Senator SHERRY—I understand that there are approximately two million new employees. Could we be provided with some information about whether that includes casuals that have ongoing employment with an employer?

Mr Monaghan—We will see what we can find in that area, if that would be helpful.

Senator SHERRY—I will finish on this point. Let us take the hospitality industry, a workplace where the vast majority of employees are casuals. Many of them, from my experience, might work for six months or a year. I have even struck casuals who are entitled to long service leave under the definition of long service leave acts. Are they new employees for the purposes of this legislation? The point about this is that it does increase very substantially the number of people you would have to target, if they are in fact new employees for the purposes of this legislation.

Mr Monaghan—I accept the latter part of that, in terms of the number of people we will need to get to over the coming months. I guess the flexibility of the choice arrangements has a benefit for those sorts of employers to come up with the best way to offer choice to suit their particular type of industry. I cannot presume to know what choice they might make. But, with the flexibility of different arrangements, employers with a high casual turnover may find that one particular model suits them better than does another.

Senator SHERRY—From the inquiries I have had—and I am referring specifically to the hospitality industry, where they have casuals who are employed today and have been so employed for a number of months or years—I do not think that employers understand that there is a possibility, with at least some of those casuals, that from 1 July they will become new employees. I do not think they understand that.

Mr Monaghan—I do not doubt that. Certainly, that is part of the work that needs to be done to make them aware.

Senator SHERRY—There has been a Federal Court case determining that the Disputes Tribunal does not have power to arbitrate, in the event of disputes. Isn't it important, in the context of choice starting from 1 July, that there be an effective disputes mechanism to resolve problems that people might have?

Mr Larkin—It depends on the nature of the problems you have in mind. The tribunal, as it stood before the recent Federal Court decision, only had a very limited jurisdiction over what you could call sale misconduct complaints. Most of their jurisdiction related to trustee decisions once the person was a member of the fund. In respect of those sale misconduct complaints, there are current industry based dispute resolution mechanisms that could adequately deal with those—for example, the life insurance complaints scheme.

Senator SHERRY—Binding?

Mr Larkin—Binding on life companies that participate in the scheme.

Senator SHERRY—Are you saying that all the particular problems that could be dealt with by the Disputes Tribunal can be dealt with by other mechanisms?

Mr Larkin—Not all of them, Senator.

Senator SHERRY—Which area?

Mr Larkin—The bulk of those relating to sale misconduct in relation to life insurance superannuation policies.

CHAIR—In terms of a contract-to-contract type of basis, which is the feature of such dispute resolution mechanisms, isn't there a problem when you put in place the trustees?

Mr Larkin—The industry schemes do rely more on cooperation between the life office and the trustee. But the operational experience of the life insurance scheme has not demonstrated that that is a major problem in terms of compliance with their determination.

CHAIR—But I think that is the big difficulty in terms of putting that across for superannuation-type products. There may be problems because of the trustee position, which is not relevant in terms of general insurance or life assurance.

Mr Larkin—I do not dispute that it is a problem, Senator. But, from the operational experience of the life insurance complaints scheme, which has been running since 1995, life insurance companies have been complying with their determinations in relation to agent misrepresentation complaints—for example, when they have asked them to refund moneys and so on.

CHAIR—We will move to the next topic. Senator Allison has questions on the dispute default fund.

Senator ALLISON—As you are aware, section 32H sets the default fund. It has been suggested to the committee that default funds should be appropriate for an individual's circumstances. For example, several witnesses have commented that it would be inappropriate for a young person to be placed in an RSA or a capital guaranteed fund, because that would lead to a much lower retirement benefit. How will the default fund be selected for new employees?

Mr Olesen—For new employees, the default fund is any complying superannuation fund selected by the employer.

Senator ALLISON—So there are no guidelines, or no ways in which—

Mr Olesen—Other than that it must be a complying superannuation fund or scheme or RSA, there are none.

Senator ALLISON—In other words, the employer may choose an inappropriate default fund: is that what you are saying?

Mr Olesen—The employer may choose any complying superannuation fund scheme or RSA.

Senator ALLISON—Including an inappropriate one?

Mr Olesen—I am not sure what 'inappropriate' may be in those circumstances, Senator.

Senator ALLISON—I have given you two examples of some that might.

Mr Olesen—I guess there is a judgment as to whether they are inappropriate or not.

Senator ALLISON—Can you confirm that section 32H effectively means that, if an employee does not make a choice, contributions will continue into whatever fund the employer previously contributed to on behalf of the employee?

Mr Olesen—Yes. For an existing employee, the default fund is the fund that the employer has previously contributed to for the benefit of that employee.

Senator ALLISON—Are there no safeguards, effectively, to ensure that the default fund is appropriate?

Mr Olesen—In the case of existing employees, I guess there is, in a sense, an assumption that the previous fund to which the employer was contributing for the employee is an appropriate fund. For new employees, it is a decision of the employer to select that default fund.

Senator ALLISON—Getting back to the question of insurance cover, Mr Connolly of Phillips Fox suggested that default funds should include some form of insurance cover, presumably for certain industries like mining and construction. Would it be a requirement that employers should consider in determining a default fund?

Mr Olesen—It is not a requirement under the bill.

Senator ALLISON—But should it be? Are there some guidelines, perhaps, that ought to advise—

Mr Olesen—We had a discussion earlier about insurance cover. It is an issue that we are aware of—

Senator ALLISON—I think we were talking more about the gap. This is really a question of whether or not employers should be alerted to this question and be required or guided towards advising their employees.

Mr Olesen—One safeguard that Mr Larkin alluded to earlier was the disclosure requirements which go with the default funds and under which there would be, as part of the key features statements, a statement about whether that fund came with death and disability cover.

Ms Gerathy—No doubt employers will look at all the funds around and make a decision as to which default fund is most likely to suit their work force. When you talk about an ‘inappropriate’ one, it is a judgment in respect of each employee. If you have an employee who is 20 or an employee who is 55, then people may make different judgments about what is an appropriate default fund or not.

Senator CONROY—Are you saying that you can have one default fund, or are you suggesting that an employer might have a number of default funds based on—

Ms Gerathy—No, I am not suggesting that at all.

Senator CONROY—But a work force is not homogenous. It may have 17-year-olds and 55-year-olds.

Ms Gerathy—That is right.

Senator CONROY—It is clearly inappropriate for them all to go into the same default fund.

Ms Gerathy—That is why an employer will make decisions about what is the most appropriate default fund for the work force. I am not suggesting at all that an employer would have numerous default funds.

Senator SHERRY—With the removal of superannuation as an allowable matter from the federal act, who will determine what is the default fund: effectively, the employer?

Ms Gerathy—The employer will determine what is the default fund. You can imagine that there would be many circumstances where the employer would choose the default fund in consultation with their employees, as well.

Senator SHERRY—You imagine that will happen?

Ms Gerathy—Yes.

Senator SHERRY—In the majority?

Ms Gerathy—I have no idea.

Senator CONROY—You are expecting the government to consult with you on your default fund option?

Ms Gerathy—I guess I will wait and see.

Senator SHERRY—Why shouldn't an independent tribunal determine that? Why should the employer determine it?

Mr Monaghan—There is an issue here about people understanding something about their financial affairs and taking a role. I do not say for a minute that that is going to happen tomorrow. We have a system at the moment that is compulsory, as you quite rightly say, and where people's money is compulsorily going into funds already. At a general level, we believe that all the aspects of the superannuation measures that have been introduced in recent years will benefit from people understanding more about what their rights and obligations are and taking a greater interest. We cannot hold their hands totally. Really, there is an element of getting them to take that interest.

Senator SHERRY—We are talking here about the default fund. These are people who, for a variety of reasons, do not do anything. Why should the employer determine the default fund?

Mr Monaghan—The employer determines it in many cases now.

Senator SHERRY—I know that.

Mr Monaghan—The employer puts the money in a fund, and individuals can choose—

Senator CONROY—You have to sign a form now.

Senator SHERRY—But in most cases the commission determines the fund, and not the employer.

Senator CONROY—That is right.

Senator SHERRY—In the vast majority of cases.

Mr Monaghan—The thing here is that employers may, if an employee fails to exercise a choice, put it into a particular fund. It has to be a complying fund, and so there is already a regime operating around that. The aim of the education work that we have been carrying on is to get people to a stage where they do not just not make a choice. As with the quotation of tax file number into the superannuation system, as with making super guarantee work better, and as with making sure you are getting your right amount of compulsory cover, there is an element there of people taking some personal responsibility for ensuring that those things happen.

Senator SHERRY—I am glad you raised that point. The evidence you gave to the estimates committee was that 44 per cent or 45 per cent of people voluntarily gave their fund their tax file number.

Mr Monaghan—No, Senator. I think that I was careful to say that that was the number of people who quoted it to their superannuation fund ‘directly’.

Senator SHERRY—That is exactly what I just said.

Mr Monaghan—That is not ‘voluntarily’. That was as a result of their dealings with their superannuation fund. The number of people quoting it voluntarily on receipt of our letters is going very well. Something like 45 per cent or 50 per cent of people leave it on a secure machine—which is, I guess, a pretty major step forward. There are a whole range of reasons that people should be taking more interest.

Senator SHERRY—With the very simple process of providing a tax file number to avoid a tax—very simple, I would have thought, and you have certainly contended that at a previous hearing—

Mr Monaghan—It is different.

Senator SHERRY—You have got what: 85 per cent? Does that include the matching you have done yourself?

Mr Monaghan—That includes the matching.

Senator SHERRY—If you take out the matching, what is the figure, approximately?

Mr Monaghan—Seventy-ish.

Senator SHERRY—Seventy-ish per cent of people after this—

Mr Monaghan—A bit higher than that, yes.

Senator SHERRY—Seventy-ish, or whatever it is—

Mr Monaghan—So far.

Senator SHERRY—Yes, so far. Seventy-ish have provided the tax file number, after a comprehensive campaign—to quote Senator Kemp’s words—just to get a tax file number.

Mr Monaghan—Senator, with respect, I do not think that that is a valid comparison. In the case of the quotation of a tax file number, firstly, you have got people having some inherent concerns about quoting their tax file number. Secondly, you have got a message with lots of qualifications around it which says, ‘If you do not do this, then this might happen.’ Thirdly, we really do not have the immediacy. And fourthly, we do not have the hook of people actually making a decision that directly affects their affairs now. I just do not think it is a valid comparison.

Senator SHERRY—I am not going to argue that it is a valid comparison. In your experience, and you have had massive experience in this area—

Mr Monaghan—And it has been wonderful!

Senator SHERRY—I know that it has been wonderful. We know each other sufficiently well to banter about this and we will laugh about it one day in 10 years time.

Mr Monaghan—I was hoping I could get St Kilda in again, but I probably cannot!

Senator SHERRY—In your judgment, given this extensive experience you have had, in the first year of operation, of the people who are eligible to exercise a choice, approximately what percentage would you expect to make a choice?

Mr Monaghan—To make a choice?

Senator SHERRY—Yes, those who are eligible in the first year?

Mr Monaghan—New employees—

Senator SHERRY—I am talking about new employees over this first year: the two million in the first year.

Mr Monaghan—To some extent, I am confident that in an environment where industry and government agencies are perhaps working somewhat more towards a common goal than in some previous experiences, there is a high potential to maximise the integration of their messages and ours. I am confident that we can develop quite clear steps that employers and employees need to go through to decide whether they have to offer a choice, or make a choice. I believe that we can chunk it down into digestible modules of message.

On the whole, people will at least have information available to help them make a choice. The proof of the pudding is in the eating, to some extent: as we track the work that is being done, we will find whether it is hitting the mark or whether it is leaving people choosing default funds—or else not choosing and thus ending up in default fund. If we get evidence that a significant number of people are doing nothing, then we will have to find a better way to get to them. We have typically done that: through research, in all our measures, we have identified where we have needed to send out additional information. For example, with super guarantee, we sent it out to PPS people, to help them with the employer/employee relationship.

We can target it as we go. Success depends not only on the work that we can do, but also on the extent to which the key bodies in the industry can work together to make sure that people get a core basis of messaging, a core basis of things that they are required to do. The ISC has indicated that they are looking at assisting with requirements around KFSs. I think that all those things put together will achieve a good result. As I say, if it looks as though there are problems with people not feeling equipped to make a choice, we will do something better to help them. It is not as though we have to do it all on day one.

Senator SHERRY—And do you accept that a key test is that, in the exercise of choice, the employees will be better off in terms of lower fees and charges and higher returns?

Mr Monaghan—Senator, that is not something for me to say yes or no to. That is obviously a policy outcome that the government has in mind.

Senator CONROY—I have one question to the ISC. When the SGC legislation was introduced, it originally envisaged annual payments being minimum and moving, over a period of a couple of years, to quarterly minimum payments. Because it was such a massive change at the time, I understand that you waived that capacity; or perhaps you can explain to me what the mechanism was for you to do that, in terms of moving back to annual? Where is that at, at the moment?

Mr Monaghan—I am probably the right person to deal with that. The super guarantee is currently an annual requirement, and that is where it is at, at the moment.

Senator CONROY—The original legislation moved to quarterly?

Mr Monaghan—Indeed. It was—

Senator CONROY—Was it amended?

Mr Monaghan—Yes, it was amended.

Senator CONROY—It was a legislative amendment that went through parliament to take away the quarterly—

Mr Monaghan—Yes. We could easily identify the exact provision—probably not right here, but we could send that to you.

Senator CONROY—One of the questions that I put to a number of the witnesses that came before us was: would they like to have their superannuation paid annually in arrears, given the importance of compounding? No witnesses volunteered the removal of the award issues where many individuals currently are mandated to have a weekly or monthly payment. Would you envisage the need, perhaps, to reintroduce a quarterly minimum?

Mr Monaghan—That is clearly a matter for the government. I could say that the government is aware that that issue is being raised, and it is aware of the issue also being raised, I would say, in relation to death and disability insurance cover. That is really all I can say, at this stage.

Senator CONROY—You would agree that there are substantially reduced final payments—or payouts, if you like—by having only a minimum requirement, if that is the option that was undertaken by an employer for an annual one-off payment in arrears, as opposed to a weekly or monthly payment? Would you accept that, at the end of the 40-year working life span, there would be a substantial reduction in benefit? The actuaries are doing some calculations for us on that.

Mr Monaghan—There are some fairly obvious mathematics, I suppose, about the length of time that things are invested for. It is clearly the case that money invested earlier earns more: that is undeniable. There are a range of issues here. Many employers have got agreements with their trustees to pay frequently and so on. In terms of the current issue of choice, we can really note that the issue in relation to super guarantee has been drawn to the government's attention. That is about all we can really add to it, sorry. I think we do have the provision. There is a legislative provision to make it annual.

Senator SHERRY—The ISC may be able to help. Can you give us some approximate figures—probably not tonight—of what number of employers pay—and for what number of employees—annually versus quarterly versus monthly? Just approximately: I would never hold you to it. I am just interested to know what the approximate numbers are.

Mr Larkin—I will take that on notice, Senator. I am not sure—

Senator CONROY—It may not be possible.

Mr Larkin—Yes. We do collect from funds the aggregate information on contributions rather than collecting it directly from employers, so we may not have it; but I will try to get that.

CHAIR—Can I move to the important question of disclosure? When will the regulations be issued describing the disclosure requirements?

Mr Larkin—It would not be prudent to issue them or put them to the government for final clearance and gazettal until after the choice bill is passed by the Senate, because it links into various provisions that are in the choice bill.

CHAIR—When is that scheduled to be in?

Mr Larkin—I understand the choice bill is scheduled for debate later this month—

Mr Olesen—In week three.

Mr Larkin—In week three of this month of March. If it is passed in these sittings, one would expect royal assent in early April—at which time, or shortly after, the regulations on disclosure could be gazetted.

CHAIR—How many weeks after the passage of the legislation would it be?

Mr Larkin—It could be two weeks.

CHAIR—Two weeks?

Senator SHERRY—It would be longer than that effectively, would it not? If the legislation goes through in the third week in March, say, the end of the third week—

Senator CONROY—But they are not sitting in the third week.

Senator SHERRY—I would say it would be the fourth week.

Mr Olesen—In the week commencing 23 March, it is scheduled for debate in the House of Representatives.

Senator SHERRY—Let us assume it goes through then. The regulations are subject to disallowance, are they not?

Mr Larkin—Yes, that is correct.

Senator SHERRY—Fifteen sitting days, is it?

Mr Larkin—Yes.

Senator SHERRY—The earliest you can confirm the regulations—in other words, they are not subject to disallowance—will be when we return after the Easter break? In fact, it will be in the budget week, won't it?

Mr Larkin—Yes, that is legally correct, Senator, but I think that under the Acts Interpretation Act they do technically take effect from gazettal.

Senator SHERRY—Yes, I understand that; but, if the Senate is not happy with the regulations and your particular details—

Senator CONROY—That has happened recently.

Senator SHERRY—We are frequently unhappy with superannuation legislation regulations—as I think everyone has noticed, including the industry. Why would the industry advertise and put out material, without being absolutely sure that the regulations are set and that they cannot be disallowed?

Mr Larkin—They would have to make their own commercial judgments on that.

Senator CONROY—They would not start using key features statements until they absolutely knew that it had passed the deadline.

Senator SHERRY—If we are not happy with the key features statement and there is a majority in the Senate that is not happy, it is a pretty critical issue, is it not, for the industry?

Mr Larkin—Yes. Under the Acts Interpretation Act, they could make commercial decisions on the basis of gazettal.

Senator SHERRY—They could print millions and millions of pieces of literature, and the Senate may say, ‘Well, we are not happy with your key features statement. We will amend it by regulation in May,’ and there is a 1 July start-up date.

Mr Larkin—Although, that is a risk that would be managed, presumably, by the government in consultation in the Senate and the industry. It is one that I cannot really comment on.

CHAIR—The yet to be established Australian Corporations and Financial Services Commission is to have responsibility for the regulation of point-of-sale requirements for all investment products. When will it be established?

Mr Larkin—We cannot comment on that, Senator.

CHAIR—Will the ISC be fulfilling the role of the ACFSC until it is established?

Mr Larkin—By and large, yes.

Mr Chapman—Can we qualify that, Senator? Again, we will be fulfilling the disclosure development role. If you are talking about sales controls in terms of intermediaries, that would still sit with the ASC for the moment.

Mr Larkin—Except in relation to life insurance agents.

CHAIR—We understand the ACFSC will review disclosure requirements for retail financial products to ensure they provide information which enables comparison between

products. Can you explain why you do not consider that this review needs to be completed before choice of fund is implemented?

Mr Larkin—It is really a timing matter, Senator. The choice of fund disclosure regulations have to be in place shortly after the choice legislation is passed—which is possibly this month or early April. The ISC has had to have carriage of the development of those regulations in consultation with the industry, particularly since they currently sit within the SIS legislation, which we administer.

CHAIR—In the disclosure discussion paper, the ISC proposes a new regulation to be inserted into SIS regulations, outlining information that must be provided to the prospective member. Can you confirm that this means that full up-front disclosure is to be implemented?

Mr Larkin—There will be full up-front disclosure for all regulated superannuation funds and RSAs, yes.

CHAIR—Can you give us any idea of the size of the key features document, to ensure that it can be read and understood?

Mr Chapman—We cannot really do so at the moment, because we are still trying to assimilate all the responses we got back to the discussion paper. The biggest determinant to the length of a key features document at the moment is the number of investment options that trustees offer. If you look around the marketplace you will see documents that vary from four pages to 150 pages, if they have a lot of investment options there.

The reason I have described it that way is the structure should be, I would expect, a document up front that gives the key elements of the fund: the fees and charges, the history of investment returns, and things like that—which I would expect should be able to fit on three to four pages. However, there may be additional material if trustees wish to try to compete in a choice environment with a fund with a multitude of investment options.

Senator CONROY—A lot of witnesses put to us that a two-page document was ideal. Do you think that is a pipedream, given the volume of information?

Mr Chapman—Again, it depends on the funds and it depends on the product innovations that the market brings into place. Clearly, you cannot sell a discretionary master trust on a two-page key features statement. You could not just describe the features, the options and the differences that are there. However, you could probably describe a simple employer-sponsored fund in that length. You could probably do an RSA-type product in that length. It is possible to have it that long, depending on the nature of the product. We have some reservations about prescribing a maximum length, simply because that will directly impact on product design in the industry. It will circumscribe what people can sell—which we do not think is the role of a regulator.

Senator SHERRY—What hope have people who are—

Senator CONROY—I thought one of the points was trying to compare apples with apples and making sure that it was simple and easy.

Mr Chapman—Yes; but it is important to focus on what the key information is that people need to compare. You will have difficulty in comparing an industry fund that has one investment option with a multi-option discretionary master trust.

Senator CONROY—People have difficulty reading a bus timetable—as Mr Monaghan has confessed. How are we going to get them to read four to six pages of key features statements for four funds, to make an informed choice?

Mr Chapman—It will depend on the content of the key features statement, the education process the ATO will be running, and the way in which the information is disclosed to make it consistent. There seems to be a general agreement in the responses to the discussion paper—and we found that before from our work on disclosure rules—that the key things people want to know, or should be told about, are the fees and charges, the investment performance and the types of benefits. We also have, as we have discussed earlier tonight, the issue of what the death and disability insurance option is within the fund. I think there is a valid argument—

CHAIR—What about risk? Are you going to put that in the key features statement?

Mr Chapman—The risk in terms of the investment options?

CHAIR—Yes.

Mr Chapman—The risk/return trade-offs. Clearly, a fund which is a—

Senator CONROY—Is it possible to have a summary and a booklet, so that people could lift out the four summaries and go to the booklet for all the expanded stuff?

Mr Chapman—That is effectively what the key features statement requirements do at the moment. That is what they create. For a discretionary master trust, for example, you create a six-page summary; but the investment detail and the options are in another separate document that you go to and refer to, once you have said, ‘Okay. I like this fund. I like the provider. The fee structure is good. They give me a good service. I understand about preservation. Now, which particular option do I want to pick? Where is my risk return profile?’

Senator SHERRY—Will you be focus group testing this document, to see to what extent people understand it?

Mr Chapman—That depends on the structure we end up with for the requirements. That has not been determined as yet.

Senator SHERRY—But why not?

Senator CONROY—This is not voluntary; this is compulsory.

Senator SHERRY—People will compulsorily have to make a choice. Surely you want to know. I would do the pub test—put it down on a bar in a hotel and say, ‘Do you understand this?’ Surely you are going to do some testing of the key feature document?

Mr Chapman—In the time frame between the regulations becoming effective and the choice coming in, the answer is I cannot—

Senator SHERRY—Why not?

Senator CONROY—But you could make a commercial decision to start now before the regulations are passed and start tomorrow.

Senator SHERRY—This is an absolutely critical document to people who are supposed to make a life-long investment choice and you are telling the committee that you are not going to test it. You are not going to make sure they can understand it, can read it and can make a valid comparison. It is just incredible that you are not going to do that.

Mr Chapman—As I said, the format of the disclosure rules has not been finally determined as yet. We have some ideas. We need to run those by the government to make some decisions. In terms of the current key features determination which you have probably seen, and in terms of some of the prospectuses you might have looked at, we did do some testing on those—back when we developed those rules at the end of 1995, start of 1996. Our experience since that date, in terms of the types of complaints we get, is that that format appears to have worked reasonably well, because the complaints we get now are not ‘I did not understand what the fund was like’, which was what they were before those rules came in. They are ‘I did not get the sort of return I wanted’, or ‘I do not understand how the structure works.’

Senator CONROY—Is this from the voluntary segment?

Mr Chapman—This is from the voluntary segment, which I accept is a different segment of the market, Senator. But at the moment we do not have a final format for the disclosure rules, and until we do we cannot make a decision whether we are going to do the pub test or any other form of acceptance—

Senator SHERRY—I can assure you that the first thing I will be doing is taking it down to the Alex hotel in Devonport. I am serious. People often ask me questions about super at the Alex hotel. I am going to put on the bar and say, ‘Can you understand this from the ISC?’ If it doesn’t make the grade, expect trouble with the regs in the Senate. We will be back.

Mr Chapman—Did you try that test with any of the examples on the back of the discussion paper, because if so, I would be very interested to hear of it.

Senator SHERRY—No, I did not. Unfortunately I was out of action at the time you were circulating the paper.

CHAIR—It has been suggested that marketing and disclosure information should be kept separate. That was put to the committee during our interstate hearings. Does anybody have a view?

Mr Larkin—The ISC put the view in our discussion paper in December that they should, in fact, be kept separate. The key feature statement should just focus on the basic, essential information.

Senator ALLISON—It has been suggested that this choice regime is not really one which offers a lot of choice of investment, and that instead of allowing retailers to offer, say, four choices within their own organisation, it ought to comply to offer four choices of investment. Do you have any comments to make about that? What sort of discussions have you had along those lines?

Ms Gerathy—Each of the four funds that could be chosen could have a choice of investment strategy. I understand a lot of them have a lot more than four, particularly if they can have up to 150 pages, so there will be more choice.

Senator ALLISON—My question is, why doesn't it comply? If a fund offers the choice of four investments, did you look at that as an option for choice?

Ms Gerathy—This is about choice of fund. A fund can only be one choice, even if it has a range of investment strategies within each particular fund, so as to provide a range of different structures.

Senator ALLISON—Wouldn't you agree though, that to offer employees the choice of investment might even be a good starting point—a way of introducing them to this whole idea, and a way of gradually embarking on their education, if you like—regarding how they exercise choice.

Ms Gerathy—I understand that a lot of funds already offer choice of investment strategy.

Senator ALLISON—Yes, I understand that, too. But we are talking here about legislation which obliges a level of choice which is outside investment. You may, in fact, have a lot of choice but no investment choice at the end of the day.

Ms Gerathy—I think that gets back to the policy rationale for the choice proposal in the first place—which is to provide competition and greater efficiencies, which you obviously do not get from just choice of investment strategies.

Senator ALLISON—Would you agree that there is not a high level of understanding about the choices that are currently on offer—the normal balanced growth and so on? There has been some evidence by witnesses that there is a very low level of understanding even of the very limited choices that are available for investment and that the industry has, firstly, not identified and defined some of those choices and, secondly, not managed to sell them to employees very well, which does not suggest that there will be a very informed choice when it comes to people choosing between funds.

Mr Monaghan—What you say is the sort of evidence we get ourselves from the industry. As investment choice is introduced, what we are told is that people tend to start off very conservatively. My understanding is that that is very much the experience overseas. I guess we keep coming back to a similar issue about building the awareness of the community in financial matters and educating them about the sorts of things they should take into account when making decisions.

Investment choice is there and is about. I do not speak with authority here, because I am not one of the funds, obviously, that offers it, but, from my recollections of discussions with people who offer investment choice, there is a growth in interest over time as people understand more about it. There is share ownership as well out there, which has changed dramatically the involvement of people in financial affairs, and there are other things. For example, I understand the Stock Exchange site is, if not the most hit site, one of the top two or three in Australia. A stock exchange game for school children is the biggest hit site; it is so popular that they have to close it to the public and only have it for schools. So there is evidence out there of some development in people's understanding, which we can build on.

Senator ALLISON—Is there evidence overseas as well that might lend weight to your argument?

Mr Monaghan—I would have to go and see if there were. I am happy to go overseas and look for you!

Senator ALLISON—It just appears to the committee to be a very daunting task at present. We have a low level of education; we have no take-up of investment choice when it is offered. It is hard for us to accept that suddenly people are going to become fascinated by their superannuation and will look for ways in which they can be involved in decision making.

Mr Monaghan—I accept that it is a task. But as super guarantee has increased, people are getting more super and either need to, or do, take more interest in it. We need to put it in the context that every single person in Australia is not going to have to do something on day one. You may well form a view about the default fund, but the people will be getting the super—the super guarantee is there, so they will be getting their superannuation—and this measure is about more choice as to where their superannuation goes.

We certainly need to help people understand the implications of the choices they make. But I do believe, on the other side, that we need to be careful not to think we have to educate the whole community by July 1 in a whole range of financial matters. We need to look at helping them make the decisions they need to make, and certainly help them with some things they should not do, such as change instantly and ask for a new choice every day, and things like that. I think there is a basis to build on, without doubting that there is a task here for us and for the industry to cooperate on. There is no doubt about that, but there is some ground for us to build on.

Senator ALLISON—I would like to return to the question of advertising.

Senator CONROY—Before you do, I have a quick follow-up there. Were you suggesting that the number of hits on the web site for the Stock Exchange were high?

Mr Monaghan—Yes.

Senator CONROY—Does that imply any duration of contact? Are you familiar with the term ‘Internet surfing’?

Mr Monaghan—There is evidence that people are getting increasingly interested. There is some evidence that it is not research in financial affairs.

Senator CONROY—The point I am making is that you can hit a site and go, ‘Oh my God! I have hit the Stock Exchange,’ and then get off it, but you are counting that as an informed measurement.

Mr Monaghan—I guess I am saying what the chairman of the Stock Exchange says in terms of their perception of the interest in their site. I am not using it as a cast-iron thing. I am just saying that there are reasons out there why people are taking more interest in financial matters.

Senator ALLISON—I am not sure that we asked you how much money the government is going to spend on this education and advertising.

Mr Monaghan—The government has made an allocation of \$2.5 million in the first year and roughly \$650,000 in the next year. But the figure cannot just be taken cold like that. The important thing is there is a direct allocation by the government for direct work in this area. However, we undertake education and communication campaigns as a normal part of our administration. We see it as being good administration and there are a large number of ways that we can use our existing ATO resources to provide information to people.

Senator ALLISON—But the \$2.5 million is over and above your current costs?

Mr Monaghan—Yes, that is a specific allocation that is above our normal administrative costs.

Senator ALLISON—It is a direct allocation to this fund. It is quite a lot of money for taxpayers to pay, is it not?

Mr Monaghan—I have frequently convened with key industry people and the important thing is that we get the maximum leverage across all of our activities. There is a lot of goodwill and cooperation to work together to ensure that we get the foundation right.

Senator ALLISON—Is that working together with industry?

Mr Monaghan—Yes.

Senator ALLISON—How do you organise that, given that the industry is now very broad.

Mr Monaghan—Certainly an increasing problem is getting the right representatives but we have networks with a whole range of people and with the ISC's networks as well. We had a forum recently where we had the Australian Consumers Association and ACCI presenting. We have had various discussions with OSW. Certainly, in this area, we see a need to expand the range of people with whom we deal beyond perhaps what we have in the past.

We will not necessarily get all of the intermediaries but we do have access through tax agents, accountants and employers. We have access through fund administrators into the industry, and we have regular contact with a wide range of bodies from the ASFAs and IFSA's to financial planners to ACA and whatever. It is certainly a bigger task to coordinate all that but we have had several meetings with the peak industry bodies around that coordination issue.

Senator CONROY—Did the amendment take away the need for quarterly payments or give you the discretion to waive it?

Mr Olesen—It is the amendment of how a contribution is made in a period starting 1 July through to the following 28 July. So that is a year and 28 days to be counted for any of those quarters in that preceding period. So it effectively allows you to make a single contribution before 28 July and have it counted for each of the quarters.

Senator CONROY—Originally it was automatic from annual to quarterly. Was there an amendment that allowed the tax office to say, 'Look, this is too hard; people have not adjusted to it yet; you can make an annual,' and so you had authority to waive it? Or did it change it directly to what you are suggesting where it was just automatic?

Mr Olesen—The way the law operates now, it is not through any discretion of the commissioner. That is the law, that any contribution made in that period is counted. If it is made before 28 July following a financial year, it may be counted for any period, any quarter, in that financial year.

Mr Monaghan—My recollection of the history is that it was legislated annual but legislated quarterly the year after. That was the first phase. The second phase was to defer the quarterly, and the third phase was to remove the quarterly altogether, legislatively. They were all legislative steps.

Senator CONROY—I remember one of the arguments being that it was taking employers longer to get an understanding and get used to it and implement it. That was certainly what I encountered.

Mr Monaghan—There were some issues around the small amounts. That was one of the key issues as I recall it.

Senator CONROY—Six years later, are the employers educated yet that they can do it quarterly?

Mr Monaghan—I am not sure that that is an issue I can really deal with here, Senator.

CHAIR—Any last questions? Senator Allison? No further questions?

Senator ALLISON—I do not think so.

CHAIR—Do you want to ask a question about portability?

Senator ALLISON—Yes. Does the government intend to introduce portability, and, if so, when?

Ms Gerathy—The government has a pre-election commitment to introduce portability for accumulation funds by the year 2000. That is the only public statement that has been made to date.

Senator ALLISON—Will choice of fund lead to a proliferation of small account balances?

CHAIR—I think we covered that earlier in the evening. They said in time that will reduce the number. Next question.

Senator CONROY—We were assured that in the long run there would be less.

CHAIR—Are there any further questions? There being no further questions, I thank the witnesses for the manner in which they have answered questions. It has been a good account for the evening. Thank you very much. I declare the meeting closed.

Committee adjourned at 11.07 p.m.