



*The Voice of Super*

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Secretary  
Senate Employment, Workplace Relations and Education Committee  
Department of the Senate  
Parliament House  
Canberra ACT 2600  
Email: [eet.sen@aph.gov.au](mailto:eet.sen@aph.gov.au)

Dear Secretary,

**ASFA Submission on *Workplace Relations Amendment (Work Choices) Bill 2005***

The Association of Superannuation Funds of Australia Ltd (ASFA) is pleased to be able to make this submission to the Senate Employment, Workplace Relations and Education Committee on the *Workplace Relations Amendment (Work Choices) Bill 2005* (“Work Choices Bill”).

ASFA is a non-profit, non-political national organisation whose mission is to protect, promote and advance the interests of Australia's superannuation funds, their trustees and their members. Our members, which include corporate, public sector, industry and retail superannuation funds, account for more than 5.7 million member accounts and over 80% of superannuation savings.

Our position on industrial award matters, as set down in the *ASFA Policy Principles* document, November 2005, is as follows:

*11.1 In ASFA's view any reforms to award arrangements should ensure that:*

- a) groups are not worse off in regard to superannuation, particularly lower and moderate income groups;*
- b) there is a cost effective way of handling any disputes between the employer and employee; and*
- c) the special features and importance of superannuation are recognised and public confidence maintained.*

*11.2 ASFA supports the provision of entitlements above the minimum requirements of the SG currently provided under awards and certified agreements.*

Though the Work Choices Bill deals with a wide range of industrial relations reforms, our submission only focuses on the superannuation-related implications of this bill.

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There will be a number of significant changes to superannuation as a result of the Work Choices Bill:

- 1) incorporated employers under state awards will be brought into the federal industrial relations system;
- 2) existing superannuation provisions in existing federal and “preserved” state awards in effect as at commencement date for both existing and new employees will be preserved until 30 June 2008;
- 3) no new federal award provisions in respect of superannuation can be made upon commencement of the new regime; and
- 4) effective 1 July 2008, all superannuation provisions preserved in respect to all federal and preserved state award conditions will be inoperative.

The proposed extension of the federal industrial relations system to existing state award employers and employees is primarily by means of the Commonwealth’s corporations power. As recognised in the Explanatory Information, this may leave up to 15 per cent of employees within a rump state industrial relations system. We wish to draw attention to the fact that this may leave some employers uncertain and employees at risk in respect of their superannuation-related responsibilities. In the absence of a truly consistent and national approach, special measures are required to ensure that employee’s superannuation is not jeopardised.

### **1. Preserving Superannuation Provisions in Awards until 30 June 2008**

The Work Choices Bill proposes that certain employment conditions within existing awards be preserved. These preserved employment conditions include long service leave, jury service, notice of termination and superannuation. We are pleased to see that superannuation is considered a key employment condition in this context and that existing superannuation conditions are to be preserved.

However unlike those other preserved conditions, the superannuation provisions are subject to a “sunset” clause, with preserved conditions only operative until 30 June 2008. According to the Explanatory Information, this is because of changes introduced into the *Superannuation Guarantee (Administration) Act 1992* (“SGAA”) by the *Superannuation Laws Amendment (2004 Measures No. 2) Act 2004* that requires employers to use ordinary time earnings, rather than an earnings base within an award, for calculating Superannuation Guarantee (SG) liability, as of 1 July 2008.

The 2008 earnings base-related changes to the SG will be accomplished through repealing portions of the SGAA and do not appear to require the removal of superannuation from awards.

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Our real concern is, however, that the explanation provided as to the reason for the 2008 sunset does not acknowledge that award provisions in respect of superannuation do more than establish a different earnings base for SG purposes. Federal awards often establish other superannuation provisions; payment of superannuation for employees who earn less than \$450 per month, more frequent contributions or employers to be liable for unpaid superannuation. These provisions will be lost and in some instances, the employee adversely affected.

If the Government is committed to preserving those other key provisions for an extended period, then it should do so for superannuation as well.

**ASFA recommends that the Government remove the 2008 sunset clause for the preservation of superannuation so as to ensure that existing provisions are maintained. This is to ensure that groups are not worse off in regard to superannuation, particularly lower and moderate income groups, and that the special features and importance of superannuation are recognised and public confidence maintained.**

## **2. Superannuation Choice Extension to State Agreement and Award Employees**

The Work Choices Bill proposes to retain existing state agreement and award conditions (“preserved notional terms”). The superannuation related conditions of state awards would only continue until 30 June 2008.

The preservation of state award and agreement provisions is very complex. It is unclear as to how choice of superannuation fund will operate in respect of employers and employees so affected. Under the current choice requirements, an employer is not required to offer an employee choice of superannuation fund if the superannuation contribution is made under or in accordance with a state award or agreement.

It is arguable under the reforms that since the employer is complying with the *Workplace Relations Act* rather than the state award or agreement, employers will lose the “state award or agreement” exemption under choice of fund. The employer may be required to offer choice of fund to an employee but also required to continue to pay superannuation under the preserved conditions of the old state award or agreement – in effect pay superannuation twice for an employee. Therefore, the interaction between the proposed treatment of state award and agreement employers and employees with the choice of superannuation fund obligations requires urgent clarification.

We would also like public clarification as to the timing of the extension of choice of superannuation fund to former state award and agreement employees. In his media release dated 14 March 2005, the Assistant Treasurer Mal Brough announced that state legislation would be overridden and those employees offered choice effective

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1 July 2006. However, the Work Choices Bill raises uncertainties as to this previously announced commencement date. This is an issue for employers, superannuation funds and for public confidence.

**ASFA seeks clarification as to the timing and offering of choice of superannuation fund to former state award and agreement employees.**

### **3. Role of Workplace Inspectors**

We are pleased to see that the Government appears to be proposing, through its amendments to section 179, that workplace inspectors will have greater powers to take action against employers for non-payment of superannuation.

The success of these inspectors is dependent not merely on having adequate legal power, but more importantly, whether the responsible agency is adequately resourced.

**ASFA would recommend that the Government ensure that the proposed workplace inspectors are effective in pursuing employers who have failed to make their superannuation contributions.**

If you have any questions or comments on this submission, please feel free to contact Dr Brad Pragnell, Principal Policy Adviser at the ASFA Secretariat on 02 9264 9300.

Yours sincerely,

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Director Policy and Research

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