Chapter Nine

Conclusions and Recommendations

Views on the Bill

9.1 The Committee notes that, during its inquiry, a broad range of views was expressed on the Choice Bill. A number of parties, notably consumer groups and organisations representing specialist financial product providers, strongly supported choice of fund and the Bill because it would give individuals greater ownership and control over their superannuation funds which would, in turn, foster greater competition and efficiency in the industry.

9.2 However, the majority of parties supported the principle of choice of fund, but argued that the Government would still need to address a number of issues prior to the implementation of choice. This position was adopted by a number of superannuation funds and associations, together with professional financial and human resource organisations, peak employer groups and superannuation lobby groups.

9.3 Only a small number of parties opposed the Bill because, in their view, it would increase retail selling opportunities for large financial institutions, thereby forcing up costs and weakening returns for fund members, to the long-term detriment of employees.

9.4 The Committee notes that, while there is support for the principle of choice, the proposed framework has certain limitations. The Committee also notes that the proposed Bill differs from earlier attempts by the Government to introduce choice, and that the measures proposed in the current Bill are, in some respects, improvements on the earlier bills. The Committee notes that the majority of submissions were from parties in the superannuation and financial services industry generally, rather than from individuals seeking choice.

9.5 However, as argued by a number of parties during the inquiry, the Committee believes that the current Bill and supporting measures before the Senate can be improved and that this would lead to a more successful implementation of choice of fund in Australia. The Committee summarises below the issues raised during the inquiry, and notes areas in which it has concerns.

Disclosure standards

9.6 Evidence to the inquiry suggests that, in order to make an informed choice about where to invest SG monies, individuals need funds to disclose adequate and comparable information about such matters as fees, charges, commissions, and rates of return. Product Disclosure Statements and reports of fund returns are important aspects of an effective disclosure regime which evidence to the inquiry suggests is an essential precondition for the implementation of choice.

9.7 The Committee notes that concerns in relation to adequacy of the disclosure regime applying to the Ongoing Management Charge (OMC) were raised during the inquiry. In particular, it was noted that the OMC did not measure total fees and charges, notably entry and exit fees, which have a crucial impact on the costs of moving between funds and the impact of that on the final benefit that is paid to employees. In addition, the OMC did not provide fund members with a means of comparing costs between funds that was fully supported by the financial services industry.

9.8 The Committee also notes that a number of regulations under the *Financial Services Reform Act 2001* were disallowed in the Senate on 16 September 2002 on the basis that the Ongoing Management Charge (OMC) was inadequate as a disclosure regime.

9.9 The Committee concurs with the recommendations of the Ramsay report that there should be separate disclosure of administration and investment fees, as this would enhance the disclosure regime for consumers.

9.10 The Committee also concurs with the views expressed by Superpartners, namely that, in addition to the OMC, financial disclosure regulations should require full financial disclosure of fees and charges on accounts, contributions, rollovers and benefits/exits, as it is fees and charges that largely determine members' financial benefits rather than the OMC.

9.11 The Committee believes that the disclosure regime covering superannuation funds and RSAs should allow employees to compare funds based on the projected final benefit, which includes the effect of fund fees and charges on the end benefit, rather than the overall cost of the fees and charges. Accordingly, the Committee also concurs with the view of Superpartners that there may be merit in the Government introducing a set of standardised assumptions for fund managers to use to project final benefits, thereby providing a means by which individual employees can compare funds.

9.12 In this regard, the Committee notes that Treasury is currently involved in working with ASFA on ASFA's current study into product disclosure and its template product disclosure statement. The Committee notes that the study is not yet concluded, but should be concluded by November 2002.

9.13 The Committee also notes the views of the former Assistant Treasurer, Senator the Hon Rod Kemp, who is on the public record as stating :

> Let me be absolutely clear that the government recognises the importance of an appropriate disclosure regime and an effective information campaign to support the move to choice.[1]

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1 Cited in the Financial Services Consumer Policy Centre, *The Key to Superannuation Choice: A Discussion Paper*, May 1999, p. 22.

9.14 The Committee notes that the current disclosure provisions could be enhanced to better support the implementation of choice. The Committee considers that a standardised disclosure regime, which has been comprehension tested, would improve the effectiveness of the current disclosure arrangements and with it the effectiveness of the consumer protection regime.

9.15 The Committee also notes that ASIC has a key role in the regulatory framework. As previously noted, ASIC has released a report on 26 September 2002 entitled 'Disclosure of Fees and Charges in Managed Investments: Review of Current Australian Requirements and Options for Reform', which makes a number of recommendations for improving the disclosure of fees and charges to enable comparison between funds. The Committee commends the report as contributing to an informed debate on improving disclosure requirements.

9.16 The Committee also considers that there would be merit in the Government examining the disclosure regime for fund returns in order to ensure consistency in approach and to increase the comparability of reporting fund returns in benefit statements. In this regard, the Committee welcomes the release of a discussion paper and draft guide by ASIC on 'The Use of Past Performance in Investment Advertising'.

9.17 Although the calculation of fund returns was not raised in great detail during the inquiry, the Committee notes that there is a range of means by which to calculate fund returns. For instance, they may be calculated pre or post fees and charges, or pre and post tax. Alternatively, they may be calculated over different periods of the year. Accordingly, the Committee welcomes the papers prepared by ASIC, and encourages interested parties to make a submission to ASIC on the draft guide by 15 November 2002.

Education standards

9.18 The Committee notes that during the inquiry, various parties raised concerns that many employees lack sufficient financial education to make an informed choice in a choice of funds environment, particularly when it comes to reading and understanding product disclosure statements.

9.19 However, the Committee also notes that the implementation of choice is proposed to be accompanied by an extensive education and implementation program involving the expenditure of $28.7 million over four years (with some $14 million earmarked for communication and education, and $14.5 million for administration and infrastructure). Although many parties argued for a greater financial commitment to education, the Committee notes the impossibility of reaching every individual through government sponsored education. The Committee anticipates that many employees will seek further outside education and advice as choice becomes available, which they will have to pay for themselves.

9.20 The Committee also notes in response to concerns regarding the targeting of the education program that the ATO has begun designing the education campaign, and will be taking advice from various consultants on elements of the campaign including

research, evaluation and monitoring. It is anticipated that the campaign would include marketing and education activities using TV, radio, press advertising and the like. In addition, $2 million has been allocated to the ATO for a consumer information centre.

Portability, the default fund and insurance

Portability and consolidation

9.21 During the inquiry, various parties argued that employees should be able to transfer their existing superannuation fund balances as at 1 July 2004, and not just their future SG contributions after 1 July 2004, to the fund of their choice. In this regard, it was argued that implementation of choice of fund should be accompanied by implementation of a portability protocol to avoid difficulties in transferring superannuation savings from one fund to another.

9.22 To progress the issue of portability, the Committee notes that the Government has released a consultation paper, *Portability of Superannuation Benefits: Enhancing the Rights of Members to Move Existing Benefits Between Superannuation Entities,* and that it is seeking responses to the consultation paper by 18 November 2002. Following consideration of these responses, the Government anticipates implementing portability through regulations amending the *Superannuation Industry (Supervision) Act 1993,* with a commencement date of 1 July 2004. The Committee also notes Treasury's advice that there are no heads of power available to implement portability through primary legislation.

9.23 The Committee welcomes this indication of the Government's intention on portability. The Committee is of the opinion that portability is a key issue in the development of an effective choice environment in Australia. It must be noted, however, that there are currently no barriers to portability for millions of fund members beyond the paperwork burden and the impost of exit fees.

9.24 The Committee also welcomes the Government's assurance that it will move quickly to implement portability.

9.25 The Committee notes that the ALP proposal for automatic consolidation, subject to a member election not to consolidate, would substantially reduce the problem of multiple accounts and lost members.

9.26 The Committee also notes that in considering the Choice Bill, it would have been useful to have access to the Government's proposed portability regulations rather than a consultation paper.

The default fund

9.27 The Committee notes that, under section 32K of the current Choice Bill, the default fund is proposed to be an employee's current fund. The Committee also notes that where an employee does not have a current fund (that is, the employee is a new employee), the default fund is the Commonwealth or Territory industrial award fund for the employee, or if there was no such award, the employer's selected 'majority

fund'. If neither is available, the default fund is proposed to be any eligible default fund selected by the employer.

9.28 The Committee notes that a majority of parties giving evidence to the inquiry supported the selection of award funds as the primary default fund where employees have no current fund, on the basis that award funds have been selected by the AIRC for being well-run and offering good returns. However, the Committee also notes that various parties expressed concern that the secondary default fund, the 'majority fund', may change regularly as workplaces change and new workers elect to join different funds.

9.29 The Committee notes that at least in the initial years of a choice regime, a majority of employees will continue to have SG contributions made to the default fund by their employers. The Committee also notes suggestions that maintaining the status quo in relation to default funds would overcome many of the concerns raised in relation to the default provisions of the Bill.

9.30 The Committee notes concerns that the 'majority fund' may change over time for individual workplaces, placing additional administrative costs on employers, and possibly additional fees and charges on employees. Accordingly, the Committee believes that the default fund provisions require reconsideration and simplification.

9.31 The Committee recognises that confusion might arise for an employer determining the default fund where more than one fund is provided in the award. The Committee notes that proposed section 32K(6) indicates that where there is more than one award fund specified, the employer must select one of those funds for the employee, but provides no guidance on what criteria should be applied in the selection of that fund. This lack of clarity in the Bill has the potential to place an onerous responsibility on the employer if the fund selected proves to be a poor performing fund.

9.32 The Committee also notes confusion surrounding proposed sub-section 32K(5)(b) that precludes the selection of a fund prescribed in an award as the default fund if that award also provides an employee with a choice of fund. The Committee accepts that this may not be the intention of this sub-section but does not find the explanation from Treasury, at paragraph 4.30, to be satisfactory. The Committee believes that this sub-section should be amended to allow award funds to be default funds in such circumstances and to permit the employer to choose from those nominated in the award. Such an amendment would be consistent with the intention of the legislation.

9.33 The Committee also notes in relation to the 56-day compliance period that employers may be required to make a quarterly SG payment to a default fund before the 56-day period has elapsed. This raises the issue whether that contribution can be retrieved later if the employee subsequently makes a choice of fund. The Committee is concerned to ensure that all SG contributions are made. However, the Committee understands that that this matter is likely to be addressed when the Government's portability proposals are finalised.

Death and invalidity insurance

9.34 Employees in industry and corporate funds generally receive comprehensive life and disability insurance as part of their membership of the funds. However, the Committee notes that various parties argued that this may be lost in a choice of fund environment, due to the greater potential turnover of fund members. This in turn raises the possibility that individuals would need to seek their own insurance coverage, at retail rates and conditions based on a medical assessment.

9.35 The Committee also notes that, in response to this concern, it was argued that under a choice environment, a market will develop to offer insurance to fund members where funds are unable to offer universal coverage, and employees will select funds which offer death or disability coverage if they want them. The Government is also proposing to enter into consultation with the industry following the passage of the Choice Bill to examine the possibility of prescribing a minimum default fund insurance level.

9.36 Noting that some employees may not wish to take out death and disability insurance, the Committee wishes to ensure the continuation of low-cost insurance coverage for those who want it without the need for medical assessment. The Committee is particularly concerned by this issue, and the possibility that many new employees may not be covered by death and disability insurance on their commencement of employment under a choice environment. To ensure coverage, the Committee believes that default funds should be required to guarantee minimum level of coverage from the date of employment, and that this should be stated up-front in the Bill, and not be the subject of consultation after the passage of the Bill. The Committee suggests around $50,000, or a figure within the range of $30,00 to $70,000, as an appropriate level or range at which to set a basic level of death insurance.

Other implementation issues

Defined benefit schemes

9.37 The Committee understands that the Government's intention is that defined benefit funds should fall under the provisions of the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2002, with the exception of unfunded schemes. However, the Committee understands that employers do not have to offer choice where the employee has reached his or her accrued maximum benefit, or where the scheme is in surplus. This is dependent, however, on obtaining from an actuary a certificate stating that the employer is not required to make contributions for the quarter, and that the assets of the scheme are equal to or greater that 110 per cent of the scheme's liabilities.

9.38 The Committee notes that a certificate from an actuary must be obtained on essentially an annual basis and that, potentially, this may add significantly to the fund's costs. The Committee understands that these costs would ultimately be born by the members of the fund through higher fees and charges to recoup costs. The

Committee also understands that Treasury intends to work with the Institute of Actuaries to develop appropriate guidelines, once choice has been implemented.

9.39 The Committee also notes that where a defined benefit fund member does have a choice, and elects to move to an accumulation fund, there are difficulties in determining the balance that gets transferred. This is because it is impossible to determine the benefits of defined benefit schemes, such as retirement income, until the point where a member leaves a scheme. Accordingly, it is very difficult to advise a member of a defined benefit scheme who is thinking of moving to an accumulation fund of the advantages and disadvantages of such a move.

9.40 Although the Committee notes that most defined benefit funds are offered by large corporate employers and that choice is satisfied where a fund is nominated in a Workplace or Certified Agreement, the Committee still believes that inclusion of defined benefit schemes under the provisions of the Bill raises too many problems. Accordingly, the Committee believes that the employer sponsors of defined benefit funds should be exempt from the provisions of the Bill, provided the schemes are fully funded and where the employer contribution is in excess of the 9 per cent SG rate. In this regard, an excess contribution should take into account the employer paying administration and/or insurance costs. The Committee also notes that the Bill mentions the Commonwealth PSS and CSS schemes as excluded from the provisions of the Bill, but does not mention the relevant state defined benefit schemes.

9.41 The Chair also raised in hearings the drafting of proposed section 32G(3), which is designed to prevent individual employees from switching from a defined benefit scheme to another scheme without formally acknowledging their understanding that they are doing so. In response, Treasury officials indicated that section 32G(3) must be read in the context of the proposed Division 4 of the Bill, under which employees in defined benefit schemes may make a choice under proposed section 32F using a standard choice form instead.

9.42 The Committee understands this argument, but nevertheless believes that the Treasury should revisit the drafting of this section to make its meaning more transparent.

9.43 The Committee does not accept that there should be any ambiguity in the drafting of the proposed Bill. While judges may use the Explanatory Memorandum (EM) as an extrinsic aid in hearing cases, it is the Committee's view that the Bill should be unambiguous and not rely on supporting documentation such as the EM or ATO documents.

AWAs and certified agreements

9.44 The Committee notes that during the inquiry, some parties supported recognition of superannuation provisions in AWAs and certified agreements as satisfying choice. However, the Committee also notes that many other parties argued that choice should be left exclusively to the industrial sphere, on the basis that it is inconsistent that AWAs and certified agreements override the choice of fund

requirements, yet existing awards, which are also a product of the industrial relations process, do not.

9.45 By contrast, other parties argued that superannuation should be removed from industrial matters (awards) entirely. It was argued that currently, employers have to contend with a dual regulatory regime - one stream of regulatory obligation (the SG legislation) that is neutral as to choice of fund, and the other (industrial awards) that is prescriptive as to fund selection.

9.46 The Committee supports the current provisions of the Bill because AWAs and certified agreements may include superannuation arrangements reached between employers and employees. Recognising such arrangements for the purposes of choice enables employers to collectively meet their obligations, thus leading to greater efficiency when giving effect to choice.

Other issues

9.47 The Committee notes that other implementation issues – collection of arrears, the standard choice form, and the commencement date of the proposed Bill – were also raised during the inquiry.

9.48 The Committee is satisfied with the provisions of the proposed Bill in respect of most of these issues. However, the Committee considers that there could be a more streamlined approach to arrears collection.

9.49 While not directly related to choice, an additional implementation issue raised by Sunsuper relates to the potential for different earnings bases to indirectly introduce additional complexities, such as wage bargaining.[2] The Committee notes this view and considers that the issue of the possible effect of different earnings bases on superannuation contributions should be kept under review. In this context, it should be noted that the former Select Committee on Superannuation and Financial Services made two recommendations in its April 2001 report on enforcement of the superannuation charge in relation to earnings bases, which the Government has noted.[3] These included the abolition of the pre-21 August 1991 notional earnings bases.[4]

9.50 The Committee also notes that the issue of not providing automatic death benefits to same sex couples was a key issue in the defeat of the previous Bill. The Committee draws the Government's attention to the report of the former Select

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2 *Submission* 8, Sunsuper, p.1.

3 In the Government response to the report, tabled on 20 June 2002, the Government noted the recommendations and indicated that it would consult with industry to establish whether it is feasible to move to a simplified earnings base provision over a period of time.

4 Senate Select Committee on Superannuation and Financial Services, *Enforcement of the Superannuation Guarantee Charge*, April 2001, Recommendations 15 and 16, p. 110.

Committee on Superannuation and Financial Services on the superannuation entitlements of same sex couples.[5]

Employers

Employer costs

9.51 The Committee notes that some evidence to the inquiry was critical of the expected additional administrative costs on employers, estimated at $27 million in the first year, with additional ongoing costs of $18 million per annum. A number of parties questioned these figures, presenting their own estimates of costs based on the cost of educating employees, processing standard choice forms and the cost of contributing to more funds.

9.52 The Committee also notes that superannuation commentators such as Gabriel Szondy, a financial services partner with PricewaterhouseCoopers, have pointed out that choice of funds will force employers who have outsourced their super funds to deal with super again and may negate some of the objectives of outsourcing.

9.53 The Committee acknowledges these concerns. The Committee notes that e-commerce and clearing-houses, including some that are already operating, will offer some cost savings to employers. However, employers using such facilities will still incur additional costs compared to the status quo, which will be substantially higher than those estimated in the EM to the Bill. Of particular concern is the impact on small business, which does not have payroll departments or similar structures to deal with this additional burden.

9.54 Noting that, in the short term employer costs may increase, while in the longer term costs may decrease because of account consolidation and e-commerce, the Committee considers that the appropriate regulator should report on the impact of choice on costs to employers for the next three years.

Employer fines

9.55 The Committee notes that, during the inquiry, various parties argued that the strict liability penalty regime proposed in the Bill is excessive, and that the penalty regime should remain within the provisions of industrial law.

9.56 The Committee also notes the advice from Treasury that the proposed arrangements were more flexible than those proposed under the previous Bill. Under that Bill, the ATO would have been obliged to penalise individual employers even when they had made an innocent mistake.

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5 Senate Select Committee on Superannuation and Financial Services, *Report on the provisions of the Superannuation (Entitlements of Same Sex Couples) Bill 2000*, April 2000.

9.57 The Committee acknowledges that the Bill provides the ATO with greater flexibility in regard to enforcement of choice, but believes that the penalty regime appears somewhat excessive and should be reconsidered by the Government.

9.58 The Committee notes that, although such a fine might be unlikely, an employer with 10,000 employees could potentially face a total penalty of $66 million under the proposed regime. At the very least, the Committee considers that the Bill should be amended to provide for the issuing of warnings, or to have a moratorium on the first year of operation of the penalty regime of the proposed Bill to allow employers more time to become familiar with the provisions.

9.59 The Committee also notes evidence suggesting that the penalty regime may be unconstitutional, on the basis that the proposed employer fines go beyond the taxation power of the Commonwealth. The Committee understands that Treasury has sought legal advice whether the fines go beyond the taxation power of the Commonwealth. The Committee considers that resolving the constitutionality issue is a matter of priority.

Commission-based selling

9.60 The Committee notes the concerns expressed by some parties to the inquiry that the lack of financial literacy of many employees will leave them vulnerable to commission-based selling of retail funds by financial advisers. Some of these parties recommended a ban on commission-based selling.

9.61 The Committee also notes that others submitted that section 947D of the *Financial Services Reform Act 2001* seeks to prevent solely commission-based selling, on the basis that financial advisers are legally required to provide a Statement of Advice which considers the client's objectives, financial situation and needs and which identifies any actual or potential charges, loss of benefits or consequences of taking the advice. While the potential remains for serious conflicts of interest on the part of advisers, who may not always recommend funds that do not pay commissions, paying up-front fees in preference to commissions is more likely to encourage a level playing field.

9.62 The Committee also notes that a number of parties also proposed a ban on trailing commissions charged by financial advisers, in favour of an up-front fee, disclosed at the time the client seeks assistance. In response, other parties, notably the representatives of financial planners and retail funds, supported trailing commissions, arguing that where an individual receives an ongoing financial service from an adviser, the adviser needs to be able to recoup costs.

9.63 The Committee acknowledges this argument, and believes that it is difficult to substantiate a case for trailing commissions for a compulsory product like SG contributions. Where there is a non-mandatory product, the Committee acknowledges that commissions may be appropriate, provided they are disclosed up-front, and that the client is made aware of the impact of the commission on the end benefit payable by the fund.

9.64 In relation to commission-based selling, the Committee notes that various parties also cited the experiences of the UK and Chile following the deregulation of their superannuation industries. However, the Committee believes that Australia's regulatory regime is a lot stronger than that which applied in the UK and Chile at the time. The Committee believes that the improved licensing and regulatory regime in Australia reduces the possibility of such experiences occurring in Australia.

9.65 The Committee notes that the estimated cost of compensation for the mis-selling in the UK in the late 1980s is of the order of £11.5 billion. The Committee is keen to ensure that the lessons are learnt from the UK experience, in order to avoid such costly ramifications in Australia, given the compulsory nature of superannuation and therefore the much greater proportion of the population that is at risk.

9.66 The Committee also notes the evidence presented that choice of fund could potentially impact adversely on not-for-profit fund costs, which in turn could potentially lead to a reduction in returns for not-for-profit funds. However, the Committee understands that even people who pay an up front fee may continue to nominate an industry fund.

9.67 The Committee acknowledges these concerns, but believes that in a competitive market place, not-for-profit funds offering good returns at low cost should remain attractive to employees, and should be able to retain their membership.

Fees and charges

9.68 The Committee notes that the issue of fees and charges associated with superannuation funds was of concern to some witnesses because the fees and charges were seen to act as a potential disincentive to choice as they decrease the level of fund payouts and retirement incomes in Australia.

9.69 In this regard, the Committee recognises that even a small difference in fund costs and returns can translate into large differences in retirement incomes over a 40-year period. The Committee notes instances where exit fees have been greater than the balance of a fund, and are routinely around 15 per cent of a fund's balance.

9.70 In order to address the issue, the Committee notes that various parties providing evidence to the inquiry suggested either a cap on fees and charges or a prohibition on entry and exit fees.

9.71 In response, however, other parties opposed a cap on fees and charges. It was argued that a cap could lead to a creeping up of prices to hit the cap, could inhibit choice by pricing various products out of the market, and could lead to a withdrawal of advice and education on retirement incomes from the workplace.

9.72 The Committee recognises that compliance with the FSR regime may result in increased costs. However, the Committee believes that fees that funds charge should reflect the underlying cost of the service, with larger funds able to take advantage of economies of scale. The Committee accepts that a cap on fees and charges would not be without its practical problems. For example, to prescribe fees to apply to a diverse range of funds could result in increased cross-subsidisation between fund members.

Alternatively, it may lead funds to become more homogenous, and to a reduction in competition. However, in light of the effect of fees on final retirement savings and widespread evidence of significant fee differentials within the industry between funds offering similar products, more detailed consideration should be given to the likely costs and benefits of regulating fees and charges.

9.73 The Committee notes, however, that in its consultation paper on portability, the Government leaves open the option of regulating exit fees should they rise excessively under a choice environment. In addition, the Committee notes the advice from Treasury that the Government intends to monitor fees and charges before and after the introduction of choice of fund on 1 July 2004 through an 'appropriate agency'. The Committee strongly supports this initiative.

Consumer protection

9.74 The introduction of choice of superannuation funds brings with it a number of consumer protection issues which have been discussed in this report. They relate mainly to the need for consumer education, and a standardised disclosure regime which permits valid comparisons to be made about the impact of fees and charges on changing funds and end benefits. However the Committee considers that the consumer protection regime could be enhanced in a number of ways.

9.75 While the FSR regulations require 'appropriate advice' to be provided to consumers by financial planners, the Committee considers that further guidance is needed in the regulations as to the meaning of 'appropriate advice'. Based on the UK experience, there is a risk that the advice financial planners might give, particularly when it is associated with a trailing commission, not an up-front fee, might not be 'appropriate' or in the best interests of their clients.

9.76 The Committee is keen to ensure that consumers contemplating a choice of superannuation fund have access to guidance from an independent source. The Committee notes that, in the short term the ATO has been funded to provide the consumer education campaign for choice and that $2 million in seed funding has been allocated for a consumer information centre. However, if choice is implemented, the Committee considers that there is a case for the seed money to be allocated to ASIC which would be well placed to make more effective use of this funding. The Committee considers that ASIC has the expertise and capability in the area of consumer protection and that, while there is a role for community based consumer services, ASIC should have the primary and ongoing responsibility for all aspects of consumer education and protection in relation to choice.

9.77 For this reason, the Committee considers that it may be appropriate for a special independent financial advisory service to be established within ASIC so that consumers contemplating making a choice of superannuation fund can access independent guidance. Such a unit would need to have a free call number so that access to the service would be available to all consumers, regardless of income level.

9.78 In order to provide an enhanced consumer protection regime, the Committee also considers that it would be appropriate for ASIC to have a role in auditing the financial planning sector by monitoring the financial plans and Statements of Advice provided by financial planners to consumers, especially in relation to choice of fund issues.

Summary

9.79 The Committee supports the principle of choice, and the right of individuals to choose their own superannuation funds, with appropriate consumer protections. However, the Committee believes that the Bill would benefit from a number of improvements in providing for the successful implementation of choice. Accordingly the Committee believes that the Government should consider making appropriate amendments to the Bill, after examining the implementation issues raised during the inquiry, in particular:

- clarifying and simplifying the default fund provisions, while retaining the protection offered by Federal, State and Territory industrial awards, where applicable;
- considering the compliance burden on businesses;
- considering the impact of fees and charges;
- reconsidering the provisions applying to defined benefit funds, with a view to exempting defined benefit funds from the proposed legislation, providing the schemes are fully funded and the employer contribution is in excess of the nine per cent SG rate;
- ensuring that appropriate levels of death and invalidity insurance cover under the default provisions of the Bill are outlined in regulations;
- considering the impact of death benefits on fund members; and
- reconsidering the level and nature of employer fines, following receipt of advice on their constitutionality.

9.80 The Committee also notes that for choice of fund to be successfully introduced in Australia through the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2002, in addition to the proposed education campaign, the Government would also need to consider the following issues not directly related to the provisions of the Bill:

- improving the existing consumer protection regime by enhancing the current disclosure provisions, including adopting a standardised disclosure regime, which has been consumer comprehension tested, and establishing a special financial advisory unit within ASIC to provide guidance to consumers contemplating the choice of a superannuation fund; and
- clarifying the proposed details of the arrangements for portability.

9.81 With these issues appropriately addressed, and appropriate amendments made, the Committee supports the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2002.

Recommendations

9.82 All members of the Committee recommend that the Government examine the issues raised by the Committee in this report.

9.83 Government members of the Committee recommend that the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2002 be passed.

Senator John Watson
Committee Chair