

## CHAPTER 3

### OPTIONS FOR THE FORM OF CHOICE

#### Introduction

3.1 The background to the legislation and the current proposal to introduce a choice regime was discussed in Chapter 1. In introducing the legislation, the Government indicated that its intention was to give employees greater choice and control:

The choice of fund arrangements are designed to give employees greater choice and control over their superannuation savings, which in turn give them greater sense of ownership of these savings. The arrangements will increase competition and efficiency in the superannuation industry, leading to improved returns on superannuation savings.<sup>1</sup>

3.2 As it now stands, the Government model for employers to provide choice of superannuation involves three options:

#### *Option 1 - Limited Choice of Four Funds*

3.3 The employer must offer the employee a choice of four complying superannuation funds including:

At least one "public offer superannuation fund";

At least one RSA or "capital guaranteed fund";

If there is one or more "standard employer-sponsored funds" of which the employer is a "standard employer sponsor" and of which the employee is eligible to be a member - at least one of those; and

If there is one or more "industry based superannuation funds" of which the employee is eligible to be a member - at least one of those.<sup>2</sup>

#### *Option 2 - Unlimited Employee Choice*

3.4 Under this option, it is the responsibility of the employee to select any complying superannuation fund or Retirement Savings Account.

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1 Second Reading Speech on the Taxation Laws Amendment Bill (No. 7) 1997, by the Parliamentary Secretary (Cabinet) to the Prime Minister, the Hon Chris Miles, MP.

2 Taxation Laws Amendment Bill (No. 7) 1997, Explanatory Memorandum, p. 65.

### *Option 3 - Certified Agreement/Award Fund*

3.5 Under the third option, the employee and employer could agree to use the industry fund specified under the particular award, or certified agreement or informal agreement.

3.6 As noted earlier, contributions to unfunded public sector schemes and contributions made in respect of employees covered by State industrial awards are also deemed to satisfy the legislation.

### **Views on choice**

3.7 Views fell into three broad categories: those who support fund member choice with few reservations; those who believe fund member choice will not be in the interests of fund members; and those who believe fund member choice can be made workable subject to a range of conditions being met.

3.8 In expressing its qualified support for choice of funds, the peak employer group, the Australian Chamber of Commerce and Industry (ACCI), also indicated that support was subject to mechanisms to ease the administrative/compliance burden on employers.<sup>3</sup> Similarly the Association of Superannuation Funds of Australia (ASFA) emphasised that any reforms to implement choice of funds should be part of a coherent reform package to reduce the overall complexity of super.<sup>4</sup>

3.9 The Australian Bankers' Association also expressed strong support for choice of funds:

Obviously, we support choice and we remain committed to trying to make it happen ... It is like the debate that Australia had pre removing tariffs, and I have greater faith in market forces than a lot of people in this room. We believe that consumers will benefit substantially.<sup>5</sup>

3.10 Those who opposed choice at this time, like the Industry Funds Forum (IFF) and Jacques Martin Industry Funds Administration, did so because they had 'never heard any compelling arguments in favour of choice.'<sup>6</sup> The Australian Council of Trade Unions (ACTU) also expressed its reservations about the introduction of choice at this time, largely because of the lack of readiness of employers, the lack of demand from consumers, and the need for a wide range of administrative, educative and technological issues to be resolved beforehand.<sup>7</sup>

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<sup>3</sup> Hansard, p. 73.

<sup>4</sup> Hansard, p. 76 and Submission No. 15, p. 3.

<sup>5</sup> Hansard, p. 78.

<sup>6</sup> Hansard, pp. 77 and 80.

<sup>7</sup> Hansard, pp. 33-34.

## Views on options

3.11 Within this framework of views, witnesses at the recent roundtable hearing expressed little support for the current model. In particular, employers raised concerns about the potential liability of employers under the employer choice of Option 1 should any fund nominated by the employer under-perform. Others were concerned about the limited nature of Option 1 to fulfil the principle aim of choice.<sup>8</sup>

3.12 The inevitability of the introduction of choice was seen by some to be a major reason for supporting the concept, as market forces were already providing a degree of choice. The Investment and Financial Services Association told the Committee that: 'We currently have about a third of the market operating under free choice.'<sup>9</sup>

3.13 While acknowledging that market forces have already begun to introduce choice, the ACA expressed the view that it would prefer that choice be introduced in a measured, methodical and regulated fashion rather than being shaped by market forces.<sup>10</sup>

3.14 In the two years since the legislation was first introduced, there have been a number of developments which have also changed the way stakeholders viewed the original model. At the roundtable the IFSA noted:

...back in February 1998 we were supportive of the government's choice of fund model at that time. Since that time, we feel the market has moved on. There have been significant developments already in e-commerce, both at an industry level and at an individual firm level. That pace is really picking up steam.<sup>11</sup>

3.15 With the market tending to pre-empt the legislation, conditions in the industry have changed and the level of support for the original model has waned. The greater support appears now to lie with a limited model of two options, unlimited choice or the award fund.

3.16 Those in favour of Option 2 - unlimited employee choice - included IFSA, the Australian Bankers' Association (ABA) and the Financial Planning Association.

3.17 IFSA advised the Committee that it supported unlimited choice 'because we believe it does generate the sorts of cost savings that you would not achieve by the more limited version of a three-, four-, or five fund choice.'<sup>12</sup>

3.18 The Australian Bankers Association noted:

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<sup>8</sup> For example, Hansard; p. 35, Submission No. 9, p. 1; Submission No. 1, p. 1 and Submission No. 5, p. 1.

<sup>9</sup> Hansard, p. 82.

<sup>10</sup> Submission No. 12a, p. 2.

<sup>11</sup> Hansard, pp. 35-36.

<sup>12</sup> Hansard, p. 36.

We certainly would not have a problem with an unlimited choice environment.<sup>13</sup>

3.19 The Financial Planning Association advised that ‘unlimited choice has in essence a great deal to offer in satisfying (the) objective of consistency and lack of change.’<sup>14</sup>

3.20 Some groups indicated support for either Option 2 - unlimited choice - or Option 3 - certified agreement/award fund. These groups included the Australian Retirement Income Streams Association (ARISA) and the Association of Superannuation Funds of Australia (ASFA).

3.21 In evidence to the Committee, ARISA advised that, in order to keep the issue of choice as simple as possible, it supported either ‘unlimited choice or a form of workplace agreement.’<sup>15</sup>

3.22 ASFA put its preference as follows:

...the model that ASFA would prefer is either collective agreements, whether they are awards or other collective agreements, or unlimited choice. We do not see any particular reason or advantage through the 'forced four' option because it does not get to the principle of an employee choosing in the way that that principle was there and it raises a whole host of other issues about small employers or others having to be experts in the area of superannuation and those sorts of issues. Our model is either a collective award or collective agreement, or unlimited choice.<sup>16</sup>

3.23 Three organisations (ACTU, the IFF, and the Australian Institute of Superannuation Trustees - AIST) opposed the introduction of choice at this time citing problems of readiness, administrative cost and difficulty and protection of employers against liability. Notwithstanding their opposition, these groups also presented their views on the options for the forms of choice.

3.24 The ACTU outlined its opposition to Option 1 and its reservations about Option 2.

The problem with the four- or five-fund model is that, firstly, the employer, presumably, chooses the funds. That raises a problem which I think the employers and their organisations are very cognisant of, which is that they do not want to have responsibility for choosing the fund because of the dangers of having to wear some liability if things go wrong. ... The problem

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13 Hansard, p. 31.

14 Hansard, p. 35.

15 Hansard, p. 34.

16 Hansard, p. 32.

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with unlimited choice is the problem of having to join the funds being talked about and is the problem of the administration attached to it.<sup>17</sup>

3.25 While also opposing the introduction of choice at this time, IFF advised that the main issue for them was that any choice regime should be employee-based and that the legislation should provide for the possibility of both collective choice of funds as well as individual choice of fund.<sup>18</sup> IFF explained as follows:

On the question of what form of choice model should apply, I would restate our position that we do not support the introduction of choice at this time. Were it to occur, the fundamental point we would make is that it should be employee based - that is, the employer should not have a key role in determining the choice of fund.....<sup>19</sup>

and

A fundamental principle which should apply to the choice model is that the choice should be the employee's choice. The model which so far has been proposed by the Australian government provides employers with the unilateral right to select the model of choice that would apply in the workplace. To achieve the desired outcome, choice must be in the hands of the beneficiaries, the employees. However, this should only occur when employees have been adequately equipped to make informed choices.<sup>20</sup>

3.26 The third group, AIST expressed the view that it did not believe that legislation to introduce choice is necessary. The Institute pointed to developments such as those in the Australian Industrial Relations Commission (AIRC) and market forces as already contributing to choice.<sup>21</sup>

3.27 The Australian Chamber of Commerce and Industry was the only organisation to support the existing model, but emphasised that its support was conditional on the employer being fully protected in terms of liability.<sup>22</sup> ACCI advised that:

The sort of choice we would support would be something along the lines of the previous government proposal which was to provide, in effect, three streams which the employer would choose: firstly, a choice of five or fewer: - whatever it is; secondly, leaving it to the employee - unlimited choice; and, thirdly, some sort of workplace agreement. In other words, the employer would choose which choice stream would apply of those three: unlimited choice, the employer offering a choice of four, five or whatever,

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17 Hansard, p. 33.

18 Hansard, p. 35.

19 Hansard, p. 35.

20 Submission No. 1, p 1.

21 Hansard, p. 79.

22 Hansard, pp. 32 and 35.

or the employer entering into some sort of workplace agreement with the employee providing choice. It would be a three-stream approach and each of those streams would offer choice to the employee in a slightly different way and the employer would choose, if you like, which stream.<sup>23</sup>

## **Summary**

3.28 A broad spectrum of views was heard on the issue of choice generally and the options for the form of choice.

3.29 Views on the options were mixed. However, the majority of witnesses expressing a point of view on a choice model supported either unlimited choice and/or the award fund rather than the Government's 'choice of four' model.

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23 Hansard, p. 32.