



# Superannuation

## choice of fund

*Many Western Australian employees have the right to choose their own superannuation fund. Employers need to check if their employees are eligible for superannuation choice, and if so, offer employees the opportunity to choose a fund.*

### Overview of superannuation choice

Choice of superannuation fund is provided in the state system by the *Industrial Relations Act 1979*. This Act applies to everyone on state awards and industrial instruments that require superannuation contributions to be made for employees.

Employers must notify eligible employees that they have the right to choose their own superannuation fund. Employees must then provide employers with details in writing about the fund to which they wish their superannuation contributions to be made.

The *Superannuation Guarantee (Administration) Act (the Act) 1992 (Cwth)* provides employees in the federal system with federal choice coverage. Employers and employees seeking further information on the federal choice system should contact the Superannuation Infoline on 13 10 20 or visit [www.ato.gov.au](http://www.ato.gov.au)

All employers are obliged to make quarterly superannuation contributions for eligible employees under the Act. The superannuation contribution required under the Act is currently nine percent.

The state and federal choice of fund provisions do not currently apply to Western Australian Government employees. Superannuation for these employees is regulated by a separate Act of Parliament.

### Calculation of superannuation contributions

Superannuation is generally calculated on an employee's 'ordinary time earnings'. The definition of 'ordinary time earnings' may differ based on:

- the provisions of the relevant award or industrial instrument; or
- the wording of the trust deed of a particular superannuation fund.

The Act exempts employers from making superannuation contributions on behalf of certain groups of employees. These include employees:

- paid less than \$450 in a calendar month;
- aged 70 years and over;
- under 18 years of age who work 30 hours or less per week; and
- paid to do work of a domestic or private nature for not more than 30 hours a week (eg a part-time nanny or housekeeper).

For more information on superannuation obligations under the Act contact the Superannuation Infoline on 13 10 20 or visit [www.ato.gov.au](http://www.ato.gov.au)

### Award superannuation contributions

Some superannuation clauses in state awards require employers to contribute only three per cent of an employee's wages or salary to a superannuation fund. However, the Act requires minimum contributions of nine per cent of salary.

The provisions requiring employers to provide a choice of superannuation fund only apply to the amount specified in the state award. For practical reasons, most employers pay the entire nine per cent contribution into a fund nominated by employees.

Employers should note that award superannuation contributions may be required for employees who fall within the exempt categories under the Act, but who are not excluded from the superannuation provisions in the relevant award.

### Employer obligations

Under the state choice system, employers are obliged to ensure that all existing and new employees are aware of their right to choose a superannuation fund.

Employers must provide all new employees, as soon as possible after commencing work, with either:

- a notification of Choice of Superannuation Fund Form (Form 1); or
- a written notice setting out all the information contained in Form 1.

Once employees have been notified, employers are then obliged to pay an employee's superannuation contribution to any appropriate fund that the employee has nominated in writing.

The information contained in Form 1 is shown in this publication. Copies of Form 1 can be purchased from the State Law Publisher or visit the website [www.slp.wa.gov.au](http://www.slp.wa.gov.au)

### Appropriate superannuation funds

In the state choice system, employees can nominate any superannuation fund that is:

- able to accept contributions from their employer; and
- a complying fund under the Act.

Details on whether a particular superannuation fund is a complying fund under the Act can be obtained by contacting the fund's trustees or the Australian Prudential Regulation Authority on 1300 13 10 60.

### Choosing a suitable fund

Choosing a superannuation fund is an important decision. Employees should carefully research and assess the benefits and conditions of entering any particular fund. Before nominating a fund, employees should read all material provided by the superannuation fund, and consult an accountant or financial adviser for independent advice on the best fund.

The information contained in Form 1 includes a list of key considerations for employees under the heading 'Information for employees'.

The major benefits from being able to choose a superannuation fund include:

- the ability to choose a fund that most appropriately meets current and future superannuation needs and goals; and
- portability, which allows employees to stay with the one fund when moving between employers or between industries, therefore maximising the long term benefits from superannuation contributions.

## Changing funds

Once employees have nominated a fund they can only change the nomination and choose a different fund if the employer agrees. Employers cannot unreasonably refuse to agree to a change of fund.

When considering changing funds, employees need to know that some superannuation funds may refuse to roll over existing contributions to an alternative fund. Superannuation funds are governed by trust deeds that set out their rules, and some funds may have rules that require or allow the trustee administering the fund to refuse to roll over an employee's contributions to another fund.

Some funds prevent trustees from rolling over contributions into another fund for a specified time (eg 12 months), and others may charge a fee for transferring contributions to a new fund.

Employees who believe that a trustee of a superannuation fund has exercised his or her discretion wrongly or unfairly can make a complaint under the fund's complaint procedures. If the complaint is not resolved, employees can contact the Superannuation Complaints Tribunal on 1300 780 808 or [www.sct.gov.au](http://www.sct.gov.au)

## Freedom of choice

Employees who have a right to choose their own superannuation fund in the state choice system must be able to do so without interference, pressure or fear of repercussions.

Employers or other people who attempt to persuade employees by threats or intimidation to nominate a particular fund commit an offence under the *Industrial Relations Act 1979*. This includes employers indicating that employment is conditional upon nominating or changing to a particular superannuation fund.

Employers cannot unreasonably refuse to contribute to a complying superannuation fund chosen by an employee. If employers unreasonably refuse to contribute to an employee-nominated fund they may be in breach of the award, industrial agreement or order and could face a penalty.

Employees who are concerned about their employer refusing to accept a chosen superannuation fund, or applying pressure to nominate a particular fund, should contact the Superannuation Infoline on 13 10 20.

## Fund performance

Provided that legislative choice of fund obligations are complied with, employers will not be liable for any loss suffered by employees if the employee-nominated fund underperforms compared to their previous fund.

Employers should not advise employees on their choice of superannuation fund, or how their superannuation investments should be managed. This may amount to financial product advice, which can generally only be provided by licensed financial advisers.

## Failure to choose

If employees do not nominate a superannuation fund employers must contribute to any superannuation fund nominated in the applicable state award or industrial instrument. If no superannuation fund is specified in the award or industrial instrument employers can contribute to any complying superannuation fund.

Employees who fail to choose a fund in the first instance retain the right to choose later.

**National Relay Service: 13 36 77**  
**Quality of service feedback line: 1800 30 40 59**  
**Translating and Interpreting Service (TIS) 131 450**

**This publication is available in other formats on request to assist people with special needs.**

## Regional Offices

Goldfields/Esperance	(08) 9026 3250
Great Southern	(08) 9842 8366
Kimberley	(08) 9169 2811
Mid-West	(08) 9964 5644
North-West	(08) 9185 0900
South-West	(08) 9722 2888

### Form 1 information

The following information appears on Form 1 of the *Industrial Relations (Superannuation) Regulations 1997*. This information must be provided by employers to:

- all new employees who are covered by the state choice of fund provisions; and
- any existing employees who have not previously been notified.

### Need more information?

If you require more information about superannuation choice of fund, please contact Wageline on 1300 655 266.

### Wageline - 1300 655 266

8.30 am – 5.00 pm weekdays  
except Wednesdays 9.00 am – 5.00 pm

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*Industrial Relations (Superannuation) Regulations 1997, reg 4*

## **Form 1 Notification of Choice of Superannuation Fund**

### **Employer to make superannuation contributions**

Your employer is required by an award, industrial agreement or order to make certain superannuation contributions for you. You may also be able to make contributions of your own.

### **Which fund?**

You are entitled to choose the superannuation fund to which your contributions will be paid. You may choose any fund that is:

- a complying fund for the purposes of the Commonwealth *Superannuation Guarantee (Administration) Act 1992*; and
- able to accept contributions from your employer.

The trustee of a fund you wish to join should be able to tell you if the fund complies with these requirements.

Unless and until you nominate a fund, subject to any applicable award, industrial agreement or order, your contributions will be paid to a fund chosen by your employer.

### **How to nominate the fund of your choice**

To nominate the fund of your choice you must give notice in writing to your employer specifying which fund you have chosen.

### **Changing funds**

Once you have nominated a fund you cannot change your nomination and choose a different fund unless your employer agrees.

However, your employer cannot unreasonably refuse to agree to a change of fund.

### **Make the right choice**

Choosing the right fund is a complex decision. Before you nominate a fund read the "Information for Employees" and consult your accountant or an independent financial adviser to make sure it is the best fund for you.

### **Information for employees**

Before you nominate a fund there are many things you need to consider to make sure the fund is suitable for you. Some of the things you should consider are:

- the type and level of **benefits** provided by the fund;
- the **fees and charges** charged by the fund;
- the type and level of **insurance** provided by the fund;
- the **preservation** requirements applying to benefits in the fund;
- any other restrictions on **access to benefits**;
- the trustee's **procedure for checking that employer contributions** are being made;
- whether the fund permits **additional member contributions**;
- the fund's **complaint resolution procedure**;
- what sort of **investment options** are available to fund members;
- whether the trustee employs fund managers, actuaries, stockbrokers and other **advisers**, and if so who they are, what they do and how much they are paid;

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- whether there is a **“cooling-off” period** for new members;
- the **tax** implications of making contributions and receiving benefits; and
- the quality and frequency of **information** about the fund’s investments and performance provided to fund members by the trustee.

If you are already in a superannuation fund you should also consider the consequences of changing to a new fund. Some of the things you should consider are:

- whether you can **transfer benefits** from your current fund to the new fund, and whether there are **fees** for doing this;
- whether there will be **changes in your contribution and benefit levels**;
- whether there are any **fees or charges** to exit from your current fund;
- whether changing funds will affect the **preservation** requirements applying to your benefit; and
- the **tax** implications of changing funds.

### Make the right choice

**Choosing the right fund is a complex decision. Before you nominate a fund:**

- carefully read the member booklet, prospectus or other information provided by the trustee of the fund; and
- consult your accountant or an independent financial adviser, to make sure it is the best fund for you.

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