

# Portability of Superannuation Benefits

Enhancing the Right of Members  
to Move Existing Benefits  
Between Superannuation Entities

**Consultation Paper**

**September 2002**

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# INVITATION FOR PUBLIC COMMENT

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This consultation paper canvasses a number of issues associated with the Government's policy proposal to enhance members' ability to transfer their superannuation benefits from one superannuation fund to another.

Submissions and comments on this paper are invited from all interested parties. Written submissions will be accepted up until 18 November 2002 and should be forwarded to:

Manager, Voluntary Savings and General Rules  
Superannuation, Retirement and Savings Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Submissions in electronic form will also be accepted up until 18 November 2002 and should be sent to:

[superannuation@treasury.gov.au](mailto:superannuation@treasury.gov.au)



# FOREWORD

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I am pleased to release this consultation paper outlining issues associated with the Government's policy on portability of superannuation benefits.

More and more, Australians are focussing on the importance of planning and saving for retirement.

The family home remains a key savings goal for many of us and we are investing more in other property and shares. But growth in superannuation coverage and contributions has meant that superannuation is, for many Australians, their second largest asset and an increasingly important aspect of their retirement plans.

In fact, Australia's superannuation system has more than doubled in size over the past six years, from about \$252 billion in March 1996 to \$532 billion in March 2002.

The Government strongly supports this savings culture. As the Minister with responsibility for superannuation, I am implementing new initiatives to make saving through superannuation even more attractive. One of my priorities is making the superannuation system more flexible for savers by introducing the twin policies of choice and portability of superannuation funds. The Government believes that workers should have the freedom to decide who manages their superannuation and the right to move their superannuation benefits from one fund to another.

Portability will give members of accumulation funds the right to transfer benefits from their current superannuation fund to a fund of their choice. It will allow members to consolidate their superannuation benefits in one account or to diversify their superannuation portfolio. The hurdles preventing portability of superannuation savings have led to more than \$7 billion in superannuation funds that are unable to find the owner and to more than 2.5 superannuation accounts for every Australian worker. Consolidating accounts can reduce fees and lead to better retirement incomes.

This policy will also benefit Australians by creating greater competition in the superannuation industry, putting downward pressure on fees and charges and resulting in more responsive investment strategies by trustees.

The purpose of this consultation paper is to stimulate discussion about the Government's ideas on implementing portability. The Government is firmly committed to consulting widely on this policy, in order to ensure a well-considered and workable outcome.

I strongly encourage members of the superannuation industry and other interested parties to share their views on the proposals contained in this consultation paper.

A handwritten signature in black ink, appearing to read 'Helen Coonan', followed by a horizontal line extending to the right.

HELEN COONAN  
September 2002

## EXECUTIVE SUMMARY

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- In its pre-election statement on superannuation, *A Better Superannuation System*, the Government reaffirmed its commitment to the portability of superannuation. The Government proposes to require defined contribution (accumulation) superannuation funds and approved deposit funds (ADFs) to provide portability of benefits at the request of a member.
- Portability refers to the ability of a member to transfer superannuation benefits from one regulated superannuation fund, ADF or Retirement Savings Account (RSA) to another regulated superannuation fund, RSA, ADF or exempt public sector superannuation scheme.
- There is currently no provision within the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) that *requires* a fund to transfer benefits at the request of a member. By default, the ability of a member to transfer existing superannuation benefits is regulated by each individual fund's governing rules. However, under the *Retirement Savings Accounts Act 1997*, RSA providers are required to provide portability.
- Portability will increase competition between superannuation funds and place pressure on funds to reduce fees and charges. It will also assist in addressing the issue of multiple superannuation accounts. Maintaining multiple superannuation accounts can significantly erode an employee's retirement benefit and lead to lost superannuation accounts.
- In principle, the Government believes that all superannuation benefits held in a regulated superannuation fund should be fully portable. However, the application of portability to defined benefit funds raises a number of special issues. Therefore, the Government will consult with interested parties on the application of portability to members with a fully funded defined benefit interest. Portability will not apply to benefits held in an unfunded or partially funded public sector defined benefit scheme, owing to the potential impact on public finances.
- Portability would apply only to a member's withdrawal benefits (that is, the vested benefits to which a member is entitled on resignation or otherwise voluntarily ceasing to be a member of the fund). Portability would not apply to member benefits that are being drawn down as a pension or annuity from a regulated superannuation fund.

- Under portability, funds and RSAs would both be required to transfer benefits as soon as practicable after the member's request, but in any case no more than 90 days thereafter.
- The Australian Prudential Regulation Authority would have the power to freeze portability of benefits in specified circumstances, including at the request of the trustee.
- The Government's preference is to allow funds to develop their own fee structures. The Government would only consider regulating exit fees if this appeared necessary to ensure the effectiveness of portability.
- The Government proposes that its portability policy commence on 1 July 2004.

# 1 BACKGROUND

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Portability of superannuation benefits is the ability of a member to transfer existing benefits from one superannuation fund, approved deposit fund (ADF) or Retirement Savings Account (RSA) to another fund, ADF, RSA or exempt public sector superannuation scheme (EPSSS).

The Government reaffirmed in its 2001 pre-election policy statement *A Better Superannuation System*, and again in the *2001-02 Budget*, its policy to require defined contribution (accumulation) funds to provide portability of benefits at the request of a member.

The Government also proposes to require defined benefit funds to provide portability for members who only have a defined contribution interest in the fund. The Government also seeks the views of interested parties on the application of portability to members with a fully funded defined benefit interest.

## 1.1 Rationale for portability

Currently, members do not have an automatic right to transfer their existing superannuation benefits to a superannuation fund of their choice. Members may be required to keep their existing benefits in a fund that was chosen by their employer or imposed as a result of an industrial award. They may only be able to move their benefit after a specified event has occurred (such as termination of employment).

The lack of portability is peculiar to the superannuation sector and reflects historical developments. Australians can freely choose their bank account and share portfolio and can move their assets between investments. There is no reasonable rationale for concluding that Australians are not also capable of choosing a superannuation fund to manage their superannuation benefits. The Government believes that, with appropriate disclosure and member information, consumers of superannuation are the best judges of their own economic well-being. As such, individuals should be able to make their own choices in superannuation and to pursue their own needs within the superannuation system.

Portability will assist in addressing the issue of multiple superannuation accounts. Multiple accounts result in fragmentation of retirement savings

## Background

which can create inefficiencies for the superannuation industry, for example by increasing the number of accounts with small balances and the associated administration costs.

Multiple accounts can also significantly erode an employee's retirement benefits as a result of the account management fees levied on each account. Multiple accounts also make it more difficult for members to keep track of their superannuation benefits. Enabling members to consolidate their superannuation, particularly accounts with small balances, may therefore lead to a reduction in the number of lost member accounts. Alternatively, members with larger balances may choose to use portability to diversify their superannuation portfolio across different providers.

Portability will enable fund members to transfer their existing benefits out of a fund that is not meeting their needs. Enhancing portability will increase competition between funds for employees' superannuation savings, and thereby place pressure on funds to improve fund performance and reduce fees and charges. Portability will also improve disclosure and critical oversight of fund performance, thereby improving prudential safeguards.

In this regard, portability will complement the Government's choice of funds legislation. The choice of funds legislation will provide employees with an opportunity to choose the fund into which future mandated employer contributions are paid. Portability will allow individuals to move existing contributions and earnings into their fund of choice.

## 1.2 Existing regulatory treatment of portability and exit fees

An individual's superannuation benefits must generally be kept within the superannuation system, that is, held by a complying superannuation fund, ADF or RSA, until the member reaches preservation age on or after retirement.

### 1.2.1 Superannuation funds and ADFs

The operation of superannuation funds and ADFs is governed by the *Superannuation Industry (Supervision) Act 1993* (SIS Act). There is no provision within the SIS Act that requires a fund to transfer benefits at the request of a member.

Sections 31 and 32 of the SIS Act provide the Government with the power to make regulations that prescribe standards applicable to the portability of benefits arising directly or indirectly from amounts contributed to superannuation funds and to ADFs. To date, no specific regulations have been made on this matter (aside from those relating to the splitting of benefits following divorce or separation).

Therefore, by default, the ability of a fund member to transfer or rollover existing superannuation benefits is regulated by the fund's governing rules.

The *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) restrict the amount of exit fees that a superannuation fund (other than a self managed superannuation fund) or ADF may charge on accounts that are covered by the member protection rules (regulation 5.17). These apply to accounts that hold a withdrawal benefit of less than \$1,000 and contain, or have contained, mandated employer-financed benefits. (The Government removed member protection for lost members with an account balance of \$1,000 or more.) There is also a general requirement that the costs of the fund be distributed in a fair and reasonable manner between all members of a fund (regulation 5.02).

Otherwise, if a fund's governing rules allow a member's benefits to be transferred out, the fund may have discretion over the level and structure of exit fees it imposes.

## 1.2.2 Retirement Savings Accounts

The operation of RSAs is governed by the *Retirement Savings Accounts Act 1997* (the RSA Act).

Under Section 50 of the RSA Act, an RSA provider must, at the request of a member, transfer the amount of the RSA to another RSA, superannuation entity, ADF, EPSSS or deferred annuity. Section 50 requires that the transfer be made as soon as practicable or, if the contract or agreement for the provision of the RSA specifies a period, within the period specified. In any case, the transfer must be made within 12 months after receipt of the written request.

Division 4.4 of the *Retirement Savings Account Regulations 1997* (the RSA Regulations) prescribes the operating standards for the portability of benefits held in an RSA.

The RSA Regulations restrict the amount of exit fees that an RSA may charge on accounts covered by the member protection rules. Otherwise, the RSA provider has discretion over the level and structure of exit fees it imposes when a member chooses to transfer their benefits out of an RSA.

## 1.2.3 Family law and superannuation

The *Family Law Legislation Amendment (Superannuation) Act 2001* was passed by the Parliament on 18 June 2001 and received Royal Assent on 28 June 2001. The Act, which will commence later this year, amends the *Family Law Act 1975* to allow a married couple to split between themselves, on their separation, payments from a superannuation fund in which one of them holds an interest. If they are unable to agree, the Family Court will be able to order a payment split.

The member's former spouse will be able to request that the trustee of the fund rollover or transfer the benefits to which he or she is entitled to another fund. Therefore, in effect, this legislative change will provide portability for the member's former spouse in the event of divorce or separation.

This legislative change will allow, in respect of defined contribution superannuation funds only, for the division of a superannuation interest in the accumulation phase and for a new interest to be created in the superannuation fund for the member's former spouse. This will be facilitated by consequential amendments that have been made to the SIS Regulations.

## 1.3 Existing practices of superannuation funds

As noted above, member access to portability depends on each fund's governing rules. Many funds currently allow portability (for instance, for personal superannuation products in public offer funds). In some cases, there is an exit fee if members transfer their benefits out of a fund.

In other cases, the fund's governing rules may prevent the outward transfer of benefits before retirement age or only allow the transfer of benefits after a specified event, such as resignation from an employer or cessation of employment in a particular industry.



## 2 PROPOSED MODEL FOR PORTABILITY

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The proposed model for portability will give, to the maximum extent practicable, members the right to transfer their existing superannuation benefits to another superannuation fund, approved deposit fund (ADF), Retirement Savings Account (RSA) or exempt public sector superannuation scheme (EPSSS).

### 2.1 Regulations on portability

It is proposed to implement portability by way of regulations under sections 31 and 32 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

The amendments will require the trustees of all regulated superannuation funds and ADFs (which are not specifically exempted) to transfer an amount in respect of a member's superannuation benefits to another regulated superannuation fund, ADF, RSA or EPSSS at the request of that member. The transfer will be subject to the receiving fund being willing to accept the transfer.

### 2.2 Transfer amounts

It is proposed that portability would apply to the withdrawal benefits of a fund member. The term 'withdrawal benefits' is defined in the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) (regulation 1.03) as the amount payable to the member or a trustee of another superannuation entity, EPSSS or RSA in respect of the member if the member voluntarily exits the fund. The amount of the withdrawal benefit reflects the amount that is vested in the fund member, in accordance with the fund rules. (The amount of a member's withdrawal benefit cannot be less than the member's minimum benefits as defined by SIS Regulation 5.04.)

For an ADF, portability would apply to the total benefits of a member. Under the RSA legislation, portability from an RSA also applies to the total benefits of a member.

There is an issue of the extent to which a trustee would be required to provide portability for a member wanting to transfer only part of his or her benefit at

one time. Allowing members to transfer only a proportion of their benefits may raise concerns for some trustees. The Government is seeking the views of interested parties on this matter.

Portability is intended to provide members with greater flexibility during the accumulation stage and to enable members to consolidate their benefits or diversify risk over a number of superannuation providers. It is not intended to change the rules applying to pension or annuity arrangements. Accordingly, portability would not apply to member benefits that are being drawn down as a pension or annuity from a regulated superannuation fund (other than an allocated pension).

## 2.3 Application of portability to certain superannuation entities

In principle, all superannuation benefits held in a regulated superannuation fund or ADF should be portable. However, there are practical considerations of how portability might apply to certain fund types.

### 2.3.1 Defined benefit members of funded schemes

For the purpose of the SIS Act, a defined benefit member is a member with superannuation benefits defined, wholly or in part, by reference to salary or a specified amount. In contrast, the benefit of a defined contribution member is equal to accumulated contributions and earnings, less fees. A defined benefit fund (DBF) is one with at least one defined benefit member (a DBF may also have defined contribution members).

Mandatory portability for defined benefit members raises special issues.

First, the rules of a DBF and the individual circumstances of a defined benefit member may give rise to a situation where the vested benefits that a member received on resignation are greater than the actuarial reserve held in the fund for that member. Portability, if applied to funded DBFs in the same way as defined contribution funds, could potentially allow employees to take advantage of such circumstances by transferring out of the scheme and re-entering if permitted by fund rules. Accordingly, it is not envisaged that DBFs would be required to provide portability to members with a defined benefit interest while they were eligible to contribute to the scheme.

A second issue is how an equivalent withdrawal benefit would be calculated if members were able to transfer deferred benefits out of a DBF (that is, a benefit preserved in the scheme after the member has ceased employment with the employer-sponsor). For example, how to calculate the withdrawal benefit of a benefit that would otherwise be paid as a pension following retirement.

Third, once a member of a DBF has reached his or her maximum benefit accrual, employers of those members are effectively exempt from making further superannuation contributions for those employees for the period a benefit certificate remains in effect for the scheme. If a member could exercise portability in these circumstances, the employer should not be required to make further superannuation contributions for the member. (Under the choice of funds proposal, the employer-sponsor would be exempt from the choice of funds legislation in relation to employees that have exceeded their maximum benefit multiple.)

Given this range of considerations, there are grounds to limit access to portability for defined benefit members with a defined benefit interest in a funded scheme, relative to members of defined contribution funds.

Nevertheless, the Government does not wish to deny funded DBF members access to portability, particularly those members that have resigned and wish to depart from the scheme permanently or those that would prefer to be a member of a defined contribution fund. Accordingly, the Government will consult with industry to identify the set of circumstances under which DBFs could provide portability without affecting the financial viability of the funds. The Government is seeking the views of employers operating a funded scheme with defined benefit members on the possible impact of portability on their arrangements.

As part of the proposed choice of funds legislation, employers would provide additional information in a choice offer to employees who are members of a DBF. This is to ensure that the employee is fully informed about the consequences of leaving their employer-sponsored DBF. It is proposed to impose a similar disclosure requirement for trustees of a DBF for members that are considering leaving the scheme and transferring their benefit out of the fund.

### **2.3.2 Unfunded or partially funded defined benefit schemes**

An unfunded DBF is one that holds no assets. A partially funded DBF is one where some assets are held by the fund but there is no intention to fund the

accrued benefit entitlements fully. Contributions to a partially funded scheme may be made by the employer, the member or both. These funds have all arisen in the public sector and are effectively underwritten by governments. Employer contributions are generally made to such funds as benefits are paid.

The selection risks that are outlined above for funded schemes would also apply to an employer-sponsor of an unfunded or partially funded DBF.

Portability could have further major financial consequences for the employer-sponsors of these schemes as it would, in effect, require them to bring forward some part of their contributions to the extent that portability was exercised.

Given these considerations, the Government does not intend that mandatory portability apply to unfunded or partially funded DBFs.

### **2.3.3 Exempt Public Sector Superannuation Schemes (EPSSS)**

EPSSS are public sector schemes, listed in schedule 1AA of the SIS Regulations. These schemes are not subject to the provisions of the SIS Act. However, under a Heads of Government agreement, the Commonwealth, States and Territories undertake to ensure that these schemes operate in a manner consistent with the Commonwealth's retirement income policy. They can include both defined benefit (including unfunded and partially funded schemes) and defined contribution schemes.

Accordingly, the Government intends to discuss with the States and Territories the relationship of portability to EPSSS.

### **2.3.4 Self-managed superannuation funds**

The Government proposes to exclude self-managed superannuation funds from the portability regime. As all members of self managed funds are required to be trustees of the fund, members of self managed funds are able to protect their own interests. Accordingly, members of self-managed funds should be able to determine their own arrangements for portability of benefits.

A fund that ceased to be a self-managed fund would become subject to the portability provisions from that time. As noted below, the Australian Prudential Regulation Authority (APRA) will have the power to freeze

portability if such a fund were to experience liquidity problems as a result of portability.

## 2.4 Timing of transfer

Funds would be required to transfer benefits as soon as practicable following receipt of a request from a member. To ensure that benefits are transferred promptly, the Government proposes to set the maximum time-frame for the superannuation provider to effect the transfer at 90 days following receipt of the member's request.

To adopt a longer notification period, such as 12 months, would diminish the effectiveness of the policy in meeting its objectives. In particular, it would reduce the extent to which portability would enhance competition between superannuation providers and, therefore, reduce the pressure on all funds to maintain investment strategies that meet the needs of members. It would also mean that some fund members would be required to keep their benefits in a fund that they do not consider is meeting their needs and possibly maintain multiple accounts for a substantial period of time.

Equally, issues may be raised about whether a shorter notification period could affect fund returns, for instance, by affecting the asset allocation of funds or by encouraging members to transfer on the basis of short term investment returns. However, retail funds already operate on the basis that members can transfer funds at short notice, as do other managed investments. This does not appear to affect the investment performance of these funds.

Section 50 of the RSA Act imposes a maximum 12 month notification period for the transfer of benefits from an account held with an RSA provider. For consistency, the RSA legislation would need to be amended to align it with the time limit for superannuation funds and ADFs. However, this is not expected to cause any undue difficulties for RSA providers, as it appears that requests for transfers out of RSAs are generally arranged well within the maximum 12 month period.

As outlined below, APRA would have the power to freeze portability if a fund experienced liquidity problems as a result of portability.

## 2.5 Exit fees

Some superannuation funds that allow the outward transfer of benefits will apply exit fees. There are a wide variety of arrangements, reflecting aspects of funds' marketing strategies and overall fee structures. Some public offer funds allow members to choose between the payment of entry/contribution fees or exit fees. In some cases, exit fees decrease to zero over the first few years of membership. In addition, there are also some capital-guaranteed products that have been marketed on the basis of particular benefit structure. These products may provide a lower benefit if the member leaves the fund before a specified time.

Both the introduction of choice of superannuation fund and portability of benefits are expected to place increased pressure on all funds to meet the needs of members, including minimising fees and charges.

The Government has enhanced the disclosure regime for the financial sector, including superannuation funds. The new disclosure regime will generally ensure that prospective public offer fund members are made aware of the level of exit fees and other conditions prior to joining or transferring their benefits into a superannuation fund by requiring the trustee to provide a Product Disclosure Statement (PDS). Non-public offer funds are also required to provide a PDS within 3 months of a person becoming a member.

In this context, the Government considers that it would be preferable not to impose new limits on exit fees.

Nevertheless, the Government must take into consideration the possibility that some funds could use exit fees as a means of countering the introduction of portability. It is for this reason that the Government will reserve the right to regulate exit fees. The Government would only consider regulating exit fees if there was evidence that exit fee arrangements were being structured for the purpose of preventing portability from operating as intended.

## 3 OTHER ISSUES

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### 3.1 Taxation implications of portability

If benefits are transferred from an untaxed fund or source into a taxed fund, the amount will be treated as taxable contribution in the hands of the receiving fund. This is the existing tax treatment of such transfers. In other circumstances, the transfer of benefits between regulated and complying entities will not have a tax consequence (although funds may incur a Capital Gains Tax liability if they liquidate assets to meet transfer requests).

The superannuation contributions surcharge will apply as under current provisions.

Where the member has transferred his or her benefits out of a fund prior to an assessment being received, then the surcharge legislation does not require that superannuation fund to pay the surcharge liability assessed in respect of those surchargeable contributions. The surcharge liability is instead imposed on the new holder of the surchargeable contributions. This treatment will be maintained under portability.

### 3.2 Freezing portability

It is proposed that the Australian Prudential Regulation Authority (APRA) be able to freeze the transfer of benefits or a proportion of benefits out of a fund to another fund where there are prudential concerns, as follows.

If APRA has a reason to believe that the transfer of funds would prejudice:

- (a) the financial position of the fund; or
- (b) the interests of the fund members;

APRA may, in writing, suspend or vary the fund's obligation to pay the benefit for such period as APRA considers fit.

APRA would also have the discretion to freeze portability of benefits where the trustee of the fund has made an application to APRA to do so. APRA

would determine the appropriate length of time for the freeze on portability. Once APRA had ceased a freeze, the maximum notification period for the transfer of benefits would recommence for any outstanding requests for transfer.

### 3.3 Consumer protection and disclosure issues

Portability must be accompanied by an appropriate product disclosure and consumer protection regime. Members must be able to make informed decisions and compare alternative superannuation products. Many of the disclosure requirements that are necessary for portability are already provided by the *Corporations Act 2001* (Corporations Act).

The general disclosure requirements under the Corporations Act harmonise, as far as is practicable, the disclosure requirements for financial products, including superannuation. In addition, the Corporations Act now provides enhanced service provider licensing and conduct regimes.

Disclosure requirements for superannuation funds are now provided under the Corporations Act, as amended by the *Financial Services Reform Act 2001* (FSR amendments), which commenced on 11 March 2002 and is subject to certain transitional arrangements. These disclosure requirements ensure that all prospective public offer fund members are made aware of the level of exit fees and other conditions prior to joining and transferring their benefits into a superannuation fund. At the time a superannuation interest is recommended or issued a Product Disclosure Statement (PDS) is required to be given to a prospective member. The PDS must include information about any amounts that will or may be payable, either by the holder or out of a common fund, in respect of the product after its acquisition, including exit fees.

#### 3.3.1 Information before joining a fund

Under the proposed choice of funds regime, the requirement that a trustee of a public offer superannuation fund must be satisfied that a person has received a PDS prior to joining the fund will be extended to non-public offer superannuation funds.

PDS information requirements for all financial products include details of benefits, costs (including all fees and charges, whether paid directly or indirectly), significant characteristics, any commissions or similar payments,

and their impact on returns, information about dispute resolutions and cooling-off periods. This information is required to be provided clearly, precisely and effectively.

The Corporations Act, as amended, already allows the same principle to apply for portability. Before joining a new fund, a person — a retail client — will need to have been provided with a PDS. This ensures that members have access to sufficient information to compare and contrast alternative funds and to choose a fund that meets their needs.

### **3.3.2 Information about current fund**

Portability would also involve some disclosure requirements in addition to those for choice of funds. Members must be able to assess the consequences of taking their benefits out of their current fund. To do this, members require information about their current fund and the status of their benefits.

The Corporations Act disclosure obligations include a requirement for fund trustees to provide certain member and fund information after each reporting period (usually 12 months). This includes (amongst other things):

- the amount of the member's withdrawal benefit at the start of the reporting period, the amount of the member's withdrawal benefit at the end of the reporting period, the method by which that amount was worked out, and the proportion of that benefit that must be preserved;
- the amount payable on a member's death and details of any disability benefits;
- a description of the fund's investment strategy and investment objectives of the fund;
- a statement of fund assets and information on the fund's rate of net earnings; and
- information relating to the fees, charges, expenses and administrative or other operational costs of the fund and the amount of fees and charges deducted by the fund from any account held in respect of the member.

More generally, periodic information for all financial products is required to include the termination value at the end of the reporting period (to the extent to which it is reasonably practicable to calculate). Further, under regulations,

details of amounts paid during the reporting period in respect of a financial product either directly or from a common fund are required to be disclosed.

The Government considers that there may be merit in a specific requirement that funds disclose on the member benefit statement the level and amount of exit fees that the member would be required to pay if they withdrew their benefits from the fund at that time.

However, members may wish to consider moving their superannuation a substantial period of time after receiving a member benefit statement. The Corporations Act (in provisions similar to previous provisions in the *Superannuation Industry (Supervision) Regulations (SIS Regulations)*) also requires a trustee to provide information to members on request. This includes any information that the member requires to understand their benefit entitlements, to understand the main features of the fund and to make an informed judgement about the management and financial condition of the fund.

The Government considers that fund trustees should also be required to provide information to members on request that would allow them to make an informed decision about the transfer of their superannuation benefits. This information should include the member's withdrawal benefit and amount of exit fees that would be payable at that point in time.

One possible approach is to require fund trustees to provide to members, on request, an additional report that includes updated information on the amount of the member's withdrawal benefits and exit fees payable at that point in time. An alternative is to require fund trustees to provide a short form statement that focuses specifically on the amount of the member's withdrawal benefit and exit fees payable at that point in time.

The Government also considers that there may be merit in implementing particular disclosure requirements for trustees of a fund that offer portability to defined benefit members (including in restricted circumstances).

Together, these disclosure requirements should ensure that members are able to make an informed decision about portability.

### **3.3.3 Market conduct**

Portability would increase the importance of financial advisers in the selling of superannuation.

The FSR amendments to the Corporations Act have drawn together separate regulation of financial advice in relation to different types of financial products into a single licensing regime for persons seeking to carry on a financial services business. Accordingly, persons who advise on superannuation products (both life and non-life products) will be subject to licensing or authorisation requirements administered by the Australian Securities and Investments Commission. Licensed financial service providers are subject to a range of measures regulating their conduct and disclosure under the Corporations Act, designed to provide for a high level of consumer protection.

### **3.3.4 Education campaign**

The Government would conduct an education campaign prior to the commencement of portability. The campaign would be designed to meet the information needs of both fund trustees and fund members.

### **3.3.5 Cooling-off period**

In certain circumstances Division 5 of Part 7.9 of the Corporations Act, and associated regulations, provide a member or standard employer-sponsor (in the first instance) of a public offer entity with a cooling-off period. The Corporations Act allows such persons to return a superannuation product in a public offer fund, approved deposit fund (ADF) or Retirement Savings Account (RSA) by a notifying request to the fund's trustee within a 14 day period after the issue of the interest or confirmation of the transaction.

## **3.4 Consent to transfer**

Under the SIS Regulations, fund trustees are required to maintain a member's minimum benefits in the fund until they are cashed out as benefits of the member or rolled over or transferred to another regulated fund (SIS Regulation 5.08).

Regulations 4.12 and 6.29 of the SIS Regulations require that a member's benefits must not be transferred unless the member has given his or her consent to either the trustee of the original fund or the receiving fund, or the transfer is to a successor fund. These provisions are designed to protect fund members from any unauthorised movement of superannuation savings by fund trustees. They do not provide members with a right to portability for their benefits.

### 3.5 Links to choice of fund

In its 2001 pre-election statement *A Better Superannuation System* and the *2002-03 Budget*, the Government reaffirmed its policy to require employers to offer employees a choice of superannuation funds. The choice of funds policy will allow a member to choose which fund will receive current and future employer contributions.

The Government's portability and choice of funds policies are complementary. If portability and choice of funds are both available to a member, the member will be entitled to shift existing entitlements into a preferred fund and ensure that future employer contributions are paid directly into that fund. This will ensure that all of a member's benefits are held in his or her preferred fund. While the Government's portability and choice of fund policies are complementary, they are not dependent on each other. Accordingly, the Government's portability proposal does not require the successful implementation of its choice of fund policy.

Furthermore, there will be no obligation for a member to exercise portability if he or she chooses their superannuation fund or, if portability is exercised, to transfer existing benefits into the fund that is currently receiving contributions for the member. While portability will apply to all withdrawal benefits, choice of funds will only apply to mandated employer contributions covered by the Superannuation Guarantee arrangements.

### 3.6 Timing

The proposed start date for portability is 1 July 2004.