



Government of **Western Australia**
Department of **Treasury and Finance**

Choice of Super Fund in the Western Australian State Public Sector

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Contents

Overview	1
Employees	2
Eligible employees	2
When you are given a Standard choice form	4
Things employees should know	5
Information and advice.....	6
Employers.....	8
Administering the Standard choice form.....	8
Things employers should know	10
Common Payments and their Treatment for Superannuation Purposes	12

Overview

Since 30 March 2012, most Western Australian State public sector employees have had the right to choose the super fund for their employer's Superannuation Guarantee (SG) contributions, and most State public sector employers have had choice of fund obligations.

Choice of fund is provided through the *State Superannuation Act 2000*. This Act requires employers to provide eligible employees with a Standard choice form and to act on their choice, consistent with the requirements of the Commonwealth's *Superannuation Guarantee (Administration) Act 1992*, Part 3A Division 6.

This guide sets out the basic choice of fund rights and obligations of State public sector employees and employers.

Further information about choice of fund and a copy of the Standard choice form can be obtained from the Australian Taxation Office www.ato.gov.au.

Employees seeking information about choice of fund can also speak to their employer's Human Resources officer, or visit 'Superannuation' menu on the Western Australia Department of Treasury and Finance website at wa.gov.au/treasury-and-finance

Employees

Eligible employees

New and current employees

State public sector employees are generally able to choose the super fund for their employer's SG contributions.

New employees at most agencies are required to be given a **Standard choice form** within 28 days of starting work, whether they are new to the public sector or have transferred from another public sector agency. This form is used to advise their employer of their chosen super fund.

Current employees at most agencies can also choose a new complying super fund for their employer's SG contributions by filling in a Standard choice form at any time during the course of their employment.

If an employee does not choose a super fund, their employer will pay their SG contributions into the employer's 'default' or 'nominated' super fund. For this reason, employees who want their SG contributions paid to the employer's default fund do not need to complete a Standard choice form. The requirements relating to stapled funds, as defined in Part 3A Division 7 of the Commonwealth's *Superannuation Guarantee (Administration) Act 1992*, currently do not apply to State Government employers and employees covered by the *State Superannuation Act 2000*.

The employer's default fund is required to be entered on the Standard choice form provided by an employer to its new employees.

Former State public sector employees

Former public sector employees who work for an employer outside the State public sector can choose to receive their SG contributions into a GESB Super account, if they already hold a super account in a scheme administered by GESB.

GESB administers accounts within a constitutionally protected fund that was established for public sector employees only. The State legislation that governs the fund now permits the GESB Super scheme to receive contributions from employers outside the WA public sector. If an employee only holds a West State Super, Gold State Super or Retirement Income account, a new GESB Super account will be opened for the former employee if a non-government employer contribution is received on their behalf.

Employees who have multiple super accounts as a result of working for different organisations can confirm how many accounts they have, and find any ATO-held or lost super, through linking their myGov account to the Australian Tax Office.

Super can also be transferred from different super funds into one account through myGov, but careful consideration should be given before consolidating super accounts. This may include seeking professional advice to assess whether it is in a person's best interests to consolidate accounts, based on their individual circumstances. A wide range of issues should be considered, including the impact of fees and charges in multiple schemes on the person's overall super investment, the potential impact of changing the insurance arrangements that apply to different super accounts, and that the decision may be irrevocable, because some super schemes are not able to be re-joined once an account has been closed.

Members of defined benefit schemes

New employees who are contributing members of the State's defined benefit schemes are not required to be offered a Standard choice form by their employer.

These schemes are:

- Gold State Super (GESB administered, closed to new members December 1995)
- the State Pension Scheme (GESB administered, closed to new members August 1986), and
- the Fire and Emergency Services Super Fund's defined benefit scheme.

Defined benefit schemes operate differently from accumulation schemes. Members of defined benefit schemes make a long-term commitment to contribute a percentage of their salary to their super, and do not receive employer SG contributions. They receive a final benefit determined by a formula that is generally based on their length of service, their level of member contributions and their final salary.

Due to the design of defined benefit schemes and the significant commitment of membership, a Standard choice form alone cannot be used to either join or leave one of these schemes. If a Gold State Super or Pension Scheme member decides to choose a different fund to receive employer SG contributions, they must first formally withdraw from the scheme by contacting GESB. The next step is to direct their employer to make future SG contributions to another complying fund using a Standard Choice form.

Defined benefit scheme members are strongly advised to seek independent financial advice relevant to their own situation and personal circumstances before making a decision to withdraw, because this action is irrevocable.

Following withdrawal, a Gold State Super member's existing benefit is 'preserved' in the fund, and the member will generally not be able to access or roll over this preserved benefit until they reach age 55 and no longer work for the State Government.

This restricted access is a usual requirement of defined benefit schemes, and is not affected by choice. The employee's future SG contributions paid into an accumulation fund will be separate from their preserved benefit in the defined benefit fund.

The consequences of withdrawal from the Pension Scheme depend significantly on individual membership history and specific scheme rules. Members of the Pension Scheme should contact GESB for this information before making any decision to withdraw.

Members of the FESS defined benefits scheme are permitted to transfer their defined benefit into a FESS accumulation account when they reach age 55 or have completed 30 years' of Fund membership if they wish. However, this action is irrevocable and they are strongly advised to seek professional advice before doing this.

For more information about Gold State Super or the Pension Scheme contact GESB on 13 43 72 or visit www.gesb.wa.gov.au.

For more information about the FESS defined benefits scheme contact FESS on (08) 9382 8444 or visit www.fesssuper.com.au.

When you are given a Standard choice form

Employers are required to provide their eligible new employees with a Standard choice form within 28 days of starting work. This usually occurs as part of the induction process.

As a new employee, you have two options for dealing with the Standard choice form:

Option 1

Do nothing

You are not obliged to complete and return the Standard choice form.

If you do not complete and return the Standard choice form, employer Superannuation Guarantee contributions will be paid on your behalf into your employer's 'default' super fund.

If you don't fill in a Standard choice form to choose a particular super fund, your employer is still required to pay super contributions for you (currently set at the equivalent of 12% of your eligible salary) to a super fund, and will pay them to its 'default' fund.

Your employer's default fund is required to be named in the Standard choice form provided to you.

The current default super scheme for most public sector employees is My GESB Super, which is a standard accumulation scheme. However, some public sector agencies have been permitted to establish their own default super fund.

If there is any doubt, the employer's default fund can be confirmed by contacting your agency's Human Resources area.

All current default funds are accumulation style superannuation schemes, except for the Fire and Emergency Services Superannuation (FESS) defined benefit scheme.

In accumulation schemes the super account builds up over time, in many ways like adding money to a bank account. Its growth depends on how much is contributed, the length of time the super is invested, the fees and costs deducted from the account and the overall investment performance of the member's chosen investment plan.

Information about My GESB Super is available on the GESB website at www.gesb.wa.gov.au/.

Employees who don't choose a fund when starting work may choose another super fund at a later date.

Option 2

Choose a new super fund and advise your employer

Eligible employees are responsible for providing the details of their chosen fund to their employer, by either completing the Standard choice form, or providing all necessary information in writing. Without this information, the employer is not obliged to accept your choice.

Your chosen fund must be a 'complying' superannuation fund or retirement savings account (RSA). This fund is required to provide you with information to provide to your employer, including a letter from the fund trustee or RSA provider confirming that the fund is a complying fund and that it will accept payments from your employer.

Employees who choose their self-managed super fund (SMSF) need to include a document confirming that the fund is regulated (printed from superfundlookup.gov.au/).

When you have provided all the required information, your employer has two months to organise the administrative details and commence making contributions to that fund. By the close of that two-month period, all employer contributions must be paid to your chosen fund, but may also be paid earlier than this.

Things employees should know

Before changing super fund

You should compare the features of your current fund and new fund before making a change. Information on choosing super funds is provided by the Australian Securities and Investments Commission (ASIC) on its MoneySmart website moneysmart.gov.au/.

You can choose often as you want

There is no restriction on the number of times State Government employees can change funds through their employer during the course of their employment.

It should be noted that superannuation is designed to be a long-term investment and the possible financial consequences for changing funds frequently should be considered.

If your employer disregards your choice

If an eligible employee has supplied the required information, their employer is obliged to accept their choice of fund. If your employer doesn't accept your choice, talk to your employer, get the facts, and if you're not satisfied with the response, contact the Australian Taxation Office (ATO) on 13 10 20 to discuss your situation.

Voluntary super contributions

The legislation for choice of fund applies to the SG contributions made by your employer.

Additional super contributions made by you or your employer, such as after-tax contributions or before-tax 'salary sacrifice' contributions, can also be made to any eligible super fund.

If you would like your employer to pay these voluntary superannuation contributions into your chosen fund, you will need to discuss this with your HR Officer.

Tax File Number (TFN)

Employees are requested to provide their TFN in Section A of the Standard choice form, but it is not compulsory to provide a TFN. However, if a TFN is not provided, the super fund may have to pay extra tax on certain contributions, you may miss out on Commonwealth-provided super co-contributions, and you will not be able to locate lost super accounts through your myGov account.

Information and advice

Asking your employer

Your employer or HR Officer is permitted to give you the facts about choice of super fund rules, their employer default fund, and how you can nominate your chosen fund.

However, your employer is not legally permitted to advise you on which super fund you should choose, or make recommendations about your super arrangements such as whether to consolidate your super into one account, as this is likely to be considered 'financial advice'.

In general, the law requires anyone giving financial advice to be licensed by the Australian Securities and Investments Commission, so do not seek financial advice from your employer unless they are licensed to provide it.

Getting independent financial advice

If you are approaching retirement, have complex tax or investment needs, have large amounts in super, or just find super complex and confusing, you should seek advice from a licensed financial adviser.

There are also free of charge resources available that could assist you with information to inform any decision.

Free information

More information about choice of fund and State public sector superannuation arrangements may be obtained from your HR Officer, or from the Department of Treasury and Finance 'Superannuation' menu at wa.gov.au/treasury-and-finance.

If you want to choose a new super fund, check out these free sources of information:

- The ASIC website at www.moneysmart.gov.au
- The ATO's website at www.ato.gov.au

For more information about West State Super and GESB Super, the default fund schemes for most State Government employers, call GESB at 13 43 72 or visit www.gesb.wa.gov.au.

FES Super is the superannuation fund for employees of the Department of Fire and Emergency Services of Western Australia (DFES), with membership also available for employees of the United Professional Firefighter's Union of Western Australian, the Western Australian Volunteer Fire and Rescue Services Association (Inc.); and the Fire and Emergency Services Superannuation Board.

For more information about the FESS schemes contact FESS on (08) 9382 8444 or visit www.fessuper.com.au/.

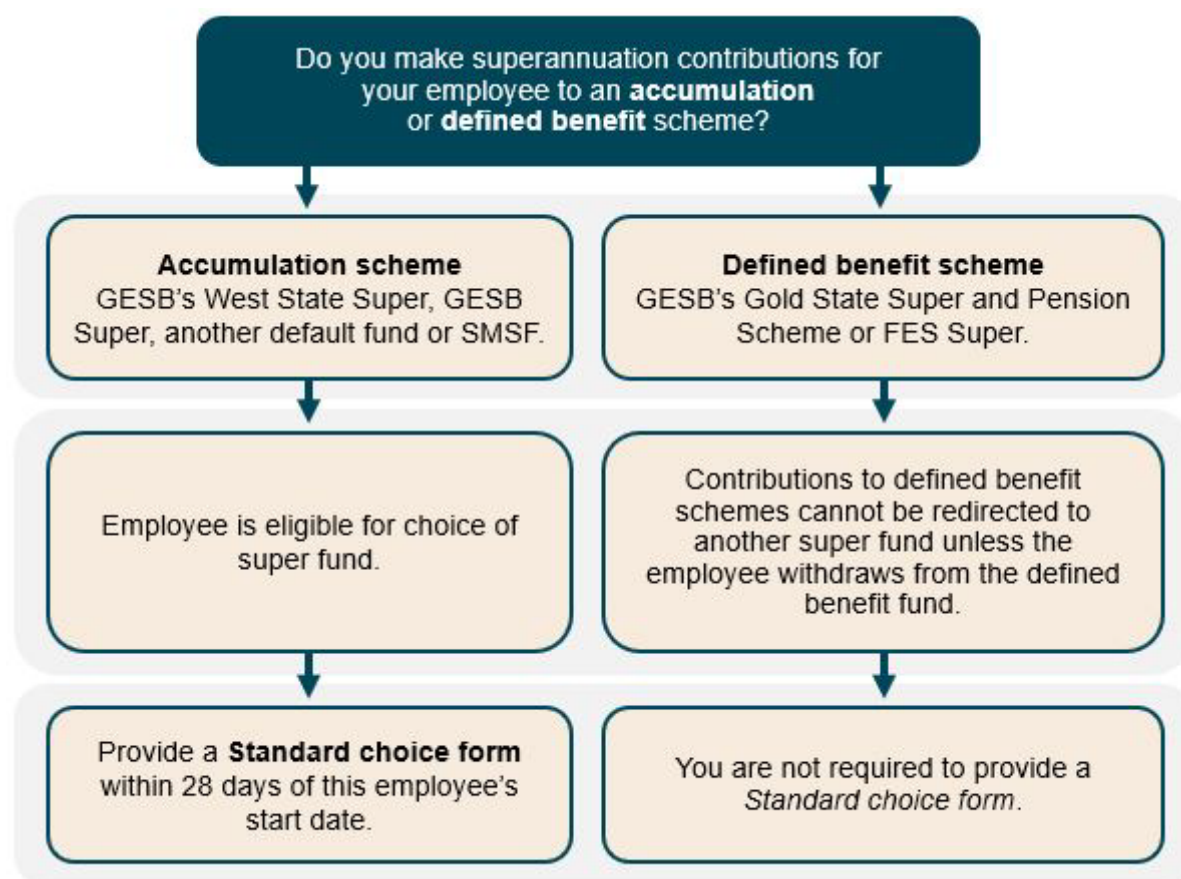
If your employer has selected another default fund, your HR Officer will be able to provide that super fund's contact details.

Employers

Administering the Standard choice form

Employers must complete the following steps as part of their choice of fund obligations:

Step 1: Identify eligible employees



Step 2: Provide a Standard Choice Form

Employers are legally required to provide a Standard choice form to new eligible employees. New employees include existing public sector employees who have transferred from another agency.

Obtain a Standard choice form

The Standard choice form can be downloaded from the ATO website at www.ato.gov.au This form was updated in April 2023 however previous versions of the form can still be used.

Fill in Section C

Employers must complete 'Section C' of the Standard choice form before giving the form to an employee.

For employers whose default fund is GESB, the required fund details are provided on the Department of Treasury and Finance's website or can be obtained directly from GESB.

Employers who have a complete or partial exemption from the *State Superannuation Act 2000* may have a different default fund.

Provide the form within the timeframe

Provide the Standard choice form to new eligible employees within 28 days of their start date. Employees must be given the opportunity to nominate a fund if they are eligible, but are not required to complete the form if they do not wish to.

Step 3: Act on the employee's choice

Accept the form

Employers have two months from the date they receive a completed Standard choice form to pay SG contributions to the employee's chosen fund.

If an eligible employee has chosen a fund before they are given a Standard choice form and they provide all the necessary information, you are required to act on their choice.

Before remitting contributions

Check that:

- the Standard choice form has been completed correctly,
- the required information has been provided, and
- the fund nominated by the employee is a 'complying superannuation fund'. A super fund is considered to be a complying superannuation fund if it meets specific requirements and obligations outlined in the *Superannuation Industry (Supervision) Act 1993*. The register of complying super funds can be accessed on Super Fund Lookup at superfundlookup.gov.au/.

If your employee does not choose a fund, you must pay their super contributions into your default fund.

Step 4: Keep the necessary records

Employers must keep records that:

- Show the agency has offered choice of superannuation fund to its eligible employees and provided them with a **Standard choice form**.
- Show that the agency has acted on its employees' choice of superannuation fund.
- Contain information about the employer default fund, such as a copy of its Product Disclosure Statement (PDS).

Records must be in English and must be kept in accordance with the *State Records Act 2000*. If the records are not in a printed form (for example, on magnetic tape or computer disk), they must be in a form which is readily accessible and easily converted into written English.

Things employers should know

1. The penalties for non-compliance

If an employer does not meet its choice of fund obligations, it remains liable for the SG charge, together with interest and penalties.

Employers must:

- offer choice of superannuation fund to their eligible employees, and
- act on their employees' choice by paying their SG contributions to their chosen fund, or to the employer's default fund if they do not choose a fund.

2. Do not give financial advice

Employers can provide employees with factual information about:

- Their obligations as an employer under choice of fund.
- The employer's default fund.
- How the employee can nominate a chosen fund.

Employers can't recommend:

- Which super fund an employee should choose or remain with.
- The level of personal contributions an employee pays into super.
- Whether an employee's super should be consolidated.

These recommendations may amount to either general or personal financial product advice. Anyone providing financial product advice is generally required by law to be licensed by the Australian Securities and Investments Commission (ASIC).

3. Public sector SG obligations

The base used by State public sector employers to calculate their SG contributions is defined by two sets of rules that define this entitlement:

- the *Superannuation Guarantee (Administration) Act 1992 (SGA Act)*, which requires employers to use ordinary time earnings (OTE) to calculate the minimum SG contribution, and
- the *State Superannuation Regulations 2001 (SS Regulations)*, which set out a list of items additional to OTE that must be included in the base for calculating SG contributions for State workers.

All public sector employers must base their SG contributions on the requirements of both the SGA Act and the SS Regulations, unless the employer has a complete exemption from the *State Superannuation Act 2000*.

A list of the employers with a complete exemption can be found at regulation 12E of the SS Regulations.

As a public sector entitlement, this contribution base for SG contributions is used regardless of whether the contribution is paid to a public sector scheme or to another complying superannuation fund chosen by the employee.

SG and OTE concepts do not apply to contributions for members of Gold State Super or the Pension Scheme:

- Super contributions for Gold State Super members are generally calculated on employee payments except where these are specifically excluded under regulation 17A of the SS Regulations.
- Super contributions for Pension Scheme members are based on the requirements of section 6(1) of the *Superannuation and Family Benefits Act 1938*.

A summary of the treatment of some key salary components for calculating SG payments for State workers is provided on the following page.

Common Payments and their Treatment for Superannuation Purposes

Payment type	OTE only (SGA Act Commonwealth)	OTE Additional Items for State workers	Other GESB Schemes
	Ordinary Time Earnings (OTE)	GESB Super, West State Super, Choice Funds	Gold State Super, Pension Scheme
Annual leave loading	Usually ¹	Yes	No
Annual leave payment	Yes	Yes	Yes
Attraction and retention allowance	Yes	Yes	Yes ²
Benefits subject to FBT	No	No	No
Bereavement leave	Yes	Yes	No
Bonuses ³ that are:			
• Assessable income for income tax purposes and not paid for work exclusively outside ordinary hours	Yes	Yes	No
• Attraction, sign-on or retention lump sum payments that are assessable income for income tax purposes	Yes	Yes	No
• Paid for work exclusively outside ordinary hours	No	No	No
• Not assessable in the hands of the employee for income tax purposes	No	No	No
Casual loading	Yes	Yes	Yes
Commissions	Yes	Yes	No
Commutated overtime payment	No	Yes	Yes
Directors' fees	Yes	Yes	Yes
District allowance	Yes	Yes	No
Long service leave payment	Yes	Yes	Yes
On-call allowance ⁵	No	Yes	Yes
Over Award payments	Yes	Yes	Yes
Overnight travel allowance	Yes	Yes	No
Overtime	No	No	No
Redundancy payments	No	No	No
Reimbursement for expenses (travel etc)	No	No	No
Remote allowance	Yes	Yes	No ⁴
Salary or wages greater than SGA Act maximum contribution base	No	Yes	Yes
Salary or wages paid for jury service by the worker's usual employer	Yes	Yes	Yes
Salary or wages paid for parental leave ⁸	No ⁷	Yes	Yes
Salary or wages paid for undertaking service in the ADF (e.g. Reserves) by the worker's usual employer	No	Yes	Yes
Salary or wages paid for voluntary emergency management activity under the <i>Fair Work Act 2009</i> , by the worker's usual employer	No	Yes	Yes
Salary or wages paid to a worker holding a visa or entry permit set out in SGA 1993 Regulation 7(1) and satisfying its conditions	No	Yes	Yes
Salary or wages paid to a worker of less than \$450 per month	Yes	Yes	Yes
Salary or wages paid to a worker under 18 years of age to work no more than 30 hours per week	No	Yes	Yes
Salary sacrificed payment, benefit, or allowance	Yes	Yes	Yes
Shift loadings	Yes	Yes	Yes
Sick leave payment	Yes	Yes	Yes
Termination of employment payments that are:			
• Lump sum payment in lieu of unused sick leave	No	No	No
• Lump sum payments for unused annual or long service leave	No	No	No
• Payments in lieu of notice	Yes	Yes	No
Weekly compensation payments under the <i>Workers' Compensation and Injury Management Act 2023</i>	Possibly ⁶	Yes	Yes

Choice of Super Fund in the Western Australian State Public Sector

Notes:

- ¹ This loading is OTE except if linked to the loss of opportunity to work overtime. Under the regulations it will attract employer contributions to GESB Super, WSS and Choice Funds.
- ² This allowance is applicable to Gold State Super and the Pension Scheme subject to being an ongoing entitlement of the position. However, see also Bonuses, where lump sum payments for attraction and/or retention are excluded for Gold State Super and the Pension Scheme.
- ³ Bonuses were excluded from superannuation for WSS and GESB Super until 1 July 2008, when OTE rules were standardised.
- ⁴ If this is paid to compensate a Gold State Super or Pension Scheme employee for remoteness and social isolation arising from the location, then it should be included in the superannuation calculation. However, if it is paid to compensate a Gold State Super or Pension Scheme employee for costs associated with the location, it is not included in the superannuation calculation.
- ⁵ If this is paid for an employee to be available for work out of normal hours then it should be included in the superannuation calculation. However, if it is paid for actual hours worked outside of normal hours, the on-call allowance is treated as overtime and does not form part of superannuation calculations.
- ⁶ The OTE status of Worker's Compensation payments vary depending on whether work is performed or not. However, under the regulations these payments will attract employer contributions for State Workers. This allowance is applicable to Gold State Super and the Pension Scheme subject to being an ongoing entitlement of the position. However, see also Bonuses, where lump sum payments for attraction and/or retention are excluded for Gold State Super and the Pension Scheme.
- ⁷ For children born from 1 July 2025, superannuation will be payable on Commonwealth-funded paid parental leave under changes enacted by the *Paid Parental Leave Amendment (Adding Superannuation for a More Secure Retirement) Act 2024* (Cth).
- ⁸ Where an employer is required to make additional contributions under Regulation 12D, this includes an amount in respect of Unpaid Parental Leave under the Treasurer's declaration published in the Gazette on 28 January 2020.

Information including advice ('information') provided in this brochure is given in good faith and solely on the basis that you are responsible for making your own assessment of it and that you obtain your own independent advice. The information should not be construed to waive any legal obligations on your part.

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