

Preliminary Submission to the Productivity Commission Inquiry into Default Superannuation Funds in Modern Awards

ASFA Submission

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Please Note:

This submission provides general information and is not intended as advice. Although verification of the accuracy of the information contained in this paper has taken place, liability is not accepted for any errors or omissions that may have occurred.

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INTRODUCTION

ASFA is a non-profit, non-politically aligned national organisation whose mission is to protect, promote and advance the interests of Australia's superannuation funds, their trustees and their members. ASFA's focus is on the issues that affect the entire superannuation industry. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self-managed superannuation funds and small APRA funds through its service provider membership, represents over 90 per cent of the 12 million Australians with superannuation.

This preliminary submission responds to a number of the questions asked in the Issues Paper released by the Productivity Commission on 29 February. ASFA expects that it will provide further submissions to the Productivity Commission during the course of the Inquiry.

For what proportion of the workforce do the default superannuation provisions in awards directly apply?

ASFA understands that currently between 20 per cent and 30 per cent of employees are directly subject to award provisions relating to superannuation. This includes employees who are paid more than the award rate but are subject to other award provisions. In some instances both the employer and employee may not be aware that award provisions apply. Award modernisation is likely to have increased the percentage of the labour force covered by awards given that the modern awards apply more generally than the previous awards which largely related to employers who were represented by organisations which were respondents to specific awards.

Formal enforcement of award provisions relating to default fund is not common with few if any recorded cases. ASFA is not aware of any case. Generally if an individual is covered by an industrial award and wants their contribution directed to a specific fund they will exercise choice of fund, supported by ATO enforcement action if necessary, rather than take action in the Federal Court to enforce an award provision relating to default fund. However, in workplaces with a relatively high level of union coverage the possibility of industrial action in response to a breach of award provisions relating to default fund might be an effective sanction for any breach.

Survey data from 2011 for employer related superannuation indicate that both defaults and choice are important in determining market share for various funds.

Who is the provider of your MAIN super fund?				
Rank	Fund	Did you choose the main super fund that you are in?		
		Yes, I specifically chose it	Yes, I was happy with the default fund on offer with my employer	Total
		<i>Count</i>	<i>% within</i>	
1	AustralianSuper	17 9.7%	16 9.8%	33 9.7%
2	AMP	10 5.7%	12 7.3%	22 6.5%
3	BT Financial Group	12 6.9%	4 2.4%	16 4.7%
4	HESTA	8 4.6%	6 3.7%	14 4.1%
5	REST Superannuation	5 2.9%	9 5.5%	14 4.1%
6	Colonial First State	10 5.7%	2 1.2%	12 3.5%
7	MLC	6 3.4%	4 2.4%	10 2.9%
8	Self-managed super fund	8 4.6%	0 0.0%	8 2.4%
9	UniSuper Limited	3 1.7%	5 3.0%	8 2.4%
10	ING	5 2.9%	2 1.2%	7 2.1%
11	Plum	1 0.6%	6 3.7%	7 2.1%

12	Statewide Superannuation	6 3.4%	1 0.6%	7 2.1%
13	Sunsuper	4 2.3%	3 1.8%	7 2.1%
14	First State Super	1 0.6%	5 3.0%	6 1.8%
15	HOSTPLUS	5 2.9%	1 0.6%	6 1.8%
16	PSS	1 0.6%	5 3.0%	6 1.8%
17	Telstra Super Pty Ltd	1 0.6%	5 3.0%	6 1.8%
18	Vic Super	1 0.6%	5 3.0%	6 1.8%
19	Asgard	3 1.7%	3 1.2%	5 1.5%
20	Government Employees Super	0 0.0%	5 3.0%	5 1.5%
21	Health Super Pty Ltd	2 1.1%	3 1.8%	5 1.5%
22	Media Super	3 1.7%	2 1.2%	5 1.5%
23	Mercer	1 0.6%	4 2.4%	5 1.5%
24	MTAA Superannuation Fund	4 2.3%	1 0.6%	5 1.5%
25	National Australia Bank Group	1 0.6%	4 2.4%	5 1.5%
26	QSuper	2 1.1%	3 1.8%	5 1.5%

How do employers currently choose between funds when there is more than one default fund listed in an award?

There are a variety of methods that employers currently use.

In some cases the employer will try to avoid choosing a default by strongly encouraging every employee to exercise choice of fund. This is more likely to occur in smaller businesses and/or in employment situations where there is a reasonable expectation of being able to get an employee to formally exercise such a choice.

An employer may choose as the default the fund with the highest level of coverage in the sector in which they operate as new employees are more likely to be a member of that fund relative to other funds. Despite the emergence of clearing houses and the like for superannuation contributions it generally is easier for employers to pay contributions to mainly one fund.

Employers may choose a default fund as a result of an approach by a business development manager for the fund concerned. Generally such business development managers point out the advantages of having the fund as a default in terms of both convenience for the employer and benefits to the employee.

Some employers may choose to undertake a competitive tender arrangement and/or engage a consultant to evaluate the alternative available. Such processes are more likely to be undertaken by larger employers. However, when the award lists relatively few alternative default funds then it may not make much sense to undertake such a formal process.

Other employers will undertake a less formal evaluation process. This might make use of Product Disclosure Statements and other material issued by funds. There also are a number of websites supported by superannuation fund rating agencies which provide information about superannuation funds.

Superannuation fund rating agencies also provide summary rating information on funds which employers might use to assist decisions about default fund selection. While each rating agency has its own proprietary approach with varying degrees of disclosure about the rating process that is adopted, generally ratings take into account factors such as organisational strength, investments, fees, administration, member services and employer services. The rating agencies licence superannuation funds to make use of such ratings in fund websites and promotional materials. Some funds publish the ratings given by more than one ratings agency.

It is also possible that some employers might choose one fund more or less at random if more than one fund is listed as a default fund. Other approaches might be to seek the views of an accountant, financial adviser, industry colleague, family member or friend. There is no legal obligation on employers to compare superannuation funds in any structured way but of course many employers will give their active consideration to available options. There is no recorded legal case where an employer has been held liable for making a 'bad' choice of default fund for its employees.

Incumbency is also very important for determining which fund or funds are being used as a default. Changes to default funds listed in an award (in terms of any additional fund or funds being listed) are unlikely to lead to many employers reconsidering the default fund they use.

How do employers currently choose a fund when there is no default fund listed in an award?

The methods used by employers when there is no default listed in an award or their employees are not subject to an award are similar to those listed immediately above.

However, when there is no award coverage there is opportunity to consider a greater variety of superannuation funds. The number of possible arrangements also will be greater to the extent that in the non-award area it has generally been possible for superannuation funds to offer customised or negotiated arrangements. For instance, it is not unusual for retail superannuation funds to offer customised employer superannuation plans with varying fees and other characteristics depending on the number of employees and aggregate account balances involved. A number of industry funds also offer such arrangements. This can involve the creation of specialised divisions within retail and industry funds, which can include, in appropriate cases, defined benefit arrangements.

Generally, larger employers have been able to negotiate lower fees and/or enhanced insurance or other arrangements but the precise outcome has depended on the operational policies of the fund concerned and the negotiating strength of

the employer. Going forward the MySuper legislation intends to place limitations on the ability of superannuation product providers to offer such customised arrangements.

The use of competitive tenders and/or tender consultants also is more common when there is no default fund listed in an award, particularly in the case of larger employers.

To what extent have employers made use of the grandfathering clause as opposed to choosing a fund from those listed in the relevant modern award?

The grandfathering clause permits employers to continue to contribute to funds that they were using prior to 12 September 2008. While the grandfathering clauses are important for certain employers and in certain industries, including those in specific states, it is relatively common for employees to have default contributions made to the mostly large funds listed in modernised awards.

The funds benefitting from the grandfathering provisions in the main are relatively small funds and/or regionally based although there are exceptions.

Fewer than two per cent (possibly less than one per cent) of employees are likely to be in default arrangements supported by the grandfathering provisions.

What are the anticipated effects of MySuper on the superannuation industry in the short and long term, particularly in relation to the pace and extent of consolidation?

The introduction of MySuper will lead to an acceleration of the current pace of consolidation of superannuation funds.

The introduction of APRA licensing of superannuation fund trustees and entities has already led to a very substantial reduction in the number of superannuation funds, particularly smaller corporate funds.

There currently are under 300 trustee entities and around 360 different superannuation funds (putting SMSFs to one side). Around 230 have assets in excess of \$50 million, around 110 with more than \$1 billion and 35 with more than \$5 billion. There has been a marked increase in the proportion of assets and members in funds with over \$1 billion in assets. Supervisory levy and other figures indicate that the top 100 funds account for the bulk of the assets in the APRA supervised sector. This will be reinforced by the introduction of MySuper.

Projections of future fund numbers

The pace of consolidation appears to be picking up, in part due to market pressures, the impending introduction of MySuper and other Stronger Super measures, and APRA processes.

During calendar 2011 the number of funds with more than \$50 million in assets fell from 255 to 232 with most of the drop occurring before 30 June (when capital gains tax rollover relief expired). Around half of the reduction was in retail funds, with the rest split between corporate and industry funds with around five departures in each. Currently there are 55 corporate funds, 53 industry funds, 38 public sector funds and 86 retail funds with more than \$50 million in assets.

Independent analysis of the industry fund category suggests that while around 25 industry funds will have scale and other characteristics to support their continued existence and expansion, around 30 exhibit characteristics which make their long term existence challenging.

In regard to corporate funds, while the rate of closure of such funds has become lower compared to when APRA licensing was first introduced, there is still likely to be a significant number of such funds that will close. As well, some corporate funds will remain largely in name only, with all major functions (including trusteeship) contracted out. By 2015 there might be only 40 corporate funds which have their own specific trustee.

For public sector funds, there is likely to be consolidation in numbers but each state is likely to retain a fund or funds, along with the Commonwealth. The existence of unfunded or only partially funded superannuation liabilities in a number of public sector superannuation funds makes their merger with other superannuation entities problematic. However,

even amongst the public sector funds there already has been significant consolidation. Further mergers within each state where there is more than one public sector fund are likely.

A number of industry and corporate funds are currently in the process of discussing mergers with other funds. A current impediment to such mergers is the absence of capital gains tax loss rollover relief. Many funds have substantial deferred tax assets due to unrealised and carry forward tax losses. These can amount to two per cent or more of total assets in the fund.