



Productivity Commission

ASU Submission

Inquiry into the Competitiveness and Efficiency of the Superannuation System – Stage 3: Assessing Competitiveness and Efficiency

Submitter: David Smith, National Secretary

Organisation: Australian Services Union

Address: 116 Queensberry Street
Carlton South, Victoria, 3053

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Introduction

1. The Australian Services Union (ASU) is one of Australia's largest unions, representing approximately 135,000 members.
2. The ASU was created in 1993. It brought together three large unions. Namely, the Federated Clerks Union, the Municipal Officers Association and the Municipal Employees Union, as well as a number of smaller organisations representing social welfare workers, information technology workers and transport employees.
3. Currently ASU members work in a wide variety of industries and occupations because the Union's rules traditionally and primarily cover workers in the following industries and occupations:
 - Disability support
 - Social and community services
 - Local government
 - State government
 - Transport, including passenger air and rail transport, road, rail and air freight transport
 - Clerical and administrative employees in commerce and industry generally
 - Call centres
 - Electricity generation, transmission and distribution
 - Water industry
 - Higher education (Queensland and South Australia)
4. The ASU has members in every State and Territory of Australia, as well as in most regional centres. About 50% of ASU members are women.

The ASU response

5. The Productivity Commission, asks participants in the inquiry to provide feedback on the performance of the current default fund allocation system by using the Stage 1 competitiveness and efficiency criterion identified by the commission¹. Whilst the commission's Issues Paper published in July 2017 acknowledges that the default fund market must aim to maximise long-term net returns to fund members², the ASU says this is a misguided emphasis. The default market must aim to protect and improve decent retirement outcomes for all Australians. To protect and improve the best long-term returns, the choice of default fund made by employers – or any other party other than the employee – must also remain the subject of regulatory review as a matter of the *Fair Work Act 2009* (FW Act).
6. The ASU welcomes commitments to seeking improved outcomes for members that are achieved by seeking system stability. We strongly support effective measures of transparency and accountability for the governance of superannuation funds that ensure integrity of the whole compulsory system. However, reducing barriers to the competitiveness and efficiency of the system in theory may never ensure maximum long-term net returns for members. Nor will contestability necessarily lower fees or other costs for members as has been proposed by developing alternative allocation models.
7. The terms of reference provided to the Productivity Commission for identifying the Stage 1 criterion for assessing alternative default fund allocations, have elevated the role of competition as a means for

¹ *Superannuation: Assessing Competitiveness and Efficiency*. (July 2017). [Issues Paper] Productivity Commission, p.9. Available at: <http://www.pc.gov.au/inquiries/current/superannuation/assessment/issues/superannuation-assessment-issues.pdf> [Accessed 7 Aug. 2017].

² *Ibid.* p. 18

measuring sustainability of net benefits to members. That is, the proposed assessment of competitiveness is assumed to have capacity to ensure efficiency objectives without scope for considering the role of the workplace relations system that enshrines the balance between competition and the employment relationships. The FWC has greater regulatory accountability and scope for considering specific demographic factors of industries and occupations that influence accumulation of retirement savings.

8. The ASU is primarily concerned that default fund allocation be recognised as a part of employment relationships. Superannuation became a feature of the Modern Awards system at a time when deferring wage increases into retirement savings was a contentious industrial issue³. Unions took action in pursuit of an award rate of 3% Superannuation through federal and State disputes in the Australian Industrial Relations Commission of the 1980s. The Superannuation Guarantee Charge (SGC) of 9% became a legislated entitlement in 1992 for more employees to be covered by superannuation at higher levels and the current MySuper default arrangements continue to provide for the payment of superannuation into a managed investment relevant to the industry or occupation covered by a Modern Award.
9. The interaction of the Awards and the SGC provide a safety-net intended to ensure that minimum superannuation payments are made. For Award covered employment, the current default system assists employers in making effective choices on behalf of employees in the most vulnerable areas of Award covered employment. The basis on which the Commission has determined that this process has inefficiencies neglects the broader scope that the Fair Work Commission (FWC) has in assessing other considerations that support how the funds can best form part of a fair and relevant employment safety-net for employees.
10. The ASU; therefore, opposes default arrangements that would institute full contestability into the market for employees' deferred wages. The Commission's proposed Models 3 and 4 cannot ensure an accessible forum or jurisdiction of equity for employees or their advocates who act to advance, as well as improve, their interests. Both models reduce the ability of members to resolve disputes about the most effective way to defer wages and protect retirement incomes. Models 3 and 4 will not ensure improvements to superannuation outcomes nor the insurance products that should always aim to effectively protect the retirement incomes for Australians and; consequently, the whole Australian retirement income system.
11. The MySuper reforms and the launch of the ATO's SuperStream system must be allowed to demonstrate their benefits, and as was originally proposed by the review, the existing default fund selection process of the FWC must be allowed time to implement improvements legislated in 2013.

The current default mechanisms

12. This inquiry asks:

How could the process for constituting the body for selecting default products be designed to deliver accountability (and thus not be judicial in nature) while mitigating the risks of politicisation and bias?⁴

13. Default allocation of the SGC forms part of the contract of employment/employment relationship. The current MySuper system was designed to acknowledge the risks to employees involved in legislating the employer's choice of default superfund. The design acknowledges that efficiency and competitiveness

³ Keating.org.au. (2017). Honourable PJ Keating - The Story of Modern Superannuation - 31 October 2007. [online] Available at: <http://www.keating.org.au/shop/item/the-story-of-modern-superannuation-31-october-2007> [Accessed 20 Aug. 2017].

⁴ Productivity Commission Issues Paper, July 2017, p. 28

criterion can be applied to the market that already accommodates voluntary contributions. However, contestability between default funds must be off-set by higher standards that ensure consumer protection for compulsory contributions. Any proposed enhancement or replacement for the current design for default fund allocation should be *most* focussed on mitigating the risks inherent in the management of employees' deferred wages by third parties.

14. Employees and their advocates must be able to continue to have recourse to agitate on all governance issues and enforcement. The current jurisdiction for advancing the employee's interests in the employment relationship is the Fair Work Commission (FWC). An Expert Panel of the FWC would be the most credible and transparent agency for conducting regular assessment and accountability for default fund selection, through the allocation of MySuper products to the Modern Awards from the Schedule of Approved Employer MySuper Products; which have been determined by criterion including industry, occupation and demographic specific criteria. The FWC is also a jurisdiction that facilitates advancement of all interests, and provides equitable access to employees or their representatives to represent and advance those interests.

Industry and occupation specific funds

15. The current default arrangements deliver a good balance of choice options for employers, exposed to regulatory review by an Expert panel of the FWC. Employers and the many employees, who do engage in choice of fund, don't rely on a fund of last resort nor on centralised government body that manages a default list exposed to successive political environments. The MySuper system has also encouraged funds to include offerings that cater to specific members. For example, Industry funds have successfully tailored their offerings to suit members' interests including insurance arrangements, investment choice, member engagement and other additional benefits to membership.
16. A properly informed Expert Panel of the FWC is the most appropriate agency to conduct regular assessments to determine appropriateness of Superannuation fund offerings through the allocation of MySuper products to the Modern Awards. An Expert Panel of the FWC should be allowed to determine the group of funds for each Modern Award and provides an accountable forum for parties to challenge the default fund selection for compulsory SGC contributions. The Modern Awards coverage is then the mechanism that compels employers to make active choices in the interests of their employees.
17. Less regulated financial markets across the globe have shown how the Australian superannuation system could have become vulnerable to the catastrophic loss of trust that followed the 2007-08 global financial crisis and any time unfettered high-risk speculative investment strategies are exposed. The imperative of the FWC jurisdiction should also be credited as a measure to best insulate superannuation savings from the volatility of financial markets of which a \$2-trillion Australian superannuation sector has become an important part.

SuperStream system

18. The ASU supports a transparent selection process that has members' interests as the only criteria for choice of default funds. MySuper products should be judged on appropriate criterion to assist employers who will make the choice of allocation of funds on behalf of passive participants. Employers choosing a default fund for their employees must continue to have simplified choices of eligible, cost-effective superannuation options that can consistently return the best net benefit to fund members.

19. As the Commission has previously identified, single members have collected multiple superannuation accounts through their working lives and the lack of consolidation represents “one of the superannuation system’s systemic failings”⁵. Costs are not the only concern for members – including the cost of paying multiple funds fees to manage their savings. Cost balanced by the individual interests of members is the concern. Account consolidation should be facilitated by the SuperStream system so that the long-term consequences of incurring investment fees across multiple superannuation accounts, as well as exposure to the ongoing payment of multiple insurance premiums, is demonstrated to the individual affected by passive allocation to multiple accounts.
20. The ATO must be supported to develop Single Touch Payroll so that it encourages the consolidation of member accounts. Members should also retain control over any decision about whether to consolidate their accounts. At any given time and especially at the commencement of new employment, an employee should be able to compare their existing superannuation accounts, their respective benefits including insurance arrangements and the fund that their employer proposes will receive their new default superannuation contributions. At the same time the employee should be prompted to seek advice on consolidating their accounts. Through an expansion of the information being made available to employees, Single Touch Payroll should continue to be developed to enhance the capability of the ATO’s SuperStream system in assisting employees to understand the ongoing cost of maintaining multiple superannuation accounts.
21. In respect of Insurance products, the Commission should not undermine their intent. The proposal for opting in to insurance should be carefully considered. The purpose of Death, Income Protection, as well as Total and Permanent Disability (TPD) policies, have become integral to the protection of decent retirement outcomes for members. The types of arrangements offered by industry and occupation specific funds are cost effective in aiming to cover all members through a simple principle: the best and most cost effective way to offer insurance is to obtain a group policy with widest possible coverage.
22. The Commission should instead turn its focus to enhancing the mechanisms to improve and monitor Death, Income Protection and TPD policies provided by funds. For example, the ASU supports the implementation of a compulsory Insurance Code of Practice to ensure standards of consumer protection. Without funds operating with effective insurance products and mechanisms like adherence to a Code of Practice, the risk of dependence for retirement income shifts back to other state provided benefits and undermines the effectiveness of superannuation to effectively assist Australians with funding their own retirement.

Structural issues

23. The current policy settings have allowed unintended consequences. Firstly, the role of compulsory and voluntary superannuation contributions in complementing the Age Pension can only operate successfully during an employee’s income earning years and are most effective for a full-time employee whose working years are never interrupted by career breaks.
24. The self-employed, part-time employed, unemployed, those earning less than \$450 per month per employer and those who cannot work due to disability also do not benefit equitably from this current policy setting and will continue to face a disproportionate dependence upon the Age Pension in

⁵ *Superannuation: Alternative Default Models*. (March 2017). [Draft Report] Productivity Commission, p.2. Available at: <http://www.pc.gov.au/inquiries/current/superannuation/alternative-default-models/draft/superannuation-alternative-default-models-draft-overview.pdf> [Accessed 7 Aug. 2017].

retirement years. It is the growth in variety of working arrangements that will weaken the sustainability of the current superannuation system and the factors contributing must qualify as relevant to this study. In the last 18 months, the ASU has surveyed our members and documented the bias in the current system against women who work most of their lives but reach retirement facing a life of poverty. Our subsequent report in partnership with Per Capita, concludes with a series of recommendations that will address the real challenges for the stability of the Superannuation sector that were acknowledged by the Commonwealth in their 2015-16 Inquiry into the economic security for women in retirement⁶.

25. The ASU continues to voice concerns that the objective of superannuation should be improvements in the operation of the superannuation system so that it continues to alleviate the impact of an ageing population on government revenue; whilst maintaining public expectations of decent living standards in retirement. The Senate of Australia's 44th Parliament of Australia pledged bipartisan support for the findings of their 2015-16 Inquiry into the economic security of women in retirement. Their important assessment of Australia's retirement income system said:

Australia's retirement income system is made up of a number of interrelated components, which cannot be viewed in isolation. This system has been subjected to tinkering, often without due consideration given to how the different components interconnect. For example, the committee considers that any objective for superannuation should acknowledge its interdependency with the other pillars, including the Age Pension.⁷

It is imperative that the cost of the Age Pension continue to be managed and remain relevant as the numbers of people who will fund their own retirement through superannuation grows; the growth in funding the cost of health and aged care from healthy superannuation must be supported; and reasonable levels of voluntary contributions must always be encouraged to ensure that consumption levels can continue to contribute to the economy as the proportion of retired Australians not working increases.

Alternative default mechanisms

26. The scope of work this Productivity Commission Inquiry has completed has context for informing an Expert Panel of the FWC constituted per the FW Act, to commence the first 4 yearly review of default fund terms of Modern Awards. The default fund review was to commence after 1 January 2014 but has been delayed by narrowing the focus to a competition and efficiency inquiry.
27. The 120 assessment methods and 4 alternate default models that the Commission has developed for the assessment of competition and efficiency⁸ of the current system won't necessarily deliver a benefit to a sector that is interconnected with the objectives of other government policy settings for retirement. In response to the concerns that the sector must be kept robust and in doing so ensure stability of the broader Australian financial sector, it seems radical to pursue greater competition with weaker regulatory oversight of risk and returns. It would be most prudent of this Inquiry to include in its assessments the

⁶ *Not So Super, For Women Superannuation and Women's Retirement Outcomes*. (August 2017). [Research Report] Per Capita. Available at: http://www.asu.asn.au/documents/doc_download/1232-not-so-super-for-women-superannuation-and-women-s-retirement-outcomes-by-asu-per-capita-august-2017-version [Accessed 7 Aug. 2017].

⁷ The Australian Government, (2016) 'A husband is not a retirement plan' *Achieving economic security for women in Retirement report*, Canberra, Senate Economics References Committee, p.139

⁸ *How to Assess the Competitiveness and Efficiency of the Superannuation System*. (August 2016). [Draft Report] Productivity Commission, p.166-173. Available at: <http://www.pc.gov.au/inquiries/current/superannuation/competitiveness-efficiency/draft/superannuation-competitiveness-efficiency-draft.pdf> [Accessed 7 Aug. 2017].

role that the FWC has to play in keeping default funds resilient for long-term needs of industry and occupational groups with diverse demographics of fund members⁹.

28. It is possible that when constituted, the Commissions' Stage 3 review recommendations and Final Report (due 2018) could flow to the FWC review in the context of broad and relevant regulatory considerations. By providing the report on competition and efficiency criterion¹⁰ to an Expert panel of the FWC, the weight or import of a competition and efficiency analysis can be balanced against other principle concerns of the FWC jurisdiction to ensure a fair and relevant safety net of employment conditions.
29. The Commission has somewhat supported this thinking by proposing that an independent government body should oversee the selection and monitoring of default funds. The ASU firmly holds the view that the appropriate body is the FWC; which has jurisdiction to consider all matters relevant to employment relationships. It is an orderly process and significantly, it has been operated at a distance from government politics of the day to focus on maximising net benefits to members. The FWC process should be allowed to run as legislated.
30. Therefore, the ASU will continue to argue that the regulatory review process of MySuper products should be undertaken by a properly informed Expert Panel of the FWC. MySuper products would be best served if the Productivity Commission makes recommendations on whether alternative allocation models can significantly improve net returns to members on all the following standard indicators of fund performance:
 - i. Best net investment return over a range of investment cycles: short - 2yrs; medium - 5yrs; &, long-term - 10 yrs.
 - ii. Whether complete transparency of fees has been implemented in accordance with the Australian Securities and Investment Commission's Regulatory Guide 97 *Disclosing fees and costs in PDSs and periodic statements*; and whether the fees are justifiable.
 - iii. Relative value of services to employees; such as transferring other balances in; online access to account; modes of additional contributions; personal financial planning advice; education of investors; retirement planning; and, calculation tools.
 - iv. Appropriateness of insurance policies for Death, TPD and Income Protection, to fund members taking into account the employing industry or occupation and the provision of cover to the employee in a high-risk occupation, at reasonable cost.

Models 3 and 4

31. The approaches of Model 3 and 4 to selecting default funds through a competitive tender process will be easily influenced by ideological policy positions of successive governments. ASU members have had broad experience in the long-term effects of contestability for markets. They deliver greater risks and poorer quality outcomes¹¹. In the Stage 1 report, the Commission identified a core problem in that the compulsion to set up default payment of the compulsory SGC necessarily asks employers to engage in complex decision making supported by massive and varied information, as well as "nudging choice" to a

⁹ *Draft report: Superannuation: Alternate Default Models*. (2017). [AIST Submission] AIST, p.27. Available at: <http://aist.asn.au/media/21174/20170502%20submission%20PCComm%20AltModels%20v1%200%20FINAL.pdf> [Accessed 7 Aug. 2017].

¹⁰ Productivity Commission, 2016

¹¹ Joint Release: ASU, E. (2017). *People's Inquiry into Privatisation launches*. [online] Asu.asn.au. Available at: <http://www.asu.asn.au/news/categories/securejobsbetterfuture/160815-peoples-inquiry-into-privatisation-launches> [Accessed 20 Aug. 2017].

range of products¹². Whilst four proposed alternative models are designed to address the issue of how choice can be made more or less efficiently, the assessment of the cost of interventions and each model with relative strengths and weaknesses should be a position reserved for future review of employment arrangements by the FWC.

Conclusion

32. The Australian Superannuation system for retirement savings is world class. We should not be abandoning the current system of review in order to run a new experiment with Australians' deferred wages.
33. The commission has not considered the importance of industry and occupation specific default funds. In the current system, employees are connected with default funds that are appropriate to their industry or occupation. The current Australian workforce has diverse and very specific demographic groups¹³; including a high concentration of genders into specific industries and occupation. Fund management relevant to industry and occupation necessitates investment management that is responsive to specific demographics of industry and occupations. For example, tracking all superannuation balances in order to intervene for those who are falling behind an acceptable 'accumulation pathway' cannot be achieved through the proposed competitive and efficiency criterion.
34. The Superannuation sector must also continue to ensure Australians can fund a decent retirement, so that it performs its role effectively as part of the Australian retirement income system. The system is performing very well and passing tests broader than measuring competition and efficiency must be applied to insulate it from the destabilising effects of market forces. The principle test should always be net return to members in the long-term. Introducing full contestability into the Australian Superannuation system will only create the circumstances for a race to the bottom by encouraging funds to waste resources on aggressive campaigns for employees' deferred wages. Contestability is not the required answer to improve stability of the Superannuation system. Especially when decreasing income security will increase in its effect on a robust superannuation system, a more conservative approach is required.
35. Superannuation outcomes play too important a role in Australia's broader retirement income system not to consider how best to protect and improve successful outcomes for an increasingly diverse range of default fund members. Allowing the FWC review to run its course would provide the best opportunity for reform of the current system. Employees and their advocates should continue to have recourse to the FWC to agitate on all governance issues. Superannuation benefits to members are actually improved by enterprise agreement and superannuation clauses in the Modern Awards. Higher levels of default insurance cover, higher levels than the prevailing SGC and making these provisions legally enforceable are just some of the advantages of the current system.
36. The ASU would be pleased to provide further information or to answer queries in relation to this submission. Please contact the National Secretary, David Smith

¹² Productivity Commission, 2016

¹³ AIST, 2017