



# **Default Superannuation Funds in Modern Awards**

## **Submission of Unions NSW**

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## OVERVIEW

Unions NSW believes that a very cautious approach should be taken to changing the default superannuation arrangements in the award system.

The trade union movement spearheaded the introduction of compulsory employer funded superannuation and with employers, set up not for profit industry superannuation funds.

In turn these funds were incorporated in awards on an industry basis.

Prior to this, superannuation was something that most employees on awards were unable to access or afford.

Before the establishment of industry super funds and their naming in awards, retail funds as they are now described were offered to their customers as a savings vehicle via banks, insurance companies financial advisers , and accountants. Commissions were paid to agents as a common practice to entice them to only offer customers certain products irrespective of performance or fees.

Fees for members industry funds have generally been lower than in retail funds , but most importantly returns have also been higher in industry funds compared to retail funds.

Only after the establishment of industry funds and their positioning in awards did retail funds start to review their fee structure and more aggressively try to protect and gain market share through better performance.

The creation of industry funds and their default status in awards has greatly improved competition.

Neither industry funds nor retail funds dominate the sector under the current arrangements.

## GENERAL RESPONSE

**Given the evolution of superannuation in awards as stated in our Overview our primary position is that no additional funds should be added as default funds in awards. However should the Productivity Commission reject this proposition the following is our general response.**

1. Unions NSW believes retail funds should not be given default status in awards, unless they can demonstrate an exceptional benefit to employees who use the products. In the case of retail funds, like industry funds, they will have to comply as a minimum, to the My Super requirements. This of itself should not allow retail funds access into awards as default funds. If all My Super products were automatically given default status this in our view could shift the balance of market share back to retail funds, and over time not be in the interests of members of super funds. The balance would be shifted because retail funds already have an advantage in marketing their products through tens of thousands of retail outlets and agents.
2. There is no overwhelming reason to change the current arrangements as to how a superannuation fund is named in awards as default funds. If a retail fund has an exceptional product to sell then they do have an ability to convince an employer organisation, an employee organisation or indeed an employer to make application under the Act for the

inclusion of their fund in the award as a default fund. This process in our opinion should not change.

3. The question arises in the Terms of Reference set out in Attachment A of the Productivity Commission Issues Paper as to what the criteria might be if Fair Work Australia was examining an application for a fund to be acknowledged in an award as a default fund. Unions NSW believes the tests that should be applied should be as follows.
  - Is the fund My Super compliant?
  - Does the fund have a substantial connection to the award through the number of members and employers it currently has in its fund?
  - Does it have other investment options it can offer members beyond MySuper which are properly governed and transparent.
  - Does it have a suitable and cost effective insurance option relevant to the workers covered by the award?
  - Does it have a transparent governance structure where the Directors of the Fund are not influenced by any other factors other than what is in the interests of the fund members? This is particularly important when looking at retail funds to ensure profit motives of the parent company is not driving investment and fee decisions?

## **ADRESSING THE QUESTIONS**

Having regard to the above, Unions NSW responds to those questions it has a view about in the Issues Paper as follows:

***To what extent do default superannuation provisions in awards influence which superannuation fund (or funds) is listed in enterprise agreements?***

Enterprise agreements by their very nature have been established through negotiation. There is nothing to stop any fund promoting themselves to employers, employees or employee representatives. Ultimately employees themselves will vote on an enterprise agreement which in many cases will name a fund. This process in our view is democratic and should not be disturbed.

***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?***

Many industry funds are looking at mergers with a view to improving services and benefits to members. My Super may accelerate this process if smaller funds don't believe they have the resources through scale to meet the requirements.

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

Most awards have default funds listed. Where they don't it is our experience that some employers favour retail funds and may receive some benefit for having put their employees into such funds.

***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?***

Employers who have had an attachment to a particular fund and who may have received some other commercial benefit would use such grandfather clauses .

***Are the criteria required of MySuper products sufficient for the selection and ongoing assessment of superannuation funds eligible for nomination as default funds in modern awards? If so, why? Does the picture change over time, as the MySuper reforms drive change and consolidation in the industry?***

Other criteria beyond My Super needs to be looked at although My Super should be a mandatory criteria. See point 3 in our general response.

***Is there a case for introducing a set of criteria over and above those required for MySuper products for funds to be eligible for nomination as a default fund in modern awards?***

Our criteria beyond My Super needs to be looked at although My Super should be a mandatory criteria. See point 3 in our general response.

***To what extent do workers covered by different awards have different investment needs? Should any such differences be taken into account in the selection of default superannuation funds for inclusion in awards? If so, how?***

The investment needs of workers are different depending on their age, level of income, and their existing savings.

All default funds should beyond the My Super investment vehicle have other investment choices for members. Eg A young professional worker on a reasonably high income might want to have the choice to invest in a potentially high growth but more risky investment. On the other hand a worker who is 57 years of age with \$400,000 in their super fund may wish to protect their capital and invest in a cash portfolio.

***Should the investment strategy, investment return target and level of risk of the default investment option be factored into the selection of default superannuation funds for inclusion in awards? If so, how?***

All default investment options in our view should not have a risk profile greater than that found in most balanced investments. Some agreement might need to be had within the industry as to the general asset allocation for a balanced option.

***Should a fund's investment management expertise be factored into the selection of default superannuation funds for inclusion in awards, and if so, how?***

Possibly, although this may require some formal accreditation and performance management tool .

***How relevant is a fund's past net performance as an indicator of its potential future performance? What weight, if any, should be placed on the past performance of a fund in assessing its suitability for inclusion as a default fund in awards?***

This should be relevant and be assessed looking at 2 , 5 and 10 year periods having regard to the performance against other funds not just absolute returns.

***If past performance is considered important in assessing a fund's suitability for inclusion as a default fund in awards:***

- *over what time period should past net performance be assessed?*
- *how should funds with no net performance record (for instance, newly merged funds or new entrants to the market) be assessed?*
- *should net performance be assessed in absolute or relative terms? That is, should the top performing funds be selected (regardless of their absolute returns), or would funds be required to meet a particular target level of performance?*

In terms of the above series of questions see answer before. In our view a brand new fund should at least be in the market place for 5 years before it should be considered for default status. (This does not include a new fund created by a merger or mergers.)

***Should fees be factored into the selection of default superannuation funds for inclusion in awards and if so, how? For instance, are there circumstances in which paying higher fees could serve the interests of members of default funds? Does this differ across industries? Should maximum fees be set for funds that are selected for inclusion as default funds in awards?***

Fees should not be a factor beyond the standards set by My Super. It is the net return to members and services provided which are important.

***Should the scope and cost of the member services offered by a superannuation fund be factored into the selection of default superannuation funds for inclusion in awards and, if so, how? Should default funds that are selected for inclusion in awards be required to provide a particular standard of service?***

Yes

***To what extent do workers covered by different awards have different service needs? Should any such differences be taken into account in the selection of default funds and, if so, how?***

Depending on the age and demographics of the workers covered by the award will depend upon their service needs. Funds which target particular Industries have a better understanding of the needs of such workers.

***What impacts are the additional trustee duties likely to have on the performance of MySuper products?***

This is unclear. It might be the greater the onus on trustees the more risk averse they are likely to be.

***Beyond the Stronger Super reforms, are there any particular aspects of fund governance that should be considered in the selection of default superannuation funds for inclusion in awards?***

In our view a fund should have an equal representation of employer and employee representatives with an agreed independent chair.

***Is there an ideal 'fund size' for default superannuation products?***

Because of increased regulation compliance size will matter in terms of ensuring enough resources are available to ensure good governance and compliance.

***How do factors like the ability to market and communicate with industry participants impact on the question of scale?***

Communication and marketing is essential particularly in a competitive environment. Retail funds who have had access to employers and employees through Banks Insurance Companies, Accountants, and Financial Advisors have had a real advantage in the market place.

***Is there a need for fund scale to be factored into the selection of default superannuation funds for inclusion in awards beyond that already implicit in the MySuper rules?***

Possibly

***Is there a clear relationship between fund scale and returns for members?***

In general scale is not so much the issue. Industry funds out perform retail funds.

***Are there any other criteria that should be used to assess whether a fund is suitable for inclusion in modern awards?***

See general response above.

***What would be the costs, the benefits and the net benefits of introducing a set of criteria over and above those already set out for MySuper products for funds to be eligible for nomination as a default fund in modern awards?***

Training for Members of Fair Work Australia who might need to look at applications to include or remove a fund from an award.

***Who would incur the costs?***

Government

***Would the criteria need to vary by industry?***

Yes Possibly . See Also general comments above

***Are these criteria needed now, or would it be better to wait to see the full effects of MySuper on the industry? If so, how long might this take?***

There should be no change to the current default arrangements in awards until My Super is fully bedded down and experienced..This in our view is 5 years.

***Are transparency and contestability desirable features of a default fund selection process?***

Transparency is important. Contestability can be deceiving and not necessarily in the interests of fund members although competition from industry funds against retail funds has been healthy to date.

***Is the current process for listing default superannuation funds in awards transparent? Is it competitive? Is there a level playing field between industry and retail funds? Is there a level playing field between domestic and international funds and should there be?***

See our General response above

***When considering whether a fund is eligible for nomination as a default fund in a modern award, how should its overall performance be assessed?***

See our General response above

***Should there be a target number of default funds listed in modern awards? If so, why?***

- ***What number of funds should be targeted? Should this number differ by industry? If so, on what basis?***
- ***How would this affect the administration costs for employers choosing one fund among those listed in awards?***
- ***Who should make the decision to restrict the number of funds in cases where more than the limit are found to be eligible, and how should this decision be made?***
- ***Should the same criteria and trade-offs between criteria as for eligibility be applied, or should they differ?***

Their should be a target in each award but probably no more than ten. This should be determined be Fair Work Australia having regard for the nature of each award and the number of members funds have under the award.

*What should be the process for applying the criteria for the selection of superannuation funds eligible for nomination as default funds in modern awards?*

- *What would be the steps involved in the process?*
- *Is there a case for an organisation other than FWA to assess the eligibility of funds against any selection criteria?*
- *What should be the role of the industrial parties to the awards? What should be the role of FWA?*
- *What would be the administrative and compliance burden of such a process on employers and their representatives, unions, superannuation funds and FWA?*
- *Is there any international experience to draw from in designing the process?*
- *How might MySuper products that are tailored to the needs of particular large employers affect the selection of default funds eligible for nomination in awards?*

See our General response above

*What would happen in the event that a listed fund had its MySuper product license revoked by APRA for no longer meeting the MySuper requirements?*

They should be automatically removed from default status in awards

*How frequently should eligibility be assessed?*

Subject to the answer above upon Application

*Who should perform this assessment?*

Fair Work

*Should the criteria for fund eligibility themselves be reviewed or changed over time? If so, how often and by whom?*

Yes ,possibly every 5 years

*Are employers best placed to choose one default fund among those listed in awards? If so:*

- *do employers need assistance in choosing between funds listed in awards? What type of assistance do they require and who should provide it?*
- *is some mechanism required to ensure that employers act in the best interests of their employees when making this decision? If so, what?*



Awards should have an appendix listed in them that provide employers and employees web and contact details of each fund.