

# CORPORATE SUPER ASSOCIATION

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Default Superannuation Funds in Modern Awards  
Productivity Commission  
LB2 Collins St East  
Melbourne VIC 8003

By e-mail to: [default.super@pc.gov.au](mailto:default.super@pc.gov.au)

Dear Sirs

## **DEFAULT SUPERANNUATION FUNDS IN MODERN AWARDS**

We refer to the Productivity Commission's review of the above.

### **Background: the Corporate Super Association**

Established in 1997, the Association is the representative body for large corporate not-for-profit superannuation funds and their employer-sponsors. We represent 35% of corporate fund assets and 30% of members of corporate superannuation funds. In general, these funds are sponsored by corporate employer sponsors with membership restricted to employees from the same holding company group, but we also include in our membership a few multi-employer funds with similar employer involvement and focus.

Many of the funds we represent include defined benefit divisions. Many of the defined benefit divisions are closed to new members, but there are also several that remain open. Many of the members are entitled to a combination of defined and accumulation benefits.

### **Modern Awards**

Our comments relate to:

- Industrial relations background for employer sponsors of Australian corporate funds;
- Criteria for inclusion of funds in awards; and
- Issues in opening the field in all awards to all funds that meet certain defined criteria (whether MySuper or other).

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## **Industrial relations and corporate funds**

There is a variety of arrangements governing support by the employer sponsors of our funds. The impact of awards on the employers and employees tends to be influenced by industrial sector and by occupation. In a number of sectors there has been a move to collective agreements between employer and employee groups, resulting in near 100% coverage of employees in the employer-sponsored fund. As regards the continuing relevance of awards, the recent data provided to us indicates that about 20-30% of the employees supported in our funds have contributions made under an award.

In a number of situations affecting our employers, the relevant Modern Award nominates several industry funds, and also contains a grandfathering clause, nominating any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund.

The inclusion of corporate funds in awards has been the result of various forms of bargaining and negotiations. To exclude these funds will result in adverse results for employees, because many provide benefits that exceed SG minimum, provide tailored and favourable insurance arrangements, and are otherwise generously supported by the employer-sponsor in a way that would not apply to an external fund. Removal of these funds from the default would disrupt the agreed arrangements, resulting in a need for extensive re-negotiations.

We are uncertain of the impact of changing the Modern Award criteria for nominating default funds in awards, on the setting of superannuation arrangements in Enterprise Agreements and other collective agreements. We are clear that the Better Off Overall Test ("BOOT") requires the conditions under the proposed industrial agreement to be more favourable, when compared with the conditions under the equivalent Modern Award, but it is not clear to us what evaluation criteria are employed at present, or should be employed in the future, by Fair Work Australia in making the BOOT comparisons in respect of superannuation arrangements. We would suggest that suitable criteria would include:

- employer support levels;
- suitability and tailoring of insurance arrangements; and
- employer subsidy of insurance benefits and administration costs.

## **Criteria for inclusion of funds in awards**

The criteria for MySuper product approval have been arrived at after extensive deliberation and consultation. Funds that are approved for MySuper are considered to be suitable for nomination as default employer fund for SG purposes. The criteria need to be settled, tested and reviewed. Any ambiguities and uncertainties need to be identified and clarified.



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Further modification for default award purposes would give rise to further process of consideration, debate and consultation and the criteria would need to be reset. Funds would face two lines of tests and confusion would result. We cannot see particular benefit in applying further and more stringent criteria for default funds in awards.

### **Potential implications of opening the field in all modern awards to all funds that meet specified criteria**

We have observed that a typical Modern Award nominates several industry funds, and generally also incorporates a “grandfathering clause” nominating, in addition, any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund.

### ***If any MySuper product can be nominated***

We note that there is a school of opinion that all MySuper products should be eligible for nomination in awards – resulting in the replacement of the existing several funds in any Modern Award by a much larger field of all approved MySuper products. In principle, this appears a fair approach, but we are concerned by the radical opening of the field, from a few funds that have been identified according to an historical process as having suitable characteristics for the employees in the relevant occupation or industry sector, to a very wide field, from which the employer may have great difficulty making and justifying a choice of default fund. This imposes a burden of selection on the employer which would not previously have been nearly so hard to negotiate.

We do note that if any MySuper product is eligible and the award has previously included an employer sponsored fund under the grandfathering arrangements, the grandfathered fund would now automatically be eligible. If it did not meet MySuper criteria, it would in any case not be acceptable as a default fund. We believe that the employer should be able to build a case for making the employer fund the default, on grounds such as the following:

- provision of benefits that exceed SG minimum,
- provision of tailored and favourable insurance arrangements,
- other additional support by the employer-sponsor, such as administration support, in a way that would not apply to an external fund
- avoidance of disruption to existing industrial arrangements with employees
- avoidance of confusion for employees and potential loss of benefits through poor decisions.

We would like, in such circumstances, for the guidelines to provide protection for the employer sponsor who chose to use the employer-sponsored fund in preference to any other MySuper product.

### ***Where there is no grandfathered default fund***

For awards where there is no grandfathered default fund, we can see potential obstacles for the employer in choosing from a large field of funds some of which are

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more suited or attractive to the industry or occupations of the employees concerned (and where some of which lack these characteristics, but the lack is not easy to perceive).

We foresee problems including:

- loss of industry or occupation specific insurance and other benefits;
- administrative difficulty for the employer in choosing a default fund;
- potential legal consequences for the employer choosing the “wrong” fund from the field.

At the least, some protection should be provided for the employer, and it would be desirable to see the employees protected from loss of more tailored insurance and other coverage.

### *If criteria developed other than MySuper*

In the event that the criteria for nomination of a default fund in an award are different from the MySuper criteria, we would wish, for reasons outlined above, to retain grandfathering arrangements for pre 12 September 2008 funds.

### *Difficulties for merged funds and those joining master trusts*

Under the above conditions, we would also require certainty that “grandfathering” under awards survives where a former standalone fund, originally protected by grandfathering, becomes a sub plan in a master trust on a successor fund transfer, or becomes a sub-plan of another fund. Under such a scenario, the sponsoring employer would become a respondent to the master fund’s or other fund’s Trust Deed rather than to the original employer-sponsored plan. However, we would like the default grandfathering arrangement protected provided that there is a chain of continuity from that fund to an existing employer arrangement such as a sub plan in a Master Trust. This has been practice under modern awards to date.

Yours faithfully

**Mark N Cerché**  
Chairman  
Corporate Superannuation Association