

5 April 2012

Productivity Commission  
LB2 Collins Street East  
Melbourne Vic 8003

To whom it may concern

## **Default Superannuation Funds in Modern Awards – submission enclosed**

Thank you for the opportunity to make a submission to your review of default superannuation funds in Modern Awards.

We support the aim of this inquiry, which we understand is to design criteria for the selection and ongoing assessment of superannuation funds eligible for nomination as default funds in Modern Awards, by Fair Work Australia.

The quality and appropriateness of default funds is vitally important to the long-term financial security of Australian workers as the majority rely on a default fund for their superannuation requirements.

legalsuper believes the default fund system will be improved by the introduction of a number of important reforms under the banner of Stronger Super, notably MySuper, SuperStream and various governance reforms. All these reforms will help ensure default superannuation funds are cost-effective and meet minimum standards, thereby providing a bedrock of retirement saving surety for all Australians.

The Modern Award system is an important plank in the superannuation system, ensuring the appropriateness of a default fund to a specific industry. By assigning specific funds to each award, employers are guided as to their most appropriate choice of superannuation fund, thereby helping to ensure retirement outcomes are more suitable for employees working under those awards.

In providing this submission we declare that legalsuper is currently one of six funds under the *Legal Services Award*.

## **Criteria for selection and ongoing assessment of superannuation funds in Modern Awards**

legalsuper believes selection criteria should be in the best interests of members and therefore underpinned by the principles of simplicity, transparency, fairness, merit, good governance, and seeking to improve member engagement with superannuation.

It is also our view that a limit should be put upon the number of superannuation funds that are included as default superannuation funds in Modern Awards. This avoids a situation where employers are presented with an unworkable number of default superannuation funds from which to choose. We suggest a maximum of ten default superannuation funds; however, in recommending this we acknowledge that in some instances a lower number of default superannuation funds may also be appropriate.

legalsuper proposes Fair Work Australia use four assessment criteria to determine whether a superannuation fund is eligible for nomination as a default fund in Modern Awards.

The four criteria we believe are necessary are:

1. Occupational specialisation
2. MySuper

3. Quality of insurance offering, and
4. Long-term net investment performance (ie after fees and taxes).

We have provided more information about each criterion below.

### **Criterion # 1: Occupational specialisation**

Occupational specialisation refers to funds that have maintained a specific focus on an industry from which they source membership; a relationship that can be quantified. By way of example, legalsuper was set up by legal professionals in 1989 and since then has made a conscious decision to maintain its focus on the legal profession. Our member-research tells us members value specialisation and by specialising in the legal profession we are better placed to develop products and services that better meet their unique needs.

Our mission is to maximise the retirement savings of members of the legal profession by formulating a successful investment strategy, industry-focussed insurance and to deliver comprehensive member education and information. We do this so our members can better tailor their superannuation and at the same time keep costs low so that more money remains in their superannuation accounts.

Evidence of the popularity of specialisation is clear. More than forty per cent of the national legal profession (or 40,000 people) are now members of legalsuper and a total of seven legal superannuation funds have chosen to merge to create the \$1.6 billion organisation legalsuper is today.

Specialisation is also defined by maintaining strong links with industry organisations. For example, legalsuper has maintained strong links with law societies around Australia including the Law Institute of Victoria, Law Society of New South Wales and Queensland Law Society. Our other stakeholders include the Australian Services Union and United Services Union who represent legal support staff in the profession. The Law Institute of Victoria, Law Society of New South Wales, Australian Services Union and United Services Union each nominate two directors to our Board, thereby reinforcing our close connection with the legal profession.

#### The value of specialisation

Members of specific occupational industries have common superannuation needs that are very different to members of other occupational industry groups. This enables specialised funds to provide products and services specifically designed for them, and to provide tailored products and services not available through funds with a more diverse membership profile.

Tailoring products and services for members of an occupational industry requires active engagement with members through forums, research and other mechanisms, to understand what they want. This gives the funds accurate, in-depth insights into what their members need, but also allows funds to interact with members in ways that educate members and increase their engagement with superannuation. By way of example, forty per-cent of assets invested with legalsuper are invested outside the default investment option, when most other funds have only around ten per-cent of their assets invested outside the default investment option, reflecting the higher level of engagement legalsuper members have with their superannuation. This level of engagement is in part a result of legalsuper's interactions with its members.

A high degree of tailoring, which a specialised fund can provide members of a specific occupational group, has a number of benefits.

1. High levels of tailoring can have a material impact on the retirement savings of the members of that group.

Insurance – Insurance products can be tailored based on feedback from members and their unique occupational profile, with features provided that are useful only to members of that group. For example, legalsuper has designed an insurance product that provides automatic cover for self-employed people, a feature not readily available from other funds, but which has increased coverage of our self-employed members which include barristers and lawyers. Also, insurance premiums and automatic cover levels vary for different occupational groups. White-collar funds like legalsuper have members classified as lower risk relative to other occupational groups, allowing us to obtain better cover and lower premiums for our members, again helping to increase insurance coverage, address the issue of underinsurance, and advance the financial security of our members and their dependants.

Investment strategies – We are better able to formulate investment strategies by researching and gaining deeper insight into our more homogeneous membership. For example, we have developed an ASX200 investment option in response to requests from our members, who wanted to invest directly in shares listed in the ASX 200, buying and selling based on their own research and advice.

Targeted engagement activities – In our experience, members of the legal profession expect high levels of professional and personal contact. As such we have developed a member-engagement program that incorporates a high focus on personal contact. Last financial year, our field staff visited 1,297 legal firms, presented 166 workplace seminars and held 1,265 one-on-one meetings with members. More than 1,740 new members were called during the year.

2. High levels of tailoring ensures our organisation provides only those products and services that are needed and valued by our members and avoids members' money being invested in the development of products and services the majority of members don't need or want, helping the fund operate more efficiently.
3. Higher levels of tailoring refines the design, development and marketing of products so that it is more efficient and therefore easier and cheaper to administer. Because our membership is a largely homogeneous group we can more efficiently and effectively conduct research to guide the ongoing development of our products and services. Occupational groups often have similar communication profiles, making for an efficient consultation process. For example, virtually all legalsuper members have a computer on their desk at work. This means electronic communication is more viable and accepted by our membership with resultant cost savings.
4. Specialisation means a fund doesn't need to spend members' savings on expensive marketing campaigns to raise awareness of the fund and maintain member loyalty. Occupational specificity creates a strong relationship between a fund and its industry and the fund becomes known within the industry as representing its superannuation interests. A lack of specificity inevitably leads funds to run more expensive higher-profile marketing campaigns to build and maintain their appeal with a broad range of cohorts, often because they try to be all things to all people, seeking membership from diverse occupational groups.

The use of 'occupational specialisation' as a criterion for award selection is already well established. Fair Work Australia has in the past varied several Modern Awards allowing specific industry superannuation funds to be included as default funds based on the fact that these funds were supported by parties to the award, for example employee and employer associations. This strongly supports the notion that members who do not actively participate in superannuation prefer a default superannuation fund that specialises in their industry.

In terms of the final design and application of this criterion – see the section, *How to apply each of these criteria*, below.

## Criterion # 2: MySuper

The Stronger Super reform package, including MySuper, has been designed to address the fact that many Australians do not take an active interest in their superannuation and as a result, largely adopt the default superannuation fund chosen by their employer.

While the requirements for MySuper are yet to be fully settled, we believe the requirements superannuation funds must meet to offer a MySuper product will set both an appropriate base-line threshold as well as a rigorous set of ongoing requirements that will ensure default fund product competitiveness.

For instance, the superannuation fund must apply to the Australian Prudential and Regulatory Authority (APRA) to have their product authorised as a MySuper product and there are strict rules in regards to trustee duties and the type of fees that can be charged. Using MySuper as a threshold selection criterion in Modern Awards will ensure Australians have their retirement savings managed in high quality products.

In terms of the final design of and application of this criterion – see the section, *How to apply each of these criteria*, below.

### Criterion # 3: Quality of insurance offering

legalsuper believes only funds that can demonstrate high-quality and value-for-money insurance products relative to an established benchmark should be eligible as a default fund in Modern Awards. The relative importance of insurance in the total mix of a fund's offering is increasing with each year. Funds that offer quality insurance products for their members provide valuable protection to the financial security of members and their dependants.

In terms of the final design of and application of this criterion – see the section, *How to apply each of these criteria*, below.

### Criterion #4: Long-term net investment performance (i.e. after fees and taxes)

legalsuper believes only funds that can demonstrate a net long-term investment performance above a long-term comparative benchmark should be eligible as a default fund in Modern Awards. The core business of all superannuation funds is to provide net investment returns for members through investment vehicles that grow their savings over their entire working lives and into retirement.

Investment performance over both the accumulation and pension phase will be a key determinant of the achievement of a satisfactorily funded life in retirement. An informed evaluation of a default fund's success must therefore include a measure of the long-term net investment performance that it has achieved.

legalsuper recommends that this is a "net" investment return measure (ie after fees and taxes), as that reflects the dollars that a member can use to fund his or her retirement. legalsuper's view is that long-term investment performance should be considered over 10 years.

In terms of the final design of and application of this criterion – see the section, *How to apply each of these criteria*, below.

## How to apply each of these criteria

In terms of applying these criteria, we believe a separate, independent, authoritative and appropriately resourced statutory body should be appointed to the task of finalising the design of these criteria based on the findings of the Productivity Commission report and in consultation with industry stakeholders. Superannuation is highly technical and relevant skills and experience are necessary to ensure assessments are fair, correct and appropriate. This assessment of the funds would then be forwarded to Fair Work Australia who would decide the funds that would be included in Modern Awards.

We believe that to complete this task properly, this body should be set up to be able to gather all the relevant evidence it needs to conduct this task. This may include the tasks of:

- Assessing MySuper eligibility.
- Designing a universal system for benchmarking investment performance and conducting this benchmarking service.
- Designing a universal system for benchmarking insurance products and conducting this benchmarking service.
- Defining the core components of what it means to claim occupation specialisation and applying this definition to funds as part of ongoing assessment.

### In conclusion

legalsuper believes the four criteria outlined above more than adequately ensure that only safe, secure, cost-effective, and well-performing superannuation funds will be selected for inclusion as default funds in Modern Awards.

Combined, we believe these criteria, together with our call to give new powers to design and assess the criteria to an independent statutory body with Fair Work Australia determining which funds are included as default funds in Modern Awards, provide a rigorous approach to assessment of a fund's suitability and inclusion as default funds in Modern Awards. This will also reinforce the government's continued role in developing retirement policy that provides a secure framework to maximise the potential for Australians to enjoy the retirement of their choice.

One of the main objectives underlying recent superannuation reform was a desire to simplify and standardise superannuation for the benefit of all Australians. A less complicated selection process will avoid the unexpected consequences that arise when a process is over-engineered. Too many criteria or overly complicated systems for designing and applying these criteria will be impractical for Fair Work Australia to administer. This in turn will increase the risk of dispute over outcomes, and ultimately undermines the efforts of the Federal Government's well-intentioned superannuation reforms.

legalsuper believes the suggestions above provide a fair and meritorious method of selection, and funds have the opportunity to be selected based on their activities and efforts. A broad structure under which all funds can compete for inclusion encourages competition, and greater efficiency, more appropriate products and services, and improved performance.

The compulsory levy passed by the Parliament in 1992 established a mandated savings program to provide all Australians with the opportunity to have a secure retirement. Crucially, a regulatory system was set up to protect the management of those savings in the accumulation and retirement phases.

Both these systems have necessarily evolved since the landmark passing of the initial levy in 1992. Governments have continued to develop policy around the levy and regulatory system, with the most recent examples of this being the increase of the levy from nine to twelve per cent and the FOFA and Stronger Super reforms before Federal Parliament now.

Ensuring that the requirements for default fund status are regularly assessed is another key element of the ongoing adjustment of the superannuation system to ensure it provides the best retirement outcome for all Australians.

We trust the suggestions contained in this submission are of assistance in the Productivity Commission's review of default superannuation funds in Modern Awards.

Yours sincerely

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