



Submission to the
Productivity Commission
concerning

**Default Superannuation Funds in
Modern Awards**

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Overview

The Government has requested the Productivity Commission to examine the issue of criteria for funds eligible to be nominated as default funds in Modern Awards by Fair Work Australia.

The Shop Distributive and Allied Employee's Association (SDA) welcomes the opportunity to provide a submission to the Productivity Commission on this issue of Default Funds in Modern Awards.

The SDA is Australia's largest trade union with approximately 212,000 members. The majority of these members are young people and women. Registered in 1908, the SDA has coverage of areas including retail, fast food, warehouse, drug and cosmetic manufacturing and distribution, hairdressing, pharmacies and modelling.

The SDA has been a long term participant in the development and application of superannuation as an industrial matter. The SDA is also an active representative on various Industry Fund Boards, ensuring that employee needs are addressed. The Primary Fund that the SDA is involved with is REST as it is the Fund that covers the majority of SDA members and more generally retail workers.

Superannuation is a vital and important working condition for low income employees. The question of choice of funds is not an issue that many employees find relevant or important. The ability to have access to a superannuation entitlement for these people only arose from hard battles in the workforce which resulted in the then Australian Industrial Relations Commission arbitrating on the matter. The Australian Industrial Relations Commission's decision in the matter made superannuation available to employees across all industries.

This removed superannuation from the realm of the high paid, male workforce and spread it to a broad range of employees which included the low paid and part-time employees where a large proportion of the workforce is female. For the first time employees such as female part-timers in retail were eligible to receive superannuation.

This was an extremely radical break from the traditional superannuation scheme.

This radical break from tradition functioned with great success for over several decades. The award system provided to low paid employees easy, fair, understandable and cost effective access to superannuation funds.

The award system continued to contain superannuation even as various superannuation legislation was made, which made superannuation universal.

In 2008 the Award system was fundamentally changed as a process of making Modern Awards was undertaken. In creating a system of Modern Awards the AIRC and now FWA was required to examine the issue of placing superannuation in Modern Awards. One of the issues that were hotly debated and contested was default funds for superannuation.

The SDA believes that the proceedings before the then AIRC and now FWA developed a sound basis for selecting the default funds in Modern Awards and ensuring other established funds could be maintained by employers.

In this inquiry the SDA would urge the Commission, that the examination and consideration of FWA (AIRC) is relevant to setting criteria for selecting default funds in Modern Awards.

The inquiry paper has asked some specific questions but there seems to be several not asked. This includes the important relationship some funds have with an industry or occupation.

The Origin of Industry Funds

REST is the Retail Employees' Superannuation Trust. It is the superannuation fund for the retail and fast food industries.

REST is an Industry Superannuation fund i.e. it is a fund established in the late 1980's when the entitlement to superannuation was first established in the Award system. At this time, a number of industry funds were established in order to avoid the superannuation of workers going into funds run by companies or by the superannuation industry. Superannuation at this time was characterised by:

- high fees
- poor vesting provisions
- lack of disclosure and transparency, and
- putting the employer's interest ahead of that of the super fund member.

Industry funds were set up in specific industries and for specific awards and/or unions. For example:

- C-BUS for the building industry
- STA for the metal manufacturing industry
- HESTA for the health industry
- CARE for the clerical employees
- ARF for blue-collar workers in manufacturing
- REST for the retail industry

All these funds have grown into multi-billion dollar funds with up to several hundred thousand members in each. Some funds have merged together over time.

The funds are run jointly by union and employer representatives. REST, for example, has four trustee directors nominated by the SDA and four nominated by the A.R.A.

These industry funds typically have: -

- low fees
- full vesting
- full disclosure to members in annual (or more frequent) reports as required by law, and
- legal obligation for trustees to act in the interests of fund members.

Originally, employers fought against any requirement to pay super on behalf of their employees to a nominated industry fund specified in the relevant award. Instead, they wanted to establish their own company fund under their own control for their employees' superannuation.

Industrial Relations Commissions at the national and State levels generally decided in favour of REST as the sole fund for retail award employees. Exceptions included:

- Tasmania where Tasplan was permitted as an alternative
- Queensland where several industry funds, and company funds already established, were permitted, and
- NSW where BBC was permitted to have its company fund on the basis that employees would get 5% super in place of the award's 3% of ordinary time earnings.

Industry funds have grown and matured. They set the standard in the superannuation industry in terms of fees, earnings, novel investment portfolios, disclosure to members, communication methods, etc. Much of the MySuper legislation and regulation reflects the operations of Industry Funds.

The Task of Setting Criteria for Default Funds

In beginning the task it is prudent to look at what is the purpose of the default fund in awards.

A 'default' can be described as a preselected option adopted when no alternative is specified. The facts and numbers from all sources indicate there is a lack of active 'choice' by employees, given this there is a recognition that a default fund is required in Modern Awards. The Government has recognised this and has not decided to abandon the role Modern Awards and Agreements have in superannuation.

One of the key purposes of the default fund in a Modern Award is to direct and assist employers in making a decision when an employee has not.

The Productivity Commission is urged to ensure that any selection criterion does not lead to every single superannuation fund that has a MySuper option, becoming a default fund for Modern Awards. This would be useless and unhelpful. Having all MySuper funds eligible as a default would not assist anyone especially employers or employees. The benefit of limited default funds in a choice environment provides for a simple, concise list of funds. It narrows the selection from the world of super funds to a concentration of a few.

Further support to limit the list of default funds can be deduced from first principles (and common sense). To provide all funds who comply with MySuper as a default would mean that there would be a system that provides an alternative between choice of all funds by the employee in the first instance or in the second instance choice of all funds by default. The two alternatives have to be distinguishable or it is nonsensical as it is not an alternative. This is not appropriate as both Government and FWA (AIRC) have confirmed and/or decided there is a role for having a default fund(s) named in Modern Awards.

Trying to set a desired number of default funds by a formula seems to be a well intentioned desire but is fraught with complications and possible pitfalls. A lot of energy could be wasted in trying to divine a formula which captures many variables i.e. size of fund, size of account balances, income of employee etc. The Productivity Commission's figure of one third of APRA funds are named as a default fund, seems to demonstrate that by the steps taken by AIRC/FWA, a reasonable number of default funds were selected. There has been no demonstration that the number of default funds have caused concern to employees or employers. It would also appear that in the review of Awards or the Fair Work Act no issues have been raised over the application or operation of the superannuation provisions.

The current default funds in Modern Awards have been listed using a number of criteria.

Two of the criteria used to establish default status were:

1. By agreement between employer and employee associations.
2. Reflecting the history of superannuation funds associated with specific industries.
This is a key and relevant factor given the work carried out by various industrial tribunals across Australia over the last three decades.

In setting default criteria which places limits deliberately to restrict the number of funds, the most compelling criteria which can be easily and readily examined is the association with an industry. A fund that has been purposely developed to service the needs and requirements of a particular workforce or industry must be given the right to be a default fund. If a system of weighting relevance of particular factors then industry association should be heavily weighted.

One criteria should be set to overcome the 'principal-agent problem'. This has been attempted in part to be addressed in MySuper but in relation to default funds status, this could be strengthened. If the criteria required both employer and employee input into the running of the fund then this removes the principal- agent problem.

Default fund history in Modern Awards

The then AIRC and subsequently FWA were tasked in the modern award process to examine superannuation in awards. Many submissions were made by various and different organisations or individuals. On the superannuation issue submissions were made by employers, unions, industry funds and retail funds. Oral submissions were also made to the Full Bench of the AIRC, where specific times were allocated to deal with the superannuation issue. The superannuation issue canvassed a vast field from not having superannuation in Awards to maintaining the existing provisions from all State and Federal Awards.

After consideration of all proposals the AIRC decided to include a superannuation clause including naming default funds.

Below are the two extracts from the main decisions issued by the Full Bench on this issue.

[29] We have drafted a model superannuation provision to be included in modern awards if those awards deal with superannuation. The clause will nominate a default fund or funds should an employee fail to exercise his or her right to nominate the fund to which employer contributions should be made. We do not think it is appropriate that the Commission conduct an independent appraisal of the investment performance of particular funds. Performance will vary from time to time and even long term historical averages may not be a reliable indicator of future performance. We are prepared to accept a fund or funds agreed by the parties, provided of course that the fund meets the relevant legislative requirements. [2008]AIRC FB 717

and

Superannuation

[89] The model superannuation provision included in the exposure drafts was the subject of a large number of submissions and comments. While some suggestions were made that there should be no superannuation provision in awards at all, we think that it is appropriate to deal with the subject in the limited terms proposed in the draft but with some modifications.

[90] The terms of the exposure draft concerning the default fund provision were the cause of a number of submissions from employer and employee interests, from superannuation funds and the superannuation industry. We have decided to allow as a default fund any fund to which the employer was making contributions for the benefit of employees on 12 September 2008. This approach is likely to minimise inconvenience for employers. While funds other

than those provided for will not qualify as default funds employees may still exercise their right to choose in favour of these funds. [2008]AIRCFB 1000

The AIRC delved deeply into superannuation, reviewing many different submissions, before issuing their decisions.

The consideration of the AIRC should be used in establishing the ongoing default fund criteria. The AIRC had the historical knowledge and the current information to make an informed decision. The decision also made practical but simple provisions to cater for some very complex problems i.e. the then current differing arrangements that applied over many states.

The AIRC also wisely stated an accurate view on investment performance. Investment performance does give a reflection of historical performance but as can be seen in MySuper provisions it does remain a difficult area to describe, measure and explain.

Conclusion

As an active participant in superannuation as both an industrial matter and a participant in industry funds where the SDA represents the workers in the retail industry the SDA believes strongly that the current system of default fund selection using the criteria established by FWA is sound and appropriate.

The criteria acknowledge both the agreement between parties and the historical development of funds associated in a specific industry.

The overlay of MySuper is an additional criteria that should be applied to the default funds.

Any change that introduces the possibility of having many funds or indeed every MySuper fund as a default fund would not be beneficial to the employees and employers who rely upon the Modern Awards.