

Master Builders Australia

Submission to the Productivity Commission Inquiry into Default Superannuation Funds in Modern Awards

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1 Introduction

- 1.1 Master Builders Australia is the nation's peak building and construction industry association which was federated on a national basis in 1890. Master Builders Australia's members are the Master Builder state and territory Associations. Over 122 years the movement has grown to 33,000 businesses nationwide, including the top 100 construction companies. Master Builders is the only industry association that represents all three sectors, residential, commercial and engineering construction.
- 1.2 The building and construction industry is a major driver of the Australian economy and makes a major contribution to the generation of wealth and the welfare of the community, particularly through the provision of shelter. At the same time, the wellbeing of the building and construction industry is closely linked to the general state of the domestic economy.
- 1.3 Master Builders estimates that the cumulative construction task over the next decade will require work done to the value of \$2.4 trillion. The residential and non-residential building sectors combined will require \$1.25 trillion worth of work and the engineering construction sector \$1.15 trillion worth. The construction workforce currently represents over 9 per cent of the total Australian workforce with the number of jobs expected to increase by 300,000 to around 1.3 million employees by 2021.
- 1.4 According to the ABS, the value of work done by the building and construction industry was \$172.9 billion in the year to September 2011, excluding around \$30 billion of smaller renovations work. Residential building work done was \$46.7 billion, non-residential building \$32.5 billion and engineering construction \$93.7 billion. At November 2011 the construction industry employed 1,039,900 people.

2 Purpose of Submission

- 2.1 On 20 January 2012 the Government announced that the Productivity Commission would conduct an inquiry into default superannuation funds in modern Awards. Terms of reference for the inquiry were formally referred to the Productivity Commission (Commission) on 6 February 2012. On 29 February 2012 the Commission published an issues paper entitled *Default Superannuation Funds in Modern Awards* (Issues Paper).

- 2.2 Master Builders' submission focuses on the factors that should govern the inclusion of default funds in superannuation provisions in modern Awards. We do so against the perspective that building and construction industry employers bring to the administration of superannuation.
- 2.3 Master Builders Australia holds the employer shares in United Super Pty Ltd, a Trustee of CBUS.

3 Building Industry Employer Perspective

- 3.1 The building and construction industry is extremely diverse, with employment in businesses ranging from a few people in family owned firms, to hundreds of people in major firms who perform work domestically and internationally. However, nearly all firms are small businesses (404,352 non-employing firms or firms employing between 1-19 people), with some medium sized firms (2,709 firms employing between 20-199) and a small number of large firms (127 firms employing 200 or more people).¹
- 3.2 The construction industry is project based and exhibits highly volatile characteristics which have a profound effect on its structure and the way it operates. Intense price competition and low profit margins keep fixed overhead costs low that has led to the growth of the sub-contracting system. This system enables firms to take advantage of specialist skills, and to expand or contract operations rapidly as required. Most of the management systems adopted by the small to medium sized businesses in the sector are informal. This translates to a need for the superannuation system to be as simple and easy to administer as is feasible with low cost outcomes from administration being at the forefront of employers' considerations.
- 3.3 The current superannuation system is viewed by many employers in the sector as overly complex. Master Builders' experience with its members is that employers in the industry do not want to go through an unwieldy process involving an assessment of superannuation funds or to spend time on the attendant administration. They merely wish to ensure that there is sufficient confidence in and adequate returns from a fund to protect their employees without in any way assuming a duty of care in relation to the placement of those funds. Hence, the notion of there being prescribed in a modern Award

¹ ABS Cat No 8155, November 2007 Table 2.1, page 22

funds which satisfy these criteria is a matter that employers in the industry support. It achieves simplicity and meets the main aim of superannuation obligations being reduced to the most efficient level for their businesses: they want to “get on and build” rather than be concerned with intimate and complex issues of superannuation administration.

4 Building Industry Modern Awards

4.1 As is indicated in the Issues Paper, Modern awards were developed by the Australian Industrial Relations Commission (AIRC), the predecessor to Fair Work Australia (FWA). Award modernisation involved the review and simplification of over 1500 pre-existing awards (both state and federal) into 122 ‘modern’ awards. Modern awards commenced operation on 1 January 2010 with five specific building and construction industry modern Awards being created thus:

- Building and Construction General On-site Award 2010
- Electrical, Electronic and Communications Contracting Award 2010
- Joinery and Building Trades Award 2010
- Mobile Crane Hiring Award 2010
- Plumbing and Fire Sprinklers Award 2010.

4.2 Other modern Awards also capture some members of Master Builders. These include the *Manufacturing and Associated Industries and Occupations Award 2010* which for example could cover makers of metal roof trusses and the *Timber Industry Award 2010* which covers some forms of joinery work.

4.3 The building and construction industry appears to have a low comparative Award reliance in pay setting. The Australian Bureau of Statistics (ABS) collects statistics on the composition and distribution of earnings and hours paid for, of employees, as well as information on how employees' pay is set - by award only, collective agreement or individual arrangement.² In 2010 the ABS survey showed that 10% of building and construction industry employees were reliant on the Award for pay setting compared with the all industries rate of 15.2%. Master Builders believes that the estimate for the construction industry is low when compared with our day to day experience with members

² ABS *Employee Earnings and Hours, Australia May 2010 Cat No 6306.0*

where up to one third of our membership (particularly in the housing sector) appears to be Award reliant.

4.4 In the course of developing the modern awards, the AIRC decided that default superannuation funds would be included in an award if:

- they had been named in an award-based transitional instrument relevant to the modern award's coverage, or
- the representatives of the main parties to the award consent.

4.5 The principal modern Award covering building and construction industry employers is the *Building and Construction General On-Site Award 2010* (On Site Award). It contains a list of default superannuation funds at clause 32.4. There are 12 named. There is also a "grandfathering" provision at clause 32.4(m) which permits the continuation of contributions to funds to which an employer was making contributions on behalf of its employees before 12 September 2008³ provided the fund is an eligible choice fund.

4.6 So far as Master Builders is able to ascertain, the status of the default funds specifically mentioned in clause 32.4 is as shown in the following table:

a)	Construction and Building Industry Super (Cbus)	On-going
b)	Building Unions Superannuation (Queensland)(BUSS(Q))	On-going
c)	QUEST Super	Not on-going
d)	AUST(Q);	On-going
e)	AustralianSuper;	On-going
f)	Australian Superannuation Savings Employment Trust (ASSET Super)	On-going
g)	Tasplan;	On-going
h)	Westscheme;	Not on-going merged with AustralianSuper on 1 July 2011
i)	Building Employers Superannuation Trust	Not on-going
j)	Civil Contractors Federation Superannuation Trust (CCFST)	Not on-going - merged with OAMPS and now a part of Apex Super
k)	SunSuper;	On-going
l)	Statewide Superannuation Trust	On-going

³ In the *Decision re transitional provisions for priority and Stage 2 Modern awards* [2009] AIRCFB 800 at para 66 the AIRC states that this date was chosen "because it was the date on which the exposure drafts of the priority modern Awards were published."

- 4.7 Unfortunately, the On Site Award is dense and difficult to read and contains a number of errors. Master Builders supports the regular and in-depth review of modern Awards. A review of the superannuation clauses of modern Awards is recommended.
- 4.8 It is essential that modern awards are free from technical errors and anomalies, a principle contained in the modern awards objective, which seeks to ensure that modern awards are ‘simple [and] easy to understand’.⁴ This is not something which has currently been achieved in the On Site Award. The goal encapsulated in the relevant part of the modern Awards objective in turn reduces the ‘regulatory burden’ and ‘employment costs’⁵ (other aims under the modern awards objective) as employers do not lose time trying to determine their obligations. Clarity also enhances the other goals of the modern awards objective, as employee entitlements are able to be more accurately addressed. These principles apply equally in terms of the structuring of a default superannuation provision as they do generally. Hence, Master Builders proposes that the relevant provisions dealing with default funds should be as simple and as easy to understand as is possible to draft. That proposition needs to be regularly revisited as experience of the administration of the provision is accumulated.
- 4.9 This latter point will become increasingly important as the process of MySuper authorisation and the natural consolidation of funds to gain economies of scale reduces the number of funds. As funds consolidate, the list of named funds will not meet the requirements of being straightforward and helpful to employers unless regularly updated (as evidenced by the material presented at Clause 4.6). This further underlines the need for a regular statutorily vindicated review of modern award provisions that ensures they are meeting employer and employee needs. The opportunity would also formally arise for a check on the alignment between modern Award provisions and the relevant superannuation laws so that the regulatory and compliance burdens of those laws were consistent or, at the least, not compounded by an Award prescription.

⁴ *Fair Work Act*, section 134(1)(g).

⁵ *Fair Work Act*, section 134(1)(f).

- 4.10 The regular, statutorily endorsed review of superannuation provisions in modern Awards would eliminate the difficulties with standing mentioned at page 4 of the Issues Paper. Whilst the *Fair Work Act, 2009 (Cth)* does contain provisions which require a review each 4 years from 1 January 2010 to determine whether they meet the modern Awards objective, discussed above, this is too long for a proper review of superannuation arrangements given the pace of change in this area of the law and the change from an industrial relations based system of regulation of superannuation to a more modern statute based, dense regulation.

5 Criteria for Proposed Regular Review

- 5.1 The criteria to be applied during the regular review of superannuation arrangements in modern Awards could also consider eligibility to be nominated as or continue as a default fund. Compliance with the new MySuper product obligations is obviously the first guiding criterion, although with the potential plethora of superannuation products to be offered, default funds rather than products should be retained in a standardised superannuation clause. In this context, we anticipate that there will be hundreds of MySuper products that offer a range of price and service offerings. Some will be tailored to particular industries or occupations, others will be generalist. The quality of the products will vary. Many employers, particularly small and micro businesses, are ill-equipped to filter this range of offerings and may fear liability for poor selection choices or process. Employers look to FWA to filter the product offerings in the market, and arrive at a list of funds that are appropriate for the industry in which they operate.
- 5.2 Hence, the second matter should be the requirement for the Australian Prudential Regulatory Authority (APRA) to provide to FWA a list of funds that satisfy certain benchmarking criteria. This should not be a task that FWA undertakes without that external party evidence. FWA is an industrial tribunal and does not possess the necessary expertise to make the relevant assessments or, if that expertise was required to be held, the vetting process could lead to any review proceedings being long, involved and inappropriately detailed. Hence, Master Builders would prefer a requirement in any statutory provision requiring an regular review to be based on evidence provided by the regulator.

- 5.3 Other criteria beyond MySuper compliance should be considered again to be certified by APRA which has the data that would then be provided by way of conclusive certificate to FWA. While the licensing regime for MySuper will control the inputs (governance, investment and insurance strategy, awareness of costs), it will not monitor the quality of the outputs (net investment performance, service standards, accessibility). The latter should be subject to consideration during the regular review.
- 5.4 The first additional criterion should be that a particular fund has a certified record of above average net returns to members. To be eligible for nomination the returns should be set above a level that recognises that the historical recognition of superannuation in modern Awards is akin to the status of deferred wages.
- 5.5 The second additional criterion should be that funds have been compliant with their statutory obligations and the relevant APRA certificate should also be tailored to accommodate a statement as to that matter, with disqualification if there has been a breach of those obligations.
- 5.6 Where those prerequisite criteria are satisfied an additional criterion that the FWA may consider is how a default fund has been able to service the needs of any specific industry sector. For example, in the case of CBUS, it has been able, because of its scale, to offer favourable insurance products for its members who work in the building and construction industry.

6 Conclusion

- 6.1 Master Builders submits that the Commission should recommend to Government that the deficiencies in modern Award regulation of default superannuation funds should be dealt with by requiring FWA to conduct a regular review of superannuation provisions of modern Awards. That review would require FWA to ensure that superannuation provisions aligned with the general law, were up-to-date in stipulating named funds, contained reference only to funds which offered MySuper products and met the minimum criteria set out in section 5 of this submission.
- 6.2 Master Builders would be happy to elaborate the conclusions set out in this submission.
