13 April 2012

Default Superannuation Funds in Modern Awards
Productivity Commission
LB2 Collins Street East
Melbourne Vic 8003
By email: default.super@pc.gov.au

Dear Sir/Madam

RE: Default Funds in Modern Awards

NAB Wealth appreciates the opportunity to provide comments to the Productivity Commission with regard to the above named inquiry and thanks the Commission for the extension to the lodgement date.

NAB Wealth broadly supports the submission made by the Financial Services Council (FSC) to the Productivity Commission and concurs with the core premise that the current framework does not promote appropriate levels of competition or enhance consumer outcomes (employer and employee in this context).

As a significant and longstanding participant in the superannuation sector of Australia, NAB Wealth has experience and expertise which is relevant to this inquiry. NAB Wealth provides investment, superannuation, insurance and private wealth solutions and manages more than $112.7 billion on behalf of individual members and corporate clients in Australia (as at September 2011).

NAB Wealth is backed by the financial strength and global capabilities of the NAB - one of Australia's most established banks. This means NAB Wealth has access to capital to protect and also grow its business by investing in the systems, processes and people to provide products and services which quickly respond to and reflect changing market and consumer dynamics.

The employers who contribute to, and members of, the superannuation funds which we administer will be affected by the changes emanating from MySuper including decisions about selecting and naming funds (or MySuper products) as 'defaults' in modern awards.

NAB Wealth has extensive experience in the corporate superannuation sector. In our Plum Financial Services division we manage a superannuation master-trust predominantly providing superannuation for employees of large employer sponsors as well as providing administration and related services to standalone corporate plans. More than 60% of the employer plans or sub-plans have membership exceeding 500 and many plans number in the thousands of members. In another master-trust (The Universal Super Scheme) we provide services to employees of small to medium enterprises (SMEs). Less than 1% of these corporate plans have member numbers above 500 but there are close to 60,000 employers and almost 500,000 members in this segment of the master-trust.

NAB Wealth fundamentally believes the prudential and tax framework for superannuation is world class and expansive. We question the need for another regulatory regime in the context of an industrial framework with yet another regulator (Fair Work Australia) overseeing similar requirements to APRA. Our contention is that the extensive changes being made by the Government through the imposition of a statutory product, MySuper, for employees who do not choose their own fund obviates the need for named funds in modern awards. The potential for regulatory arbitrage is real.

We are mindful of the significant role played by employers in assisting with the efficient management of employees' retirement savings particularly with remittance of mandatory contributions. Hence, we support options that allow employers, particularly small to medium enterprises, to simply look up a regularly updated, APRA-approved (or maintained) listing of compliant products for these purposes.

In the attached document we have provided some further expansion of our views and would be pleased to discuss these with you. In the initial instance, please contact Helen Brady.

Yours sincerely

Dallas McInerney
NAB Group Manager, Government Affairs and Public Policy

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1 Executive Summary

1. The Superannuation Guarantee (Administration) Act and Regulations (SG laws) are inextricably linked to the prudential and operational provisions of the Superannuation Industry Supervision Act and Regulations (SIS laws) and to the Corporations law. These links ensure that only regulated and registered superannuation funds receive tax concessions, are monitored for compliance with prudential and consumer laws as well as with tax laws. This is sufficient protection without an added award framework overlay.

2. We believe the superannuation sector, comprising a range of providers including those supported by shareholder structures and those operating in a mutual environment, is strong and made stronger by the capacity of those providers to compete. This diversity actually creates a level of scrutiny through competition that leads to improvements that cannot be effected by legislators or statute.

3. The embedment of particular funds in industrial awards beyond the superseding development of SG laws is an historical anomaly. This anomaly is exacerbated in the context of a MySuper product regime which has enhanced obligations for reporting, regulatory oversight, trustee duties and benefit design. It is our view the MySuper regime will provide a robust and sufficient basis for an employer to select any such MySuper product for those employees who do not elect to direct their Superannuation Guarantee (SG) contributions to another arrangement of their choice.

4. The prudential aspects of the regulatory framework work, or should work, in conjunction with a competition policy that is open to compliant arrangements in order to deliver greater efficiencies in design with downward price pressure delivering better consumer outcomes.

5. Employers should have the flexibility to undertake as much, or as little, research into complying MySuper options as suits their circumstances. That is, with ongoing annual assessment and comparison of 'default' funds by APRA, as well as by trustees offering MySuper products under expanded duties, the actual obligation of employers is simply to ensure they contribute SG to a complying MySuper product for employees who haven't chosen their own fund. Employees have the opportunity to review their MySuper product and choose a different arrangement if they prefer.

6. We strongly believe employers should have the capacity to change 'default superannuation' providers in the interests of business efficiency as well as for the

competitive and productive outcomes that such flexibility would deliver to the sector overall. In this context, we do not support arbitrary limitations on funds specified in particular awards.

7. A monopoly of one fund is unjustifiable and places both employers and employee members at risk of negative outcomes if that fund becomes non-compliant or cannot meet business needs. Adding more funds requires the employer to make a selection. In this case, there is no argument against an employer being given the capacity to select any MySuper compliant product.

8. In contrast to current limited options in modern awards, a listing of compliant MySuper products enables employers to meet their legislated obligations to remit minimum contributions for eligible employees to complying funds and provides them with the opportunity to change to a different and more suitable product provider at a future point in time where this is appropriate.

2 Superannuation: historical evolution (a brief summary)

The superannuation world today is framed by the minimum contribution requirements set out in the SG laws and a prudential structure enshrined in the SIS laws.

While superannuation has been a part of Australian savings landscape since at least the mid-twentieth century it has changed dramatically in both coverage and design since that time.

A seminal moment in the modern evolution of superannuation was the Australian Council of Trade Union's (ACTU) proposal of a 3% employer award superannuation contribution (as a substitute for increased wages) under the Wages Accord Mark II which was endorsed by the Australian Conciliation and Arbitration Commission in the mid-1980s. The contributions were paid into funds specified in union/employer agreements, or by orders and awards of the relevant industrial relations tribunals. The funds were usually set up or sponsored by the relevant unions and, in some cases, employer organisations.

This initiative introduced the concept of broad-based compulsory superannuation ensuring wider access to retirement savings plans which, previously, were generally only afforded to employees in the public sector or larger corporations (eg banks).

With effect from 1992 the Keating Labor Government introduced the SG laws requiring minimum contributions by employers to give universal superannuation coverage to Australian employees. This policy was developed for a variety of reasons including macro-economic considerations but it was also important for ensuring consistency in contribution rates across the nation, adequate management and audit of compulsory super arrangements and mitigating continuing gaps in coverage. This framework now forms a key part of Australia's modern three-pillar retirement system which has garnered international recognition and approbation.

The SG laws effectively gave education and enforcement power to the ATO (which had the skills and resources) to collect data and enforce payment from employers under a self-assessment system. This system works in conjunction with the prudential and consumer laws (with supervisory oversight by APRA and ASIC respectively) to require that contributions are paid only to complying funds meeting legislated as well as trust and consumer disclosure law standards.

It is clear that superannuation is no longer a small 'cottage' industry or a minor subset of the financial sector but one which is a major contributor to employment, Australia's GDP, and the growth in retirement savings for the majority of the population. The increasing size and importance of the sector was a fundamental reason for the future-focused *Review into the governance, efficiency, structure and operation of Australia's superannuation system* (known as the Super System Review chaired by Jeremy Cooper) the terms of which received industry-wide support.

The Review recommended that an assessment of the openness and competitiveness of the fund nomination process to awards be conducted. It is our view that the current default fund provisions in awards are not open or competitive. The recent changes to the industrial law including implementation of modern awards entrenched restrictive options by naming specified funds in all modern awards.

An historical precedent of awards containing occupational superannuation provisions is not sufficient basis to restrict the number of default options available under modern awards for particular groups of employees.

2.1 Superannuation as an allowable matter, modern awards

Even though minimum compulsory employer contributions were enshrined in statute under the SG provisions in 1992 they were not removed from award regulation. So, frequently the industrial tribunals would approve awards or agreements that stipulated where the contributions were to go. In some cases, even where employees wanted to direct their SG contributions to a fund they preferred, the award and industrial framework may have prevented it.

Notwithstanding this, under many Federal awards, and also State-based industrial provisions, employers and employees were afforded the opportunity to choose 'any complying fund' as allowed under the SG laws, or could choose, by agreement, a complying fund different to that stipulated in the award (see Attachment in Section 7).

Against this legislative background, the Howard Coalition Government committed to the removal of superannuation as an 'allowable matter' in industrial award provisions from 2008. This would have enabled employers to choose 'any complying fund' with minimum insurance coverage. However, the excision of superannuation as an 'allowable matter' was overturned when the Rudd Labor Government came to power in 2007 instituting the Fair Work Act which expressly included superannuation as an 'allowable matter'.

Modern awards have not appreciably reduced complexity or simplified the default superannuation options for employers. The combined effect of the introduction of fund choice laws, centralisation of previously State-based industrial powers at Federal level, inclusion of superannuation as an 'allowable matter' under the Fair Work Act and the formalisation of modern awards with specified funds has served to reduce the complying fund options previously available to many employers. For some subject to multiple awards, there is an ongoing need to assess which of their employees are covered by particular awards and subsequently which superannuation funds must be used as defaults. Such complexity would be eliminated under a regime enabling employers to choose a single MySuper to meet their obligations (see Attachment in Section 8 for an example of a company subject to multiple awards).

NAB Wealth believes the SG laws adequately establish the minimum contribution requirements thus negating the need for industrial provisions to stipulate a rate which could only be higher. We do not believe the prudential framework, particularly the enhanced MySuper framework, is so lacking in efficacy as to warrant another regime and another regulatory party to be embedded in the framework to identify limited funds to which default contributions can be made.

We submit that such an approach would undermine: the wider policy aims of reducing red tape; balanced regulatory and market principles; competitive neutrality; greater efficiency; and entrench existing complexity for many employer thus weakening the reforms aimed at ensuring a robust superannuation sector into the future.

In addition, we note that both the AIRC and Fair Work Australia have expressly indicated that it is not appropriate that they undertake an active role in assessing which funds should be named in particular awards.

> *"We do not think it is appropriate that the Commission conduct an independent appraisal of the investment performance of particular funds. ... We are prepared to accept a fund or funds agreed by the parties, provided of course that the fund meets the relevant legislative requirements"*[1]

We would agree with these comments and would argue they support our proposition that the need for specifically selected and named funds in modern awards is unnecessary given the

[1] AIRC Statement, Award Modernisation, (AM2008/1–12), Full Bench, 12 September 2008

prudential framework of the superannuation system, particularly with the advent of MySuper. Further, the frequency with which MySuper will be reviewed by trustees (an annual assessment) as well as APRA oversight and production of league tables far exceeds the 4 yearly timeframe for review of modern awards.

3 Employers: involvement, experience, issues

Employers are the linchpins of our effective superannuation system which, during the GFC, provided a safety net for our economy and helped Australian companies raise equity through direct and indirect investments.

The involvement of employers undoubtedly creates efficiencies for the Government in policy setting, as well as for funds and for regulators by being conduits (in the hundreds to thousands) for employees (in the millions).

We believe that an open system allowing an employer to utilise any one MySuper product is more efficient than having to reference award provisions. As noted in the previous section, many employers face inherent complexity even in the rationalised modern awards – we refer again to the attachment which outlines the circumstances of an actual company that wished to transfer its superannuation fund to one of our master trusts. The company operates nationally and comprises a diverse workforce subject to different awards. MySuper would allow this employer to contribute to the same arrangement for all employees without the overlay of complex award distinctions.

Those employers who connect superannuation benefits to wider workplace benefits can, through the greater disclosure that accompanies the MySuper regime, more readily compare different MySuper products both to seek enhanced outcomes for employees or, to find those arrangements that facilitate ease of management of superannuation (for example, services to re-distribute employee's SG to chosen funds).

On average, larger businesses (201-500 employees) are much more likely to actively promote superannuation than smaller businesses (20-50 employees)[2]. In its policy development of MySuper, we were pleased the Government recognised that elements of an employment arrangement can be enhanced at an employer's discretion. In this context, superannuation is just as relevant as pay, leave entitlements and extra employee benefits such as discounted services provided or facilitated via the employer.

[2] Cameron Research Group 2011, *The Australian Medium Sized Business Market for Superannuation: 2011*, chapter 12, p76.

As a result, larger employers (with greater than 500 employees) who actively promote superannuation as a workplace benefit are given the opportunity under MySuper to provide their employees with an enhanced superannuation arrangement. Claims that this undermines comparability or the nature of MySuper as a low cost, simple default are not apt given these 'enhanced' arrangements are available by virtue of the employer's capacity to negotiate better benefits, terms or fees. Discouraging this discourages better outcomes. All default funds must provide a MySuper option which will be clearly rated and ranked in the marketplace. That is clearly a beneficial and effective base for comparability.

4 Master trusts: effect of competition and aggregation

There is much argument about the past performance and costs of different arrangements within the superannuation sector.

There has been a great deal of movement and change within the superannuation sector particularly over the last decade. Because superannuation has such a long history there are products and frameworks developed for different times which need to be managed but the industry has also responded to a dynamic world where technology, globalisation and innovation have led to significantly different opportunities and different demands.

It is our experience that the industry has adapted well and it is our view that both competition and regulatory provisions which reframe past structures act as enablers of this ability to adapt to change.

We have moved from a relatively paternalistic structure of standalone corporate funds run by employers to the more open architecture of public offer funds and master trusts – offered both by shareholder backed providers and mutual structures.

The master trust structures retain the efficiencies of the employer model via bespoke employer sub-plans but remove the legal and compliance burden from employers.

4.1 Competition and effect on fees

Tailoring solutions for medium to large corporate superannuation arrangements fosters price competition and innovation. As evidence of this, Rice Warner, in its Superannuation Fees Report for the year to June 2008[3] estimated that fees for large employer master trusts reduced

[3] Rice Warner Superannuation Fees Report, December 2008

by 0.45% pa (to 0.79% pa) over the period since 2002. This represents a significant reduction of about one third in fees.

Employer master trusts are constantly innovating to meet the needs of large employers. Current examples include developments in online communications, tools for member engagement and advice, and segregated investment solutions that enable the value of deferred tax assets to be maintained within a master trust arrangement.

Overall, it has been demonstrated that fees for corporate master trusts are competitive in relation to other segments in the Australian superannuation market and globally.

In September 2009, Deloitte and the then Investment & Financial Services Association (IFSA) released the results of a global study that found that the fees charged by Australia's largest superannuation funds compare well against the most competitive funds in the world[4]. In particular, the study found that for both standalone corporate funds and for employers participating in employer master trusts, Australia compares very favourably with other countries reflecting:

- the small number of larger plans in Australia, which are well established and generally efficiently run, leveraging scale by appropriate outsourcing of scale based functions;
- intense competition of these types of employers in the employer master trust and industry fund sectors by the most efficient operators in these segments; and
- the benefits of scale delivered by a multi-employer plan.

The study found that the total average fees for larger employer master trusts in Australia were 0.76% of assets per annum.

Further, Rice Warner, in its Superannuation Fees Report for the year to June 2008[5] estimated that fees for the whole superannuation industry averaged 1.21% of assets with those for large employer master trusts averaging 0.79% having reduced by 0.45% over the period since 2002. Over the same period, fees paid in the industry fund sector reduced by only 0.16%.

Under separate cover we have also provided an outline of current fees for recent arrangements submitted for tender which we believe show both the ongoing consumer benefit of competitive pressure and engagement by employers with capacity and functions that enable

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[4] Joint Deloitte/IFSA Media Release 29 September 2009 – Australia compares well in global super fee study
[5] Rice Warner Superannuation Fees Report, December 2008

differentiated offers for employees.

Based on past experience and the added driver of MySuper and associated prudential changes we believe the sector will continue to rationalise with corporate funds and industry funds merging to manage new compliance requirements and to achieve necessary scale. This is supported by analysis and projections by Rice Warner Actuaries, fund mergers will continue. Rice Warner predicts that within 5 years the number of APRA-regulated funds will reduce as follows[6]:

Corporate	143	35
Industry Fund	65	42
Public Sector	37	25
Commercial	141	95
Small APRA	3,519	1,500

5 Statutory product criteria: MySuper

The law defines a MySuper product and sets out a range of criteria that must be met. NAB Wealth submits that this regime is extensive and believes additional/different requirements (in Awards) will lead to unnecessary cost, over-regulation, and sectoral distortion. Many of these provisions, in conjunction with APRA prudential standards, will meet the questions regarding criteria raised in the discussion paper. Whilst still being settled, the criteria for MySuper include:

- Registrable superannuation entity (RSE) licensees must apply to the Australian Prudential Regulation Authority (APRA) for authorisation to offer a MySuper product;
- Rules on the payment of contributions and account transfers for MySuper products;
- With limited exceptions, only provide a single diversified or lifecycle investment strategy for the RSE (fund);
- All members having access to the same options and facilities;
- The same processes are adopted in crediting or debiting member accounts;
- The only limits placed on the source or kind of contributions to a MySuper product are those prescribed by regulations or imposed under the general law or a law of the Commonwealth (for example, it may not be appropriate to require MySuper products to accept transfers from overseas jurisdictions that impose different or additional standards);
- Rules limiting the transfer of a member's interest without the member's consent except to another MySuper product within the fund or as required or permitted under a law of the Commonwealth;

[6] Rice Warner Media Release, December 2011

- Restriction on permitted fees that can be deducted from member accounts (including a ban on the payment of commission);
- Permitted fees to be effectively the same for all members in the MySuper product, with the exception of the administration fee;
- Application of specific trustee duties in relation to a MySuper product including:
  - to manage the MySuper product at an overall cost aimed at optimising the best financial interests of members, as reflected in the net return over the long term;
  - to clearly articulate an investment return target (over a rolling 10 year period) and level of risk appropriate to members of the MySuper product; and
  - to actively examine and conclude whether the MySuper product has access to sufficient scale (with respect to both assets and number of members) to continue to provide net returns that are in the best financial interests of members.
  - trustee duties for eligible rollover fund licensees that are similar to the specific trustee duties in relation to MySuper products;
  - the power for APRA to make prudential standards in relation to superannuation and issue directions to RSE licensees;
  - allowing defined benefit funds and schemes to continue to be a default superannuation product;
  - rules for the charging of financial advice deducted from member accounts and charging for intra-fund advice;
  - prohibition on deduction of commissions from member accounts;
  - rules for the payment of performance-based fees by RSE licensees to investment managers in relation to the assets of a MySuper product;
  - trustee obligations in respect of insurance;
  - limitation of certain fees to cost-recovery;
  - a rule for the fair and reasonable allocation of costs between each MySuper product and each choice product within a fund;
  - enhanced data collection and data publication powers for APRA;
  - specific disclosure requirements in relation to MySuper products, including a product dashboard;
  - arrangements for the transition of member accounts from existing default superannuation products to MySuper products (including a formal plan to be developed by the trustee).

If another regime separate to MySuper is to apply in relation to specifying particular and limited funds in modern awards to receive SG contributions (ie an expansion of today's

arrangements) where no other active choice is made, that framework will need to allow for changing circumstances over time and potentially for yet another transition or grandfathering framework. Given the expansive nature of MySuper, in conjunction with other policy initiatives focussing on administrative efficiency and the Future of Financial Advice reforms, we believe it would be a retrograde step to impose a separate set of criteria or tests for 'default' super in the award framework.

6 ATTACHMENT: Summary of industrial law provisions pre 'super choice' (2001)

It is important to note that the majority of States and Territories allowed employees and employers, under any relevant State based award/arrangement, to agree on the superannuation fund to which superannuation contributions were to be paid. The various 'fund choice' provisions which applied in each of the States and Territories in the early 2000's is summarised below:

New South Wales – Section 124 of the NSW Industrial Relations Act 1996 provided that an employee may, with their employer's written approval, nominate that their compulsory contributions be paid to a complying superannuation fund of their choice despite any requirement of an award or industrial agreement. *Note: For the nomination to be effective, the employee's nomination must be in writing and signed by the employee. The employer must also provide the employee with a copy of both the employee's written nomination and the employer's written approval and keep a copy of the nomination on file.*

Queensland – There were similar provisions to the NSW legislation. Section 405 of the Queensland Industrial Relations Act 1999 stated that an employer and employee may, by written agreement, arrange for superannuation contributions to be made to a complying fund other than that specified in the relevant award or industrial agreement.

Victoria – In 1996 the Victorian Government referred its industrial relations powers to the Commonwealth. As a result of this referral, all previous State award conditions were effectively abolished with certain minimum employment entitlements (excluding superannuation) being protected by Commonwealth legislation. This meant that for Victorian employees not covered by a Federal award or a formal agreement, employers could pay contributions into any complying superannuation fund. Such employees could therefore select a fund of their choice with the agreement of their employer.

Western Australia – Under section 49C of the WA Industrial Relations Act 1979, employees covered by a WA award or industrial agreement that required employers to make superannuation contributions, had to be given the option to choose their own complying superannuation fund. Employers had to provide an 'unlimited choice of funds'. If an employee decided not to nominate a fund, the employer had to contribute to the fund specified under the

relevant award/industrial agreement, or where there was no specified fund, the employer could contribute to any complying superannuation fund.

South Australia and Tasmania – There was no statutory provision in either State that allowed an employee to nominate a fund other than that specified in the relevant award or industrial agreement. In other words, employees were subject to award arrangements regardless of preference.

Northern Territory and ACT – In both the Northern Territory and ACT employees and employers are effectively covered by Federal awards. As such, there was no ability to choose a different superannuation fund to those nominated in the award or approved agreement, unless those awards or agreements specifically allowed alternatives which some do[7].

[7] This contrasts now with modern awards which stipulate specific funds and only allow others which were effectively in place prior to 12 September 2008.

7 ATTACHMENT: Multiple award provisions: superannuation assessment for actual company 2010

Consideration of Company X's Award/EBA provisions

This is a guide only. It is the employer's responsibility to determine to which funds it can pay future SG contributions. We recommend appropriate legal advice be obtained.

Based on preliminary analysis, there is nothing in the relevant Modern Awards or the Enterprise Agreements that prevents the transfer of members from the Company X Super Plan to a sub-plan of the Y Superannuation Fund (YSF). However, the issue is whether the Fund is eligible to receive future SG contributions from the employer under the terms of relevant modern awards. A summary assessment is provided below.

1. Salaried employees

Employment contracts do not nominate a default fund or restrict employees from nominating a fund of their choice (except defined benefit members who must be and remain members of the Company X Super Plan).

Impact of Award Modernisation: *Nil*

2. Employees covered by the Clerks Private Sector Award 2010

This is a Modern Award.

The superannuation clause is as follows:

> *Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 24.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 24.2 and pay the amount authorised under clauses 24.3(a) or (b) to one of the following superannuation funds or its successor:*
>
> **(a)** *CARE Super;*
>
> **(b)** *AustralianSuper;*
>
> **(c)** *SunSuper;*
>
> **(d)** *HESTA;*
>
> **(e)** *Statewide Superannuation;*

(f) *Tasplan;*

(g) *REI Super;*

(h) *Asset Limited;*

(i) *Westscheme Pty Ltd; or*

(j) *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.*

Impact of Award Modernisation

The Company X Super Plan (or its successor) is not eligible to be the default for employees covered by this Award unless Clause (j) applies ie if Company X was contributing to the Y Superannuation Fund (YSF) for the benefit of its employees before 12 September 2008[8].

If Clause (j) does not apply, any such current Company X Super members would need to actively **choose** and submit a fund nomination form to Company X in order to join the new YSF sub-plan to enable Company X to pay future SG contributions to the YSF. Otherwise future contributions need to go to one of the named default funds.

3. Employees covered by the Commercial Sales Award 2010

This is a Modern Award.

The superannuation clause is as follows:

> *Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 20.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 20.2 and pay the amount authorised under clauses 20.3(a) or (b) to one of the following superannuation funds or its successor:*
>
> **(a)** AustralianSuper;
>
> **(b)** *LUCRF Super;*
>
> **(c)** *CareSuper;*
>
> **(d)** *REST Superannuation;*
>
> **(e)** *Sunsuper; or*

[8] There is ongoing uncertainty as to the scope of the 'grandfathering' provision.

(f) *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.*

Impact of Award Modernisation

The Company X Super Plan (or its successor) is not eligible to be the default for employees covered by this Award unless Clause (f) applies ie if Company X was contributing to the YSF for the benefit of its employees before 12 September 2008[8].

If Clause (f) does not apply, any such current Company X Super members would need to actively **choose** and submit a fund nomination form to Company X in order to join the new YSF sub-plan to enable Company X to pay future SG contributions to the YSF. Otherwise future contributions need to go to one of the named default funds.

4. Employees covered by the Professional Employees Award 2010.

This is a Modern Award.

The superannuation clause is as follows:

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 17.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 17.2 and pay the amount authorised under clauses 17.3(a) or (b) to one of the following superannuation funds or its successor:

(a) *AustralianSuper;*

(b) *Tasplan;*

(c) *Statewide Superannuation Trust; or*

(d) *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.*

Impact of Award Modernisation

The Company X Super Plan (or its successor) is not eligible to be the default for employees covered by this Award unless Clause (d) applies ie if Company X was contributing to the Y Superannuation Fund for the benefit of its employees before 12 September 2008[8].

If Clause (d) does not apply, any such current Company X Super members would need to actively **choose** and submit a fund nomination form to Company X in order to join the new YSF sub-plan to enable Company X to pay future SG contributions to the YSF. Otherwise future contributions need to go to one of the named default funds.

5. **Employees covered under the BBB Enterprise Agreement 2009**

   The Agreement requires that the company contribute to 'the Company X Super Plan or another complying fund'.

   Impact of Award Modernisation

   Nil (and the transfer to YSF would seem to meet the Agreement so there should be no issue in paying future SG contributions to the new YSF sub-plans for these employees).

6. **Employees covered under the CCC Enterprise Agreement 2009**

   The Agreement nominates the Company X Super Plan as the default fund and specifies that employees may contribute to the Company X Super Plan, AUSTQ, or Australian Super.

   Impact of Award Modernisation

   Nil

7. **DDD Collective Agreement 2008**

   No default fund nominated in the Agreement.

   Impact of Award Modernisation

   Nil ((and the transfer to YSF would seem to meet the Agreement so there should be no issue in paying future SG contributions to the new YSF sub-plans for these employees).

8. **EEE Enterprise Agreement 2009**

   Default fund is Australian Super.

   Impact of Award Modernisation

   Presumably any employees covered by this Agreement who are in the Company X Super Plan are members because they have chosen this fund and can therefore be transferred to YSF. However, future SG contributions for these employees would be required to be paid to Australian Super unless they **choose** the new YSF sub-plan as their ongoing fund by submitting a fund nomination form to Company X. Otherwise future contributions need to go to Australian Super.

9. **FFF Certified Agreement**

No default fund named.

Impact of Award Modernisation

Nil ((and the transfer to YSF would seem to meet the Agreement so there should be no issue in paying future SG contributions to the new YSF sub-plans for these employees).