

**Submission to Productivity Commission Inquiry
into Default Superannuation in Modern Awards**

AMP Group
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1. INTRODUCTION

AMP welcomes the opportunity to make a submission in relation to the Productivity Commission's Inquiry into Default Superannuation in Modern Awards.

AMP is the largest superannuation provider in Australia and has assisted Australians take control of their financial futures for over 160 years. AMP provides a range of superannuation and retirement solutions which cater to all the needs of the community.

AMP is responsible for the management of over \$60 billion in retirement and superannuation assets on behalf of nearly 4 million customers. Of these funds, approximately \$20 billion in superannuation assets are directly attributable to approximately 500,000 members of a number of employer default superannuation plans.

AMP has long advocated the need to review the existing process by which default superannuation funds are nominated in the Modern Awards. We are one of the few retail superannuation providers that are nominated on a small number of Awards – in all cases this is a result of our historical position as a provider of superannuation products to various employers under Awards pre-Award modernisation.

The review of default superannuation in Modern Awards is timely and must seek to end the restrictive and unwieldy practices of the Awards system in Australia that ultimately fails to protect the interests of workers in relation to this allowable matter.

2. ROLE OF SUPERANNUATION IN AWARDS

The role of Fair Work Australia (FWA) as the regulator of the Modern Award system is to help parties to the Award to articulate the minimum terms and conditions of employment in each Award. Superannuation is one area where the Awards go beyond merely specifying the minimum terms and conditions.

All employers are subject to superannuation guarantee obligations for those employees that meet legislative criteria to have a portion of their salary (9%) paid as superannuation contributions. Some employers choose to pay above the minimum legislated rate of superannuation, as they may in relation to other allowable matters such as minimum wage rates or prescribed leave entitlements. Hence the minimum term and condition with respect to superannuation should be the obligation of the employer to meet their legislative responsibilities in paying all superannuation entitlements for eligible workers.

However, the Modern Awards in relation to superannuation go beyond these minimum terms and conditions. Under the Award system today, many employers are restricted as to which superannuation providers they are able to select from in order to discharge their Award and legislative obligations.

Prior to the commencement of the Modern Award system, specific funds could be nominated within an Award. However most Awards did not restrict employers from going beyond the nominated funds through the inclusion of an open clause stipulating they could choose from any other complying superannuation fund. The introduction of the Modern Awards removed this clause meaning new employers to an Award are completely restricted to those funds nominated in the respective Award.

FWA maintain that the practice of nominating superannuation funds in Awards does not restrict the ability of an employee to nominate an alternative superannuation fund in which to receive their

entitlements¹. This is correct. However, it is recognised that around 60 percent of members do not make active choices in relation to their superannuation².

Rather, general apathy amongst employees means that the bulk of their superannuation contributions flow into the employer's appointed default fund. Further, FWA seem to fail to acknowledge that the obligation to make superannuation contributions belongs to the employer. Therefore, the employer has a critical role in determining which default fund is appropriate for those employees who do not nominate an alternative destination for their contributions.

One of the criticisms of the superannuation system is that it is too confusing for employers, hence the need for a "pre-approved" list to assist them discharge their obligations. This is a sweeping generalisation of employers and fails to acknowledge those that view the Award system as a guide rather than the rule. The Modern Awards fail to cater for those employers who wish to offer their employees a different or better employment proposition, and superannuation (including any associated insurance benefits) is one of the easier conditions for employers to do this.

3. RESTRICTION OF COMPETITION IN MODERN AWARDS

The removal of the earlier arrangements allowing employers to access "any other complying superannuation fund" not nominated in their respective Award has now resulted in a restriction of competition within the Award system.

Further, significant difficulty is caused for those employers who may have employees under multiple Awards. For example, a school may have employees consisting of teachers, administration/clerical staff, cleaners, gardeners, etc... all under different employment awards. For these employers, they may be required to choose a different default fund between Awards if there is no consistent fund available.

This creates inefficiencies for the employer – assuming they are aware of this conflict and continue to comply with their Award obligations. Anecdotally, we are aware of a number of employers that either are not aware or intend to rely on the grandfathering provisions offered by FWA. However, as time continues, we believe we are likely to see more employers deliberately not comply with the restrictions presented to them through the Award system on the grounds of administrative inefficiency, unless flexibility is reintroduced into the default superannuation system within Modern Awards.

Modern Awards are required to be reviewed/updated on a four-yearly cycle. However, to date FWA have refused to acknowledge their role in assessing the ongoing performance of any default funds that have been nominated in Awards. In response to a question on notice, FWA responded that they did not think it was appropriate that "the Commission conduct an independent appraisal of the investment performance of particular funds"³.

This statement raises significant questions as to how FWA will discharge their obligation to review a Modern Award in its own right every 4 years if they do not seek to assess the ongoing validity of a nominated superannuation fund (of which investment performance should be a one of the key criterion). If FWA are not skilled or resourced appropriately to undertake this assessment, an

¹ Hansard, Senate Standing Committee on Education Employment and Workplace Relations - Additional Estimates 2010-2011, response to question on notice – DEEWR question no. EW0757_11

² Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2011 Explanatory Memorandum, page 5.

³ Hansard, House of Representatives – Thursday 9 February 2012. Response to question no. 736.

alternative regulatory body should be appointed in their place, or the practice of nominating funds should cease.

Additionally, the existing FWA process surrounding the variation of Modern Awards to include a new nominated default fund is opaque. Without this transparency, the cost (through the need to employ expert resources) and effort of interacting with the system can often override any benefits. This leads to inertia in the system where employees are disadvantaged by a lack of competitive tension amongst superannuation providers. Employers are also barred by this inability to seek out alternative default superannuation providers.

4. ROLE OF MYSUPER IN MODERN AWARDS

Following the most comprehensive review and consultation on the future of the superannuation system in Australia, the Government intends to introduce new arrangements for default superannuation from 1 July 2013, called MySuper.

MySuper has been specifically designed to provide a new level of protection to superannuation members not previously mandated within the superannuation system. MySuper will also address the general state of apathy that exists amongst superannuation members. Many workers have multiple superannuation accounts that are either forgotten or left behind when an employee changes employer. Each of these accounts has fees and charges levied against them that over time results in the erosion of savings at a faster pace than had they been consolidated.

Over the years a number of measures have been introduced to try to minimise the number of superannuation accounts in existence, such as campaigns to encourage consolidation of accounts as well as the work of the ATO and ASIC to try to reunite lost superannuation accounts with their owners.

MySuper is designed to be low cost with minimal features to minimise the erosion of superannuation benefits of members. Further, a member will only be allowed to have a single MySuper account going forward - that is, employees will be required to either rollover their MySuper account to their new employers default fund, or nominate their existing account to receive ongoing superannuation guarantee contributions.

From 1 July 2013, default employer contributions will only be able to be paid and received into an approved and compliant MySuper product issued by a licensed provider. An employee still retains the ability to choose an alternative superannuation fund, but an employer will be restricted to a MySuper product for those employees that fail to nominate a distinct fund to receive contributions.

Therefore, MySuper will be required to form part of the future of Modern Awards, whether at the behest of FWA or not. In relation to existing default funds nominated in Modern Awards, all of these Awards will need to be updated prior to the commencement of the MySuper regime to refer to the MySuper-compliant product of the fund provider. The fund provider must have an authorisation granted by APRA to be able to offer a MySuper product. FWA will need to undertake a review of all nominated default funds to ensure that are all MySuper compliant in order to remain listed in an Award.

AMP believes that the standards set through the MySuper legislative environment are satisfactory and of a suitably high quality to ensure employees superannuation assets are maximised and protected. Importantly, MySuper will simplify and standardise the default superannuation products available to Australians. Funds will be limited in the number of MySuper products they will be able to

offer and this will make comparison of MySuper products more manageable⁴. In our view, no additional criteria are required to further enhance the MySuper regulatory regime from an Awards perspective.

5. REGULATORY OVERSIGHT OF MYSUPER

APRA will be the primary regulator of MySuper products in the market. APRA will be responsible for granting a specific MySuper licence to superannuation trustees of MySuper products based on a set of defined criteria and conditions. Each of these criteria has been designed to provide a member with appropriate protection, as well as benefits. At the same time superannuation trustees will be restricted from including additional features that are superfluous or have the ability to erode a members' accumulated balance.

APRA will also be responsible for the ongoing supervision of the product and its superannuation trustee on an annual basis. This will include assessing the trustee's ongoing compliance with their regulatory obligations as well as a number of quantitative elements, such as costs for members and net investment performance of the MySuper product. Failure to meet all regulatory obligations can result in APRA withdrawing a MySuper trustee's licence to offer such a product.

The trustee of a MySuper product will also be subject to heightened responsibilities to members of their product. Trustees will be required to critically assess their ongoing ability to provide a quality MySuper product to their members against key criteria, such as scale of the fund and whether the investment objectives of the product are appropriate for the needs of the members.

In addition to the enhanced legal obligations in respect of MySuper, trustees will also have to comply with the new APRA prudential standards relating to investment governance, conflicts of interest, insurance and the transition to MySuper. Under the proposed legislation, there will also be a separate category of duties applying to directors of superannuation trustees. This will significantly increase the personal liability of such directors. Further, these heightened duties on both trustees and directors of trustee companies are likely to be a contributing factor to further fund mergers and consolidations.

6. CONSOLIDATION OF SUPERANNUATION FUNDS

Scale or size of a fund has long been recognised as beneficial in order to deliver superior outcomes for members. Scale allows a trustee to negotiate better rates with service providers such as investment managers, administrators and custodians. Whilst the superannuation guarantee (currently 9%, rising to 12% by 2020) ensures a level of growth for funds each year, many funds have recognised the value in mergers to provide better outcomes for members.

As a result, there have been a significant number of fund consolidations occur over recent years, such as Westscheme Super and Australian Super, Health Super and First State Super, Uniting Church Super and NGS Super and Aviation Industry Super and Australian Super. There are a number of further mergers currently proposed, however the taxation environment is currently not supportive of further mergers. As recently as 11 April, AGEST has warned that their \$6bn merger with Australian Super will not be completed by 30 June 2012, as they had previously hoped, unless they are able to receive tax relief for approximately \$45m of accumulated investment losses⁵.

⁴ Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2011 Explanatory Memorandum, page 6.

⁵ Australian Financial Review, 12 April 2012, "Tax bill could kill big super fund merger", Sally Patten.

It is envisaged that once this taxation issue is resolved, coupled with new obligations for Trustees under the MySuper regime, will again see a number of funds look to suitable partners with which to merge to ensure they are able to continue to provide the best outcome for their members.

7. ONGOING ASSESSMENT OF MYSUPER PRODUCTS

APRA will be responsible for the ongoing assessment of MySuper products. Trustees of a MySuper product will be required to report a significant amount of data to APRA on a regular basis. It is then intended that APRA will use this information for comparative purposes and publish these comparisons on a publically accessible website.

At this stage it is intended that the published data for all MySuper products will include analysis of elements such as the administration fees charged to members, costs of insurance options available within the product, type and level of insurance cover provided, investment strategy and options available and net investment performance of the product over set timeframes.

APRA has undertaken a practice of publishing league tables setting out fund financial characteristics and net investment performance on an annual basis over the past few years. This table seeks to identify the best performing funds and attribute a ranking to each fund assessed. It is intended that APRA will publish equivalent league tables for the approved MySuper products available in the market on a similar frequency.

AMP believes that with the introduction of the MySuper regime for default superannuation contributions, coupled with the proposed prudential regulatory oversight by APRA, there is no longer a need for FWA to continue the practice of nominating specific funds in Modern Awards. The MySuper model is a dynamic one that seeks to provide a greater level of accountability and transparency to members, more frequently. The practice of nominating specific funds in Modern Awards is a static model that remains largely unchanged and unassessed between each 4 yearly review cycle. This increases the risk of employees being locked into an underperforming fund (potentially eroding their retirement savings) whilst they wait for their award to be reviewed.

8. ROLE OF THE EMPLOYER IN SUPERANNUATION

For many years the role of the employer in superannuation has been under-recognised. FWA continue to maintain the role of the employer as merely a facilitative one, not recognising that many employers take an active interest in the wellbeing of their employees and seek to provide above minimum conditions to the extent they are economically viable to do so.

Superannuation is one of the areas where an employer is able to deliver greater benefits to their employees - by way of more tailored and better insurance cover, cheaper fees due to scale, or investments aligned to the ethos of the workforce - without significant cost to the employer.

AMP is aware of concerns expressed about the proposal to remove nominated funds from the Modern Awards, particularly in relation to the burden on employers to choose a default superannuation fund for their employees. It must be noted that presently 13 of the 122 Modern Awards do not have nominated funds stipulated in the superannuation condition. This does not appear to have significant ramifications or create an undue burden for those employers with employees under these Awards.

AMP believes that with the level of assessment and comparability expected to be provided publicly by APRA, employers will have all the resources they need in order to come to a decision about which fund to choose for their employees. And given the information made available by APRA will be more dynamic than the frequency of the review process for Modern Awards, employers will be assured they are always able to base their decision on current information.

For those employers that are interested only in superannuation to the extent of ensuring they discharge their statutory obligations, they will still be able to use the information provided by APRA to choose a fund for their employees, based on whichever criteria they deem appropriate (ie: performance ranking, size of fund, or union/industry alignment).

9. RECOMMENDATION

With the imminent introduction of the MySuper regime to Australia's superannuation system, AMP believes there is no longer a need to continue the practice by FWA of nominating specific funds to individual Modern Awards. In order to deliver truly fair and competitive outcomes for employees, the Modern Award system should no longer prevent an employer from seeking the most appropriate MySuper product for those employees who have not actively chosen a superannuation fund to contribute to.

Accordingly, every Modern Award should allow any MySuper compliant product to be available to all employers to select on behalf of their employees.