



CORPORATE SUPER SPECIALIST ALLIANCE

30th July 2012

Default Superannuation Funds in Modern Awards
Productivity Commission
LB2 Collins Street East
Melbourne Vic 8003

The Corporate Super Specialist Alliance's response to the Productivity Commission's report on Default Superannuation funds in Modern Awards

The Corporate Super Specialist Alliance (CSSA) finds the Productivity Commission's report on Default Superannuation funds in Modern Awards generally positive. It is excellent that the commission realises that the process for the selection and ongoing assessment of superannuation funds for listing as default funds in modern awards needs to be reformed.

The Productivity Commission's desire is to make the process open, contestable and transparent; as this is not currently the case.

The Commission has identified 4 possible options as alternatives to reform the selection process.

- Option 1 involves each employer choosing a fund from all of those that offer a MySuper or other approved default product.
- Option 2 represents a minimal change, where the industrial parties assess all potential funds and nominate a subset of five to ten funds to FWA for listing in awards.
- Option 3 represents a more significant change to the current industrial process, with decisions being made by a Fair Work Australia (FWA) panel — comprising full-time members and part-time experts — and the selection process being opened up to allow all funds to present their case to FWA to be listed in modern awards.
- Option 4 is similar to Option 3, but decisions would be made by a new expert body independent of FWA, with FWA playing a minimal role in administering the decision.

The CSSA believes option 1 is a viable alternative, as we outlined in our submission to the Commission. If MySuper legislation is passed into law and all default superannuation funds must be MySuper funds then it is very clear to us that there will certainly be no need to nominate default funds in awards as any MySuper fund would, by design, be suitable as a default fund. My Super funds are designed specifically to be default funds and must meet the legislated standards. This option would result in the least "red tape" and regulation.

The Commission has effectively ruled out option 1, as it believes this may be too confusing for employers. If this is the eventual outcome then the CSSA would suggest that the only other viable option is option 4.

We do not consider option 3 as viable, as we do not believe FWA has the specific knowledge and the necessary experience of superannuation to be in the position to make decisions as to which funds should be allowed as default funds in modern awards. We also understand that FWA has been subject to some significant level of criticism in their handling of recent enquiries. Their impartiality has been brought to question, and they have taken a long time to reach conclusions on enquiries, which would lead us to question if they have the necessary resources to take on this role. It therefore seems logical that a new expert body independent of FWA would be best positioned to make decisions on superannuation in Modern Awards.

The Commission has also put forward a view that there should be no fewer than 5 and no more than 10 funds listed in an award. This seems to strike a fair balance, providing that it is not the same funds listed repeatedly in each award. Some awards with a predominance of certain demographic groups or employment conditions will require funds that cater specifically to their needs. We feel innovation and creativity needs to be fostered, and that all funds need to be given equal opportunity to be nominated in an award; therefore the process of selection needs to be outlined clearly so that funds can understand the criteria.

The CSSA is also generally very positive about the recommendation that under any circumstance employers would be able to choose a fund not listed in an award, provided they can demonstrate, upon request, that their employees are no worse off. We feel it is very important to allow employers to be able to tailor their superannuation offering to suit their employees, as the roles of employees that are employed under a particular award can be very diverse.

Our serious concern about this recommendation is that the onus is put onto employers to prove that their employees are no worse off. We believe that this requirement of proof needs to be carefully quantified so that an employer is aware that they have met the criteria required at the time a fund is selected, as if this is not

the case this would provide a significant disincentive for an employer to make a selection outside the funds nominated in an award.

The outcome of a decision to invest in a certain Superannuation fund will not be known until time has passed and the actual performance of the selected fund can be measured against its peers. It is not practical to put the responsibility of the ongoing performance of a chosen fund onto employers, as they can only make a decision based on the factors that they understand at the time the decision is made. We would also be keen to ensure that there is no contingent liability or exposure for Financial Advisors if an employer seeks the assistance of an advisor in selecting a fund (and therefore passes this obligation on to the adviser).

The CSSA agrees that allowing an employer to choose their own default fund will provide for closer tailoring of superannuation to the needs of particular workplaces than is possible under a system based on awards. We agree that when an employer is choosing their default superannuation fund, the employer must put the best interests of their employees first. We also agree with all the factors that have been listed as primary factors for consideration; being

- The appropriateness of the MySuper product's investment return objective and risk profile for employees to whom the superannuation provisions in that modern award apply, although we find it difficult to conceive that one single investment strategy can possibly be appropriate for every person employed under a particular award
- The fund's expected ability to deliver on its MySuper investment return objectives
- The appropriateness of the fees charged by the MySuper product, given its stated investment return objective and risk profile
- An assessment of whether governance structures are, as far as legislative requirements allow, consistent with meeting the best interests of members
- The mechanisms put in place by fund trustees to deal with conflicts of interest, and the transparency in disclosing those conflicts
- The likelihood of members being switched to higher cost divisions of funds, or facing significantly higher fees for features of their policies (such as insurance), upon exiting their current employment ('flipping'), although we do believe that some minor fee differentials may occur if an employee leaves the employment of a firm that has negotiated discounts on behalf of their staff and that this is an acceptable practice if the exiting member reverts back to a fee that is no higher than the standard fee for the MySuper product
- The compatibility of a fund's insurance offerings with the characteristics of employees to whom the superannuation provisions in that modern award apply, although again we do feel that tailoring of insurance is required on an employer by employer basis as an award can cover millions of employees

- The quality of member- and fund-specific intra-fund advice. This is of particular interest to the CSSA as we believe the proactive delivery of education to employees is critical to achieving the Governments desired outcome of improving financial literacy and ultimately people's financial independence. Often education and advice provided in the workplace is the only exposure individuals have to proactive financial education.
- The administrative efficiency of a fund. CSSA members are generally very aware of the administration capabilities of superannuation providers

Further, we agree that

- all funds that have MySuper authorisation from APRA (as well as EPSSSs) are able to apply to be listed in a modern award and have the application considered on its merits
- existing grandfathering provisions relating to superannuation funds would be removed from modern awards, on the understanding that an employer can nominate any fund they desire as their default fund
- there is an ongoing assessment that would enable the removal of funds in exceptional circumstances
- a wholesale reassessment takes place periodically, at which time the full selection process would be repeated and all funds that wish to be listed in awards would need to apply or reapply. We believe this reassessment should occur regularly; the current industry standard timeframe is 3 years. We do not think an 8 year timeframe is appropriate
- there is an appeal mechanism that strikes a balance between allowing parties the right to appeal where there are sufficient grounds to do so, while discouraging vexatious claims.

We do not agree that funds could be removed from, but not added to, awards. It would appear logical that if a superannuation fund is recognised as being superior to its peers, or if a new fund is developed that offers superior features and benefits, that employees should be able to get access to this fund rather than waiting an arbitrary period, such as 8 years, for a reassessment of default funds within an award to occur. Imposing this limitation on the ability to add funds will not encourage creativity and innovation of fund design. It could also lead to funds that are nominated becoming complacent and not regularly improving and updating their offering.

We believe that the intention of the legislation should be to assist employers and their employees to access the best possible superannuation products. As MySuper is a new concept there is a lot of room for product innovation to occur in the near term. Restricting the ability of potential new, innovative products from being able to be considered for inclusion in Modern Awards seems to be counterintuitive. The

flexibility to add new funds would not necessitate a wholesale reassessment of funds.

Implementation and transition

The CSSA agrees that a commencement as soon as practicable would be ideal, and agrees with the Commissions assessment of the affect the reforms will have on stakeholders and that there is merit in conducting an independent public review after the first wholesale reassessment of funds, to ensure that the criteria for default fund selection remain useful and relevant and that the selection process is working as intended.