

CORPORATE SUPER ASSOCIATION

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Default Superannuation Funds in Modern Awards
Productivity Commission
LB2 Collins St East
Melbourne VIC 8003

By e-mail to: default.super@pc.gov.au

Dear Sirs

DEFAULT SUPERANNUATION FUNDS IN MODERN AWARDS

We refer to the Productivity Commission's Draft Inquiry Report on the above.

Background to the Corporate Super Association

Established in 1997, the Association is the representative body for large corporate not-for-profit superannuation funds and their employer-sponsors. We represent 35% of corporate fund assets and 30% of members of corporate superannuation funds. In general, these funds are sponsored by corporate employer sponsors with membership restricted to employees from the same holding company group, but we also include in our membership a few multi-employer funds with similar employer involvement and focus.

Many of the funds we represent include defined benefit divisions. Many of the defined benefit divisions are closed to new members, but there are also several that remain open. Many of the members are entitled to a combination of defined and accumulation benefits.

Employer "opt out" proposals

We note the proposal to replace "grandfathering" of default funds to which the employer was contributing before 12 September 2008 with the proposed arrangement under Draft Recommendation 8.2: that an employer responding to a Modern Award should be able to contribute to any MySuper fund if the employer can demonstrate:

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- that the fund has been chosen after taking into account the factors listed by the Commission for the selection of default funds for inclusion in Modern Awards, and
- that the employees are no worse off than they would have been, if one of the funds listed in the award had been used by the employer.

We believe that the “employer opt-out” process has merits, in that it could simplify the process of choosing a default fund such as the long-standing employer sponsored fund, or its successor.

However, we have overall difficulties with the “no worse off” test, which we consider to be unnecessary and undesirable.

The “no worse off” test lacks clarity, and we are concerned that the subsequent review and assessment of the employer’s choice of default fund will be carried out with the benefit of hindsight, an advantage not available to the employer when making the choice of default fund.

We would instead support an approach which omits the “no worse off” test

As proposed by the Commission, this would involve availability of choice of default fund from the entire range of MySuper products, limited by the criteria summarised by the Commission in the Draft Inquiry Report under “Draft recommendations, findings and information requests” as follows:

- To review key aspects of the chosen fund in relation to the factors listed as “to be taken into consideration” at Draft Recommendations 4.1, 4.2, 4.3, 5.1, 5.3, 5.4, 6.1, 6.2, 6.3.

Practical application of a “no worse off” test

A “no worse off” test on top of these criteria appears to us to be impractical in its application, given the following aspects:

- How would “no worse off” be interpreted in this context? The current expression is uncertain because
 - it does not list objective criteria for testing; and
 - it could be interpreted as requiring no single employee to be worse off; this would be very difficult to determine, and could result in the chosen default fund being challenged on a single issue basis.

It could be interpreted as requiring the employee to be no worse off than he or she would have been under any (i.e. the overall best) of the listed funds. This appears to require testing of the employer’s chosen default fund against all of the funds named in the award.

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A more practical alternate approach is to require the employer to select a default fund that provides a similarly competitive offering (given that any two funds rarely provide exactly the same offering) to any one of the funds listed in the Award, based on the criteria outlined by the Commission, and applied on a collective or aggregate employee basis.

At a minimum, the ‘no worse off test’ (should it be retained) should be applied on a collective or aggregate employee basis against any one, rather than all of the listed funds.

Employer review and compliance process

In order to demonstrate that appropriate process has been followed in choosing the default fund other than from the award list, the employer will need to carry out regular review and document it. An appropriate interval for review would be required, and we would suggest that this could be similar to the period for award review.

This should be achievable by a straightforward review of the prescribed key metrics set out in the Draft Inquiry Report, without requiring a complex submission process.

Compliance monitoring

We presume that it would be most efficient for any monitoring of the employer opt-out to be carried out by the body that is chosen to carry out the selection process proposed under Options 3 and 4 outlined under Draft Principal Finding 8.1.

We believe that appropriate objects for the monitoring process would be:

- to ensure that the fund chosen by the employer for default contributions is a MySuper fund; and
- to review key aspects of the chosen fund in relation to the factors listed as “to be taken into consideration” at Draft Recommendations 4.1, 4.2, 4.3, 5.1, 5.3, 5.4, 6.1, 6.2, 6.3.

If employer “opt-out” not available

In the event, however, that the employer opt-out proposal is abandoned, we feel it becomes imperative to retain the “grandfathering” arrangements, with modification to allow for successor fund arrangements, for reasons outlined in our submission to the Commission in April 2012.

The modification of grandfathering to allow for successor fund arrangements is a key requirement, given the continuing consolidation in the sector. For these funds to be permitted in grandfathering arrangements they would necessarily have to include MySuper products.

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The retention of corporate funds as default funds in awards, including the retention through grandfathering, has been the result of various forms of bargaining and negotiations. To exclude these funds will result in significant adverse affects for employees, because many provide benefits that exceed SG minimum, provide tailored and favourable insurance arrangements, and are otherwise generously supported by the employer-sponsor in a way that would not apply to an external fund.

Removal of these funds from the default would disrupt the agreed arrangements, resulting in a need for extensive re-negotiations. This is unlikely to be in the best financial interests of the members, and goes against the Commission's previously outlined principle of retaining stability in the superannuation system.

Yours faithfully

Mark N Cerché
Chairman
Corporate Superannuation Association