



National Union of Workers

Submission to the Productivity Commission  
in response to the Draft Report on Default  
Superannuation Funds in Modern Awards

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## Glossary

**AIRC** – Australian Industrial Relations Commission  
**APRA** – Australian Prudential Regulation Authority  
**ACTU** – Australian Council of Trade Unions  
**EBA** – Enterprise Bargaining Agreement  
**FWA** – Fair Work Australia  
**FW Act** – Fair Work Act 2009 (Cth)  
**MW Panel** – Minimum Wage Panel  
**NUW** - National Union of Workers  
**PC** – Productivity Commission

## Background

The NUW is a large Australian trade union, formed in 1998 by a progressive amalgamation of unions.

It represents workers in a range of industries including warehousing, logistics, food processing, manufacturing, poultry, defence logistics, dairy, market research and call centres.

Although the majority of our members are covered by Enterprise Bargaining Agreements, the NUW still has a large number of members who rely on modern awards. Many of these members will be directly affected by any changes that may result from the Commission's review of default superannuation funds in modern awards.

In this submission, the NUW has chosen to focus on the Commission's information request for feed back on the merits of two options in relation to ongoing selection and assessment of superannuation funds for listing in modern awards.

This submission will recommend that 'Option 3' is the most appropriate for the Commission to recommend in its final report.

The NUW understands that the ACTU will be making submissions as part of this review. As an affiliate union, the NUW supports those submissions.

## Context

Productivity Commission data indicates that 80% of workers do not choose a fund when they begin employment and are therefore reliant on the default superannuation fund/s to determine where their superannuation payments will be directed.<sup>1</sup> This means that when a union has not negotiated a collective bargaining agreement which includes a clause about the use of a specific not-for-profit superannuation fund, the way the default fund system is structured is crucially important to the retirement years of low paid workers. While there is a minimum superannuation contribution that employers must make, the way that contribution is managed by a superannuation fund plays a critically important role in determining the quality of life working people enjoy in retirement.

The default superannuation system provides a significant safety net for NUW members, especially for those working in highly transient industries like poultry and logistics, where work is often short term and workers are likely to shift employers after a short period of time and more often than not choose the default superannuation option.

The current default superannuation system ensures that these workers are only exposed to a small number of industry approved superannuation funds. Excluding the majority of non approved profit based funds from default status ensures those that are not comfortable with managing their own fund are matched with independently approved funds that are not beholden to shareholders and short term profit objectives. This is particularly important when factoring in the rationale behind people selecting default superannuation funds.

The Productivity Commission's draft report identifies why the majority of individuals tend to choose the default superannuation fund rather than choosing their own fund. The main reasons identified are a lack of financial literacy, the complexity of investment decisions, high search costs, the endowment effect, lack of price awareness, heuristics and the framing effect all contribute to the high number of workers who simply trust that the default fund will provide a decent rate of return to their superannuation funds.<sup>2</sup>

Not for profit superannuation funds have consistently outperformed retail superannuation funds in terms of average returns over the last 15 years. Figures provided by the Australian Prudential Regulation Authority indicate that retail funds returned an average of 3.84% of interest earnings between 1996 and 2011. Over the same period, not for profit funds returned 5.59%. This equates to \$75 billion dollars less in investment returns for Australian workers over the 15 year period.<sup>3</sup> This not only affects the retirement of working people it also reduces the amount of capital invested into job creating investment projects in the local economy.

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<sup>1</sup> John Paul, Asset Super, *Productivity Commission Enquiry Default Superannuation Funds in Modern Awards*, 5 April 2012

<sup>2</sup> Australian Government Productivity Commission, *Default Superannuation Funds in Modern Awards Draft Report*, June 2012, Page 4

<sup>3</sup> Age (online), *Retail Funds Fall Short by \$75b*, July 25, 2012

## Options for reform

In response to the Commission's request for information in relation to the merits of Options 3 and 4, the NUW believes that Option 3 is the most appropriate for the Commission to recommend. The NUW recommends that, as the Commission has described, an expert panel be established within Fair Work Australia (**FWA**) whose purpose it is to determine which superannuation funds should be granted default status in certain modern awards. The NUW agrees with the Commission that the design of this panel should be based on the existing Minimum Wage Panel (**the MW Panel**) that each year determines the increase for wages and allowances in modern awards. The MW Panel is comprised of a mix of the President of FWA, three full time FWA Members and three part time members that have extensive knowledge or experience in the following areas; workplace relations; economics; social policy; and/or business, industry or commerce<sup>4</sup>. Each year prior to making a determination the Panel is able to inform itself through submissions from interested parties. The Panel then makes a determination based upon these submissions.

The NUW's experience with the design and operation of the MW Panel has been a positive one. The establishment of a panel comprising of both existing FWA members and other part-time members with specific expertise in relevant fields has provided the appropriate balance between experience in workplace relations and industrial matters, and expert knowledge in other relevant areas such as macroeconomics and business. The operation of this panel has also provided for an efficient and transparent process where interested parties are able to make submissions. The MW Panel is also required to publish the reasons for its decisions, contributing to a more transparent process. The NUW believes the demonstrated effective operation of the MW Panel should be considered by the Commission when determining whether or not to proceed with 3 or 4. The MW Panel has so far operated in an efficient and effective manner and the NUW believes it would be an appropriate and effective template for the introduction of a similar panel to determine default superannuation funds in modern awards.

There is broad agreement across both the Superannuation sector, Industry Groups and Unions that superannuation in its current design is essentially a system of deferred wages<sup>5</sup>. The system is designed to ensure that Australians have adequate savings to support them throughout retirement. This therefore means that superannuation payments and their management are inherently industrial issues, not dissimilar to wages, hours of work, penalty rates et cetera. This is reflected in Enterprise Bargaining Agreements, the vast majority of which contain extensive content in relation to superannuation arrangements. However, by nature, anyone who is covered by a modern award is not covered by an EBA. In many of these cases these workers do not have the capacity or ability to negotiate with their employers in relation to industrial matters. They are therefore reliant on Fair Work Australia to set and vary their industrial conditions through the Modern Award system.

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<sup>4</sup> See sections 627(4), 628(3) and 629(4) of the *Fair Work Act* 2009.

<sup>5</sup> Australian Hotel Association, *Submission in Relation to Default Superannuation Funds in Modern Awards*, 4 April 2012

Under Part 2-3 of the FW Act FWA is responsible for the making, varying and revoking modern awards. According to s132 of FW Act Modern Awards are designed to “set minimum terms and conditions for national system employees in particular industries or occupations” (in conjunction with the National Employment Standards (**NES**))<sup>6</sup>. When performing these functions (and when the Minimum Wage Panel is making its determination) FWA is required to ensure that modern awards are meeting certain objectives (s134)<sup>7</sup>. These objectives include taking into account (among others); the relative living standards and the needs of the low paid (s134(1)(a)); the need to encourage collective bargaining (s134(1)(b)); the need to promote social inclusion through increased workforce participation (s134(1)(c))<sup>8</sup>.

After establishing the modern awards throughout 2008 and 2009 FWA is required by the Act to perform four yearly reviews of all Modern Awards. FWA also has the power to make, vary or revoke modern awards at any time, upon application, in order to achieve the modern award objectives; to remove ambiguity, uncertainty or correct an error (s160)<sup>9</sup>.

It is clear that the FW Act grants FWA the sole power to determine the industrial conditions that apply to millions of Australians that do not have the qualifications, skills bargaining power to negotiate their industrial conditions with their employers. This power was granted to FWA based on its expertise and experience in industrial matters and its unique ability to inform itself and consider facts and arguments from the relevant parties in relation to the setting of industrial entitlements. In the experience of the NUW, this has provided an effective, efficient and balanced framework for the creation and maintenance of modern awards.

However, the introduction of a system that wholly excluded FWA from having any meaningful involvement of the selection of default funds in modern awards would serve to undermine the role and authority of FWA as the independent body that is responsible for the creating, varying and maintenance of modern awards. ‘Cherry picking’ this responsibility from FWA and granting it to a wholly independent body would potentially create an anomalous situation where FWA has responsibility for setting and varying all industrial matters contained in modern awards (such as wages, hours of work, penalty rates, breaks et cetera) except default superannuation funds. This is despite, as described above, superannuation being widely regarded as ‘deferred wages’ and therefore inherently being an industrial matter. This would fundamentally undermine FWA’s role as the independent body responsible for establishing, maintaining and varying the industrial entitlements of millions of Australians. The NUW believes that this would be inconsistent with the both the intent and objectives of the FW Act and would be detrimental to the effective operation of the modern award system.

Furthermore, under the scenario envisaged in Option 4, there is no indication that the independent body would be required to have regard to the modern award objectives that FWA is required to consider when setting modern awards. This could lead to a situation where FWA is active in creating and varying modern awards in order to achieve the objectives outlined in the FW Act, while an independent body tasked with creating a significant part of the same award (the default

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<sup>6</sup> *Fair Work Act 2009* (Cth)

<sup>7</sup> *ibid*

<sup>8</sup> *ibid*

<sup>9</sup> *ibid*

superannuation fund) is not required to strive to achieve the same objectives. This could serve to fundamentally undermine the ability for FWA and modern awards to achieve the objectives outlined in the FW Act.

In making decisions regarding the naming of default funds within awards the NUW believes it is imperative that whichever agent or body is responsible for selecting default funds is guided by the views of those who use and are directly affected by their decisions. Those who are most affected by the naming of default funds in modern awards are primarily employers and employees. Their views therefore should be given pre-eminence in the process. The NUW believes that FWA is the body that is best placed to consider the views of these participants. FWA has the proven ability and experience in considering the views of employers and employees and their representatives (including Unions and Industry/Business groups) as they are obligated to in almost all of its functions. A body wholly independent of FWA would potentially not have the same ability or experience to properly consider the views of those most affected by their decisions. The inability of an independent body to properly inform itself of the views of those most affected by their decisions could potentially lead to detrimental outcomes for both employers and employees.

Lastly, the Commission should not discount the importance of the industrial experience and knowledge that FWA possesses. FWA has been established as the national workplace relations Tribunal and has the responsibility for dealing with matters relating to employees and employers. Through this, FWA and its precursor, the Australian Industrial Relations Commission (AIRC), have amassed extensive knowledge and experience in determining and dealing with industrial matters relating to employees and employers. This knowledge and experience would undoubtedly be crucial when determining an industrial issue as important to employees and employers as default superannuation funds. This industrial experience, combined with the expert knowledge in other relevant areas (which would be provided through the creation of a panel similar to the MW panel) would provide a balanced framework for the naming of default funds within modern awards. By contrast, a body that is completely independent of FWA would be devoid of this experience and knowledge of industrial matters. The NUW believes this would lead to a decision making process that is inherently deficient.

## Summary

The NUW believes that any reforms to the existing superannuation arrangements in relation to the selection of default funds must be made in the interests of those most affected by the changes – employers and employees. This will ensure default award superannuation funds are committed to balancing both capital investment in the Australian economy and ensuring employer superannuation contributions are managed to achieve the highest possible returns for workers to assist them to live comfortably in retirement.

In achieving these objectives the NUW believes that in relation to the process for the selection and ongoing assessment of default funds for modern awards, 'Option 3' is the most appropriate for the Commission to recommend. The MW Panel has so far operated in an efficient and effective manner and would provide a suitable template for a similar panel to be established within FWA for the selection of default superannuation funds in modern awards. This would provide for a process that balances the industrial knowledge and experience of FWA with expert knowledge from those who have expertise in relevant fields. Furthermore, it would preserve FWA's role in the creation, variation and maintenance of all aspects of modern awards as well as the intent and objectives outlined in the FW Act. Finally, the NUW believes this option will best allow for the input of those most affected by the naming of default funds in superannuation awards, therefore leading to more beneficial outcomes for both employers and employees.