



Default Superannuation Funds in Modern Awards
Productivity Commission
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Melbourne Vic 8003

Email: default.super@pc.gov.au

03 August 2012

Dear Sir or Madam,

RE: Default Superannuation Funds in Modern Awards, Productivity Commission Draft Report

The Financial Planning Association of Australia (FPA)¹ welcomes the opportunity to provide comments and feedback on the Productivity Commission Draft Report, June 2012 – *Default Superannuation Funds in Modern Awards*.

The FPA wishes to formally acknowledge our support of this report, the thorough review of the process, and the conclusions drawn that the current system should be reformed to address the structural impediments and shortcomings.

In general, the FPA is encouraged by the findings and recommendations to reform the institutional arrangements for the default fund decision-making process.

The FPA believes an environment that fosters competition and innovation will deliver better outcomes for working Australians. We are very supportive of the Commission's intent to allow Employer choice under the proposed options.

The purpose of our submission is to highlight those areas of clarification and potential unintended consequences.

Yours sincerely

Dante De Gori
General Manager Policy and Government Relations

¹ The FPA is the peak professional body for financial planning in Australia. The 8,000 individual professional members of the FPA have an enforceable Code of Professional Practice, including the Client First principle. 5,700 of our members have achieved CFP certification, which is the global standard of excellence in financial planning. FPA practitioner members manage the financial affairs of more than 5 million Australians whose investments are valued at \$630 billion.



Default Superannuation Funds in Modern Awards: Productivity Commission Draft Report

Introduction

The FPA has reviewed the Productivity Commission Draft Report, *Default Superannuation Funds in Modern Awards*, June 2012, in relation to the following areas:

- Factors for consideration in the selection and ongoing assessment of default funds in modern awards
- Principles for designing a selection process
- Reforming the selection process
- Transition issues and future review

The FPA believes that the long term success of Australia's economy and assured financial confidence for Australians in retirement is dependent on a policy and regulatory framework that delivers genuine **transference, comparability** and **competition** in their financial services, underpinned by strong consumer protections. We believe this would best be achieved by providing strong protocols around the approval process for a MySuper Fund by the Australian Prudential Regulation Authority (APRA) but that once approved all Employers and their Employees should have the opportunity to select from *any* of these funds.

The Commission has identified and assessed four options for reform to the process for selection and ongoing assessment of superannuation funds for listing as default funds in the modern awards.

With the introduction of MySuper the FPA believes Option 1 (allowing all employers to choose from all funds that offer a MySuper or other approved default product) would strengthen the contestable market and result in competition benefits flowing to Australia's employees. In addition, this option would minimise delays and costs in addressing some of the current structural impediments and shortcomings identified in the report.

As this option has been ruled out by the Commission, we have limited our feedback to the institutional arrangements for the default fund decision-making process based on Option 3 and 4.

We believe, that under either of the proposed options, an Employer should have the choice to select a MySuper default fund for their Employees. We support the Commission's intent to allow Employer choice under the proposed options; however we are concerned that the proposed additional requirements would make this option untenable for Employers, negating the identified benefits for employees, and resulting in unintended consequences.



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Factors for consideration in the selection and ongoing assessment of default funds in modern awards

Draft Finding 7.1

There is no case for the selection and ongoing assessment of superannuation funds for listing as default funds in the modern awards to involve any prescriptive criteria over and above those used by Australian Prudential Regulation Authority in authorising MySuper products.

The FPA agrees with the Commission's Draft Finding 7.1. We strongly support that the selection and ongoing assessment of superannuation funds for listing as default funds in modern awards should have the best interest of members as the primary objective.

Principles for designing a selection process

Draft Recommendation 7.1

- *Best interest of members* – there is an explicit focus on members' interests.
- *Contestability* – all funds have an equal chance to put forward their case for consideration.
- *Transparency* – relevant information is made publicly available and potential conflicts of interest are declared.
- *Procedural fairness* – all parties have the right to put forward their case for consideration to an unbiased umpire.
- *Minimum regulatory burden* – each party involved incurs minimum cost and inconvenience compatible with achieving the aims of the process.
- *Avoidance of instability* – the broader superannuation system is not destabilised.
- *Consistency with other policies* – the process aligns with other relevant policy directions, including Stronger Super and Future of Financial Advice reforms.
- *Regular assessment* – all default funds must earn their listing in an award on a regular basis

The FPA welcomes and supports the Commission's recommendation that the process for selection and ongoing assessment of superannuation funds should adhere to the following principles; best interest of members, contestability, transparency, procedural fairness, minimum regulatory burden, avoidance of instability, consistency with other relevant policies (including the Stronger Super and Future of Financial Advice reforms) and regular assessment.



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Reforming the Selection Process

The FPA welcomes the Commission's findings and recommendation to reform the institutional arrangements for the default fund decision-making process

1. Options to reform the current process

The Commission has outlined options to reform the current process and is seeking feedback from participants on the relevant merits of the two alternative options below.

Draft Principle Finding 8.1

Option 3:

Decisions being made by an expert panel within Fair Work Australia (FWA), and the selection process being opened up to allow all funds to present their case to be listed in awards to FWA, based on the factors identified by the Commission.

Option 4:

Establishment of a new expert body independent of FWA, with the sole purpose of selecting and assessing the funds to be listed in modern awards, based on the factors identified by the Commission.

In considering which of the two options above would be more likely to address the structural impediments and shortcomings identified in the Productivity Commission Draft Report our preference is for Option 4.

Whilst Option 4 represents the greatest change to the current process, our view is that an independent expert body (with relevant skills, experience and independence) will be better placed to ensure adherence to principles outlined in Draft Recommendation 7.1, creating greater confidence in the process going forward.

Linking the decision around such a significant financial choice for Australians to an industrial relations structure such as FWA is likely to create substantial conflicts of interest and degradation of function and outcome for both the industrial relations as well as financial purpose of the organisation.

FPA Recommendation

The FPA preference and recommendation is that Option 1 is selected.

In the absence of Option 1 being available then the FPA recommends Option 4 is preferred over Option 3. However, we would seek to understand the implications of increased costs and potential delays in implementation of this option.



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2. Choice within the Modern Awards

Draft Recommendation 8.1

All funds that are authorised to offer a MySuper product (and exempt public sector superannuation schemes) should be able to apply to be listed in an award and have the application considered on its merits. An applicant's case should be outlined and assessed against the factors for consideration identified by the Commission. Other factors could be taken into account for individual awards at the decision maker's discretion.

The FPA is encouraged by the Commission's recommendation that the selection and ongoing assessment of those funds should be merit based and that the applicant's case should be considered against the factors outlined in the Draft Recommendations.

Draft Recommendation 8.4 provides that Modern Awards should list no fewer than 5 funds and no greater than 10 funds. The rationale is based on the view that the list needs to be restrictive to avoid excessive costs for employers, while still promoting competition.

The FPA believe it is very important to have a reasonable representation of funds listed throughout the modern awards to promote competition. We believe there is a risk that only a relatively small number of funds would be represented throughout all the modern awards. As this would significantly reduce competition we would seek further clarification to better understand the process or proposed process that would mitigate this identified risk.

The FPA endorses the Commission's view that having a number of funds listed in the awards should not impede the flexibility of employers to choose any fund not listed in the awards, as long as the fund is approved, under the Stronger Super legislation, to receive default contributions (that is, a fund offering a MySuper product, or an EPSSS or a defined benefit).

3. Employer Choice

The FPA believes that Employers who proactively seek to improve Employee Benefits (incurring research costs that are not passed to members) should be encouraged to do so. However if not encouraged that at a minimum they should not be discouraged.

There are a number of benefits to employees of this approach and many of these are outlined in the report.

In particular, an Employer's ability to select any one of the MySuper superannuation funds:

- Reduces the threat that competition benefits will be eroded by limiting funds flow to a relatively small number of superannuation providers. Alleviating the problems associated with contestability.
- Provides flexibility for employers (particularly those who have a diverse workforce often covered by multiple awards) to select a provider who can tailor a solution to the needs of that workplace (e.g. insurance design)
- Protects current benefits and minimises disruption from the proposed removal of the Grandfathering clause.



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4. Requirements for Employers Choice

Draft Recommendation 8.2

Employers selecting should be required to justify their choice, if called upon, by demonstrating that:

- the factors for consideration identified by the Commission were taken into account when making the decision
- their employees are at least no worse off than if the employer had chosen a fund listed in the relevant award.

The FPA in principle supports Draft Recommendation 8.2 with respect to employers being required to justify their choice against the factors identified for consideration, when called upon to do so.

We believe, however, adding a no worse off test will create a high degree of uncertainty for Employers, increase complexity, increase costs and prevent Employers from seeking tailored solutions or retaining arrangements that benefit their employees collectively.

We are concerned that this requirement could negate those benefits identified in the Productivity Commission Draft Report that would otherwise flow from an Employer's ability to select a default fund not listed in the awards.

Imposing upon Employers an additional requirement (higher hurdle) to ensure their employees are no worse off, we believe will act as an impediment for Employers, when choosing a new fund or retaining current arrangements.

Further, the removal of the Grandfathering provision Draft Recommendation 8.3 may result in increased disruption and loss of employee benefits, as Employers abandon current arrangements for fear of being exposed to indeterminate liability.

Employer's must have confidence to exercise the option to [retain] select a fund not listed in the modern award without being unduly exposed to risk.

FPA Recommendation

The **FPA recommends** further clarification, as to the application of *Draft Recommendation 8.2*, is provided to give Employers guidance and confidence to pursue this option. We are concerned that unintended consequences may arise from introducing a no worse off requirement.



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Transition issues and future review

The FPA would favour the introduction of the proposed reforms to align as closely as practical to the introduction of MySuper.

5. Ongoing Assessment

Draft Recommendation 8.5

There should be an ongoing assessment of the list of superannuation funds in modern awards to ensure that any demonstrably unsuitable, unauthorized or non-existent funds are removed as required. In addition, a wholesale reassessment should occur every eight years at which time the full selection process would be repeated and all funds that wish to be listed in the awards would need to apply or reapply. Mid-way between each reassessment, a light-handed interim assessment should be undertaken, at which time funds could be removed from, but, not added to awards.

Frequency of reassessment has been identified as a major driver of cost therefore a wholesale reassessment would occur every eight years at which time the full selection process would be repeated.

A system that is cost effective and one that creates certainty and continuity must be balanced with one that encourages innovation, competition and is responsive to a changing market place.

Under the proposed options we would favour a process that allowed for the addition of new funds as part of the mid-way assessment.

FPA Recommendation

The **FPA recommends that** the four year mid-way assessment allows for the addition of new funds as well as the removal of existing funds.