

2 August 2012

Default Superannuation Funds in Modern Awards
Productivity Commission
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Dear Sir/Madam,

The Electrical Contractors Association Group of Companies welcomes an opportunity to provide feedback in response to the draft report released by the Australian Government Productivity Commission, *Default Superannuation Funds in Modern Awards*.

The **Electrical Contractors Association (ECA)** is the leading voice of the electrical industry and is committed to improving and advancing this sector. ECA is registered as an industrial organisation under Queensland legislation with its operation in Queensland. The association's website is: <http://www.masterelectricians.com.au/page/ECA/>

Master Electricians Australia Ltd (MEA) is a not-for-profit organisation that provides a national accreditation program to electrical contractors seeking to differentiate themselves from other contractors - similar to that process adopted by Master Builders within the construction industry. MEA is part of the ECA Group of Companies and operates nationally. The organisation's website is: <http://www.masterelectricians.com.au>.

References to ECA and opinions expressed by the ECA, within this submission, should be read as both the ECA and Master Electricians Australia.

In our initial submission to the Productivity Commission in relation to Default Superannuation Funds in Modern Awards we emphasised the administrative burden that superannuation arrangements place on small business. We also expressed our concern that the proposed changes would generate a further layer of administrative responsibility for time and resource poor small businesses. Many of these employers may have established positive working relationships with existing default super funds and the changes will require valuable resources to be dedicated to researching the relative benefits of the approved default super funds and implementing the necessary changes. The limiting of the number of default funds listed in an award to between five and ten as proposed in the report will to some extent lessen the burden of choice being placed on small business by these reforms. However, the ECA still maintains that the proposed changes to the superannuation system will create an added administrative burden that small businesses can ill afford to shoulder.

Compliance Periods

MEA is concerned that transitional compliance periods are not explicitly referred to in the draft report. The only indication of transitional compliance measures is in section 9.2 where it states that, “...employers will need to be given a reasonable period of time to make changes for their employees once a new list of default funds is determined in any award”. This lack of clarity could be particularly problematic for businesses whose employees are covered by several different awards, each of which may have existing default super funds that may not meet the new criteria. The impact on the workload of these business owners would be significant, at the administrative level in having to adjust payments within a very short time frame and potentially affecting the relationship with employees, leading to possible disputation and industrial action at the extreme.

In the absence of any specific compliance periods being detailed in the draft report, MEA recommends the following lead-in measures. If existing funds are found to fail the new criteria, the government must provide for:

- A 12 month transitional compliance period for funds to comply or create products that do comply;
- A notification to both employers and employees concerning the status of their current fund in relation to compliance; and
- A 12 month transitional period whereby employers have time to identify a new default fund.

Ongoing Management

While MEA would support the timing of the proposed eight yearly review of funds, the draft report fails to provide further information regarding the ongoing management aspects of the reforms. MEA suggests that in the event a fund, initially found to meet the set criteria, subsequently loses its compliance status, the following steps should be taken:

- Notify all employers contributing to the fund it has failed to retain its accreditation;
- A 12 month transitional period for the fund;
- All funds currently under management to be protected from further financial loss;
- A refund of re-establishment costs to the employer by either the non-complying fund or Federal Government; and
- A subsidy of lost interest to employees by the Federal Government in the event that a fund no longer complies with the relevant financial benchmarks.

Process for selection and ongoing assessment of funds

If the decision is made to implement the proposed changes, our preference for the selection and ongoing assessment of funds would be option four, involving the appointment of an independent panel of experts. Such a panel should be appointed by the Minister and comprise largely of experts from financial and investment areas. Specifically, we believe that Australian Prudential RA (APRA) the Australian Securities and Investment Commission (ASIC) and the Reserve Bank should be represented given that investment performance governance and international economics risk management should be factors for consideration in selecting

the funds to be listed. Industry representatives, including employee and employer group representatives could certainly provide valuable input into the default funds selected for inclusion in the relevant awards. However, ultimately the selection of default superannuation funds is not a workplace relations issue but a financial one and the panel of experts should reflect this.

We also recommend that this independent panel only be convened when required to make determinations, namely at the four and eight year mark for the purposes of review. The alternative of a standing committee carries the risk of losing independence as committee members develop relationships with particular super funds, not necessarily to the benefit of employers or employees. There are also additional administration costs involved to keep such a committee in place permanently. We would therefore also support the proposal in the draft report that the secretariat for the panel sit within an existing organisation with superannuation expertise, namely the Australian Prudential Regulation Authority (APRA).

Employers choosing a fund not listed in the relevant award

For employers who elect to nominate a fund not listed in the award, MEA proposes that the criteria against which these employers will be judged in justifying their choice be further articulated. Our concern is that in making this decision to remain with a fund no longer listed as a default fund in the relevant award, an employer may be opening themselves up to personal liability for any losses incurred by that superannuation fund. While the draft report does provide a broad requirement, i.e. that employees will be made no worse off than if a listed fund had been chosen, further clarification is needed to avoid employers inadvertently paying the price for a fund's poor performance. Given that many employers, particularly those running small businesses, may decide to remain with their existing default fund, it is essential that they understand exactly what factors they will be judged against and the consequences of potentially making the wrong choice.

ECA acknowledges the advantages of reforming the existing superannuation system in Australia, however, we are concerned that small business will pay a price for the benefits realised by employees. In light of this, we urge government to continue to consider the needs of small business in the development and implementation of these reforms.

Yours sincerely,

Jason O'Dwyer
Workplace Relations Manager