

**Supplementary Submission to Productivity  
Commission Inquiry into Default Superannuation  
in Modern Awards**

**AMP Group**  
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## 1. INTRODUCTORY REMARKS

AMP is pleased to be able to contribute a supplementary submission in relation to the Productivity Commission's Inquiry into Default Superannuation in Modern Awards (the "Inquiry").

AMP would like to commend the Productivity Commission (the "Commission") on the quality of the Draft Report (the "Report") and the thorough understanding of the issues as demonstrated by a number of the insights and recommendations made.

As one of the largest providers of superannuation solutions to employers in the Australian superannuation industry, AMP maintains a close interest in this Inquiry and is able to offer a level of experience and perspective other providers are unlikely to offer. Our comments below do not seek to address each recommendation or information request made by the Commission. Rather we have sought to concentrate on those issues that we see the greatest priority in addressing.

## 2. PREFERRED POSITION

As stated in our previous submission, AMP remains of the belief that the most efficient, competitive and equitable approach is for any compliant MySuper product to be available to all employers under any Modern Award, without any restrictions on an employer.

The four options presented in the Report for consideration are:

- Option 1 – allow all employers to choose from all funds that offer a MySuper or other approved default product;
- Option 2 – a minimal change to the existing industrial process for selection of default funds;
- Option 3 – design of a transparent selection process within the confines of the existing Fair Work Australia (FWA) industrial process;
- Option 4 – design of a transparent selection process to be administered by a new independent body outside of the existing FWA industrial process.

Of the four discrete options, AMP advocates Option 1 as our preferred solution on the grounds that this option is likely to result in the most administratively efficient, cost-effective and competitive process. With the imminent commencement of the MySuper regime, the "protectionist" role of listing default superannuation funds in awards becomes redundant in the face of substantially higher independent regulatory standards.

## 3. ROLE OF APRA IN MYSUPER REGIME

As outlined in our previous submission, APRA have been charged with the responsibility of administering and overseeing the regulatory environment designed for specifically for the MySuper regime. Through specific legislative changes, the obligations on a Trustee of a MySuper product have been heightened significantly to achieve the greatest level of protection for those members that find themselves in a default superannuation fund (usually through an employer's arrangements) without consciously have chosen a destination for their superannuation contributions.

In a number of areas of the Report, and indeed in the original terms of reference, there are comments relating to the need for additional criteria to be applied in the selection process for a default superannuation fund in a Modern Award, above and beyond those strict legislated criteria governing the design and authorisation of a Trustee to offer a MySuper product. AMP is firmly of the view that it is unnecessary for additional criteria to be applied to a selection process of default funds

in Modern Awards. Rather, this would only create administrative inefficiencies with no net benefit to the end member.

There is considerable difficulty in assessing a regulatory regime that has not yet come into effect. There are a number of assumptions and pre-assessments being made throughout the Report (particularly in relation to the design of the selection process) on the MySuper regime's likely success or flaws, without tangible experience of the regime in operation. This is of substantial concern as it has the potential to undermine the regulatory and policy intent behind the development of the MySuper system before it has even commenced.

All of the superannuation industry, as well as consumer advocacy bodies, industry and union representatives, have engaged in an intense and extensive consultation period prior to the final design of the framework. It is critical that this framework is given a chance to operate as intended before any assessment as to its effectiveness or otherwise is made.

Since the commencement of this Inquiry, APRA have released their draft prudential standards in relation to the authorisation and operation of a MySuper product. This has provided the industry with a better understanding and insight as to how APRA is likely to approach their regulatory role in this space. It has become very clear through this consultation that the standards set for a MySuper provider are significant, and that the authorisation process has been designed with a very strong desire to ensure only the most robust operators are able to service this market.

## **4. ALTERNATIVE OPTIONS**

The Report seeks specific feedback on two alternative positions (Options 3 and 4) in relation to the possible operation of the selection of default funds in Modern Awards. Both of these options have elements that would be undesirable and result in sub-optimal outcomes for members.

### **4.1 Option 3**

Option 3 proposes the establishment of a specific panel within Fair Work Australia (FWA) charged with the responsibility of designing and operating a process to assess the application of any funds seeking appointment on a specific Modern Award. It is proposed that this panel comprise FWA commissioners and members with expertise in a range of areas, which may include finance and superannuation.

Whilst this option represents a change from existing practice, through the establishment of a specific panel, it is largely representative of existing practices. There is significant uncertainty as to whether this proposal could realistically deliver a more independent assessment process. The Report's comment in relation to whether a FWA panel "might be biased, or perceived to be biased, towards the views of any party that they were, or remain, affiliated with"<sup>1</sup> highlights the inherent flaw of this option and the retail sector of the superannuation industry has concerns about this option for this reason.

### **4.2 Option 4**

This option proposes to create an independent body, completely removed from FWA that would be responsible for the design and administration of a transparent process to select specific default funds for an award.

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<sup>1</sup> "Default Superannuation Funds in Modern Awards" – Productivity Commission Draft Report, June 2012, page 168

This has an attraction for the retail superannuation industry in that potential, or real, biases from the industrial award system should be eliminated through the establishment of this selection panel.

However, this option also presents a number of problems that would need to be properly assessed in order to determine the ultimate cost/benefit.

It appears that there is presently no logical body or association in existence that has the requisite skills and resources necessary to house this expert panel. Nor is there a body that has complementary duties or functions that could be relatively easily amended to absorb the responsibility of designing and carrying out a selection process for default funds in awards.

We note the reference to APRA in the Report as a possible source of resources for this body. However, we would caution against any suggestion of APRA taking on such a role. APRA's role as a prudential regulator is clearly defined. It would severely compromise the independence of a regulator should they be required to undertake a process that requires them to pass value judgements on products issued by the Trustees they prudentially supervise.

Therefore, Option 4 would probably require the establishment of a new body, with all the associated administrative costs this would incur.

## **5. SPECIFIC ISSUES FOR DISCUSSION**

The Report raises a number of specific points that we would also like to provide comment on, in addition to the consultation sought on preferred options for the ongoing selection of default funds in Modern Awards.

### **5.1 Principles and factors for selection**

The Report suggests a number of principles that would underpin the design of any selection process. These principles are generally sensible and should promote a process that maintains the best interests of members at its core.

However, the selection factors proposed in the Report reinforce our previous arguments in support of Option 1. Most of the factors listed will be addressed through the authorisation process of a MySuper product administered by APRA. It is therefore unclear as to the need for this assessment to essentially be repeated.

Some of the proposed factors also appear irrelevant to the default superannuation selection process. The administrative efficiency of a fund will largely be standardised through the implementation of the Superstream reforms currently being developed by APRA in conjunction with the ATO. Improving interaction between employers, members and superannuation funds is at the core of these reforms.

Further, the likelihood of members being switched to higher cost divisions of the fund is also an irrelevant factor in the selection process. A standard MySuper offer can only ever be the fund that is listed on an award; therefore all workers under that award, in that chosen fund have access to the same rights and benefits.

Whilst individual employers with employees under an award may be able to negotiate further discounts on behalf of their employees (subject to a trustee's legislative ability to do so) this can only happen at the instigation of an employer. The circumstances whereby an employee moves

away from an employer that has been eligible for and able to negotiate a different pricing arrangement can only ever result in that employee reverting to the standard MySuper offer originally appointed to the relevant award.

## **5.2 Employers ability to move off award list**

Employers should be free to select from any other authorised MySuper product not listed on an individual award.

As set out in our previous submission, there are legitimate reasons for an employer wanting to select a fund outside of an award – such as those employers with employees under multiple awards where there is no consistent default fund listed. There should be no barrier to an employer in making that decision.

The proposal for a “no worse off” test for an employer that seeks to select a MySuper product outside of their relevant awards will create an artificial barrier for employers fearing reprisal from FWA or the possibility of litigation from employees seeking to challenge the selection made by the employer if there is a difference in returns to the member.

The proposition that employers would need to assess a fund against the same factors used by the selection panel in determining those funds to be listed on an award is an excessively onerous obligation for employers and one that will ultimately prevent employers from moving outside the default funds listed.

Employers should be free to choose any authorised MySuper product, should they so wish. It is unclear as to what issue a “no worse off” test is seeking to address. As outlined in the report, previous iterations of awards allowed free movement for employers to choose default funds outside of awards, with no evidence of issues arising from this ability<sup>2</sup>.

As previously discussed in section 5.1 of this submission, most of the factors identified for the selection process will already be assessed by APRA in determining whether a trustee is granted authorisation to offer a MySuper product. Therefore, it should be sufficient for an employer to rely on APRA’s prudential supervision of the MySuper regime as the basis for their selection.

## **5.3 Grandfathering**

The Report makes a short recommendation in relation to discontinuing the grandfathering provisions in the award system for default funds. There is little explanation as to how this conclusion has been reached; therefore it is difficult to understand the rationale behind this recommendation.

The removal of perpetual grandfathering in the award system for default funds is likely to create significant administrative inefficiencies and burden on employers. For example, should a fund be removed from the list of default funds on an award, the non-existence of grandfathering would mean that any employers that had previously selected that fund as their default fund would be required to select a new fund to contribute to on behalf of their employees. For employees, this would mean they would be forcibly removed from their existing arrangements unless they exercised their choice

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<sup>2</sup> “Default Superannuation Funds in Modern Awards” – Productivity Commission Draft Report, June 2012, page 156

of fund right. For some employees, this outcome may not be in their best interests, depending on their own personal circumstances.

The administrative burden placed on employers, especially medium to large employers, in changing default superannuation funds is also considerable. In order to change a default superannuation fund, an employer is bound by the Superannuation Guarantee Act to issue all employees with a choice of fund form (and act on and retain returned forms). The ongoing provision of grandfathering would allow those employers the ability to make their own assessment as to whether their employees would be better served by a wholesale change of default fund arrangements or not.

## **6. RECOMMENDATION**

As highlighted above, there are significant limitations and barriers presented in each of the options set out in the Report, including;

- promotion of existing biases and conflicts through the selection process (Options 2 & 3);
- the introduction of significant administrative costs and inefficiencies in establishing a transparent selection process (Options 3 & 4);
- unnecessary duplication of APRA's MySuper assessment process (Options 3 & 4); and
- restrictions on employers to seek more competitive outcomes for their employees unless they are able to prove employees are "no worse off" (all options).

Thus, AMP remains of the belief that the most efficient, competitive and equitable approach is for any compliant MySuper product to be available to all employers under any Modern Award, without any restrictions on an employer.