



10 August 2012

Mr Mike Woods  
Deputy Chairman & Presiding Commissioner  
Default Superannuation Funds in Modern Awards  
Productivity Commission  
LB2 Collins Street East  
Melbourne VIC 8003

By email: [default.super@pc.gov.au](mailto:default.super@pc.gov.au)

Dear Mr Woods,

**Re: Inquiry into Default Superannuation Funds in Modern Awards**

United Voice welcomes the opportunity to respond to the Productivity Commission's draft report on default superannuation funds in modern awards. In particular, we strongly support the view that default arrangements should have the best interests of members as the primary objective.

United Voice has a long and proud history of representing the interests of low-paid workers. We represent over 120,000 members in a range of award-reliant industries, including aged care, child care, cleaning, hotels, healthcare, restaurants, security, clubs and manufacturing. Not only are we uniquely positioned to provide insight into their experiences and interests, but we have also fought hard to protect and bolster their working conditions, workplace rights and entitlements over the years, of which superannuation is an important pillar.

We are concerned about the recommendations made by the Productivity Commission in its draft report, in particular those relating to the process of default fund selection, and the potential negative impact these could have on our members and award-reliant workers. We believe the model proposed by the Productivity Commission will result in a much more active level of competition amongst super funds for default status in awards, ultimately resulting in higher distribution costs and lower returns for default members and award-reliant workers, many of whom are low-paid and our members.

Following on from our appearance before the Commissioners at the public hearing in Sydney, we have included below a brief summary of our response to the draft report and attach a copy of the research report that was tabled at the hearing. This report, commissioned by HOSTPLUS and completed by Rice Warner Actuaries, includes modelling that demonstrates the impact of the proposed reforms on a typical superannuation fund member's account balance at age 65. In summary, the proposed changes could lead to a significant reduction in benefits for fund members over their lifetime, of the order of \$27,000 or 8.2% of total retirement benefits. The attached report includes details of the assumptions made by Rice Warner in projecting the impact of additional distributional costs on fund members, and provides some clarifications as to the points raised by the Productivity Commission at the hearing.

United Voice appreciates the opportunity to respond further to the questions raised by the Productivity Commission at the public hearing, particularly regarding the history of selection of default superannuation funds in awards. We refer the Commissioners to the list of AIRC decisions in Appendix 1 of our submission as evidence of an effective award distribution process that is based on objective and transparent selection criteria and has resulted in low-cost and efficient outcomes for members.

We would like to thank you for the opportunity to engage on this very important issue and to speak on behalf of our members and low-paid workers, who are so often forgotten in the debate about superannuation.

Yours sincerely,

Louise Tarrant  
National Secretary

***LHMU is now United Voice, a union of workers organising to win better jobs, stronger communities, a fairer society and a sustainable future.***

# **Submission to Productivity Commission Inquiry: Default Superannuation Funds in Modern Awards**



10 August 2012

This submission has been prepared by United Voice National Office on behalf of United Voice members and branches across Australia

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## 1. Introduction

### 1.1. Introducing United Voice

United Voice is a union of workers organising to win better jobs, stronger communities, a fairer society and a sustainable future. Our members work across a range of industries, including aged care, health, childcare, education, property services, hospitality and manufacturing. We are a union of 120,000 Australian workers, united by our shared belief in the dignity of workers and our right to fair and just treatment at work and fair and just access to wealth, security and voice in our community. Our members are among the approximately 20% of Australians who are considered the “working poor”, earning less than two-thirds of the median wage and often trapped in a cycle of precarious employment, low pay and insecure work.<sup>1</sup>

United Voice has played an active role in representing workers’ interests across a range of industries in regards to superannuation. Traditionally, superannuation was limited to white-collar workers, with those workers who were low-paid, blue-collar, women or casualised (which broadly characterises the membership profile of our union) generally excluded from superannuation. From the early 1980s, our union has fought for better access to superannuation entitlements and has played a significant role in ensuring that superannuation is provided across the workforce. **It is in this capacity that we respond to the Productivity Commission’s draft report – as advocates for our members and low-paid workers, and in support of a superannuation system that delivers the best outcomes for fund members.**

### 1.2. Our Members’ Experiences

Our submission speaks to the experiences of our members, many of whom are award-reliant and for whom any reforms to default arrangements in modern awards will have a significant impact. In particular, we focus on the experiences of cleaners and the cleaning industry throughout our report, as cleaners are amongst our most vulnerable members. We would urge the Productivity Commission to carefully consider the impact of reforms on low-paid award-reliant workers. **Many of the reforms to superannuation in recent years, although well-intended, have failed to adequately address the needs of low-paid workers.** The increase in the superannuation guarantee to 12 per cent has not necessarily improved the retirement outlook for our members. Indeed, it may have the perverse effect of eroding their income over time, as employers (supported by the government) argue that any increases in the superannuation guarantee should come out of wages. Any dampening effect on wages would also erode the value of the age pension (as it is indexed to wages growth), magnifying the impact on low-paid workers.

The issue of low pay is compounded by increasingly insecure and precarious work arrangements across many of the industries in which our members work, which is further compounded by the failure of many employers to comply with their superannuation obligations. Superannuation non-compliance is perhaps the biggest threat to retirement incomes for one of our most vulnerable groups of members, contract cleaners. This issue was most starkly demonstrated with the collapse of the largest provider of cleaning services to shopping centres, Reflections Group, in 2010. Reflections went under owing over \$3 million in superannuation entitlements to its 3,500 staff. The impact on cleaners was devastating and the consequences are even now still being felt. Many former Reflections cleaners did not receive the super payments that were owed to them until more than a year after the company had collapsed.

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<sup>1</sup> United Voice (2011), *Living on a knife’s edge: The growth of the working poor in Australia*, p.4.



*“There's a couple of thousand of us who worked at Reflections, and we got out pay slips that said our super had been paid, but the company lied because they didn't pay a cent for months and months. Why didn't anyone know about it? Surely if the company is not paying, surely some bell should go off somewhere. You guys didn't pick it up, and we didn't too, but surely someone could do something about it.”*

(Former Reflections cleaner)

Reflections Group was one of the largest cleaning companies in Australia. **If a large, reputable company fails to meet its superannuation obligations, where does this leave the myriad of smaller, less reputable companies?** United Voice has heard many stories of unscrupulous employers in the cleaning industry failing to pay the proper superannuation entitlements to cleaners – or indeed any super at all. Where sham contracting exists – for example, when cleaners are asked to sign an application for an ABN instead of an employment form or are paid cash in hand – cleaners simply do not receive any superannuation contributions at all.

Finally, many of our members have seen their superannuation balances plummet as a result of the global financial crisis and subsequent market volatility. For many workers approaching retirement age this has meant that they have had to delay retirement. For cleaners who work in physically demanding jobs this is an added burden that many simply will not be able to sustain.

*“I once looked forward to the thought of retiring on a moderate income. I know now that that's not the case; I know that I'll be working well after my 65th birthday.”*

(Cathy Daniels, shopping centre cleaner from South Australia)

These factors combine to create the perfect storm for our low-paid members, who struggle not only to make ends meet during their working lives but also into retirement. In a survey of our cleaning members last year, almost 70 per cent said they struggled to get by on their current wage and 63 per cent supporting children said they had trouble paying for groceries. 92 per cent said they would not have enough money to be able to retire at 65, and 86 per cent felt that their financial future was not secure.<sup>2</sup> A recent demographic survey of our members also found that they struggle on low wages and are concerned about retirement.<sup>3</sup> Two-thirds of our members earn less than \$24 per hour compared to less than 50 per cent in the ABS benchmark. 56 per cent report having “great difficulty” managing financially, with nearly half citing the main reason for this as inadequate incomes and viewing this as a long-term problem. **40 per cent of our members said they could not afford to retire before age 70, with 7 per cent saying they would “never” be able to afford to retire.** Affordability problems mean that 30 per cent of members expect to work 10 years or more longer than they would like to. 58 per cent of members said they were not confident about how to fund their retirement, with 90 per cent of older members saying they expected to have to rely on the age pension in retirement.

### **1.3. Giving Voice to Low-Paid Workers**

It is in this context that we ask the Productivity Commission to carefully consider the impact of any proposed changes on low-paid workers' superannuation entitlements. In making our submission, United Voice speaks on behalf of low-paid workers, our members, and gives voice to their concerns and needs. **The guiding principle throughout our submission is that the superannuation default system should work in the best interests of fund members.**

<sup>2</sup> Ibid., p.8.

<sup>3</sup> Watson, I (2012), *United Voice Membership Survey*, draft report, 5 June 2012 (note this is not yet released and the results are based on preliminary findings from the draft report).



## 2. Executive Summary

United Voice welcomes the finding by the Productivity Commission that default arrangements in awards have provided stability and investment returns have generally exceeded those of non-default funds. We believe that this is proof of a system that has met the overarching principle reflected in the draft report that, “The selection and ongoing assessment of superannuation funds for listing as default funds in modern awards should have the best interests of members as the primary objective”. **United Voice supports efforts to ensure that the system continues to work in the best interests of default members.**

However, we do not believe that the proposed recommendations will result in better outcomes for default fund members. Whilst we agree that the selection and ongoing assessment of default funds should have the best interests of members as the primary objective, we challenge the assumption made in the draft report that greater contestability and employer choice will lead to lower costs and better returns. In making our submission, we do not provide comment on all of the findings and recommendations made by the Productivity Commission, but instead focus on those that promote contestability and employer choice. **United Voice does not support any recommendations by the Productivity Commission that would result in the opening-up of default arrangements to greater contestability or wider choice of fund.** In particular, we are concerned about the proposed reforms to the default fund selection process, and do not support the following recommendations:

- Draft Recommendation 8.1 allowing all funds (who are licensed as MySuper products) to apply to be listed in awards;
- Draft Recommendation 8.2 allowing employers to choose a fund not listed in the award (that is, enabling them to “opt out” of the default system); and
- Draft Recommendation 8.4 mandating that between five and ten default funds are listed per award.

Moreover, **many of the recommendations in the draft report place an undue emphasis on reforming the process of default selection and distribution, rather than on building robust measures of accountability and transparency.** United Voice agrees that the system of default superannuation should work in the best interests of fund members, but this will not be achieved by allowing new entrants to provide a dumbed-down version of a default product. The focus of the reforms should instead be on ensuring that the superannuation funds who manage the retirement savings of disengaged default members are free from the commercial motivations that apply in a typical market, and that the structure, oversight and management of the providers of default superannuation are of the highest possible standard.

In assessing the extent to which the current and proposed models meet the best interests of members, United Voice has considered the following:

1. whether the current model of regulated distribution is efficient in operation and cost;
2. whether an alternative model of greater contestability would lead to better outcomes for members; and
3. whether the proposed model, which emphasises the role of employer choice rather than representative structures, will ensure suitable default funds are nominated.

We consider each of these in the following sections.

In section 3, we argue that **the current system of default superannuation in awards has delivered an efficient, low-cost and high return product for default members.** It has achieved this via an orderly and regulated distribution model, in which a clear rationale for the nomination of default funds in awards has been established and funds are selected based on jurisdiction and merit. The core principles underpinning the selection of default funds in awards are that members’ interests





are best served by a representative governance structure and by efficient, low-cost (usually not-for-profit industry) funds. The nomination of default funds in awards is part of an industrial process in which an impartial tribunal arbitrates outcomes and ensures a minimum safety net of wages and conditions (including superannuation) for all employees. Unions have played a central role in representing the interests of employees in this process, and have consistently argued for a low-cost, efficient and representative model that best meets the needs of members. Furthermore, United Voice argues that an orderly and regulated distribution of default super funds through awards, with limited competition between default funds, has ensured lower distribution costs and allowed a steady level of contributions, which has enabled funds to invest in long-term unlisted assets that deliver a higher return. We put to the Productivity Commission that the current system has delivered superior outcomes for default members, and therefore we do not agree that the process for nominating default funds needs to fundamentally change, and submit our preference for Option 2 in the draft report. **United Voice supports the ongoing role of Fair Work Australia in selecting default funds and argues that the nomination and selection of funds should remain within an industrial relations framework and involve the active participation and negotiation between employer and employee representatives.**

In Section 4, we argue that opening the market up to greater contestability and employer choice will lead to a heightened level of competition amongst funds to be nominated as the default. **Far from resulting in a reduction in costs for default funds, the proposed reforms will lead to the addition of significant distribution costs, thereby eroding returns to members by as much as 8.2%.** We expect that as a result of the proposed changes, the distribution costs for not-for-profit industry default funds will increase towards that of retail funds, rather than allowing a lower price to be set. Not-for-profit industry default funds will need to invest heavily in marketing and distribution channels in an effort to compete with the scale and resources of retail funds (predominantly owned by the major banks). Default superannuation is at risk of being drawn into a financial services industry that is more focused on generating business and profits than acting in the best interests of superannuation fund members. **Active competition between funds also threatens to undermine the investment advantages of the current regulated distribution model, with default funds surrendering their illiquidity premium in order to facilitate greater employer choice.** Moreover, industry funds risk losing their collaborative mindset, which has allowed them to work together to improve operational efficiencies and access better investment deals, delivering superior returns to members.

Finally, in Section 5 we highlight the tension between the stated goals of facilitating employer choice and ensuring that the system operates in the best interests' of members. Ultimately, employer decision making is the wrong place to promote and institutionalise competition. The prevailing rationale in a model of market contestability where there is a greater role for employer choice seems to be "what's best for employers", as opposed to their employees. United Voice argues that the emphasis on employer choice will lead to perverse outcomes for employees. **The proposed changes could result in employers making decisions based on commercial advantage or administrative ease, instead of the best interests of their employees. Moreover, it removes default selection from an industrial relations framework that has provided important protections for employees in the form of union representation.** Unions are the only legitimate representatives of a disengaged workforce on superannuation and as such play an essential role in representing the best interests of workers. The ability of unions to represent employees on superannuation funds is entirely appropriate, as superannuation is part of the safety net of wages and conditions determined at the industry level. Moreover, representative structures have delivered better outcomes for fund members – not-for-profit funds with representative governance structures have outperformed for-profit funds by up to 2.4% per annum. Ultimately, regulation of default superannuation through industry distribution channels and representative governance structures provides a low-cost and efficient model for default members, ensuring that award-reliant workers are protected and served by a system that best meets their interests and needs.





### 3. Current Model of Regulated Distribution

#### 3.1. Transparent and Merit-Based Selection Process

Superannuation originated in the industrial relations system. Enforceable awards of Federal and State industrial tribunals determined the funds which applied for each industry. Default funds in awards were originally determined with regard to the Australian Industrial Relation Commission's (AIRC) superannuation principles, which favoured jointly controlled multi-employer funds to facilitate portability between employers and the efficiencies and economies of scale that flow from the operation of a small number of funds in an industry. **The criteria developed by the AIRC ultimately resulted in the establishment of a system with an efficient, low-cost delivery model.**

The Productivity Commission's draft report found, "The primary objective of default funds should be the best interests of members, and for modern awards that list default funds, the selection and ongoing assessment of those funds should be merit based". United Voice does not dispute these findings. However, we contend that **the current system of award nomination and review does meet members' best interests and has led to the development of an efficient distribution model that delivers superior returns for default members.** The report also notes, "The absence of a more open and transparent selection system has reduced the competitive pressures on incumbent default funds. In some cases, this has resulted in inefficiencies (including unnecessary burdens on employers who, in some cases, have no choice but to use a listed default fund for all or some of their employees)". The Productivity Commission essentially argues that the current process of selecting default funds in awards lacks procedural fairness and is marred by self-interest and conflict, and that it is based on precedent rather than merit. This is far from the truth, and fails to appreciate the history of award superannuation and **the central role of an impartial industrial tribunal in arbitrating outcomes and providing a minimum safety net of conditions for all employees.**

##### 3.1.1. Early Test Cases

The 1986 and 1987 *National Wage Cases* (presided over by the Australian Conciliation and Arbitration Commission) established a rationale for the approval of contributions of up to three per cent to approved superannuation funds, which were generally multi-employer industry funds jointly sponsored by unions and employer associations. A condition of the 1986 wage case decision was that industry funds would be required to conform to the Commonwealth's operational standards for superannuation, which specified greater member involvement in the control of superannuation funds (through equal representation of employees and employers on the trustee boards of funds with 200 or more members).<sup>4</sup> In 1994, the AIRC reviewed award provisions relating to superannuation as part of the landmark *Superannuation Test Case*. The main outcome of the test case was to establish the continuing role of the AIRC in the application of superannuation and to **reinforce the role of the AIRC in dealing with choice of fund matters as part of a safety net of award wages and conditions.**<sup>5</sup>

The test case confirmed that in determining applications as to specification of a super fund, the AIRC would (amongst other considerations) have regard to the Supervision Act which provides for the prudent management of certain funds (in particular the requirement with respect to equal representation of employers and members on standard employer-sponsored funds), and "have regard to previous decisions of the Commission with respect to the specification of a fund or funds". In reference to previous decisions, **the case listed a number of "conventions" underpinning the nomination of default funds,** as submitted by the ACTU and as derived from the 1987 *National*

<sup>4</sup> APRA (2007), "A recent history of superannuation in Australia", *APRA Insight*, Issue Two, 2007, p.6.

<sup>5</sup> Senate Select Committee on Superannuation (1995), *Super Guarantee: Its Track Record*, February 1995. See [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Committees?url=history/super\\_ctte/su-prep15/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=history/super_ctte/su-prep15/index.htm). In particular, Chapter 10 "Interaction Between SG and Award Superannuation", pp.116-17.



*Wage Case* and subsequent AIRC decisions. These “conventions” included that the following factors be considered in specifying default funds:

- Insurance and Superannuation Commission (ISC) approval/complying funds;
- multi-employer schemes to promote true/no cost portability;
- avoidance of a multiplicity of schemes within a single workplace; and
- equal representation of unions and employers on trustee boards.<sup>6</sup>

Whilst the Commission did not think the use of the word “conventions” was appropriate in describing the views with respect to superannuation fund nomination, nonetheless the AIRC stated it would have regard to its previous decision with respect to the specification of funds in awards.

The *Award Simplification Test Case* in 1997 established allowable and non-allowable matters in awards and developed model clauses for inclusion in awards. Although the decision represented a further shift towards enterprise bargaining and reducing the role of awards in the workplace, in some respects **the decision bolstered the award system, through designating its role as a minimum safety net.**<sup>7</sup> The principles established in the decision specified that awards should be varied so that they:

- act as a safety net of fair minimum wages and conditions of employment;
- are simplified and suited to the efficient performance of work according to the needs of particular workplaces or enterprises; and
- encourage the making of agreements between employers and employees at the workplace or enterprise level.<sup>8</sup>

### 3.1.2. Superannuation Funds in Awards

The superannuation model clause developed in the *Award Simplification Test Case* included specification of funds into which contributions should be made. Subsequently, the *Building and Plumbing Award Simplification* cases in 1999 and mid-2000 established the content of superannuation provisions in simplified awards. During the 1999 case, **the ACTU submitted to the AIRC that the cases that had been decided by the AIRC on choice of fund had established the following five principles:**

1. Preference has been given to multi-employer funds operating in the particular industry so as to maximise the ability of employees moving between different employers to maintain superannuation benefits with the least complexity;
2. The Commission has supported the efficiencies which flow from the operation of a single fund, or a limited number of funds, in an industry, which it sees as benefiting employees through economies of scale;
3. The Commission has stressed the importance of joint control of funds through trustee boards made up of employer and employee representatives;
4. The Commission has tried to ensure that, where employees have a choice between one or more funds, this is made on the basis of proper information, rather than as a result of employer pressure; and
5. The Commission has agreed to exemptions or alternatives to the award-specified fund in appropriate circumstances.<sup>9</sup>

<sup>6</sup> AIRC (1994), *Superannuation Test Case – September 1994*, 7 September 1994, [Print L5100]. See <http://www.airc.gov.au/kirbyarchives/decisions/1994superannuation.pdf>.

<sup>7</sup> Parliamentary Library (1998), “Award Simplification: what’s out and what’s in”, *Current Issues Brief* 9. See [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/Publications\\_Archive/CIB/CIB9798/98CIB09](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/CIB/CIB9798/98CIB09).

<sup>8</sup> AIRC (1997), *Award Simplification Decision*, 23 December 1997, [Print P7500]. See <http://www.airc.gov.au/kirbyarchives/decisions/1997awardsimplification.pdf>.



In its decisions relating to the building and plumbing awards, the AIRC examined the operation of the *Financial Clinic Case*, the *Superannuation Test Case* and the *Award Simplification* decisions. In particular, the AIRC examined the ability to nominate funds in respect to both union members and non-union members (that is, as a minimum safety net for all workers). The AIRC notes that there were two aspects to the question of whether an award could require contributions on behalf of non-union employees into specified superannuation funds – jurisdiction and merit. Regarding jurisdiction, in the 1999 case the AIRC noted that the *Financial Clinic* judgment in the High Court established that a nominated fund could be specified for non-unionists under “special circumstances” relating to an industrial dispute. For example, where one fund is named to ensure that non-union members are not employed on less favourable terms than union members.<sup>10</sup> This was confirmed in the 2000 decision, which established that the AIRC did indeed have “jurisdiction to require employers bound by the relevant building and plumbing awards to make superannuation contributions with respect to non-unionists into the funds specified in these awards.” The 2000 decision also upheld the established principle, “that the interest which an organisation of employees possesses in the establishment or maintenance of industrial conditions for its members gives a foundation for an attempt on its part to prevent employers employing anyone on less favourable terms”.<sup>11</sup>

In the 1999 *Building and Plumbing Award Simplification* decision, it was determined that **if the AIRC is deemed to have jurisdiction (which it was later deemed to have in the 2000 case), then the claim will be decided on its merits**, which may include:

- the history of any superannuation provisions in the award;
- the circumstances of the industry covered by the award;
- **the decisions of the Commission relating to specification of fund** (to which the AIRC notes they were taken by the ACTU); and
- many of the matters referred to in the evidence of the witnesses.<sup>12</sup>

The “decisions of the Commission relating to specification of fund” laid out five principles as outlined on the previous page (and which are listed in Appendix 1A and Appendix 2 of this submission). Some of the “matters referred to” by witnesses in the 1999 case (see Appendix 3) that may be taken into account in naming funds in awards included:

- portability;
- mobility of the workforce;
- no entry/exit fees and no commissions paid to agents of financial planners;
- equal representation of employer and employee representatives on the trustee board;
- low administration costs;
- member investment choice;
- automatic insurance cover; and
- monthly contributions.<sup>13</sup>

### 3.1.3. Rationale for Default Funds

These cases, amongst many others, have established a clear rationale for the nomination of default funds in awards based on jurisdiction and merit. The core principles that have been established over time include that **members’ best interests are served by a representative governance structure and**

<sup>9</sup> AIRC (1999), *Building and Plumbing Award Simplification*, 11 August 1999, [Print R770], See <http://www.fwa.gov.au/FWAISYS/isysquery/c399d9bb-3e4a-40a4-9376-92c113c46b68/1/doc/>

<sup>10</sup> Ibid.

<sup>11</sup> AIRC (2000), *Building and Plumbing Award Simplification*, 16 June 2000, [Print S6886]. See <http://www.fwa.gov.au/decisionssigned/html/S6886.htm>.

<sup>12</sup> AIRC (1999), op. cit.

<sup>13</sup> Ibid.



**by efficient, low-cost (usually not-for-profit industry) funds.** The rationale for the inclusion of default funds was further reviewed during award modernisation in 2008. The Full Bench of the AIRC established that there were two grounds for the inclusion of a default fund in a modern award. “The first is that the fund was nominated as a default fund in an award-based transitional instrument relevant to the coverage of the modern award, or second, that it is a consent position.” Furthermore, the AIRC stated, “Our present view is that we should continue to provide for default funds where there is a history of award regulation of superannuation in the industry or occupation the modern award covers.”<sup>14</sup> In our view, the award modernisation decision recognises that default funds are regulated through awards (and subsequently the relevance of industry or occupational coverage) and that there is a history of decisions in state-based industry or occupational awards that is relevant to the inclusion of particular funds in awards. It also reaffirmed the standing of consent parties (that is, employer and employee representatives) in negotiating the inclusion of particular funds in awards.

**Each of these reviews has provided an opportunity for consideration of alternative funds, but throughout this process no cost-effective or performance based competitors to industry default funds have emerged.** This is in itself a reflection that default funds have continued to evolve and provide efficient and cost-effective default arrangements for members. Moreover, default funds have conducted their own internal audits to ensure that their costs are kept to a minimum and that each fund’s operations are modernised and updated to ensure maximum efficiency. In this way, the system of default fund selection and review has actively contributed to the reduction in costs achieved by default funds over time.

### **3.2. Established Distribution Channels**

United Voice also disputes the argument made in various submissions such as that from the Australian Chamber of Commerce and Industry that “Award-determination of the employer’s default is not as circumscribed as it first appears.” The evidence used to make such an argument is that the vast majority of modern awards list multiple default funds (as well as include a clause allowing employers to make contributions to funds they were contributing to on behalf of employees before award modernisation). Prior to the advent of modern awards in the new, national workplace relations system, it was more usual than not to have only one fund nominated in Federal or State awards that covered single industries or single occupational groups. These awards often reflected union eligibility rules and occupational coverage, and the designated default funds reflected the development of industry funds relevant to those occupations or industries. Through award modernisation, state-based arrangements were consolidated into national modern awards, which in some cases resulted in multiple superannuation default funds being listed in each modern award. However, **the pattern of award distribution through established industry, occupational or state-based channels remains relatively unchanged.** In addition, although industry funds are increasingly “public offer” funds and accept members across all industries, this is as a result of choice of fund legislation, which was designed to open the market up to competition, but which has had limited impact due to lack of engagement by employees who tend not to exercise choice.

Whilst we acknowledge that there is a level of competition between default funds in some awards (and as a result of choice of fund legislation), this competition is on the margins. Even in those modern awards where there are multiple funds, some do not actively compete as they operate in specific geographic locations or industry or occupational groupings. However, not all industry sectors are clearly and openly delineated in the coverage of each industry fund and there will always be some funds where there is an arguable case for one or more funds having a say for that coverage. **United Voice submits that where default fund coverage issues are unclear, these should**

<sup>14</sup> AIRC (2008), *Award Modernisation Decision*, 19 December 2008, [2008] AIRCFB 1000. See <http://www.fwa.gov.au/decisionssigned/html/2008aircfb1000.htm>.





**be clarified by Fair Work Australia.** On occasions where competition is live, it is often a result of a small fund with limited capacity to provide a service naturally losing market share to a larger fund. Over time, these smaller funds have been (and will continue to be) absorbed through mergers and ongoing consolidation in the sector. Indeed, this is an explicit outcome that is encouraged by current government policy in order to ensure funds achieve maximum efficiency through economies of scale. The picture that emerges, then, is one of an **orderly and regulated distribution of default super funds through awards, with limited competition between default funds.**

### **3.3. Benefits of Regulated Distribution**

The focus on regulated distribution channels has had particular relevance for low-paid workers, for whom an imported distribution cost (involving the marketing of competing funds) would simply erode an already low contribution. As many submissions to the inquiry have already highlighted, **the industry fund model, with low fees, no commissions and innovative investment strategies, has delivered superior returns for members.** Moreover, over the years, default funds have worked to reduce their costs and fees and have become more efficient. Costs per member have come down further through the process of fund consolidation, although as the Productivity Commission has pointed out in the draft report, the cost savings diminish once a fund reaches a particular scale. According to research by Rice Warner Actuaries (attached), **the average industry fund cost (operating expenses and investment expenses) per member is estimated to be \$248 per annum.** For the five largest industry funds, the cost is \$226 per member per annum. Recent product comparisons by SuperRatings (based on a \$50,000 account balance for balanced products) show that the annual per member cost for retail funds is often twice that of industry funds.<sup>15</sup>

**Steady contributions through regulated distribution have also given industry funds an edge in terms of investment strategies.** According to a July 2012 Chant West publication, “Over the longer term, the strategic allocation policies of industry funds have served them well. In particular, those allocations to unlisted assets have added to performance and reduced volatility, or risk. They do mean slightly higher investment costs, but those extra costs have been more than justified by the added benefits”.<sup>16</sup> The industry-based model also allows funds to tailor products and services, such as insurance offerings, to meet the needs of their particular industry, occupational grouping or demographic. Moreover, the industry model also allows for a more effective compliance process, with relevant employer associations and unions working with their industry fund to provide information (consistent with privacy laws) to help chase up arrears. Without that industry connection (and with the threat of employers being able to opt-out of default funds if they were chased for arrears) it would be much more difficult for funds to ensure compliance. Indeed, where employers have been allowed to choose their own fund under particular awards in the current system (usually those awards that do not have union coverage or membership), this has resulted in significant compliance issues.<sup>17</sup>

United Voice believes there is sufficient evidence to suggest that the current model of regulated award distribution of default super funds is established on transparent and objective merit-based criteria and therefore considers the best interests of members and delivers lower costs and better returns to default members. Whilst we support the move towards greater transparency in the industry and a more explicit recognition of the merit-based default fund nomination process, we believe the system has already delivered better outcomes for members in the form of low-cost super

<sup>15</sup> SuperRatings (2012), Product comparisons (various), 31 July 2012.

<sup>16</sup> Chant West (2011), “Super funds consolidate with 9.2% average return”, 25 July 2011. See <http://www.chantwest.com.au/PDFFiles/Chant%20West%20Media%20Release%20-%20June%202011%20Performance.pdf>.

<sup>17</sup> Inspector General of Taxation (2010), *Review into the ATO’s administration of the Superannuation Guarantee Charge – A report to the Assistant Treasurer*, March 2010.



and superior returns. Therefore, **we do not agree that the process for nominating default funds needs to fundamentally change, and submit our preference for Option 2 in the draft report.** We support the ongoing role of Fair Work Australia in selecting default superannuation funds and argue that the nomination and selection of funds should remain within the industrial system and involve the active participation of and negotiation between employer and employee representatives.





## 4. Proposed Model of Contestability

### 4.1. Heightened Level of Competition

United Voice believes that the reforms to the selection process put forward by the Productivity Commission will result in the opening-up of default arrangements to a greater level of competition than it seems the Commissioners have anticipated. The recommendations allow parties with no standing (such as superannuation funds) to nominate for selection in an award, mandate between five and ten default super funds per award, and allow employers to “opt out” and choose a default fund not listed in the award. If implemented, **these reforms will lead to a heightened level of competition amongst funds to be nominated as the default, importing a competitive model where it has not previously existed.** For example, the *Cleaning Services Award 2010* currently lists three industry superannuation funds, AustralianSuper, SunSuper and Westscheme.<sup>18</sup> AustralianSuper is the national default superannuation provider for the cleaning industry, and services national employers and locally-based employers in all states and territories. Sunsuper is a Queensland-based multi-industry fund that predominantly services local employers in the Queensland market, and Westscheme is a similar fund for Western Australia that recently merged with AustralianSuper. Thus, there are currently only really two funds who service the cleaning industry (AustralianSuper and SunSuper), with limited competition between them outside of Queensland. By listing additional default funds in the cleaning industry modern award, this would lead to a greater level of competition and subsequently a more costly model of distribution.

### 4.2. Distribution Costs

**Wider choice of default fund would simply lead to the addition of a distribution cost, which would outweigh any of the expected benefits of lower administrative costs.** The proposed model will not deliver efficiencies for industry funds (by and large the current default funds), who are already efficient in their operation and provide a low-cost product. According to a recent report released by Chant West, the average management cost for industry funds is 1.09% (on a \$50,000 account balance). This compares with an average cost of 1.75% for retail master trusts and 1.56% for corporate master trusts.<sup>19</sup> The report also showed that costs have increased in recent years as a result of choice of fund legislation, particular for industry funds as they have sought to expand their range of services in order to compete with retail funds.<sup>20</sup> This demonstrates the negative impact on cost that heightened levels of competition (for “public offer” members) has had on the industry to date.

Moreover, there is evidence to suggest that many of the MySuper products are priced at higher levels than current industry fund products, with some retail fund MySuper products priced at up to twice as much as industry fund products (according to product comparisons by SuperRatings).<sup>21</sup> Reported costs for retail funds and master trusts may also even be understated, as they do not include costs of the parent or sponsor entities in cross-subsidising their operations (for example, through cross-selling and general advice at bank branches and call centres). A 2009 report by Deloitte quoted research by Rice Warner which found (in relation to corporate funds and corporate master trusts), “Many services are subsidised for larger funds. For example the time spent by trustees and the fund secretary will be donated by some organisations and some costs and

<sup>18</sup> FWA (2012), *Cleaning Services Award 2010*, [MA000022]. See

[http://www.fwa.gov.au/documents/modern\\_awards/award/ma000022/default.htm](http://www.fwa.gov.au/documents/modern_awards/award/ma000022/default.htm).

<sup>19</sup> Chant West (2012), “MySuper or not, you can’t judge a fund by its fees”, March 2012. See

<http://www.chantwest.com.au/cwPublicNewsRoom.aspx?&MenuItemID=200&NewsItemID=>

<sup>20</sup> This has been confirmed by a number of research papers, including: Fear, J and Pace, G (2009), “Australia’s ‘Choice of Fund’ Legislation: Success or Failure?”, *Rotman International Journal of Pension Management*, Vol.2 Issue 2, Fall 2009.

<sup>21</sup> SuperRatings (2012), *op. cit.*



insurance premiums are also paid by some funds”.<sup>22</sup> Far from there being a reduction in costs as a result of greater contestability and choice, it is likely that industry funds will have to increase their costs in an effort to compete with retail funds and master trusts.

#### 4.2.1. Rice Warner Assumptions

According to research recently commissioned by HOSTPLUS and completed by Rice Warner Actuaries (attached), “The measures proposed in the Commission’s report will effectively increase competition between superannuation funds. All things being equal, we would expect that competition would have a direct impact on distribution costs within the industry. In the first instance, the measures are likely to add cost pressure to many smaller industry funds, as they currently have limited distribution channels other than the modern award system. As a result, the industry fund segment is likely to consolidate quickly, possibly to as few as five to ten large funds and a number of smaller funds specialising in delivering service to much smaller groups.”

“On its own, the impact of scale would be expected to reduce average member costs in administration and investments. However, the largest industry funds are already efficient and their members are unlikely to see significant benefits from the increased size and membership. Research gathered by Rice Warner shows that scale benefits for administration are marginal once funds achieve a certain critical mass. Moreover, the large industry funds remaining after the consolidation process would need to invest heavily in business development teams to maintain their market share. By contrast, most of the commercial corporate master trusts that compete directly with industry funds are owned by one of the major banks, and have direct ownership of the banking relationships with both the superannuation fund members and their employers, which would give them a competitive advantage.”

The report goes on to say, “Under the Productivity Commission’s proposed structure, employers would be encouraged to choose other funds. This will require nominated funds to develop distribution resources to defend their existing membership and to seek new employers. Funds will also seek to attract members under choice, more vigorously than they do at present”.

The report estimates that distribution costs average around 0.50% of assets for the smallest employers in the commercial corporate master trust segment. For larger employer plans, distribution costs reduce as a percentage of assets under management. Rice Warner estimates that distribution costs would be lower for industry funds at 0.35% of assets under management, due to their non-commercial basis and the ability to employ lower cost staff. Based on an average account balanced of \$21,675 (for commercial master trusts), this would represent a distribution cost of approximately \$75 per member per annum. Rice Warner have not differentiated costs between MySuper and “Choice” members.

#### 4.2.2. Modelling the Impact of Distribution Costs

**As a result of the proposed reforms, Rice Warner estimate that distribution costs will increase by \$75 per member per annum.** The net cost impact on members (given an estimated \$8 reduction in cost as a result of the benefits of consolidation) would be \$67 per member per annum. The proposed changes could lead to a significant reduction in benefits for fund members over their lifetime, of the order of \$27,000 or 8.2% of total retirement benefits for a 25 year old with a current balance of \$15,000, and \$17,000 or 4.1% of total retirement benefits for a 45 year old with a current balance of \$80,000.

<sup>22</sup> Referenced in Deloitte Actuaries and Consultants (2009), “IFSA 2009: International superannuation and pension fund fees”, 21 September 2009. Original reference given as Rice Warner (2008), “Superannuation Fees Report 2008: Market Segment Analysis at 30 June 2008”, commissioned by IFSA.



### **4.3. Focus on Profits**

United Voice argues that the recommendations allowing for greater contestability could in fact have the opposite effect to that intended. Rather than competition leading to a reduction in costs for default funds, their costs will go up so that they can compete with retail funds, who have vast distribution networks and sales teams. At the core of all arguments in favour of the current default system is that industry funds, unlike retail funds, are not-for-profit. As such, all profits generated are returned to members. This is fundamentally important to members of industry funds (many of whom are also United Voice members) as they are often low-paid and have small account balances. **It also allows trustees to act solely for the benefit of members, rather than fall prey to the conflicts that come from trying to juggle the competing interests of members and shareholders** (usually of the parent banks). Retail and commercial funds are in the business of making a profit for their shareholders and generally at least part of any return generated is appropriated as profit for shareholders, thus reducing returns to members.

The major retail banks see superannuation as the next leg of growth that will help them drive and maintain their record profits, following their cornering of the residential mortgage market over the last 20 years. Some have even referred to the growth of superannuation as a “land grab”.<sup>23</sup> There is a real risk of the major banks further entrenching their oligopolistic position in the finance sector, which threatens to undermine competition in the long-term and intensifies the risks associated with the concentration of wealth management and debt in the hands of the four major banks. Over time, this will result in erosion of returns to members through higher fees and costs, “ticket-clipping” and related party transactions – that is, the **financial services industry will become more focused on generating business and profits than acting in the best interests of superannuation fund members.**

### **4.4. Erosion of Collaborative Approach**

**The proposed reforms also threaten to undermine the investment advantages of the current regulated distribution model, which is characterised by stable contributions and a collaborative approach.** As award default options are opened up, existing providers of default superannuation will require greater levels of liquidity to facilitate employer choice and as a result will need to reweight their strategic investment allocation towards liquid assets such as cash, bonds and shares and away from unlisted assets. The illiquidity premium that not-for-profit default funds have enjoyed<sup>24</sup> will be lost. Moreover, as default funds begin to compete more actively with one another, this will reduce the incentives to collaborate on investment. At the recent Global Dialogue, the Chief Investment Officer of HOSTPLUS told attendees, **“I fear that we are about to squander what is arguably our primary advantage: industry funds collaboration”**.<sup>25</sup> By working together, industry funds can bargain for advantageous terms with fund managers and in co-investment deals, and share tax, legal and due diligence costs. Industry funds risk losing their collaborative mindset. As a result, they will lose the advantages that have allowed them to focus on long-term growth and deliver superior returns for members.

Industry super funds have embraced a collaborative approach over the years, which has allowed them to use their combined scale to generate operational efficiencies, create and access better investment deals, participate in governance activities arising from voting rights, lobby together on behalf of their members and play a leading role on issues to do with corporate social responsibility. Collaborative initiatives have played a major role in enhancing the efficiency of industry funds and providing additional financial services for members on a not-for-profit basis (for example, through

<sup>23</sup> Johnston, E and Evans, M (2012), “We’re all just one big super market now”, The Age, 21 July 2012.

<sup>24</sup> Cummings, J R and Ellis, K (2011), “Risk and return of illiquid investments: A trade-off for superannuation funds offering transferable accounts”, Working Paper (published by APRA), November 2011.

<sup>25</sup> Mumme, S (2012), “Global Dialogue spurs pension-fund collaboration”, Investment Magazine, 16 July 2012.



the establishment of ME Bank).<sup>26</sup> Shared services including back office operations, investment in technology on a shared basis and collaborative investment management structures have all been part of the success story of industry super funds. Collective investment vehicles focused on infrastructure, property and private equity (for example, ISPT and IFM) have been very successful in delivering superior returns to industry funds.<sup>27</sup>

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<sup>26</sup> Brown, C and Davis, K (2011), "Is Pension Fund Collaboration Possible and Sustainable? Insights from Australian Experience", 1 April 2009. Available at SSRN: <http://ssrn.com/abstract=1371452>.

<sup>27</sup> Industry Super Network (2011), "Unlisted assets key to investment performance", 27 July 2011.



## 5. Employer Choice versus Employee Voice

### 5.1. Impact of Greater Employer Choice

The Productivity Commission's recommendations place an undue emphasis on employer choice, rather than allowing distribution to play out through an arbitrated industrial process. This is of great concern to United Voice, as any move towards greater employer choice (such as through the proposed "opt out" provisions) could lead to perverse outcomes for employees. **The prevailing rationale in a model of market contestability where there is a greater role for employer choice seems to be "what's best for employers", as opposed to their employees.** The proposed changes could result in employers making decisions based on commercial advantage or administrative ease, instead of the best interests of their employees. Whilst we acknowledge that superannuation administration can be a significant cost and concern to employers, we do not believe it is appropriate to think about the process of choosing a superannuation fund as primarily a business transaction or employment cost to be minimised.

Whilst there are employers who do have the best interests of their employees at heart – and many have made submissions to the inquiry in support of current default arrangements – there is a real risk of such goodwill being eroded over time as default arrangements are opened up to competition from retail funds. With employers able to opt out of default funds listed in awards, there is nothing to stop retail funds from offering financial incentives to employers to choose their fund, for example by providing them with a better deal on their business loan. In this context, employers are more likely to be motivated by their own interest than that of their employees – particularly in industries such as cleaning, where we would have no confidence that, given any choice of fund or ability to opt-out, an employer would be able to immunise themselves against undue or even perceived employer benefits. Allowing a greater role for employer choice may also lead to superannuation funds adopting "soft" arrears processes so as to avoid the threat of employers walking away and taking their business elsewhere, thereby **enabling employers to move between funds as a way of avoiding unwanted scrutiny on their superannuation obligations.**

The capacity of super funds and the regulators to effectively chase arrears and monitor compliance under a model of competitive default arrangements needs to be considered, particularly given that they already struggle to ensure employers meet their superannuation obligations (especially in industries with high levels of contracting and outsourcing, such as cleaning). Indeed, the push for a more competitive market has already had a negative impact on the ability of funds to chase arrears. The introduction of choice of fund legislation in 2005 removed the requirement for employers to be bound as a participating employer to a particular fund (either through the Trust Deed of the fund or through a separate Participation Agreement). The closer legal relationship that existed before choice of fund was introduced meant that funds were in a stronger position to enforce payment of contributions, the frequency of those payments and requirements for employers to furnish sufficient information to allow speedy and efficient allocation of contributions to employees' accounts. The advent of choice of fund significantly eroded and in some cases eliminated those legal relationships.<sup>28</sup> Many industry funds still ask employers to sign a Participation Agreement in order to contribute to the fund, but their ability to require employers to make regular contributions and to enforce those contributions is severely curtailed. Despite the barriers to effective compliance, industry funds continue to pursue arrears by working together through the industry-run administrator (Superpartners) and debt collection agency (Industry Funds Credit Control).

<sup>28</sup> ACTU, ISN, IFCC, AIST (2009), "Review into the Tax Office's administration of the Superannuation Guarantee Charge", submission by the Australian Council of Trade Unions, Industry Super Network, Industry Funds Credit Control and the Australian Institute of Superannuation Trustees, July 2009.





## **5.2. Benefits of a Representative Model**

Moreover, even if there were conditions placed on employers who want to opt out of award defaults under the proposed model, employers should not be solely responsible for choosing default funds as they are essentially divorced from the ramifications of their decisions. Employer choice can never be a proxy for employee choice. At the end of the day, employers have no direct interest in delivering better superannuation outcomes for their employees. Only under a representative model will they remain engaged on delivering what's best for their employees and fund members, instead of what's best for them. United Voice agrees with the sentiments expressed in a 2008 paper by the Australia Institute, "A system, which grants discretion to employers to choose the fund into which workers are automatically enrolled (unless they make an active choice), has the potential to create large conflicts of interest between employers, employees, super funds and financial planners. So long as employer and employee interests remain unaligned in this way, employers who are tasked with choosing a default fund (and are often the target of marketing efforts by funds and advisers) may end up not selecting the most appropriate default fund for their employees but may, instead, decide on a fund which presents a lower administrative burden".<sup>29</sup>

Despite overwhelming evidence of the success of the representative model in delivering better returns for members, there seems to be a complete disregard for the legitimacy of worker representatives on the board of superannuation funds. **By opening up default arrangements to funds with non-representative governance structures, we are concerned that this will then remove important protections for workers in the form of union representation.** Alternative models of default funds with non-representative governance structures are arguably more susceptible to conflicts of interest. Deloitte summarised the problems of conflicts of interest (both actual and perceived) in a 2006 report: "Decisions made in the interests of members may run counter to the commercial interests of parties related to the trustee – and decisions that would benefit the interests of the parties related to the trustee may not be in the best interest of members... The trustee of a master trust is usually related to the commercial organisation that sponsors it. That organisation is itself almost invariably a major supplier of goods and services to the trust. In some cases the sole major supplier. Typically the sponsor (via the related trustee) is contracted to deliver services. A strict interpretation of the contractual arrangements would admit the possibility of the sponsor being terminated but the reality is that the sponsor drives the trust."<sup>30</sup>

United Voice is in favour of a process that emphasises the best interests of employees, rather than providing choice to employers. **Unions are the only legitimate representatives of a disengaged workforce on superannuation and as such play an essential role in representing the best interests of all workers (not just union members).** The representative governance structure of industry superannuation funds has provided employees with a voice and has ensured that funds are run in the best interests of disengaged members. According to a paper produced by the Australia Institute, "Because both employers and employees are involved in the industrial negotiation process, default funds that are identified in awards and agreements are often well-chosen, meeting the needs of both employers and workers. Indeed, default funds named in awards have historically outperformed master trusts".<sup>31</sup> United Voice has played an active role since superannuation was first established in representing the interests of fund members, both in appearances before the AIRC and Fair Work Australia and in our role as employee trustees on the board of industry superannuation funds, including AustralianSuper, HOSTPLUS and HESTA. **The ability of unions to**

<sup>29</sup> Fear, J and Pace, G, "Choosing Not to Choose: Making Superannuation Work by Default", Discussion Paper Number 103, November 2008, Paper released by the Australia Institute.

<sup>30</sup> Deloitte, "Caesar's wife", Analysis June 2006, available at [http://www.deloitte.com/assets/Dcom-Australia/Local%20Assets/Documents/Deloitte\\_Analysis\\_June\\_06%281%29.pdf](http://www.deloitte.com/assets/Dcom-Australia/Local%20Assets/Documents/Deloitte_Analysis_June_06%281%29.pdf)

<sup>31</sup> Fear, J and Pace, G (2008), "Choosing Not to Choose: Making Superannuation Work by Default", Discussion Paper Number 103, November 2008, paper released by the Australia Institute.





**represent all workers (including members and non-union members) on superannuation funds is entirely appropriate, as superannuation is part of the safety net of wages and conditions determined at the industry level.**

**Ultimately, employer decision making is the wrong place to promote and institutionalise competition.** Maximising choice remains an article of faith in Australian superannuation policy, and yet it does not work at either the employee or employer level. It is more appropriate and beneficial for super fund members for decisions about the nomination of default funds to be arbitrated through an industrial process that considers the interests of employees and recognises the legitimacy of unions as representatives of default fund members. Moreover, the choice of fund legislation provides opportunities for employees to exercise choice if they wish to do so, which is where competition for members currently plays out. The introduction of the Stronger Super reforms and MySuper default products also provides a platform for competition amongst funds, although whether it will lead to better outcomes for members is questionable. Whilst we welcome the fact that the system needs to regulate the protection of employees' retirement savings, this should not be done through providing a dumbed-down version of the default product (MySuper), but instead through **ensuring that the super funds managing the retirement savings of disengaged members are free from the commercial motivations that apply in a typical market, and that the structure, oversight and control of providers of default superannuation are of the highest possible standards.** Industry superannuation funds are best placed to represent the interests of members, with a representative structure that ensures trustees are accountable to members. According to an OECD study, "Employee or member representation can ensure a better alignment of the interest of the governing board with those of the fund's beneficiaries".<sup>32</sup> Industry funds do not fit the model of a rational commercial interest, where the profit motive is paramount, but are fundamentally different due to the continual review, oversight and management of worker representatives at the ownership and board level. Moreover, governance structures have proved to be on the whole more transparent than those in the retail fund sector, where it is difficult to find information about the trustee companies that run such funds, let alone the directors.

There is widespread evidence to suggest that **employee representation on superannuation fund boards has delivered better outcomes for default fund members.** According to a report commissioned by AIST, "Representative trustee funds that operate on a not-for-profit basis outperform for-profit funds by up to 2.4% per annum".<sup>33</sup> Whilst many submissions to the Productivity Commission inquiry have questioned the legitimacy of union trustees in representing default fund members due to a perceived conflict of interest, unions – like industry super funds – are not commercial entities. They are not-for-profit organisations that are run solely in the interests of members. As passionate defenders of workers' superannuation entitlements, union trustees are only concerned with representing fund members' best interests as they are ultimately accountable to their members, both at the fund level and as representatives of unions that are run by members and for members.

<sup>32</sup> Cited in Bryan, D, Ham, R, Rafferty, M and Yoon, K, "Governance and Performance in the Australian Occupational Superannuation Industry", March 2009.

<sup>33</sup> Bryan, D, Ham, R, Rafferty, M and Yoon, K (2009), "Governance and Performance in the Australian Occupational Superannuation Industry", March 2009. Research conducted by the Workplace Research Centre, University of Sydney, and commissioned by AIST. See also Liu, K and Arnold, B R (2010) "Australian superannuation outsourcing – fees, related parties and concentrated markets", *APRA Working Paper*, July 2010 and Sy, W, Inman, C, Esho, N and Sane, R (2008) "Superannuation fund governance: trustee policies and practice", *APRA Working Paper*, July 2008.



## 6. Conclusion: A Representative Model that Meets the Best Interests of Members

United Voice supports the primary objective established in the draft report that default superannuation arrangements should meet the best interests of members. Throughout our submission, we have argued that the current system has considered the best interests of employees and has delivered better outcomes for default fund members. **The representative governance model of default industry funds and other not-for-profit superannuation funds has ensured that employees have a voice on what is an important pillar of a regulated safety net of industry award wages and conditions.**

We are concerned that many of the recommendations put forward by the Productivity Commission will erode the advantages that have flowed through to default fund members, many of whom are award-reliant workers and our members. **The proposed model takes away the best rationale for default superannuation – the provision of low-cost superannuation and the protection of members' interests through representative structures – and puts in place a contestability and employer choice rationale that we argue will ultimately result in employers putting their own interests first, rather than those of their employees.** The concepts of contestability and competition in superannuation are fundamentally flawed. Default funds are (for the most part) not-for-profit entities that do not operate as commercial interests acting to maximise profits and exploit market inefficiencies. Therefore, **competition around distribution and employer choice will not protect the interests of disengaged employees, but will instead impose an additional cost on existing industry and not-for-profit providers who will struggle to compete with the scale and resources sitting behind retail funds.**

We do not agree that the criteria for nominating default funds or the process of selection in modern awards needs to fundamentally change. **Whilst United Voice supports the concept of objective and transparent merit-based criteria for award selection, we argue that such criteria already exist.** However, there is a case for Fair Work Australia to build upon and strengthen its rationale for default fund selection. We would welcome the inclusion of long-term investment performance (amongst other considerations) as a factor that could be considered in reviewing default arrangements, and would be confident that this would lead to a confirmation of industry and other not-for-profit funds as the appropriate defaults. **United Voice also supports the ongoing role of Fair Work Australia in selecting default funds and argues that the nomination and selection of funds should remain within an industrial relations framework and involve the active participation of and negotiation between employer and employee representatives.** Regulation of default superannuation through industry distribution channels and representative governance structures provides a low-cost and efficient model for default members, ensuring that award-reliant workers are protected by a system that best meets their interests and needs.



## Appendix 1: AIRC decisions relating to choice of superannuation fund

### A. Listed as evidence by the ACTU in *Building and Plumbing Award Simplification Case 1999*<sup>34</sup>

*National Wage Case - March 1987* [Print G6800 at pp.21-24]  
*Clothing Trades Award 1982* [Print H4332 [C0037]]  
*Child Care Industry (Northern Territory) Award 1986* [Print J1181 [C0148]]  
*Transport Workers (Passenger Vehicles) Award 1984* [Print J5599 [T0091]]  
*FMWU - and - Anton Products* [Print H5643]  
*Clothing Trades Award 1982* [Print H0608 [C0037]]  
*Timber Industry (Superannuation) Award 1988* [Print J8120 [T0197]]  
*Gardam Contracting Pty Ltd* [Print J8119]  
*National Building and Construction Industry Award 1990* [Print M5927 [N0122]]  
*Dry Cleaning Industry Interim Award Interim Award 1980* [Print H6126 [D0033]]  
*Hairdressing and Beauty Industry (Northern Territory) Award, 1987* [Print H8027 [H0042]]  
*Meat Industry Awards* [Print J6619]  
*Retail, Wholesale and Distributive Employees (N.T.) Award 1980* [Print H9778 [R0018]]  
*Food Preservers' Interim Award 1986* [Print J7723 [F0015]]  
*Rundles Pty Ltd* [Print H3983]  
*The Storemen and Packers (Wool Selling Brokers and Repackers) Award, 1973* [Print H2961 [S0049]]  
*Storemen and Packers (Wool Industry - Superannuation) Award 1998* [Print H5580 [S0197]]  
*Storemen and Packers (Wool Industry - Superannuation) Award 1998* [Print H6346 [S0197]]  
*Trustee Companies Employee Superannuation Award 1989* [Print H9169 [T0235]]  
*Brambles - and- TWU* [Print M8464]  
*Insuper Case* [Print L9284]  
*Hospitality Industry Superannuation Case* [Print N1387]  
*Read Uniforms Pty Ltd* [Print H2858]  
*Transport Workers Superannuation Case* [Print N2522]

### B. Additional AIRC cases

*Australian Workers' Union Construction and Maintenance Award 2002* [PR928815]  
*Metal Industry (Superannuation) Award 1989* [PR900519]  
*National Building and Construction Industry Award 1990* [Print L2807 [N0122]]  
*Plumbing Industry (Australian Capital Territory) Award 1982* [Print F0964 [P0053CRA]]  
*Plumbing Industry (New South Wales) Award 1983* [Print F2180 [P0111]]  
*Plumbing Trades (Southern States) Construction Agreement 1979* [Print E2721 [P0092]]  
*Plumbing Trades (Mixed Industry) Award 1993* [Print L4144 [P0398]]  
*The Sprinkler Pipe Fitters' Award 1998* [Print Q5148 [S0091]]  
*Hotels, Motels, Wine Saloons, Catering, Accommodation, Clubs and Casino Employees (Northern Territory) Consolidated Award 1986* [1989 AIRC 517]  
*Hairdressing and Beauty Industry (Northern Territory) Award 1987* [1989 AIRC 321]

<sup>34</sup> AIRC (1999), *Building and Plumbing Award Simplification*, 11 August 1999, [Print R770], <http://www.fwa.gov.au/FWASYS/isysquery/c399d9bb-3e4a-40a4-9376-92c113c46b68/1/doc/>.



## **Appendix 2: ACTU submission to the *Building and Plumbing Award Simplification Case 1999***

### **THE ACTU'S SUBMISSIONS<sup>35</sup>**

[64] In outline, the ACTU submitted that:

- \* the Commonwealth's submissions should be rejected;
- \* the decided cases in the Commission on choice of fund to which we were referred (and which we list in Appendix E) established the following five principles:
  - (1) preference has been given to multi-employer funds operating in the particular industry so as to maximise the ability of employees moving between different employers to maintain superannuation benefits with the least complexity;
  - (2) the Commission has supported the efficiencies which flow from the operation of a single fund, or a limited number of funds, in an industry, which it sees as benefiting employees through economies of scale;
  - (3) the Commission has stressed the importance of joint control of funds through trustee boards made up of employer and employee representatives;
  - (4) the Commission has tried to ensure that, where employees have a choice between one or more funds, this is made on the basis of proper information, rather than as a result of employer pressure; and
  - (5) the Commission has agreed to exemptions or alternatives to the award-specified fund in appropriate circumstances.
- \* in respect of the judgment in *Financial Clinic*:
  - the Court followed the long-established principle in the *Metal Trades Case* [(1935) 1935] HCA 79; 54 CLR 387] that an industrial dispute may arise from union claims designed to ensure that non-union members are not employed on less favourable terms than union members;
  - the only basis for the union claim before the Court was its desire that there should be a single superannuation scheme for the insurance industry; and
  - this situation did not apply with respect to the building and plumbing awards.
- \* there is nothing in the award simplification requirements that supports the abandonment of the case by case approach envisaged in *Financial Clinic* and adopted in the *Superannuation Test Case*;
- \* the appropriate mechanism for dealing with superannuation in the award simplification process is to apply the principles determined in the *Award Simplification* decision. (We have set out the relevant principles in paragraph [50].);
- \* the outcome of these proceedings should be that we should issue a general statement setting out the following principles:

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<sup>35</sup> AIRC (1999), *Building and Plumbing Award Simplification*, 11 August 1999, [Print R770], <http://www.fwa.gov.au/FWAISYS/isysquery/c399d9bb-3e4a-40a4-9376-92c113c46b68/1/doc/>.



- (1) the decision in the Superannuation Test Case is confirmed;
- (2) any application for variations to an award superannuation provision must be determined in light of the facts and circumstances of the particular case. In cases concerning increased flexibility in relation to superannuation funds the onus will be on the party seeking to vary the existing award provision. Where such a case for additional flexibility is made out, an enterprise flexibility clause will generally be the appropriate avenue for implementing greater flexibility;
- (3) previous Commission decisions concerning fund specification will continue to be relevant; and
- (4) applications pursuant to Financial Clinic will be considered only where a case is made out that the award provision may not be valid in relation to non-union members. Where such a case has been made out, applications will be considered on a case by case basis in light of the facts and circumstances at a particular enterprise. Relevant considerations in determining the existence of circumstances of the type referred to by the High Court will include:
  - whether use of the proposed fund would provide less favourable conditions for non-union members relative to union members;
  - whether use of the proposed fund is "less onerous" for the employer;
  - a comparison between the fees and charges of the award specified fund or funds and the fund or funds proposed for the non-members, including entry and/or exit fees;
  - whether the proposed fund requires monthly payment of contributions;
  - whether the proposed fund has an active arrears policy;
  - whether the proposed fund is jointly controlled;
  - whether the employer receives direct or indirect incentives to utilise the proposed fund; and
  - where the union nominates employee representatives to the award-specified fund or funds, the effect on that fund or funds of the use of the proposed fund.

[65] In its submissions, the ACTU took us to a substantial amount of material including:

- \* proposed superannuation legislation;
- \* the August 1992 "Super Changes" paper of the Senate Select Committee on Superannuation ;
- \* the March 1998 Choice of Fund report by this Committee;
- \* various papers and reports relating in whole or in part to superannuation ; and
- \* proceedings in the Senate in November 1998 in which Senator Allison called on us to "reject the [Commonwealth's] claim".





### **Appendix 3: Additional evidence in *Building and Plumbing Award Simplification Case 1999***

#### **THE WITNESS EVIDENCE<sup>36</sup>**

[17] The evidence of Ms Hewett, fund secretary of United Super, included that:

- (1) United Super is the trustee of C+BUS.
- (2) C+BUS is a public offer industry based complying superannuation fund under the Supervision Act.
- (3) C+BUS was established by deed on 27 July 1984 for the sole purpose of providing retirement benefits to members and their dependants and is conducted on a not for profit basis in that all returns are used for the advantage of its members and there are no dividends paid to stakeholders in the trustee.
- (4) C+BUS has assets of over \$2 billion and over 313,000 members. C+BUS has public offer status and it is therefore open to any member of the public to apply to join it. However, its primary focus remains on the construction, building and allied industries (the industries).
- (5) C+BUS has over 20,000 participating employers, many of whom are also members of C+BUS.
- (6) Over 70 per cent of all participating employers in C+BUS have five or fewer members in each workplace. The typical employer in this category has no formal office and its record-keeping is very poor.
- (7) C+BUS has a number characteristics which are pertinent to the industries, as follows:
  - (a) Portability. Since there is such a large number of participating employers in C+BUS, members are able to move freely about the industries while remaining members of C+BUS.
  - (b) No entry/exit fees. No commissions are paid to agents or financial planners.
  - (c) Equal representation of employer and employee representatives on the trustee board. Employer representatives are nominated by the MBA and come from a range of employer associations in the industries. Employee representatives come from a range of employee associations in the industries and are nominated by the relevant unions and the ACTU. There is also one director appointed to the board in accordance with the Supervision Act who is independent of the MBA and the unions.
  - (d) Low administration costs. Administration costs are amongst the lowest of all superannuation funds. The current administration fee charged by the trustee is between 70 and 85 cents per active employer-sponsored member per week.
  - (e) Member investment choice. The trustee provides C+BUS members with \$1000 or more in their account with a choice of three investment strategies being a balanced strategy, a growth strategy and a stable strategy.
  - (f) Automatic insurance cover. The contribution-based insurance cover offered by C+BUS is a very significant benefit to employees in the industries. Given the dangerous nature of the industries and

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<sup>36</sup> AIRC (1999), Building and Plumbing Award Simplification, 11 August 1999, [Print R770], <http://www.fwa.gov.au/FWAISYS/isysquery/c399d9bb-3e4a-40a4-9376-92c113c46b68/1/doc/>.





the transient work patterns of members arising from the cyclical nature of the industries, these insurance benefits are critical to members' and members' dependants' financial security.

(g) Monthly contributions. Making contributions less frequently would deprive members of insurance for lengthy periods.

(8) Certain competitors of C+BUS offer advantages to employers to induce them to participate in their funds.

(9) Implications for workers in the construction and building industries of acceptance of the Commonwealth's proposed award superannuation clause are:

(a) That, without a role for the relevant union, the employer/employee choice may be for funds and accompanying insurance that are inappropriate for employees in the industries. The unions in these industries have a quite sophisticated understanding of superannuation and insurance and have a significant role in ensuring that their members' contributions are made to funds which provide appropriate benefits to their members.

(b) So far as non-union members are concerned, there is a need in the industries for a degree of award regulation to ensure that non-union members have superannuation and accompanying insurance no less beneficial to them than is available to union members. The availability of insurance and the conditions applicable to it are critical to concerns she has about union and non-union employees. A number of employers currently making contributions on a monthly basis (and so enabling insurance appropriate to the industries) may opt for funds which require only annual payments thereby depriving employees of relevant insurance cover. In her opinion, employers making superannuation contributions for employees who commence employment after the time that the Commonwealth proposals applied will opt to make contributions on an annual basis.

(c) Threat to existing insurance cover. The Commonwealth's proposals will significantly threaten the provision of the insurance coverage and in particular, the ability of C+BUS and other funds to offer automatic acceptance and free cover periods, because the insurance depends upon the receipt of monthly premiums. Automatic cover would not be available if employers could make their contributions annually. This in turn would directly and detrimentally affect premium levels and C+BUS's capacity to maintain the present insurance benefits. One of the reasons the trustee can provide automatic insurance without a health declaration is having the size and ability to bring economies of scale to the insurer. If the Commonwealth's proposals were accepted, and the requirement for employers to pay monthly in accordance with the trust deed was effectively removed and, in turn, significant amounts of contributions were paid on an annual basis only, these economies of scale would be threatened. All members of C+BUS would be affected even if only some members were unable to obtain insurance because contributions were not being made on a regular monthly basis on their behalf.

(d) Experience with fund choice. The trustee's experience is that a provision permitting unrestricted choice of a complying superannuation fund affects the quality of members' superannuation and insurance benefits.

(e) Insolvency/closure. The Commonwealth's proposal that an employer need not sign a deed for the fund to make monthly contributions will mean that an employer may defer payment of its superannuation guarantee contributions until July 28 each year and not make any superannuation contributions in respect of its employees at any time during the previous financial year. Arising from the Commonwealth's proposal that employers need not agree to be bound by the terms of a fund's trust deed and no longer be required to make contributions on a monthly basis, there will be a significant loss to members in the amount of benefits available on retirement. C+BUS's investment



adviser, Industry Fund Services, has calculated that the average member's benefit will be 3.6% higher if contributions are made on a monthly basis. On a retirement benefit of \$800,000, calculated at \$60/week contributions over 40 years at an average annual return of 8%, this represents an additional \$28,800 in benefits. The alteration in the timing of the receipt of employer contributions to an annual basis will impact on the current investment strategy of C+BUS. That alteration will almost certainly mean that the investment earnings of C+BUS will be reduced which necessarily impacts on members' retirement benefits.

[18] The evidence of John Sutton, national secretary of the construction and general division of the CFMEU and a trustee of C+BUS, included that:

(1) The building and construction industry employs around 640,200 persons, which is 7% of the Australian workforce. Of these employees around 416,000 are wage and salary earners.

(2) The industry is the second most fragmented (after agriculture) in Australia, with 94% of all businesses employing fewer than five people. These businesses account for just over two-thirds of all people working in the industry. Less than 1% of businesses have twenty or more employees, which account for only 14% of people in the industry.

(3) The project based nature of the work has led to the workforce being highly mobile both geographically and between employers.

(4) Another factor affecting the mobility of the workforce is the boom and bust cycle of the industry.

(5) The high mobility of the workforce and the boom and bust cycle of the industry have created major problems in regard to the security of payments for workers. There have been many instances where an employer has gone bankrupt during a project resulting in workers not receiving their full entitlements of wages, annual leave, redundancy and superannuation.

(6) In order to reduce these non-payments, the union has pursued portable industry schemes, especially with respect to long service leave, redundancy and superannuation, whereby employers make payments on a weekly or monthly basis. The issue of security of payments was the main reason for the establishment of the C+BUS scheme and the trust deed requirement for monthly payments.

(7) When his union made application to insert superannuation into the NBCI Award it sought to have one fund only named in the award (C+BUS). This was because it believed that the only way to protect workers' superannuation entitlements was to have a single industry fund to which all employers in the industry contributed. Another important factor was that the industry fund could provide continuous insurance cover, especially death and permanent incapacity cover, when workers changed employers. An additional reason was that having one industry fund would prevent disputation over choice of fund given the mobility of the workforce.

(8) The CFMEU also believed that having one fund would ensure that non-union members would not be employed on less favourable conditions than union members. Under the industry scheme the union knows the workers' superannuation entitlements are managed at arm's length from the individual employers (e.g. that there are no loans to or investments in the employer's business). It also knows that the contributions must be paid on a monthly basis and that the insurance cover provided is the same with no financial link to the individual employer.

(9) Where superannuation contributions are made into other funds, the only way in which the CFMEU can ensure that there are no additional benefits to the employer, especially where non-union members are employed, is by a thorough examination of the trust deeds of those funds. This



is what occurred with the BEST scheme when the MBA made application to insert that fund in the award clause.

(10) Another consideration in addressing the issues of superannuation and choice of fund is the ability of construction workers to make an informed decision. Factors affecting this ability include levels of literacy and numeracy.

(11) Unpublished data from the Australian Bureau of Statistics' Survey of Aspects of Literacy, 1996, show that the literacy and numeracy levels of workers in the construction industry are considerably lower than the levels of the broader Australian workforce.

(12) Given the complexity of superannuation, especially the language of trust deeds, it is highly unlikely that a significant percentage of construction workers would be able to understand the differences between superannuation schemes without expert outside assistance.

[19] The evidence of John Rutherford, the secretary of the plumbing division of the CEPU, included that:

(1) The plumbing industry is comprised mostly of small companies that employ one or two tradespeople and perhaps an apprentice. The number of companies that at any given time employ more than five people is relatively small.

(2) The nature of small employers is that they rely heavily on the relevant award for guidance as to industrial rights, responsibilities and practice. The company principal usually works as a tradesperson in addition to co-ordinating the jobs and managing the company.

(3) The plumbing industry operates on the basis of short-term subcontracting. All employment in the industry is dependent on the contractor winning work. All employees operate with the threat of unemployment looming if the contractor is unable to win a contract that can be timed to start at the conclusion of the current project or projects.

(4) Contracting for work is extremely competitive with large numbers of companies consistently needing to find new work to keep afloat. Consequently the profit margins are extremely narrow and employers are often unable to sustain their workforce through even short downturns in work activity.

(5) The industry is notoriously susceptible to the boom and bust cycle.

(6) Security of payment continues to be a major issue in the construction industry. Because of the small margins, the boom and bust cycle, the contracting basis and short-term nature of the industry, it is common for award entitlements to be difficult for workers to recover. Industry schemes with short instalment periods have greatly assisted in ensuring that workers receive at least the majority of their legal entitlements. Such schemes include the State long service leave schemes, industry superannuation, industry redundancy schemes and the industry sick leave scheme.

(7) The workforce in the plumbing industry is highly mobile. If the Commonwealth's application were to succeed it would have a serious impact on employees because many would be compelled to agree to their superannuation contributions being paid into differing funds as they move from employer to employer.

(8) The CEPU believes that without strong award protection, including superannuation, non-union members would be likely to be employed on less favourable terms than union members.



(9) The CEPU is the main source of reliable information on the full range of entitlements for employees. The nature of the industry makes it extremely difficult to disseminate such information and ensure that it is understood. Employees who are not members of the union are in an even poorer position to understand or influence their entitlements and as a consequence are less likely to receive them.

(10) Superannuation is among the most complex and least understood of industrial entitlements. That benefits are not received until retirement and are paid at rates which cannot be computed in advance renders them largely incomprehensible to the majority of workers in the industry.

(11) Allowing for any fund to be utilised by agreement is a formula for handing the choice exclusively to the employer. In his experience with other entitlements, such an outcome would be inevitable.

(12) If employers are not required to pay into funds which are designed for the needs of the industry, non-union members will be enrolled into funds which are less appropriate. In particular, the award funds operate on a monthly contribution basis and provide insurances designed to suit the nature of work in the industry. These insurances operate from the first payment. Account-based schemes commonly require payment at the end of the financial year, meaning that employees under such schemes would have no insurances for up to the first twelve months. Given the high levels of mobility in the industry, this could leave many employees uninsured for a large part of their working lives. Such schemes also enable the employer to benefit from holding the payments and using that money until the annual payment is due. This will create a difference between union members and non-union members. At the same time, employers could, by enrolling their employees into certain funds, receive commissions or other indirect financial benefits, which will create a disincentive to the employment of union members.



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