



The Transport Industry Superannuation Fund (The T.I.S. Fund)

Response to Default Superannuation Funds in Modern Awards Productivity Commission Draft Report June 2012

Limited to:

- Summary of submissions
- Draft Recommendations, findings and information requests

26 July 2012

SUMMARY OF SUBMISSIONS

The T.I.S. Fund supports the thrust of the Productivity Commission's recommendations. Its detailed comments are set out in the Schedule attached.

However, there are four main areas where the T.I.S. Fund disagrees with the draft Recommendations:

1. **The T.I.S. Fund Recommends a Modified Option 4:** The T.I.S. Fund recommends a combination of Option 1 and Option 4 (referred to as Option 4A). Under Option 4A, there would be no artificial limit on the number of default funds under an award. The award clause would simply refer to a default fund list maintained by APRA. Further details about that system are set out below and in the attached schedule.

The T.I.S. Fund recommends Option 4A because:

- **Consistent with PC Reform Principles:** It is consistent with each of the Reform Principles outlined by the PC.
 - **No Other Options Are As Consistent:** None of the other options is as consistent with the Reform Principles.
2. **The T.I.S. Fund says the fund's history in the industry should be taken into account:** The T.I.S. Fund agrees with the criteria identified by the Productivity Commission for the selection and assessment of superannuation funds. The T.I.S. Fund recommends adding one further criterion to consider, being that fund's history in the industry.

That criterion would recognise the value of funds that have established practices and products that benefit specific industries. This would meet the best interests of members while minimising regulatory burden and avoiding instability.

3. **APRA should be the body that assesses board governance and transparency:** The T.I.S. Fund disagrees with draft recommendation 5.2 that the Government should consider assembling a panel of corporate governance experts and relevant regulators to assess the appropriateness of board structures of default superannuation funds.

Instead, APRA should be appointed to assess board structures because this would be less expensive and APRA has the required expertise.

4. **The new system should be reviewed within 5 years of the date it is implemented:** The T.I.S. Fund disagrees with the recommendation that the new system should be reviewed in 2023. Any new system should be reviewed within 5 years of the date it is implemented to prevent the consolidation of a bad system.

Each of these recommendations is detailed below.

1. WHY OPTION 4A IS THE MOST CONSISTENT WITH REFORM PRINCIPLES

Option 4A is more consistent with those principles than any of the options identified by the Productivity Commission.

- **Why Option 4A is consistent with the principle of meeting the interests of members:** If an employee does not choose a fund, the employer is entitled to choose any fund from the register maintained by APRA. APRA will ensure that all superannuation funds in that list meet the prescribed criteria. This will provide a safety net for members. It will also promote competition as employers will not be artificially restricted in funds they can choose. This will enhance performance. Members' interests will be safeguarded if they do not select a fund themselves. As identified below, this will increase transparency and reduce the opportunity for undue influence in the selection process.
- **Why Option 4A is consistent with the principle of contestability:** All funds that meet the required criteria will be default funds. This will greatly improve contestability in the industry and will minimise the potential for superannuation funds to unfairly establish monopoly positions. If there are many funds operating within one award, only appropriate funds will achieve default fund status under the APRA criteria. Competition between funds will improve fund performance.
- **Why Option 4A is consistent with the principle of transparency:** APRA will publish its criteria for selecting default funds and maintain a public register of those funds. Like the system for making complaints to the ACCC, people will be able to make complaints about default funds to APRA. This will be part of APRA's ongoing monitoring role. This will resolve the current problem of illogical reasoning behind the appointment of default funds and lack of accountability of default funds.
- **Why Option 4A is consistent with the principle of procedural fairness:** All funds will be entitled to be default funds if they meet a set of logical and relevant publicly available criteria. This will remove unnecessary impediments for funds to become default funds. APRA will be the only body able to make a decision as to whether a fund is a default fund. The same test will apply regardless of interests that certain funds represent. Default funds will be judged on their merits according to APRA criteria, rather than on any irrelevant factors. This will improve the performance of default funds.
- **Why Option 4A is consistent with the principle of minimum regulatory burden:** There will be no requirement for employers to justify their choice of default funds. No new system will be required to regulate employers' decisions and deal with employers found liable for making poor decisions. This will minimise regulatory burden in general. Employers who are using funds in reliance on the grandfathering provisions will continue to use those funds if APRA determines that they comply with its criteria. This will minimise the regulatory burden during the transition phase.
- **Why the T.I.S. Fund option is consistent with the principle of the avoidance of instability:** All funds that comply with APRA's criteria will continue to operate. Only those employers who are using non-compliant funds will be required to select new funds. This will prevent unnecessary upheaval. Industries will continue to function effectively during the transition phase and accidental non-compliance will be minimised.
- **Why the T.I.S. Fund option is consistent with the principle of consistency with other policies:** The policy directions of the Stronger Super Reforms are geared

toward the strengthening of the regulatory systems in the superannuation system. The ongoing role of APRA will strengthen the regulation of the superannuation system. In addition, Option 4A is consistent with the aims of the Competition and Consumer Act.

- **Why the T.I.S. Fund option is consistent with the principle of regular assessment:** APRA will maintain a register of default funds, rather than assessing potential default funds every 8 years. People will be able to make applications to APRA if they are concerned about a particular default fund. This will encourage default funds to maintain a high level of performance and prevent non-compliant funds from remaining on the register.

The T.I.S. Fund says that no other option is as consistent with the Productivity Commission's principles as Option 4A

- **Why Option 1 doesn't meet the Productivity Commission's principles as well as Option 4A:** As identified by the Productivity Commission, Option 1 would not meet the principle of protecting member's best interests. This is because the MySuper or other approved default product would not have had to pass the selection criteria identified by the Productivity Commission at chapters 4, 5 and 6 of its Draft Report. Option 4A would resolve this problem as it incorporates the selection criteria identified by the Productivity Commission.

The T.I.S. Fund recognises that Option 1 may not address the need of some employers for simplicity in making a choice of default fund for their employees. While the T.I.S. Fund does not consider that this is a significant issue as it is not relevant under the Productivity Commission's principles, it says that Option 4A would increase the simplicity of employers' choice. The APRA register would note which awards applied to which default funds. The T.I.S. Fund submits that the choice does not need to be further limited as enterprise bargaining provisions ought to be used if any employer does not wish to select a fund.

- **Why Option 2 doesn't meet the Productivity Commission's principles as well as Option 4A:** As identified by the Productivity Commission, Option 2 will not meet the principles of contestability and transparency. Also, industrial parties do not have the required skill or impartiality required to assess funds and this system would not be in member's best interests.

Option 4A resolves the issues of contestability and transparency by having an impartial body assess all super funds against the same criteria. APRA has the skill to perform that task and consequently the system will better meet member's interests.

- **Why Option 3 doesn't meet the Productivity Commission's principles:** There are three key problems with Option 3:
 - **FWA does not have the required expertise.** This means this option will not meet members' best interests.

Option 4A will resolve that issue as APRA will possess the required expertise to perform its functions.
 - **Employers face liability which will reduce competition.** Employers choosing a fund other than a default fund listed in the award may be required to justify that decision and could potentially be found liable for it. This would limit contestability as employers would be much more likely to choose a default fund listed in an award. This would require a system to police employers' decisions

which would increase regulatory burden. It would lack transparency as employers would not be required to provide their reason for choosing a fund unless that decision was questioned.

Option 4A would resolve these issues as APRA would maintain the list of default funds. In addition to increasing contestability, decreasing regulatory costs and increasing transparency, this option would better meet the interests of members as APRA would possess the expertise to provide an appropriate safety net for members.

- **It has no provision for regular review.** If a fund does not become a default fund in the initial phase, it has no hope of becoming one for the next 8 years. In light of the potential liability faced by employers in choosing a non-default fund, this would mean non-default funds would be almost totally reliant on employees choosing them. As only a limited number of employees choose their super fund, this would result in most non-default funds ceasing to exist.

Option 4A would significantly increase contestability as it would allow for funds to apply to APRA to become default funds at any time and would not limit the number of default funds.

- **Why Option 4 doesn't meet the Productivity Commission's principles**

Option 4 does not meet the Productivity Commission's principles for the same reasons as Option 3, except that Option 4 does not include the problems associated with including Fair Work Australia.

2. WHY THE PRODUCTIVITY COMMISSION SHOULD ADD FURTHER CRITERIA FOR ASSESSING SUPERANNUATION FUNDS

The T.I.S. Fund agrees with the criteria identified by the Productivity Commission for the selection and assessment of superannuation funds. The T.I.S. Fund recommends adding a further criteria to consider, being that fund's history in the industry

- **The T.I.S. Fund agrees with the Productivity Commission's criteria:** The T.I.S. Fund recommends that the criteria identified by the Productivity Commission at draft recommendations 4.1, 4.2, 4.3, 4.4, 5.1, 6.1, 6.2, and 6.3 should be taken into account in the selection and ongoing assessment of superannuation funds for inclusion on the APRA register recommended under Option 4A.

The T.I.S. Fund also recommends that the criteria to be taken into account by APRA should include consideration of a fund's history in the industry relevant to that award, knowledge of that industry and established relationships in that history.

- **Why the history of the fund in the industry should be taken into account in addition to the criteria identified by the Productivity Commission:** Certain funds have developed in conjunction with industries and have established products, structures and agreements that are relevant and useful specifically to those industries. These factors are of relevance to the members of those industries. Employers and funds have spent time and money establishing those arrangements. While non-compliant funds should not be able to rely on past relationships to continue to operate, if a fund is compliant, neither the fund nor the employer should be penalised if the fund does not become a default fund. This is consistent with the

principles of meeting members' best interests, minimising regulatory burden and avoiding instability.

3. WHY APRA SHOULD ASSESS BOARD GOVERNANCE & TRANSPARENCY

The T.I.S. Fund disagrees with draft recommendation 5.2 that the Government should consider assembling a panel of corporate governance experts and relevant regulators to assess the appropriateness of board structures of default superannuation funds. Instead, the T.I.S. Fund says that APRA should assess board structures.

- **Why the establishment of a panel of corporate governance experts and relevant regulators to assess board structures would not comply with the Productivity Commission's principles:** The establishment of such a panel would be expensive and would increase the regulatory burden of the Government. It would also be unnecessary as APRA already performs a role in assessing corporate governance. The establishment of this panel would also increase instability in the transition phase.
- **Why the appointment of APRA to assess board structures would comply with the Productivity Commission's principles:** APRA is already doing a significant amount of work in assessing and improving corporate governance. The appointment of APRA to conduct this assessment as part of its regulatory role would prevent the unnecessary expense of establishing a new body. It would also reduce the potential for instability during the transition phase as it would not require the establishment of a new body. As APRA possesses the required expertise, this recommendation would meet members' interests.

4. WHY ANY NEW SYSTEM SHOULD BE REVIEWED WITHIN 5 YEARS

The T.I.S. Fund disagrees with the recommendation that the new system should be reviewed in 2023. Any new system should be reviewed within 5 years of the date it is implemented.

- **Why a review of the new system within the next 5 years would comply with the Productivity Commission's principles:** A review of any new system within 5 years after it is implemented will allow problems in the system to be identified before they cause irreversible damage.
- **Why a review of the new system in 2023 would not comply with the Productivity Commission's principles:** A review of the system in 2023 would not sufficiently meet the principles of contestability and regular assessment. If there are problems in the system that is chosen, by 2023 the system would have been in place too long to enable those problems to be remedied

SCHEDULE

The T.I.S. Fund's Response to the Commission's draft report is set out below, using the Commission's numbering and heading.

INVESTMENT PERFORMANCE

Draft recommendations 4.1, 4.2, 4.3 & 4.4: The T.I.S. Fund supports the inclusion of these criteria in the selection and ongoing assessment of default funds by APRA. The T.I.S. Fund says that those default funds should not be listed in awards, but should be listed in a register maintained by APRA. In relation to 4.4, the T.I.S. Fund advises that, although small, it has been able to achieve scale advantages by outsourcing to independent suppliers (e.g. administration, compliance, investment and insurance).

GOVERNANCE AND TRANSPARENCY

Draft recommendations 5.1, 5.3 & 5.4: The T.I.S. Fund supports the inclusion of these criteria in the selection and ongoing assessment of default funds by APRA. The T.I.S. Fund says that those default funds should not be listed in awards, but should be listed in a register maintained by APRA.

Draft recommendation 5.2: The T.I.S. Fund does not support this recommendation. The assembling of such a panel would be unnecessary and costly. APRA already has the required experts. Superannuation funds would probably bear the costs associated with the establishment and the maintenance of the proposed panel through increased levies. The costs would ultimately be passed on to members. If such a panel was ultimately established, it ought to be reviewed within 5 years of its establishment to determine its ongoing necessity, given improved financial literacy, and engagement by employers and members with their super.

OTHER POTENTIAL CRITERIA

Draft recommendation 6.1, 6.2 & 6.3: The T.I.S. Fund supports the inclusion of these criteria in the selection and ongoing assessment of default funds by APRA. The T.I.S. Fund says that default funds should not be listed in awards, but should be listed in a register maintained by APRA. In relation to 6.1, the T.I.S. Fund advises that it has been able to provide insurance offerings to long distance drivers that they would not otherwise have been able to obtain due to the risks associated with the industry. This is of immense significance and value to the members of this industry.

Further T.I.S. Fund recommendation: The selection and ongoing assessment of superannuation funds for listing as default funds in modern awards should include consideration of that fund's history in the industry, knowledge of the industry and established relationships within that industry.

PERFORMANCE OF THE DEFAULT SUPERANNUATION FUND SELECTION SYSTEM

Draft finding 7.1: The T.I.S. Fund agrees with this finding.

Draft recommendation 7.1: The T.I.S. Fund supports this recommendation. However, as noted in the submissions, the T.I.S. Fund does not believe that either Option 3 or Option 4 would uphold these principles. Option 4A will more effectively meet the principles set out in draft recommendation 7.1 than any of the options identified by the Productivity Commission in its Draft Report.

Draft finding 7.2: In response to this finding, the T.I.S. Fund submits that the current process for the selection of default funds in awards lacks transparency and competition and does not work in the best interests of members. The T.I.S. Fund currently has two applications into Fair Work Australia for variation of award, to include the T.I.S. Fund as a Default Fund. These are due to be heard over the next few months. Although these applications have been brought to FWA by an organisation of standing in the Transport industry 'NatRoad', and although the T.I.S. Fund is intrinsically linked with its transport partners, members and employers, under the current process of assessment, it is still difficult to break through the barriers set in 2008, with the advent of modern awards. There is a perceived strong degree of procedural unfairness, and a lack of superannuation knowledge and expertise within FWA.

OPTIONS TO REFORM THE SELECTION PROCESS

Draft recommendation 8.1: The T.I.S. Fund says that all funds that are authorised to offer a MySuper product should be able to apply to be a default fund and have that application considered on its merits. An applicant's case should be outlined and assessed against the factors for consideration identified above. Other factors could be taken into account for individual awards at the decision maker's discretion. Such discretion ought to be subject to reasonable constraints.

Draft recommendation 8.2: The T.I.S. Fund does not support this recommendation. This recommendation introduces a new liability for employers which would discourage employers from choosing funds other than default funds and would consequently reduce competition. In addition, as employers would be subject to a new liability, a system would need to be established to police that liability which would increase regulatory costs. The T.I.S. Fund does not agree with the assumption that employers are unwilling to choose default funds, or that they are not up to that task. The T.I.S. Fund submits that in its experience in the Transport industry, there is no lack of understanding and that employers are sufficiently financially educated and concerned for their employees to both educate themselves on respective MySuper Funds and to choose from a list of default funds which are overseen by APRA.

If APRA determines which funds are deemed to be default funds (without limiting the number of funds that can be default funds), this will resolve any concerns about employers' ability to make that decision, while at the same time maintaining choice and enhancing competition. While the regulatory function of the body would increase under this method, the regulatory costs associated with the establishment of a new employer liability in choosing default funds would be prevented. As APRA would contain experts in the areas of finance and superannuation, it is likely that members would benefit from this system.

Information Request: The T.I.S. Fund recommends APRA as the appropriate body to monitor compliance as it has the required skills, expertise and knowledge. However, under Option 4A, employer compliance would need very little monitoring as the only employers who would face liability would be those choosing super funds that were not on the register maintained by APRA. This is preferable as it is a preventative solution rather than a reactive one.

Draft recommendation 8.3: As the T.I.S. Fund is not listed as a default fund in any award, it is highly dependent on the grandfathering provisions contained in awards. It is not plausible for non-compliant awards to be able to continue to operate by virtue of grandfathering provisions. However funds should not be penalised simply because they are not the chosen 5 to 10 default funds. Further, simply removing the grandfathering provisions, without an appropriate replacement, would cause instability within many

industries for members and employers. Draft recommendation 8.2 would not alleviate this instability as many employers would be required to choose new funds. The T.I.S. Fund estimates that, due to the inadequacies in the current system, over 50% or more of employers that choose the T.I.S. Fund have sustained their arrangements with us through grandfathering provisions.

Draft recommendation 8.4: The T.I.S. Fund does not support this recommendation as it will severely limit contestability in the industry. The limitation of employer choice is not consistent with the principles identified by the Productivity Commission.

Draft recommendation 8.5: 8 years is too long to add a competitive element into the system as, within that time, default funds would have established a monopoly and other super funds would probably no longer exist. The combination of the length of time and the potential liability faced by employers would result in an extraordinarily high threshold for funds not listed in awards to compete with default funds. 8 years in the superannuation industry is a lifetime in both industry and political terms. If the number of default funds per award is limited, the chosen default funds will have established and cemented their monopoly positions before the review occurs.

APRA should maintain a list of default funds and those funds need not be listed in awards. APRA would have a regulatory role in relation to that register and people could make applications to APRA if there was concern about any of those funds. This would alleviate the need for both the 8 yearly and the interim reviews, which may in any event be unnecessary for certain awards. If the Commission upholds its recommendation to include a review process, that review ought to occur every 4 years.

Draft recommendation 8.6: The T.I.S. Fund supports provision for appeals. It notes that, under Option 4A, the decisions being appealed would be those made by APRA.

Draft principal finding 8.1 & information request: The T.I.S. Fund recommends Option 4A which is an amalgam of Option 1 and Option 4. Option 4A would provide an effective process for the selection and ongoing assessment of superannuation funds for listing as default funds in modern awards, while at the same time providing for the member's best interests and addressing the needs of employers. Option 4A will greatly improve contestability.

APRA should be the expert body to oversee the register of default funds. APRA possesses the required expertise and knowledge. It will operate transparently and independently without the apparent or perceived conflicts of interest of those bodies currently operating in the sector.

TRANSITION ISSUES AND FUTURE REVIEW

Draft recommendation 9.1: The T.I.S. Fund supports this recommendation. The current system has allowed Default Funds to operate as monopolies without the need to justify or fight for their position as Default Funds. The MySuper system is geared toward the best interests of members and should appropriately be incorporated into the system. To further delay the implementation of the new system would allow the current Default Funds to further consolidate their monopoly position in the industry.

Draft recommendation 9.2: The T.I.S. Fund supports this recommendation but notes that it does not support Fair Work Australia's involvement in the selection of Default Funds.

Information request - The T.I.S. Fund is a non-profit, non-public offer fund regulated by APRA with volunteer unpaid directors, and equal employer and employee board representation. Employer Sponsors & their members are restricted to those who are

‘Grandfathered’ (Modern Awards 2008), and those members who actively choose The T.I.S. Fund. The T.I.S. Fund believes that in assessing non-public offer funds, special consideration ought to be given to the history of and basis for the existence of these funds. The industry specific products offered and specific industry understanding by these funds add value to their members that ought to be recognised in the selection criteria.

Traditionally, these funds by nature are run very efficiently, and stick to Core benefits. Being small and specialised provides its own benefits, not least of which is a personalised knowledge and understanding of its members and employers.

As mentioned above, a large portion of the T.I.S. Fund membership base is dependent on the grandfathering provisions in the modern awards. While there are problems with those grandfathering provisions, they have provided for the continuation of non-default funds that are valuable to members but would otherwise have ceased to exist. As noted under ‘Why the Productivity Commission should add further criteria for assessing Superannuation Funds’, The T.I.S Fund recommends that the history and background of the superannuation fund, the knowledge of that industry and its established relationships in that industry be taken into account.

Draft recommendation 9.3: The T.I.S. Fund agrees that there should be an independent public review of the arrangements ought to take place. However, in light of the significant problems identified in the current system after its short existence, the T.I.S. Fund submits that 2023 is too distant. The T.I.S. Fund submits that this review should occur 5 years after the new system is implemented.

The Trustees

The Transport Industry Superannuation Fund