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Submission 27 - Australian Chamber of Commerce and Industry (ACCI) - Alternative Default Fund Models - Public inquiry

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Chamber of Commerce
and Industry

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1 Introduction

As part of the government's response to the Financial System Inquiry the Treasurer requested the Productivity Commission (Commission) to investigate and develop criteria to assess the efficiency and competitiveness of the superannuation system and to inquire into and develop alternative models for a formal competitive process for the allocation of default fund members to products.

The two processes of developing criteria for assessing efficiency and allocating into defaults are linked because any proposed allocation model should have regard to the criteria recommended to assess system competitiveness and efficiency. Any allocation model should have close regard to system operational and allocative efficiency and should not itself be a source of weakened competitiveness nor negatively impact efficiency. However the linkage between the two parts of the inquiry is not seamless. Any investigation of systemic allocative efficiency must also consider the basis upon which one destination product is to be preferred over another.

On 20 September the Commission released an issues paper, *Superannuation: Alternative Default Models*, (Issues Paper) about its inquiry into the allocation of products to default fund members. The Issues Paper advises that the Commission will approach its investigation and development of criteria for assessing the system's efficiency and competitiveness by imputing analytical objectives to the system, formulating criteria to assess whether the objectives have been achieved and identifying indicators of relative performance against the identified criteria, and also it will use a "no default" model to assess the costs and benefits of default allocation propositions.

The imputed analytical system objectives are not the same as those being considered as the proposed statutory objectives, against which proposed statutory amendments are to be considered. The Commission's imputed primary system objective is to deliver the best outcome for members and retirees.¹ The Issues Paper is intended to challenge but the proposed "no default" comparator sits somewhat uncomfortably with this imputed system objective because in a system which compels employer contribution but cannot rely on employees to specify their destination fund maximising member and retiree outcomes may divert focus from system costs which are externalised from members' balances.

The Australian compulsory superannuation system is the product of a number of significant policy decisions over time and it is a system with many and complicated moving parts. In its current form it requires compulsory contributions by employers for eligible employees, which is the imposition of compulsory savings related to an employee's ordinary time earnings to overcome the typical psychological difficulties of reducing present discretionary expenditure for a long term future and uncertain goal. Because of this uncertainty about the future and the wide variety of circumstances which aging people face as they approach their retirement or wind-down from the labour force, the system seeks to provide for choice of outcome and route.

¹ P 3, *Superannuation Competitiveness and Efficiency – Issues Paper*, Productivity Commission, March 2016
<http://www.pc.gov.au/inquiries/current/superannuation/competitiveness-efficiency/issues/superannuation-competitiveness-efficiency-issues.pdf>,

Not all members make their choices. Many are, or feel, inadequate to the task of making decisions with long term financial consequences and this, too, contributes to a level of disengagement from the system.

Disengagement not only means that the system requires a high level of prudential responsibility on the part of those, the funds, which make the decisions for disengaged members (the MySuper rules), but also has meant that there are too many accounts. Despite a number of changes to promote consolidation of disparate accounts there are still too many accounts in the system.²

In the absence of strong countervailing system benefits any replacement which is contemplated should not provide a systemic source of account proliferation.

1.1 The Superannuation System is Changing

The development of the Australian superannuation system as a nearly universal national private pension system was promoted by the industrial relations system before the introduction of national legislation. The legacy of that industrial beginning is not only seen in system coverage but in many of its design features, the results of the way that various system problems were addressed. This is true of the default selection system.

As has been noted in many quarters and reports the system has grown and bears little resemblance to its early days. It is now not only a huge asset pool but it is growing rapidly bigger. International comparisons are difficult because of the difficulty of standardising variables and their application across diverse systems and usually like is not being compared with like. Usually, too, international measurements do not accord with national ones, making those comparisons difficult, too. Nonetheless there are international comparisons that do provide something of a benchmark.

In 2014, on the basis of assets measured as a proportion of GDP, the Australian superannuation system was the fourth largest in the OECD membership group. Australian fund assets equated to 110.0% of national GDP, a figure surpassed only by the Netherlands (159.3%), Iceland (146.8%) and Switzerland (120.3%).³

In that year contributions equated to 7.5% of GDP, surpassed in the OECD only by Switzerland with contributions at 8.1% of GDP.⁴ Scandinavian countries aside, employers' contribution as a proportion of total contributions was at the high end at 68.1%.⁵ On the downside Australian fund operating expenses were high at 0.7% of assets, only exceeded by eight other OECD countries. Both the Netherlands' and Iceland's fund operating expenses were 0.2% of assets. Operating

² The 132 RSE licensees of APRA regulated funds with more than 4 members reported 27,397,726 member accounts at 30 June 2015. Taken from table 1 *Statistics – Annual fund-level Superannuation Statistics, June 2015* (issued 10 February 2016), APRA

³ OECD, *Funded Pension Indicators*, OECD.Stat, accessed 26/10/16 at http://stats.oecd.org/Index.aspx?DatasetCode=PNNI_NEW

⁴ OECD, *Funded Pension Indicators*, OECD.Stat, accessed 26/10/16 at <http://stats.oecd.org/viewhtml.aspx?QueryName=601&QueryType=View>

⁵ OECD, *Funded Pension Indicators*, OECD.Stat, accessed 26/10/16 at http://stats.oecd.org/Index.aspx?DatasetCode=PNNI_NEW#

expenses might be associated with maturity, but Australia's 0.7% and the 0.2% figures for Iceland and the Netherlands also applied in 2001.⁶

The Australian superannuation system is growing quickly and in 2015 it was bigger again. System maturity plays a part here because assets are a combination of contributions and earnings less benefits (as well as the overall state of the national economy measured as GDP). Fund assets represented 117.7% of GDP. The comparable 2015 figures for the Netherlands were 178.4%, Iceland 149.2% and Switzerland 124.7%.⁷

The second major development bearing on this inquiry is SuperStream and the new capacity for information collection and supply that SuperStream, and the underpinning advances in digital capacities which enable it, single touch payroll and the like, bring. In a number of ways these new systems provide the option of new, more efficient and different solutions to old system problems. These new capacities and their potential to benefit the system are important in considering options and their effective implementation. They also mean that it is likely that selecting and implementing choice will also change from how it occurs under the current statutory regime. The choice process, or at least the consequences for the choice process of this inquiry into default allocation, are properly part of the Commission's consideration.

2 The Australian Chamber's interest in superannuation

The Australian Chamber's interest in superannuation is directed at the employer's experience in the superannuation system – how the system impacts employers, its cost and administrative demands, its compliance obligations and penalties. Employers have a strong interest in system efficiency.

The Australian Chamber's members comprise a mix of state and territory chambers of commerce and industry-based organisations or federations. Apart from its role as a contributing employer on behalf of its employees, the Chamber has no interest in any superannuation fund or scheme and it nominates to no trustee board. Some, but not all, of its members nominate to trustee boards.

Chamber policy is determined by its membership through its committees and Council, but policy does not require unanimity and members have the right to pursue different objectives when that is more appropriate for their particular membership.

3 Characteristics of the Australian Superannuation system

This section looks at the way that the current rules affecting employers affect the superannuation system and what might be changed.

⁶ OECD, *Funded Pension Indicators*, OECD.Stat, accessed 26/10/16 at <http://stats.oecd.org/viewhtml.aspx?QueryName=14477&QueryType=View>

⁷ *Pension Funds in Figures*, OECD, June 2016 at <https://www.oecd.org/daf/fin/private-pensions/Pension-funds-pre-data-2016.pdf>

Employers play a major role in the national superannuation system. Eligible employees' compulsory savings are administered through employers and it is they who must make contributions and ensure that employees' contributions are properly made.

This indirect mechanism creates a number of system inefficiencies such as the cost of data collection, poor data quality and loss of currency. For employers, particularly before SuperStream, the mix of default and chosen fund employees imposed significant administrative costs. These have not gone away, but, set up costs aside, the implementation of SuperStream is reducing this systemic cost to employers, and should continue to do so for numbers of employers for a while yet.

Beyond the scope of the Commission's inquiry, but with important systemic consequences, the enforcement of the employer role in the superannuation system has given rise to a statutory system (based on the obligation to report an unpaid tax) and a penalty structure which is both draconian and inequitable, but which is also dysfunctional for achieving the policy objective of timely, well directed contributions for funds to allocate. The constitutional basis for compulsory national superannuation is not optimal but it is necessary. The overarching statutory framework and penalty structure the taxation power supports can be changed.

Because employers must make contributions and not all eligible employees are equally, or sufficiently, engaged, employers are responsible for supplying employees' information, and, unless the employee advises where (s)he wants his or her contributions placed, employers are also responsible identifying which fund contributions are paid into.

While employers make eligible employee contributions and there are employees who are not sufficiently interested, or feel they do not have the capacity, to identify which fund they want their contributions paid into, there will need to be either a default fund or a default fund system⁸. The fact that a system of statutory employer contributions with no statutory guarantee of employee fund selection requires one or more default funds and, in the latter case, default fund allocation, does not mean the system requires that the employer must identify where the non-chosen fund contribution should be placed. There are good reasons for contemplating different options.

3.1 Are employers appropriate to choose a default?

Although most employers accept the need for the superannuation system for retirement, and indeed accept the need for employer contributions, many employers, particularly small employers, see superannuation as a burden and are concerned that they lack the expertise to make the decisions required⁹. In its preliminary research into system actors' perspectives on superannuation Colmar Brunton reported of its employer focus groups:

⁸ Some small employers do not have a default fund. In the absence of a default fund, and no chosen fund from an employee all the employer can do is to not pay, and to use non-payment as a motivator to obtain choice. Depending on the timing of all this, a "...refuse to contribute until you tell me where..." approach could give rise to a superannuation shortfall. See P 26, *Understanding Superannuation, Preliminary report: Qualitative Investigation with Employers, Consumers and Industry* Colmar Brunton Social Research, 25 March 2010

⁹ P 40, *How to Assess Superannuation Competitiveness and Efficiency – Draft Report*, Productivity Commission, August 2016

Employers do not see a need to get information about superannuation funds – particularly as there is little reason for them to consider changing default funds. Employers are also extremely cautious about providing advice to employees about fund details as they feel they are at risk of being sued if they are seen to be providing advice. If questions are asked employers generally direct the employee to the superannuation fund to seek the information.¹⁰

There is no particular reason why as a class employers are well placed to identify the best default fund and good reason to suspect that they are not. On current Australian Taxation Office figures there are about 750,000 employers who have contribution obligations and about 90% or 670,000 of these are small businesses with fewer than 20 employees¹¹. Colmar Brunton reported:

Most employers had not chosen the default fund; in most cases it had been inherited. For those who had been involved in choosing a superannuation fund the process was considered to be relatively straight forward, although this reflects the perceived lack of distinction between the funds rather than access to comprehensive and simple information.

...

There was general acknowledgement that information about comparative performance between funds, even between fund types was not well known and it was not felt that this information would be easy to find. One of the issues in comparing funds is that the system is seen to be very complex with no common baseline to provide an accurate comparison. Differing fee structures, the payment of commissions and differing investment strategies are all seen to confuse the picture in terms of a straight comparison between funds. “I would choose CBUS as most of the tradies are in it.” (Employer, less than 20 staff)¹²

Current allocation into defaults is not efficient because it relies on employer choice and does not usefully drive system beneficial competition for the same reason. For a number of reasons mandatory employer fund selection is not – from the perspective of the system – a good model. These reasons are generally well known. They include the fact that many employers are not equipped to identify the best default, or defaults, for their employees (the make-up or circumstances of which may change over time), the principal-agent problem and the fact that the selection of funds is constrained by modern awards.

Modern awards specify funds. The Commission has already noted that the assignment of funds to modern awards owes more to precedent and industrial outcomes than it does to evaluation of candidate fund performance. In this respect the award modernisation process, which was completed in 2010, generally proceeded on the basis that if the fund was specified in a pre-Fair Work award which fell within the coverage of the modern award it was specified in the modern award. Because the coverage of many modern awards was broader than that of the pre-Fair Work awards which they were displacing this process generally had the effect of increasing the number of specified funds from which an employer covered by the modern award could choose.

The intention of this expansion of specified funds was to retain the *status quo* for employers. Under the current system there are very real administrative costs and risks of guarantee breaches

¹⁰ P 10, *Understanding Superannuation, Preliminary report: Qualitative Investigation with Employers, Consumers and Industry* Colmar Brunton Social Research, 25 March 2010

¹¹ Taken from *SuperStream – Employer Onboarding*, SuperStream Engagement Forum, 19 October 2016, at <http://lets-talk.ato.gov.au/LiveStream/documents>

¹² P 27 *Understanding Superannuation, Preliminary report: Qualitative Investigation with Employers, Consumers and Industry* Colmar Brunton Social Research, 25 March 2010

associated with changing defaults. Unsurprisingly the expanded range of specified defaults did not lead to any great reallocation of defaults by employers.

Employers do not commonly change defaults and available evidence¹³ supports the view that external events, not routine internal review, are usually associated with an employer changing a default fund. The most common current push factor is probably fund amalgamation.

The Australia Institute said of default fund selection:

Survey research commissioned by Industry Super Network in late 2007 showed that once employer-nominated fund arrangements are in place, employers are very unlikely to revisit them; 94 per cent of employers reported that it was unlikely or very unlikely that they would change their nominated fund in the 12 months following the survey. The main reasons cited by respondents for not seeking to change funds were that: no problems had been experienced or there was otherwise no need to change; changing was too much work and it was easier to stay in the present fund; and the current fund provided good services and was efficient or professional. Importantly, most of these reasons related to the administrative concerns of the employer and not to whether the current employer-nominated fund delivered good outcomes for employees¹⁴.

...

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.¹⁵

3.2 Is it too early to review employer default selection?

The Issues Paper draws attention to and distinguishes the Commission's earlier investigation of defaults, *Default Superannuation Funds in Modern Awards* (Default Funds). The purposes of the two inquiries are different. In Default Funds the Commission recommended a two-stage process for selecting MySuper products for specification in modern awards, based on product merit rather than industrial precedent, with the second stage being undertaken by an independent panel within the Fair Work Commission.

¹³ For example, in its subsequent report, *Investigating Superannuation: Quantitative Investigation with Employers – Final Quantitative Report*, Colmar Brunton Social Research, 20 January 2010. Colmar Brunton asked respondents whether they had been involved in changing a default. There were 1004 respondents half of whom reported having a default (P 34). Of these 32% had some participation in default selection (P) and the primary reported reasons for fund selection were low fees (89%) and good returns (89%) (P 44). However, most (88%) were satisfied with their default (only 2% were dissatisfied) (P 49) and the predominate reason for satisfaction was because the default fund was easy to deal with (45%) or was not problematic (23%) (P51). Only 36 (7% of N = 517, or 3.6% of the original N = 1004) had changed a default (P 53), and the two main reported reasons were more beneficial (for employees) (38%) and easier to deal with (29%) (P 55). Filtering and “don’t know” mean that there are different numbers of respondents to each of these questions.

¹⁴ Pp 27 -28, *Choosing Not to Choose, Making Superannuation work by default*, Fear J and Pace G, Discussion paper 103, November 2008, The Australia Institute + Industry Super Network

¹⁵ P 29, *Choosing Not to Choose, Making Superannuation work by default*, Fear J and Pace G, Discussion paper 103, November 2008, The Australia Institute + Industry Super Network

The statutory implementation of the Commission's recommendations in that report (Division 4A, Part 2-3 of the *Fair Work Act 2009*) has not achieved the Commission's objectives. It has proved difficult to find expert panel members who are both expert and independent. The enabling legislation departed from the Commission's recommendations by giving a greater role to industrial parties than recommended and a list of somewhat less transparent criteria for assessment than contemplated by the Commission.¹⁶ The failure of the FWC process to alter the current basis of fund specification in awards is not itself a reason to retain mandatory employer default selection, defer this inquiry or delay its recommendations.

Perhaps the system disadvantage of requiring employers to select employee default funds is most simply demonstrated by looking at the next step in the typical default fund member process (and for a proportion of chosen fund members as well), that of identifying how a member's contribution should be invested. Under superannuation legislation, where the member doesn't advise investment preferences, the default investment option is the responsibility of the fund. Properly so, and no-one has suggested this should be otherwise.

No-one has suggested that employers as a class have the expertise to, and should, make the investment decision for their disengaged employees. Yet to make the decision about which default fund is also to make the decision about which default (MySuper) investment option the employee is to receive. Although until recently funds have tended to compete by expanding their product range so as to be present across the market rather than competing on price, default fund selection has implications for the range of non-default investment options available to its members, as well.

3.3 System maturity

As noted in the Commission's draft report the superannuation system is yet to mature. There is no labour market generation which has worked from entry to typical retirement age under the Guarantee system and certainly none which has worked under the higher (9%+) contribution rates. This system immaturity favours the contributions (asset growth) phase over benefits (asset stability or reduction) phase, and, as noted above, the Australian superannuation system is very large and growing quickly.

As well, MySuper is not yet fully implemented.

The introduction of APRA authorised MySuper products was supported by transitional provisions which had the general effect that a fund which offered a MySuper product was also required to transfer a member's assets held in the fund's pre-MySuper default investment option (accrued default amount) into the fund's MySuper account, unless otherwise directed by the member. Funds which did not offer MySuper were to transfer their members' accrued default amounts into another fund's MySuper product unless otherwise directed by the member.

The obligation on trustees to allocate contributions on behalf of a member who has not directed how they should be invested into a MySuper product commenced on 1 January 2013. Funds are not required to transfer the accrued default amounts of its members into a MySuper account until 1 July 2017.

¹⁶ Capable of statutory rectification but there was also legislative confusion about contribution to funds and allocation into MySuper products which could give rise to significant complications.

The impact of this transitional arrangement can be overstated. APRA issued a Prudential Standard about the transfer of accrued default amounts requiring the development of transfer plans.¹⁷ Trustees were required to develop these plans having regard to member best interest, which, given the purpose of MySuper and its rules, meant that transfers of accrued default amounts should take place as quickly as practicable.

The evidence supports this view. Between 30 September 2013 and 30 September 2015 the value of accrued default amounts declined by 76.5% from \$220.6B to \$51.9B¹⁸. In the year ending June 2016 the figure had declined to \$41.3B representing 3% of assets in APRA regulated funds with more than 4 members (8.7% of assets in MySuper products)¹⁹.

4 The Current Default System

This section looks at the characteristics of the current default allocation regime and its consequences for the superannuation system.

4.1 Defaults allocated by each employer

Employers allocate new default fund employees into the relevant default(s) at that workplace. The system requires a new default fund to be allocated to an eligible employee by each new employer of that person at the time of job entry unless (s)he intervenes at that time with a chosen fund. Systemically this provides a measure of inter fund competition because it means that default allocation is not merely a product of typical labour force entry pathways, but, relying on member disengagement, it focusses fund competition on the employer, particularly larger employers. In the case of eligible employees who are sufficiently engaged to seek to avoid account proliferation, seemingly a minority, this also gives rise to award-based fund specification biases because current funds tend to be chosen.

The present system also conduces to account proliferation. If it is accepted that account proliferation across and within funds²⁰ is systemically undesirable, any replacement default allocation mechanism should not operate to allocate a default fund for an eligible employee with each new job. This suggests that, in principle and subject of the employee exercising choice at any time, an eligible employee should bring his or her allocated fund into his or her second and subsequent jobs.

Providing for employees to bring their (default) fund with them may look like requiring employees to identify a chosen fund, but there are two important differences from the prevailing choice regime.

¹⁷ SPS 410

¹⁸ P 2, *Superannuation Statistics Selected Feature – Accrued Default Amounts*, APRA, September 2015 (issued November 2015)

¹⁹ P 8, *Quarterly Superannuation Performance*, APRA, – June 2016 (issued 23 August 2016)

²⁰ Intra fund multiple accounts are generally regarded as a legacy issue. That's not wholly correct. Although a very small minority there are eligible employees who does not wish to give, or allow access to, their TFNs. Coupled with name modifications, changes in address and the like these employers can continue to have new accounts made in funds where they already have an account.

Currently an eligible employee entering a new job with a pre-allocated default would need to advise details of that fund to the employer in the same way as is required on the standard choice form. However, SuperStream and its associated enabling services are changing employers' dependency on employees to provide personal and fund information and funds' dependency on employers to supply employee information. Under SuperStream enablers such as the TFN validation service could provide this necessary information to enable contributions and allocation data.

Systemically, reliance on the employee to identify his or her allocated default (or chosen) fund could be circumvented.

Second, trustees' statutory obligations to members are prudential they are not determined by any necessary civil legal relationship with the member (such as a contractual relationship or mutual adherence to a deed). The nature of these statutory obligations is largely determined by the nature of the product which the member's contributions are allocated into. "Contractual" relations exist with either the member, where that person has sought and been accepted for membership by the trustee (and this underpins the choice process), or the participating employer who has enrolled the member and contributes on his or her behalf (underpinning the default fund process). These membership types may be held in different registers or divisions and there may be different classes of "direct" member.²¹

It is sometimes argued that the absence of a "contractual" relationship between the fund and a non-participating employer contributing on behalf of a direct member impedes the fund's capacity to recover late or missed payments on that member's behalf. To the extent that this is true, and the facts are difficult to quantify or assess, it seems capable of "contractual" remedy. It is not a reason for the system to require participating employers.

However, the fact that funds currently require a "contractual" relationship with either participating employers or direct members does need to be considered in the design of a scheme where employers do not allocate the default fund to default fund members. If introduced under the current legal framework those allocated default members would have no "contractual" relationship with the receiving fund and nor would their contributing employer. There may be gaps which would require statutory or prudential remedy.

The emerging electronic transaction and reporting system is also changing compliance and recovery and presenting new, more efficient options. Funds have different approaches to the nature and resource intensity of their efforts to recover partial, late or missed contributions. Not all approaches adopted by funds impose equally justifiable or appropriate costs on their members and some recovery practices could give rise to other system detriments. The improving visibility of contributions and the different recovery strategies being presented mean that some current recovery practices seem an increasingly unjustified expenditure of member money.

²¹ Poor data and systems, and sometimes fund rules, means that this has contributed to the excess of member accounts.

4.2 Engaged employers

While it is the case that employers as a class are not the best judge of which fund an employee's contributions should be paid into and that systemic reliance on them to do so imposes systemic costs it is also true that some employers wish to be involved and are set up to make good decisions for employees. These employers are engaged and, based on fund performance, are also able to make good decisions for their employees. Not the only but the most obvious examples are those employers which provide their own company fund.

The combination of the spread of compulsory defined contributions superannuation and significant policy changes, including the introduction of MySuper, has dramatically reduced the number of company funds which remain.

At 30 June 2016 there were 116 different authorised MySuper products on offer from 102 RSEs and these numbers were relatively stable across the year. 96 of these RSEs offered just the one 'generic' MySuper product but six of them also offered other MySuper products – there were 14 authorised large employer products, including one which was authorised in fiscal 2016, which were offered concurrently with those six RSEs' generic product. 15 of the 96 RSEs just offering generic MySuper were corporate funds²².

Should employees commencing with one of these employers be excluded from an external allocation system were one to be determined?

To some extent this question presupposes the answer to other design decisions. The Chamber's submission has proceeded on the basis that there appear to be good reasons to allocate a default once and the employee would then carry that fund, or a replacement one because substituted by the employee's choice, with him or her.

Under this approach it would be available for the external allocation scheme to be triggered with entry into the first job in which the employee is eligible for guarantee contributions but it would also be possible to allocate with some other event, such as an application for a TFN, which may often be earlier. There may be systemic benefits in such an approach such as earlier engagement with superannuation and recognition of superannuation as a work entitlement without compromising an employee's right to not declare his or her TFN.

Providing for the employee to trigger the allocation process has a number of systemic advantages besides taking employers out of unnecessary activities, but there could not be systemic reliance on employees to apply or to choose a fund. There would still need to be a capacity for an employer whose incoming new employee did not have a superannuation fund in his or her data, or had no accessible data, to trigger allocation on that new employee's behalf.

There is no systemic reason why employers should be required to trigger allocation for all new entrants, or all first time entrants. If, despite its effect on account proliferation, default allocation was required for each new job, company specific defaults could be embedded or be a reason for exclusion from the external allocation process.

²² P 8, *Quarterly statistics*, APRA, June 2016 (issued 23 August 2016)

The 29 company funds offering MySuper discussed above do not represent the extent of remaining company funds which are open to new members, but these others do not offer MySuper and operate as choice funds. The same technologies which are enabling transactional efficiency, pre-filling, reporting and visibility will, also impact the choice process, simplifying it and making it more efficient. Potentially the only difference between the two could be who identified the incoming employee's fund.

4.3 Other employees

There will be some employees who are not new labour market entrants whose current fund or scheme cannot accept contributions from a new employer. From a system perspective these employees cannot be relied upon to exercise choice. Their circumstances would need to be accommodated by any non-employer based default allocation scheme. In the case of these employees the allocation system would need to be available at the point of the subsequent new job entry (which may be a concurrent second job).

The standard choice process is not triggered for eligible employees who commence a job which is regulated by an enterprise agreement or another deemed instrument (agreements). The standard fund used in that workplace is usually a default because in most instances the employer registers the incoming employee for contributions. The design characteristics of any non-employer based default allocation system, and the corresponding evolution of the choice process, will be very important in determining how this question should be addressed under an external default allocation system.

Subject to these factors, the Chamber's tentative view is that it may be appropriate to treat these defaults as chosen funds.

This is because it seems likely that choice will alter with changes to the default mechanism and it seems distinctly possible that the currently conceptually clear distinction between direct and default enrolled member will also change as a result of the Commission's review. Even in its current form choice is not actually excluded from workforces where an agreement applies. Except where excluded by the explicit terms of the agreement, choice, although not required, is permitted, and in practice chosen funds are accepted in many workplaces regulated by an agreement. The fact of an agreement suppresses the statutory right to choice, not choice itself. The Australian Chamber supported legislation to rescind the statutory suppression of the right to choice and it expects that such legislation will come back on.

5 Conclusions

The Chamber recommends that in its consideration of new default fund allocation models the Commission give consideration to the following general principles:

- The review should recognise the emerging digital capabilities in considering the design of default allocation systems and also recognise the implications of default allocation for fund allocation more generally.
- The default allocation mechanism should not require employers to make the decision about which default fund should apply, nor require employers to trigger default selection.

- Unless justified by significant countervailing system benefit the default allocation mechanism should not be a source of account proliferation.
- If allocated a default fund employees should bring that fund, in the same way as a chosen fund, to subsequent employers. Employees should be able to access the system so as to substitute their allocated fund.

6 About the Australian Chamber

6.1 Who We Are

The Australian Chamber of Commerce and Industry speaks on behalf of Australian business at home and abroad.

We represent more than 300,000 businesses of all sizes, across all industries and all parts of the country, making us Australia's most representative business organisation.

We speak on behalf of the business sector to government and the community, fostering a culture of enterprise and supporting policies that keep Australia competitive.

We also represent Australian business in international forums.

Our membership comprises all state and territory chambers of commerce and dozens of national industry associations. Individual businesses also get involved through our Business Leaders Council

6.2 What We Do

The Australian Chamber strives to make Australia a great place to do business in order to improve everyone's standard of living. We seek to create an environment in which businesspeople, employees and independent contractors can achieve their potential as part of a dynamic private sector. We encourage entrepreneurship and innovation to achieve prosperity, economic growth and jobs.

We focus on issues that impact on business, including economics, trade, workplace relations, work health and safety and employment, education and training.

We advocate for Australian business in public debate and to policy decision-makers, including ministers, shadow ministers, other members of parliament, ministerial policy advisors, public servants, regulators and other national agencies.

We represent the broad interests of the private sector rather than individual clients or a narrow sectional interest.

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