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Commissioners Peter Harris and Karen Chester
Productivity Commission
Level 12, 530 Collins Street
Melbourne VIC 3000

Dear Commissioners,

Re: Submission on the Productivity Commission's draft report for the inquiry into Superannuation Alternative Default Models

Thank you for the opportunity to contribute and provide comments on the stage two draft report of the superannuation review.

United Voice has had the opportunity to read the submission prepared by the Australian Council of Trade Unions (the ACTU) which we support in its entirety.

The attached comments are made in addition to our support for the ACTU's submission.

Yours sincerely,

Jo-anne Schofield
National Secretary



United Voice Submission:

Productivity Commission's draft report for the inquiry into Superannuation Alternative Default Models

April 2017

About 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, early education and care, education, property services, hospitality and manufacturing. We are a union of 120,000 Australian workers, united by our shared belief in the dignity of work, 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 per cent 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.¹

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 (almost universally) across the workforce, first through the award system and then through the compulsory Superannuation Guarantee. It is in this capacity that we respond to the Productivity Commission's draft report on Alternative Default Models ('the draft report'); as advocates for both our members and award-reliant workers, and in support of a superannuation system that delivers the best outcomes for fund members.

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

Our Members

The majority of our members who are in award-reliant industries have benefitted from low-cost, not-for-profit industry default funds. Typically, our members are not actively engaged in decision-making about their superannuation and do not choose a fund, but instead rely on default fund arrangements in modern awards. The policy settings relating to default superannuation arrangements thus have a crucial bearing on our members' lives, and the extent to which their needs are met by the Australian superannuation system. Moreover, our members have growing concerns about superannuation and retirement. In a 2013 survey of our membership, United Voice members expressed concerns about the adequacy of their retirement incomes, particularly those approaching retirement age.

Response to the Productivity Commission's Draft Report

United Voice has had the opportunity to read the submissions prepared by the Australian Council of Trade Unions (the ACTU) which we support in its entirety. In particular, we do not support removing the allocation of default funds from the Fair Work Commission. Maintaining the stability of the system should be paramount. To that extent, any changes ultimately recommended by the Productivity Commission could apply to the existing system.

Additionally, United Voice makes some broad comments on the Inquiry itself and the draft report:

Firstly, United Voice notes that the Inquiry was limited by its Terms of Reference, which focussed on alternative models for a formal competitive process. Our view is that the benefit of the current default arrangements in industrial awards is that funds are not in direct competition and can deliver an efficient, low-cost product to particular workers in particular sectors. It cannot be assumed that increased competition will improve efficiency in the sector and improve outcomes for Award-reliant workers. On the contrary, placing funds in direct competition with each other will lead to increases in administration and other costs for our members and a reduced rate of return in their retirement savings.

Secondly, we strongly oppose any model that takes superannuation out of the industrial relations system. Superannuation is deferred wages, and Awards and enterprise agreements are and should remain the appropriate means of selecting and prescribing default superannuation funds. If superannuation did not exist, the employer contributions would be paid regularly as increased wages. Employees therefore have to be satisfied that the best possible use is being made of what is, after all, their own money. That is why it is an important condition of employment negotiated by employers and unions on behalf of employees.

In addition, before the current system is changed, the process for the selection of default funds under the *Fair Work Act 2009* (Cth) (the Fair Work Act) should have an appropriate opportunity to run and be completed. The current process was formulated after the Government initiated a review by the Productivity Commission into the selection of default funds in awards in 2012. Following that review, legislation was introduced changing the way that funds are nominated in awards. This default fund

selection process was to occur once every four years in a review conducted by an Expert Panel and Full Bench of the Fair Work Commission.²

The default fund review began in 2013 but has been indefinitely suspended pending the Minister's decision to appoint members to the Expert Panel. The process of determining a Default Fund List for each Award was never finalised. United Voice believes that the logical process would be to allow this process under the Fair Work Act to be completed before any subsequent changes are made. We also strongly oppose any attempts to remove selection of default superannuation funds from the industrial relations umpire.

Model 1: Assisted employee choice

In this proposed model, employees select a superannuation product themselves from a non-mandatory shortlist of products that a new government body determines. The employee's choice is 'assisted' with 'information and nudges' to make an informed choice.³ As the Productivity Commission found, this model contemplates high competition which would have the flow-on effect of high marketing costs and potentially 'wasteful competition'. It also found that this model would be better able to 'innovate and anticipate shifts in consumer needs.'⁴

As stated above, the primary objective of superannuation policy should not be on competition but on the best interests of fund members. Competition is far from being in the best interest of members, and heightened competition for default fund status is likely to result in increased distribution costs for default fund members and have a negative impact on their returns.

Similarly, the selection of 4 to 10 products by a government body will erode employee voice, with a particularly significant impact on award-reliant industries. In effect, the employees will have no collective say about which funds are named. Unions have traditionally taken a central role in representing the interests of employees in the nomination of default funds as part of industrial awards, and have consistently argued for low-cost and efficient models. As representatives of award-reliant workers, we take our responsibilities towards protecting our members and ensuring default fund arrangements deliver benefits on their behalf seriously. To this end, the Productivity Commission should carefully reconsider proposing this model in the context of the best interests of millions of fund members who are not actively engaged in decision-making around their super fund.

Model 2: Assisted employer choice (with employee protections)

This model proposed by the Productivity Commission gives employers the choice of selecting a default product for their employees who fail to nominate a fund.

² *Fair Work Act 2009* (Cth) s 156A(1).

³ Productivity Commission, *Overview - Superannuation: Alternative Default Models, Draft report*, Canberra, March 2017, pp 13-14.

⁴ *Ibid* at p 17.

The prism of ‘employer choice’ is dangerous. It creates an administrative burden for employers and has the potential to cause huge conflicts of interest. The prevailing rationale in a model of market contestability where there is a greater role for employer choice seems to be ‘what is best for employers’ as opposed to their employees. This arrangement could result in employers making decisions based on commercial advantage, inducements or administrative ease, instead of the best interest of employees.⁵ The problem of employer choice is well summarised 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”.⁶

United Voice urges the Productivity Commission to acknowledge the problems associated with this model and to reconsider its draft finding 5.1

Models 3 and 4: Multi-criteria tender and Fee-based auction

Both proposed models 3 and 4 have a number of stages which require funds to first meet minimum criteria and then compete for selection by either out-bidding each other on member fees or making proposals against a number of selection criteria at a tendering and comparative evaluation stage.

A number of the proposed selection criteria are analogous to the first stage criteria in s.156F of the Fair Work Act that require the Fair Work Commission’s Expert Panel to take into account when determining the Default Superannuation List.⁷ To this end, there is no reason why s.156F of the Act could not be amended and supplemented to include some of the more specific criteria in models 3 and 4 around investment strategy, past performance and fee level transparency.

Government Selecting Body

Aside from the baseline model, all of the proposed models require a competitive selection process carried out by a newly created Government body.

Currently, the distribution of default superannuation contributions occurs at the industrial relations tribunal, the Fair Work Commission. A specially constituted Expert Panel, consisting of existing Fair Work Commission Members and three expert panel members with knowledge and experience in finance,

⁵ Research by the ATO into employer attitudes and behaviour in relation to superannuation found that 13 per cent of employers admitted either to receiving inducements to use their current default fund, or to not being sure if inducements had been offered. 11 per cent of large employers admitted to having been offered inducements to select their default fund. See Brunton, C. (2010), “Investigating Superannuation: Quantitative Investigation with Employers, Final Qualitative Report”, p.56.

⁶ 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.

⁷ *Fair Work Act 2009* (Cth) s 156E(2).

investment and management or superannuation,⁸ is tasked with reviewing and compiling the Default Superannuation List. Given the breadth of expertise required and the industrial history of the tribunal in balancing and protecting employer and employee interests, this is the most appropriate body to make default fund selections. In particular, we note the previous Expert Panel's Chair was a long-serving Senior Deputy President of the Commission with advanced qualifications.⁹

United Voice submits that the Government body proposed in the draft report is comparable to the Expert Panel for 4 yearly reviews of default fund terms in the Fair Work Act with the only difference being that the Government body is removed from the industrial relations system. The process of selecting default superannuation funds for non-engaged employees should therefore remain with the Fair Work Commission's Expert Panel.

United Voice submits that the Productivity Commission's willingness to ignore the superior system that already exists in its assessment of the alternative default models, means the draft findings and recommendations are weakened. Any recommended changes flowing from the draft report are therefore likely to be inferior to the system we already have in place. More broadly, we do not support removing the allocation of default funds from the industrial relations arena.

⁸ *Fair Work Act 2009* (Cth) s 620(1A).

⁹ Workplace Express, *FWC's Acton resigns*, 24 March 2017.