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Overview

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| Key points |
| * Default superannuation arrangements for those employees who derive their default superannuation product in accordance with modern awards have provided market stability, and net returns of default funds have generally exceeded those of non‑default funds. However, the arrangements could be improved. * The primary principle governing default superannuation arrangements for modern awards should be the promotion of the best interests of employees. * The selection of default products for awards should be merit rather than precedent based, and should encourage improved performance through competition. * The criteria that the Australian Prudential Regulation Authority will use for MySuper product authorisation provide a first filter for the selection of products. * The Commission recommends a set of non-prescriptive factors to be considered as a second stage ‘quality filter’ when selecting default products for modern awards. * The factors relate to: investment objectives and performance (as primary factors); fees and costs; governance practices (particularly mechanisms in place to deal with conflicts of interest); insurance; intra-fund advice; and administrative efficiency. * The process for the selection and ongoing assessment of default products in modern awards should be reformed. Decisions on the listing of default products should be made by a new Default Superannuation Panel within Fair Work Australia (FWA). * The panel should consist of the FWA President (or delegate) and an equal number of full-time members of the tribunal and part-time independent members appointed for their expertise in finance, investment management or superannuation advisory services. * The part-time members should not be representatives of organisations or parties to awards, but should be appointed as independent members based on expertise. * Superannuation funds should be given standing to apply to, and be directly heard by, the panel, in order to have their products assessed for listing in modern awards. The panel should transparently assess cases on their merits, using the factors identified by the Commission, and any other factors deemed relevant by the panel. * The panel should list all MySuper products for each modern award that meet the factors for consideration (which may prove to be a long list). No express limit should be placed on the number of products that may be listed in any given modern award. * The panel should identify in each modern award, wherever possible, a small subset of those listed products judged as best meeting the interests of the relevant employees. * The panel should conduct ongoing assessments and undertake a periodic wholesale reassessment of the products listed in modern awards. * The process should apply at least for the medium term, given the uncertainty regarding the number, mix and quality of MySuper products to be offered from 2013. * The process should be reviewed in 2023 and this review should include consideration of the appropriateness of allowing employers to select any MySuper product as a default superannuation product. |
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# Overview

Australia’s three-pillar retirement income policy comprises a means-tested and government-funded age pension, supported by both voluntary saving and compulsory superannuation contributions.

Superannuation effectively became compulsory in 1992 with the introduction of the superannuation guarantee. This guarantee now requires employers to make superannuation contributions for most employees at the rate of 9 per cent of ordinary time earnings. This rate will progressively increase to 12 per cent by 2019‑20. At June 2012, total superannuation assets reached $1.4 trillion, approximately equivalent to Australia’s GDP in 2011‑12. Assets are predicted to reach 150 per cent of Australia’s GDP by around 2040.

In 2009, the Australian Government commissioned an independent review into the governance, efficiency, structure and operation of Australia’s superannuation system (the Cooper Review). The Government accepted many of the Cooper Review’s recommendations, including the establishment of a new simple and cost‑effective default superannuation product, MySuper. Under new legislation, only defined contribution funds that offer a MySuper product, or exempt public sector superannuation schemes (EPSSSs), will be eligible to be listed as a default fund in modern awards (that is, the 122 industry and occupational awards that commenced on 1 January 2010).

Also arising from the Cooper Review, the Government has asked the Commission to design criteria for the selection and ongoing assessment of superannuation funds eligible for nomination as default funds in modern awards by Fair Work Australia (FWA). Accordingly, this inquiry assesses a range of criteria that could be used and also examines the process by which the decision to list funds in modern awards is made.

Despite the growth of superannuation in Australia, most employees do not make an active choice about which fund, and/or which superannuation product in that fund, their superannuation contributions should be paid into. This can be due to a range of reasons, such as the complexity of investment decisions and apathy about superannuation given its compulsory nature (box 1). The failure of many employees to make an active choice is the primary rationale for having a default superannuation system.

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| Box 1 Difficulties faced in making retirement savings decisions |
| Individuals might encounter difficulty making retirement savings decisions that are in their own best interests for a number of reasons. These include:   * lack of financial literacy, which limits people’s ability to make informed financial choices * complexity of investment decisions and difficulty matching risk preferences with the right products * high search costs in terms of time taken to research and understand what is often a large number of products * the ‘endowment effect’ where people value money that is lost more highly than money gained, causing them to be unduly conservative in their investment decisions * lack of price awareness, as compulsory contributions, fees and other costs do not come directly out of members’ pockets * information asymmetries between superannuation providers and individuals * a long lag between the initial investment of contributions and the time when the benefits can be accessed * an associated tendency toward procrastination and inertia in making retirement savings decisions * mental rules or short cuts (heuristics) that people use when they have no clear preference, or where the cost of acquiring information is too high, which can lead to persistent biases in decision making * framing effects, where people choose based on how the available options relate to one another, how they are explained and what other information is provided at the same time, rather than which option is in their best interests. |
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The recent Stronger Super reforms aim to promote a more effective and efficient superannuation system (box 2). The reforms will do this by better aligning the interests and incentives of agents (such as fund trustees) and their principals (such as members), and by promoting greater transparency and accountability in the conduct and governance of superannuation funds. In addition, the reforms will make it easier to compare the performance of default superannuation products through better information disclosure.

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| Box 2 The Australian Government’s Stronger Super reforms |
| The Government has announced a range of reforms that include:   * a new default superannuation product — MySuper — authorised by the Australian Prudential Regulation Authority. Under new legislation, only defined contribution funds that offer a MySuper product or exempt public sector superannuation schemes will be eligible to be listed as default funds in modern awards * requiring trustees to develop a single diversified investment strategy for their MySuper products specifying the investment return target (over a rolling 10 year period) and the level of risk appropriate to members of each MySuper product * introducing rules governing fees which can be charged for MySuper products by: * limiting the types of fees that can be charged, restricting the circumstances in which performance fees may be charged, limiting certain fees to cost recovery and prohibiting the deduction of commissions from member accounts * requiring a fair allocation of costs between MySuper products and other products * requiring all fees to be disclosed to members * requiring equal treatment of members by giving all members of a MySuper product: * access to the same options, benefits and facilities * equal attribution of gains, losses and beneficial interests * the same fees (with some limited exceptions) * protection against fee subsidisation (since one employee should not be favoured over another where they have the same employer) * protection against being unknowingly ‘flipped’ to a higher cost division of a fund (through a ban on transferring members unless their consent is received no more than 30 days before any such transfer) * at least a minimum default level of life and total and permanent disability insurance on an opt-out basis.   Governance and fund administration reforms are also being introduced, including:   * a requirement that the trustees promote the financial interests of the fund members * mandatory governance, investment and insurance covenants * a requirement that the trustees determine annually whether or not MySuper members are disadvantaged by the scale of the fund * a product dashboard where funds must publish investment return targets and achievement of those targets, liquidity information, and fees charged per member * capital requirements, which now cover operational risk * a requirement that proxy voting policies be published * new data and e-commerce standards that will include electronic transmission of linked financial and member data using standardised formats * the use of a member’s tax file number as the primary identifier. |
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### The current default superannuation system

Since 1 July 2005, most employees have been able to choose a superannuation fund and a specific superannuation product offered by that fund to which their superannuation contributions are made. This choice extends to employees who derive their default superannuation product in accordance with a modern award. This latter group of employees encompasses:

* award‑reliant employees
* employees who receive above‑award wages or conditions but derive their default superannuation product in accordance with a modern award
* employees covered by enterprise agreements that do not specify a default fund but refer to the modern award for superannuation purposes.

For employees who do not choose a superannuation fund or product, their employer is required to make superannuation contributions into a default fund and, where relevant, into a fund listed in an award. Of the 122 modern awards, 109 list at least one default fund, with some listing up to 18 funds (figure 1). For those modern awards that do not list a default fund, the employer may select any fund, provided it complies with the relevant superannuation legislation. Where there are grandfathering provisions in a modern award, employers can generally continue to make contributions to their previously selected default fund, even if it is no longer listed in the award.

Figure 1 Number of default superannuation funds listed per modern award

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| Figure 1. There are 12 awards that do not name any default fund. There are 16 awards that name one default fund. There are 66 awards that name between 2 and 6 default funds. There are 27 awards that name 7 or more default funds. |

Default superannuation funds in Australia were included in awards when superannuation became an industrial matter in national wage bargaining in the 1980s. Many industry-based superannuation funds were established to cater for employees in specific industries, and a number of these have since become public offer funds — that is, funds that can be joined by members of the public by their own choosing.

Modern awards were developed during 2008 and 2009. Some modern awards cover a large and diverse range of industries and occupations, while others cover a smaller, more defined group. The superannuation funds that were selected for listing in the modern awards (mainly industry funds, along with some retail and corporate funds) were largely those that were already included in the relevant award‑based transitional instruments. Most of the funds currently listed in modern awards have been classified by the Australian Prudential Regulation Authority (APRA) as industry funds (figure 2).

Figure 2 Indicative types of funds listed as default funds in modern awards

66 identifiable funds, by APRA classification

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Since the commencement of modern awards on 1 January 2010, 30 applications have been made to list additional default funds in awards. Twenty of these applications were granted by FWA, on the basis that:

* the fund was listed as a default fund in an award-based transitional instrument relevant to the coverage of the modern award
* the representatives of the main parties covered by the award consented to the inclusion of the fund, or
* employers were making contributions to the fund for the benefit of employees covered by the modern award before 12 September 2008.

It is estimated that at least $6 billion, and potentially more than $9 billion, in superannuation contributions were made to default funds in modern awards in 2010 for employees who derive their default superannuation product in accordance with a modern award. Therefore, default listings in modern awards provide a relatively stable and predictable flow of new monies for many superannuation funds.

### How well does the current default superannuation system perform?

The current default superannuation arrangements have resulted in net returns of default funds (that is, those listed in modern awards) generally exceeding those of non-default funds. Over the eight years to 2011, default funds in modern awards averaged an after-tax rate of return of 6.4 per cent, compared with 5.5 per cent for non-default funds.

While acknowledging this performance, the Commission considers that the current arrangements should be assessed in terms of their capacity to serve employees’ best interests over time. A well‑designed system should do the following:

* Place ‘meeting the best interests of employees’ as the explicit overarching objective in any criteria for the selection and ongoing assessment of superannuation products for listing as default products in modern awards.
* The current process for listing default funds in awards is based largely on precedent and the consent of industrial parties.
* Promote contestability and competition — all funds that offer an eligible default product should have an equal opportunity to be assessed for listing in awards, and competition should provide an incentive for the ongoing innovation, efficiency, performance and consumer focus of superannuation funds.
* The current system benefits funds that are supported by industrial parties.
* Promote transparency — relevant information should be made publicly available and actual, perceived or potential conflicts of interest should be declared.
* The current system does not explicitly address actual, perceived or potential conflicts of interest.
* Be procedurally fair — all parties should have the right to put their case to an unbiased umpire.
* The current system does not provide for full procedural fairness, with some funds facing significant impediments to having their case to be listed as a default fund heard by FWA.
* Impose a minimum regulatory burden — each party involved should incur the minimum cost and inconvenience compatible with achieving the aims of the process.
* The current system imposes minimal regulatory burdens.
* Promote stability and therefore stakeholder confidence in the superannuation market as a whole.
* The current system promotes stability.
* Be consistent with other policies — including the Stronger Super and Future of Financial Advice reforms.
* The current system is not always consistent with the reforms that place the best interests of employees as paramount, nor are decisions about where default money should be placed always made by professional advisers acting in the best interests of their clients.
* Have scope for regular assessment — all default funds must earn their product listing in a modern award on a regular basis.
* Currently, there is no requirement for the funds and their products listed in modern awards to be regularly assessed and, if necessary, be delisted.

In these respects, the current system can be improved on because it:

* is based largely on precedent
* benefits funds that are supported by industrial parties
* is insufficiently transparent
* lacks important elements of procedural fairness
* is not always consistent with the recent reforms
* has inadequate mechanisms for the ongoing assessment of funds listed in modern awards.

In summary, employees who derive their default superannuation product in accordance with modern awards would benefit from a default superannuation system that ensures decisions are merit based rather than primarily precedent based.

### Defining selection criteria for listing default products in modern awards

In considering potential criteria for the selection and ongoing assessment of default superannuation products for listing in modern awards, the Commission is mindful of the recent introduction of a significant number of reforms to the superannuation system. From July 2013, in addition to the introduction of MySuper products, there will be significant disclosure, governance and administrative reforms which are intended to make default superannuation products more transparent and comparable (box 2 above).

The Commission considers that the criteria for MySuper product authorisation, which will be administered by APRA, provide an appropriate starting point for the selection and ongoing assessment of superannuation products for listing in modern awards.

While the Commission does not consider there is a need for additional prescriptive criteria, there are several factors that should be taken into account when selecting products to be listed in awards. This is for two main reasons:

* The Stronger Super reforms serve largely to standardise features and promote disclosure to improve comparability between MySuper products, rather than filter out any products which may not represent the best interests of employees. Hence, there is a need for a ‘quality filter’ to distinguish between funds seeking listing of their products in modern awards.
* There is an administrative burden for employers — particularly new employers being required to choose from a potentially large number of diverse MySuper products. Aspects of superannuation compliance — particularly the complexity of the legislation, timing requirements for superannuation payments, and the administrative cost of paying small amounts for casual employees — are of concern to employers. Having all MySuper products listed as defaults in modern awards (or the practical equivalent, of not listing any default products or funds in any modern awards) might add to this compliance burden and create additional search costs for employers.

The Commission is proposing that the following factors be considered in the selection and ongoing assessment of superannuation products for listing as default products in modern awards.

#### Investment performance (primary factors for consideration)

* *The appropriateness of the MySuper product’s long‑term investment return target and risk profile for employees who derive their default superannuation product in accordance with a given modern award.* The Commission considers that the likely variability of MySuper product investment strategies is desirable, as it will result in a range of products that can meet the potentially diverse needs of employees who derive their default superannuation product in accordance with a given modern award. Accordingly, particular types of investment strategies should not be prescribed for default products. Instead, consideration should be given to the appropriateness of a product’s long‑term investment return target and risk profile for these employees.
* *The fund’s expected ability to deliver on the MySuper product’s long‑term investment return target, given its risk profile*. Investment performance (returns after fees, taxes and charges) is central to meeting the best interests of members. Therefore, a fund’s expected ability to deliver on its long‑term investment return target, given its risk profile, should be taken into account in the selection of a default product. Acknowledging the widely held view that past performance is no guarantee of future performance, the Commission does not support the selection of products based on their relative past performance. However, the Commission acknowledges that a fund’s track record is one factor in determining its future ability to deliver on its MySuper long‑term investment return target, given its risk profile.

#### Fees charged to members

* *The appropriateness of the fees and costs associated with the MySuper product, given its stated long‑term investment return target and risk profile, and the quality and timeliness of services*.The imposition of fee caps (beyond the Stronger Super cost recovery limits for some fees) is not recommended because of the distortions that would be introduced. However, fees and costs should be considered in the context of the stated long‑term investment return target and risk profile, and the quality and timeliness of services associated with the MySuper product.

#### Governance and transparency

* *An assessment of whether governance practices are consistent with meeting the best interests of members.* The mechanisms put in place by fund trustees to deal with conflicts of interest, and the transparency associated with disclosure of those conflicts, should be an area of particular focus. Given APRA’s recently enhanced role of developing and overseeing prudential standards relating to governance, it would be appropriate for the decision maker to be largely guided by APRA in assessing governance practices. Moreover, the Commission is broadly supportive of APRA’s approach of not mandating any particular governance structure while also highlighting potential benefits of using independent directors.

#### Insurance, financial advice and administrative efficiency

* *The appropriateness of the MySuper product’s insurance offerings for employees who derive their default superannuation product in accordance with a given modern award.* The Commission recognises that employees in different occupations and different awards have different characteristics and face varying risks, thus requiring different types of insurance. The Stronger Super reforms will impose a duty on trustees to manage insurance solely for the benefit of members, and allow trustees the flexibility to differentiate insurance offerings within MySuper products between different groups of members. While supporting these initiatives, the Commission recommends the consideration of the insurance needs of employees who derive their default superannuation product in accordance with a given modern award.
* *The quality of intra-fund advice.* The Commission considers that intra-fund advice (that is, advice relating to a member’s existing interest in the fund and products offered by the fund) is important in equipping members with the skills and knowledge to make decisions about their superannuation.
* *The administrative efficiency of a fund*. Members and employers face transaction and time costs in interacting with funds. Therefore, it is the Commission’s view that funds applying to have a default product listed in modern awards should be assessed on their administrative efficiency — in terms of their ability to minimise these costs to members and employers.

### These factors that have been identified by the Commission for consideration when assessing whether a superannuation product should be listed as a default product in a modern award are not prescriptive, nor are they exhaustive. It is recommended that the decision maker be able to include other factors at their discretion, provided the reasons for doing so are fully disclosed. For the most part (with the notable exception of the factor relating to a fund’s administrative efficiency), the factors for consideration apply filters to the MySuper authorisation criteria used by APRA. A decision on whether to list a fund will need to be made ‘on balance’ across the factors (noting the primacy of two) and include consideration of any other factors that are considered to be of particular importance in specific cases.

### Applying the factors for consideration — an open, contestable and transparent process

Given the limitations of the current system for listing funds in awards outlined above, the Commission considers that the selection process itself needs to be reformed. To this end, the Commission canvassed and assessed four options in its draft report that were representative of the views put to it by participants.

The option of employers being able to choose any MySuper product received support from some stakeholders. However, given the timing of this inquiry, with the MySuper legislation not yet in force, the Commission is not in a position to observe the quality of products being offered by the market. Accordingly, the Commission is not currently able to be satisfied that the legislated MySuper authorisation process will operate as a sufficient filter to ensure that the best interests of employees who derive their default superannuation product in accordance with modern awards would be adequately protected simply by those employees being placed in any MySuper product.

Some inquiry participants supported essentially maintaining the status quo. The Commission has rejected this stance because current arrangements do not explicitly focus on the best interests of employees, and do not adequately address contestability and transparency concerns.

The Commission received many responses to its draft report proposal to provide an employer with the discretion to choose any MySuper product as their default product, as long as they could demonstrate, if called upon, that their employees would be no worse off than if a listed fund were chosen. Box 3 outlines the reasons why the Commission no longer supports the proposal for employer discretion, though providing some degree of employer flexibility remains a key consideration in the Commission’s recommended approach (see below).

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| Box 3 Employer discretion to choose a default superannuation product |
| The draft report canvassed the possibility of providing employers with the discretion to choose any MySuper product as their default product, as long as they could demonstrate, if called upon, that their employees would be no worse off than if a listed fund were chosen.  The Commission does not support this discretion provision. The Commission was unable to design an appropriate test that would not place an undue burden on employers, while at the same time safeguarding the best interests of employees who derive their default superannuation product in accordance with modern awards.  Despite not recommending the employer discretion provision, the Commission acknowledges that some employers want flexibility to choose from outside the award list, and have the expertise to do so in a way that addresses the best interests of their employees. Accordingly, the Commission considers that some degree of flexibility for employers remains important. |
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The Commission is proposing a variation of one of the two options it supported in the draft report. The Commission recommends that a Default Superannuation Panel be established within FWA to make decisions about which superannuation products are listed in modern awards. The panel would consist of the FWA President (or delegate), and an equal number of full-time members of the tribunal and part-time independent members appointed for their expertise in finance, investment management or superannuation advisory services. The part-time members should not be representatives of particular organisations or parties to modern awards, but should be appointed as independent members based on their expertise.

The Commission recommends that an expert panel within FWA, rather than a new expert body independent of FWA, conduct the selection and ongoing assessment process. The Commission bases this on several reasons:

* The Commission considers that all funds that wish to have products listed as default products, and all other interested parties, should be heard directly by the decision maker (that is, a Default Superannuation Panel within FWA) as part of the one process, without there being a separate subsequent opportunity for industrial parties to make submissions to FWA.
* There are costs involved in setting up a new body and associated administrative processes. These costs could be incurred for little benefit, as the new body may not be needed in the longer term if the maturing of the market for MySuper products means that it is no longer necessary to list default products in modern awards.
* There is a risk of three ‘regulators’ potentially overlapping: APRA, FWA (while ever default superannuation arrangements remain in modern awards) and the proposed new body. The potential for overlap, conflict and confusion between three entities is a concern.

Under the Commission’s proposal, all superannuation funds that offer an authorised MySuper product (and EPSSSs), including those funds currently listed in modern awards, would be required to apply to the Default Superannuation Panel if they want their default product(s) considered for listing in modern awards. Applicants would need to outline their case against the factors for consideration identified by the Commission, and any other factors deemed relevant by the panel. Applications would be made publicly available, and assessed by the Default Superannuation Panel on their merits.

The Commission recommends that all superannuation funds that offer an authorised MySuper product (and EPSSSs) be given ‘standing’ solely for the purpose of listing default superannuation products in modern awards. Giving these funds standing will require legislative change and will enable them to make applications to vary an award and be heard by the panel. Rights to judicial review of decisions should also be extended to these superannuation funds. This will promote contestability and transparency of the process.

Applicants that are not listed in the initial round should be allowed to apply/reapply to the panel at any time to have a MySuper product listed, subject to any limits that the panel places on how often an applicant with a product found to be unsuitable can reapply.

Any party with sufficient interest, including industrial parties, should be given the opportunity to submit their views on the applications received from funds by the Default Superannuation Panel. When doing so, they should be required to publicly disclose any conflicts of interest. These submissions should be publicly available, and the panel should determine the weight placed on them according to the merits of the arguments put forward.

The number of products listed in a given modern award should be at the discretion of the Default Superannuation Panel, rather than be a prescribed quota. The decision on whether or not to list a product should be based on an assessment of a fund’s application against the factors for consideration proposed by the Commission, and any other factors at the panel’s discretion.

Where decisions about whether or not to list a product are marginal, the panel should err on the side of listing the product, which may result in a longer list. In the absence of grandfathering, a relatively long list has several advantages:

* It reduces the risk that an individual employee ends up worse off as a result of being moved into a product that is only marginally better than their current product and paying fees and insurance premiums on multiple accounts.
* There will be fewer movements of members between funds and therefore the risk of market instability is reduced.
* It decreases the administrative burden on existing employers as their current fund is more likely to be listed.
* It increases the opportunity for employers to choose a fund that it considers best meets the unique needs and characteristics of their employees (without the need to meet any other tests).

In addition, it is highly desirable that the panel, wherever possible, identify in each modern award a subset of those products found suitable for listing that, on transparent and publicly disclosed factors, it judges as best meeting the interests of employees who derive their default superannuation product in accordance with that modern award. Identifying a subset of products has several advantages:

* It makes it easier for new employers to choose a default product.
* It would be broadly consistent with the size of the lists currently in awards which appears to have been manageable for employers.
* It will drive competition between funds to achieve the status of being one of the subset when the subset of products is determined and reviewed and could lift standards throughout the industry.

As with decisions of the FWA Minimum Wage Panel, decisions of the Default Superannuation Panel should be final and not subject to appeal. Only judicial review on the grounds of jurisdictional errors should be permitted.

There should be an ongoing assessment of the list of superannuation products in modern awards by the Default Superannuation Panel to ensure that any unauthorised, non‑existent or demonstrably unsuitable products are removed from modern awards as required. There should also be a periodic wholesale reassessment of the list of superannuation products in modern awards, and the subset of products best meeting the interests of employees who derive their default superannuation product in accordance with modern awards, every four to eight years.

Tailored MySuper products and MySuper authorised corporate funds should be required to apply to the Default Superannuation Panel for approval, in order to receive default contributions for employees who derive their default superannuation fund in accordance with modern awards. As with generic products, applications should be permitted at any time, and should be made and assessed on a transparent basis, against the factors for consideration proposed by the Commission (and any other relevant factors at the discretion of the panel).

These employer-specific products should not be listed in modern awards. Rather, modern awards that list superannuation products should specify that employers may pay into their employer-specific MySuper product provided that it has been assessed by the Default Superannuation Panel as being suitable. Tailored MySuper products and MySuper authorised corporate funds that have been approved by the panel would need to reapply on a periodic basis (at the discretion of the panel) to ensure that the product continues to meet the best interests of the relevant employees.

The Commission recommends that default contributions only be made to products that have been assessed as suitable by the panel (although contributions could continue to be paid into defined benefits funds without assessment given the advantages that defined benefit funds generally bestow on members).

Employers could continue to make contributions to a fund not listed in the modern award if it is included in an enterprise agreement, and the over-riding right of an employee to choose a fund would not change.

Box 4 summarises the Commission’s recommended process for the selection and ongoing assessment of default products in modern awards.

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| Box 4 The Commission’s recommended selection process |
| * A Default Superannuation Panel should be established within FWA. * From 2014, the panel should consider applications from superannuation funds and funds should be given standing to apply to, and be directly heard by, the panel. * All funds seeking to have their products listed in a modern award, including those already listed in modern awards, would need to apply to the panel in an initial round. Applications should be made publicly available. * Any party with sufficient interest, including industrial parties, should be given the opportunity to submit their views on the applications received from funds by the Default Superannuation Panel. When doing so, they should be required to publicly disclose any conflicts of interest. Submissions to the panel should be made publicly available. * The number of products listed in a given modern award should be at the discretion of the Default Superannuation Panel based on the applications received for that award and the panel’s assessment of the applications against the Commission’s factors for consideration, and any other factors deemed relevant by the panel. * Where decisions about whether or not to list a product are marginal, the panel should err on the side of listing the product, which may result in a longer list. * The panel should, wherever possible, also identify in each modern award a small subset of the listed products that it judges as best meeting the interests of the relevant employees. * Decisions of the panel should be clearly articulated and made easily and publicly accessible. * Decisions of the Default Superannuation Panel should be final and not subject to appeal. Only judicial review on the grounds of jurisdictional error should be permitted. * There should be an ongoing assessment of the list of superannuation products in modern awards by the panel to ensure that any unauthorised, non‑existent or demonstrably unsuitable products are removed as required. * There should also be a wholesale reassessment every four to eight years of the product lists in modern awards, and the subset of products best meeting the interests of employees who derive their default superannuation product in accordance with modern awards. |
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The Commission holds the view that all funds should be assessed, and then regularly reviewed, to ensure they are suitable to receive default contributions. The continuation of grandfathering arrangements relating to default superannuation would work against this principle. The Commission therefore recommends that, following an appropriate transition period, grandfathering provisions relating to default superannuation should be removed from all modern awards.

### Implementation and transition

The Commission acknowledges the magnitude of the reforms already underway through Stronger Super, and that the industry is undergoing a period of significant transition to the new regime. Nonetheless, the Commission proposes that its reforms should ideally be legislated in full by 2014, so that the new process, together with the consideration of factors relevant to the selection of default products, can be held that year, potentially in conjunction with the review of modern awards that will take place in 2014.

From a community-wide perspective, the reforms will have the considerable net benefit of improving superannuation outcomes for employees who derive their default superannuation product in accordance with modern awards, and for fund members more broadly. It will do this by aligning the agents’ (such as industrial parties and employers) interests with those of members and by encouraging improvement in the quality of superannuation products. The reforms will affect stakeholders in different ways:

* Employees who derive their default superannuation product in accordance with modern awards will benefit because their best interests will be the primary objective in the selection and ongoing assessment of default products, and there will be increased competition in the default superannuation market. However, some employees will find themselves in different funds, and will need to consolidate to avoid having multiple accounts. They will need accessible information from government agencies to help them make good decisions in response to any changes.
* In general, employers will benefit from the improved administrative capabilities of the funds they deal with. However, some employers will incur the cost of changing default funds, and will need to be promptly informed of changes to award listings. Employers will need to exercise judgement if they decide to swap between listed default products, to ensure their employees will not be worse off.
* The reforms will not affect all superannuation funds in the same way. All funds that wish to have their default products listed in awards (including funds that are currently listed) will need to submit an application for listing in 2014, and at least every eight years thereafter.
* The Default Superannuation Panel within FWA will have a range of responsibilities and functions, and will need to be resourced appropriately.

The Default Superannuation Panel will need a legislative basis for its operations. The Commission envisages that this could be modelled on current legislative arrangements for the Minimum Wage Panel that are contained within the *Fair Work Act 2009* (Cwlth). In developing the legislative framework, it will be important that:

* the factors for consideration are prescribed in the legislation
* principles of good process are followed
* all aspects of the default product selection process are provided for in (or permitted by) legislation, including that all eligible superannuation funds have standing solely for the purpose of listing default superannuation products in modern awards
* a legislative basis is provided to enable APRA to share data with the Default Superannuation Panel, and vice versa.

The Commission highlights the importance of sufficient resources being allocated to the Default Superannuation Panel to enable it to conduct all of its tasks in a professional and rigorous manner, and of clearly separating the panel’s budget from that allocated to FWA’s other functions.

The Commission recommends that there be an independent public review of the reforms after the first periodic reassessment of all awards has been completed, ideally in 2023. The review should examine whether the process and factors for consideration for default product selection remain useful and relevant, and consider the appropriateness of employers being able to use any MySuper product as a default superannuation product.