# Recommendations and findings

## Selection and ongoing assessment of default superannuation products in modern awards

Finding 7.1

There is no case for the selection and ongoing assessment of default superannuation products for listing in modern awards to involve any prescriptive criteria over and above those used by the Australian Prudential Regulation Authority in authorising MySuper products.

Recommendations 4.1, 4.2, 4.3, 5.1, 6.1, 6.2, 6.3, 7.1

The selection and ongoing assessment of default superannuation products for listing in modern awards should have as their primary objective the best interests of employees who derive their default superannuation product in accordance with a modern award. The following factors should, at a minimum, be taken into consideration, but not as prescriptive criteria.

* 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 (as a primary factor) (4.1).
* The fund’s expected ability to deliver on the MySuper product’s long‑term investment return target, given its risk profile (as a primary factor) (4.2).
* The appropriateness of the fees and costs associated with the MySuper product, given:
* ***its stated long‑term investment return target and risk profile***
* ***the quality and timeliness of services provided (4.3).***
* Whether fund governance practices are consistent with meeting the best interests of members, with particular focus on the mechanisms put in place by fund trustees to deal with conflicts of interest, and the transparency associated with disclosure of those conflicts (5.1).
* The appropriateness of the MySuper product’s insurance offerings for employees who derive their default superannuation product in accordance with a given modern award (6.1).
* The quality of intra-fund advice (6.2).
* The administrative efficiency of the fund (6.3).

These factors for consideration should be enshrined in legislation. The legislation should also allow the decision maker to consider other factors that may be relevant, provided it clearly and publicly states its reasons for considering those factors (7.1).

Recommendation 4.4

The selection and ongoing assessment of default superannuation products for listing in modern awards should not include scale as a specific factor for consideration over and above the MySuper ‘scale test’.

Finding 7.2

The process currently used in the selection and ongoing assessment of superannuation funds for listing as default funds in modern awards has the following strengths. It:

* has generally led to the listing of funds that have delivered relatively strong average net returns when compared to net returns of non-default funds
* has a measure of transparency
* imposes few regulatory burdens and fosters stability in the superannuation market.

The process has the following shortcomings. It:

* does not explicitly require decision makers to act in the best interests of employees who derive their default superannuation product in accordance with a modern award, or to consider the regulatory and administrative burden that may result from their decisions
* does not give equal access to all superannuation funds and therefore does not gain the advantages of contestability and competition
* is insufficiently transparent
* lacks important elements of procedural fairness
* has inadequate mechanisms for the ongoing assessment of funds.

## Principles for designing a selection process

Recommendation 7.2

The process used in the selection and ongoing assessment of superannuation products for listing as default products in modern awards should adhere to the following principles.

* Best interests — there is an explicit focus on meeting the best interests of employees who derive their default superannuation product in accordance with a modern award.
* Contestability and competition — all default products have an equal opportunity to be assessed for listing in awards, and competition provides the incentive for the ongoing innovation, efficiency, performance and consumer focus of superannuation funds.
* Transparency — relevant information is made publicly available and potential conflicts of interest are declared.
* Procedural fairness — all parties have the right to put forward their case for consideration by an unbiased umpire.
* Minimum regulatory burden — each party involved incurs the minimum cost and inconvenience compatible with achieving the aims of the process.
* Market stability — the superannuation market is not destabilised.
* Consistency with other policies — the process aligns with other relevant policy directions, including the Stronger Super and Future of Financial Advice reforms.
* Regular assessment — all default products must earn their listing in an award on a regular basis.

## Reforming the selection process

Recommendation 8.1

A Default Superannuation Panel should be established within Fair Work Australia to make decisions about which products are listed in awards. The Default Superannuation Panel should be made up of the Fair Work Australia 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 awards, but should be appointed as independent members based on their expertise.

Recommendation 8.2

Funds that are authorised to offer a MySuper product (and exempt public sector superannuation schemes) should be given standing solely for the purpose of listing default superannuation products in modern awards. This will allow those funds to make applications to have their products listed in modern awards, and be directly heard by the Default Superannuation Panel.

Applications should outline a case against the factors for consideration identified by the Commission (and any other factors at the Default Superannuation Panel’s discretion), and 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 by the Default Superannuation Panel. When doing so, they should be required to publicly disclose any conflicts of interest. All submissions should be publicly available, and the panel should determine the weight placed on the submissions it receives according to the merits of the arguments put forward.

Recommendation 8.3

***After a transition period, grandfathering provisions relating to default superannuation should be removed from all modern awards.***

Recommendation 8.4

The number of default products listed in a given modern award should be at the discretion of the Default Superannuation Panel. The decision about whether or not to list a product should be based on an assessment of a fund’s application against the factors for consideration identified 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 it even if this creates a longer list. Given the absence of grandfathering, a longer list will reduce the need for employers to change default funds. This will help ensure that the best interests of employees are not undermined by issues of market instability and the potential negative impact of having multiple accounts (unless employees exercise choice to consolidate their existing balances).

In addition, it is highly desirable that, where possible, the panel identify in each modern award a small subset of those products found suitable for listing that it judges best meet the interests of employees who derive their default superannuation product in accordance with that modern award. Identifying a small subset of products will assist employer choice and encourage competition.

The reasons for the panel’s decisions about which products are found suitable for listing, and which are identified in the subset of products that best meet the factors for consideration, should be clearly articulated and made easily and publicly accessible.

Recommendation 8.5

The Default Superannuation Panel should undertake ongoing assessment of the list of superannuation products in modern awards to ensure that any unauthorised, non‑existent or demonstrably unsuitable products are removed as required.

Once the initial process of listing funds in modern awards is complete, applications to the panel to add a MySuper product (or a product offered by an exempt public sector superannuation scheme) should be permitted at any time, subject to any limits the panel places on how often an applicant with a product that has been found to be unsuitable can reapply.

Recommendation 8.6

The Default Superannuation Panel should conduct a reassessment of the list of products in modern awards periodically, at which time the full selection process would be repeated and all funds that wish to have their default products listed in awards would need to apply or reapply.

The frequency of this reassessment should be at the discretion of the Default Superannuation Panel, but the reassessment should be conducted no more often than every four years and no less often than every eight years.

Should a product lose the status of being in the subset of products judged as best meeting the interests of employees who derive their default superannuation product in accordance with a modern award, contributions could continue to be made into that product, as long as it remains listed for that award. Default contributions to a product would only need to cease if the product was no longer listed.

Recommendation 8.7

In order to receive default contributions into a tailored MySuper product or a MySuper authorised corporate fund for employees who derive their default superannuation product in accordance with a modern award, funds should be required to apply to the Default Superannuation Panel for approval. As with generic products, applications should be permitted at any time, and should be made and assessed against the factors for consideration outlined by the Commission (and any other factors at the panel’s discretion).

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.

Finding

The Commission notes that the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012 makes provision for employers to continue to pay into a defined benefit fund for employees who derive their default superannuation product in accordance with modern awards. The Commission supports this approach and considers it appropriate that defined benefit funds be exempt from assessment by the Default Superannuation Panel.

Recommendation 8.8

Decisions of the Default Superannuation Panel should be final and reviewable only on the grounds of jurisdictional error.

## Maximising the benefits of the reforms

Recommendation 9.1

The legislative and policy changes necessary to give effect to the Commission’s recommended reforms should ideally be put in place in 2013 and 2014. This would allow the new process, together with the consideration of factors relevant to the selection and ongoing assessment of default superannuation products for listing in modern awards, to be applied during 2014, and potentially coincide with the review of modern awards that will take place that year.

Recommendation 9.2

The product names and identifiers and fund names used by the Australian Prudential Regulation Authority should be used by Fair Work Australia to list default superannuation products in modern awards.

Recommendation 9.3

An independent public review of the arrangements for the selection and ongoing assessment of default superannuation products for listing in modern awards should be conducted after the first periodic reassessment of products listed in awards has been completed, ideally in 2023. Amongst other things, the review should examine:

* whether the factors considered in selecting products for listing in modern awards remain useful and relevant
* whether the selection process is working to deliver outcomes that are in the best interests of employees who derive their default superannuation product in accordance with a modern award
* the appropriateness of employers being able to use any MySuper product as a default superannuation product.