Default Superannuation Funds in Modern Awards
ACTU submission to the Productivity Commission

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Introduction

The Australian Council of Trade Unions and our affiliates represent nearly 2 million working Australians and their families. For over 40 years unions have played in a leading role in campaigning for better retirement incomes for working people. We have argued consistently that our superannuation system must place the long-term financial interests of workers above all other considerations. That is why unions established the first industry funds, campaigned in support of our present compulsory contributions system, and supported the recent and long-overdue reforms to the provision of financial advice.

We therefore welcome the opportunity to respond to the Productivity Commission's current inquiry into the selection of default superannuation funds in modern awards. We are happy to clarify or comment further on any of the issues discussed in this submission.

Current Arrangements in Context

The Commission's Issues Paper contains a clear and concise summary of current arrangements for the naming of default funds in awards. We would add it is important to note that unions regard all aspects of superannuation as an industrial issue. They are therefore an essential component of collective bargaining and a legitimate subject for industrial regulation. Unions routinely negotiate improvements to superannuation arrangements, one result of which is that nearly one-quarter of all employees in Australia currently receive a rate of contribution in excess of the current 9 per cent legislated minimum.

The Commission will be aware that among those involved in providing superannuation products in Australia there are sharply contrasting views about the appropriateness of naming defaults in modern awards. It has become common for critics to claim they are anti-competitive, inefficient and inflexible[1]. In our view they have worked well. It is worth reviewing why we believe this to be the case.

The recent review of Australia's superannuation system, led by Jeremy Cooper, recognised that reform must start from the recognition that abstract appeals to promoting 'competition' and 'choice' have limited relevance to a large proportion of the market for superannuation. We agree. This is because it is a market with a number of important distinctive features:

[1] Financial Services Council (2012) *Submission – Fair Work Act (2009) Review 2012.*

a) Involuntary participation by consumers most of whom do not have the resources to make informed choices and are therefore passive. While most workers have the right to exercise individual choice very few actually do so. Around 3 per cent of fund members switch funds each year. Around half of these do so only because they change job. Over 90 per cent of fund members do not take the opportunity to switch between investment options[2].

b) Significant information asymmetry between most fund members and superannuation professionals. To millions of Australians superannuation appears dauntingly complex, opaque and shrouded in impenetrable jargon. The proliferation of products and investment options in recent years, far from engaging and empowering customers, has often reinforced the image of an industry beyond the understanding of most ordinary people. 'Choice overload' in the context of limited financial literacy tends to reinforce consumer passivity and inertia. For many, the time and costs involved in acquiring sufficient knowledge to make informed decisions about fund and investment choices are too great[3].

c) Multiple conflicts of interest. To many financial institutions our superannuation system is primarily an opportunity to accumulate private profit. The existence of a large number of customers who are compelled to participate in a market they often do not understand and are unable to influence has provided financial institutions with many opportunities to apply a raft of fees, charges and commissions at the expense of member benefits. This is evidenced by the fact that while retail funds have on average underperformed relative to most not-for-profit funds in terms of net returns to members, they continue to charge significantly higher fees[4]. This indicates that a major inefficiency in the Australian superannuation system, and one which requires priority attention from government, is the retail super sector.

In this market context the current practice of allocating some disengaged employees to default funds via modern awards offers a number of important advantages.

Firstly, they relieve employers of the responsibilities and costs involved in choosing from a large number of potential default funds. Research shows that most employers strongly support the inclusion of default funds in awards[5]. In part this is because many employers regard their compulsory super obligations as a burden to be minimised. This is why, as the Cooper review panel noted, many of those employers not formally covered by an award are nevertheless content to use a default fund named in an award appropriate to their industry.

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[2] Industry Super Network (2009) *Competition in the Superannuation Market.*
[3] Fear, J. and G. Pace (2008) *Choosing Not to Choose: making superannuation work by default*. The Australia Institute, Discussion Paper 103.
[4] Bryan, D. et al (2009) *Agents with Too Many Principals? An Analysis of Occupational Superannuation Fund Governance in Australia.* Workplace Research Centre, University of Sydney.
[5] Industry Super Network (2009) *Super System Review Phase 2 Operation and Efficiency: Appendix 2 Employers and Workplace Default Superannuation Funds*.

Secondly, they offer flexibility. All those employees whose default fund membership is determined by an award can leave that fund at any time and join another one of their choice. It also remains open to each employer and their employees to reach an enterprise agreement that names a default fund different from that specified in the relevant award. Further, any fund not presently named in an award can, with the support of a relevant employer or employee representative, apply to Fair Work Australia to be included. Many such applications have been successful. As the Commission's Issues Paper notes, 14 per cent of funds listed in awards in 2011 were retail funds. Such funds are also free to market their products to specific employers and groups of employees who have reached an enterprise agreement with the aim of convincing them that it is in their interests to have their fund named in the agreement as the default.

As part of its deliberations and eventual report to government the Commission may wish to consider and comment upon why many retail funds do not make greater efforts to develop their business via the opportunities already afforded them by modern awards and enterprise agreements.

Thirdly, and most importantly, these arrangements have a proven record of operating in the best interests of the large majority of employees affected by them. Most funds named in industry and modern awards operate on a not-for-profit basis. On average, these funds charge less and deliver higher net returns to members than retail funds.

Levels of fees and performance are, of course, closely related.

According to research conducted by the University of Sydney, in the period from March 2004 to December 2008 for-profit funds with trustees appointed by the parent financial institution consistently underperformed other funds by up to 2.4 per cent per annum on a risk-adjusted basis. They further estimated that every 1 per cent of sustained underperformance will translate into a cut in final retirement benefits of approximately 20 per cent. The research concluded that a key reason for underperformance was the difference in levels of fees and expenses[6]. This conclusion was further supported by analysis by APRA which found that in the 10 year period from 1996 to 2006 the main reason for differences in net returns between fund types was the higher expenses associated with for-profit funds[7].

In sum, current arrangements have proven to be flexible, in the best interests of most members and popular with many employers. They are an effective response to the problem of disengagement in a compulsory system. The priority for policy makers should be their refinement in light of clear empirical evidence, rather than deductions from abstract models of hypothetical consumer behaviour, that they require improvement.

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[6] Bryan, D., G. Considine, R. Ham and M. Rafferty (2009) *Agents With Too Many Principles? An Analysis of Occupational Superannuation Fund Governance in Australia*. Workplace Research Centre, University of Sydney.
[7] APRA (2009) *Insight*, issue 2.

Enterprise Agreements

Enterprise agreements play an important part in our industrial relations system. Approximately 45 per cent of all non-managerial employees in Australia have their core terms and conditions of employment, including superannuation in most cases, determined by agreements that are negotiated and voted upon by employees and then approved by Fair Work Australia[8]. The process of making enterprise agreements is democratic, inclusive and transparent. It commands the confidence of employees and employers.

In the context of the present inquiry enterprise agreements raise two issues.

Firstly, the extent to which default superannuation provisions in awards influences the selection of funds in agreements. There is anecdotal evidence from employers and unions that award provisions do influence agreements to varying degrees across different parts of industry. This influence was noted by the Cooper review panel but not discussed in any detail. We are not aware of research in this area that would provide a detailed and reliable overview of current practice.

Secondly, the role of employee fund choice in the context of enterprise agreements. In June 2004 the Federal Parliament passed the *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004*. This came into effect on 1 July 2005. Subject to certain exemptions, the legislation allows employees to direct contributions made by employers in accordance with the *Superannuation Guarantee Charge Act 1992* to the superannuation fund of their choice.

The original intent of ministers was that choice of fund would apply to employees covered by agreements reached between employers and employees at enterprise level. However, this was opposed by unions and many employers. Employers were concerned at the potential costs involved in administering contributions to multiple funds. Unions argued that superannuation, as deferred wages, was an industrial issue. Therefore, the selection and naming of appropriate funds should be subject to collective negotiation and agreement. This amounted to choice on a collective basis.

The government decided in 2004 that employees covered by an appropriate collective agreement would be exempt from the *Choice of Superannuation Funds Act*.

Our view remains that the issue of superannuation, and the selection of funds to which contributions are made, is appropriate to collective determination at an enterprise level. In practice, there is considerable flexibility in relation to how this determination is managed by employers and employees when they reach an agreement. It is open to the parties to do one of the following:

[8] DEEWR (2011) *Trends in Federal Enterprise Bargaining: September Quarter*.

a) Not name any fund in the written agreement. In this case there may be an informal understanding that all contributions will be made to a fund that has been in use for some time within the enterprise but which the parties believe need not be named. Such a fund may be a retail or not-for-profit fund.

b) Allow employees who wish to do so to choose any fund they wish, while directing default contributions to one or more named funds. Such funds may be either retail or not-for-profit.

c) Allow employees who wish to do so to choose between a number of named funds, while directing default contributions to one or more named default funds. Such funds may be either retail or not-for-profit.

d) Direct that all contributions be made to one named fund. This may be retail or not-for-profit.

The extent to which each of these options is in use, and to which retail or not-for-profit funds receive contributions in each case, is not known. We are aware of internal research conducted by industry funds which suggests that up to 40 per cent of current enterprise agreements do not name any fund.

Unions strongly support the right of employees to negotiate which fund or funds their contributions are paid to. While most employees covered by enterprise agreements are currently exempt from the choice of fund legislation, in practice it remains open to parties to agree a form of choice they believe is most appropriate to their enterprise. We believe this flexibility benefits employees and employers and should continue.

Equal Representation Governance

The ACTU is a strong supporter of the equal representation model of fund governance. It has played an important role in the success of not-for-profit funds over the past 20 years. The proven record of diligent stewardship of member contributions and prudent investment of funds is testimony to the enduring effectiveness of the model. We therefore agreed with the Productivity Commission in 2001 when it concluded:

> 'The equal representation rules for trustee boards of standard employer-sponsored funds provide balanced representation of employer and employee interests. They are conducive to active member interest in the prudent management of these funds. This benefit exceeds the cost of finding and appointing members who are capable of undertaking trustee duties.'[9]

[9] Productivity Commission (2001) *Report into the Superannuation Industry (Supervision) Act 1993 and certain other Superannuation Legislation*.

The ACTU is not aware of any evidence base that has emerged since this conclusion was first published that would cause the Commission to revise this view or cause us to withdraw our endorsement of it.

The ACTU therefore opposed the recommendation made by the Cooper review panel that the SIS Act be amended so that no less than one-third of the total number of member representative trustee-directors must be non-associated and no less than one-third of employer representative trustee-directors must be non-associated.

We noted at the time this recommendation flowed from the review panel's assertion that such a reform reflected 'contemporary best practice in corporate governance.'[10] It did not arise on the basis of actual evidence that the equal representation model in Australia was failing and therefore required this particular reform. Nor did the panel's report consider any of the evidence and debate generated by researchers in corporate governance which questions the extent to which non-associated or independent directors actually deliver better performance and governance in practice.[11]

In short, the panel opted for speculative assertion rather than evidence-based policy analysis. We therefore welcomed the government's rejection of the Cooper panel's recommendation and its view that the equal representation model worked well and should continue.

Some in the superannuation industry may use the opportunity of the Commission's current review to return to the equal representation model, this time arguing there is a significant conflict of interest between those employer/employee representatives who are fund trustees and who may also be involved in the process of naming default funds in awards.

Conflicts of interest can be found in many parts of the financial services industry. In superannuation among the most significant conflicts is the very large exposure retail funds have to related-party assets. Drawing on original research into the various structures and practices of retail and non-retail trustees in Australia, an APRA paper made the following important observations:

> 'Whilst company boards and trustee boards of retail pension funds are distinct entities, their historical origins and their typical compositions with significant numbers of overlapping executive directors make the distinction more theoretical than real, particularly in many cases where the shareholders are related entities or a parent company. In practice, the conflicts are 'resolved' by the retail trustees treating

[10] Super System Review (2010) *Final Report: Part One Overview and Recommendations*, p. 12.
[11] For example see: Cohen, L., A. Frazzini and C.J. Malloy (2008) *Hiring Cheerleaders: Board Appointments of 'Independent' Directors*, Harvard Business School; Lawrence, J. and G. Stapledon (1999) *Do Independent Directors Add Value?* Centre for Corporate Law and Securities Regulation, University of Melbourne; Ritchie, T. (2007) 'Independent Directors: Magic Bullet or Band Aid?', *Corporate Governance eJournal*, 3-1-2007.

> fund members like clients or consumers in a pension product, thus possibly diluting the notion of trusteeship in favour of the notion of product manager.
>
> Unlike non-retail trustees who negotiate the best possible terms for investment management services for their funds, retail trustees who often have investment managers as executive directors on their boards have impaired incentive to negotiate best terms for investment management services.'[12]

In our view, trustees with a diluted notion of trusteeship, who regard fund members primarily as consumers, and who operate with impaired incentives in relation to promoting member interests are not fit to receive and manage the contributions of disengaged workers.

While the government has taken some welcome steps as part of its *Stronger Super* reform agenda to promote a greater focus on member interests, these will not fundamentally alter the related-party exposures and serious conflicts of interest that are powerful drivers of retail fund behaviour.

In general, the challenge for policy makers in this area is to abolish the most egregious conflicts while regulating others to minimise the downside-risks to consumers.

In our view the involvement of some trustee directors in shaping the content of awards does not constitute a serious risk to the interests of default members. Firstly, the large majority of awards, 93 out of 122, name multiple possible default funds for use by employers. In practice this mediates the influence of particular industrial representatives at the level of Fair Work Australia. Secondly, as discussed above, current default fund arrangements already allow considerable flexibility and choice for employers and employees above the award level. Including a named default fund in an award is not equivalent to being compelled to join that fund.

Nevertheless, there are some proportionate and practical steps that could be taken to enhance public confidence in the role of employer and employee representatives in selecting default funds. We discuss these in the 'Options for Reform' section below.

MySuper

Unions broadly welcomed the MySuper initiative recommended by the Cooper review panel on the basis that, if implemented in full, it could make a significant contribution to protecting the long-term financial interests of millions of default product members. The panel recommended implementing a regulatory framework within which the costs and performance of a relatively small number of high-scale MySuper products would become increasingly transparent and comparable. Over time, and in the context of other reforms to the superannuation system such as SuperStream, this would generate pressures toward

[12] Wilson, Sy (2008) *Superannuation Fund Governance: an interpretation*, APRA, Sydney, p. 12.

lowering fees and improving net returns. Ultimately it was envisioned that the obvious cost/return advantages of certain MySuper products compared to others would encourage previously disengaged members to start making active choices about where their contributions were being made.

We continue to strongly support many aspects of the MySuper reforms being pursued by the government. In particular, the additional obligations on trustees to act in the best financial interests of beneficiaries, the limits on fees and commissions, and the increased focus on returns over 10 year periods will benefit many default product members.

However, there were some important gaps in the model recommended by Cooper. In particular, the model did not seek to mandate a definition of 'low fees'. In part this was because the panel understood that any attempt to do so would lead retail funds to find ways and means to circumvent any specified level or formula. The panel effectively concluded, somewhat incongruously given their recognition of the highly imperfect nature of the market for default superannuation, that fees would eventually be driven down by the additional transparency and comparability promoted by other aspects of their MySuper package. A similar reasoning underpinned their hopes for higher net returns.

The view that increasing transparency and comparability in the context of crowded markets for complex financial products substantially increases the engagement and empowerment of previously passive consumers has little empirical support. The Cooper panel did not propose effective solutions to the problem of high fees and relative underperformance – it merely delegated it to market forces that are not relevant to default superannuation in the hope that such forces eventually become so.

These gaps and weaknesses in the Cooper model of MySuper have been reproduced and compounded by what the government appears intent on implementing. In particular, increased simplicity, transparency and comparability, which the Cooper panel had identified as a core aim of its recommendations, have been compromised by decisions to allow funds to tailor their product on the basis of employer-size, enabling each RSE to offer a range of MySuper products that vary by administration cost, price points and branding.

The problem of 'flipping'

Of particular importance is the government's decision not to prohibit 'flipping'. This is a routine practice by many retail funds that involves moving a default product member into a higher-cost product without their knowledge or permission when that member changes jobs. The practice exploits member disengagement, siphoning-off additional fees at the expense of member balances and their long-term financial interests.

The Cooper panel had recommended prohibiting flipping on the basis that a MySuper product member, who has not made an active choice to do so, should only be moved out of a MySuper account if they are moved to an Eligible Rollover Fund. The government has decided not to adopt this recommendation.

In the context of the present MySuper proposals each RSE must offer a product with a standard set of fees to all potential members. However, because the government is intending to allow funds to negotiate different fee arrangements with employers depending on their size, a member who pays a low fee when employed by a large employer can be transferred (or 'flipped') into a higher fee version of the same MySuper product in the same fund when they leave that employer. This transfer will not require the permission of the member because it will be a predefined feature of the low fee version of the MySuper product when the member is defaulted into it. Retail funds will be able to offer 'loss leading' versions of their MySuper products to particular large employers on the basis that employee turnover will mean such losses are recouped over time.

Real-life examples of the costs of 'flipping' to disengaged members have been provided by AustralianSuper to the Parliamentary Joint Committee on Corporations & Financial Services which has been conducting an inquiry into the *MySuper Core Provisions* and *Trustee Obligations and Prudential Standards* bills. The examples provided by AustralianSuper show that annual fees charged to a default member's account after they have been 'flipped' can increase by up to 300 per cent[13].

It follows that when MySuper becomes obligatory in 2013, employers and employees are likely to be confronted with several hundred variously branded and priced MySuper products whose long-term costs and benefits to members will be far from clear or easy to determine. It is highly unlikely such a product-market environment will encourage more and better decision-making by employers and employees, most of who do not engage with the detail of default superannuation.

Therefore the new MySuper regime, as it seems likely to operate, cannot be regarded as offering sufficient protection to disengaged workers or sufficient assistance to employers who do not want to shoulder the costs and risks involved in choosing between several hundred products. In particular, the new regime will not limit fees and will not ensure that default members become members of the best performing MySuper products.

Awards which allow any and all MySuper products to operate immediately as defaults will expose several million disengaged and often low-paid workers to the increased risk of being allocated to a product that charges more than they need pay, flips them into a higher-cost product without their knowledge, and delivers much lower net returns than that routinely provided by other available default products.

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[13] AustralianSuper (2012) *Submission to the Parliamentary Joint Committee on Corporations & Financial Services' inquiry into the Superannuation Amendment (MySuper Core Provisions) Bill 2011 and Superannuation Legislative Amendment (Trustee Obligations and Prudential Standards) Bill 2012*.

In our system of mandated contributions it is vital that a higher-standard than MySuper compliance is applied to those products which superannuation funds wish to be included as defaults in modern awards. We discuss what this higher-standard could comprise, and the potential processes for implementing it, in the next section.

Options for Reform

While unions believe that existing award default arrangements have worked well over the years, a changing regulatory and industry environment means we are alert to the importance of keeping these arrangements under review and suggesting improvements when evidence and experience indicates that action is required. In our submissions to the Cooper review in 2009/10 we recommended a range of reforms to the superannuation system, including changes to arrangements for selecting default funds in awards. Some of these recommendations are repeated here[14].

a) Additional criteria for award inclusion

The primary purpose of our compulsory superannuation system is to combine with the age pension and private savings to maximise retirement incomes. This means managing and investing contributions in ways that maximise net returns to beneficiaries.

While the large majority of funds named in awards serve default members well, there is a risk that a named fund begins to underperform for a period of years. It is open to the relevant industrial parties to identify underperformance and take appropriate action. However, the extent to which fund performance is reviewed and acted upon is uneven, reflecting the fact that in the context of their broader bargaining activities particular employer and employee representatives attribute varying levels of priority to award default fund issues.

There is a case for a more rigorous and consistent approach.

i) We recommend that only those MySuper compliant products that APRA report as being among the top 100 best performing in terms of net returns to members over an extended period (such as 10 years) can be eligible for inclusion as a default in an award.

Inclusion in awards in 2013 should be based on funds being able to demonstrate, on the basis of APRA data, that they have operated a MySuper-equivalent product over an extended period that has delivered net returns to members that placed their equivalent in the top 100 of all similar products. Entry to awards after 2013 would be conditional on funds being able

[14] To be clear, all the discussion and recommendations made in this submission refer to modern industrial awards, not to enterprise awards which fall outside the scope of the Commission's present inquiry.

to prove to APRA that they have operated an equivalent of a scale, relevance and level of performance over an extended period that would make it appropriate for award inclusion.

In addition, in the context of a compulsory contribution system with low levels of member engagement there is no justification for allowing default members to be allocated to a fund that may 'flip' them into a higher cost product without their knowledge or permission when they change employment.

ii) We recommend that only MySuper products which expressly require the consent of members before they are transferred to another part of the product are eligible for inclusion as a default in an award.

In the run-up to 1 October 2013 funds could apply to APRA to have their proposed default products certified as being MySuper compliant and as meeting the additional performance and 'flipping' criteria outlined above. Having received this certification it would then fall to the appropriate employer and employee representatives in the context of Fair Work Australia to decide which of these products should be named in each award.

b) The role of Fair Work Australia

We have a large and growing superannuation sector that has in some cases developed on the basis of serving the interests of distinct industries and occupational groups. This is particularly true of not-for-profit funds. These industries and occupations often have particular behavioural characteristics, service requirements and product needs. While many funds now count a large number of very different workplaces and types of worker among their membership, it nevertheless remains the case that many funds retain valuable skills and experience relevant to delivering particular products and services that make them best suited to particular parts of industry and the workforce.

It is therefore appropriate that employer and employee representatives, in the context of Fair Work Australia, play a central role in deciding which APRA-certified MySuper products should be named in each particular award.

However, in our compulsory system there is a legitimate public interest in requiring that representatives follow processes and consider factors that are conducive to promoting good decisions and public confidence in them.

i) Further to our discussion of the equal representation model earlier in this submission, we recommend that when making representations to Fair Work Australia to have particular funds named in awards, all those making representations be required to fully disclose any relevant interest they have in those funds and to declare that in advocating the naming of a particular fund or funds they are acting in the best financial interests of those affected.

The matter of acting in the best financial interests of all those covered by a modern award raises the related issue of how many funds should be included. A small number of modern awards currently name only one fund as a default. To help mitigate selection risk and promote public confidence in the default naming process there may be merit in requiring every modern award to list at least two appropriate funds.

ii) We recommend that the Commission give consideration to recommending that all modern awards list at least two appropriate funds. Interested parties could be asked to comment further on this issue prior to the Commission's final report to government.

When deciding which APRA-certified MySuper products are named in an award there are a number of factors that we believe should be considered by Fair Work Australia. These factors recognise the status of superannuation as an industrial issue and the differential experience that funds have in servicing distinctive industries and groups of workers.

iii) We recommend that when considering which products are named as defaults in awards Fair Work Australia be required to give particular regard to the following factors:

- The views of those parties with standing in relation to award content;
- The relevance of a fund, and the MySuper product it is offering, to the particular industries and occupations covered by the award on the basis of considerations such as existing coverage, insurance design, and the quality and range of member services.

Finally, it is in the public interest that once award default content has been initially determined in the context of the new MySuper regime in 2013, these arrangements are subject to review.

The Fair Work Act provides for an annual wage review in each financial year and a review of modern awards every four years. The annual wage review is conducted by a specialist panel which includes the President of Fair Work Australia, three or more specialised Minimum Wage Panel members and up to three other members of Fair Work Australia. The four yearly review is conducted by a full bench of Fair Work Australia.

Four yearly reviews are the principal way in which the content of modern awards other than wages are varied and maintained. Each modern award must be reviewed in its own right. However, this does not prevent Fair Work Australia from reviewing two or more modern awards at the same time.

Changes to modern awards outside the system of annual wage and four yearly award reviews are limited. The Fair Work Act enables Fair Work Australia to make, vary or revoke a modern award where 'necessary' to achieve the modern awards objective; to update or omit the name of employer, organisation or outworker entity; to remove ambiguity, uncertainty or correct an error (s160); or to deal with discriminatory industrial instruments.

In addition, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* provides for a one-off review of modern awards and transitional arrangements, as soon as practicable after 1 January 2012 to ensure that modern awards are operating effectively, without anomalies or technical problems arising from the initial award modernisation process. The process adopted by Fair Work Australia in relation to the 2012 review relies on interested parties to identify specific matters for the Tribunal's consideration.

The modern awards objective applies to performance or exercise of modern award powers by Fair Work Australia. The modern awards objective requires the Tribunal to ensure that modern awards, together with the National Employment Standards contained in the Fair Work Act, provide a fair and relevant minimum safety net of terms and condition taking into account a number of social and economic criteria. Fair Work Australia is also required to have regard to the objects of the Act and where relevant, the minimum wages objective.

The existing framework of award reviews provides a cost-effective means of reviewing default funds in modern awards on a semi-regular basis in accordance with the modern awards objective. The process ensures that the views of interested parties are taken into account. However, there is no guarantee that Fair Work Australia will consider the status of default funds as part of each award review.

iv) To ensure a process occurs we recommend that the Fair Work Act be amended to require Fair Work Australia to convene a special purpose full-bench (similar to the minimum wages panel) that would assess the effectiveness of award default arrangements and consider representations for their amendment, based on the criteria identified above. Ideally this would occur in conjunction with, or closely follow, the conduct of the four yearly reviews of modern awards. In line with the mechanism for appointment of part-time members of the minimum wage panel[15], provision could be made for the appointment of subject matter experts to assist Fair Work Australia in its deliberations. Additional provision could also be made to specifically allow or require Fair Work Australia to seek or consider the views of relevant regulatory bodies including APRA.

[15] See sections 627(4), 628(3) and 629(4) of the *Fair Work Act* 2009.