5 April 2012

Mike Woods
Deputy Chairman
Productivity Commission
LB2 Collins Street East
Melbourne Vic 8003

Dear Deputy Chairman

RE: Financial Services Council Submission

We write to you following the release of the Productivity Commission's issues paper in February 2012. Our submission will address elements within the existing framework which have resulted in a less competitive and secure superannuation system.

The present system is failing consumers and employers – it lacks transparency and is no longer appropriate following the introduction of MySuper.

The Financial Services Council (FSC) supports the MySuper reforms and this inquiry and looks forward to contributing to the enhancement of the system by ensuring an open, transparent and competitive approach to the selection of default funds.

The FSC represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers and financial advisory networks, trustee companies and public trustees. The FSC has over 130 members who are responsible for investing $1.8 trillion on behalf of more than 11 million Australians.

The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the fourth largest pool of managed funds in the world. The FSC promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

Our submission outlines a solution which addresses each of the identified problems with the current system, in doing so, we have also responded to the questions in the issues paper delivered in February 2012.

We look forward to discussing the contents of this submission with you.

Regards

ANDREW BRAGG
SENIOR POLICY MANAGER

FINANCIAL SERVICES COUNCIL SUBMISSION

PRODUCTIVITY COMMISSION INQUIRY –

DEFAULT SUPERANNUATION FUNDS IN MODERN AWARDS

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1. SUMMARY AND RECOMMENDATIONS

The Financial Services Council (FSC) seeks to highlight through this Productivity Commission (PC) review a significant regulatory impediment in the Fair Work Act (the Act) which:

1. Undermines consumer protection in default superannuation;
2. Limits competition in the $1.3 trillion superannuation sector; and
3. Negatively permeates the day-to-day operations of small and medium sized businesses in Australia.

This review occurs at a time of significant reform in the superannuation industry; primarily the MySuper reforms. These reforms will deliver significantly higher safeguards for Australian workers, who as superannuation members, do not choose their own superannuation fund.

As stated in the Explanatory Memorandum for the *Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2011* presently before the Parliament, MySuper is:

> ...a new, simple and cost-effective superannuation product that will replace existing default products. MySuper products will have a simple set of product features, irrespective of who provides them. This will enable members, employers and market analysts to compare funds more easily based on a few key differences. It will also ensure members do not pay for any unnecessary 'bells and whistles' they do not need or use.

MySuper is a therefore a substantial change in the regulation of the default superannuation system which introduces safeguards for members and simplicity for employers (in conjunction with the SuperStream reforms).

Presently, the lack of competition as a result of the Fair Work Act superannuation provisions is preventing the operation of a free and efficient market. According to the OECD, open, competitive markets deliver an optimal outcome in all markets:

> All OECD countries rely fundamentally on competition in product markets to organise production. Competition stimulates innovation and efficiency in the use of resources, thereby leading to greater product diversification and lower prices. Therefore, competitive product markets are in the interest of all consumers.[1]

Policy settings can engender competitive tensions at both the retail (employee) and wholesale (employer) level in any market. Competition at the wholesale level in the default superannuation market is presently heavily restricted as a result of the Act. In order to address both the regulatory burdens faced by employers and the consumer protection shortcomings of the Fair Work regime, the superannuation framework must become more open, transparent and easier for employers to engage.

The FSC believes an important outcome of the reforms is that an employer may select any Australian Prudential Regulation Authority (APRA) regulated MySuper superannuation fund as a default fund from commencement on 1 July 2013.

If this were permitted, a designated Fair Work process would not be required as an employer would be free to select any APRA regulated MySuper product. This approach has the benefit of removing

[1] The Organisation for Economic Co-operation and Development (OECD) "Competition: Economic Issues" - http://www.oecd.org/about/0,3347,en_2649_34833_1_1_1_1_37463,00.html

conflicted industrial parties from selecting default superannuation funds which are approved without proper consideration by Fair Work Australia. To alleviate any burden on employers in selecting from many MySuper funds, the Government should maintain a MySuper website for employers and consumers.

This approach also removes another agency from the already complex superannuation system which involves APRA, ASIC, the ATO and AUSTRAC. The more agencies involved, the higher the regulatory cost, the greater the complexity and the likelihood of failings in consumer protection.

Key findings

No consumer protection mechanism exists – APRA and ASIC do not have jurisdiction on default fund selection or review.

The default superannuation market under Modern Awards is closed (almost half the regulated market is locked out of the default system – only 104 out of the 196 public offer licenced funds are listed).

The system maintains conflicts of interest (related parties agreeing on funds they are affiliated with to be listed under Modern Awards).

Small businesses rarely use enterprise agreements which can be used to legally override default fund provisions (1.2 million small businesses but just 24,000 enterprise agreements).

The approach is inconsistent with global practice of allowing an open market once a fund is regulated / registered to accept employer contributions.

New employer research – Westfield / Wright

Following the release of the Productivity Commission's issues paper, the FSC engaged Westfield / Wright to undertake research into how employers view the present system and the suite of proposed MySuper reforms. This research focused specifically on small and medium sized employers (3-200 workplace headcount) as these enterprises face a higher compliance burden with fewer resources than large businesses.

The research produced the following two key findings which reflects a collective view that the current system is in urgent need of reform. (1) Employers want empowerment and freedom of choice of their own default fund – they do not want any external party involvement (unions or employer groups) and (2) employers do not seek further criteria to be overlain on MySuper.

In detail, the findings include:

1. At present, the default superannuation system is shrouded in opacity and the influence of special interest groups / third parties through Fair Work Australia. Employers reported abuse by unions (and also financial advisers) to unfairly 'game' the default super system.

2. Employers seek *minimum* standards being met on default super – not least to cover their own liability – but once met, *let them decide.*

3. The MySuper concept of standardisation, simplicity and fewer default options attracts overwhelming support.

4. Employers have a clear idea of the information *they* would want to make an informed choice of default fund. This is what MySuper will produce.

5. The concept of a government website containing all the authorised MySuper products and associated information is heavily supported.

6. Transparency is important – employers want to see better disclosure; especially of super fund management and executive remuneration and qualifications.

7. The MySuper reforms are seen as a positive change for small and medium sized businesses.

Core Recommendation

OUTLINE	SOLUTION	COMMENT
This existing superannuation provisions undermine consumer protection, limit competition and impose compulsory superannuation funds on employers. There is presently no criterion for fund selection.	Amend *Fair Work Act 2009* with the following text and criteria: "A modern award must not include terms requiring employer contributions to be paid to particular superannuation funds. All MySuper funds satisfy the criteria of an eligible default fund"	This solution creates a flexible superannuation provision which is consistent with the object of the MySuper reforms. It does not remove superannuation as an allowable matter from Section 576J of the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008.*

Recommendations

Recommendation 1 - Extend choice of fund to all defined contribution members, except where this results in an employer paying contributions twice.

Recommendation 2: Should default funds continue to be listed in Modern Awards, conflicted parties (and their associates) which have standing under the *Fair Work (Registered Organisations) Act 2009* should be prohibited from intervening in applications made by other funds seeking to be included in a Modern Award. This addresses the clear conflict that exists as a consequence of the equal representation trustee model whereby conflicted parties (and their associates) with standing are able to block applications made by competitor funds.

Recommendation 3 – Any super fund that offers a MySuper product should be eligible to be a default fund.

Recommendation 4 - Modern Awards should no longer list default superannuation funds by name.

Recommendation 5 - Create a dedicated MySuper employer friendly website containing materials to assist employers in meeting their superannuation obligations.

2. BACKGROUND

Fair Work Act 2009

Under Award Modernisation and through the repeal of the Commonwealth Government's "Workchoices" legislation, superannuation was reclassified as an 'allowable matter' for industrial purposes. This regressive step significantly reduced flexibility, competition and choice in the industrial system and superannuation industry.

Division 3 of the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* contains the requirement that superannuation be dealt with as an allowable matter in the industrial process. That is, industrial instruments such as Modern Awards include provisions for superannuation.

At the time of the passage of the Fair Work Act in 2009, the FSC (then the Investment and Financial Services Association or IFSA) expressed to a Senate Committee an ultimately fulfilled predication that the Fair Work Bill would be:

1. Inconsistent with Australia's longstanding economic reform agenda;
2. Lead to higher fees for members; and
3. Deliver a lack of flexibility for employers.

Reduced competition due to increased regulation is clearly inconsistent with the national consensus on economic reform over the past three decades. This factor did not require the passage of time to make an assessment. Employers and employees are required to enter into costly enterprise agreements simply to choose different default superannuation funds, creating a significant barrier to competition. Practically speaking, this often requires the agreement of the unions concerned – who have a vested interest in ensuring particular funds remain as a default fund.

On the other hand, many of the funds which are most commonly found in the Modern Awards have increased their weekly or monthly member fees. For instance, during 2009, AustralianSuper (listings in 70 Modern Awards) increased its administration fee from $1 per week to $1.50.

The lack of employer flexibility has emerged from default funds being mandatory for employers unless they choose to pay for an enterprise agreement. Accordingly, the efficiency and service quality of an Award-listed fund has led many small businesses being bound to a service they do not wish to maintain. The lack of industrial flexibility of specifying default funds can also place employers in an untenable position by forcing them to continue contributing to a fund which is contrary to the interest of employees.

In our submission to the Senate Education, Employment and Workplace Relations Committee in 2009, we provided three alternative approaches in order of preference (instead of prescribing funds by name in Modern Awards:

1. First we argued that Modern Awards should not specify a default superannuation fund and that any APRA-regulated product could be an eligible default fund;
2. Second we suggested if that was not the view of the Committee, employers could utilise prescribed default funds or use their own (without incurring costs such as those associated with an enterprise agreement);
3. Third we suggested a set of criteria on the following matters:

I. Fees;
II. Transparency;
III. Performance;
IV. Asset selection, diversification and management;
V. Levels of service provided to employees;
VI. Insurance levels;
VII. Compliance with professional standards; and
VIII. Provision of discretionary financial advice.

The three positions outlined in our 2009 submission do not remain strictly contemporaneous given this Review (and the Fair Work Act Review of 2012) occurs following considerable regulatory developments.

Our preferred 2009 position is no longer applicable given the proposed MySuper reforms where the superannuation industry will be segmented into "default" and "choice" spheres. It would therefore no longer make sense to allow any superannuation fund to become an eligible default fund given MySuper presents a defined, purpose built default fund. The third position is also redundant as MySuper will define in law six of the eight points of criteria we had suggested would be relevant in 2009. Each point is to be standardised in legislation and regulated by APRA.

Our second preference, that an employer can select a fund of their choice, remains relevant in an amended form. Instead, it would now be appropriate that an employer could select any fund offering a MySuper product as a default fund.

In summarising, the MySuper concept has narrowed the number of solutions with a dedicated default product and standardised product design / criteria.

Modern Awards

When determining Modern Award conditions, the Australian Industrial Relations Commission (now Fair Work Australia) prescribed default super funds in Modern Awards principally in the years 2008 and 2009. The Modern Awards commenced on 1 January 2010.

Many awards in the pre-FWA/Modern Award era did not contain superannuation provisions or contained open-ended superannuation provisions, with no real prescription of the default fund. It has been estimated that as many as 30 per cent of superseded state and federal awards provided the employer with the capacity to select any compliant superannuation fund as a default fund.[2] This included some awards with a very significant coverage – such as the NSW *Clerical and Administrative (State) Employees Award*, which covered most employers in the state.

The view of some industrial parties that superannuation funds should be maintained in Modern Awards is out-dated. Following the formalisation of the modern superannuation industry in Commonwealth law in 1992/93, superannuation contributions and operating standards have been determined by the law (and not industrial arrangements). This is primarily because under Commonwealth statute, the *Superannuation Guarantee (Administration) Act 1992* requires that 9 per cent of wages must be paid into a regulated superannuation fund. This does not differ between industries under Commonwealth law. A minimum of 9 per cent must be paid under every award regardless of which fund it is paid into.

[2] AMP Submission - Senate Education and Employment Workplace Relations Committee (Inquiry into the Fair Work Bill 2008) Page 2

Further, Modern Awards do not determine the substantive superannuation arrangements or conditions, nor do they regulate or prescribe how funds are licensed or must operate. These conditions are primarily prescribed in the *Superannuation (Industry) Supervision Act 1993*, Regulations and APRA directions.

In the context of the current MySupr reforms, the operating standards, trustee behaviours and fund interaction with members will be standardised and regulated in legislation and prudential standards. There will not be any Modern Awards which will present a modified version or variation of MySuper; it will apply universally.

3. MAJOR THEMES

Impact on employers

The Fair Work Act provisions which permit Fair Work Australia to determine superannuation funds as mandatory default funds for award employers are out-dated. The Act does not provide employers with the flexibility of selecting a default superannuation fund of their choice unless they institute an enterprise agreement (at their own expense). This applies despite the employer facing a requirement to compulsorily contribute to a superannuation fund.

This is particularly discriminatory to small and medium-sized businesses which are less likely to have the financial capacity to institute an enterprise agreement. Such employers are therefore forced to use the default superannuation fund listed in the relevant award regardless of its efficiency, member and employer service capability.

With 1.2 million small businesses in Australia;[3] but fewer than 24,000 enterprise agreements registered with Fair Work Australia (which cover multiple enterprises throughout the economy), it is clear that employers do not view this as a simple solution to an unwanted default superannuation fund.

The FSC's engagement with the small business community has revealed that many small employers are frustrated with the poor service quality of compulsory default funds but the cost of instituting an enterprise agreement is a barrier to selecting a different default fund. This is a significant shortcoming of the regulatory framework.

Where superannuation funds, listed in Modern Awards, are inefficient in their dealings with employers, this adds time and costs to an employer's operations. This has occurred, in part, because of a lack of competition in the default superannuation sector and also because employers are required to pay the Superannuation Guarantee.

When a person in their own business is forced to use an inefficient process or an inefficient supplier then there will be a likely loss of productivity and the risk that mistakes will be made.

The captive market enjoyed by many large superannuation funds has failed to provide an incentive for the adoption of efficient and user-friendly administration services. Employers, as major users of superannuation administration services, have no choice but to utilise the fund regardless of its administrative capacity / functionality.

We believe that if competition between funds in the default fund market were permitted, service to the employer would improve; in some cases significantly. This would assist small businesses in particular.

Absence of consumer protection

The existing framework is the only area in financial services regulation which is without any consumer protection regime.

This was acknowledged in a 2008 letter penned by former Minister for Superannuation & Corporate Law Senator the Hon Nick Sherry. The then Minister requested that if the AIRC / FWA was to prescribe default superannuation funds in Modern Awards, they should establish an appropriate

[3] Department of Innovation Fact Sheet http://www.innovation.gov.au/SmallBusiness/KeyFacts/Documents/SmallBusinessDataCard.pdf

process and criteria for selecting funds rather than doing so on an arbitrary or non-transparent basis.[4]

The Commission chose not to heed the Minister's request and instead prescribed superannuation funds into awards without adopting a process. On 12 September 2008, the Commission stated they would not apply criteria when selecting funds in awards despite the urging of Minister Sherry:

> "[29] We have drafted a model superannuation provision to be included in modern awards if those awards deal with superannuation. The clause will nominate a default fund or funds should an employee fail to exercise his or her right to nominate the fund to which employer contributions should be made. We do not think it is appropriate that the Commission conduct an independent appraisal of the investment performance of particular funds.[5]

The consequence of FWA's refusal is that there is neither a process nor review mechanism for the selection of default superannuation funds in Modern Awards. In effect, industrial parties registered under the Act select default funds which they are affiliated with.

For instance, employees of an employer group or a union, both registered organisations under the *Fair Work (Registered Organisations) Act 2009*, can also be trustees of a particular fund which they agree should be a default fund under a Modern Award.

Because no formal selection process exists, Fair Work Australia endorses the private agreement between the parties despite the conflict of interest. Only registered organisations under the Act are granted appearance rights before FWA. Accordingly they are the only parties that can nominate which funds should be included in awards. No other organisation can seek to vary a Modern Award.

Fair Work Australia's abrogation of responsibility to develop a process has led to the alarming situation of superannuation funds under investigation by APRA being prescribed as default funds; including funds with poor investment performance. Neither APRA nor ASIC has regulatory capacity to remove a default fund selected by Fair Work Australia; accordingly the present system represents a failing of consumer protection.

Lack of competition

At the consumer or retail level, most Australians may select any regulated superannuation fund for the collection of their compulsory contributions. That is, individuals are free to utilise the employer's default fund or they may select any regulated APRA fund or an SMSF. This framework provides significant capacity for competition at the retail level.

At the wholesale / employer level, competition is heavily restrained. Employers operating under a Modern Award have particular superannuation funds prescribed by name for each industry or sector of the economy. There are 122 Modern Awards stipulating particular funds. Such funds are compulsory for most Award employers who are unable to select a different APRA regulated fund for the payment of default superannuation contributions for their employees.

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[4] Please see this letter in appendix B

[5] AIRC statement on Award Modernisation 12 September 2008 - http://www.fwa.gov.au/awardmod/databases/general/decisions/2008aircfb717.htm

Modern Award coverage can be as high as 45 per cent in certain industries;[6] it has been estimated that as many as 70-80 per cent of Australians use an employer default fund.[7]

Further, just 104 of the 196 APRA regulated "public offer" superannuation vehicles are listed in Modern Awards. Accordingly almost 50 per cent of the regulated industry is prevented from competing and operating in certain workplaces covered by Modern Awards.[8]

The combination of these factors highlights the restriction preventing regulated superannuation funds from competing with each other in the large default superannuation market. Ultimately, the individuals who are "default members" in these workplaces are less likely to benefit from price efficiency and innovation because of the captive market.

International comparison

The following is an assessment of the regulatory architecture in a number of member nations of the Organisation for Economic Co-operation and Development (OECD). Each nation has, or is in transitioning to a Defined Contribution private pension systems which require the employer to make default contributions.

Table 1: Wholesale / retail private pension fund choice

OECD NATION	SEPARATE DEFAULT REGULATION	EMPLOYER CHOICE	EMPLOYEE CHOICE
IRELAND (PRSA)	YES	YES	YES
NEW ZEALAND	YES	YES	YES
UNITED KINGDOM (PERSONAL ACCOUNTS)	YES	YES	YES
UNITED STATES (401k SAFE HARBOR)	YES	YES	YES
AUSTRALIA (TODAY)	NO	NO	YES
AUSTRALIA (MYSUPER)	YES	TBD	YES

Only Australia restricts employer choice of a "default fund". Australia is the outlier in comparing the ability of an employer to select a regulated default product. The MySuper reforms exacerbate the competitive restriction if the market remains closed to competition. Each of the remaining

[6] Fair Work Australia – "Statistical Report—2010–11 Annual Wage Review" – Page 28 - http://www.fwa.gov.au/sites/wagereview2011/statistical_reporting/Statistical_Report_19-May-2011.pdf
[7] Australian Government – "Super System Review" - http://www.supersystemreview.gov.au/content/downloads/final_report/part_one/Final_Report_Part_1_Consolidated.pdf
[8] Analysis of Modern Award listed superannuation funds (www.fwa.gov.au); the term "public offer" to an APRA regulatory classification for superannuation funds which are permitted to operate in any industry or sector of the economy (see APRA's annual superannuation bulletin - http://www.apra.gov.au/Super/Pages/annual-superannuation-publication.aspx p21)

jurisdictions permit any default fund which is regulated / registered to be eligible for an employer to choose. Each nation allows employees to select their own private pension vehicle.

Limited nature of grandfathering

In 2009, Fair Work Australia instituted a flexibility arrangement that employers contributing to existing superannuation funds could continue making contributions despite such funds not being a named fund in a Modern Award. The clause stated that an employer could satisfy their legal obligations by contributing to:

> "any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund".

However the grandfathering provision has not been effective, particularly where there have been corporate restructures and amalgamations. In such cases, a transfer of employees from one employer to another occurs and as the receiving employer was not contributing to the former employer's fund as at 12 September 2008, the receiving employer is unable to contribute to the original fund. Therefore the grandfathering provision does not apply under a Modern Award despite this being the optimal manner to minimise the impact of the restructure or amalgamation on employees' super benefits.

This causes further problems when the employees are defined benefit members and members whom are not entitled to choice – effectively this delivers a cessation of defined superannuation benefits to the employee's detriment.

While this clause worked in some instances where the superannuation fund was the default fund to which the employer was contributing before 12 September 2008, it:

- excludes default funds arrangements put in place since that date;
- effectively prohibits employers from changing an existing default fund to seek a better outcome for its employees - for example lower fees, better member services unless this can be done via an industrial agreement which overrides the Award (the costs of this make such an option unlikely for all except very large employers). This means employees may be worse off if the default funds nominated in the award do not offer the best available benefits, competitive fees, member services etc., when compared with other funds in the market.

For the purposes of assessing grandfathering, in a survey of FSC members which include all major corporate and retail superannuation providers, the following findings were made:

- Few superannuation providers have used the grandfathering clause due to the legal uncertainly surrounding its operation;
- In cases where providers have sought to use the clause, employers have not been prepared to utilise it;
- It has been sparingly used on a number of occasions where employers have sought to upgrade their superannuation offering to a new product, predominantly as a result of their business needs changing or the growth of their business;
- There have been a number of cases where employers have initiated a tender review only to subsequently either cease the review or that due to the ambiguity in the grandfathering provision and the lack of any legal precedence have decided to remain with the pre 12 September 2008 default provider.

Employers have not been comfortable relying on the provision and have instead not tendered, resulting in the plan staying in an existing fund, or tendered only with the funds listed on the award (limiting competition). This has therefore resulted in almost all of these plans missing out on access to more competitive arrangements.

This highlights a further benefit of our proposed approach. Because an employer would be free to select from any MySuper product, these issues would not longer arise.

No choice of fund for certain employees

At present, there is a cohort of employees for which no choice of fund (which permits an Australian to select their own superannuation fund) is permitted. This is a little known fact but inconsistent with the policy intention that consumers in a compulsory savings system can access choice of superannuation fund.

The primary choice of fund provisions are found in section 32C of the *Superannuation Guarantee (Administration) Act 1992* (Cth).

- Subsection (1) says that an employer complies with the rules if they make contributions to a member's chosen fund
- Subsection (2) says that an employer complies with the rules if they make contributions to a default fund which satisfies certain conditions

The other provisions of section 32C provide other exceptions to the choice of fund provisions.

The relevant provision is subsection 32C(6) which says that an employer complies with the choice of fund rules if it makes contributions in accordance with certain types of industrial instruments. In post-Fair Work Act parlance, this means an enterprise agreement with an embedded superannuation fund can remove an employee's ability to select their own superannuation fund.

A relevant example can be found in the case of major employer Coles Group. The Coles Group enterprise agreement stipulates that all Superannuation Guarantee monies for every Coles employee must be paid to the named default fund, REST.[9] The FSC is aware of instances where employees have sought to select their own fund and in doing so have opened an account with another provider only to have their request to have their chosen superannuation contribution destination request denied.

On the basis of a contemporary and representative data sample, 30% of Australians are exercising choice of fund - this data is collected across all industries by a major payroll provider.[10] Accordingly, applying the same ratio to this example, subsection 32(C)(6) is preventing 30% of Coles Group employees from selecting a superannuation fund. In just one company, this is preventing over 30,000 Australians from exercising a choice of superannuation fund.

Recommendation 1 - Extend choice of fund to all defined contribution members, except where this results in an employer paying contributions twice.

[9] Fair Work Australia: *Coles Supermarkets Australia Pty Ltd and Bi Lo Pty Limited Retail Agreement 2011* – appendix G "superannuation" - http://www.sda.org.au/images/awards/award41.pdf

[10] Payment Adviser – choice of fund statistics – February 2011

4. ISSUES PAPER QUESTIONS

The following section seeks to answer the questions posed in the issues paper

PRESENT ARRANGEMENTS

For what proportion of the workforce do the default superannuation provisions in awards directly apply?

Award coverage is difficult to determine. Academics and industrial relations experts have long found comprehensive data difficult to obtain. However Fair Work Australia's wage data collection suggests an economy-wide level of award reliance around 16 per cent where coverage can be as high as 45 per cent in certain industries.[11] Further, it has been estimated that as many as 70-80 per cent of Australians select a non-default fund.[12]

To what extent do default superannuation provisions in awards influence which superannuation fund (or funds) is listed in enterprise agreements?

Where an enterprise agreement is instituted, any APRA regulated public offer superannuation fund can be designated as a default fund for a particular workplace. The FSC understands that during negotiations between employers and employees (or unions), the equal representational model of joint trusteeship can influence this process.

For example, in the building and construction industry, an enterprise agreement negotiation is likely to result in an industry fund such as CBUS being selected as a default fund. This outcome is likely because both the relevant union (CFMEU) and employer association (Master Builders Association) have multiple board positions on CBUS. Critically, the union and the employer group are the only representatives with access to Fair Work Australia.

Using publically available data through Fair Work Australia, over 500 enterprise agreements in the broader building and construction industry have selected CBUS as a default fund - an overwhelming majority of agreements in that industry.

In many cases, where an enterprise agreement is instituted, the employee loses the ability to select their own fund due to the operation of the choice of superannuation fund provisions (see "major themes"). This option when exercised has the most significant negative impact on competition.

Does the superannuation fund nominated in an enterprise agreement in any way impact on the assessment of the 'better off overall' test?

How do employers currently choose between funds when there is more than one default fund listed in an award?

In the Westfield / Wright research, most businesses of sub-200 employee size only have a single default fund, and this is chosen by the owners themselves.

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[11] Fair Work Australia – "Statistical Report—2010–11 Annual Wage Review" – Page 28 - http://www.fwa.gov.au/sites/wagereview2011/statistical_reporting/Statistical_Report_19-May-2011.pdf

[12] Australian Government – "Super System Review" - http://www.supersystemreview.gov.au/content/downloads/final_report/part_one/Final_Report_Part_1_Consolidated.pdf

How do employers currently choose a fund when there is no default fund listed in an award?

Refer to the previous answer.

To what extent have employers made use of the grandfathering clause as opposed to choosing a fund from those listed in the relevant modern award?

Please refer to grandfathering comments under "key themes".

Are transparency and contestability desirable features of a default fund selection process?

Transparency and contestability are both important features of any market – this applies in the default superannuation sector. In order of priority, contestability comes before transparency as it matters little if a market is transparent but closed to new entrants.

Superannuation is a publicly mandated, privately managed retirement savings system. The policymaking consensus of the past quarter century has delivered a privatised model for achieving a public policy objective.

A critical element of privatisation theory and practice is the existence of an open market where competition can drive the most efficient, cost effective outcome at the highest quality. Accordingly contestability is a desirable feature if the open market is to operate as it should and deliver the appropriate competitive tensions.

At present, default superannuation funds listed in Modern Awards are neither subject to broad competition nor contestability. Other industries such as telecommunications and aviation have been exposed to competition in recent decades, the result of which has been reduced prices and increased quality.

Transparency is also important as any market which is both closed and non-transparent presents a barrier to entry to new entrants. A clearly prescribed transparent set of criteria for a superannuation fund to compete for business is essential in enticing new market entrants. In most markets, a licence to operate is sufficient to satisfy the regulator that a provider meets the relevant legal requirements.

The prevailing default superannuation marketplace is not transparent as providers with APRA Registrable Superannuation Entity (RSE) public offer superannuation licences are unable to access and compete in this sector.

Is the current process for listing default superannuation funds in awards transparent? Is it competitive? Is there a level playing field between industry and retail funds? Is there a level playing field between domestic and international funds and should there be? If not, what are the barriers to transparency and contestability?

The current process of default fund selection is not transparent, restricted to very few stakeholders and culminates in automatic endorsement by Fair Work Australia. Typically a union and employer group will agree upon a default fund to include as an award default fund. As per the example outlined above, the equal representation model of industry superannuation funds has a significant bearing on the outcome of these considerations.

Therefore once the two industrial parties have agreed upon what is an obvious default fund, they use their "standing" to apply to Fair Work Australia which endorses their request. Standing refers to an employer or employee group, which is a registered organisation under the *Fair Work (Registered Organisations) Act 2009.*

The few parties registered under this Act are the only stakeholders entitled to appear before Fair Work Australia. As typically each of these parties has preexisting affiliation with an industry superannuation fund, the only stakeholders entitled to access Fair Work Australia are therefore conflicted. Accordingly the process is not transparent. In other words, the decisions about default funds are not made by Fair Work Australia, they are made elsewhere in a non-transparent manner.

Affiliations with registered organisations are therefore the only way in which a superannuation fund can practically become a default fund in a Modern Award. As retail funds do not have formal links with unions or employer associations (i.e. retail funds do not share directors who work for a union or employer association) they are effectively locked out of the current system.

These barriers are not unique to retail funds. A superannuation fund operated by a foreign company which have obtained a licence from APRA to conduct a superannuation business, will similarly be prevented from accessing this market. An international operator with a public offer licence would be forced to negotiate with a union or employer group before considering approaching Fair Work Australia. Either way, a significant non-transparent barrier to entry exists.

Recommendation 2 - Should default funds continue to be listed in Modern Awards, conflicted parties (and their associates) which have standing under the *Fair Work (Registered Organisations) Act 2009* should be prohibited from intervening in applications made by other funds seeking to be included in a Modern Award. This addresses the clear conflict that exists as a consequence of the equal representation trustee model whereby conflicted parties (and their associates) with standing are able to block applications made by competitor funds.

Recommendation 3 - Any super fund that offers a MySuper product should be eligible to be a default fund

Recommendation 4 - Modern Awards should no longer list default superannuation funds by name.

What are the effects of these barriers on member outcomes?

Will expected superannuation fund consolidation have any impact on the current process for selecting default superannuation funds? Will it affect competition in the superannuation and default superannuation markets? Is it expected to improve performance and cost-effectiveness? If so, how?

Are employers best placed to choose one default fund among those listed in awards? If so:

- *do employers need assistance in choosing between funds listed in awards? What type of assistance do they require and who should provide it?*
- *is some mechanism required to ensure that employers act in the best interests of their employees when making this decision? If so, what?*
- *If not, why not? Who or what other organisation could be better placed to make this choice? What process should be followed?*

The Westfield / Wright research reveals that employers want empowerment and freedom of choice of their own default fund – they do not want union or external party involvement or Fair Work Australia. They seek assistance through a government website such as an APRA provided employer-focused MySuper website.

IMPACT OF MYSUPER

What are the anticipated effects of MySuper on the superannuation industry in the short and long term, particularly in relation to the pace and extent of consolidation?

There are three significant impacts of MySuper which follow:

1. Introduction of a government branded default fund with an APRA approval mechanism

MySuper will for the first time segment the superannuation industry into "default" and "non default" products. The regulatory regime presently under construction reflects a completely separate framework. MySuper will have its own licence authorisation which APRA must individually approve prior to the product being taken to the market.

This represents the first and only instance where Australia's prudential regulator approves an actual product rather than issuing a licence to operate a business.

In addition, APRA will maintain a separate data collection for MySuper which is specifically designed for fund members and employers. MySuper will therefore become a government-branded default superannuation product which can only use that particular label where it has sought and secured authorisation from APRA.

This will provide employers and members with a level of comfort that all MySuper products are specifically designed for default purposes with:

- A dedicated MySuper RSE authorisation;
- A diversified investment strategy;
- Robust insurance provisions;
- Appropriate transparency and disclosure;
- Fee regulations;
- Higher trustee duties; and
- Prohibition on certain activities such as commission charging.

2. Sub fund rationalisation of default superannuation market

Upon commencement in 1 July 2013, MySuper will deliver a significant rationalisation of the default superannuation market.

While today there are literally thousands of different default superannuation products in the market, the MySuper environment will see the number of solutions reduce to the hundreds.

The very purpose of the MySuper policy is to reduce the solutions and level of variation in the default superannuation environment. The Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2011, currently before the Parliament, is due to give affect to this policy in law.

From 1 July 2013, a licensed superannuation provider (RSE licensee) will only be entitled to offer one single public offer (generic) MySuper product per RSE. An RSE licensee must separately apply to APRA in order to offer a MySuper product.

Today, providers with an RSE licence may offer an infinite number of default superannuation products and solutions to the market.

There are presently 183 public offer RSEs – we expect this to be a good proxy for the number of MySuper public offer solutions which will be in the market.

The largest impact of the rationalisation of the default superannuation industry will be felt in the case of small employers. The Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2011 allows an RSE licensee to offer a different MySuper product to a large employee (with more than 500 employees). However the RSE licensee is not entitled to offer a different product to an employer with less than 500 staff.

That is, a standardised MySuper product is provided to all small and medium sized businesses with up to 500 employees under this new law.

For workplaces larger than 500, the Government has sought to allow workplaces to determine the most appropriate MySuper to reflect respective demographics, yet the current FWA process prevents this from occurring.

TABLE 2 – Employer Superannuation Solutions

FACTOR	TODAY	MYSUPER FROM 1/7/13
Number of default solutions offered by a super fund	Infinite default solutions / unregulated	One public offer MySuper default fund per RSE
Ability for a provider to vary a default offering to a small or medium sized business (sub 500 employees)	Infinite flexibility	Not permissible – the same MySuper option can not have its underlying characteristics altered.
Dedicated default super regulation and licensing	No – public offer (not default) licence category	Yes
Default fees and pricing	Unregulated	No ability to charge a higher fee than stated
Dedicated default super website	No	To be developed by APRA and ATO (expected)

3. Industry structure consolidation

At a macro level, the superannuation industry remains a very diverse and non-concentrated market – the least concentrated in the Australian financial services sector. However recent trends suggest that a combination of market and regulatory factors are driving consolidation.

To provide some idea of the extent of superannuation industry consolidation, in 2004, there were 1,785 APRA regulated superannuation entities; today this number is 368. Not only are there vastly fewer corporate superannuation funds, industry and retail fund sectors have almost halved, as have those with a "public offer" superannuation label.[13]

[13] APRA Annual Superannuation Statistical Bulletin – issued 29 February 2012

The FSC expects this to continue as the Stronger Super reforms begin commencing in July 2013. These reforms represent the most significant changes in the 20 year history of compulsory superannuation. Alongside the MySuper reforms, APRA's prudential standards for superannuation and elements of the SuperStream reforms will commence from 1 July 2013.

The APRA prudential standards will align the corporate and operational governance structures of the superannuation industry with other regulated industries (banking and insurance). Superannuation funds will be incurring significant structural costs in making these changes, which have been estimated to cost the industry $1 billion over ten years (2010-2020).[14]

Further, it is expected that the SuperStream reforms will consolidate at least 25 per cent of the industry's superannuation accounts from commencement on 1 January 2014.[15] The SuperStream changes will also compulsorily alter the way in which the superannuation industry is administrated.

Each of these three changes will generate significant costs to the industry, which is likely to lead to smaller funds considering their ability to meet the new standards. Indeed this combination is likely to accelerate consolidation and lead to less superannuation funds and therefore fewer default superannuation funds.

Are the criteria required of MySuper products sufficient for the selection and ongoing assessment of superannuation funds eligible for nomination as default funds in modern awards? If so, why? Does the picture change over time, as the MySuper reforms drive change and consolidation in the industry?

The MySuper regulatory structure should be sufficiently enduring. There is no obvious reason that the law would need to change to facilitate evolutionary needs. The Cooper Review recommended a post implementation review in 2015. The Regulatory Impact Statement for the Stronger Super reforms proposes a similar examination – we believe a post implementation review should provide this assessment.

Is there a case for introducing a set of criteria over and above those required for MySuper products for funds to be eligible for nomination as a default fund in modern awards?

Each of the elements canvassed in the Productivity Commission's issues paper (pages 7-12) are to be regulated in law through the MySuper framework.

The MySuper product and associated framework in the two Bills that are presently before Parliament impose comprehensive regulation of:

- Investment disclosure, targeting and pricing;
- Expertise and fund governance;
- Fees;
- Insurance;
- Advice and member services; and
- Scale.

[14] FSC and Ernst & Young – The $20 Billion Dollar Prize (SuperStream research) - http://www.ey.com/Publication/vwLUAssets/Pub_-_The_20_billion_prize/$FILE/ASU_Pub_The_20_billion_prize.pdf

[15] FSC and DST Global Solutions – Superannuation Account Consolidation - http://www.fsc.org.au/downloads/uploaded/FSC_DST%20account%20consolidation%20v2%200%20FINAL_6ebe.pdf

It is therefore unnecessary to overlay further regulation on the MySuper product as it already contains every conceivable provision that a default fund could attract under law. Further criteria would also suggest that APRA's licensing process for MySuper is insufficient to be able to accept default superannuation contributions.

Additional criteria on a MySuper product to establish default status would undermine the benefits of standardising the default superannuation industry and may heavily reduce competition from the market. Further this would only be confusing for employers who would have to determine whether a MySuper can be a default fund or if only a MySuper plus additional criteria complies.

Overlaying further criteria on the MySuper default product would squander an opportunity to make superannuation simpler and less compliance-heavy for employers. If the proposed central repository of information for employers, such as an APRA or ATO website, is to be a success, it must not over complicate employer engagement in superannuation.

According to the Westfield / Wright employer research, there is no case for overlaying further criteria on MySuper. Employers feel that the system is already over-complicated. According to the report:

> In the eyes of SME owners, once certain benchmarks are met to gain a MySuper Licence – and these would include predictable criteria such as a minimum size of fund, and a good level of insurance available (seen as "absolutely critical") – it should be for government to step back, and employers to choose their default fund.[16]

MySuper delivers on each of the criterions outlined above.

MYSUPER "PLUS" CRITERIA

Investments

To what extent do workers covered by different awards have different investment needs? Should any such differences be taken into account in the selection of default superannuation funds for inclusion in awards? If so, how?

Should the investment strategy, investment return target and level of risk of the default investment option be factored into the selection of default superannuation funds for inclusion in awards? If so, how?

Should lifecycle investment strategies be considered? If so, how?

Australian workplaces are not homogenous, they vary on the basis of age and work profile. Different workplaces need different superannuation arrangements to reflect their demographic profile. The MySuper framework recognises this by allowing flexibility.

In superannuation, there are two main elements which may be flexibly tailored in this manner: insurance and the asset allocation.

Under the MySuper framework, a default fund provider will be allowed to tailor the insurance arrangements of any workplace. The asset allocation of larger workplaces (more than 500

[16] Appendix A

employees) can also be altered as can a "lifecycle" approach to investing. Providers of default superannuation will be able to deploy such flexibility as necessary.

We believe each of these elements should be applicable regardless of whether the legal instrument is an award or an enterprise agreement which determines employment and superannuation conditions.

Fund expertise and performance

Should a fund's investment management expertise be factored into the selection of default superannuation funds for inclusion in awards, and if so, how?

How relevant is a fund's past net performance as an indicator of its potential future performance? What weight, if any, should be placed on the past performance of a fund in assessing its suitability for inclusion as a default fund in awards?

If past performance is considered important in assessing a fund's suitability for inclusion as a default fund in awards:

- *over what time period should past net performance be assessed?*
- *how should funds with no net performance record (for instance, newly merged funds or new entrants to the market) be assessed?*
- *should net performance be assessed in absolute or relative terms? That is, should the top performing funds be selected (regardless of their absolute returns), or would funds be required to meet a particular target level of performance?*

Investment management and the related governance arrangements are regulated both under law and in prudential standards. Trustees of MySuper funds have particular trustee duties which apply to these products exclusively.

Past performance is no guarantee of future performance applies to all financial products. Applying a performance criterion in the law leads to a risk that a default fund which outperforms in one year may not do so in the next.

Further, given the MySuper regime commences on 1 July 2013, and may not be offered beforehand, no past performance will exist for MySuper investment options until October 2013. As MySuper has been defined in law as an investment option, it is a completely new default superannuation investment which commences on 1 July 2013.

Fees

Should fees be factored into the selection of default superannuation funds for inclusion in awards and if so, how? For instance, are there circumstances in which paying higher fees could serve the interests of members of default funds? Does this differ across industries? Should maximum fees be set for funds that are selected for inclusion as default funds in awards?

Fees and costs are not a proxy for member value. There are no maximum fees set in the MySuper regulatory framework reflecting that fee caps have, in other jurisdictions, led to providers pricing their products at the maximum amount.

Insurance

Should default superannuation funds be required to provide maximum or minimum levels of life and TPD insurance? How should the cost of this insurance be factored into the selection of default funds for inclusion in awards?

To what extent do workers covered by different awards have different needs for life and TPD insurance? How should any such differences be factored into the selection of default superannuation funds for inclusion in awards?

Should income protection insurance be factored into the selection of default superannuation funds for inclusion in awards and, if so, how?

Through the Stronger Super reforms, from 1 July 2013 trustees of default funds will be required to offer members Life and Total and Permanent Disability (TPD) insurance on an opt-out basis.

The reforms will also introduce a statutory requirement for trustees of default superannuation funds to formulate, review regularly and give effect to an insurance strategy that includes consideration of:

- the level/s of cover available to members;
- the basis for the decision to offer a particular level/s of cover having regard to the demographics of the fund ; and
- the costs associated with acquiring the level/s of cover for members.

The FSC supports these measures and submits that if a fund meets the legal requirements to hold a MySuper license, including in relation to its insurance arrangements, then no additional requirements should be necessary to be able to qualify for inclusion as a default fund in an award.

The FSC submits that the measures outlined above provide sufficient protection for members in relation to their insurance needs and balancing those against the need to ensure insurance costs do not erode the members' retirement savings.

The Stronger Super reforms recognise the need for default funds to tailor the insurance arrangements according to the demographics of the members of that fund, including occupation, age etc.

Therefore, the FSC submits that if a default fund meets the legal requirements to hold a MySuper license then no additional requirements should be necessary to be able to qualify for inclusion as a default fund in an award.

The Stronger Super reforms enable trustees of default superannuation funds discretion to offer members income protection insurance on an opt-out basis, an opt-in basis. The Government announcement indicated this was to ensure that member's accounts will not be reduced by premiums for insurance cover that the trustee has determined is not suitable for their members.[17]

[17] Stronger Super Information Pack, September 2011

Therefore, the FSC submits that if a default fund meets the legal requirements to hold a MySuper license then no additional requirements should be necessary to be able to qualify for inclusion as a default fund in an award.

Other member services

Should the scope and cost of the member services offered by a superannuation fund be factored into the selection of default superannuation funds for inclusion in awards and, if so, how? Should default funds that are selected for inclusion in awards be required to provide a particular standard of service?

To what extent do workers covered by different awards have different service needs? Should any such differences be taken into account in the selection of default funds and, if so, how?

The MySuper regulatory framework presently limits the nature of the member services which can be provided. MySuper providers are required to offer the same services to all MySuper members (regardless of the member's use of those services) through a cross-subsidised administration fee charged across the MySuper membership.

MySuper providers are not permitted to alter the nature of member services which are paid for under the administration fee.

Governance

What impacts are the additional trustee duties likely to have on the performance of MySuper products?

Beyond the Stronger Super reforms, are there any particular aspects of fund governance that should be considered in the selection of default superannuation funds for inclusion in awards?

Would being selected as a default fund in an award affect fund governance and operations?

MySuper trustees will have duties to members which are more prescriptive than those for “choice” members. It remains unclear whether this will affect performance. Many superannuation funds are moving to a more stringent standard of governance for trustee independence, conflict management and disclosure.

The FSC has recently announced new compulsory Standards for its superannuation provider members. The policy reinforces fiduciary responsibility through independence, conflict management and disclosures. The policy will commence on 1 July 2013.

Scale

Is there an ideal ‘fund size’ for default superannuation products?

How do factors like the ability to market and communicate with industry participants impact on the question of scale?

Is there a need for fund scale to be factored into the selection of default superannuation funds for inclusion in awards beyond that already implicit in the MySuper rules?

Is there a clear relationship between fund scale and returns for members?

There is no ideal fund size in assessing member value. Regardless, the MySuper framework contains a requirement that a MySuper trustee annually makes an assessment of scale. Each trustee will be required to make this assessment in relation to their MySuper product.

Other

Who would incur the costs?

Who would the benefits accrue to? Would they be confined to those for whom a modern award applies? Or would they flow through to other MySuper products and/or choice products to drive widespread improvement in the superannuation industry? Would they flow through to taxpayers by lowering the burden on public funding for pensions?

Would the criteria need to vary by industry?

Are these criteria needed now, or would it be better to wait to see the full effects of MySuper on the industry? If so, how long might this take?

We do not propose to make comments on this matter.

Ongoing assessment of eligibility

How frequently should eligibility be assessed?

Who should perform this assessment?

Should the assessment process differ from the initial selection process? If so, in what way?

How should the assessment account for consolidation in the industry?

What would be the consequences of funds transitioning in and out of meeting the eligibility criteria for employers, members, the funds and FWA? Is there a way to manage this transition?

Should the criteria for fund eligibility themselves be reviewed or changed over time? If so, how often and by whom?

These questions highlight the complexity of introducing an overlay between what the Government has already deemed as adequate for all default members (MySuper) and criteria which is deemed necessary for Modern Awards.

We have addressed these questions throughout this submission – we do not believe that maintaining the existing system's shortcomings is desirable. Accordingly, the process and eligibility canvassed above should not be necessary where any MySuper product is an eligible default fund.

OPEN ENDED

When considering whether a fund is eligible for nomination as a default fund in a modern award, how should its overall performance be assessed?

How should trade-offs between different eligibility criteria be made? Should different weights be placed on certain criteria?

Should there be a 'two tier' process where a fund must meet certain eligibility criteria, while other criteria are optional?

Should all funds deemed eligible for nomination as a default fund in a modern award be listed? If so, why? How would this affect the administration costs for employers choosing one fund among those listed in awards?

Should there be a target number of default funds listed in modern awards? If so, why?

- *What number of funds should be targeted? Should this number differ by industry? If so, on what basis?*
- *How would this affect the administration costs for employers choosing one fund among those listed in awards?*
- *Who should make the decision to restrict the number of funds in cases where more than the limit are found to be eligible, and how should this decision be made?*
- *Should the same criteria and trade-offs between criteria as for eligibility be applied, or should they differ?*

How should expected consolidation in the superannuation industry be taken into account? What would happen in the event of product mergers?

Should some type of grandfathering clause remain in modern awards? What are the advantages and disadvantages of retaining such a clause?

As stated, we do not believe that a separate process or criteria for default fund selection in a Modern Award is necessary in a MySuper environment. It would undermine the reforms from both an employer and superannuation industry perspective.

Maintaining named superannuation funds in Modern Awards post 1 July 2013 would remove competition and introduce further complexity in a system which is already opaque. A separate process for nominating MySuper products in Modern Awards at the exclusion of other MySuper products entrenches, in the new system, the failings of the existing system of:

- Anti-competitiveness;
- Compulsory funds for employers; and
- An absence of consumer protection.

Accordingly, we do not believe the questions posed on pages 13 and 14 of the issues paper represent appropriate elements of the new system.

Breaking the nexus between named superannuation funds and the industrial system will remove the ongoing administrative complexities and costs of the existing system. These are referred to in the issues paper and include:

- Eligibility over and above MySuper and the associated process;
- What happens in the instance of consolidation of superannuation funds; and
- Grandfathering.

Moving to a standardised MySuper default fund framework negates the need for the industrial relations system to contain this process, does not require provisions for consolidation of super funds and grandfathering.

If an employer is able to select any APRA-approved MySuper default fund, employers will not have to concern themselves with superannuation industry dynamics which include mergers and successor fund transfers (consolidation and grandfathering).

The Westfield / Wright research found that the preferred number of default funds would actually be one government provided product. Despite this view, it is clear that employers today are selecting from a vastly wider suite of default superannuation options than will be possible under MySuper. Accordingly, employers felt that once default eligibility was achieved, they should be allowed to select a particular fund with that designation.

According to the report:

> An overall finding from these sets of respondents is that they don't agree that additional layers of complex criteria should be overlaid onto default funds. MySuper should be enough for an employer default. They hope and expect that the Government's role here should be to ensure that certain, baseline criteria are met – on the scale of fund, provision of insurance, non-excessive fees – but that it should end there. Employers and employees should then be free to decide, based on consistent 'unspun' information.[18]

COMPLIANCE (EMPLOYER AND SUPER INDUSTRY)

What should be the process for applying the criteria for the selection of superannuation funds eligible for nomination as default funds in modern awards?

- *What would be the steps involved in the process?*
- *Is there a case for an organisation other than FWA to assess the eligibility of funds against any selection criteria?*
- *What should be the role of the industrial parties to the awards? What should be the role of FWA?*
- *What would be the administrative and compliance burden of such a process on employers and their representatives, unions, superannuation funds and FWA?*
- *Is there any international experience to draw from in designing the process?*
- *How might MySuper products that are tailored to the needs of particular large employers affect the selection of default funds eligible for nomination in awards?*

If funds currently listed in awards were unable to meet a stricter set of criteria, what would be the consequences for members, employers and their representatives, unions, superannuation funds and FWA?

[18] Appendix A

What would happen in the event that a listed fund had its MySuper product license revoked by APRA for no longer meeting the MySuper requirements?

As stated, overlaying an additional process or criteria on MySuper to be an eligible default fund in any industrial instrument would be unnecessary and maintain existing system inefficiencies and cost.

As such our comments in respect of these questions are limited to matters which have not been canvassed earlier.

As part of the MySuper reforms, APRA is developing a new statistical collection for members and employers to access a range of information on MySuper. We believe that to assist employers in meeting their superannuation obligations and with MySuper, a dedicated website should be maintained by the ATO or APRA.

This initiative found strong support from the Westfield / Wright research – according to the report:

> We found an enthusiastic reception for the idea of an independent (Government-owned) MySuper website that would act as a central source of all this, default-super related information. As well as being a "*long overdue*" information source, these small and medium-sized businesspeople also see it as the chance to "*shine a light*" on the funds themselves, and what's on offer. As one put it, "*I would want the data there for ME to be able to make a choice".* [19]

Recommendation 5 – Create a dedicated MySuper employer friendly website containing materials to assist employers in meeting their superannuation obligations.

Large employers which have instituted a large MySuper product must have more than 500 employees (MySuper Core Provisions Bill) to be eligible to have their own (tailored) MySuper product. Typically, employers of this size will have an enterprise agreement in place which can specify the large MySuper product as the default fund.

The final question highlights the existing system's flaws – that there is no process to delist a default fund which is embedded in a Modern Award. As we do not endorse any proposal where MySuper products would be named in awards, a delisting process need not be developed.

[19] Appendix A

5. CONCURRENT REVIEWS AND REFORM

During the 2010 election campaign, the government committed to introducing reform of the default superannuation sector; thematically named MySuper. This followed a comprehensive independent review of the superannuation industry - the Super System Review (Cooper Review).

The Cooper Review recommended a new mandatory default product structure for the default fund (MySuper). Recommendation 1.2 stated: "*The SG Act should be amended so only a MySuper product is eligible to be a 'default' fund nominated by an employer*."[20]

In recommending a legislated minimum default fund standard, the Review recognised that all approved MySuper products should become eligible default funds for industrial purposes. Recommendation 1.3 stated:*" …all MySuper products are able to be nominated, for 'default fund' purposes in awards approved by Fair Work Australia."*

The enabling legislation for this reform is presently before the Parliament.

Further, a review of the Fair Work Act is presently progressing. The FSC believes that each of these processes remains relevant to this Review as we remain of the view that superannuation funds should not be entangled in the Fair Work system.

[20] Australian Government - Review into the governance, efficiency, structure and operation of the superannuation system – page 24 - 5 July 2010. http://www.supersystemreview.gov.au/content/downloads/final_report/part_one/Final_Report_Part_1_Consolidated.pdf