AIST Response – Productivity Commission Draft Report – Default Superannuation Funds in Modern Awards

August 2012

AIST Submission

AIST

The Australian Institute of Superannuation Trustees (AIST) is an independent, not-for-profit professional body whose mission is to protect the interests of Australia's $450 billion not-for-profit superannuation sector. AIST's members are the trustee directors and staff of industry, corporate and public-sector superannuation funds, who manage the superannuation accounts of two-thirds of the Australian workforce.

AIST is a registered training organisation and has recently expanded its education program to encompass the growing and changing needs of all members of the not-for-profit superannuation sector.

AIST offers a range of services including compliance and consulting services, events - both national and international - as well as member support. AIST also advocates on behalf of its members to relevant stakeholders.

AIST's services are designed to support members in their endeavour to improve the superannuation system and build a better retirement for all Australians.

Contact

Fiona Reynolds, CEO

David Haynes, Project Director

AIST
Australian Institute of Superannuation Trustees
Ground floor 215 Spring St
Melbourne VIC 3000

T 61 3 8677 3800
F 61 3 8677 3801
E info@aist.asn.au
www.aist.asn.au

1 Introduction

This submission responds to five key topics covered by the Productivity Commission's Draft Report:

1. The process for selecting a default fund: the choice between options 3 and 4
2. Employer discretion to opt-out: not a good idea
3. An alternative to employer opt-out: superannuation single issue enterprise agreements
4. Factors in default selection
5. Grandfathering of super funds not nominated as a default fund: a proposal for their removal

The proposals detailed in points 3 and 5 above have been developed specifically in response to questions asked on AIST by the Productivity Commission at the public hearings held in Melbourne on 30 July 2012.

Default funds play an important role in our compulsory superannuation system. They contribute to one of the key public policy objectives of overall retirement incomes policy, maximising member's retirement incomes.

AIST also believes that given the compulsory nature of the system that policy objectives should encompass structural efficiency, minimising intermediation, profit taking and market concentration. As the superannuation system is compulsory and primarily employment based there must be a mechanism in place to determine where member's contributions are placed should they not make an active choice as to where to put their superannuation contributions.

AIST believes that Fair Work Australia and our national modern award system provide the most efficient, equitable and appropriate structure to efficiently determine the destination of default contributions when an employee has not made a choice.

AIST contends that the industrial relations system has served members well over the long term in maximising their retirement incomes. The Draft Report records the outperformance of default funds. The long-term lower costs and outperformance of not for profit funds has also been recognised by APRA, ratings agencies, and a range of surveys and studies from both within and independent to the industry

AIST also contends that the award default system has been fundamental to creation and growth of a competitive and dynamic superannuation and funds management sector since the mid-1980s. A sector has the healthy characteristics of multiple competing players – with no dominant competitor- continuing innovation, competitive pressure and focus on intermediation and efficiency. This is a sharp contrast to the market structure and of concentration of the Australian banking sector.

Within this overall framework AIST is of the view that the funds chosen as default funds must therefore be the best performing funds and fit for purpose for the members of a particular award. AIST recognises the importance of compulsory superannuation as one of the three pillars of retirement incomes policy, it is important social policy - it is not merely a one size fits all financial product that can be plucked off the shelf.

ABN 19 123 284 275

AIST
Australian Institute of Superannuation Trustees
Ground floor 215 Spring St
Melbourne VIC 3000

T 61 3 8677 3800
F 61 3 8677 3801
E info@aist.asn.au
www.aist.asn.au

Workers in different sectors have different needs whether that is reflected in insurance offerings or asset allocation, and this needs to be reflected in the funds selected in awards. We therefore believe that factors other than being MySuper compliant need to be considered when selecting default funds.

Given the compulsory nature of superannuation the government and regulators have an added duty of care to protect member's interest and to ensure that employers are not overly burdened and asked to make decisions they are not equipped to make. Therefore changes to the system need to be approached with care and with member's best interests at heart.

Changes to the system must not be driven by political rhetoric and pressure about so called closed shops. Nor should the system be about favouring one sector over another.

AIST believes that given the changing regulatory environment and the move from 9 to 12 % Superannuation Guarantee contributions that a review of default funds is none the less warranted and we support much of the Productivity Commission's draft report.

Furthermore, we support transparency, disclosure and contestability and we are open to changes to the system that provide better outcomes for members and changes that make the system easier to understand.

The allegation that retail funds are locked out of the award system (as the Draft Report points out) this is incorrect. Retail funds appear in 16% of awards, and in more awards than public sector funds and corporate funds.

AIST believes awards play an important role for workers in setting out their minimum employment entitlements. Superannuation is one these entitlements and it makes no logical sense to AIST for superannuation not to be considered alongside other employment conditions within FWA.

It also makes no sense to AIST to review and upgrade the selection of default funds and then to allow employers to opt out of the system. "Choice of fund" has been in operation since 2005 and allows individuals to select a fund outside the default system.

ABN 19 123 284 275

AIST
Australian Institute of Superannuation Trustees
Ground floor 215 Spring St
Melbourne VIC 3000

T 61 3 8677 3800
F 61 3 8677 3801
E info@aist.asn.au
www.aist.asn.au

2 Basis of AIST position

AIST supports transparency, disclosure and contestability in the selection of default superannuation, and supports the overall approach taken by the Productivity Commission in this inquiry. We also believe that fairness and balance are fundamental requirements of the process.

AIST accepts that existing arrangements, while resulting in good, well-performing outcomes for millions of Australians, could be seen as having insufficient transparency. AIST also accepts that default selection could be improved by the introduction of objective criteria. Hence, we support Option 3 over Option 2.

We do not accept that the status quo has not worked in terms of protecting the best interests of members but accept that existing processes can *appear* opaque. The lack of access to the system (and the associated issue of standing) has been overstated in some of the previous submissions made to the Productivity Commission. AIST suggests that it is a relatively simple matter for a product provider to gain the support of a party covered by an award (e.g., an employer) for an application for inclusion as a default fund.

AIST believes that the elements of enhanced transparency, disclosure and contestability should be provided within existing frameworks and structures wherever possible. In particular, AIST supports the award system and the overall regulation of workplace matters by Fair Work Australia.

Where matters are about *ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions* of employment, then these matters should be regulated by Fair Work Australia. The words in italics are taken directly from the objects of the *Fair Work Act 2009* (subsection 3(b)).

It is Fair Work Australia that is tasked by legislation to provide a balance between the interests of employers and the interests of employees, and it does so on the basis of a statutory requirement to have regard to the need for business flexibility, and the promotion of productivity and economic growth for Australia. Again these requirements are prescribed in the objects of the *Fair Work Act* (subsection 3(a)).

The selection of default superannuation should have regard to exactly the same balance of employer and employee interests, and the same requirements for flexibility and productivity. It is an issue about the workplace: It is not about providing a balance between retail and not-for profit funds, or a balance between big funds and small funds, or a balance between public sector funds and private sector funds.

Additionally, superannuation involves the private provision of a public good, and so – while nonetheless supporting contestability – consideration of this issue simply on the basis of competing financial products is deficient.

ABN 19 123 284 275

AIST
Australian Institute of Superannuation Trustees
Ground floor 215 Spring St
Melbourne VIC 3000

T 61 3 8677 3800
F 61 3 8677 3801
E info@aist.asn.au
www.aist.asn.au

2.1 The process for selecting a default fund: The choice between options 3 and 4

2.1.1 Options to reform the selection process - Option 4

The Productivity Commission has considered the role of Fair Work Australia in the options it has provided for discussion. Option 4 is for a new independent body that chooses funds to list in modern awards.

The outsourcing of the selection of default superannuation to an entity outside of Fair Work Australia runs many risks in relation to the achievement of the objectives for default fund selection, and is opposed by AIST.

Firstly, an outsourced selection process runs the risk of becoming a battleground between competing segments of the superannuation. This would be compounded if the selection process is dominated by people from the superannuation industry, all of whom are likely to come with a vested interest or a partisan background. The appointment of people on an individual rather than representative basis would only go some way toward ameliorating this.

Secondly, an outsourced selection process does not give sufficient weight to either employer or employee interests. The "industrial parties" represent employer and employee interests: It's what they do. If their views are to be given no more weight than other submissions – the other submissions largely being the submissions of competing product providers - how then will these interests be given proper consideration?

There is no guarantee that the competition generated by the external panel would be about the best interests of employers and employees, nor that it would be in alignment with the approach of Fair Work Australia in providing an industrial safety net.

The Productivity Commission suggests that the body would be made up of experts from area such as finance and superannuation, but there is no mention of this being balanced by consumer interests. It is paradoxical that a process that excludes member interests is proposed to be "constituted to reflect the best interests on members" (p.170). It would be better to use an existing process and structure designed around the interests of employees.

Thirdly, an outsourced selection process involves unnecessary duplication. It would involve the creation of a parallel bureaucracy that would need to be staffed and otherwise resourced. It would need a budget allocation, a secretariat, the ability to travel and meet across the whole of Australia, and the ability to publish its decisions. It would need to be properly regulated through detailed and accessible processes, and need to have appropriate appeal mechanisms. As an appeal may end up in the Federal Court, the initial proceedings need to be appropriately structured and constituted. In short, the panel would need all of the things that can provided within the existing infrastructure of Fair Work Australia.

ABN 19 123 284 275

AIST
Australian Institute of Superannuation Trustees
Ground floor 215 Spring St
Melbourne VIC 3000

T 61 3 8677 3800
F 61 3 8677 3801
E info@aist.asn.au
www.aist.asn.au

The Productivity Commission suggests that it is unlikely a full secretariat would be required on a full-time basis, but this is unrealistic, and could condemn even a soundly based version of such a panel to being under-resourced and unable to fulfil its responsibilities.

The Productivity Commission anticipates a nice, neat process where decisions are made every four years, with not much happening in between. This is not how the regulation of employment conditions works, as can be seen from the large number of matters listed before Fair Work Australia every day. This would increase both in volume and significance where the contestability of a large slice of the $1.3 trillion superannuation industry is under consideration.

The existing framework of Fair Work Australia allows contestability in the selection of default superannuation funds, and has been the subject of many applications. Just taking a snapshot of existing activity reveals current appeal proceedings related to an application to have LUCRF Super added to the list of default funds in the Road Transport and Distribution Award, and another application that seeks to have the Law Employees Superannuation Fund (LESF) added to the Legal Services Award.

In the performance of its functions, the Productivity Commission has a statutory obligation to have regard to the need to reduce the regulation of industry. Outsourcing the selection process would increase the regulation of industry without corresponding benefits. It would involve a significant net addition to the regulatory burden and costs faced by business.

This is compounded by the Productivity Commission suggesting that Fair Work Australia will have a "minimal role" that is restricted to administering the decision of the panel.

This would require a legislative change to the Fair Work Act to remove their responsibility about ensuring a guaranteed safety net in relation to superannuation. Without such a legislative change, Fair Work Australia has a statutory responsibility to confirm that the independent panel decision meets the requirements of the Fair Work Act and its own requirements; that is, that it provides an appropriate balance between the interests of employers and employees. This would mean that, not only would there be two governmental bodies regulating conditions of employment, but that superannuation would be subject to multiple levels of unnecessary regulation.

Overall, the Productivity Commission's assessment of Option 4 does not sufficiently recognise this factor or give them sufficient weight.

2.1.2 Options to reform the selection process - Option 3

In contrast, each of these issues is or can be satisfactorily addressed in Option 3, the proposal for a more open and transparent industrial process, involving an expert panel under the auspices of Fair Work Australia. AIST supports Option 3.

ABN 19 123 284 275

AIST
Australian Institute of Superannuation Trustees
Ground floor 215 Spring St
Melbourne VIC 3000

T 61 3 8677 3800
F 61 3 8677 3801
E info@aist.asn.au
www.aist.asn.au

The most significant issue faced in Option 3 is the asserted lack of expertise within Fair Work Australia in the area of finance and superannuation. AIST believes that this lack of expertise may be overstated, with a number of members of Fair Work Australia having significant expertise and experience in this area.

The President of Fair Work Australia was one of the architects of the current superannuation system, and one Vice-President is a former long-term director of the Commonwealth Bank of Australia: These are high level credentials. Other members have been long term trustees of major superannuation funds.

Nonetheless, even if this lack of expertise is assumed to be the case, then the Productivity Commission has also provided the answer to the problem in its draft report. The model of the minimum wage panel is cited. The Minimum Wage Panel works well; it is integrated into the tribunal's operation; it is subject to the *Fair Work Act*, including the requirement to balance interests and have regard to broader economic factors; it uses the resources and infrastructure of Fair Work Australia, and so there are minimal extra costs; and its point of difference is the ability to co-opt members with specialist expertise. In other words, it is a model ideally suited for extension into superannuation.

The Productivity Commission identifies the potential issue of bias, but AIST believes that this is less likely to be an issue when the part-time members are sitting alongside other members of Fair Work Australia who generally come from a partisan background, but whom are focussed on fulfilling their statutory obligations. This is therefore a much lesser risk than it would be in Option 4.

The other potential concern identified by the Productivity Commission in Option 3 relates to avoiding instability. The draft report states "*This option might result in greater change to the list of funds in awards because the weight of the view of the industrial parties is diminished compared with Option 2.*" (p.169). In our view, this statement mixes up two assumptions. The first assumption is that may be a greater change to the list of awards than would result from the maintenance of the status quo. AIST accepts that this assumption may be correct.

However, the second assumption is that the weight of the view of industrial parties would be diminished by super funds being able to make their case to be listed as a default fund, and that this could cause instability. AIST does not accept that this would necessarily be the case, as Fair Work Australia would still be required to make an assessment about balancing the best interests of employers and employees, and Fair Work Australia should therefore give greater weight to the submissions of – and any agreement between - industrial parties on these matters.

It is important, however, that Fair Work Australia give strong guidance at the outset as to the conduct of proceedings relating to default selection so that they are not unreasonably long, complicated or expensive. It is generally that case that the permission of a Fair Work Australia member is required if a party is to be represented by a lawyer or paid agent (unless they are from an employer or employee organisation), and AIST submits that this rule should apply to proceeding before the superannuation panel.

ABN 19 123 284 275

AIST
Australian Institute of Superannuation Trustees
Ground floor 215 Spring St
Melbourne VIC 3000

T 61 3 8677 3800
F 61 3 8677 3801
E info@aist.asn.au
www.aist.asn.au

It is also important that the grounds for appeal from a decision of the superannuation panel are limited. The process should be designed so that the key decisions are made at Fair Work Australia and that appeals are the exception rather than the rule. An outcome where the ultimate decision on default is routinely made by the Federal Court should be expressly guarded against in the design stage.

One option would be for an appeal related to default selection only to be permitted by an employer, or an organisation of employer or employees, and then further limited to an appeal on a question of fact, made on the ground that it involved a significant error of fact.

2.2 Employer discretion to opt-out

There is a flaw in the Productivity Commission's proposal – which is common to Options 2, 3 and 4 – for employers to be able to choose a fund not listed in a relevant award, and only be required to demonstrate that employees are no worse off. If it is accepted that superannuation is a matter that legitimately forms part of employees' conditions of employment, the flaw is that this proposal is not consistent with a framework that balances employer and employee interests. The proposal only recognises employee interests to a very limited extent that AIST submits is not consistent with the objects of the *Fair Work Act*.

We note that subsection 3(c) of the *Fair Work Act* provides that the guaranteed safety net of minimum conditions cannot "*be undermined by the making of statutory individual employment arrangements of any kind given that such arrangements can never be part of a fair workplace relations system*." The proposal is one step worse than the individual contracts prohibit by the Act in that it does not require agreement with any employees or their representatives.

Superannuation is a workplace entitlement that was introduced on a widespread basis in Australia as a wage trade-off, and, to a large extent, increases in superannuation benefits have effectively continued to be provided on this basis. Notwithstanding the legislative basis of much of the superannuation system, it retains workplace characteristics, and can be a negotiable matter between employer and employee interests. This would be undermined by allowing unilateral employer discretion.

It is incorrect to assume that there will always be alignment between the views of employers and employees about the selection of default superannuation, or that this is an issue of no consequence to employees – especially with the advent of MySuper.

There may be features of a superannuation fund that may not be seem as desirable by some employers, even though they provide real and direct benefits to employees. An example of this lack of alignment is fund's use of an arrears process to follow up on unpaid superannuation contributions.

In contrast, the overwhelming requirement of a superannuation fund by employers is ease of administration, i.e. the ability to make contributions in a seamless manner, and a straightforward relationship with the fund. While this is undoubtedly important (and is the basis of the current

ABN 19 123 284 275

AIST
Australian Institute of Superannuation Trustees
Ground floor 215 Spring St
Melbourne VIC 3000

T 61 3 8677 3800
F 61 3 8677 3801
E info@aist.asn.au
www.aist.asn.au

SuperStream reforms), it should not supplant the priority that is given to the pursuit and achievement of strong net investment returns.

The Productivity Commission proposal states that "*employer discretion allows for closer tailoring to the needs of a particular workplace than can a system based on awards. It therefore has the potential to provide superior outcomes for those members*" p.156). While this reason has merit, workplace flexibility can be provided in another way that is consistent with a balanced framework.

Under existing legislation, enterprise agreements tailored to meet the needs of particular workplaces can be made. They can include a broad range of matters, including superannuation. Enterprise agreements are agreements made at an enterprise level between employers and employees about terms and conditions of employment.

A superannuation clause can nominate a default fund and clarify such matters as the level of superannuation contributions paid by the employer (i.e., it can be higher than that required under the Superannuation Guarantee), the frequency of payments, and other matters that help clarify superannuation entitlements.

Enterprise agreements are made under the auspices of the *Fair Work Act*, and Fair Work Australia can assist in the process of making such agreements, deal with disputes, and assess and approve agreements.

While there is no impediment to the making of an enterprise agreement containing a complete code of employment conditions (including superannuation), or in having an single-issue enterprise agreement about superannuation where there is no other enterprise agreement covering particular employees, it is understood that a single-issue enterprise agreement may not be permissible unless it supersedes a previous enterprise agreement covering those employees.

AIST recommends that further flexibility be built into enterprise agreement arrangements in relation to superannuation. AIST proposes that the *Fair Work Act* be specifically amended to allow the creation of single-issue enterprise agreements on the subject of superannuation that can exist side-by-side with another enterprise agreements applying at the workplace. As well as covering superannuation, such agreements should also identify the parties covered, the nominal term of the agreement, a consultative mechanism and dispute settlement procedures.

AIST submits that the other reasons given in support of employer discretion have less merit. The fact that some historic arrangements provided employer discretion is not a reason *per se* for its inclusion in future arrangements.

The obligation under the SIS to choose a fund is not an obligation to choose a good fund, or a high-performing fund, or a fund that meets employee interests: It is only an obligation to choose a complying fund. The draft report implies that this obligation has to be fulfilled in a way that does not disadvantage their employees. This is not correct, and so is not a reason in support of employer discretion.

ABN 19 123 284 275

AIST
Australian Institute of Superannuation Trustees
Ground floor 215 Spring St
Melbourne VIC 3000

T 61 3 8677 3800
F 61 3 8677 3801
E info@aist.asn.au
www.aist.asn.au

Finally, the draft reports that employer discretion will increase contestability. Given that the report only suggests that employers will be required to justify their decision after the event, and only if challenged, does not suggest a competitive process. It suggests a quasi-secretive process where employers availing of this outcome would hope not to be noticed.

If employer discretion can be exercised without a requirement to notify that choice and without the need to meet an explicit "member interest" test, then the notion that the award selection process has substance and protects interests becomes worthless. While the overwhelming majority of employers can be assumed to take their responsibilities seriously and properly, this is the option that will be chosen by unscrupulous employers looking to shirk their responsibilities.

If the exercise of employer discretion is subject to a notification requirement and the need to meet a best interest test, then this will become yet another area of unnecessary duplication and possible inconsistent outcomes. These problems are overcome if employers are able to create single-issue enterprise agreements covering superannuation.

Therefore, AIST supports the rigorous, public and highly contestable process envisaged under Option 3 – without employer discretion outside of the award and enterprise agreement system.

2.2.1 An alternative to employer opt-out: Superannuation single issue enterprise agreements

AIST's initial submission to the Productivity Commission proposed that single issue enterprise agreements dealing with superannuation be permitted, as an alternative to allowing unilateral employers opt-out. This section addresses how such an arrangement might work.

Section 57 of the *Fair Work Act* states that the provisions of modern awards do not apply where an enterprise agreement applies to an employee. Therefore, under existing legislation, the making of a single issue agreement, including one that covers superannuation, would void the operation of the relevant award, not just in relation to the subject matter of the agreement but in relation to all matters.

Comprehensive enterprise agreements are able to include superannuation provisions that may nominate a default fund or a mandatory fund. If it does not (and it may not), an employer is able to choose any fund as the default fund, even if the previously applicable modern award included a prescribed list of default funds. This is a consequence of the operation of section 57. Over 40% of enterprise agreements do not have a superannuation clause that nominates a default or mandatory fund, although numerous enterprise agreements include numerous provisions of the relevant modern award by reference.

AIST submits that both the effective inability to make a single issue enterprise agreement concerning superannuation, and the existing capacity to opt-out from superannuation provisions using the enterprise agreement mechanism are flaws in the Fair Work system that should be addressed by legislative changes.

ABN 19 123 284 275

AIST
Australian Institute of Superannuation Trustees
Ground floor 215 Spring St
Melbourne VIC 3000

T 61 3 8677 3800
F 61 3 8677 3801
E info@aist.asn.au
www.aist.asn.au

AIST recommends that subsection 57(1) of the *Fair Work Act* (interaction between modern awards and enterprise agreements) be amended so that:

1. Where an enterprise agreement does not include provision for superannuation, the applicable superannuation provision is either that which is prescribed:
    a. in a single-issue enterprise agreement covering superannuation that applies at the enterprise; or
    b. in the absence of a single-issue enterprise agreement covering superannuation, in the modern award(s) that would otherwise apply at the enterprise.
2. Where an enterprise agreement is solely concerned with superannuation, the operation of the enterprise agreement does not displace the coverage of the modern award(s) applying at the enterprise.
3. An enterprise agreement concerned solely with superannuation should, as a minimum, nominate a default fund or a mandatory fund, make reference to applicable superannuation legislation, require employer contributions at the level and frequency required by superannuation legislation, and allow for voluntary employee contributions. It will also be required to fulfil the other mandatory requirements for an enterprise agreement (e.g., a dispute resolution clause).

The implementation of this proposal would enable superannuation to be "carved-out" as an industrial matter at an enterprise agreement while still remaining within the auspices of the Fair Work system. It would enable an enterprise-wide solution that addressed the minimum factors for default selection (which unilateral employer out-out does not), while not otherwise requiring negotiation of a complete code of conditions in circumstances where the enterprise is otherwise satisfied with the conditions prescribed in the modern award. This may also be a cost-effective outcome for the enterprise.

It also provides a solution that accommodates corporate funds while ensuring that their selection meets minimum criteria.

2.3 Factors in default selection

AIST generally supports the nine factors the Productivity Commission has identified for consideration when a third party is selecting funds to be listed in modern awards.

1. *The appropriateness of the MySuper product's investment return objectives and risk profile for employees to whom the superannuation provisions of that modern award apply (as a primary factor).*
2. *The fund's expected ability to deliver on the investment objectives of its MySuper product (as a primary factor).*
3. *The appropriateness of the fees charged on the fund's MySuper product, given its stated risk and return profile.*

ABN 19 123 284 275

AIST
Australian Institute of Superannuation Trustees
Ground floor 215 Spring St
Melbourne VIC 3000

T 61 3 8677 3800
F 61 3 8677 3801
E info@aist.asn.au
www.aist.asn.au

4. *Whether governance structures are, as far as legislative requirements allow, consistent with meeting the best interests of members.*
5. *The mechanisms put in place by fund trustees to deal with conflicts of interest and the transparency in disclosing those conflicts.*
6. *The likelihood of default members being switched to higher cost divisions of the fund, or facing significantly higher fees for features of their policies (such as insurance), upon exiting their current employment ('flipping').*
7. *The compatibility of the fund's insurance offerings with the characteristics of employees to whom the superannuation provisions of that modern award apply.*
8. *The quality of member- and fund-specific intra-fund advice.*
9. *The administrative efficiency of the fund, according to a set of benchmarks determined by APRA (or another appropriate body) in consultation with the industry.*

(Draft report, pp. 112-113)

However, AIST also submits that these factors can be used as more than the basis for guidelines and can be framed as prescriptive criteria. Given the clear and direct link of these factors with the best interests of members, the Productivity Commission should be comfortable about recommending their use on this basis.

2.3.1 Governance structures

In relation to item 4, AIST's support for appropriate governance structures is well known and well documented. AIST's Fund Governance Guidelines are providing the basis for a common industry position on governance, and are being revised to ensure alignment with the forthcoming APRA prudential standard on government. Rather than recommending yet another process and panel to consider governance and board composition, AIST recommends that the Productivity Commission support this approach to improved governance structures.

2.3.2 Flipping

In relation to item 6, AIST applauds the Productivity Commission's recognition of flipping as a significant issue. We nonetheless believe that the draft report under-appreciates the prospect for abuse associated with the removal of discounted fees by large employers. Given that the average employee changes jobs about every six years, the regulatory structure should provide greater protections against flipping within MySuper structures.

2.3.3 Financial advice

In relation to item 8, AIST submits that advice and education services beyond intra-fund advice should also be considered. For example, the existing, range and distribution of member financial education services (e.g., seminars and member information), and the ability to access appropriate fee-for-service financial advice should also be taken into account in assessing the quality of advice.

ABN 19 123 284 275

AIST
Australian Institute of Superannuation Trustees
Ground floor 215 Spring St
Melbourne VIC 3000

T 61 3 8677 3800
F 61 3 8677 3801
E info@aist.asn.au
www.aist.asn.au

2.4 Grandfathering

The Productivity Commission draft report makes numerous references to existing grandfathering provisions in modern awards that allow employers to make superannuation contributions to their previously selected default fund. The Productivity Commission concluded that, irrespective of the reform option chosen, the reformed process would include the removal of existing grandfathering provisions from modern awards. This conclusion was, however, reached in the context of also proposing unilateral employer opt-out: a proposal with which AIST strongly disagrees.

The draft report notes that AIST is opposed to grandfathering continuing in its present format. This section addresses a process for the removal of grandfathering, and ameliorating its consequences.

AIST proposes the following smooth and efficient process for the removal of grandfathering:

1. From the date a modern award or enterprise prescribes default or mandatory funds that meet the minimum criteria for selection, all new employees who have not chosen a super fund must have their superannuation paid into a prescribed fund.
2. Within 12 months of a modern award or enterprise prescribing default or mandatory funds that meet the minimum criteria for selection, an employer must conclude the following process in relation to their employees whose default contributions are paid into a grandfathered fund:
    a. Advise all employees of the prescribed default or mandatory funds that meet the minimum criteria for selection in relation to the employer, including material providing an explanation of the "best interest for members" basis for this.
    b. Specifically advise these employees that their superannuation contributions will not be paid into the grandfathered fund from a specified date within the 12 months, and identify the *future destination for default contributions*
    c. Also advise these employees that they have choice of fund, how this choice can be exercised (using material similar to that provided to new employees) and options for account consolidation.
    d. Contributions previously made to the grandfathered fund to remain in the grandfathered fund, unless the employee elects to transfer their benefit in the grandfathered fund to the new default fund.
3. The same process to be followed in the event of a fund being removed from a list of prescribed funds in a modern award or enterprise agreement.

Once a superannuation contribution is made by an employer to a super fund, it forms part of the benefit of the super fund member. Notwithstanding the reason for a super fund losing default status, it cannot or should not be transferred without the member's knowledge or consent. However, it is also in the public interest that the member knows about the consequences of their super fund losing default status in relation to their *accrued benefit*

ABN 19 123 284 275

AIST
Australian Institute of Superannuation Trustees
Ground floor 215 Spring St
Melbourne VIC 3000

T 61 3 8677 3800
F 61 3 8677 3801
E info@aist.asn.au
www.aist.asn.au

Accordingly, AIST recommends that the previously grandfathered fund be required to advise employees whose default contributions were previously paid into the fund:

a) That the fund will no longer be able to accept their default contributions.
b) That another (specified) fund will be receiving their contributions from a (specified) date.
c) The reasons for this.
d) The options available to the member, being:
    i. Remaining in the fund;
    ii. Transferring their accrued benefit into the new default fund; and
    iii. Transferring their accrued benefit into another fund chosen by the member.
e) A standard form to give effect to these options should be provided to the member.

This is not a perfect solution but it has to be weighed against the confusion that would result from the transfer of benefits without the member's knowledge or consent from one fund about which a member may only be vaguely aware to another fund about which a member may also likely be unaware.

This proposal should be considered in conjunction with AIST's proposal for superannuation single issue enterprise agreements. AIST suggests that it is a better public policy outcome for corporate super funds that have been chosen by an employer to be identified and regulated by means of an enterprise agreement than to be outside a transparent selection process.

AIST further supports the view that the Stronger Super reforms provide an effective foundation to promote disclosure and comparability of default superannuation products and funds, and that these factors are needed to be a 'quality filter' to distinguish among them.

AIST also agrees that there is an administrative burden for employers in being required to choose from a potentially wide range of funds that offer MySuper products, and that a listing of 5-10 funds in awards is generally appropriate.

Incidentally, the draft report makes a number of comments at various points that do not seem to be strongly connected to the draft recommendations. These include unsupported comments about the existing selection process. While AIST does not intend to focus on these, our overall support for the Productivity Commission's recommendation should not be taken as support for these incidental comments.

ABN 19 123 284 275

AIST
Australian Institute of Superannuation Trustees
Ground floor 215 Spring St
Melbourne VIC 3000

T 61 3 8677 3800
F 61 3 8677 3801
E info@aist.asn.au
www.aist.asn.au