



Australian Hotels Association

Submission in relation to:

Default Superannuation Funds in Modern Awards

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Summary

Employers play a critical role in Australia's superannuation system, particularly in the hotel industry where many employees are entering the workforce and dealing with superannuation for the first time, and where the majority of the workforce is award-reliant. The selection of default funds is critical due to the increased proportion of employees relying on the employer to select their super fund for them.

Expanding lists of eligible default funds in modern awards risks overwhelming employers, particularly those in the hotel industry who are already subjected to a myriad of time consuming regulations in other areas of their business.

Both employers and employees see employer superannuation contributions as deferred wages, and it is important that industrial organisations representing these parties continue to be actively involved in the process of selecting default funds within awards. This process must involve an independent arbiter to balance any competing claims and interests.

The Australian Hotels Association (AHA) therefore strongly supports the retention within the industrial relations system of the process for determining default funds in awards. Fair Work Australia (FWA) is the best placed body to adjudicate on applications from funds for inclusion, and the most appropriate time for this is when FWA conducts its scheduled four-yearly reviews of modern awards. This adjudication process should involve consideration of several factors beyond MySuper compliance, including the views of industrial parties to the award, which are best placed to inform Fair Work Australia of the views of employers and employees on the relative merits of a fund or fund services.

This model would not restrict any compliant fund from being listed as a default fund, providing it can get support from just one employee or employer covered by the award.

The AHA also submits that it would be preferable to set a target number of default funds for awards. The value of nominating eligible default funds is to assist employers in their selection process. Eligible funds should be those that are not only compliant with relevant legislation, but which have demonstrated relevance to the industry through services, products and investment strategy.

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About the AHA

The Australian Hotels Association (AHA) is an organisation of employers in the hotel and hospitality industry registered under the *Fair Work (Registered Organisations) Act 2009*. Its membership of more than 5,000 licensed hotel businesses includes pub-style hotels plus three, four and five-star accommodation hotels located in each state and territory. The AHA's accommodation hotel members are serviced by Tourism Accommodation Australia, a division of the AHA. The AHA has branches located in every Australian capital city and a Canberra-based national office.

The AHA, along with United Voice (formerly the Liquor, Hospitality and Miscellaneous Union) established the Hostplus Superannuation Fund in 1987 as the industry superannuation fund for hospitality, tourism, recreation and sport. Hostplus has been a hugely successful fund and now has almost one million members, deals with 80,000 employers and controls almost \$10 billion in funds. Hostplus has been recognised as the SuperRatings Fund of the Year for 2007, 2008 and 2009 and as *Money* magazine's 'Best of the Best' award for Best Super Fund Manager for 2007, 2008 and 2009.

The Hostplus corporate structure requires the AHA to nominate three directors to the Board of Hostplus. United Voice also nominates three directors, and there are also three independent directors. The governance structure of Hostplus is in line with the recommendations of the Cooper Review.

About the hotel industry

The hotel industry is a significant employer, with more than 278,000 people employed between the pub sector (188,000)¹ and the accommodation sector (90,000)², and an annual wages and salaries contribution of \$5.41 billion. In addition there are an estimated 20,000 employees in the casino sector³. Although some hotels are large-scale operations with hundreds of employees which form part of national or international chains, the majority of AHA members are small, locally-owned businesses serving their surrounding communities. In 2005-06 only 145 of 65,197 businesses in the ABS Accommodation, Cafes & Restaurants sector employed more than 100 people.⁴

While around 15 per cent of the national workforce is award reliant, in the hotel industry around three-quarters of employees are employed under the terms and conditions of the *Hospitality Industry (General) Award 2010*. In addition, many people find their first employment in the hospitality industry and find themselves dealing with superannuation for the first time and are disinclined to take much interest in superannuation with their retirement such a distant prospect.

¹ PricewaterhouseCoopers (2009) *Australian hotels: More than just a drink and a flutter*

² Australian Fair Pay Commission (August 2008), *Accommodation, Cafes and Restaurants Industry Profile, Research Report No. 1/09*

³ Australasian Casino Association, *Submission to the Parliamentary Joint Select Committee on Gambling Reform*, 31 January 2011

⁴ Australian Bureau of Statistics (2007), *Australian Industry 2005-06*

Preferred nomination process

Given the intention of the Government for Fair Work Australia to review each modern award every four years, it is appropriate that the review include accepting applications to be named as a default fund in the award at these times. Given the nature of superannuation payments and their acceptance by both employers and employees that these are deferred wages, it is appropriate that this process remain within the industrial relations system and adjudicated by an independent arbiter in Fair Work Australia. There may be merit in FWA appointing a committee or panel of superannuation experts to assist in this process.

Applications should be open to any MySuper compliant product without the need to have standing under the award in question. Fair Work Australia should consider the following when deliberating on applications:

1. The long term net performance of the fund.
2. The views of parties with standing under the award.
3. The experience of the applicant trustees and coverage of the fund within the industry's workforce.
4. The relevance and scope of member and employer services.
5. The appropriateness of the fund's insurance offering.

As with the remainder of the award review process, the naming of default funds should be open and transparent. Fair Work Australia is experienced in arbitration and should eventually decide the formal processes but the following conditions should be included:

- Applications should be made publicly available via the FWA website to permit interested parties to provide informed comments.
- Public hearings should be held.
- Decisions to be issued in writing and made publicly available via the FWA website.
- Parties with standing under the award should be able to apply for a review of a decision.

This proposed process opens up the system to applications from parties without requiring the endorsement of parties with standing under an award, while still ensuring that the process is transparent and provides key stakeholder groups with the opportunity to engage in the deliberations. It will ensure that all default funds listed in awards have demonstrated the ability to provide sound investment strategies and a range of member and employer services relevant to the industry.

Consider impact on employers

Page 2 of the Issues Paper outlines the Commission's approach to analysing information and designing default fund eligibility criteria and says "in conducting its analysis, the Commission will be mindful of the impacts of its recommendations on:

- Those who elect to choose their own superannuation fund or product, and
- The way that default superannuation funds are chosen under enterprise agreements."

Employers play a critical role in the operation of Australia's world-leading superannuation system, acting as the unpaid administrator of employee retirement savings and providing information and data critical to the efficient administration of funds and the system itself. In an industry such as hospitality where business owners are subject to high levels of regulation and compliance requirements, there needs to be consideration of the impact of changes on employers.

The AHA submits that the Commission should also consider the impact of changes on employers when conducting its analysis.

Responses to the Issues Paper questions

Please note the AHA has provided direct responses below only to those questions of direct relevance to employers or the hospitality industry. Other questions are better addressed by employee representatives or the superannuation industry.

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

In the hospitality industry the default superannuation provisions apply to the vast majority of employees. In an AHA survey of 643 hotels conducted in January 2012, it was found that 86% of pubs and 62% of accommodation hotels were employed under the *Hospitality Industry (General) Award 2010*⁵ compared with just 15% of award-reliant employees across all sectors.⁶ In many cases, people enter the workforce for the first time through the hospitality industry, meaning they are dealing with superannuation for the first time and are therefore less likely to exercise fund choice than more experienced workers coming from other employment.

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

While there are no records available to the AHA, within the hotel industry it is believed the majority of enterprise agreements in the hospitality industry list Hostplus.

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

No. It would not be possible to argue the benefits of one fund over another over the relatively short timeframes of enterprise agreements.

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

Employers choose a default fund on the basis of services provided by the fund to the employer and employees, on the historical performance of the fund, and on the basis of existing or prior relationships with the fund. Some of the specific considerations of employers are based on:

⁵ Australian Hotels Association: *2012 Annual Wage Review submission*

⁶ Productivity Commission (2012) *Issues Paper: Default Superannuation Funds in Modern Awards*, p3

- Commissions or advisory fees paid to third parties.
- The level of any entry, exit or ongoing account fees.
- When contributions cease, the employee remains a member of the default fund until he/she consolidates into a new active fund or is rolled into a suitable eligible rollover fund.
- The fund offers competitive insurance.
- Conditions of relevant awards or enterprise agreements.
- The fund meets prudential regulatory standards.
- The fund has effective procedures in place for following up arrears in payments.
- The fund has a representative trustee structure.
- The fund complies with relevant legislation.

Generally, the primary concern of employers in this process is the ease of the transaction process with a fund and any employer costs involved. The overwhelming majority of employers using award default funds report satisfaction with current arrangements⁷ and there is no push for changes to the current system from employers in the hotel industry.

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?

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?

The introduction of the Government's reforms will see a large number of funds deemed MySuper compliant, but only those that are able to demonstrate an ability to provide services identified by the hospitality industry as necessary or desirable should be named in the *Hospitality Industry (General) Award 2010*.

The process supported by the AHA for considering applications to be named as default funds in awards is set out under *Preferred nomination process* in this submission.

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?

⁷ Colmar Brunton (2010) *Understanding Superannuation: Preliminary Report – Qualitative Investigation with Employers, Consumers and Industry*, p20

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

The appropriateness of an applicant fund's investment strategy for the industry should be addressed in a fund's application to be named in an award and considered by Fair Work Australia in the context of the process identified in this submission under *Preferred nomination process* criteria as part of its deliberations.

The hospitality industry workforce is characterised by a higher proportion of younger employees and people working on either a casual or part time basis (such as parents with young children, people earning a second income, etc.) and it is possible that this may mean the workforce has different investment needs than in industries with different demographic profiles such as mining or horticulture.

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?***

Although past performance does not indicate future performance, it is one area where employers can simply compare different funds when considering a default for the business. Selecting a fund with a good performance history can provide employers with comfort that they have acted in the best interests of their employees.

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?

A maximum fee limit should apply to all superannuation products listed in awards. The decision about whether the member would benefit from a higher-fee fund should be made by each individual member, not by anyone else on his/her behalf. Given the low level of engagement and awareness of superannuation amongst award-reliant employees, particularly in the hospitality industry, there is merit in ensuring a level playing field so that employers are not faced with the potential need to justify their selection of a higher-fee fund to employees.

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?

Are there any other criteria that should be used to assess whether a fund is suitable for inclusion in modern awards?

The AHA believes that the provision of relevant and available member services should be an essential requirement of funds listed in awards. As an industry-specific example of unique service needs, the AHA notes that in the hospitality industry, workers may need to be able to access information and advice outside standard business hours. Specific details of services and additional member products are matters for employee representatives and the superannuation industry to determine.

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?***

According to the Issues Paper, the majority of awards currently list between two and six funds. The *Hospitality Industry (General) Award 2010* lists six funds. It is important that the number of funds listed in awards remains limited to prevent overwhelming employers with excessive options for default funds. It is unrealistic to expect employers to spend the time examining the relative merits of potentially dozens of different superannuation funds.

The AHA submits that a target number of funds should be identified for each award, and that no more than ten funds should be listed in any award.

The AHA's preferred process for determining this would be in line with its proposal outlined earlier in this submission – a Fair Work Australia adjudication undertaken while conducting its four-yearly review of the award – which is outlined under *Preferred nomination process* in this submission.

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?***

Provided the number of funds listed in awards is limited to ten or fewer, employers are best placed to choose a default fund without assistance. The AHA's preferred nomination process identified earlier in this submission involving Fair Work Australia effectively pre-vets funds for suitability purposes, leaving employers to choose from a limited number of compliant funds offering relevant and desired services.