

# BETTER REGULATION AND GOVERNANCE, ENHANCED TRANSPARENCY AND IMPROVED COMPETITION IN SUPERANNUATION—FOCUS QUESTIONS

## Part 1: A Better Approach to Regulation

- 1. The Government has committed to identifying (in dollar terms) measures that offset the cost imposed to business of any new regulation. What suggestions do you have for how the regulatory compliance burden can be reduced?**

It is not possible to provide credible cost estimates for many of the issues raised in the paper because the final details (indeed in many cases the broad direction) of many of the matters canvassed in the paper are not known.

We believe the costs of the proposals that are currently able to be properly costed are as follows.

### **Part 3: Enhanced Transparency**

#### Product dashboard

The cost for maintaining the product dashboards for all products on the website would be approximately \$300,000 per annum.

We recommend that a carve out be put in place for member directed investment options where members select the specific investments in the choice option as this would involve no disadvantage to members who invest in this type of option.

We recommend that permanent class orders be instituted, to enable Funds to include a website link on their statements instead of providing the member with a hard copy of the product dashboard. If this does not occur and funds are required to provide hard copy MySuper dashboards and choice dashboards with statements, the cost to funds would be over \$500,000pa.

#### Portfolio holding disclosure

If funds are required to complete the portfolio holdings disclosure on a full look through basis, the cost would be around \$150,000 for initial set up of a solution (both initial collation, process set up and website set up) and ongoing costs of around \$250,000 - \$300,000

If funds were required to complete the portfolio holdings disclosure with look through to the first non-associated vehicle, we believe the cost would be around \$80,000 for initial set up of a solution (both initial collation, process set up and website set up) and ongoing costs of around \$500,000pa.

#### Signposts

Changes to the regulatory requirements for the Operational Risk Financial Reserve could save members and the industry significant amounts of money.

APRA currently require all superannuation funds regardless of size, complexity or strength of systems to hold 25 basis points of funds under management in an Operational Risk Financial Reserve. In the case of profit for member only funds, where there is no independent sponsoring owner, this reserve can only be funded by a cost to members, either as a fee or reduction in earnings. This “one size fits all” approach fails to recognise that not all risks are linear in relation to funds under management. Nor does it recognise that larger funds tend to spend more to mitigate risks and that the members of these

funds are not given the benefit of that expenditure in reduced cost of reserving capital for Operational Risk.

We believe that risk-weighted scenario analysis, which takes account of these issues, is a more appropriate approach. We believe the risk-weighted approach to manage operational risk is particularly appropriate for large superannuation funds, and consider that this could reduce the cost of holding the ORFR capital by 25%, and still provide adequate protection against risk events.

### General

Superannuation is a heavily regulated industry. This is appropriate given the public policy issues involved; the statutory basis of the system; the significant public expenditure; and the large amount of money involved. Any moves to self-regulation should be resisted for these reasons. It is important to ensure that the appropriate balance is struck between legislative and regulatory control which protect members' interests, and providing sufficient flexibility for the industry to operate efficiently and with scope for appropriate innovation.

## **Part 2: Better Governance**

### **What should 'independent' mean for superannuation fund trustees and Directors?**

#### **2. What is the most appropriate definition of independence for Directors in the context of superannuation Boards?**

As well as being defined in legislation the concept of an 'independent' Director already exists within superannuation insofar as all Directors are required to act with 'independence of mind' when making decisions in relation to beneficiaries' interests in superannuation funds. As Directors of a regulated superannuation fund they are representing members' interests, not the interests of any other party including management or shareholders. These requirements apply to equal representation Boards and to public offer Boards that do not have such representation.

All Directors of APRA regulated funds are subject to statutory covenants in relation to conflicts, they must invest superannuation monies on an arms-length basis, and must ensure that they are acting in the best interests of beneficiaries. If they have other potentially conflicting interests they must not prioritise those interests above the interests of the beneficiaries of the fund.

By way of further background it is important to understand the basis of the governance structure of 'profit for members' industry funds such as AustralianSuper.

In a commercial institution shareholders have a substantial investment in the enterprise with an expectation of a return on their investment. By contrast industry funds' shareholders are essentially 'sponsoring' shareholders, which operate on the basis of all profits being for members. It follows that Directors appointed by the sponsors have a different relationship with the shareholder and a different obligation to the shareholder, than if the shareholder was expecting a return on their capital. The interest of Directors appointed by sponsor shareholders is specifically to maximise the benefits to members, with no equal obligation to deliver a return on capital. As a result of this fundamentally different governance approach, Independent Directors have not been a major feature of

most industry fund boards other than in the context of meeting identified requirements for particular skills and experience.

AustralianSuper proposes that the definition of Independent Director that would apply to all APRA regulated funds be:

“An Independent Director” is a Director who may be a fund member but who is not an employee of the Fund or a related party and who has no business or other relationship that could materially interfere with – or could reasonably be perceived to interfere with – the independent exercise of their judgement.

When determining the independent status of a Director the Board should consider whether the Director:

- (i) is, or is directly associated with, a substantial shareholder of the trustee company;
- (ii) is directly associated with a business that makes superannuation contributions to the fund;
- (iii) has within the last three years, been employed by the fund or a related entity or a shareholder;
- (iv) has within the last three years been materially associated with the fund as a material service provider to the fund or a related entity.”

We believe this definition, combined with existing statutory and other requirements, represents a rigorous regime of independence.

### Proportion and role of Independent Directors

#### 3. What is an appropriate proportion of Independent Directors for superannuation Boards?

The most critical point about the composition of a superannuation fund trustee Board is that it is comprised of people who in aggregate have the appropriate skills and experience to ensure that the organisation provides optimal results for members. The prescription of an “appropriate proportion of Independent Directors”, without reference to skills and experience, appears to put form ahead of function in this debate. AustralianSuper believes that Boards and shareholders should be responsible for ensuring that they have a strong blend of relevant skills and experience to ensure their organisations perform strongly.

In relation to Board structure AustralianSuper supports the current arrangements, which have well-served the interests of members of most Australian superannuation funds, which provide for superannuation fund trustee shareholders and their Boards to determine the appropriate proportion of Independent Directors on their Boards.

Consistent with the response to point 2 above, the term “Independent Director” is used here in a non-representative context only, ie an Independent Director is not a representative of a member or employer interest. All superannuation fund Directors are expected to act with an independent mind and solely in the interest of fund members.

The prevailing governance arrangements for industry funds – and in particular in the context of this submission, for AustralianSuper members – have produced very strong results for fund members. The case for a mandatory proportion of Independent Directors

has not been made on merit grounds. Indeed the empirically-based grounds for maintaining the currently successful equal representation model are very strong.

The success of the prevailing model of the equal representation structure (which allows for, but does not prescribe Independent Directors) and in particular the independence of mind that is exercised by Directors of industry funds is evidenced by:

(i) Investment performance

The investment performance generated by the equal representation trustee structure (typically associated with profit-for-member, or as they are sometimes known, not-for-profit funds) is starkly different to that generated by commercial funds that do not share this trustee structure

The SuperRatings data for Balanced funds to 30 June 2013 shows the significant outperformance of funds with (typically) an equal representation trustee structure:

	Rolling 5 year	Rolling 10 year
Not for Profit Fund Median	4.10 % pa	7.15 % pa
<b>Master Trust Median</b>	3.11 % pa	5.27 % pa

APRA data based on investment performance at an entity level also demonstrates that the equal representation model has generated stronger investment performance than governance structures that are not based on the same model.

(i) Dealing with related parties

Another example of the value generated by the equal representation model, and in particular how Directors of these Boards act in the best interests of their members and with an absolute independence of mind, is provided in APRA research. In 2010 APRA released a paper dealing with how superannuation funds manage their relationships with related parties.

The paper included the following table which – see the bottom line – shows that not-for-profit funds treat outsourcing relationships with independent service providers similarly to the way they treat related party service providers. The same cannot be said of retail funds which do not share the equal representation Board structure.

ALL FUNCTIONS – ESTIMATED ANNUAL COST				
Median Fund	Not-For-Profit		Retail	
Total Expense	Independent Service Providers	Related Service Providers	Independent Service Providers	Related Service Providers
<b>Per Fun (\$000)</b>	6,345	6,309	6,473	16,592
<b>Per Member (\$)</b>	185.53	184.48	189.27	485.13
<b>By Assets</b>	0.51%	0.51%	0.52%	1.33%

(APRA, “Australian superannuation outsourcing – fees, related parties and concentrated markets”, K Liu and B Arnold, July 2010, p4)

The paper concluded that:

“We find that ‘relatedness’ *per se* is not detrimental to fund members. However,

when we consider whether the fund has been established on a not-for-profit basis, or as a retail commercial endeavour, we find that the trustees of retail funds pay significantly higher fees to related service providers. In contrast, the fees paid by trustees of not-for-profit funds to related parties are not significantly different than those to independent service providers.” (APRA, p2)

This material demonstrates that the current arrangements (which in AustralianSuper’s case has seen the Board decide to appoint one Independent Director of its own volition) have produced very strong results for members. Additionally, the APRA research proves this model provides a governance structure that deals with related parties and unrelated parties on a similar commercial basis – a clear case of acting independently - and a characteristic that the APRA work demonstrates is not shared across the industry.

We believe that this represents a powerful, fact-based case demonstrating how the current model has served the interests of fund members.

Having made our primary position clear (ie the current arrangements have served the members of industry funds – and this fund in particular – very well), we recognise that the Government may mandate the appointment of Independent Directors to superannuation fund boards. In relation to AustralianSuper’s particular circumstances we could accept a requirement to appoint one third of board members as appropriately qualified Independent Directors.

**4. Both the ASX Principles for listed companies and APRA’s requirements for banking and insurance entities either suggest or require an independent chair. Should superannuation trustee Boards have independent chairs?**

AustralianSuper’s position on independent Chairs of superannuation funds is based on our general position on Independent Directors (point 3 above).

If the ideal candidate for Chair is a Director of the fund, but not an Independent Director, it would be contrary to the best interests of the fund and its members for a sub-optimal person to be appointed the Chair.

The appointment of the Chair is appropriately a matter for the Board, which should have the authority to select the best person for the role, not the best person from a sub-set of the Board.

**Process for appointing Directors on superannuation trustee Boards**

**5. Given the way that Directors are currently appointed varies across funds, does it matter how Independent Directors are appointed?**

AustralianSuper understands that there are a variety of methods across the industry by which Directors are appointed to the Boards of superannuation funds.

In AustralianSuper’s case an Independent Director can be appointed jointly by shareholders upon Board ratification.

A strong regulatory regime of Prudential Standards applies in relation to the appointment of Directors, including a requirement for policies in relation to: Fit and Proper standards for Directors; Governance; Conflict of Interest management; and Risk Management. Given the comprehensive regulatory environment that currently exists we believe that adherence to these provisions is an appropriate framework for the

appointment of Independent Directors, and that no change is required.

We would note that we believe the model currently applying at AustralianSuper strikes the appropriate balance with shareholder nomination and the Board having the final decision.

**6. Should the process adopted for appointing Independent Directors be aligned for all Board appointments?**

Directors nominated by member and employer organisations should continue to be nominated respectively by the relevant organisations.

### Management of conflicts of interest

**7. Are there any other measures that would strengthen the conflict of interest regime?**

AustralianSuper understands that, including following the Stronger Super reforms, the conflict of interest regime in the superannuation sector is the most stringent across the financial services industry. For example superannuation fund trustees have to comply with a statutory covenant in relation to conflicts of interest, rather than just common law provisions; and that superannuation trustees have a statutory duty to prioritise the interests of beneficiaries above their own or other interests. One area where improvement in the managing of conflicts of interests remains is in relation to dealing with related parties. The superannuation industry is replete with funds that are part of broader organisations from which services are purchased. Such transactions are often entirely appropriate and in the best interest of fund members.

However, sometimes the decision to purchase from a related party, and the terms of such purchase, raise questions about the propriety of the related party transaction. Greater disclosure in relation to related party transactions – other parties considered; rationale for choosing to deal with a related party; some disclosure of the relative commercial criteria; etc would be appropriate to give members confidence that such decisions are made on merit.

### Ongoing effectiveness of superannuation trustee Boards

**8. In relation to Board renewal, should there be maximum appointment terms for Directors? If so, what length of term is appropriate?**

There should not be maximum appointment terms for Directors. The Board should be mindful of the overall service profile of Directors and their tenure (and other characteristics such as experience, age, gender, etc) throughout the whole Board, but there is no need to prescribe a maximum term for individual Directors. As noted in point 9 below there should be a formal process of Board and Director review at prescribed periods where these factors should be taken into account.

**9. Should Directors on Boards be subject to regular appraisals of their performance?**

Superannuation fund Boards should follow good governance practice and conduct formal reviews of the Board and Directors on a regular basis. These reviews should seek to assess and make recommendations on the efficiency and effectiveness of the Board as a whole (and Committees) in meeting the organisation's objectives. At least every two to three years a formal external assessment should be conducted by an independent third party.

## Implementation issues

- 10. Would legislation, an APRA prudential standard, industry self-regulation or a combination be most suitable for implementing changes to governance? What would the regulatory cost and compliance impacts of each option be?**

Any changes to governance would need to be achieved by legislative change rather than by industry self-regulation on prudential standards. Any revision of the structure of superannuation boards would need to take into account the existing legislative requirements for both public offer superannuation funds and non-public offer superannuation funds.

- 11. What is the appropriate timeframe to implement the Government's governance policy under each option?**

Given the size and importance of the superannuation industry and the importance of confidence and stability to members and contributing businesses, any changes should include timeframes directed to achieving minimum disruption, cost or regulatory burden. In relation to Board make-up, aligning changes to existing terms and providing sufficient notice would be of assistance. Different timeframes could apply to new appointments as compared with changes to existing arrangements.

Depending on the changes that are finally determined to be implemented, it would be appropriate for an implementation period of up to three years to apply.

- 12. Given that there will be existing Directors appointed under a variety of terms and conditions, what type of transitional rules are required?**

The careful and measured implementation of appropriate transition arrangements will be very important for stability and confidence in the superannuation system. As noted in point 11 above a transition period of up to three years should apply for existing Directors.

## Part 3: Enhanced transparency—choice product dashboard and portfolio holdings disclosure

### Part 3A. Choice product dashboard

- 13. Should a choice product dashboard present the same information, in the same format, as a MySuper product dashboard? In answering this question you may wish to consider, if the choice product dashboard is to present different information, what should it include and why?**

The choice product dashboard should, as much as is practical, aid comparability of products by presenting the same information, in the same format, as a MySuper product dashboard. The purpose of the product dashboard is to facilitate easy investment option decision-making and like-for-like comparisons. This objective should not change for presentation of information for more engaged members who are making decisions on choice products.

The product dashboard should enable members to make comparisons between superannuation products as follows:

- between the various MySuper products offered by different funds
- between their current MySuper product and other choice products offered by the same fund
- between the various choice products offered by their current fund

- between the various choice products offered by different funds

Currently the MySuper product dashboard is provided on a fund’s website and there is temporary ASIC class order relief that enables funds to reference the product dashboard on the member statement via a website address rather than as a hard copy. It is recommended that legislation supports this as an ongoing provision, in light of the additional cost that would be required to print the product dashboard as an attachment to hard copies of member statements.

### Net investment return versus net return

**14. Is it appropriate to use a single benchmark (CPI plus percentage return) for all choice product return targets?**

We do not believe it is appropriate to use a single benchmark (CPI plus percentage return) for all choice product return targets, but we believe it is important to retain either a CPI-linked or a market Index-linked return target for the purposes of comparability of choice products.

A CPI-linked return target is appropriate for diversified portfolios where the Trustee is seeking an absolute return but inappropriate where the choice investment option offered is a portfolio of a single asset class (eg. shares, fixed interest, property). Use of an absolute return target such as a CPI-linked return target for single asset class portfolio could misleadingly represent the trustee as having some control over the performance of individual asset classes at different points in the market cycle. A relative return target such as a market Index-linked target is more appropriate for single asset class portfolios.

For example, the return target for an Australian shares portfolio would be relative to the ASX300 Index rather than CPI, as reflected in the information below on AustralianSuper’s Australian Shares investment option (excerpt from AustralianSuper’s *Investment Choice Guide*).



**15. Should both net investment return (investment return net of investment costs only) and net return (investment return net of all associated costs) be used to measure a product’s investment return on the choice product dashboard? In considering this question, you may wish to consider:**

**If including an additional measure for a product’s investment return would add unnecessary complexity.**

**If both net investment return and net return are used on the choice product dashboard, whether they should also be used on the MySuper product dashboard.**

**Whether it is appropriate to use a single time horizon, for example 10 years, when**



### **calculating target net return and net return for the range of possible choice products.**

We are of the view that it would be inappropriate and misleading to members to use multiple performance measures on the choice product dashboard when the choice product is compared with a single measure of investment return on the MySuper product dashboard. The net investment return figure on the choice product dashboard would have no meaning when compared against a net/net return figure disclosed on a MySuper product dashboard. It could misleadingly make the choice product look cheaper than what it is in this context.

We also believe it would be inappropriate and confusing to the consumer to use both the net investment return and the net return on the dashboard for a choice product, as this would be inconsistent with the MySuper product dashboard which uses only the net return (less investment fees, administration costs and taxes).

We think it is appropriate to use a single time horizon, for example 10 years, when calculating target returns for the range of possible choice products, provided, for purposes of comparability, this time horizon is the same one used in the dashboard for the MySuper option.

### **Measuring a product's investment risk**

- 16. Should the choice product dashboard include both a short-term (volatility) and long-term (inflation) risk measure? In considering this question, you may wish to consider:**

**Is the SRM model the best measure of short-term investment risk?**

**What would be the most suitable measure of long-term risk to include on the product dashboard?**

**Is it possible to present a long-term risk measure in a similar format to the short-term risk measure (that is High/Medium/Low)?**

**Would including an additional risk measure add unnecessary complexity to the product dashboard?**

AustralianSuper supports the view that the choice product dashboard should include both a short-term (volatility) and long-term (inflation) risk measure. This is because risk must be defined differently in different investment timeframes. If a member is invested for a short period their main risk is volatility of annual returns. If they are invested for a long period they are less exposed to volatility in annual returns and more exposed to their investment not outperforming inflation.

The most suitable measure of long-term risk to include on the product dashboard is the capacity of investment options to produce returns in excess of inflation (as measured by CPI) over a 20-year period. CPI is preferable to AWOTE as an absolute return measure as CPI is the measure used in the MySuper product's return target and the measures used for the long-term and annual returns, targets and risks should be consistent and comparable.

It is possible to present a long-term risk measure in a similar format to the short-term risk measure (that is High/Medium/Low).

An additional risk measure would not add unnecessary complexity to the product dashboard if the short and long term risk measures' assumptions were consistently and clearly disclosed.

## Additional carve outs

- 17. Are additional carve outs from the choice product dashboard obligations required? If so, why are these additional carve outs required? In considering this question, you may also wish to consider identifying where the gaps in the current carve out provisions are.**

We are of the view that the choice product dashboard obligations should carve out member-directed investment options, where the member selects the specific assets in the choice option (while remaining invested in other options as required by the Trustee for diversification purposes).

This is in contrast to diversified or single asset class portfolios that are offered as choice options by the Trustee because the Trustee has determined the composition of these portfolios, whereas the member determines the specific composition of their portfolio in a member-directed investment option.

## A liquidity measure

- 18. Should a measure of liquidity be included on the choice and/or MySuper product dashboard? If so, what would a suitable measure be?**

AustralianSuper supports disclosure of a liquidity measure on the basis that it is meaningful to members.

Consideration also needs to be given in relation to how much disclosure of a liquidity measure in blunt terms at the investment option level will of itself create a flight to more liquid options. In many cases this will not be the optimal choice for a long term superannuation investment. It is worth noting that bank liquidity measures whilst reported to APRA, do not accompany disclosure in respect of retail banking products. It is the presence of the regulatory supervision and liquidity testing (and the protections afforded by the RBA to depositors in APRA-regulated institutions) which provides them with comfort on liquidity risk.

Trustees and APRA normally monitor liquidity by considering the percentage of assets of the entire fund that can be liquidated to meet member withdrawals (including pension payments) during a major liquidity crisis.

The liquidity measure proposed in this discussion paper is different, and may not provide meaningful disclosure to members. Firstly, it is suggested to apply to investment options of the fund, given that product dashboards apply only to investment options of the fund. As a result, it can only reasonably measure liquidity in terms of a member moving out of an investment option, which is different from the prudential monitoring of whole-of-fund liquidity. Secondly, like the prudential liquidity measure it does not take into account a range of other factors which impact liquidity, such as the level of inflows and outflows of fund which also affect liquidity.

## Implementation issues

- 19. Should the commencement date for the choice product dashboard be delayed beyond 1 July 2014? If so, what date would be suitable for its commencement? What would be the benefits and costs to such a delay?**

We do not support a delay beyond 1 July 2014. Choice products are already being compared against MySuper products without the benefit of a product dashboard for each product to enable clear and effective investment decision making for members. Any delay would be to the detriment of superannuation fund members, seeking to exercise informed choice about their superannuation fund, and who wish to use choice product dashboards to assist them in making the right choice.

## Part 3B. Portfolio holdings disclosure

### Presentation of portfolio holdings

- 20. Which model of portfolio holdings disclosure would best achieve an appropriate balance between improved transparency and compliance costs? In considering this question, you may wish to consider the various options discussed above:**

**Should portfolio holdings disclosure be consistent with the current legislative requirements (that is, *full* look through to the final asset, including investments held by collective investment vehicles)?**

**Should the managers/responsible entities of collective investment vehicles be required to disclose their assets separately? To give effect to this requirement, legislation would require all collective investment vehicles to disclose their asset holdings, regardless of whether some of its units are held by a superannuation fund.**

**Should portfolio holdings disclosure be limited to the information required to be provided to APRA under *Reporting Standard SRS 532.0 Investment Exposure Concentrations*?**

We support portfolio holdings disclosure being consistent with current legislative requirements, with the following modifications:

- Disclosure of final investment product/asset only, with no attribution of a particular asset to any external fund manager.
- Presentation of four data fields in table format for each final investment product (name, sector, geographical location and percentage of the holding to 2 decimal places of the overall product). Presentation of percentage instead of dollar values would mean the disclosure would reduce potential commercial disadvantage that may be experienced by funds as a result of disclosing the carrying value of unlisted assets and would reduce the exposure of investment managers to commercial disadvantage as a result of disclosing dollar values of assets.

- 21. What would be the compliance costs associated with each of these models for portfolio holdings disclosure?**

The compliance costs for this model would include costs for funds to source and maintain the lists of holdings and for staff to design, publish and maintain the presentation layer for the fund's website. In set-up stage fund staff costs would be approximately \$100,000 and ongoing staff costs would be approximately \$150,000 per annum.

Compliance costs would also include external costs in the form of fees paid to service providers such as custodians for collating details of unit trust holdings details from fund managers, data cleansing and building an automated solution to look through the Fund's products to underlying holdings. We expect these fees would be approximately \$50,000

per annum.

Note that the cost estimates do not assume the lists of holdings are audited. Audit of the lists would be problematic from a timing perspective, given the data is to be updated every six months.

We regard the compliance cost for portfolio holdings disclosure to be small relative to the consumer and public policy benefit that it will provide. In 2009 AustralianSuper conducted a survey on the Fund's investment education and information, which included the opportunity for members to nominate whether they would like the Fund to provide any other information or services. In a sample of 1,000 members, 276 members provided unprompted feedback. Of these comments, 12% were specifically from members wanting the Fund to provide more detailed disclosure of investment holdings.

**22. Should portfolio holdings information be presented on an entity level or at a product (investment option) level?**

It is likely to be more useful for consumer decision making for portfolio holdings disclosure (PHD) to be presented at a product (investment option) level than at an entity level. However, should it be required, it is possible to provide the disclosure at both the product and the entity level.

### Materiality threshold

**23. Is a materiality threshold an appropriate feature of portfolio holdings disclosure?**

We do not believe that a materiality threshold is an appropriate feature of PHD because: (i) a large number of investments would likely be undisclosed; (ii) there is no material additional cost in full disclosure; (iii) there is little material additional cost or work in full, as distinct from partial, disclosure.

**24. What is the impact of a materiality threshold on systemic transparency in superannuation fund asset allocation?**

The impact of a materiality threshold on transparency depends in large part on the threshold that is imposed. The proposed selective disclosure runs the risk that it will not provide optimal consumer and regulatory benefit. We believe that all funds should make full practical disclosure of their portfolio holdings.

**25. What would be the most appropriate way to implement a materiality threshold?**

The most appropriate way to implement a materiality threshold would be for ASIC to exercise its discretionary powers under section 1017BB, to grant relief in respect of particular assets on a case by case basis and with appropriate conditions of relief.

### Implementation issues

**26. Should the commencement date for portfolio holdings disclosure be delayed beyond 1 July 2014? If so, what date would be suitable for its commencement? What would be the benefits and costs to such a delay?**

We are of the view that the commencement date should be delayed to disclosure of holdings as at 31 December 2014, to enable funds to properly prepare for those changes. All funds should be treated equally if they are to be considered for naming in a modern award. In order to meet the initial criteria for consideration, a fund must be MySuper Authorised and must be competitive.

With the ‘best interests of employees’ being at the core of changes to default superannuation products for listing in modern awards selection and assessment, a corporate fund must meet the same stringent tests as any industry or retail fund in

#### **Part 4: Improved competition in the default superannuation market**

**27. Does the existing model (which commences on 1 January 2014) meet the objectives for a fully transparent and contestable default superannuation fund system for awards, with a minimum of red tape?**

We are confident that the objectives of the existing model – to have a fully transparent and contestable default system for awards with a minimum of red tape – will be achieved through the adoption of the existing model’s principles as outlined in the *‘Default Superannuation Funds in Modern Awards: Productivity Commission Inquiry Report’* dated 5th October 2012.

We are satisfied that an exhaustive consultative process was applied in determining this model, with the views of interested parties having been sought. 94 submissions were received and informal meetings were held with key industry, business and employee representative organisations. Following release of the Draft Report, public hearings were conducted in New South Wales and Victoria

In addressing the matters of transparency and contestability, recommendation 7.2 of the report prescribed that;

- all MySuper Authorised products have an equal opportunity to be assessed for listing in awards
- relevant information is made publicly available
- potential conflicts of interest are declared
- all parties have the right to put forward their case for consideration by an unbiased umpire
- all default products must earn their listing in an award on a regular basis.

We are also satisfied that the existing model will keep red tape to a minimum as all funds will be subject to the same application process to be named as a default fund in a modern award and a review of the funds named in each Award will occur every four years.

**28. If not, is the model presented by the Productivity Commission the most appropriate one for governing the selection and ongoing assessment of default superannuation funds in modern awards or should MySuper authorisation alone be sufficient?**

We believe that the existing model will appropriately meet the objectives for a fully transparent and contestable default superannuation system for awards.

We do not believe that a MySuper Authorisation alone is enough for nomination as a default fund under Awards. MySuper products represent a minimum set of operating criteria – they do not, and do not purport to, go to the issue of comparative outcomes for members. Accordingly, AustralianSuper strongly asserts that MySuper compliance, in itself, is not sufficient for the selection and ongoing assessment of superannuation funds eligible for nomination as default funds in Awards.

In addition to being a MySuper product, superannuation funds must be able to meet the

criteria as outlined in *Division 4A – ‘4 yearly reviews of default fund terms of modern awards’ – Subdivision A, Section 156F* of the Fair Work Act 2009 No. 28, 2009 as amended:

- a) the appropriateness of the MySuper product’s long term investment return and risk profile;
- b) the superannuation fund’s expected ability to deliver on the MySuper product’s long term investment return target, given its risk profile;
- c) the appropriateness of the fees and costs associated with the MySuper product given:
  - I. its stated long term investment return target and risk profile; and
  - II. the quality and timeliness of services provided;
- d) the net returns on contributions invested in the MySuper product;
- e) whether the superannuation fund’s governance practices are consistent with meeting the best interests of members of the fund, including whether there are mechanisms in place to deal with conflicts of interest;
- f) the appropriateness of any insurance offered in relation to the MySuper product;
- g) the quality of advice given to a member of the superannuation fund relating to the member’s existing interest in the fund and products offered by the fund;
- h) the administrative efficiency of the superannuation fund;

Any other matters the FWC considers relevant.

This more rigorous and comprehensive set of criteria is an important set of factors to be considered in selecting a default fund, rather than just the minimalist MySuper model.

**29. If the Productivity Commission’s model is appropriate, which organisation is best placed to assess superannuation funds using a ‘quality filter’? For example, should this be done by an expert panel in the Fair Work Commission or is there another more suitable process?**

The Fair Work Commission (FWC) is the appropriate body to make informed decisions about all workplace, industry and Award matters and the parties of standing to FWC are best positioned to understand the needs of employees, employers and the workplace. Further, the Default Superannuation Panel (“expert panel”) which has been created within the Fair Work Commission is the most suitable body to perform the assessments and apply quality filters to funds applying to be named as default superannuation funds in modern awards.

We are confident that the expert Panel, consisting of the FWC President, 3 fulltime members of the Commission and 3 part-time independent members, having been appointed for their expertise in superannuation, finance and investment management is the appropriate group to perform the role of independent and unbiased umpire.

**30. Would a model where modern awards allow employers to choose to make contributions to any fund offering a MySuper product, but an advisory list of high quality funds is also published to assist them in their choice, improve competition in the default superannuation market while still helping employers to make a choice? In this model, the advisory list of high quality funds could be chosen by the same organisation referred to in focus question 29.**

The selection and ongoing assessment of default superannuation products for listing in modern awards must operate on the basis of ‘best interests of employees’ who derive

their default superannuation product in accordance with a modern Award. This must be the core objective of any selection criteria.

It is our view that a model allowing employers to choose to make contributions into **any** fund offering a MySuper product (albeit supported by an advisory list of high quality funds that may or may not be utilised) would not necessarily lead to greater competition, but instead has the potential to be counter to the best interests of employees.

We support the existing model whereby funds must make a submission to be named in a modern award/s and the expert panel assesses each application on its merit – considering key criteria such as the fund’s medium to long term net-of-costs investment performance of the default investment option, the scale of the fund and the level and timeliness of services provided to fund members, the suitability and cost of insurance provided by the fund, the quality of intra-fund advice and the relevance of the fund to the industry in which the employees operate.

In the event that a MySuper product did not make the advisory listing of high quality funds as determined by the Panel (with expertise in superannuation, finance and funds management), then what would make an employer better placed to nominate this alternative MySuper product into which the retirement savings of their employees be paid?

Unless the model stays within the Fair Work Commission and all interested parties are given the standing to apply to, and be directly heard by the Panel to have their products considered for listing in modern awards, the process will lack the rigour and quality filtering that we consider essential to meeting the best interests of members test.

**31. If changes are made to the selection and assessment of default superannuation funds in modern awards, how should corporate funds be treated?**

All funds should be treated equally if they are to be considered for naming in a modern award. In order to meet the initial criteria for consideration, a fund must be MySuper Authorised and must be competitive.

With the ‘best interests of employees’ being at the core of changes to default superannuation products for listing in modern awards selection and assessment, a corporate fund must meet the same stringent tests as any industry or retail fund in order to be named in a modern award.