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Manager
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The Treasury
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PARKES ACT 2600

Re: Governance, enhanced transparency and improved competition in superannuation

Thank you for the opportunity to contribute to this consultation process.

United Voice has had the opportunity to read the submission prepared by the Australian Council of Trade Unions (ACTU) which we support in its entirety.

The attached comments are made in addition to our support for the ACTU's submission.

For more information on this submission, please contact Madeleine Holme on (02) 8204 3000 or madeleine.holme@unitedvoice.org.au

Yours sincerely,

Louise Tarrant
National Secretary

United Voice is a union of workers organising to win better jobs, stronger communities, a fairer society and a sustainable future.

Introducing United Voice

United Voice is a union of workers organising to win better jobs, stronger communities, a fairer society and a sustainable future. Our members work across a range of industries, including aged care, health, childcare, education, property services, hospitality and manufacturing. We are a union of 120,000 Australian workers, united by our shared belief in the dignity of work and our right to fair and just treatment at work and fair and just access to wealth, security and voice in our community. Our members are among the approximately 20 per cent of Australians who are considered the 'working poor', earning less than two-thirds of the median wage and often trapped in a cycle of precarious employment, low pay and insecure work.¹ Not only are we uniquely positioned to provide insight into their experiences and interests, but we have also fought hard to protect and bolster their working conditions, workplace rights and entitlements over the years, of which superannuation is an important pillar.

United Voice has played an active role in representing workers' interests across a range of industries in regards to superannuation. Traditionally, superannuation was limited to white-collar workers, with those workers who were low-paid, blue-collar, women or casualised (which broadly characterises the membership profile of our union) generally excluded from superannuation. From the early 1980s, our union has fought for better access to superannuation entitlements and has played a significant role in ensuring that superannuation is provided (almost universally) across the workforce, first through the award system and then through the compulsory Superannuation Guarantee. It is in this capacity that we respond to the Federal Government's discussion paper on governance, transparency and competition in superannuation – as advocates for both our members and award-reliant workers, and in support of a superannuation system that delivers the best outcomes for fund members.

Our Members' Experiences

The majority of our members work in award-reliant industries and have benefited from the low-cost, not-for-profit model and representative governance structure of industry default funds. Typically, our members are not actively engaged on superannuation and do not choose a fund, but instead rely on default arrangements. As such, our members are reliant on a strong default system in awards to deliver superannuation arrangements that meet their needs. United Voice dedicates a significant amount of time to ensure that the needs of our members and indeed all workers in our coverage are met by our superannuation and retirement system. We believe that as representatives of award-reliant members we have a higher duty of care to ensuring default arrangements deliver on their behalf. We have represented our members in countless cases over the years at the industrial relations tribunal (currently the Fair Work Commission) in relation to superannuation matters.

This duty of care is amplified by an understanding of the specific needs of our membership profile. United Voice has an ageing membership, and a majority of our members are women, part-time or casual workers or come from a migrant background. Many work in contracted industries or are employed in insecure or precarious work arrangements, where employer non-compliance with the superannuation guarantee is prevalent. For many years, our members have spoken about their concerns in relation to superannuation and retirement. A 2012 demographic survey of our membership found that our members struggle on low wages and are concerned about retirement. 56 per cent report having 'great difficulty' managing financially, with nearly 50 per cent of people citing the main reason for this as inadequate incomes and viewing this as a long-term problem. 40 per cent of our members said they could not afford to retire before age 70, with 7 per cent saying they would 'never' be able to retire. Affordability problems mean that 30 per cent of members expect to work 10 years or more longer than they would like to. 58 per cent of members said they were not confident about how to fund their retirement, with 90 per cent of older members saying they expected to have to rely on the age pension in retirement.

¹ United Voice (2011), *Living on a knife's edge: The growth of the working poor in Australia*, p.4.



A 2013 survey of 26,000 United Voice members showed that concerns about superannuation and retirement are widely felt by our members, particularly those approaching retirement age. Many of our members feel they do not adequately understand superannuation and do not have the knowledge or expertise to make the right decisions. They are worried that they are not contributing enough to their super and are concerned about not being able to afford to retire.

Members expressed concern about the adequacy of retirement incomes, particularly in the context of cost of living pressures (such as housing and utility costs). Some members approaching retirement age have been forced to delay retirement plans. For those who work in physically demanding jobs (such as cleaning) this has meant an added burden that many simply will not be able to sustain. The idea of fairness also came up a lot, with many members expressing a view that politicians and public sector workers should not receive higher benefits than workers in the private sector.

"When I get older and reach retirement, I worry if I will I have enough money to support myself and my wife."

- John, Security Guard (New South Wales)

"I'm 59 so I'd like to slow down a bit. But we haven't finished paying off our house yet and we couldn't maintain a standard quality of life if I retired with a mortgage."

- Cathy, Cleaner (South Australia)

"I'm looking at the end of my working life and find myself asking, do I have enough? With the cost of basics forever going up I just don't know if I'll be able to support myself comfortably in my twilight years."

- Barbara, Teacher's Aide (Queensland)

"Retirement really worries me. Most people my age don't have the money to retire and need to keep working. I don't want to work until I hit the grave."

- Thomas, School Cleaner (Tasmania)

"My main issue is that I have to go to work. The cost of living is so high you can't afford not to. I'm 60 and I still have to work but my job's very physical. I'm a housekeeper, so that gets harder if you're over 60."

- June, Motel Housekeeper (Queensland)

"Implement a superannuation watch dog to ensure employers are paying their staff superannuation. Fine employers that don't."

- John, Security Guard (South Australia)

"Give everyone as much superannuation as politicians receive."

- Robert, Casino Worker (Tasmania)

Given the vulnerable circumstances of our members and their concerns about superannuation and retirement adequacy, we believe that any proposed changes to the superannuation system should be carefully considered and should ensure that the interests of award-reliant default superannuation members are protected. It is in this context that we make the following comments in response to the Government's discussion paper, in relation to governance and default fund arrangements.



Governance

1. United Voice is supportive of the equal representation model, which we believe serves the best interests of fund members.

United Voice is a strong supporter of the not-for-profit, equal representation model. Evidence shows that this model has delivered better returns on average to fund members.² We believe that the representative structure of default industry super funds has been a critical factor in their success, fostering a collaborative approach between employer and employee representatives that ensures both parties are focused on the best interests of fund members.

Equal representation is a widely used and recognised model of pension fund governance around the world. The benefits of *employee representation* on pension funds, in particular, are well established. According to an OECD study, “employee or member representation can ensure a better alignment of the interest of the governing board with those of the fund’s beneficiaries”.³

Moreover, there is no evidence that representative governance structures have not worked in the best interests of members and no compelling case that they need to change. Indeed, non-representative structures have historically not performed as well and are arguably more susceptible to conflicts of interest. According to a 2006 Deloitte report:

“Decisions made in the interests of members may run counter to the commercial interests of parties related to the trustee – and decisions that would benefit the interests of the parties related to the trustee may not be in the best interest of members... The trustee of a master trust is usually related to the commercial organisation that sponsors it. That organisation is itself almost invariably a major supplier of goods and services to the trust. In some cases the sole major supplier. Typically the sponsor (via the related trustee) is contracted to deliver services. A strict interpretation of the contractual arrangements would admit the possibility of the sponsor being terminated but the reality is that the sponsor drives the trust.”⁴

2. Employee representatives are best placed to represent the interests of disengaged default fund members.

United Voice has a long and proud involvement with superannuation. We have played an active role in representing the interests of fund members across a range of diverse industries and sectors, with employee trustee positions on major industry superannuation fund boards, including AustralianSuper, HOSTPLUS and HESTA. Moreover, as a representative of largely award-reliant workers, United Voice has also fought hard for superannuation as an industrial entitlement and to ensure the creation of a low-cost, not-for-profit model of default superannuation.

Despite overwhelming evidence of the success of default funds in delivering better returns for members, there seems to be a lack of recognition of the positive role played by union trustees on the boards of super funds. Over the years, United Voice directors have worked tirelessly to ensure that the funds they

² According to a 2009 report commissioned by AIST, representative trustee funds that operate on a not-for-profit basis outperform for-profit funds by up to 2.4% per annum. See Bryan, D, Ham, R, Rafferty, M and Yoon, K (2009), “Governance and Performance in the Australian Occupational Superannuation Industry”, March 2009. The most recent APRA data also demonstrate that at the aggregate level super funds operating under representative structures consistently outperform retail funds over 1, 5, 10 and 15 years. APRA’s analysis of annual rates of return over a 10 year period show that 96 per cent of the top 50 performing funds are from the not-for-profit sector, and of the 50 lowest performing funds 80 per cent are for-profit funds. Refer to the ACTU’s submission.

³ Cited in Bryan, D, Ham, R, Rafferty, M and Yoon, K, “Governance and Performance in the Australian Occupational Superannuation Industry”, March 2009.

⁴ Deloitte, “Caesar’s wife”, Analysis June 2006, available at http://www.deloitte.com/assets/Dcom-Australia/Local%20Assets/Documents/Deloitte_Analysis_June_06%281%29.pdf.



are involved in provide an efficient, low-cost product and maximise returns to members. The officials elected or nominated to act as the directors of industry funds feel a direct and personal responsibility to act in the best interests of the fund's members. Their continued employment and the respect they enjoy from members would certainly be at risk if they failed in their duty to fund members. Unions are the only legitimate representatives of (disengaged) workers on superannuation matters and as such play an essential role in ensuring that their best interests are served.

3. United Voice does not support reforms mandating the appointment of independent directors on superannuation fund boards.

Existing arrangements already allow the appointment of independent directors by funds if they believe such appointments are appropriate to their needs and circumstances. Moreover, the model of independent directors in the corporate and banking and insurance sector is not an appropriate comparison to use in relation to superannuation funds. As the ACTU's submission highlights, responsible superannuation entities are established as trusts, whereby trustees have a fiduciary duty to act in the best interests of beneficiaries. Therefore, the legal obligations placed on the directors of superannuation funds are qualitatively different from those placed on the directors of banks and insurance companies. Furthermore, shareholders or sponsoring organisations of not-for-profit super funds with representative structures (*employer and employee sponsored funds*) do not have a beneficial interest in how funds operate. Funds are run in the interests of the beneficiaries, with all profit going back to fund members.

This contrasts sharply with the practice of retail funds, where many directors are appointed by a related corporate body which has a strong commercial interest in how member contributions are managed and invested. It is this commercial interest or conflict that should drive any consideration of the appointment of independents, but that is absent from the not-for-profit sector. In considering the application of ASX corporate governance guidelines on independent directors to superannuation funds, the government should recognise the important distinction between beneficial shareholders of listed corporates whose primary interest is to maximise returns on their investments, and non-beneficial shareholders in a superannuation trustee context whose primary duty is to advance the best interests of fund members.

Default Super Funds

1. The system of default superannuation fund selection in awards has delivered an efficient, low-cost product and higher net returns for default fund members.

The distribution of default superannuation contributions occurs through our industrial relations system. Superannuation represents deferred wages. If superannuation did not exist the employer contributions would be paid regularly as increased wages. That must mean that employees have to be satisfied that the best possible use is being made of what is, after all, their own money. That is why it is an important condition of employment negotiated by employers and unions on behalf of employees. Our view of current default arrangements is that funds are not in direct competition but deliver an efficient, low-cost product to particular workers in particular sectors. Moreover, default funds named in awards have historically outperformed non-default funds.⁵ Our members do not support a change to this system. They object to the idea that profit seeking entities might have access to their deferred wages and deliver a reduced rate of return as a result of increases in administration and other costs.

The nomination of default funds in awards is part of an industrial process in which an impartial tribunal (currently the Fair Work Commission) arbitrates outcomes and ensures a minimum safety net of wages and conditions for all employees, which includes superannuation. Unions have played a central role in

⁵ Bryan, D, Ham, R, Rafferty, M and Yoon, K (2009), "Governance and Performance in the Australian Occupational Superannuation Industry", March 2009. Research conducted by the Workplace Research Centre, University of Sydney, and commissioned by AIST. See also Liu, K and Arnold, B R (2010) "Australian superannuation outsourcing – fees, related parties and concentrated markets", *APRA Working Paper*, July 2010 and Sy, W, Inman, C, Esho, N and Sane, R (2008) "Superannuation fund governance: trustee policies and practice", *APRA Working Paper*, July 2008.



representing the interests of employees in this process, and have consistently argued for a low-cost, efficient and representative model that meets the best interests of fund members. United Voice believes there is no conflict of interest in nominating an employee director to multiple industry funds that provide default products to our members as these funds are not in direct competition with each other for members. In fact, we have invested heavily in developing the skills and experience of particular individuals who play a critical role in ensuring that default superannuation arrangements and the superannuation system as a whole works in the best interest of beneficiaries.

2. United Voice supports the ongoing role of the Fair Work Commission in nominating default funds in Awards, and argues that decisions should be based on precedence and merit.

There is a perception that the nomination of default funds has largely been determined by whether an organisation has standing on the matter, and that decisions have been based on precedence rather than establishing the merits of the particular funds under consideration. This is not the case. Historically, the nomination of default funds in awards was determined with regard to certain principles, which favoured portability between employers, the efficiencies and economies of scale that flow from the operation of a small number of funds in an industry, and equal representation of employees and employers on trustee boards. The Commission's decisions were informed by an understanding of the merits of particular funds, taking into account the following matters:

- portability;
- mobility of the workforce;
- no entry/exit fees and no commissions paid to agents of financial planners;
- equal representation of employer and employee representatives on the trustee board;
- low administration costs;
- member investment choice;
- automatic insurance cover; and
- monthly contributions.⁶

The merit based process followed by the Commission ultimately resulted in the establishment of a default system with an efficient, low-cost delivery model, which on average provides better returns for default fund members. The role of the Commission in establishing the merits of particular funds and recognising criteria for nomination is important to note, particularly in light of proposed changes to default arrangements to include generic MySuper products that may not meet such criteria.

Moreover, it is entirely appropriate that the views of employers, employees and their representatives have precedence over the views of non-industrial parties (including superannuation funds). Indeed, even amongst these parties, the views of employees should be paramount. Their deferred wages lie at the heart of the argument. As previously demonstrated, superannuation is an industrial entitlement and the selection of default funds is an important industrial issue for workers and their representatives.

Abandoning the current system whereby default funds are selected on merit *from the point of view of the beneficiaries* would undermine the system as a whole. It would force industry funds to compete for individual members' contributions, thereby forcing up the cost of administration.

3. Opening default fund arrangements up to 'increasing competition' and 'employer choice' may be contrary to the primary objective of serving the best interests of members.

United Voice wholeheartedly endorses the principle expressed by the ACTU in its submission that the default fund system must serve the best interests of disengaged members:

⁶ AIRC (1999), Building and Plumbing Award Simplification, 11 August 1999, [Print R770]. See <http://www.fwa.gov.au/FWAISYS/isysquery/c399d9bb-3e4a-40a4-9376-92c113c46b68/1/doc/>.



“[...] some in the financial services sector have a significant interest in securing greater access to default contributions partly because it is easier to impose high fees, charges and commissions on those who do not engage with the detail of how their superannuation is managed by others. It is therefore vital that in our system of compulsory contributions public policy places the interests of disengaged members first and recognises the highly distinctive nature of the market for default superannuation that exists, not in economic theory, but in practice.”

Due to the compulsory nature of superannuation and limited member engagement, any proposed reforms to the nomination of default funds in awards should put the best interests of members as the primary objective, rather than focusing on improving competition or creating a “fully transparent and contestable default superannuation fund system”. Indeed, far from being in the best interests of members, heightened competition for default fund status is likely to result in increased distribution costs for default fund members and have a negative impact on returns.⁷

Opening up the default system to increasing levels of competition will result in an erosion of employee voice, with a particularly significant impact on award-reliant industries where employees will effectively have no collective say about which funds are named. The prism of ‘employer choice’ is dangerous – as highlighted in the ACTU’s submission many employers do not want it and it has the potential to cause huge conflicts of interest. The prevailing rationale in a model of market contestability where there is a greater role for employer choice seems to be ‘what’s best for employers’ as opposed to their employees. Opening up default arrangements could result in employers making decisions based on commercial advantage, inducements or administrative ease, instead of the best interests of employees.⁸ Allowing a greater role for employer choice may also lead to default super funds adopting ‘soft’ arrears processes so as to avoid the threat of employers moving between funds as a way of avoiding unwanted scrutiny on their superannuation obligations. The problem of employer choice is summarised in a 2008 paper by the Australia Institute:

“A system, which grants discretion to employers to choose the fund into which workers are automatically enrolled (unless they make an active choice), has the potential to create large conflicts of interest between employers, employees, super funds and financial planners. So long as employer and employee interests remain unaligned in this way, employers who are tasked with choosing a default fund (and are often the target of marketing efforts by funds and advisers) may end up not selecting the most appropriate default fund for their employees but may, instead, decide on a fund which presents a lower administrative burden”.⁹

United Voice urges the Government to acknowledge the problems associated with employer choice and to carefully consider any changes in the context of its responsibility to protect the best interests of millions of disengaged fund members.

⁷ According to modeling by Rice Warner, opening up the default system to any MySuper product is likely to increase distribution costs for members of industry superannuation funds by \$75 per member per annum. The net cost impact on members (given an estimated \$8 reduction in cost as a result of the benefits of consolidation) would be \$67 per member per annum. The proposed changes could lead to a significant reduction in benefits for fund members over their lifetime, of the order of \$27,000 or 8.2% of total retirement benefits for a 25 year old with a current balance of \$15,000, and \$17,000 or 4.1% of total retirement benefits for a 45 year old with a current balance of \$80,000. See Rice Warner (2012), “Default Superannuation Funds in Modern Awards”, research prepared for HOSTPLUS for submission to the Productivity Inquiry into Default Funds.

⁸ Research by the ATO into employer attitudes and behaviour in relation to superannuation found that 13 per cent of employers admitted either to receiving inducements to use their current default fund, or to not being sure if inducements had been offered. 11 per cent of large employers admitted to having been offered inducements to select their default fund. See Brunton, C. (2010), “Investigating Superannuation: Quantitative Investigation with Employers, Final Qualitative Report”, p.56.

⁹ Fear, J and Pace, G, “Choosing Not to Choose: Making Superannuation Work by Default”, Discussion Paper Number 103, November 2008, Paper released by the Australia Institute.

