

28th October 2016

Inquiry into Alternative Superannuation Default Models
Productivity Commission
Locked Bag 2, Collins Street East
Melbourne VIC 8003

SUBMISSION ON ALTERNATIVE SUPERANNUATION DEFAULT MODELS

Dear Sir / Madam.

On behalf of the Institute of Public Affairs, please find enclosed this submission on Alternative Superannuation Default Models, which has been prepared in response to the Productivity Commission's September 2016 Issues Paper.¹

1. Introduction and Context

The Institute of Public Affairs believes that superannuation lies at the heart of important national policy questions about taxes, spending, personal responsibility and choice, as well as the appropriate role of government and its regulatory authorities.

The superannuation system in Australia and other countries exists as a means to enable individuals to take greater responsibility for their own lives and in particular, to give them the opportunity to fully fund their own retirement.

A complementary benefit is that income derived from private savings and consumed in retirement is income that is not provided by government i.e. the taxpayer.

Regulatory measures that affect the confidence or ability of people to provide for themselves damage the strength of the retirement incomes system, whether they take the form of:

- restrictions on how or where private savings can be accumulated or invested;
- tax increases that remove private savings from personal accounts;
- restrictions on the amount of money that can be saved within or transferred into personal accounts;
- attempts to use the welfare system as an income reference point, such as the Australian Government's current proposal that the primary objective of the superannuation system be to "*provide income in retirement to substitute or supplement the Age Pension*"; or
- continuous changes to the rules by governments without notice, sometimes also without grandfathering.

¹ Productivity Commission, *Superannuation: Alternative Default Models*, Issues Paper, September 2016, <http://www.pc.gov.au/inquiries/current/superannuation/alternative-default-models/issues/superannuation-alternative-default-models-issues.pdf>

Australia's superannuation assets are currently worth over \$2 trillion and are projected to increase to \$9 trillion in value by 2040. Superannuation also represents around 22 per cent of the assets of Australian households.²

Yet the September Issues Paper noted that around two thirds of superannuation fund members use default arrangements,³ and in August the Productivity Commission said that around 20 per cent of the workforce may be "*constrained from making an active choice...particularly employees under some modern awards and enterprise bargaining agreements.*"⁴ This is equal to over 2 million Australians.⁵

While the historic role of the trade union movement and the wider workplace relations system in the establishment of Australia's diverse superannuation market is acknowledged, this fact should not mean that current arrangements for the selection of default superannuation funds should be set in stone.

Policy makers and regulators should always be conscious of whether or not existing arrangements in any area reflect current market conditions, modern standards or community expectations.

As the Productivity Commission itself said on the role of the Fair Work Commission in its November 2015 Workplace Relations Framework Inquiry Report:

*"...the legalistic approach it adopts for award determination gives too much weight to history, precedent and judgements on the merits of cases put to it by partisan interest groups. This calls for a change in institutions and in practices."*⁶

This statement applies equally to superannuation policy.

2. Overall Financial and Budgetary Context

Notwithstanding the considerable growth in superannuation assets from \$245 billion in 1996 to \$2 trillion today,⁷ Australia's 2014 National Commission of Audit found that the proportion of retirees on a full or part pension was expected to remain at around 80 per cent over the next three decades.⁸

² Superannuation (Objective) Bill 2016 & Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016 Explanatory Materials, https://consult.treasury.gov.au/retirement-income-policy-division/superannuation-reform-package/supporting_documents/Exposure_draft_Explanatory_Memorandum_Superannuation_Tranche_1.pdf

³ Productivity Commission, Superannuation: Alternative Default Models Issues Paper, September 2016, p.2, <http://www.pc.gov.au/inquiries/current/superannuation/alternative-default-models/issues/superannuation-alternative-default-models-issues.pdf>

⁴ Productivity Commission, *How to Assess the Competitiveness and Efficiency of the Superannuation System* Draft Report, p.37, <http://www.pc.gov.au/inquiries/current/superannuation/competitiveness-efficiency/draft/superannuation-competitiveness-efficiency-draft.pdf>

⁵ Explanatory Memorandum, Superannuation Legislation Amendment (Choice of Fund) Bill 2016, p.15, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr5643_ems_d9a2df_d1-1a10-42f9-aa7a-59733e7f6fe5%22

⁶ Productivity Commission, *Workplace Relations Framework*, Volume 1, No.76, 30 November 2015, p.2, <http://www.pc.gov.au/inquiries/completed/workplace-relations/report/workplace-relations-volume1.pdf>

⁷ Superannuation (Objective) Bill 2016 & Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016 Explanatory Materials, https://consult.treasury.gov.au/retirement-income-policy-division/superannuation-reform-package/supporting_documents/Exposure_draft_Explanatory_Memorandum_Superannuation_Tranche_1.pdf

⁸ Commonwealth of Australia, *National Commission of Audit 2014*, Chapter 7.1: Age Pension, <http://www.ncoa.gov.au/report/phase-one/part-b/7-1-age-pension.html>,

The Organisation for Economic Co-operation and Development (OECD) has also found that the net pension replacement rate for average income earners in Australia is expected to be only 58 per cent (53.4 per cent for women) in 2061⁹ when the generally accepted benchmark, including from former Prime Minister Paul Keating,¹⁰ is 70 or even 80 per cent.

In other words, the superannuation system is not currently providing adequate income in retirement, and wasn't predicted to be doing so in the foreseeable future, even prior to the Commonwealth Government's proposed changes announced in the 2016 Budget.¹¹

However, the ability of the Commonwealth Government to maintain the Age Pension at current levels, as well as pay for complementary health and other services for older Australians, must also be questioned.

Since 2007-08, Commonwealth Government spending has increased¹² from \$271 billion per year or 23.1% of Gross Domestic Product (GDP), to \$445 billion in 2016-17 or 25.8% of GDP.

By 2019-20, spending is expected to pass \$500 billion for the first time. So while it took 107 years for federal spending to reach \$271 billion it will take only another twelve years to reach \$500 billion and according to trend a total of only fourteen years to double it to \$542 billion.

Similarly, sometime shortly after 30 June 2017, Australian Government Gross Debt is expected to pass \$500 billion for the first time. Gross debt on 30 June 2007 was only \$53.2 billion.¹³

According to the Government's own Budget Papers, the cost of 'Income Support for Seniors' was \$43.2 billion in 2015-16 and is projected to reach \$51.8 billion just four years later. The total social security budget is similarly expected to rise from \$158.6 billion in 2016-17 to \$191.8 billion by 2019-20.¹⁴

With the number of working-age Australians for every person aged over 65 expected to drop from 4.5 in 2014-15 to 2.7 by 2054-55 (it was 7.3 in 1974-75), and with a total proportion of over 22% of Australians to be aged over 65 in the same year,¹⁵ the financial pressures on government will be considerable.

Encouraging more people to save more of their own money for their retirement, increasing superannuation fund returns, and giving people more personal control over how their money is invested will become increasingly important.

⁹ Organisation for Economic Co-operation and Development, *Pensions at a Glance 2015*, p.210, <http://www.oecd.org/publications/oecd-pensions-at-a-glance-19991363.htm>.

¹⁰ Paul Keating, "The Story of Modern Superannuation", Speech to the Australian Pensions and Investment Summit, 31 October 2007, <http://www.keating.org.au/shop/item/the-story-of-modern-superannuation-31-october-2007>

¹¹ Commonwealth of Australia 2016-17 Budget website, Tax and Super section, http://budget.gov.au/2016-17/content/glossies/tax_super/html/

¹² Commonwealth of Australia, *Budget Paper No.1: Budget Strategy and Outlook 2016-17*, p 10-5

¹³ *Ibid.* p 10-13

¹⁴ Commonwealth of Australia, *Budget Paper No.1: Budget Strategy and Outlook 2016-17*, p 5-26

¹⁵ Commonwealth of Australia, *2015 Intergenerational Report: Australia in 2055*, http://www.treasury.gov.au/~media/Treasury/Publications%20and%20Media/Publications/2015/2015%20Intergenerational%20Report/Downloads/PDF/2015_IGR.ashx

3. Union Role in Beginning of Compulsory Superannuation

In a 2007 speech to the Australian Pensions and Investment Summit, former Prime Minister and Treasurer Paul Keating noted ¹⁶ how compulsory, employer-funded superannuation contributions first arose out of the Australian Council of Trade Unions' (ACTU) submission to the 1985 National Wage Case at the then Conciliation and Arbitration Commission.

Mr Keating noted that in supporting the ACTU's claim for three per cent employer-funded superannuation, he "*wanted unions to enjoy a structural and ongoing benefit in recognition of their years of wage responsibility.*"

He also said that he and ACTU Secretary Bill Kelty "*were both of a mind to add the layer of private retirement incomes to the industrial agenda as part of an expanded social wage.*"

After the Conciliation and Arbitration Commission subsequently knocked back the ACTU's 1990 attempt to increase award superannuation contributions to 6 per cent, the then Treasurer gave a commitment to Mr Kelty and lead ACTU negotiator Iain Ross to cite the Australian Constitution's Corporations Power and legislate an increase.

Mr Keating also made it clear that promising to increase employer-funded superannuation contributions to 6 and then 12 per cent was an important part of his 1991 campaign to dislodge Bob Hawke from the Prime Ministership, with Mr Kelty and Mr Ross threatening to walk away from the Prices and Incomes Accord if contributions did not rise.

From the very beginning, employee superannuation has clearly been viewed in certain quarters through the prism of an industrial relations agenda.

Thirty one years later, the Conciliation and Arbitration Commission's successor body, the Fair Work Commission, retains an important role in approving the content of workplace agreements and allocating default funds.

Iain Ross is now the President of the Fair Work Commission, appointed by the Gillard Government in 2012.

4. Default Superannuation, the Ongoing Role of Trade Unions and the Heydon Royal Commission

In September 2016, the default superannuation market was estimated to be worth around \$450 billion with funds inflow of around \$9 billion per year. ¹⁷

There is little doubt that the current legislative framework creates a significant advantage for superannuation funds that have a footprint in the workplace relation system.

¹⁶ Paul Keating, "The Story of Modern Superannuation", Speech to the Australian Pensions and Investment Summit, 31 October 2007, <http://www.keating.org.au/shop/item/the-story-of-modern-superannuation-31-october-2007>

¹⁷ Australian Financial Review, "AustralianSuper braced for banks to get access to default markets," 21 September 2016, <http://www.afr.com/news/policy/australiansuper-braced-for-banks-to-get-access-to-default-market-20160921-grl5p3>

According to the Financial Services Council, industry funds account for 88 per cent of the superannuation products listed in the 122 modern awards, with one fund, AustralianSuper, listed in 82 alone.¹⁸

In fact, nine of the ten most commonly included award default funds are industry funds.¹⁹

But this understates the extent of industry fund influence, as choice can be limited or restricted by negotiated enterprise agreements as well.

For example the 2011 enterprise agreement between Coles/Bi-Lo and the Shop, Distributive and Allied Employees Association (SDA) specifies that superannuation payments are to be made to the Retail Employees Superannuation Trust (REST)²⁰ as does the 2012 agreement between Woolworths and the SDA.²¹

While the fact that the REST Board²² currently has four SDA representatives, as well as one each from Coles, Woolworths, Myer, the Retail Council and an independent chairman, suggests that unions and some employers may be satisfied with this arrangement, it is not apparent that the views of actual employees are taken into consideration.

The practical reality experienced on the ground by some employees was also highlighted at the recent Royal Commission into Trade Union Governance and Corruption.

The Royal Commission's Interim Report²³ detailed how the Transport Workers Union (TWU) seeks to have employer superannuation payments made into its related entity TWUSUPER, in a similar manner to the National Union of Workers and its associated Labour Union Co-Operative Retirement Fund (LUCRF).

The Report noted the five year campaign by TWU member and Toll employee Paul Bracegirdle to be allowed to choose his own fund amidst considerable union resistance, as well as the decision by market research company employee Katherine Cole to reduce her hours because she was compelled to have her superannuation payments go to LUCRF.

Importantly, the Royal Commission also highlighted the disclosure of CBUS superannuation fund member details to a Construction, Forestry, Mining and Energy Union (CFMEU) official, which while not directly related to the question of default superannuation, illustrates what can be the imprecise boundaries between fund, union, employer and employees.²⁴

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Ltd Retail Agreement 2011, <http://www.sda.org.au/download/enterprise-agreements/COLES-SUPERMARKETS-AUSTRALIA-PTY-LTD-BI-LO-PTY-LTD-RETAIL-AGREEMENT-2011.pdf>

²¹ Woolworths National Supermarket Agreement 2012, <http://www.sda.org.au/download/enterprise-agreements/WOOLWORTHS-NATIONAL-SUPERMARKET-AGREEMENT-2012.pdf>

²² REST Industry Super website, Board Members page, <http://www.rest.com.au/About-REST/Our-Board>

²³ Royal Commission into Trade Union Governance and Corruption, Interim Report, Volume 1, Chapters 6.2 and 6.3, <https://www.tradeunionroyalcommission.gov.au/reports/Documents/InterimReportVol1.pdf>

²⁴ Royal Commission into Trade Union Governance and Corruption, Interim Report, Volume 2, Chapter 8.3, <https://www.tradeunionroyalcommission.gov.au/reports/Documents/InterimReportVol2.pdf>

The Royal Commission's Final Report²⁵ noted that “*the potential for coercive conduct and conflicts of interest in enterprise bargaining identified in respect of employee benefit funds also exists in respect of superannuation funds*” and that while Australian employees are generally able to choose their own superannuation fund, people employed under particular industrial agreements are not.

It recommended that the relevant parts of section 32 of the Superannuation Guarantee (Administration) Act 1992 that deny employee superannuation fund choice be repealed, noting that the Murray Financial System Inquiry had made a similar recommendation.²⁶

While the Turnbull Government introduced the Superannuation Legislation Amendment (Choice of Fund) Bill 2016 into the House of Representatives in March, seeking to extend choice of fund to all employees under workplace determinations or enterprise agreements from 1 July 2016, this legislation lapsed after the 2016 Federal Election.²⁷

Although allowing all employees the opportunity to choose their superannuation fund and providing an avenue for the selection of a default fund when no choice is made are separate issues, they are inextricably linked.

Given that up to 20 per cent of employees or around two million people are estimated to have restricted, or no, choice of superannuation funds, this is a considerable problem.²⁸

5. Preferred Solution

In a September 2016 paper for the Institute of Public Affairs, *Strangling the Goose with the Golden Egg*,²⁹ Rebecca Weisser and Henry Ergas highlighted a number of reasons why the current superannuation system is failing Australia.

High taxes, complexity, inconsistent treatment of different assets, and a bias against saving featured prominently.

However, the paper also noted a number of sources that had found Australia's superannuation system suffers from high transaction costs.

These included:

- a 2015 OECD Report which found that Australian pension fund operating expenses as a share of total investments were up to eight times higher than other markets;³⁰ and

²⁵ Royal Commission into Trade Union Governance and Corruption, Interim Report, Volume 5, Chapter 6C, <https://www.tradeunionroyalcommission.gov.au/reports/Pages/Volume-5.aspx>

²⁶ David Murray AO et al, *Financial System Inquiry Final Report*, November 2014, Recommendation 12, p.131, http://fsi.gov.au/files/2014/12/FSI_Final_Report_Consolidated20141210.pdf

²⁷ Parliament of Australia, Bills and Legislation website, http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5643

²⁸ Explanatory Memorandum, Superannuation Legislation Amendment (Choice of Fund) Bill 2016, p.15, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr5643_ems_d9a2dfdl-1a10-42f9-aa7a-59733e7f6fe5%22

²⁹ Rebecca Weisser and Henry Ergas, *Strangling the Goose with the Golden Egg: Why We Need to Cut Superannuation Taxes on Middle Australia*, September 2016, <http://www.ipa.org.au/publications/2545/strangling-the-goose-with-the-golden-egg>

³⁰ Organisation for Economic Co-operation and Development, *Pensions at a Glance 2015*, p.97, <http://www.oecd.org/publications/oecd-pensions-at-a-glance-19991363.htm>,

- the 2014 Financial Services Inquiry report which found that superannuation fees had not fallen by as much as expected, given the considerable increase in funds under management which should have translated into substantial economies of scale.³¹

In particular, this paper cited a 2014 report by Jim Minifie, *Super Sting: How to Stop Australians Paying Too Much for Superannuation*,³² which looked at the issue of superannuation fund fees and expenses in depth, and proposed a considered solution.

This report revealed that:

- Australian superannuation fund fees are higher than most OECD countries and much higher than systems of a similar size;
- As total funds under management and individual fund sizes increased, fees also increased;
- High fees can reduce retirement income by more than 20 per cent; and
- Between 2004 and 2013 fees had absorbed over a quarter of superannuation account gross earnings, reducing \$378 billion in earnings to just \$220 billion.

It also noted that employees and employers are disengaged from the fund selection process, that there is wide ignorance of comparative fee and investment performance, and that a 2010 survey for the Australian Taxation Office found that 60 per cent of people did not choose their own fund when they started at their most recent employer.

As a solution, Mr Minifie suggested that the Government run a tender for the right to operate a default superannuation fund or small number of funds for a set period, and that employees are offered the opportunity to join, when they start a new job or when they lodge their tax return each year.

The Institute of Public Affairs considers this to be a sound concept, but would propose some changes.

5.1 Abolition of Compulsory Superannuation

Firstly, employers are only obliged to assist with the administration of employee superannuation funds so long as they are required by law to pay a percentage of an employee's wages into a superannuation account.

If compulsory, employer-funded superannuation contributions were to be abolished, then there would be no need for employers to work out where to pay these contributions, and if an employee wished to save money into a superannuation account, he or she could either nominate where the employer may deposit it, or conduct the transaction themselves.

³¹ David Murray AO et al, Financial System Inquiry Final Report, November 2014, Recommendation 10, <http://fsi.gov.au/publications/final-report/chapter-2/improving-efficiency/>

³² Jim Minifie, *Super Sting: How to Stop Australians Paying Too Much for Superannuation*, Grattan Institute, 27 April, 2014, <http://grattan.edu.au/wp-content/uploads/2014/04/811-super-sting.pdf>

5.2 *Default Funds and Sunset Clause*

However, taking into consideration the terms of reference of this inquiry, the abolition of compulsory employer-funded superannuation payments is not currently on the agenda, so there must be a process for selecting a default fund or funds that involves agents other than the employee.

The Institute of Public Affairs considers that in order to improve personal engagement with superannuation, competition between funds, and fund performance, the process must be centred on the employee themselves as much as possible.

There should be no role for an employer, trade union, employer organisation or government entity such as the Fair Work Commission to choose where an employee invests their own retirement savings.

The Commonwealth Government should immediately repeal any legislation or regulations that prescribes a role for the Fair Work Commission, trade unions or employer organisation in the selection of default superannuation funds.

The Government should run a tender process to select between two and five private sector superannuation funds that are then given the right to act as default funds for a set period.

This process should be open to existing retail and industry funds, as well as to new competitors, including from overseas, that are approved by an appropriate body such as the Australian Prudential Regulation Authority (APRA).

The default period should operate for between two to four years, before the tender process is run again. The concept that employees are presented with the opportunity to change to a default fund when they lodge their tax return with the Australian Taxation Office (ATO) each year, also has merit.

While this system is in operation, the ATO should publish a simple one or two page form for new employees (or an online portal as appropriate) with basic information about these default funds, but specifying that the employee may also choose their own. If an employee still does not exercise choice, one of the up-to-five default funds should be randomly allocated to them.

Importantly however, these laws should either sunset or be re-examined by a body such as the Productivity Commission after a period of up to twelve years, or three tender cycles.

Long term, it would not be desirable to merely substitute government or ATO/APRA involvement in the selection of employee superannuation funds for the current employer/Fair Work Commission role.

The ultimate aim is to shake up the system, remove vested interests, involve the private sector, boost competition and engagement, and empower people to take greater responsibility for their own financial future.

In the same way that these entities are not involved in the selection of employee bank accounts, electricity or telecommunications providers, the selection of a superannuation fund should ultimately be a matter for an employee alone.

5.3 Assessment Against Six Principles

This model is in accordance with the six guiding principles that formed part of Treasurer Morrison's 17 February 2016 Terms of Reference, being:

- Best Interests;
- Competition;
- Feasibility;
- Credibility and Transparency;
- Regular Assessment and Accountability; and
- Fiscal Implications.³³

Taking default superannuation out of the workplace relations system, excising the role of employers, maintaining a means to select default funds, and allowing all approved superannuation funds to bid to be the default is the most effective way to boost competition, reduce fees and empower individual account holders.

This model would be low cost and easy to administer for each employer, and second/third/fourth tenders would allow new providers to offer default services while the system matures.

It reduces the potential for vested industrial relations system interests to influence the selection of default funds, and with the designation of a sunset clause / formal review process attempts to ensure that government involvement is a means to an end rather than an end in itself.

In particular the sixth principle asks the Productivity Commission to consider "*the extent to which the process can reduce reliance on the Age Pension and/or give rise to other risks or costs for Government.*"

It is a shame that this principle was not heeded in putting together the superannuation changes announced in the May 2016 Budget.

Finally, it is noted that the Terms of Reference asked the Productivity Commission to "*develop alternative models for a formal competitive process for allocating default fund members to products...*" a phrase also picked up later in the Issues Paper.

This is an unfortunate juxtaposition that illustrates how the principle of personal choice is not the primary consideration when discussing superannuation issues. A system should not allocate people to products – it should either allocate products to people, or allow people to choose.

6. Current Fee and Industry Structures are Irrelevant for Default Choice

The Institute of Public Affairs has noted some of the public commentary on this issue since the release of the Productivity Commission's Issues Paper.

³³ Productivity Commission, *Superannuation: Alternative Default Models*, Issues Paper, September 2016, <http://www.pc.gov.au/inquiries/current/superannuation/alternative-default-models/issues/superannuation-alternative-default-models-issues.pdf>

By way of example, two separate articles in The Australian³⁴ and the Australian Financial Review³⁵ on 3 October 2016 noted amongst other things that:

- Industry superannuation funds were highlighting bank compliance problems as a reason to not allow greater retail access to default funds;
- A former Bank Chief Executive said that a proposed Banking Royal Commission was designed to boost the influence of industry superannuation funds at the expense of banks;
- Industry Super Australia alleged that bank teller bonuses were responsible for customers switching to bank-owned superannuation products;
- The Financial Services Council claimed that the Fair Work Commission had prevented retail funds from competing for billions of dollars of consumer retail savings every year; and
- A former ACTU Secretary, who is now an industry fund director, said that low fees in retail funds were actually evidence of passive investment management.

These examples, which are by no means comprehensive, highlight the inevitable result when government policy gives advantage to companies, groups of companies or industries.

They also suggest that some industry participants may be more concerned with tilting the law to support sectional interests rather than prioritising choice and returns for consumers.

The administration of private financial accounts should not be subject to industrial-political intrigue.

The Institute of Public Affairs believes that marketplace diversity, choice and competition are an important means to maximise benefits to consumers. To that end, while this submission has highlighted some of the problems with the current system, which tends to benefit industry superannuation funds, change should not actively seek to benefit or punish any company, group of companies or industry.

Government should not discriminate between different types of superannuation funds, and competitive tension should be recognised as a positive driver.

If industry superannuation funds do indeed have a lower fund structure than retail funds, this need not change under an alternative default system. In fact the need to compete to retain or improve market share may lower fees further

Similarly, the ability to ‘break open’ the existing default superannuation monopoly may encourage retail superannuation funds to further lower their own fees to better compete with industry funds.

The Productivity Commission should be aware of all vested interests when making its recommendations to government.

³⁴ The Australian, “Default Super: industry and retail funds’ battle heats up”, 3 October 2016, <http://www.theaustralian.com.au/business/financial-services/default-super-industry-and-retail-funds-battle-hots-up/news-story/72faa88690cfd724e28cdf231a54f20e>

³⁵ Australian Financial Review, “Superannuation war heats up as industry funds attack banks over teller sale,” 3 October 2016, <http://www.afr.com/business/banking-and-finance/superannuation-war-heats-up-as-industry-funds-attack-banks-over-teller-sales-20161003-grto65>

7. Problems with Alternative Models

7.1 *Status Quo*

The status quo is not a realistic option.

In the section of its November 2015 Workplace Relations Framework Inquiry Report dealing with protected industrial action and the Fair Work Commission's assessment of 'excessive claims,'³⁶ the Productivity Commission said that "*It is inherently undesirable to have an industrial regulator effectively act as a commercial arbiter between two parties.*" It added that "*this is a broad principle that should inform any future development of the Fair Work Act.*"

In its formal recommendations, the Productivity Commission also said that:

"The Australian Government should also amend the Fair Work Act 2009 (Clth) to:

- *Remove matters pertaining to the relationship between employer and employee organisations from the list of permitted matters in enterprise agreements; and*
- *Specify that an enterprise agreement may only contain terms about permitted matters.*"³⁷

While the selection or allocation of superannuation funds was not the subject matter of these two references, the Institute of Public Affairs considers that the principle is the same.

Industrial agreements should only refer to matters pertaining to the employment relationship. The selection of an employee's superannuation fund is not something that should involve an employer, employer association, trade union or industrial tribunal.

Given the 2014 Federal Court decision that froze the internal Fair Work Commission process to review default superannuation fund allocations after President Iain Ross appointed himself to the Expert Panel,³⁸ now would also be an opportune time to chart a different course.

7.2 *Minor Modification*

Other floated alternatives such as allowing or requiring employers to choose a default fund from the full list of over 100 MySuper products³⁹ or further widening the pool to all approved superannuation fund products may solve the problem of default choice in the workplace relations system, but only transfers responsibility to employers.

The employee must be the only person that makes the superannuation fund choice.

³⁶ Productivity Commission, *Workplace Relations Framework*, Volume 1, No.76, 30 November 2015, p.45, <http://www.pc.gov.au/inquiries/completed/workplace-relations/report/workplace-relations-volume1.pdf>

³⁷ Ibid, Recommendation 20.2, p.59

³⁸ Federal Court of Australia, *Financial Services Council Ltd vs Industry Super Australia Pty Ltd* [2014, FCAFC 92, <http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/full/2014/2014fcafc0092>

³⁹ ABC News, "Superannuation group warns consumers could lose out if employers choose retirement fund," 21 September 2016, <http://www.abc.net.au/news/2016-09-21/superannuation-consumers-could-lose-out-choose-funds/7865058>

8. Conclusion

Over thirty years after the 1985 National Wage Case and nearly twenty five years after the passage of the Superannuation Guarantee (Administration) Act 1992, it is difficult to accept that around 2 million Australians are denied the right to choose where their own private superannuation savings are deposited.

In the 21st Century it would be considered absurd if an employer were compelled by legislation to nominate the bank account into which an employee's salary had to be paid, or selected an employee's health insurance or household electricity or telecommunications provider.

This principle applies equally to superannuation.

Recommendation 10 of the 2014 Financial System Inquiry report said that "*Compulsory contributions, coupled with a complex system, contribute to disengaged consumers and weak member-driven competition.*"⁴⁰

The workplace relations system is not the place to decide who manages private retirement savings. Superannuation is a financial product and belongs in the financial system.

It is not the employer's money.

It is not the union's money.

It is not the government's money.

It is not the superannuation fund's money.

It is not the employer association's money.

It is not the Fair Work Commission's money.

It is the employee's money.

All employees should have the freedom to choose their superannuation fund.

Kind regards,

{Signed}

Brett Hogan
Director of Research

⁴⁰ David Murray AO et al, Financial System Inquiry Final Report, November 2014, Recommendation 10, <http://fsi.gov.au/publications/final-report/chapter-2/improving-efficiency/>