



Investment & Financial Services Association Ltd

ABN 82 080 744 163

6 January 2009

The Hon Julia Gillard MP
Deputy Prime Minister
PO Box 6022
Parliament House
Canberra ACT 2600

Dear Deputy Prime Minister

Re: Fair Work Bill 2008 and Default Superannuation Funds

I am writing regarding the recent decisions by the Australian Industrial Relations Commission (AIRC) creating the first 17 Modern Awards to apply from 1 January 2010.

The Investment and Financial Services Association (IFSA) is a national not-for-profit organisation which represents the retail and wholesale funds management, superannuation and life insurance industries. IFSA has over 145 members who are responsible for investing over \$1 trillion on behalf of more than ten million Australians. Members' compliance with IFSA Standards and Guidance Notes ensures the promotion of industry best practice.

The Fair Work Bill 2008 will confirm that the industrial umpire (currently the AIRC but to be replaced by Fair Work Australia) has the power to create awards dealing with superannuation matters. IFSA is concerned that many of the 17 modern awards already created by the AIRC specify a limited number of superannuation funds which can be a default fund in a particular industry. IFSA is expecting similar outcomes in awards for the remaining industries currently being considered by the AIRC, which cover the vast majority of the Australian economy.

The default funds specified in awards will apply to employees who do not choose their own fund and will be compulsory for employers where there is no industrial agreement which overrides the award. Transitional arrangements apply to employers contributing who were contributing to another fund before 12 September 2008.

IFSA raised concerns with the nomination of individual funds as default funds during the consultation process on award modernisation conducted by the AIRC. I attach IFSA's submissions to the AIRC for your information.

The modern awards do not simply represent a continuation of the arrangements which applied pre-WorkChoices. For example, the modern award for retail employees, which may cover over 1 million employees, lists a single fund – Retail Employees Superannuation Trust. This is more restrictive than the current awards for retail employees in States such as QLD (five funds specified) and SA (125 employers have a different default fund approved).

The modern awards are also inconsistent with approaches adopted internationally, with the employers able to choose from 46 stakeholder pension schemes in the United Kingdom or 36 KiwiSaver providers in New Zealand.

Default superannuation contributions are a significant public policy issue. The Rice Warner Actuaries *Superannuation Fees Report 2008* estimates that compulsory superannuation contributions were \$48 billion in the year to 30 June 2008. Separate research indicates that 85 to 90 per cent of employees estimated to have their contributions paid into their employer's default superannuation fund.

IFSA is of the view that specifying a default funds in award results in a range of negative public policy outcomes, including:

- Inconsistency with Australia's longstanding microeconomic reform agenda

Employers and employees will be required to enter into potentially costly industrial agreements simply to choose different default superannuation funds, creating a significant barrier to competition. As a result, modern awards effectively create 'mandated' monopolies for default superannuation contributions in three industries which are major employers: retail (including fast food), textile clothing and footwear, and higher education. 'Mandated' oligopolies are created in other industries which are major employers such as manufacturing and hospitality. Anticipated mergers between superannuation funds are likely to lead to further concentration.

If this were to occur in other sectors of the economy this would be viewed as a major national concern – hence we are bringing it to your attention.

- Higher fees for members

Reducing competition will reduce competitive pressures on fees. Widespread competition has seen fees reduce across most sectors of the superannuation industry. The Rice Warner Actuaries *Superannuation Fees Report 2008* shows that total fees averaged 1.21% in 2008 compared to 1.26% in 2006, saving Australians almost \$600 million per annum. Since 2002, the most significant fee reductions have been 0.45% for large corporate master trusts which are excluded from being default funds in modern awards, other than the racing, horse and greyhound training, mining and rail industries. I have attached a copy of the Rice Warner *Superannuation Fees Report 2008*.

- Lack of flexibility

Specifying default funds could, in some circumstances, place employers in an untenable position by forcing them to continue contributing to that fund, contrary to the interest of employees. For example, if only one default fund was specified

and that fund was experiencing administrative difficulties, governance issues, liquidity constraints, poor investment returns or drastically increased its fees.

For these reasons, IFSA is of the view that the Government should provide further guidance to the AIRC and the parties to awards on appropriate outcomes in this area, through amendments to the Fair Work Bill 2008 or any other means available to the Government.

Possible solutions

IFSA's preferred alternatives to the current modern awards are set in the joint IFSA/Financial Planning Association submission to the AIRC. The suggested approaches in order of preference are that no default superannuation fund be nominated, that awards nominate a default fund but this not be compulsory for employers or that awards allow employers and employees to agree a different fund through a less formal process than an industrial agreement.

In addition, IFSA believes that modern awards could instead require employers to choose a default fund that is consistent with a list of criteria. The criteria should be determined and remain outside the actual awards, be generic in nature and apply across all industries. This would allow for market innovation and provide greater flexibility for the criteria to be reviewed in line developments in the superannuation market and regulations.

Consideration would need to be given to the development of the criteria. For example, it could be developed by an independent panel comprising of parties to the awards and other expertise including from within the financial services sector, in parallel to the Award Modernisation process. Consideration should also be given to how such criteria are measured. This should be based on accurate, reliable and transparent data, comparing like with like, to allow for clearly evidenced comparisons of funds. The selection of a fund should be based on the characteristics of the individual fund rather than the category of fund.

The AIRC decision is already affecting outcomes in the marketplace as transitional arrangements only apply to funds to which employers were contributing to before 12 September 2008. This has become a critically urgent matter and I would like to meet with you at the earliest possible juncture. I can be contacted on 02 9299 3022.

Yours sincerely



Richard Gilbert
Chief Executive Officer

Cc: Senator the Hon Nick Sherry
Minister for Superannuation and
Corporate Law

Cc: The Hon Chris Bowen MP
Assistant Treasurer and Minister for
Competition Policy and Consumer
Affairs