



**Australian Government**

**Department of Education, Employment and Workplace Relations**

The Secretary  
Senate Economics Legislation Committee  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Mr Bryant

**INQUIRY INTO SUPERANNUATION LAWS AMENDMENT (MYSUPER CAPITAL GAINS TAX RELIEF AND OTHER MEASURES) BILL 2013**

Please find attached to this letter a submission from the Australian Government to the Committee for its Inquiry into Superannuation Laws Amendment (MySuper Capital Gains Tax Relief and Other Measures) Bill 2013.

This submission concerns Schedule 3 of the Bill, being the amendments that were moved and passed in the House of Representatives on 20 June 2013, concerning default superannuation arrangements for employees to whom a modern award applies.

Please refer to the Supplementary Explanatory Memorandum for further detail on Schedule 3 of the Bill.

Yours sincerely

**Peter Cully**  
A/g Group Manager  
Workplace Relations Policy Group  
20 June 2013

**Australian Government Submission to the Senate Economics Legislation Committee Inquiry into Superannuation Laws Amendment (MySuper Capital Gains Tax Relief and Other Measures) Bill 2013**

1. Schedule 1 to the *Fair Work Amendment Act 2012* (FW Amendment Act) amended the *Fair Work Act 2009* (FW Act) to introduce new requirements in relation to terms in modern awards that nominate default superannuation funds for employees who have not chosen a fund ('default fund terms'), and a process under which the Fair Work Commission (FWC) will review such terms every four years. The first such review must be conducted as soon as practicable after 1 January 2014.
2. Four yearly reviews of default fund terms are intended to provide a transparent and contestable process under which only funds that are in the best interests of employees are selected for inclusion as default funds in modern awards.
3. Under the current provisions of the FW Amendment Act, an 'employer MySuper product' (a 'tailored MySuper product' or 'corporate MySuper product') cannot be reviewed by the FWC. Following the first four yearly review, superannuation contributions for default fund employees to whom a modern award applies would therefore not be permitted to be directed to a corporate MySuper product. Such contributions will only be able to be directed to a tailored MySuper product if the fund is specified in the relevant modern award, following positive assessment by the FWC of the fund's 'generic MySuper product'.
4. Large employers with corporate superannuation arrangements (such as Qantas and Rio Tinto) and superannuation industry stakeholders (such as the Financial Services Council and Mercer) raised concerns about these provisions during the Senate Education, Employment and Workplace Relations Legislation Committee Inquiry into the Fair Work Amendment Bill 2012 (FW Amendment Bill). Their concerns related to employers not being able to make contributions for modern award reliant employees to funds offering high performing employer MySuper products, and potential disruption that changes to employee superannuation arrangements may cause for employers and employees.
5. In its summing up speech on the FW Amendment Bill, the Government made a commitment to consider this issue further and make any required amendments. On 19 June 2013, the Hon Bill Shorten MP, Minister for Employment and Workplace Relations and Minister for Financial Services and Superannuation, introduced amendments to the Superannuation Laws Amendment (MySuper Capital Gains Tax Relief and Other Measures) Bill 2013 (Superannuation Amendment Bill). The amendments to the Superannuation Amendment Bill satisfy that commitment.
6. The amendments to the Superannuation Amendment Bill amend the FW Amendment Act to allow contributions for default fund employees to be directed to an employer MySuper product, subject to the product being approved by the FWC and specified on the Schedule of Approved Employer MySuper Products (the Schedule).
7. The approval process for employer MySuper products is to be conducted by an Expert Panel of the FWC in two stages. In the first stage, the corporate or tailored MySuper product will be assessed against legislated criteria relating to the performance of the product. In the second stage, the Expert Panel will assess whether including the product on the Schedule would be in the best interests of relevant default fund employees. The FWC will be required to ensure that employers and employees to which the product relates, and any organisation entitled to represent their industrial interests, have a reasonable opportunity to make submissions.

8. The approval process for employer MySuper products includes assessment against the same legislated criteria relating to the product's performance as the process for generic MySuper products that was established in the FW Amendment Act. The FWC has expertise in managing complex issues that affect multiple employers and industries and making balanced decisions based on the evidence put before it. The Government is confident that this process will ensure reasonable and practical outcomes for all stakeholders.
9. Employer MySuper products specified on the Schedule will be required to be reassessed in the next four yearly review and subsequent reviews.
10. The FW Amendment Act currently requires the FWC to vary modern awards in four yearly reviews of default fund terms to specify at least two, but generally no more than 10, superannuation funds in relation to generic MySuper products. An amendment will increase the maximum number of funds that can generally be specified in a modern award from 10 to 15.
11. There was a concern that the existing limit of 10 funds may see some high performing funds not being included in particular modern awards where there are more than ten funds which meet the legislated criteria of being in the best interests of employee members covered by the award. The proposed amendments ensure that high performing funds have reasonable prospects of being specified in modern awards.
12. A further amendment will ensure that the new requirements included in the FW Amendment Act do not apply before 1 January 2015. This change provides certainty sought by stakeholders on how long existing arrangements will be able to continue.
13. These amendments have been developed following extensive consultation with large employers with corporate superannuation arrangements, unions and superannuation industry stakeholders since the FW Amendment Bill was passed. The position reached in the amendments is an appropriate balance of the positions put forward by employers, unions and superannuation industry stakeholders which is reflected in their combined support for the amendments.