

ISN SUBMISSION

# FAIR WORK AMENDMENT BILL 2012

STANDING COMMITTEE  
ON EDUCATION,  
EMPLOYMENT &  
WORKPLACE RELATIONS

13/11/12

SB1232



Industry  
Super  
Network

## About Industry Super Network

Industry Super Network (ISN) is an umbrella organisation for the industry super movement. ISN manages collective projects on behalf of a number of industry super funds with the objective of maximising the retirement savings of five million industry super members. Please direct questions and comments to:

**Richard Watts**  
**External Relations Manager & Legal**  
**Counsel**

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

[rwatts@industriysuper.com](mailto:rwatts@industriysuper.com)

ISN Pty Ltd ABN 72 158 563 270 Corporate Authorised Representative No. 426006 of Industry Fund Services Ltd ABN 54 007 016 195 AFSL 232514

# | SUMMARY

Industry Super Network intends to limit its brief submissions to Schedule's one and two of the Fair Work Amendment Bill 2012 which deal with superannuation related matters.

ISN welcomes the Bill which increases transparency in the process by which default superannuation funds are named in modern awards and ensures the process has as its overarching consideration the best interests of employees.

The Bill implements the key recommendations of the final report of the Productivity Commission<sup>1</sup> and successfully incorporates those key recommendations into a functional system that recognises that Superannuation Guarantee payments are a form of deferred wages.

ISN suggests a change to s156F by adding an additional criterion for consideration when determining a product's eligibility to be named on the Default Superannuation List.

The Bill's amendments to the manner in which default funds are named in modern awards should be read in context of the introduction of MySuper default funds, the Stronger Super reforms and the introduction of new prudential standards by APRA. These legislative and regulatory changes introduce new governance and prudential standards which, when combined with the proposed amendments to the Fair Work Act will significantly improve protections offered to Australian workers

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<sup>1</sup> Productivity Commission 2012, *Default Superannuation Funds in Modern Awards*, Report No. 60, Final Inquiry Report, Canberra.

## **Division 4A – 4 yearly reviews**

The requirement of s156A that the two stage 4 yearly review of the default fund terms of modern awards be undertaken as soon as practicable after each 4<sup>th</sup> anniversary of the commencement of s156A, is not in itself problematic and consistent with the recommendations of the Productivity Commission.

The Productivity Commission's recommended review process was intended to coincide with the Fair Work Commission's review of modern awards every four years. Section 156A does not explicitly link the two review processes. It is suggested that the default fund term review must coincide with the more general review of modern awards and that a proper interpretation of "as soon as practicable" would be a contemporaneous review process.

ISN supports the proposed two stage review process within the 4 yearly reviews.

## **Section 156C applications to list a MySuper product**

ISN believes it is appropriate that any superannuation fund that offers a generic MySuper product be entitled to make an application to be included in the Default Superannuation list. It would be preferable that an application is made in relation to each modern award the fund seeks to be named in. Any application fees that are prescribed by regulation in accordance with s156C(4)(b) should be reasonable and payable for each modern award application

## **S156D Submissions on applications to list a MySuper product**

It is appropriate that an applicant under s156C(3) also be provided with the opportunity to make written submissions in support of their application to be listed on the Default Superannuation List. Submissions should be made in relation to each modern award to address industry or award demographic specific matters.

## **First stage criteria**

ISN supports the criteria to be applied to the first stage process. The criteria appropriately focus on the long-term net return and level of services provided to members and their appropriateness given the demographic of the relevant award.

ISN does not share the views of the Productivity Commission that the practice of 'flipping' of members who finish employment with an employer into a higher priced product has been adequately dealt with. It is suggested that the original recommendation of the Productivity Commission in its draft report<sup>2</sup> that criteria should require a consideration of the likelihood of a member being switched to a higher cost product or division of a product when they exit their current employer; should be reinstated.

The inclusion of the additional criteria is consistent with the aims of the Bill and does not delay or impose any additional cost on the process. We suggest that if the only objection offered to the inclusion is that it is superfluous, the Bill should err on the side of caution and include the amendment.

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<sup>2</sup> Productivity Commission 2012, Default superannuation funds in modern awards, Draft Inquiry Report, Canberra. Draft recommendation 5.4 Page 93.

The amendment would see the introduction of a new s156F(i) and the renaming of the existing s156F(i) to (j).

(i) the likelihood of a member being switched to a higher cost division of a fund, or facing significantly higher fees upon exiting their current employer.

(j) any other matters the FWC considers relevant.

ISN recognises that the existing s156F(i) demonstrates that the first stage criteria is non-exhaustive and when determining whether to include a generic MySuper product on the Default Superannuation List, the Fair Work Commission may take into account any other matters it considers relevant. For example, the FWC may consider any fee or other impact on members when exiting the employment to which the original fund division relates or the administrative and compliance impact on employers. This particular example is recognised in the Bill's Explanatory Memorandum.

### **Section 156G Second stage process - Review of the default fund term of modern awards**

ISN supports the proposed second stage process, including the requirement that bodies or persons requesting that a particular superannuation fund be named in a modern award disclose any interest they have in their submission to FWA.

The second stage process recognises that superannuation is a form of deferred wages and that the primary parties are the employers and employees or their representatives. The interests and views of those paying and those receiving these deferred wages should properly come before the interests of financial product providers.

### **Section 156K Transitional authorisation for certain superannuation funds**

It is appropriate that transitional or grandfathering arrangements will be at the discretion of the FWC where they consider such an arrangement appropriate.

It is suggested that it would be inconsistent with the MySuper superannuation legislation amendments to provide grandfathering for any product that is not a MySuper authorised product. Except in exceptional circumstances and as a measure designed to protect the financial interests of affected fund members who are employed under the relevant award, any MySuper product that has not meet the first stage criteria to enable it to be included on the default fund list should not be subject to transitional arrangements.

### **Conclusion**

ISN supports the Fair Work Amendment Bill 2012 and suggests only minor amendment. The Bill, in conjunction with MySuper legislation amendment Bills and the introduction of new superannuation prudential standards will implement the core recommendations of the recent Productivity Commission inquiry and result in a more open, transparent and robust process for the selection of default superannuation funds in modern awards.