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Committee Secretary
Senate Education, Employment and Workplace Relations Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

## Fair Work Bill 2008 and Default Superannuation Funds

The Financial Planning Association of Australia[1] (FPA) welcomes the opportunity to participate in the Senate Standing Committee on Education, Employment and Workplace Relations inquiry into the Fair Work Bill 2008.

The FPA's key area of concern relates to superannuation, particularly the mandating by the Australian Industrial Relations Commission (AIRC) of specific default superannuation funds in the modern awards. 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. Many of the established 17 priority modern awards specify a limited number of superannuation funds which an employer must use as the default fund for their employees, along with provisions to maintain some existing arrangements. The FPA is concerned with this approach and that it will set a precedent for further modern awards.

As the professional body representing financial planners who recommend all types of superannuation funds to their clients – corporate, retail, industry and self managed superannuation funds (SMSF) - we are not representative of superannuation funds but of their members and their advisers. As such, we are concerned about the impact on the end consumers (ie employees). We consider there are three key issues that will result from the AIRC decision that we set out below.

The FPA recognises the debate on the issues of fund performance, advice fees and commission payments. We also recognise that this often distracts from broader considerations. Our submission is unequivocally not aligned to any sectoral product interest and details our view that the default superannuation market should be open to all superannuation funds. Decisions should be made as a result of a comprehensive assessment of all aspects of the fund, not just past investment performance, to determine the appropriateness of the fund for employees. We set out suggested criteria in *Attachment A* that could form the basis of such an assessment.

### 1. Impact on the end consumer

### 1.1 Reduced market competition reduces benefits for employees and employers

Issue – The 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. This will stifle the benefits of a competitive market to the detriment of employers and employees.

[1] The FPA is the peak professional organisation for the financial planning sector in Australia. With approximately 12,000 members organised through a network of 31 Chapters across Australia, the FPA represents qualified financial planners who manage the financial affairs of over five million Australians with a collective investment value of more than $630 billion.

Impact on employees – The resulting reduction in market competition will reduce the competitive pressures on fees and could consequently lead to increased costs borne by employees and employers. Employers and their employees who are subject to the modern awards will have reduced access to the innovative customer service offerings, pricing rivalry, and diverse product range, available in the broader competitive superannuation market from which default funds should be chosen. A competitive market has delivered significant benefits to employees and employers including improved member education efforts by funds, daily unit pricing, real-time website access, employer facility to pay superannuation contributions electronically and the facility to pay for financial advice inside of superannuation (and thereby obtain a tax advantage).

The default superannuation market should be open to all superannuation funds – corporate, public, retail, industry – to ensure employers and their employees have access to the associated benefits and innovative opportunities of the broader competitive superannuation market

### 1.2 Appropriateness of default funds

Issue - The AIRC's 2008 statement that it did not consider that it is appropriate for the AIRC to conduct an independent appraisal of the investment performance of particular funds, that performance varied from time to time and that even long-term historical averages might not be a reliable indicator of future performance. Further the AIRC stated that it would be completely inappropriate and beyond its expertise for an industrial tribunal to try and assess the competing merits of individual superannuation funds.

Different population demographics have different superannuation needs. When considering how to provide for the superannuation needs of a group of people, age, gender and job type, and other considerations must be taken into account. The complexity of matching demographic profiles and retirement needs with appropriate default funds cannot be effectively achieved at the industry level. If default funds are to be used to assist employees who simply cannot make a decision, then the default fund would be best selected by the employer.

Impact on employees – It is estimated that 85 to 90 per cent of employees have their contributions paid into their employer's default superannuation fund[2]. Employers and employees who do not exercise superannuation choice will be forced into a fund which has not been assessed as to being appropriate to meet their needs leaving them exposed to inappropriate customer service arrangements, unsuitable product offerings and investment options, and as a result potentially increased costs.

Many employers seek professional financial advice to ensure they select the most appropriate fund for their employees. The choice of default superannuation fund is more efficiently made by the employer who is able to make a decision based on (and potentially in consultation with) their individual workforce, rather than being mandated at an industry level and through the award system.

Prescribing default funds in the modern awards would prohibit an employer to act on that advice and would force organisations to use a default fund that may not suit the needs of their employees.

Further, limiting selection by statutorily mandating specific funds as the employer default superannuation fund in the awards for a minimum period of four years, creates a lack of process for employees, employers and industries to review the appropriateness of the fund in meeting the needs of their workers.

If the mandated fund was experiencing administrative difficulties, governance issues, liquidity constraints, poor investment returns or drastically increased its fees, employers would have to remain with the fund or risk breaching its industrial relations obligations to change funds even in the interest of employees. The FPA suggests this creates a potential for a moral hazard which would be borne by employers and ultimately employees.

[2] Senator Sherry's submission to the AIRC, August 2008

### 1.3 Improving financial education and capability of employees

Issue - In addition to the use by employers of financial planners to assist them select the best fund for their workforce, planners also assist employees to select the best asset allocation, insurance, and other services, as well as provide vital financial education.

Recent research has found financial education was the component of financial advice most valued by consumers. Other valued consumer benefits include[3]:

- Future cost avoidance arising through more planned cash and debt management;
- Reduction in lifestyle instability arising through appropriate insurance coverage, securing ownership of a home, and obtaining appropriate support from government agencies for disabled dependents;
- Enhanced life opportunity due to more focused business management, return to work strategies, lifestyle instability reduction, and acquisition of lifestyle assets; and
- Helping people to understand their situation, navigate the financial market place and gain control of their finances.

Impact on employees - The AIRC decision prevents access to advice for all employers and employees, and cuts out an entire profession who are best placed to assist.

## 2. FPA recommendations

The FPA urges the Senate Committee to recommend that the Fair Work Bill 2008 be amended to ensure that the default superannuation fund market in Australia is competitive for the benefit of the millions of Australian employees covered by the award system.

The FPA recommends either:

1. No default superannuation funds be nominated in the awards; or
2. The modern awards ensure that any default fund mandated be consistent with a set of objective and transparent criteria.

The FPA recognises recent media and stakeholder attention on the issue of fund performance, fees and advice commissions. However, the suggested criteria addresses these issues for the benefit of employees and employers. The selection of a default fund should involve the assessment of all aspects of the fund, not just past investment performance, which as noted by the Australian Securities and Investments Commission (ASIC) in its own Regulatory Guidance (RG53), is no indicator of future performance and restricts the use of such data in promotional material to Australian consumers. The suggested criteria, initiated by the FPA, has been considered by a range of industry associations.

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 detailed 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. An example of what the list of criteria could include is at Attachment A: Criteria for default superannuation fund.

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[3] *Value of Advice Research*, Rice Warner Actuaries, February 2008

To streamline the process for employers, there is scope for the assessment of whether a fund meets the default criteria to be undertaken by a third party.

The FPA would welcome the opportunity to appear before the Senate Committee on this matter.

If you would like further information on the issues raised in this submission, please contact Gerard Fitzpatrick, General Manager, Policy and Government Relations (02 9220 4505; gerard.fitzpatrick@fpa.asn.au).

Yours faithfully

Jo-Anne Bloch
Chief Executive Officer

Enc: FPA submission to the AIRC on award modernisation, August 2008
Joint IFSA/FPA submission to the AIRC on draft modern awards, October 2008

# Attachment A:
# Criteria for a default superannuation fund

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Criteria for a default superannuation fund should include:

1. Entry and management fees – The entry fees and the components of management fees should be clearly disclosed and competitive with other funds.

2. Exit fees – Exit fees should cover the administration cost of the transfer only an be clearly disclosed.

3. Transparency of information about the fund – Information about the unit pricing, the liquidity of the fund's portfolios and investments, the funds related service providers, asset allocation, structure and procedures, should be transparent and accessible. Consumers should be able to genuinely identify and compare like with like funds.

4. Fund performance[4] – The performance of the fund should be appropriate relative to approved benchmarks for a comparative group.

5. Asset selection, diversification and management – Investment options within the default fund should offer diversification, transparent management and adequate liquidity of assets, to cater for the needs of the demographic profile of the workforce.

6. Levels of service provided to employees – Consideration should be given to the fund's customer service commitment and employees access to ongoing services including online and call centre enquiry facilities, member education and access to financial advice.

7. Minimise administrative costs for employers – Consideration should be given to the fund's ability to reduce the administrative burden on employers, in particular providing employers with the facility to pay superannuation contributions electronically.

8. Insurance cover – Funds should offer alternative levels and types of insurance cover to ensure adequate protection is available to meet the needs of employees.

9. Compliance with professional standards - Default funds should meet high professional standards to ensure consumers are protected. For example, IFSA Standards and Guidance Notes ensure the promotion of industry best practice and the Association of Superannuation Funds of Australia (ASFA) has a suite of Best Practice Papers for superannuation trustees. The FPA has a Code of Ethics and Rules of Professional Conduct, practices standards and Conflicts of Interest Principles to which its members must adhere when providing financial advice.

10. Provision of financial advice – Where access to financial advice is made available by a fund, the cost of such advice should be clearly disclosed and separated from management fees. Such financial advice should provided by an appropriately qualified person.

[4] There has been considerable public debate about the comparability and accuracy of data on which decisions regarding the performance of funds are based. Improvements around the construction and transparency of data are anticipated in response to need for accurate data.