

13 November 2012

SENATE COMMITTEE INQUIRY INTO THE *FAIR WORK AMENDMENT BILL 2012*

- Submission by the Qantas Group

1. These submissions are made by Qantas Airways Limited and associated employers within the Qantas Group of companies in relation to the amendments proposed in Schedule 1 of the *Fair Work Amendment Bill 2012 (Amendment Bill)* in relation to default superannuation.
2. The Amendment Bill defines a "corporate MySuper product" in s23A (Schedule 1, Item 9) as a MySuper product that is offered by a fund that is:
 - o a standard employer-sponsored fund;
 - o is not a public offer superannuation fund; and
 - o has one standard employer-sponsor or 2 or more standard employer-sponsors that are associates of each other.
3. The Qantas Superannuation Plan (**QSP**) is a superannuation fund that will offer a corporate MySuper product as defined.
4. The QSP will comply in all respects with the requirements of the new MySuper legislation.
5. The QSP currently has approximately 33,000 members. Approximately 50% of members are in accumulation divisions of the fund.
6. The Amendment Bill proposes amendments to the FW Act such that a superannuation fund can only be included on the Default Superannuation List in a modern award if it is a "generic MySuper product" (see proposed s156B). A corporate MySuper product is expressly excluded from the definition of a generic MySuper product.
7. As a result, a corporate MySuper fund cannot be a default fund for the purposes of a modern award (see paragraph 51 of the Explanatory Memorandum to the Amendment Bill).
8. The Amendment Bill, if enacted, will remove the ability for employers covered by a modern award to contribute to a corporate MySuper fund as a default fund in respect of its employees covered by a modern award (except those who are defined benefit members).
9. This will remove the ability for Qantas Airways Limited (and its associated employers covered by the QSP) to contribute to the QSP in respect of its employees covered by a modern award (except those who are defined benefit members). This will have a similar impact on a number of large employers who have company-sponsored superannuation funds that are not public offer funds.

AUSTRALIA BELGIUM CHINA FRANCE GERMANY HONG KONG SAR INDONESIA (ASSOCIATED OFFICE) ITALY JAPAN
PAPUA NEW GUINEA SINGAPORE SPAIN SWEDEN UNITED ARAB EMIRATES UNITED KINGDOM UNITED STATES OF AMERICA

Ashurst Australia (ABN 75 304 286 095) is a general partnership constituted under the laws of the Australian Capital Territory carrying on practice under the name "Ashurst" under licence from Ashurst LLP. Ashurst LLP is a limited liability partnership registered in England and Wales, and is a separate legal entity from Ashurst Australia. In Asia, Ashurst Australia, Ashurst LLP and their respective affiliates provide legal services under the name "Ashurst". Ashurst Australia, Ashurst LLP or their respective affiliates has an office in each of the places listed above.

223228692.01

10. Currently most modern awards include a "grandfather clause" which allows an employer to contribute to any superannuation fund or its successor to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund.
11. The Amendment Bill, if enacted, will remove these grandfather clauses from modern awards when the first review occurs after 1 January 2014.
12. It was proposed in the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012 (Further MySuper Bill)*, which was tabled in the House of Representatives on 19 September 2012, that the grandfather clause in modern awards be retained (see paragraph 4.20 of the Explanatory Memorandum to the Further MySuper Bill).
13. There is no cogent rationale for changing the position as proposed in the Further MySuper Bill less than 2 months ago. Such removal will lead to inconsistencies and impact negatively on employers with employer-sponsored funds as discussed below.
14. The legislation as proposed will make no change to the current arrangements which permit Qantas Airways Limited (and its associated employers) to contribute to the QSP as the default fund in relation to the following groups of employees who have been provided with choice of fund but have made no election:
 - (a) employees of the employer who are covered by a collective agreement which specifies the employer-sponsored fund as the default fund (see paragraph 9 of the Explanatory Memorandum to the Amendment Bill); and
 - (b) employees of the employer who are defined benefit members within the employer-sponsored fund (as permitted by proposed s149D(1)(d) and s149D(2)); and
 - (c) employees of the employer who are award and agreement-free.
15. It is inconsistent and unfair to exclude such contributions from the modern award, particularly where:
 - (a) employees have been provided with choice of fund but have made no election; and
 - (b) the employer-sponsored fund complies with all the requirements of the choice of fund and MySuper requirements.
16. There is no cogent rationale for allowing such arrangements in enterprise agreements but not in modern awards.
17. Furthermore, an employer should not be required to enter into an enterprise agreement simply to achieve consistency of outcome in this respect.
18. The proposed amendments penalise good employers who have established and run company-specific funds for their employees over a long period of time.
19. The transitional authorisation process in proposed s156K of the Amendment Bill is not a satisfactory solution as it is temporary and does not, in the long term, overcome the inconsistency issues discussed above.

20. In our submission, in light of the matters raised above, the Amendment Bill should be amended as follows:
- (a) In Item 13 of Schedule 1, add in a new s149D(6) which provides:
- "A default fund term of a modern award must permit an employer covered by the award to make contributions, for the benefit of a default fund employee, to any superannuation fund or its successor that offers a corporate MySuper product and to which the employer (or an associated entity) was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund."*
- (b) In Item 13 of Schedule 1, amend s149D(1)(d) to include a reference to new subsection (6).
- (c) Include an express provision in the Amendment Bill that makes it clear that an agreement between employers and employees to include a particular default fund as a term of an enterprise agreement (where that fund is not included in the modern award) will not be a matter that would allow the Fair Work Commission to determine that an enterprise agreement does not pass the Better Off Overall Test.
21. The amendments proposed in paragraphs 20(a) and 20(b) would ensure protection for employees by mandating that any such fund must comply with the MySuper requirements and the choice of fund requirements, whilst overcoming the inconsistencies and negative impact on employers with longstanding employer-sponsored funds identified in the submissions above.
22. The amendment proposed in paragraph 20(c) would ensure that the statement of intent in paragraph 9 of the Explanatory Memorandum to the Amendment Bill is given effect to and ensure an employer is not required to establish, to the satisfaction of the Fair Work Commission, that the employer-sponsored default fund leaves employees better off overall than the industry funds specified in the modern award. Such a requirement would be excessively onerous on employers.

ASHURST AUSTRALIA

13 November 2012