

9 January 2009

By email: eewr.sen@aph.gov.au

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

Dear Sir/Madam,

Inquiry into the Fair Work Bill 2008 – Award Modernisation and Default Superannuation Funds

1 Introduction

This submission is made by Colonial First State Investments Limited (Colonial First State). As a major workplace relations stakeholder and interested party, Colonial First State is pleased to have the opportunity to make a submission to the Senate Education, Employment and Workplace Relations Committee Inquiry into the Fair Work Bill 2008. Our interest in the Bill relates specifically to certain provisions which address modern awards and superannuation, with issues in relation to default superannuation funds our main focus.

Colonial First State previously (October 2008) made submissions¹ to the Australian Industrial Relations Commission (AIRC) on the award modernisation process as it relates to the model superannuation provisions to be included in modern awards for the 12 primary industries/occupations. This submission is made as a consequence of the provisions contained in the final modern awards, released on 19 December 2008.

Colonial First State is the trustee of a number of retail superannuation funds including employer super funds, where we are the default fund for over 6,000 employers and over 200,000 members.

2 Summary

In our October 2008 submission to the AIRC we expressed significant concerns with the superannuation provisions contained in the then draft modern awards. These draft awards named particular funds as the default fund for various industries. As set out in that submission, we believe that naming a particular fund as the default fund leads to:

- increased cost and regulatory burden for employers;
- potential disadvantage to employees as they may perceive that a particular fund and its performance is endorsed by being named in the award; and
- an increasingly anti-competitive and inflexible environment as employers can no longer select their own default fund.

¹ www.airc.gov.au/awardmod/databases/retail/Submissions/colonial_submission_ED.DOC (copy attached)

Colonial First State Investments Limited ABN 98 002 348 352, AFS Licence 232468 (Colonial First State) is the issuer of interests in FirstChoice Personal Super, FirstChoice Wholesale Personal Super, FirstChoice Pension, FirstChoice Wholesale Pension and FirstChoice Employer Super from the Colonial First State FirstChoice Superannuation Trust ABN 26 458 298 557 and interests in the Rollover & Superannuation Fund and the Personal Pension Plan from the Colonial First State Rollover & Superannuation Fund ABN 88 854 638 840 and interests in the Colonial First State Pooled Superannuation Trust ABN 51 982 884 624

We further argued that in order to meet the Government's stated objectives, the modern awards should refrain from specifying the name of a default superannuation fund. This would mean employers would be allowed to select their own default fund. Alternatively, we suggested that modern awards must at least allow, in addition to naming a particular default fund, an alternative complying super fund as its default fund. This would provide employers with the option of selecting the fund that most appropriately meets their needs.

The final modern awards for primary industries, released by the AIRC on 19 December 2008, name a handful of funds from one sector of the industry as the nominated default funds for those industries. This result largely fails to address the retail superannuation industry's concerns.

We recommend the Fair Work Bill 2008 be amended to remove the default fund provisions from modern awards. We have also set out some other options.

3. Impact on competition

The nomination of default funds in awards largely reflects the historical development of the superannuation system. Many of the super products widely available at the time that employer compulsory super was introduced were designed as vehicles for voluntary savings, rather than vehicles for compulsory employer contributions and so were not considered for award default fund status. Significant developments in the super industry since that time, including legislative advances such as the introduction of Choice of Fund in 2005, mean the industry is now characterised by a large number of providers competing for employer contributions. This competition is having increasingly positive effects for superannuation members. For example, according to research released recently by IFSA and Rice Warner Actuaries, competition continues to put downward pressure on fees: overall fees for the industry averaged 1.21% for the year to June 2008, down from 1.37% in 2002.²

Specifying individual default funds in awards only reduces these competitive pressures as the monopolistic position held by certain default funds, whose predominance today is attributable to these historical circumstances, can translate into poor performance or otherwise uncompetitive product offerings. This will be to the ultimate detriment of members/employees.

4. AIRC and parties ability to give adequate consideration to appropriate default fund arrangements.

As discussed in the submissions mentioned above, the considerations involved in choosing a default super fund for employees are not insubstantial. The investment performance, fees, insurance and features of the fund will impact an employee's final benefit in retirement.

In recognition of the importance of this decision, and acknowledging that the AIRC may not be equipped to provide appropriate guidance to the parties to the awards on the financial performance of funds, the Minister for Superannuation and Corporate Law, Senator the Hon. Nick Sherry suggested in submissions that "the parties to the award...form a panel of experts to compile a set of principles to underpin criteria for a list of well performing funds that can be chosen as the default funds for awards...(and) offer(ed) the assistance of APRA to the Parties and any expert panel..."

From this it is clear the Government would prefer that the Commission benefited from assistance in advising the parties on default super funds, or instead deferred to another body more familiar with the specific issues. The Commission's statement of 12 September 2008, accompanying the release of the draft modern awards, highlights its own reluctance to undertake this role. In that statement the Commission said it does "not think it is appropriate

² IFSA / Rice Warner Superannuation Fees Report 2008

that the Commission conduct an independent appraisal of the investment performance of particular funds.”

This should be contrasted with typical practice undertaken by employers in selecting a default fund, where they would (usually with the help of a consultant or financial adviser) compare investment performance as well as other features such as fees, insurance premiums and coverage, member services, education and access to financial advice.

It appears that the AIRC has not considered such factors in choosing default funds and there is a lack of transparency around the process. We believe that a fuller universe of funds should be considered and that member/employees should be afforded greater rigour in any decision-making about their default super fund.

5. Preferred option - amend the Fair Work Bill 2008

Given the Commission’s approach to this matter Colonial First State believes it is appropriate, and in the national interest, for the Government to provide its own solution. One way to do this would be to amend the Fair Work Bill 2008 so that it specifically addresses default super funds, according to one of the following options (in order of preference):

- i) remove the ability of awards to specify default funds, allowing employers the freedom to select a default fund based on their own consideration of the merits of each fund;
- ii) allow awards to nominate a default fund, but for this not to be compulsory for employers;
- iii) allow awards to nominate a default fund, but also allow employers and employees to agree a different fund through a less formal process than an industrial agreement; or
- iv) require awards to specify a set of features or criteria that a default fund should possess. This would allow all funds with this set of features to compete for default fund status and would allow appropriate levels of competition to exist.

The aim of the features/criteria should be to promote competition and choice, and facilitate a fair and open process for the nomination of default funds. IFSA and the Financial Planning Association (FPA) have already begun to develop appropriate criteria for default funds.

Please contact me on 02 9303 6025 if you would like to discuss this submission.

Yours sincerely,

Nicolette Rubinsztein

**General Manager, Strategy
Colonial First State**