

19 September 2016

Manager
Competition Unit
Market and Competition Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Ms McCallum

RE: Competition and Consumer Amendment (Competition Policy Review) Bill 2016

The Financial Services Council (FSC) welcomes the request for submissions in response to the Competition and Consumer Amendment (Competition Policy Review) Bill 2016.

The FSC has over 100 members representing Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. The industry is responsible for investing more than \$2.7 trillion on behalf of 13 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world. The Financial Services Council promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

The FSC is concerned that the bill does not recognize two major barriers to competition in the superannuation industry:

1. The anti-competitive overlay in default superannuation market, where the Fair Work Commission determines superannuation terms in modern awards that restrict choice between APRA-approved MySuper products; and
2. The prevention of a consumer's right to choose their superannuation fund through enterprise agreements.

Anti-competitive arrangements in modern awards

The FSC supports enhancing competition in the superannuation industry to improve the efficiency of the system and improve outcomes for consumers. The seismic barriers to competition in the superannuation industry are well known and long overdue for reform. The overlay of the Fair Work Commission (FWC) into superannuation law is perhaps the best example in the economy of deeply uncompetitive public policy settings.

The mere fact that superannuation funds which obtain a "MySuper" authorisation from APRA may not take their product to market (because of the Fair Work Commission overlay) highlights the competition barrier.

The MySuper competitive framework as envisaged by Jeremy Cooper in the 2010 *Super System Review* remains incomplete. While the MySuper product framework has been legislated, MySuper products cannot compete in the marketplace as Cooper proposed. This is

solely due to the industrial barriers which remain under the Fair Work Commission process for allocating compulsory default funds.

In July 2010, in response to the *Super System Review* which proposed that MySuper products be able to compete in the marketplace, the government released its Stronger Super reforms which explained that the MySuper product parameters would be set out in legislation and enforced by Australian Prudential Regulatory Authority (APRA).

In addition, the Productivity Commission report in 2010 said that “the selection of default funds in awards largely reflects precedent and is not subject to a competitive process”.

However, contrary to the *Super System Review and Productivity Commission recommendations* the MySuper legislation clearly continues to impose severe limits on competition between funds, with the process:

- It creates unnecessary duplication by requiring MySuper products to be approved by APRA, then accepted for default listing by the Fair Work Commission (FWC) Expert Panel and then chosen from the list by the FWC Full Bench; and
- It favours incumbent award default funds by restricting the right to make submissions in the second stage of the FWC review, which decides which fund is listed in each award, to only registered organisations (unions and employer organisations) that own funds.

The current FWC process fails to facilitate competition by only allowing unions and employers, which own the funds, to make submissions in relation to which funds are listed in each modern award. The FWC system is both conflicted and not transparent and must be abolished in favour of competition.

Furthermore, the current default system prevents consumers and employers from choosing to leave an underperforming MySuper product in order to join a more competitive product, a critical ingredient in creating a competitive market.

Removal of choice in enterprise agreements

The FSC believes Competition and Consumer Amendment (Competition Policy Review) Bill 2016 should be amended to include amendments to the *Superannuation Guarantee (Administration) Act 1992* to ensure employees under new workplace determinations or enterprise agreements that are made from 1 July 2017 have an opportunity to separately choose their superannuation fund.

These changes have already been drafted and were previously introduced into the 44th Parliament via the Superannuation Legislation Amendment (Choice of Fund) Bill 2016. We believe both the time and resources of the Parliament could be saved by merging this legislation with the Competition and Consumer Amendment (Competition Policy Review) Bill 2016.

Please do not hesitate to contact me should you require any additional information on 02 9299 3200.



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