

9 January 2009

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

Dear Committee Secretary

**Inquiry into the Fair Work Bill 2008**

We write to provide a submission to your Committee inquiry into the Government's proposed Fair Work Bill 2008.

The scope of our interest in the Bill is limited to raising issues around superannuation, particularly with regard to the setting of default fund arrangements. Superannuation default fund arrangements come into play when an employee, upon commencing employment, does not choose his or her own superannuation fund as allowed by Choice of Fund legislation. The result is that the employer's future superannuation payments for the employee are placed into a default superannuation fund that has previously been selected by the employer.

ING Australia Limited (ING Australia) is one of Australia's leading fund managers, life insurers and superannuation providers with more than \$45 billion in assets under management. ING Australia is a joint venture between the global ING Group, which owns 51%, and one of Australia's major banks, ANZ, which owns 49%.

ING Australia provides employer based superannuation products and services to around 38,000 employers including some of Australia's largest and smallest employers across a diverse range of industries throughout Australia. In doing so, we represent approximately 650,000 employer based members - roughly equating to 1 in 15 working Australians - providing a product that is appropriate for a variety of industries and awards.

We also provide personal superannuation and retirement services to over 220,000 customers as well.

**Summary**

Under section 139, clause (1) (i) of the draft Bill, the Government seeks to maintain superannuation as an allowable matter following legislative changes to this effect made in the Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008 which was given assent on 20 March 2008.

Since this legislative change the experience of the Australian Industrial Relations Commission (AIRC) setting default fund arrangements in awards has been to limit default fund providers. We believe this will create significant risks and disruptions to employers, employees and the superannuation industry.

Our key concerns are that:

- Monopoly / Oligopoly situations are likely to be established through the provision of default fund arrangements for workers on awards – with these new arrangements predominately favouring a select few industry funds. This will significantly impact on competition in the superannuation industry, reducing competitive downward pressure on fees and stunting industry innovation;
- Workers could be placed into a new default fund arrangement without due diligence / risk assessment or financial advice taken by the parties about the new default fund option – a clear threat to future retirement income;
- Grandfathering arrangements and the selection of funds without the aforementioned due diligence could see under performing industry funds entrenched as default fund providers;
- Industrial tribunals, whether it be the AIRC or its proposed successor Fair Work Australia, are not sufficiently skilled and lack the expertise to assess the adequacy of a default fund arrangement;

Rather than naming a particular default fund/s in awards, we submit that the Senate Education, Employment and Workplace Relations Committee should recommend that the Fair Work Bill be amended so either:

- a) Modern awards cannot contain terms relating to default fund arrangements. This would allow the Government to more appropriately deal with any concerns it has around default funds under superannuation law, or
- b) Give the industrial relations umpire greater guidance on the default fund issue by specifying in law appropriate features of a default fund. Suggested features can be found at Appendix 1 and are consistent with IFSA's submission to your inquiry.

A more detailed explanation of our concerns is provided below. In detailing our concerns we are not in any way seeking to reflect on the Bench of the Australian Industrial Relations Commission in sharing with you our understanding of how the default fund process is unfolding.

### **Competition and ING Australia's Performance**

We welcome the opportunity to be able to fairly compete with other corporate funds, corporate master trusts and industry funds and know from this competition that we can and do provide in many cases better prices, products and services compared with other default fund providers. We have a diverse industry and we support that diversity in that it allows superannuation fund members to benefit from industry innovation that comes from a competitive market.

Our Corporate Super product's performance has been assessed by various independent research houses on a range of criteria such as investment mix, performance, fees and charges, insurance, member services and communications maintaining the:

- Heron Partnership, 'Top Rated Corporate Product' rating 2008/09 – holding it four years in a row;
- Best possible Selecting Super Quality Rating of AAA, 2008;
- Best possible Chant West rating of 5 apples in the Medium Corporate category 2008;
- Best possible Chant West rating of 5 apples for the ING Default Investment process Optimix;
- Finalist Selecting Super Deluxe Choice Super Fund of the Year awards 2007;
- ASFA Marketing Excellence Awards for Marketing and Communications 2007,

We have also won a 'Money Magazine' Best of the Best award – Gold for the "Best International Shares Super Fund 2008'.

Despite our clear bona fides in being able to provide high quality, top rated, competitive superannuation products ING Australia's ability to deliver these to working families will be significantly restricted if the Parliament does not take action to protect real competition between funds wanting to achieve default fund status.

#### **Default Fund Coverage, Threat to Retirement Incomes of Low Paid**

As referred to earlier, in February 2008 the Government fulfilled its election commitment to legislate to make superannuation an "allowable matter" which gave the current industrial umpire the Australian Industrial Relations Commission the power to make determinations around superannuation issues for people on awards. This is a major undertaking that we believe will extend to more than just award workers.

Award workers make up about 19 percent of the Australian workforce. However, default fund arrangements set for award workers would likely flow through to non award workers in the workplace as employers would, for ease and simplicity, be loathe to administer multiple default funds.

We understand the Government's policy rationale behind its legislative reform was to ensure better protections for the future retirement incomes of lower paid workers, an important consideration in this volatile economic climate.

We are concerned that unless competition for default fund status is preserved the current process will actually produce less robust default fund arrangements for award workers and others, effectively undermining the policy objective referred to earlier.

#### **Ability and aptitude of the Commission and the parties to give adequate consideration to appropriate default fund arrangements:**

The Minister for Superannuation and Corporate Law, Senator the Hon. Nick Sherry, in his 18 July 2008 submission to the AIRC awards modernisation process asked the Commission to "suggest to the parties to the awards that they 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 in order to facilitate access to fund return data to aid in the research, analysis, and development of principles".

This tacitly acknowledged the Commission is not geared to provide guidance to the parties on the financial performance of funds. We also understand the Commission may not have information to compare other aspects of fund offerings - such as insurance, investment choice access to financial advice, member education and member services - that are also important factors to assess when judging the suitability of a fund for default status.

We also note the AIRC's 12 September statement, accompanying the release of 14 draft priority modern awards, that it does "not think it is appropriate that the Commission conduct an independent appraisal of the investment performance of particular funds. Performance will vary from time to time and even long term historical averages may not be a reliable indicator of future performance".

With the Commission declining to consider indicators of the performance of funds (financial or otherwise) and with there being no apparent transparency around the AIRC's reasoning to favour some funds over others, we can only deduce that the Commission is accepting suggestions from the parties on future default fund arrangements.

The AIRC may also be nominating funds on the basis that they are industry funds that have previously provided national coverage for award workers in a particular industry.

On 19 December the Full Bench of the Commission created 17 new priority awards for various industries and occupations that will commence operation from January 2010. In 14 of these new awards the Commission nominated predominantly a handful of industry funds to be the default fund providers, with a single for profit fund being nominated to provide default fund arrangements for the racing industry only.

In the absence of a process being conducted by the parties to compare and assess default funds, based on guidance as to appropriate features of a default fund, it is difficult to see how the Commission's nomination of certain funds as the default option is in the best interests of workers / superannuation fund members.

There has apparently been no due diligence undertaken by the Commission to ensure the protection of these interests. Similarly, the selection of a default fund based on historical national coverage for a certain industry also ignores issues of performance and due diligence.

Even though the Commission has decided to introduce grandfathering so that any fund to which the employer was making contributions for the benefit of employees on 12 September 2008 can remain over time this will only represent greater administration costs and complexity for employers. As a result employers will be more inclined to accept a Commission nominated fund. We endorse the IFSA's assertion to your inquiry that the first stage priority modern awards effectively create 'mandated' monopolies for default arrangements in three major industries and 'mandated' oligopolies in a further 11 industries / occupations.

It is also interesting to note that the Commission's grandfathering provisions might actually result in poor performing superannuation funds continuing their roles as default fund providers. The Minister for Superannuation and Corporate Law, Senator the Hon Nick Sherry, wrote in his 18 July 2008 submission to the Commission that:

"It is of significant concern in light of their default fund status that some industry funds have been consistent underperformers. Aggregated unpublished APRA data shows that there are 24 industry funds (out of a total of about 84 such funds), potential default funds in awards, that have underperformed over the long term. This underperformance is as high as 1.6 per cent per annum and these funds have a membership of around 3 million accounts in a system wide total of around 21 million accounts".

With there being a decided lack of transparency around the default fund selection process workers / fund members would be none the wiser if one of these apparent under-performing industry funds is successful in being granted default fund status under the new arrangements or, through grandfathering, was able to maintain its existing under-performing default fund coverage.

## **Remedies**

In order to preserve the objective of protecting and enhancing superannuation outcomes for those workers on awards who do not exercise choice of fund, we request the Senate Education, Employment and Workplace Relations Committee consider the following:

- a) Recommending that no particular fund be named as a default fund in modern awards.

In addition we ask for the Committee's support for (either):

- b) Default fund arrangements are not established in modern awards via amendment to the Fair Work Bill; or
- c) Providing the industrial relations umpire with greater guidance on the default fund issue by specifying in the Fair Work Bill appropriate features of a default fund. Suggested features can be found at Appendix 1.

Thank you for the opportunity to provide you with a submission on this important matter. We would welcome the opportunity to address our submission at your Sydney Committee hearings in relation to this inquiry as this issue has serious implications for ING Australia, competition in the financial services sector and for the best interests of working Australians.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Bowden', with a large, stylized circular flourish underneath.

Ross Bowden  
Executive Director  
Wealth Management  
ING Australia

## **Appendix 1:**

### **Criteria for a Default Superannuation Fund**

#### **Criteria for a default superannuation fund could include:**

1. Entry and management fees – The entry fees and the components of management fees should be clearly identified and comparable to other funds.
2. Exit fees – Exit fees should cover the administration cost of the transfer only and 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.
4. Fund performance<sup>1</sup> – 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.
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 be provided by an appropriately qualified person.

---

<sup>1</sup> There has been considerable public debate about the transparency 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.