



DETERMINATION

Fair Work Act 2009

s 160—Variation of modern award to remove ambiguity or uncertainty or correct error

Variation of modern awards on the Commission’s own motion – modern award superannuation clause review

(AM2022/29)

TEXTILE, CLOTHING, FOOTWEAR AND ASSOCIATED INDUSTRIES AWARD 2020

[MA000017]

Clothing industry

JUSTICE HATCHER, PRESIDENT
VICE PRESIDENT CATANZARITI
DEPUTY PRESIDENT CLANCY

SYDNEY, 26 MARCH 2024

Variation on the Commission’s initiative – review and variation of modern award superannuation clauses to reflect current superannuation requirements – Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023 – superannuation in the National Employment Standards.

A. Further to the decision issued by the Full Bench on 26 March 2024 [[\[2024\] FWCFB 189](#)], the above award is varied as follows:

1. By deleting clause 27.1 and inserting the following:

27.1 Superannuation legislation

- (a) The NES and Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deal with the superannuation rights and obligations of employers and employees.
- (b) The rights and obligations in clause 27 supplement those in superannuation legislation and the NES.

NOTE: Under superannuation legislation:

- (a) Individual employees generally have the opportunity to choose their own superannuation fund.

- (b) If a new employee does not choose a superannuation fund, the employer must ask the Australian Taxation Office (ATO) whether the employee is an existing member of a stapled superannuation fund and, if stapled fund details are provided by the ATO, make contributions to the stapled fund.
- (c) If an employee does not choose a superannuation fund and does not have a stapled fund, the choice of superannuation fund requirements will be satisfied by contributions made to a superannuation fund nominated in the award covering the employee, provided the fund is able to accept contributions for the benefit of the employee.
- (d) A fund may not be able to accept contributions for the benefit of an employee if the employee would be a new member of the fund's MySuper product and the MySuper product is closed to new members because it has failed the performance tests of Australian Prudential Regulation Authority (APRA) for 2 consecutive years.

2. By deleting the introductory paragraph appearing in clause 27.4 and inserting the following:

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 27.2 to another superannuation fund, the employer must make the superannuation contributions provided for in clause 27.2 and pay any amount authorised under clauses 27.3(a) or 27.3(b) to one of the following superannuation funds or its successor, provided that, in respect of new employees, the fund is able to accept new beneficiaries:

3. By deleting the paragraph appearing under the “**Superannuation**” heading in the Appendix to Schedule F and inserting the following:

By law, your employer has to make a superannuation contribution of **11%** to a superannuation fund for you. This percentage will increase to **11.5%** on 1 July 2024 and **12%** on 1 July 2025. The industry default funds under the Award are Australian Super Fund and SunSuper, which are approved by both the union and some employer organisations, unless you choose another fund. In some circumstances your employer may be required under the law to make contributions to another fund.

B. This determination comes into operation on 9 April 2024. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect in relation to a particular employee until the start of the employee's first full pay period that starts on or after 9 April Month 2024.



PRESIDENT

Printed by authority of the Commonwealth Government Printer