



# 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)

### **AUSTRALIAN PUBLIC SERVICE ENTERPRISE AWARD 2015**

[MA000124]

Commonwealth employment

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 13.1 and inserting the following:

#### **13.1 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), the *Superannuation Benefits (Supervisory Mechanisms) Act 1990*, the *Superannuation (Resolution of Complaints) Act 1993* (Cth), the *Superannuation Act 1976*, the *Superannuation (Productivity Benefit) Act 1988*, the *Superannuation Act 1990* and the *Superannuation Act 2005*, deal with the superannuation rights and obligations of employers and employees in the APS.
- (b) If an employee is a member of the Commonwealth Superannuation Scheme, the Public Sector Superannuation Schemes, the Public Sector Superannuation Accumulation Plan or covered by the *Superannuation (Productivity Benefit) Act 1988* their employer superannuation contributions will be in accordance with the relevant legislation relating to those arrangements.

- (c) The rights and obligations in clause 13 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) 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.

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 2024.



PRESIDENT

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