



# 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)

## **VITERRA BULK HANDLING AND STORAGE OF GRAINS, PULSES AND MINERALS AWARD 2015**

[MA000136]

Grain handling 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 18.1 and inserting the following:

### **18.1 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 18 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 clause 18.3 and inserting the following:

**18.3 Superannuation fund**

- (a) Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 18.2 to another superannuation fund, the employer must make the superannuation contributions provided for in clause 18.2 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:
  - (i) a fund 9 April to the employer and is on the Schedule of Approved Employer MySuper Products;
  - (ii) a 9 April relation to which the employee is a defined benefit member;
  - (iii) a fund that is an exempt public sector superannuation scheme;
  - (iv) a fund that is a public sector superannuation scheme (within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cth) and a law of a State requires the employer to make contributions to for the benefit of the employee; or
  - (v) a fund in relation to which a transitional authorisation is under operation.

- (b) If none of the funds in clause 18.3(a)(i) to 18.3(a)(v) apply, then the employer will make contributions to
- (i) Hostplus; or
  - (ii) Mercer Super Trust; sub-plan VA Super Plan.

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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