

Division 4A—4 yearly reviews of default fund terms of modern awards

Subdivision A—4 yearly reviews of default fund terms

156A 4 yearly reviews of default fund terms

Timing of 4 yearly reviews

(1) The FWC must conduct a 4 yearly review of default fund terms of modern awards starting as soon as practicable after each 4th anniversary of the commencement of this Part.

Note: The President may give directions about the conduct of those reviews (see section 582).

Two stages of the 4 yearly reviews

(2) There are 2 stages of the 4 yearly review.

First stage—the Default Superannuation List

(3) In the first stage, the FWC must make the Default Superannuation List for the purposes of the review.

Note: In the first stage, the FWC must be constituted by an Expert Panel for the purposes of making the list and determining applications to include standard MySuper products on the list (see paragraphs 617(4)(a) and (b)).

Second stage—reviewing and varying default fund terms

(4) In the second stage, the FWC:

- (a) must review the default fund term of each modern award; and
- (b) must make a determination varying the term in accordance with section 156H; and
- (c) if section 156J applies—must make a determination varying the term in accordance with that section.

Note: For the second stage, the FWC must be constituted by a Full Bench (see subsections 616(2A) and (3A)).

The Schedule of Approved Employer MySuper Products

(5) In the 4 yearly review, the FWC must also make the Schedule of Approved Employer MySuper Products.

Note: The FWC must be constituted by an Expert Panel for the purposes of making the schedule and determining applications to include employer MySuper products on the schedule (see paragraphs 617(4)(c) and (d)).

Subdivision B—The first stage of the 4 yearly review

156B Making the Default Superannuation List

- (1) In the 4 yearly review, the FWC must make and publish the ***Default Superannuation List***.
- (2) The Default Superannuation List must specify each standard MySuper product that the FWC has determined under section 156E is to be included on the list.
- (3) The Default Superannuation List must not specify any other product.

156C Applications to list a standard MySuper product

- (1) Before making the Default Superannuation List, the FWC must publish a notice that invites superannuation funds that offer a standard MySuper product to apply to the FWC to have the product included on the list.
- (2) The notice must specify the period in which an application may be made.
- (3) After the notice is published, a superannuation fund that offers a standard MySuper product may make a written application to have the product included on the list.
- (4) The application must:
 - (a) be made in the period specified in the notice; and
 - (b) be accompanied by any fees that are prescribed by the regulations; and
 - (c) provide information relating to the first stage criteria.
- (5) The FWC must publish any application made under subsection (3).
- (6) However, if an application includes information that is claimed by the superannuation fund to be confidential or commercially sensitive, and the FWC is satisfied that the information is confidential or commercially sensitive:
 - (a) the FWC may decide not to publish the information; and
 - (b) if it does so, it must instead publish a summary of the information which contains sufficient detail to allow a reasonable understanding of the substance of the information (without disclosing anything that is confidential or commercially sensitive).
- (7) A reference in this Act (other than in this section) in relation to an application made under subsection (3) includes a reference to a summary referred to in paragraph (6)(b).

156D Submissions on applications to list a standard MySuper product

(1) The FWC must ensure that all persons and bodies have a reasonable opportunity to make written submissions to the FWC in relation to an application made under subsection 156C(3).

(2) If:

(a) a person or body makes a written submission in relation to an application made under subsection 156C(3); and

(b) the person or body has an interest in relation to:

(i) the superannuation fund that made the application; or

(ii) if the person or body refers to another superannuation fund in the submission—that superannuation fund;

then the person or body must disclose that interest in the submission.

(3) The FWC must publish any submission that is made.

156E Determining applications to list a standard MySuper product

(1) If an application is made under subsection 156C(3) to have a standard MySuper product included on the Default Superannuation List, the FWC must make a determination about whether to include the product on the list.

(2) The FWC must not determine that the product is to be included on the list unless, taking into account:

(a) the information provided in the application; and

(b) the first stage criteria; and

(c) any submissions that were made in relation to the application;

the FWC is satisfied that including the product on the list would be in the best interests of default fund employees to whom modern awards apply or a particular class of those employees.

156F First stage criteria

The *first stage criteria* are as follows:

- (a) the appropriateness of the MySuper product's long term investment return target and risk profile;
- (b) the superannuation fund's expected ability to deliver on the MySuper product's long term investment return target, given its risk profile;
- (c) the appropriateness of the fees and costs associated with the MySuper product, given:
 - (i) its stated long term investment return target and risk profile; and
 - (ii) the quality and timeliness of services provided;
- (d) the net returns on contributions invested in the MySuper product;
- (e) whether the superannuation fund's governance practices are consistent with meeting the best interests of members of the fund, including whether there are mechanisms in place to deal with conflict of interest;
- (f) the appropriateness of any insurance offered in relation to the MySuper product;
- (g) the quality of advice given to a member of the superannuation fund relating to the member's existing interest in the fund and products offered by the fund;
- (h) the administrative efficiency of the superannuation fund;
- (i) The distribution system for the fund does not involve remuneration arrangements which are based on bonus or commission structures and that all those persons who are responsible for the distribution or engaged in the distribution act in a manner in which the interests of the potential member as measured by the other first stage criteria have pre-eminence;
- (j) The default investment regime within the MySuper product is one in which the asset allocation has been determined, on a risk-related basis, to achieve an investment return which meets industry best practice standards, as determined by reference to APRA performance tables and the performance of the investment regime, as measured by its long-term performance results, has met benchmarks as determined as appropriate by the Expert Panel;
- (k) The fund has in place appropriate systems to meet the appropriate standards for Environmental, Social and Governance investment practices as prescribed by the United Nations Principles for Responsible Investment;
- (l) The fund produces an Annual Report and Annual Financial Statements in a manner which is consistent with the standards prescribed by APRA and which are published in a readily accessible format;

(m) any other matters the FWC considers relevant.

Subdivision C—Second stage of the 4 yearly review

156G Review of the default fund term of modern awards

(1) As soon as practicable after the Default Superannuation List is made, the FWC must review the default fund term of each modern award.

(2) The FWC must ensure that the following persons have a reasonable opportunity to make written submissions (including submissions requesting that a particular superannuation fund be specified in the term in relation to a standard MySuper product) to the FWC in relation to the default fund term of the award:

- (a) an employee and employer that are covered by the modern award;
- (b) an organisation that is entitled to represent the industrial interests of one or more employees or employers that are covered by the award;
- (c) if the award includes an outworker term—an organisation that is entitled to represent the industrial interests of one or more outworkers to whom the outworker term relates.

(3) If:

- (a) a person or body (whether or not a person referred to in subsection (2)) makes a written submission in relation to the default fund term of a modern award; and
- (b) the person or body refers to a particular superannuation fund in the submission; and
- (c) the person or body has an interest in relation to that superannuation fund;

then the person or body must disclose that interest in the submission.

(4) The FWC must publish any submission that is made.

156H Default fund term must specify certain superannuation funds

(1) After reviewing the default fund term of a modern award, the FWC must make a determination varying the term:

- (a) to remove every superannuation fund that is specified in the term; and
- (b) to specify superannuation funds or funds in relation to standard MySuper products that satisfy the second stage test.

Before determining the particular of any superannuation fund or funds to be inserted into the award, the views of the industrial parties to the award as to the means of reflecting the wishes of employers and employees in default fund selection should be taken into account.

(2) A standard MySuper product satisfies the ***second stage test*** if:

(a) it is on the Default Superannuation List; and

(b) the FWC is satisfied that specifying a superannuation fund in relation to the product in the default fund term of the modern award would be in the best interests of the default fund employees to whom the modern award applies, taking into account:

(i) any submissions that were made in relation to the default fund term of the award; and

(ii) that if the industrial parties propose that a fund be inserted into the award as a default fund which is not all profits to members fund, then the industrial parties be required to make submissions as to why they believe the insertion of such a fund as a default fund is in the interests of the employees covered by the award including why they believe the payment of a fee or equivalent to the promoter of the fund is in the interests of those employees.

(iii) any other matter the FWC considers relevant.

156J Variation to comply with section 149D

If, at the time of the 4 yearly review, the default fund term of a modern award does not comply with section 149D, the FWC must make a determination varying the term so that it does.

156K Transitional authorisation for certain superannuation funds

(1) The FWC may make a transitional authorisation in relation to a superannuation fund (other than a superannuation fund referred to in subsection 149D(1), (1A), (2), (3) or (4)) if, at the time of the 4 yearly review, the FWC is satisfied that it is appropriate to make the authorisation.

(2) The transitional authorisation comes into operation on the day it is made and ceases to be in operation on the day specified in the authorisation.

Subdivision D—The Schedule of Approved Employer MySuper Products

156L The Schedule of Approved Employer MySuper Products

(1) In the 4 yearly review, the FWC must:

(a) make and publish the Schedule of Approved Employer MySuper Products; and

(b) revoke any previous Schedule of Approved Employer MySuper Products.

Note: If an employer MySuper product is on the schedule, an employer covered by a modern award can make contributions, for the benefit of a default fund employee, to a superannuation fund that offers the product (see subsection 149D(1A)).

(2) When the schedule is made, it must specify any employer MySuper product that the FWC has determined under section 156P is to be included on the schedule.

(3) After the schedule is made, it must be amended to specify any employer MySuper product that the FWC has determined under section 156P is to be included on the schedule.

Note: The FWC must be constituted by an Expert Panel for the purposes of amending the schedule (see paragraph 617(5)(b)).

(4) If the schedule is amended as referred to in subsection (3), the FWC must publish the schedule as amended.

(5) The schedule must not specify any other product.

156M FWC to invite applications to include employer MySuper products on schedule

(1) Before making the schedule, the FWC must publish a notice that invites:

- (a) superannuation funds that offer an employer MySuper product; and
 - (b) employers to which an employer MySuper product relates;
- to apply to the FWC to have the product included on the schedule.

(2) The notice must specify the period in which an application may be made.

156N Making applications to include employer MySuper products on schedule

(1) The following may apply to the FWC to have an employer MySuper product included on the schedule:

- (a) a superannuation fund that offers the product;
- (b) an employer to which the product relates.

(2) The application must be made:

(a) in the period (the ***standard application period***) specified in the notice under section 156M; or

(b) in the period (the ***interim application period***) that:

- (i) starts immediately after the schedule is made under paragraph 156L(1)(a); and
- (ii) ends immediately before the next 4th anniversary of the commencement of this Part.

Note: Paragraph (2)(a) deals with applications that are made in a 4 yearly review of default fund terms, and paragraph (2)(b) deals with applications that are made outside a 4 yearly review.

(3) The application must also:

- (a) be accompanied by any fees that are prescribed by the regulations; and
- (b) provide information relating to the first stage criteria.

(4) The FWC must publish any application made under subsection (1).

(5) However, if an application includes information that is claimed by the applicant to be confidential or commercially sensitive, and the FWC is satisfied that the information is confidential or commercially sensitive:

- (a) the FWC may decide not to publish the information; and
- (b) if it does so, it must instead publish a summary of the information which contains sufficient detail to allow a reasonable understanding of the substance of the information (without disclosing anything that is confidential or commercially sensitive).

(6) A reference in this Act (other than in this section) in relation to an application made under subsection (1) includes a reference to a summary referred to in paragraph (5)(b).

(7) Only one application in relation to an employer MySuper product may be made under subsection (1) in the period that:

- (a) starts at the start of the standard application period; and
- (b) ends at the end of the interim application period.

156P FWC to determine applications

(1) If an application is made under subsection 156N(1) to have an employer MySuper product included on the schedule, the FWC must make a determination about whether to include the product on the schedule.

Note: The FWC must be constituted by an Expert Panel for the purposes of making this determination (see paragraphs 617(4)(d) and (5)(a)).

(2) The FWC must not determine that the product is to be included on the schedule unless the product satisfies the first stage test and the second stage test.

156Q The first stage test

An employer MySuper product satisfies the *first stage test* if the FWC is satisfied that including the product on the Schedule of Approved Employer MySuper Products would be in the best interests of default fund employees, or a particular class of those employees, taking into account:

- (a) the information provided in the application; and
- (b) the first stage criteria; and

(c) any submissions that were made in relation to whether the product satisfies the first stage test.

156R Submissions about the first stage test

(1) The FWC must ensure that all persons and bodies have a reasonable opportunity to make written submissions to the FWC about whether an employer MySuper product satisfies the first stage test.

(2) If:

(a) a person or body makes a written submission in relation to whether an employer MySuper product satisfies the first stage test; and

(b) the person or body has an interest in relation to:

(i) the superannuation fund that offers the product; or

(ii) if the person or body refers to another superannuation fund in the submission—that superannuation fund;

then the person or body must disclose that interest in the submission.

(3) The FWC must publish any submission that is made.

(a) Before determining the particulars of any superannuation fund or funds to be inserted into the award, the views of the industrial parties to the award as to the means of reflecting the wishes of employers and employees in default fund selection should be taken into account.

156S The second stage test

An employer MySuper product satisfies the *second stage test* if the FWC is satisfied that including the product on the Schedule of Approved Employer MySuper Products would be in the best interests of default fund employees of an employer to which the product relates, or a particular class of those employees, taking into account:

(a) any submissions that were made in relation to whether the product satisfies the second stage test;

(b) that if the industrial parties propose that a fund be inserted into the award as a default fund which is not all profits to members fund, then the industrial parties be required to make submissions as to why they believe the insertion of such a fund as a default fund is in the interests of the employees covered by the award including why they believe the payment of a fee or equivalent to the promoter of the fund is in the interests of those employees; and

(c) any other matter the FWC considers relevant.

156T Submissions about the second stage test

(1) The FWC must ensure that the following persons have a reasonable opportunity to make written submissions to the FWC about whether an employer MySuper product satisfies the second stage test:

- (a) an employee of an employer to which the product relates;
- (b) an employer to which the product relates;
- (c) an organisation that is entitled to represent the industrial interests of a person referred to in paragraph (a) or (b).

(2) If:

- (a) a person or body (whether or not a person referred to in subsection (1)) makes a written submission in relation to whether an employer MySuper product satisfies the second stage test; and
- (b) the person or body has an interest in relation to:
 - (i) the superannuation fund that offers the product; or
 - (ii) if the person or body refers to another superannuation fund in the submission—that superannuation fund;

then the person or body must disclose that interest in the submission.

(3) The FWC must publish any submission that is made.

- (a) Before determining the particulars of any superannuation fund or funds to be inserted into the award, the views of the industrial parties to the award as to the means of reflecting the wishes of employers and employees in default fund selection should be taken into account.

Subdivision E—Publishing documents under this Division

156U Publishing documents under this Division

If the FWC is required by this Division to publish a document, the FWC must publish the document on its website or by any other means that the FWC considers appropriate.