

Senate Standing Committee on Education and Employment

**QUESTIONS ON NOTICE
Additional Estimates 2013-2014**

Agency - Fair Work Commission

Department of Employment Question No. EM0495_14

Senator McKenzie provided in writing.

Question

FWC - Four yearly review of superannuation fund choice

1. In relation to the current proceedings in the Fair Work Commission, has the Department developed a communications strategy to ensure that employers do not experience disruption to their business should a FWC determination require them to direct their superannuation moneys to a fund other than the one they currently use?
2. Will there be any amnesties granted? Please provide details of the strategy.
3. When will the FWC release details on how it plans to accommodate the needs of those MySuper fund providers who do not have direct or indirect links in to unions and/or employer associations, and are therefore disadvantaged, and/or precluded from being able to appear before the Commission as a party?
4. How does the FWC plan to address this matter which has profound efficiency and competition implications?
5. Will the FWC give detailed and specific reasons for not including a MySuper fund applicant from its list of funds in each Modern Award?
6. What will be the avenue for appeal in the event that a MySuper fund is unjustly excluded from a FWC list?

Answer

1. The Department of Employment has provided the response to part 1 of this question.

As the four yearly review of default superannuation terms in modern awards has only recently commenced, it is not clear at this stage whether any current default superannuation funds will be removed from modern awards as a result of the review. The Department of Employment is closely monitoring proceedings during the four yearly review of default fund terms in modern awards. If the department becomes aware of any potential significant disruption for employers arising from the review, the department will provide advice to the Minister accordingly.

2. The Fair Work Ombudsman has provided the response to part 2 of this question.

At this stage, the Fair Work Ombudsman is not planning on taking part in the four yearly review of default superannuation terms in modern awards. In any event, the Fair Work Ombudsman will monitor the outcome of the review and any changes that may result to modern awards.

3. & 4. The question of standing to apply to vary modern awards under s.158 of the *Fair Work Act 2009* (the Act) is not relevant to the review of default superannuation fund terms in modern awards.

The Expert Panel issued a [Statement on 11 March 2014](#) (www.fwc.gov.au/documents/documents/awardmod/Var010110/2014fwcfb1146.pdf) finalising the notices, forms and timetable for the 2014 review of default superannuation fund terms in modern awards. The notices attached to the Statement and published on the Commission's website invite applications from:

- superannuation funds offering a standard MySuper product to apply to the Commission to have the product listed on the Default Superannuation List.
- superannuation funds offering an employer MySuper product and employers to which an employer MySuper product relates to apply to the Commission to have the product included on the Schedule of Approved Employer MySuper Products.

Applications must be lodged with the Commission by Monday, 28 April 2014. Applications and any written submissions received in relation to applications lodged will be published on the Commission's website.

Sections 156C and 156G of the Act allow all MySuper fund providers to make an application or submission as part of the process.

5. Paragraph 5 of the Expert Panel's Statement of 11 March 2014 explained the review process in making the Default Superannuation List:

[5] We will proceed in accordance with the FW Act, by conducting the four yearly review of default fund terms of modern awards as soon as practicable after 1 January 2014, publishing notices, inviting applications, providing a reasonable opportunity for written submissions and, if necessary, conducting hearings prior to making determinations on whether to include particular MySuper products on the List or the Schedule and making the List and the Schedule.

Once the Default Superannuation List has been made a Full Bench is required to review the default fund term of modern awards. Section 156H of the Act sets out the requirements of the review:

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 at least 2, but no more than 15, superannuation funds in relation to standard MySuper products that satisfy the second stage test.

Note: See subsection (3) for when the default fund term may specify more than 15 superannuation funds.

(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) any other matter the FWC considers relevant.

(3) The default fund term may specify more than 15 superannuation funds in relation to standard MySuper products that satisfy the second stage test if, taking into account the range of occupations of employees covered by the modern award, the FWC is satisfied it is warranted.

The Full Bench will publish a decision at the time of issuing determinations varying the default fund terms in modern awards.

6. A party may apply under sections 562 and 563 of the *Fair Work Act 2009* and section 39B of the *Judiciary Act 1903* to the Federal Court seeking a review of a Full Bench decision.