



# Modern Awards

## Frequently Asked Questions

### Background to Award Modernisation

#### What is 'award modernisation'?

Award modernisation is the process of reviewing and rationalising awards to create a system of 'modern awards'.

The Australian Relations Commission (AIRC) is managing the process on behalf of the Federal Government (Minister for Workplace Relations).

The modern awards will take effect from 1 January 2010 (unless the award contains transitional provisions).

#### What is an award?

An award is an enforceable document containing employment conditions such as minimum wages.

Generally, different awards will apply to employees in different industries.

#### What are 'modern awards'?

Modern awards will replace all existing awards (except those applying to a single enterprise) from 1 January 2010, unless the award contains transitional provisions. The modern awards will supplement the National Employment Standards.

Modern awards will cover employers and employees in the national workplace relations system. They will be industry or occupation-based, and will apply to all employers and employees who perform work covered by a particular award.

#### What do modern awards impact?

The aim of the award modernisation process is to create a comprehensive set of modern awards along industry or occupational lines, to address essential matters including:

- **superannuation ('super')**\*
- minimum wages
- the type of work to be performed
- overtime and penalty rates

- salaried arrangements (where appropriate)
- allowances
- leave and leave loading
- consultation and other matters including conditions of employment for outworkers and industry specific redundancy schemes.

\* see below for more information on the impact for super

Enterprise Based Agreements are NOT affected by modern awards.

#### How might the award modernisation process impact a business?

Modern awards will commence on 1 January 2010 (unless the award contains transitional provisions) and, at this point, many employees' minimum entitlements will change. Employers will need to determine before this date whether the work their employees perform will be covered by a modern award and when it takes effect. Employers will also need to check whether any terms and conditions of employment have changed, and if there are any transitional arrangements that may affect these changes.

Please contact the Fair Work Infoline on 13 13 94, or visit [www.fairwork.gov.au](http://www.fairwork.gov.au) for assistance.

In relation to super, employers who commenced their business' default super fund on or after 12 September 2008 may need to redirect super contributions for employees covered by particular awards into super funds specifically named in these awards.

# Asgard

### Who isn't covered by modern awards?

Enterprise Based Agreements are NOT affected by modern awards.

In addition, employees who are paid a guaranteed amount of \$108,300 pa (indexed annually, and pro-rated for part-time employees) will not be covered by a modern award. Many managers and higher income employees may not be covered by a modern award, even if there is a relevant modern award for their industry.

### What legislation governs these new changes?

*The Fair Work Act 2009* is the relevant legislation for this system and covers the majority of workplaces in Australia.

### Who is the AIRC?

The Australian Industrial Relations Commission (AIRC) is a national tribunal dealing with employment issues.

### What is 'Fair Work Australia'?

[Fair Work Australia](#) is the national workplace relations tribunal. Fair Work Australia assumed many of the functions of the AIRC from 1 July 2009. It is one of the bodies that replace the AIRC and the Australian Industrial Registry. The new Fair Work system started on 1 July 2009 (though modern awards won't take effect until 1 January 2010). It is Australia's new national workplace relations system.

### Will the modern awards affect super?

Some employers' super arrangements will be impacted by modern awards. Employers who commenced their business' default super fund on or after 12 September 2008 may be required to redirect super contributions for employees covered by particular awards into super funds specifically named under these awards.

Enterprise Based Agreements are NOT affected by modern awards.

## Modern awards and superannuation

### What do modern awards mean for my business' super?

Default super funds are named in the modern awards, which results in some employers losing the ability to select an appropriate default super fund on behalf of some of their employees. Enterprise Based Agreements are NOT affected by modern awards.

Employers who commenced their default super fund before 12 September 2008 are **not affected** by these changes. You can continue to pay contributions into your default super fund for all existing employees, as well as any new employees who commence with your business at any time in the future.

Employers whose default super fund commenced on or after 12 September 2008 will be affected if they have employees covered by the new modern awards as at 1 January 2010, and may be required to redirect super contributions for employees covered by particular awards into the specific super funds named in these awards.

There are several exceptions to this outlined in the following section.

### If I have employees who will be covered by modern awards as at 1 January 2010, are there any circumstances where I can continue paying super into our current default super fund?

Yes, there are several exceptions. You can continue to contribute on behalf of award-covered employees into your Asgard plan if:

- your existing Asgard plan commenced before 12 September 2008
- the employee has completed a standard Choice form nominating the Asgard Employee Super Account as their chosen fund

- you enter into a registered collective agreement (known as an 'enterprise agreement' under the Fair Work Act 2009) naming the Asgard Employee Super Account as the default super fund
- you enter into an Individual Transitional Employment Agreement (ITEA) with the employee naming the Asgard Employee Super Account as the default super fund – however, the availability of this option is limited. An employer who was using Australian Workplace Agreements (AWAs) as at 1 December 2007 can enter into an ITEA with new employees as well as employees on AWAs. New ITEAs cannot be entered into from either 1 July 2009 or 1 January 2010, although existing ITEAs will continue to apply and override modern awards, or
- you successfully apply to the Australian Industrial Relations Commission (AIRC) to be excluded from the application of an award (or parts of it). Please note, however, that this requires you to establish grounds for the exclusion (such as increased burden on the business), as is the practice currently for exclusions.

Enterprise Based Agreements are NOT affected by modern awards.

### My business's default super plan commenced prior to 12 September 2008 – is my business affected?

No, an employer can continue to contribute to a super fund chosen before 12 September 2008. You can continue to pay contributions into your default super fund for all existing employees, as well as any new employees who commence with your business at any time in the future.

### **What happens when I hire new employees after 1 January 2010?**

If your default super fund commenced before 12 September 2008, your business's super arrangements are not affected by modern awards and all new employees at any future date in time can become members of your current default super fund.

### **Do the modern awards nominate various super funds?**

Each award names its own set of super funds (or one singular super fund) that employers will need to select as the new default super arrangement from 1 January 2010.

### **Where can I see if a modern award nominates a particular super fund?**

Visit the AIRC website at [www.airc.gov.au](http://www.airc.gov.au) – Award Modernisation – Full Bench Proceedings – [Modern Awards](#).

### **What if my business commenced our Asgard plan prior to 12 September 2008 but it is not the business' default super fund?**

Even if your Asgard plan was not your business' default super fund, so long as you were making contributions to it before 12 September 2008 on behalf of your employees means that you are exempt from the application of modern awards.

### **What is the impact if I can't pay employer contributions into my business' present default super fund?**

Where the modern award names a fund or a limited selection of funds into which to pay contributions for award-covered employees, as an employer, you will need to:

1. Select a fund for their award-covered employees from those named in the relevant award. In some cases, there may only be one super fund named in the award.

2. Advise the affected employees that you are unable to continue paying their contributions into the existing Asgard default super fund and advise them which super fund you are required to contribute to from 1 January 2010.

If an employee has already exercised Choice, no further action is required by them.

If your employees do not want their employer contributions to be directed into the fund named in the award, they may exercise Choice, by providing you a completed Choice form. Your employees do not need to wait until modern awards take effect in January 2010 to provide you with a Super Choice form. They can let you know immediately. (Remember that any employees' Choice forms are retained by you for your business' records.)

### **Are there any potential disadvantages for my employees?**

If your employee wants you to continue to contribute to their existing super fund, they must exercise Choice of fund. Otherwise, they may be subject to the following disadvantages:

#### **Multiple accounts, increased administration and paperwork**

- Multiple super accounts
- Multiple sets of fees
- Multiple sets of insurance premiums

In addition, employees would need to revisit some important administration tasks they may have already completed in the current fund, such as nominating beneficiaries and selecting their investment strategy.

#### **Potential loss or reduction of insurance cover**

Changing to a new super fund may also disadvantage some employees with health issues which have arisen since their insurance started in the current default super fund as these

could be considered pre-existing medical conditions. Moving to a new super fund could result in an increase in premiums, reduced cover or loss of cover.

In addition, a decrease in the total members of the fund may result in a decreased Automatic Acceptance Limit (AAL) which is the level of cover which can be offered automatically (through the formula design of the employer) before questionnaires and medicals become necessary.

#### **Potential increase in administration fees**

Super administration fees are often discounted to take advantage of economies of scale. As a result, a significant decrease in the number of members in the super fund may result in a higher administration fee for remaining members.

#### **If our default super fund decreased in number of members, what impact might it have on the employees who continue contributing to the default super fund?**

A significant drop in the number of members remaining in the default super fund could have two consequences for the remaining members:

#### **Potential loss of Automatic Acceptance Limit (AAL)**

A decrease in the total members of the fund may result in a decreased Automatic Acceptance Limit (AAL) which is the level of cover which can be offered automatically (through the formula design of the employer) before questionnaires and medicals become necessary. The AAL is usually determined by the number of members in the default super fund. If as a result of these changes, the number of members in your default super fund decreases, the AAL may also decrease.

### **Potential increase in administration fees**

Super administration fees are often discounted to take advantage of economies of scale. As a result, a significant decrease in the number of members in the default super fund may result in a higher administration fee for remaining members.

### **What action did Asgard take between April 2008 and now to try and minimise inconvenience to employers in the Asgard Employee Super Account?**

When it was determined that default super funds would be included in the various new modern awards, Asgard submitted applications to the AIRC with the request that the Asgard Employee Super Account be considered as one of a broad pool of funds that an employer could use. We wanted to make sure that employers could choose from a wide selection of funds and continue to use their existing default super fund. We believed this was the best way to minimise disruption to employers and members, and at the same time allowing for healthy competition between super funds for the benefit for employers and members.

Unfortunately, despite active lobbying, our submissions were not successful.

### **How did the AIRC choose the funds that are nominated in the awards?**

It is unclear what criteria the AIRC applied to select the funds that have been nominated as default super funds in the modern awards. Many stakeholders in the super industry, including the Investment and Financial Services Association (IFSA), have called for increased transparency regarding the selection process.

### **What are the consequences of non-compliance with modern awards?**

Under the Fair Work Act, an employer must not contravene a term of a modern award. If an employer breaches a modern award, the Fair Work Divisions of the Federal Court and Federal Magistrates Court may make various orders, including:

- (a) an injunction or interim injunction to prevent, stop or remedy the effects of the contravention, and/or
- (b) an award of compensation for loss that a person has suffered due to the contravention.

In addition, an eligible State or Territory Court or the Fair Work Divisions of the Federal Court and Federal Magistrates Court can fine the employer up to a maximum amount of \$6,600 for an individual or \$33,000 for a body corporate. As such, there are serious ramifications for an employer that breaches a modern award by not making its super contributions to the nominated fund.

However, you should check if your employees are affected by the modern awards, and whether you need to change any of your current contribution practices before you do anything.

Your super fund provider (or any super fund provider) is unable to give you advice relating to your particular employees and whether you comply with the legislation. As a result, you should seek help from the Fair Work Australia Infoline on 13 13 94.

### **Is the Choice form I give affected employees different to the Choice form I give to new starters currently?**

It may be.

If your employee has advised you that they would like to continue contributing to the Asgard default super fund, you may provide them with

a pre-populated Choice form in the Employee section for their ease and convenience. [Click here to access a pre-populated Choice form for the Asgard Employee Super Account.](#)

Otherwise, you should provide them [the standard Choice form](#), which allows them to complete the Employee section with their chosen fund details.

Employees wishing to continue contributing to the Asgard default super fund, do not need to wait until modern awards take effect in January 2010 to provide you with a Super Choice form. They can provide you with a Super Choice form immediately. (Remember that Choice forms do not come to Asgard. You retain these on file for your business' records.)

### **Affected employees**

#### **Should I be identifying my award-covered employees now?**

Before 1 January 2010, employers and employees will need to be aware of the modern award that may apply to the work they do, and how their pay rates might be affected. The Fair Work Infoline (13 13 94) can assist you in doing this.

Modern awards available to date can be viewed on the AIRC website at [www.airc.gov.au](http://www.airc.gov.au) – Award Modernisation – Full Bench Proceedings – [Modern Awards](#).

#### **Who isn't covered by modern awards?**

Employees who are paid a guaranteed amount of \$108,300 pa (indexed annually) will not be covered by a modern award. Many managers and higher income employees may not be covered by a modern award – even if there is a relevant modern award for their industry.

### **Is it only those on awards now that will be covered by modern awards?**

Not necessarily. Seek advice from the Fair Work Infoline on 13 13 94 for further guidance.

### **How do I go about entering into a registered collective agreement or ITEA?**

Queries of an industrial relations nature are best dealt with by the appropriate government body. Contact the Fair Work Infoline on 13 13 94 for guidance.

### **When can my affected employees start completing the Super Choice form?**

At any time. Employees wishing to continue contributing to the Asgard default super fund, do not need to wait until modern awards take effect in January 2010 to provide you with a Super Choice form. They can provide you with a Super Choice form immediately.

Remember Choice forms do not come to Asgard. You retain these on file for your business' records.

### **Where can my employees go with questions about modern awards?**

Your super fund provider (or any super fund provider) is unable to give you advice relating to your particular employees and whether you comply with the legislation. As a result, you should seek help from the Fair Work Australia Infoline on 13 13 94.

If an employee wants to discuss their particular award, outside of the information you as their employer are able to provide, they can also call the Fair Work Infoline on 13 13 94.

Employees requiring assistance understanding the features and benefits of their current default super fund, or who need help completing a Choice form to continue contributing to the current default super fund, can contact Asgard.

If your employee wishes to continue contributing to their existing Asgard Employee Super Account, you may provide them a Super Choice Fund Nomination form with the details of the Asgard Employee Super Account pre-populated for them in the Employee's section.

Otherwise, you should provide your employee with a [Standard Choice form](#), where they can complete the Employee section themselves with their chosen fund. If your employee later wishes to choose your current Asgard default super fund, below are the details your employee will require to complete the form.

The details for the Choice form are:

Fund Name: Asgard Employee Super Account

Fund address: Asgard, PO Box 7461,

Cloisters Square, Perth, WA 6850

Fund ABN: 90 194 410 365

SPIN: ASG0007AU

Fund telephone number: 1800 998 185

Employees wishing to continue contributing to the Asgard default super fund, do not need to wait until modern awards take effect in January 2010 to provide you with a Super Choice form. They can provide you with a Super Choice form immediately.

### **What can I give my employees to remind them about the features and benefits of the Asgard plan?**

[Asgard Employee Super Account Product Summary for Employees](#) – a 2 page flyer that summarises the key benefits and features available to members.

### **Can I tell my affected employees what to do with their super?**

No, only those licensed to provide financial advice can guide the employees towards a decision.

You can, however, provide your employees with information to help them make an educated decision. This may include materials about their current default super fund and the various features and benefits they currently enjoy as part of your business' default super fund with Asgard.

### **Where can I get more information?**

#### **Where can I get more information about Fair Work?**

Visit the Fair Work Online site at [www.fairwork.gov.au](http://www.fairwork.gov.au) or call the Infoline on 13 13 94.

#### **Where can I get more information modern awards?**

Fair Work Australia has an online section devoted to [awards and award modernisation](#).

#### **Where can I find an award?**

Try [Fair Work Australia's award search engine](#).

#### **Where can I look at the modern awards already available?**

[Modern awards](#) are listed on the AIRC website as they become available.

### **Other useful quick links for employers**

If your employee has yet to decide what they would like to do: [Standard Choice form](#).

If your employee has advised you that they would like to continue contributing to Asgard Employee Super Account: [Asgard Employee Super Choice form](#).

[Fair Work Australia's Modern Awards Fact Sheet](#).



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**Things you should know:**

This information is given in good faith and has been derived from sources believed to be accurate at its issue date. It should not be considered a comprehensive statement on any matter nor relied upon as such. No company in the Westpac Group accepts responsibility for the accuracy or completeness of, or endorses any such material. Except where contrary to law, we intend by this notice to exclude liability for this material.

This information has been prepared without taking account of your objectives, financial situation or needs. Because of this you should, before acting on this information, consider its appropriateness, having regard to your objectives, financial situation and needs.

Asgard has not reviewed any awards or other industrial instruments or agreements that are, or may become relevant to employers or employees. It is possible that Asgard Employee Super Account may not satisfy obligations under any award or industrial instrument or agreement. Accordingly, before making a decision about Asgard Employee Super Account, we recommend that you seek legal advice on the appropriateness of Asgard Employee Super Account, having regard to the requirements of any awards or other industrial instruments or agreements that are, or that may become applicable.

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