



Submission by the Australian Council of Trade Unions to the
Fair Work Commission Superannuation Review (AM2025/1)

– 12 September 2025

ACTU Submission, 12 September 2025

ACTU D. No 32 /2025

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About the ACTU

1. Since its formation in 1927, the ACTU has been the peak trade union body in Australia. It has played the leading role in advocating for, and winning, the improvement of working conditions, including on almost every Commonwealth legislative measure concerning employment conditions and trade union regulation. The ACTU has also appeared regularly before the Fair Work Commission (“**the Commission**”) and its statutory predecessors, in numerous high-profile test cases, as well as annual national minimum and award wage reviews.
2. The ACTU is Australia’s sole peak body of trade unions, consisting of affiliated unions and state and regional trades and labour councils. There are currently 36 ACTU affiliates who together have over 1.7 million members who are engaged across a broad spectrum of industries and occupations in the public and private sectors. The ACTU has consulted with its affiliates in the preparation of these submissions.

The Superannuation Review

3. On 12 August 2025, the Commission issued a Statement¹, initiating a review of superannuation provisions in modern awards. The review, commenced on the Commission’s own initiative under sections 157 and 160 of the *Fair Work Act 2009* (“**the FW Act**”), addresses three key issues: the absence of a standard employer contributions clause in certain awards, inconsistencies in the definition of the National Employment Standards (“**NES**”) in 9 plain language awards and outdated or incorrect naming of default superannuation funds in a number of modern awards.
4. The Commission has clarified that this process is not a statutory 4-yearly review of default fund terms under Division 4A of Part 2-3 of the FW Act. Despite the legislative requirement for such reviews to commence as soon as practicable after 1 January 2014, the Commission notes that it has been unable to constitute the required Expert Panel due to a lack of appointed members. As a result, the Commission has not yet conducted any 4-yearly reviews of default fund terms.
5. The Commission’s statement sets out provisional views that certain awards be varied to include the standard employer contributions clause. It also proposes updating the superannuation fund names listed in default fund terms to reflect current fund structures and branding.

¹ [2025] FWCFB 175

6. The ACTU welcomes the Commission initiating this process of its own motion. In the submission below, the ACTU briefly addresses each of the three key issues and the associated proposed variations.

First Issue: Employer contributions clause

7. The Commission proposes to insert what is otherwise the standard employer contributions clause into 15 awards that presently do not contain such a clause. The awards proposed to be varied may be divided into 3 categories.

Six Enterprise Awards

8. The Commission has identified the following 6 enterprise awards that were made after 1 January 2014 to be varied:

- Australian Broadcasting Corporation Enterprise Award 2016
- Australian Bureau of Statistics (Interviewers) Enterprise Award 2016
- Australian Federal Police Enterprise Award 2016
- Australian Public Service Enterprise Award 2015
- Christmas Island Administration Enterprise Award 2016
- Parliamentary Departments Staff Enterprise Award 2016.

9. The Commission has indicated a provisional view that, as section 149B of the FW Act applies to the relevant awards, and those awards currently lack an employer contribution clause, the awards should be varied to include the standard clause. The ACTU supports this proposed amendment as a matter of principle.

10. The ACTU however, submits that where the awards contain provisions that *supplement* the NES in terms of the contributions to be made, in particular where they effectively provide for a greater contribution, adjustments to the standard employer contribution clause should be made to ensure that the obligation is not inadvertently lost, or otherwise made ambiguous or uncertain. For example, the *Australian Public Service Enterprise Award 2015* provides the following superannuation clause 13 (excluding the note at the end of the section):

(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* deals 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. [bolding added]

11. The ACTU understands from its consultations with the Community and Public Sector Union (“**the CPSU**”) that subclause 13(b) effectively provides higher rates than the 12% of the Superannuation Guarantee Charge. The ACTU is concerned that simply adding the standard employer contributions clause may dilute or make uncertain the existing entitlements.
12. Parliament’s intention in legislating s.149B was to provide an additional award entitlement for superannuation, *not* to reduce or otherwise diminish award entitlements. Such an intent was made explicit in the Explanatory Memorandum to the implementing legislation, *the Fair Work Amendment Act 2012*:

“28. New section 149B provides that a modern award must include a term requiring employers to make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being liable to pay the superannuation guarantee charge under the Superannuation Guarantee Charge Act 1992 with respect to that employee. **This provision will ensure that if an employer is required to make superannuation contributions for an employee to whom a modern award applies in order to avoid paying the superannuation charge, the employee will also have an entitlement to be paid those contributions under the terms of the modern award. ...**” [bolding and underlining added]

13. We also note that section 149B must be interpreted in the context of s.40 of the FW Act. Section 40 provides that a public sector employment law prevails over a Fair Work instrument that deals with public sector employment to the extent of any inconsistency. In that context, the obligation on the Commission in s.134(1)(g) to take into account the need to ensure a simple, easy to understand and stable award system, would be furthered by

making express the relationship between respective obligations on the relevant employing authorities with respect to superannuation contributions.

14. Similar issues to those identified with respect to the *Australian Public Service Enterprise Award 2015* also arise with respect to the clause 10 of the *Australian Bureau of Statistics (Interviewers) Enterprise Award 2016*, clause 12 of the *Parliamentary Departments Staff Enterprise Award 2016* and clause 12 of the *Australian Federal Police Enterprise Award 2016*.
15. The *Christmas Island Administration Enterprise Award 2016*, has a slightly different, although relevantly similar, superannuation clause:

12.1 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 12 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.

12.2 If an employee is a member of the Commonwealth Superannuation Scheme, the Public Sector Superannuation Scheme, the Public Sector Superannuation Accumulation Plan or covered by the *Superannuation (Productivity Benefit) Act 1988* their employer superannuation

contributions will be in accordance with relevant legislation relating to those arrangements.

12.3 If a permanent or temporary employee is a member of an accumulation fund not set out in clause 12.2 , the rate of contribution will be 15% of the employee's ordinary time earnings, as defined in the *Superannuation Guarantee (Administration) Act 1992* .

12.4 If a casual employee is a member of an accumulation fund not set out in clause 12.2 , the rate of contribution will be in accordance with the charge percentage set out in section 19(2) of the *Superannuation Guarantee (Administration) Act 1992* , or any subsequent legislation.

[bolding and underlining added]

16. The ACTU again respectfully submits that to insert the standard contribution clause without adjustment would appear to risk inserting ambiguity or uncertainty into the award.
17. The ACTU has seen a draft copy of an alternative clause proposed by the CPSU in relation to the *Australian Public Service Enterprise Award 2015*. The ACTU supports the proposed wording.
18. With respect to the *Christmas Island Administration Enterprise Award 2016*, the ACTU submits that the standard employer contribution should be amended to include at the beginning "Without reducing the superannuation entitlements otherwise payable under this award,".

Reserve Bank of Australia Award 2016

19. The Commission has also identified the *Reserve Bank of Australia Award 2016* as a further enterprise award for variation. The award has an employer contribution clause in the following terms:

16.3 The Bank will contribute to the appropriate fund the minimum amount as required by the legislative requirements, or such greater amounts as the Bank determines in each case to be necessary or desirable to provide the benefits.

20. The clause does not, on its face, identify the legislative requirements or the "necessary" benefits.

21. Financial Sector Union (“**the FSU**”) is an affiliate of the ACTU and the union with the primary interest in the *Reserve Bank of Australia Award 2016*.² The ACTU defers to any submission made by the FSU in relation to the award on the basis of the union’s representation of the relevant employees.

Nine Industry / Occupational Awards

22. The third category of modern award proposed to be varied is comprised of 9 industry/occupation awards. The awards are as follows:
- (a) Asphalt Industry Award 2020
 - (b) Black Coal Mining Industry Award 2020
 - (c) Dredging Industry Award 2020
 - (d) Hydrocarbons Industry (Upstream) Award 2020
 - (e) Maritime Offshore Oil and Gas Award 2020
 - (f) Mining Industry Award 2020
 - (g) Miscellaneous Award 2020
 - (h) Rail Industry Award 2020
 - (i) Seagoing Industry Award 2020
23. The ACTU supports the proposed inclusion of the standard employer contributions for the reasons identified by the Commission from paragraphs [14] to [20] of the Statement. The ACTU respectfully agrees that varying these 9 awards under s.157 of the FW Act to include the standard employer contributions clause is both necessary and consistent with the modern awards objective. The proposed variations would appear to have utility in closing an historical gap, upholding Parliament’s intent and appropriately expanding the avenues for enforcement of superannuation rights for workers.

² See *Application by Finance Sector Union of Australia; Application by Reserve Bank of Australia* [2015] FWCFB 2224 (10 April 2015).

Second Issue: Amendment to NES Definition in Plain Language Awards

24. The Commission has provisionally proposed to amend a list of 9 awards to reflect the introduction of Division 10A of Part 2-2 into the FW Act. The introduction of Division 10A has the effect that, subject to the exclusions referred to in s.116A, national system employees may now enforce a statutory right to superannuation as part of the National Employment Standards.³
25. The proposed variations vary the 9 awards (described as the “plain language awards”) by inserting into the extract of s.61 of the FW Act that appears in the definition of “National Employment Standards” in the awards the following, “(ha) superannuation contributions (Division 10A)”.
26. The proposed variations are of no substantive effect, in the sense that there is no change to the substantive entitlements of employees and employers covered by the respective awards, however, the ACTU submits that the change is appropriate to more accurately reflect the content of the National Employment Standards following the insertion of paragraph (ha) into s.61 of the FW Act by the *Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023*.

Third Issue: Updating Superannuation Fund Names in Default Fund Terms

27. The Commission proposes to vary default fund terms in modern awards:
 - (a) to reflect any changes to the names of superannuation funds which have occurred due to mergers or for any other reason;
 - (b) to correct any errors in the naming of funds;
 - (c) to delete fund names where they have been duplicated;
 - (d) to express fund names consistently across modern awards; and
 - (e) to remove any default funds that do not offer a MySuper product.

³ The coverage of the new Division does not apply to employees and employers who are only national system employees or national system employers because of ss.30C, 30D, 30M and 30N of the FW Act, that is, employees and employers who are covered by the FW Act only because of a State’s referral of powers to the Commonwealth. The limitation was enacted to accommodate the circumstances where the States’ referral of powers to the Commonwealth that is relied on for the FW Act included superannuation to a limited extent. See the Explanatory Memorandum to the *Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023* paragraph [88].

28. The ACTU supports the proposal to update modern awards on the basis that the changes will make modern awards easier to understand and apply; and are otherwise an appropriate exercise of the Commission’s power under s.160 of the FW Act. The ACTU also accepts that it is also appropriate to remove funds that do not offer a MySuper product, as proposed in subparagraph (e) above, on the basis that such an offering is effectively required by the operation of ss.149C &D of the FW Act. We note that the Commission has previously removed funds from awards that do not offer a MySuper account.⁴
29. The proposed changes are summarised in the [spreadsheet](#) published by the Commission that accompanies the Statement. Given the size of the task, the ACTU appreciates the useful work the Commission has undertaken in conducting the audit. While the ACTU has not been able to review in close detail all of the approximately 550 Fund names reviewed across the modern award system, we identify two relatively isolated matters below:
- (a) A proposal to change the reference to the “Local Government Superannuation Scheme (LGSS)” in the *Water Industry Award 2020* to “Local Government Super” appears not to reflect the legal fund name. The audit elsewhere suggests that awards referring to the Local Government Superannuation Scheme (LGSS) be amended to “Local Authorities Superannuation Fund”, the name of an APRA regulated fund. The name “Local Government Super” is not the name of an APRA regulated fund. It would therefore appear that the audit contains an error and the correct legal name of the fund is likely “Local Authorities Superannuation Fund”.
 - (b) A proposal to change the reference to “Energy Super” in the *Electrical Power Industry Award 2020* and the *Electrical, Electronic and Communications Contracting Award 2020* to “Brighter Super” does not reflect the version of the name that appears in the APRA records of regulated funds, which is the Brighter Super Fund. The same issue arises regarding the name “Brighter Super Fund” as compared to the proposed “Brighter Super” with respect to the proposed change of name for “LG Super” contained in the *Local Government Industry Award 2020* and the *Water Industry Award 2020*.
30. The ACTU however flags what may be a more substantive issue with referring to funds only by their APRA registered or legal name. We do so in the context of a concern we understand the Super Members Council has about the use of Fund names and the potential for employers and employees being confused where this differs from the established branding of an offering made by the fund. As Modern Awards are legal documents establishing enforceable entitlements, it is important that the entities are correctly identified. However,

⁴ See the *Superannuation Review 2013* [2013] FWCFB 10016 at paragraph [19] of

awards are also living documents, subject to interpretation in workplaces around Australia by employers and employees, more often than not, without the benefit of legal advice or in contemplation of legal proceedings. This environment in which modern awards operate is recognised in the modern award objective which requires the Commission to take into account, amongst other things, the need to ensure a “simple, easy to understand” award system.⁵

31. For that reason, it is our submission that where an award refers to the name of fund that is the recognisable and current brand name of a superannuation fund, or an offering of the fund, but which may not be the precise legal name, the Commission should consider including both the legal name of the fund and the more common fund name or offering. By way of example, the audit identifies Media Super as being referred to in the following awards:
- (a) Broadcasting, Recorded Entertainment and Cinemas Award 2020
 - (b) Chullora Printing Award 2015
 - (c) Graphic Arts, Printing and Publishing Award 2020
 - (d) Journalists Published Media Award 2020
 - (e) Live Performance Award 2020
 - (f) Mannequins and Models Award 2020
 - (g) Metropolitan Newspapers (South Australia and Tasmania) Printing Award 2015
 - (h) Northern Territory News Award 2015
 - (i) Note Printing Australia Award 2016
 - (j) Printing Industry – Herald & Weekly Times – Production Award 2015
 - (k) Queensland Newspapers Pty Ltd Printing (Murarrie) Award 2015
 - (l) Sporting Organisations Award 2020.
32. Following a Successor Fund Transfer in 2022, which merged Media Super with Cbus, the APRA fund name for what was Media Super is now, in technical terms, the CONSTRUCTION AND BUILDING UNIONS SUPERANNUATION FUND.⁶ However, it is our understanding that the branding for the product referred to in the awards continues to be “Media Super”, see for example the website and associated documentation provided for employers and employees at www.mediasuper.com.au. In that context, there would appear a risk that to update the award clause by removing “Media Super” and instead referring to the fund only as the CONSTRUCTION AND BUILDING UNION SUPERANNUATION FUND, as appears the proposal in the audit spreadsheet, may cause confusion and in any event may be unlikely to

⁵ Section 134(1)(g).

⁶ See the Media Super homepage at <https://www.mediasuper.com.au/>. The legal fund of the name is acknowledged at <https://www.mediasuper.com.au/fund-details>

make the varied awards simpler or more easy to use on a day-to-day basis in accordance with the modern award objective. In the circumstances, rather than the removal of the reference to Media Super, a more plain-language approach may be to include a note to the following effect, or similar, under the relevant clause:

Media Super is a branded division within the Construction and Building Unions Superannuation Fund (Cbus), administered by United Super Pty Ltd in its capacity as trustee for Cbus.

33. Other approaches may be apt. Without seeking to unduly delay the update of the awards, given the importance of accurately identifying funds and the plain language benefits of ensuring that any changes align with common usage, the ACTU respectfully submits it will be important to ensure that funds themselves are provided with an opportunity (and if funds do not make a submission in response to the statement of 12 August 2025, a further opportunity) to make submissions with respect to how they might most accurately and usefully be referred to. We believe this approach is likely to strike the best balance between regulatory clarity and practical guidance for employers and employees alike.
34. Finally, the ACTU notes that the audit provides the following in relation to AMP Superannuation Savings Trust:

“AMP Superannuation Savings Trust' is not currently registered with APRA according to 'APRA Super Fund Lookup' nor is it in the APRA list of super funds with Mysuper Authorised products. It is unclear whether the fund should be deleted from the award or changed to 'AMP Super Fund' which does have a Mysuper Authorised product.”
35. The ACTU confirms that APRA reports that the AMP Superannuation Savings Trust is not currently registered with APRA or in the APRA list of super funds with MySuper Authorised Products.⁷ Moreover the funds have different ABNs and appear to be different accounts (see Attachments 1 and 2) to this submission. In those circumstances, the ACTU submits that further information would need to be obtained regarding the relationship between the two funds prior to any substitution of the names.⁸
36. The ACTU otherwise defers to affiliate submissions regarding awards covering their members.

⁷ Australian Prudential Regulation Authority. (2025, September 8). *List of RSEs and RSE licensees and MySuper authorised products* [Excel spreadsheet]. <https://www.apra.gov.au/sites/default/files/2025-09/List%20of%20RSEs%20and%20RSE%20Licensees%20and%20MySuper%20Authorised%20products%208%20September%202025.xlsx>

⁸ A possible history of what has occurred is referred to in [Resolution Life Australasia Limited v AMP Limited; Munich Reinsurance Company of Australasia Limited v AMP Limited \[2025\] NSWCA 21 \(27 February 2025\)](#) at paragraph [7] however the similarity of names of a number of products suggests to the need for caution and further information.

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The Trustee for AMP SUPERANNUATION SAVINGS TRUST

ABN details

ABN:	76 514 770 399 View record on ABN Lookup
ABN Status:	Active from 01 Nov 1999
Fund type:	APRA Regulated Public Offer Fund
Contact details:	L 27 50 BRIDGE ST SYDNEY NSW 2000
Status:	Not registered with APRA Check register of superannuation institutions

Previous name(s)

Previous fund name	From	To
AMP SUPERANNUATION SAVINGS TRUST	12 Jan 2009	05 Feb 2010
The Trustee for AMP SUPERANNUATION SAVINGS TRUST	01 Sep 2007	12 Jan 2009
AMP SUPERANNUATION SAVINGS TRUST	24 May 2005	01 Sep 2007
THE TRUSTEE FOR AMP SUPERANNUATION SAVINGS TRUST	04 Dec 2003	24 May 2005
AMP SUPERANNUATION SAVINGS TRUST	01 Nov 1999	04 Dec 2003

What does 'Not registered' with APRA mean?

The status of this fund could not be determined from APRA. The most likely cause is that this is not an APRA regulated fund.

Please contact the ATO Superannuation Infoline on [13 10 20](tel:131020) for assistance

Also refer to [frequently asked questions](#)

Disclaimer

This extract is based on information supplied by superannuation entities to the Commissioner of Taxation.

Important Neither the Australian Government nor the ATO endorse or guarantee the performance of super funds.

Warning Statement

Anyone who tells you to set up a SMSF is giving you financial advice. This means the person or company must have an [Australian Financial Services \(AFS\) licence](#). Check [ASIC Connect Professional Registers](#).

THE TRUSTEE FOR AMP SUPER FUND

ABN details

ABN:	78 421 957 449 View record on ABN Lookup
ABN Status:	Active from 03 May 2000
Fund type:	APRA Regulated Public Offer Fund
Contact details:	PO BOX 6346 WETHERILL PARK NSW 1851
Status:	APRA Registered (data correct as at 09 Sep 2025 5:00 AM) Check register of superannuation institutions

Fund product details

USI	Product name	Contribution restrictions	From	To
AMP0195AU	SignatureSuper	No	16 May 2020	31 Dec 9999
AMP0886AU	SignatureSuper - Term Pension	Yes - contact fund	16 May 2020	31 Dec 9999
AMP1316AU	SignatureSuper - Allocated Pension	Yes - contact fund	16 May 2020	31 Dec 9999

Previous name(s)

Previous fund name	From	To
The Trustee for AMP SUPER FUND	01 Oct 2021	11 Nov 2021
The Trustee for SUPER DIRECTIONS FUND	22 Dec 2010	01 Oct 2021
SUPER DIRECTIONS FUND	22 May 2009	22 Dec 2010
The Trustee for SUPER DIRECTIONS FUND	09 May 2007	22 May 2009
SUPER DIRECTIONS FUND	03 May 2000	09 May 2007

What does 'APRA registered' mean?

An [APRA](#) regulated fund must be registered by APRA before it can accept transfers, rollovers or contributions.

Make sure this fund is registered before paying transfers, rollovers or contributions.

Also refer to [frequently asked questions](#)

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