



Choice of superannuation fund – how to determine if your employees are eligible

CHOICE OF SUPERANNUATION FUND

Choice of superannuation fund gives many employees the right to choose which superannuation fund their employer superannuation contributions are paid into. Choice of superannuation fund started on 1 July 2005.

All new eligible employees must be given a *Standard choice form* within 28 days of their start date.

! It is not compulsory for employees to choose their own fund or change to a new one but this law gives them the right to if they want to. If an employee does not choose a fund, you must continue to pay their superannuation contributions into the fund you nominate on the *Standard choice form*.

CHOICE OF SUPERANNUATION FUND EXTENDED TO MORE EMPLOYEES

If you are an incorporated business and you have employees that were covered by a state award, you should check whether they are now covered by a 'notional agreement preserving state award' under the WorkChoices changes.

From 1 July 2006, these employees can choose the fund into which their superannuation contributions are paid.

Under these new rules, existing employees can ask for choice of superannuation fund. If they ask, you are required to give them a *Standard choice form*.

You still have to provide new eligible employees with a *Standard choice form* within 28 days of their start date.

THREE STEPS YOU NEED TO TAKE

STEP 1:

Identify your new eligible employees

To help you work out which employees are eligible, use the flow chart on the next page.

Not everyone is eligible to choose a superannuation fund – it generally depends on the type of award or industrial agreement under which you employ them.

The flow chart provides a guide to eligibility under the choice of superannuation fund rules in the superannuation guarantee legislation. It does not comprehensively cover obligations that may exist under state laws or state based industrial arrangements.

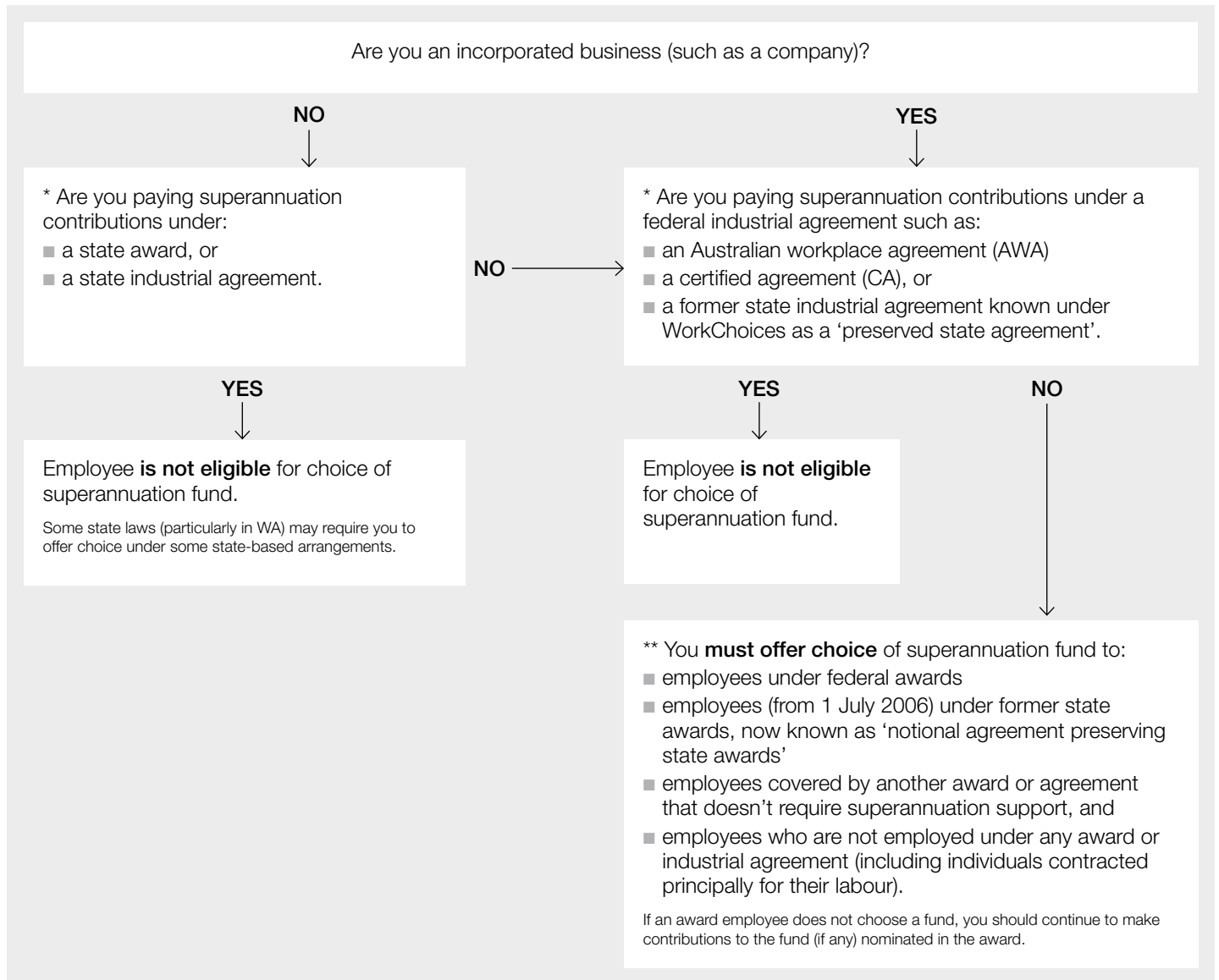
➤ If you are not sure what award or industrial agreement, if any, an employee is covered by, visit the WageNet website at www.wagenet.gov.au

The website has information on federal awards, industrial agreements and links to information about state awards. Alternatively, you can phone the workplace relations department in your state or territory.

Some members of defined benefit funds and some government employees are not eligible for choice of superannuation fund. To check whether this applies to your employees, visit www.superchoice.gov.au or phone **13 10 20**.

➤ The flow chart on the next page applies from 1 July 2006. For enquiries about eligibility before 1 July 2006 visit www.ato.gov.au/super or phone **13 10 20**.

FLOW CHART: How to determine if your employees are eligible for choice of superannuation fund



* Answer 'NO' to these questions if the employee is covered by an award or agreement but it doesn't specifically call for you to pay superannuation contributions.

** If you already offer the employee unlimited choice of superannuation fund as part of their employment conditions (and you act on their choice), you do not have to hand out a *Standard choice form* again.

STEP 2:

Provide a *Standard choice form* to new employees who are eligible for choice

If you have new employees who are eligible for choice of superannuation fund, you must provide them with a *Standard choice form* within 28 days from the day they started work with you.

They are not required to complete the form if they do not want to nominate a fund, but you do have to give them the choice if they are eligible.

- ⊖ You also have to provide a form within 28 days:
 - to existing eligible employees if they request a form from you in writing
 - if you become aware that you are unable to contribute to an employee's chosen fund or that it is no longer a complying fund, or
 - if you change your employer fund.

For copies of the *Standard choice form* (NAT 13080), visit www.ato.gov.au/super and search for '13080' or phone **1300 720 092**.

When choosing a fund, you should ask your employee to provide you with:

- the full name and contact details of the fund
- their account name in the fund
- the number or other unique identifier (if any) the fund uses to refer to their account
- the fund's Australian business number (ABN) if it has one
- the method you can use to pay the superannuation contributions to the fund and any details you need to make the payment
- the superannuation product identification number (SPIN) if it has one
- the unique identifier or number (if any) you use to refer to the employee (such as a payroll number), and
- a written statement, provided by or on behalf of the trustee of the fund, that the fund is a resident regulated fund and can accept your contributions.

Your employee should be able to get this information from their superannuation fund.

If the fund is a self managed superannuation fund, your employee should also provide you with evidence that it is a regulated superannuation fund. This evidence must have originated from the Tax Office.

- ⊖ Anyone providing financial advice is generally required by law to be licensed by the Australian Securities and Investment Commission (ASIC). Making recommendations about which superannuation fund an employee should choose, the level of contributions they make to superannuation, or whether an employee's superannuation should be consolidated may amount to either general or personal financial product advice.

STEP 3:

Act on your employee's choice

Once an eligible employee makes a choice of superannuation fund, you have two months to arrange to pay contributions into that fund. After this time, any superannuation contributions paid for that employee must be to their chosen fund.

Continue to pay superannuation contributions

If an employee has not chosen a fund, or if you have not accepted their choice of fund because they have not yet provided all the information you need, you need to start (or continue) paying enough superannuation contributions to the fund you nominate.

It does not need to be the same fund for each employee, but you can only nominate one fund per employee. The employer fund can be the fund you are currently paying superannuation contributions into for an employee.

You need to check that the employer fund:

- is a complying fund, and
- meets the minimum life insurance requirements for choice of superannuation fund, or is covered by the transitional arrangements for insurance coverage.

- If you need more information on how to check your employer fund meets the requirements for choice of superannuation fund refer to *Choice of superannuation fund – guide for employers* (NAT 13185), visit www.ato.gov.au/super and search for '13185' or phone **1300 720 092**.

Consequences of not meeting your choice of superannuation fund obligations

If you don't meet your choice of superannuation fund obligations you may have a 'choice liability'. This is part of the superannuation guarantee charge and increases the amount you have to pay.

The choice liability is 25% of whatever contributions you paid that did not meet your choice of superannuation fund obligations (to a limit of \$500 per notice period per employee). The Tax Office transfers this amount to your employee's superannuation fund or retirement savings account.

To ensure employers are meeting their choice of superannuation fund obligations, we conduct a variety of compliance activities. These activities include following up on complaints received from employees, phone audits or field audits involving formal visits to the employer's premises or those of their advisers.

FREQUENTLY ASKED QUESTIONS

Q. Do I need to hand out a *Standard choice form* every 12 months?

- A. No. If you have already offered choice to your employees then generally you only need to hand out new forms:
- to new eligible employees starting work
 - to existing employees if they request a form from you in writing
 - if you become aware that you are unable to contribute to an employee's chosen fund or that it is no longer a complying fund, or
 - if you change your employer fund.

Q. What should I do if my employee has not provided me with all the information I need to accept their choice of superannuation fund?

- A. If an employee has not chosen a fund or not yet provided you with all the information you need to pay contributions to their chosen fund, you should continue paying enough superannuation contributions to the employer fund (the fund you nominated on the *Standard choice form*).

Q. Do I need to act on an employee's choice every time they want to change funds?

- A. No. You only need to act on an employee's choice once in any 12 month period.

Q. Can I still use the superannuation holding account special account after 30 June 2006?

- A. No. The SHA special account was only available as a transitional measure and will be closed to all employer deposits after 30 June 2006. You will need to make arrangements to pay your superannuation contributions to a complying superannuation fund or retirement savings account.

Q. I am a company with employees under a former state award (now known as a 'notional agreement preserving state award') and I haven't had to offer choice before, what do I need to do?

- A. From 1 July 2006 if your employee chooses a fund and gives you the necessary details then you have two months to act on that choice. After that time any superannuation contributions should be made to the chosen fund.

Q. Can I reject a choice if I have to become a participating employer of that fund?

- A. Yes. You do not have to accept a choice from an employee if the fund is not willing to accept contributions from you when the choice is made.

Q. I employ seasonal workers; do I need to keep handing out a *Standard choice form* each time they recommence employment?

- A. No. You only need to provide a *Standard choice form* to an employee when they first start work with you.

➤ For more information about who is eligible for choice of superannuation fund refer to the publication *Choice of superannuation fund – guide for employers* (NAT 13185) or *Superannuation guarantee – a guide for employers* (NAT 1987).

Both of these publications are available at www.ato.gov.au/super by searching for '13185' or '1987' or phoning **13 10 20**.

Copies of the *Standard choice form* (NAT 13080) are also available using these channels.

➤ MORE INFORMATION

For further information on this topic:

- visit www.ato.gov.au/super or www.superchoice.gov.au
- phone us on **13 10 20**, or
- write to:
Australian Taxation Office
PO Box 277
WORLD TRADE CENTRE VIC 8005

If you do not speak English well and want to talk to a tax officer, phone the Translating and Interpreting Service on **13 14 50** for help with your call.

People with a hearing or speech impairment with access to appropriate teletypewriter (TTY) or modem equipment, phone **13 36 77**. If you do not have access to TTY or modem equipment, phone the Speech to Speech Relay Service on **1300 555 727**.

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