



# Choice of super fund - meeting your obligations

Many employees can choose which super fund their employer superannuation contributions are paid into.

The option to choose a super fund under the superannuation guarantee started on 1 July 2005. Choosing a super fund was also extended in July 2006 to employees working for corporations under former state awards.

## What are my obligations?

As an employer, there are three steps you need to follow, in order to meet your obligations, when a new employee starts work.

### Step 1: Identify your new eligible employees

Not everyone is eligible to choose a super fund. It generally depends on the type of award or industrial agreement that you employ them under.

If you don't have any eligible employees, you don't need to do anything further.

 When you employ new staff you need to check their eligibility.

## Who is eligible to choose a super fund?

Your employee can generally choose their super fund if they are:

- employed under a federal award
- employed under a former state award, now known as a 'notional agreement preserving state award'
- employed under another award or agreement that doesn't require superannuation support, or
- not employed under any state award or industrial agreement (including contractors paid principally for their labour).

## Who is not eligible to choose a super fund?

Your employee may not be eligible under the superannuation guarantee to choose a super fund if:

- you pay superannuation for them under a state award or industrial agreement or under certain workplace agreements, including an Australian Workplace Agreement (AWA) and collective agreements (although choice can also be provided under these awards or agreements), or
- they're in a particular type of defined benefit fund or they've already reached a certain level in a defined benefit fund.

Some federal and state public sector employees are also excluded from choice of superannuation.

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](http://www.wagenet.gov.au) or
- phone the workplace relations department in your state or territory.

## Step 2: Provide a Standard choice form to new employees who are eligible to choose a super fund

If you have a new employee who is eligible to choose a super fund, you should provide them with a [Standard choice form](#) (NAT 13080) within 28 days from the day they started working for you.



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

If your employee does not choose a fund, you must pay the superannuation contributions for that employee into the fund you have identified as your [employer nominated fund](#) (also known as your default fund).

You also have to provide a *Standard choice form* within 28 days if:

- an existing eligible employee asks you for a form
- you are unable to contribute to an employee's chosen fund, or it is no longer a complying fund, or
- you change your employer nominated fund.



Make sure *the Standard choice form* includes your employee's tax file number so that any contributions you pay are not returned to you by the super fund.

## How do I obtain a copy of the Standard choice form?

You can download our [Standard choice form](#) (NAT13080) or you can order a form by phoning the publications ordering service on **1300 720 092** (and quoting NAT number 13080).

## Step 3: Act on your employee's choice

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

You need to start paying superannuation contributions to your [employer nominated fund](#), if:

- an employee does not choose a fund within 28 days, or
- you have not accepted their choice of fund because they have not yet provided all the information you need.



From 1 July 2008, your employer nominated fund must offer minimum life [insurance](#) for members.

If you don't meet your obligations, including paying your employee superannuation contributions to the correct fund, you may face penalties – see [Are there penalties for failing to comply?](#)

## What is an employer nominated fund?

Your employer nominated fund is the fund you pay an employee's superannuation guarantee contributions to if they do not choose a fund.

The super fund you choose must be a complying fund and from 1 July 2008 also offer a minimum level of life [insurance](#), as set out in the regulations (with some exceptions).

These requirements apply if you:

- continue to make contributions to your existing nominated fund, or
- choose a new fund.

The fund you currently pay employee superannuation contributions to is likely to meet the requirements. However, to make sure it does check with the trustee or the authorised representative of the fund.

Similarly, if you are considering a new employer nominated fund, check with the trustee of that fund to ensure they meet the requirements.



It is illegal for a super fund to provide benefits to you as an incentive to use their fund as your nominated fund. For example, a fund is not allowed to offer you a free holiday to encourage you to choose their fund as your employer nominated fund.

## How to I check if a super fund is complying?

A super fund is considered to be complying if it meets specific requirements and obligations outlined in the legislation. Talk to the fund's trustee to check the fund is complying.

If they tell you in writing it does comply, and you find out later that it doesn't, you are protected against penalties for paying contributions to a non-complying fund.

We regulate self managed superannuation funds (SMSFs) and the Australian Prudential Regulation Authority (APRA) regulates all other super funds and approved deposit funds.

## Insurance requirements

From 1 July 2008, your employer nominated fund (also known as your default fund) must offer minimum life insurance death cover to members.

The insurance cover must comply with the following requirements:

- a premium of at least \$0.50 per week for those under 56 years of age, or
- the level of insurance cover must equal or exceed that shown in the table below, or
- if the contributions are made to a defined benefit fund on behalf of a defined benefit member, the cover must equal or exceed that detailed in the table below.

Age range	Minimum level of insurance cover
0-19	Nil
20 to 34	\$50,000
35 to 39	\$35,000
40 to 44	\$20,000
45 to 49	\$14,000
50 to 55	\$7,000
56+	Nil

There are some instances where employer-nominated super funds do not need to meet life insurance requirements, for example if you:

- are making contributions under a federal award
- arrange insurance cover for your employees outside the super system that includes death cover that is at least equivalent to the minimum insurance requirements
- are unable to obtain insurance from the fund normally used in respect of a particular employee due to the employee's health, occupation or hours worked, or
- contribute to a fund whose governing rules were in place on 11 March 2005 and determined that an amount not less than \$50,000 will be payable in respect of the death of an employee.

## What you need to do

You need to:

- contact your employer nominated super fund to make sure that it is offering life insurance to cover the employee's death (most industry and retail funds and master trusts provide adequate insurance options). The contact details of Australia's super funds can be found at [www.superreview.com.au](http://www.superreview.com.au) by selecting *Superannuation* in the left hand navigation bar, and
- visit [www.business.gov.au](http://www.business.gov.au) and select *ABN Look Up* then *Super Fund Lookup* to check that your fund is a complying super fund.



If your employer nominated super fund does not offer the minimum life insurance for members, you will need to arrange insurance either with another super fund or with an insurance provider.

## What information and advice can I give?

You can provide factual information to an employee about:

- what choosing a super fund is about
- your obligations in relation to choosing a super fund, and
- what your employee can do to nominate a super fund as their chosen fund.



Anyone providing financial advice is generally required by law to be licensed by the Australian Securities and Investment Commission (ASIC).

Unless you are licensed by ASIC to provide financial advice, don't make recommendations about:

- the super fund an employee should choose
- the level of contributions they make to superannuation, or
- whether an employee's superannuation should be consolidated.

## Where can employees go for information on choosing a super fund?

Employees can find out more about how to compare and choose super funds by visiting the Australian Securities and Investments Commission (ASIC) FIDO website at [www.fido.gov.au](http://www.fido.gov.au) or phoning **1300 300 630**.

## What records do I need to keep?

You must keep records that show you've met your obligations, including:

- records showing the *Standard choice form* has been provided to all eligible employees
- details of employees who do not have to be offered a choice of super fund
- receipts or other documents issued by the super fund showing you have made superannuation contributions to an employees' chosen fund, and
- records confirming your employer nominated fund is a complying fund and meets the life insurance requirements.



Your records about choosing a super fund must be in English and kept for at least five years.

## Are there penalties for failing to comply?

Yes. If you don't meet your obligations, including paying your employee superannuation contributions to the correct fund, you may be liable for a 'choice liability'.

The choice liability is part of the superannuation guarantee charge and is the penalty you have to pay if you do not meet your obligations.

The choice liability applies when:

- you have paid superannuation guarantee contributions to a complying fund for your employee but not to the fund chosen by them, or
- you have not given your employees a *Standard choice form* in the required timeframe.

To avoid paying the superannuation guarantee charge, it is essential you pay enough superannuation contributions to your employee's chosen fund (or to your employer nominated fund) by the [quarterly cut-off dates](#).



You will also be subject to the super guarantee charge if you impose a fee on employees for implementing their choice of super fund.

## Frequently asked questions

### Do I need to hand out a Standard choice form every 12 months?

No. If you have already offered a choice to your employees, 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
- if you are unable to contribute to an employee's chosen fund, or it is no longer a complying fund, or
- you change your employer nominated fund.

### I employ contractors and seasonal workers. Do I need to keep handing out a Standard choice form each time they work for me?

No. You only need to provide a *Standard choice form* (NAT 13080) to an employee when they first start work with you (refer to the form when they work for you again).

### How often can an employee choose a fund?

An employee can choose a fund as often as they want but you only have to accept one choice in every 12 month period.

### What if an employee does not choose a fund?

If an employee does not choose a fund, you must pay their superannuation guarantee contributions into your employer nominated fund.

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

You must continue paying enough superannuation contributions to your employer nominated fund if an employee has not:

- chosen a fund, or
- provided you with all the information you need to pay contributions to their chosen fund.

## Do I have to accept my employee's choice?

If the employee's *Standard choice form* does not contain all the required information, you do not have to accept it. However, you are still required to pay superannuation contributions to your employer nominated fund for that employee, until they give you the required information.



A choice cannot be refused based on how the contributions are to be made (for example, electronically). Superannuation funds will accept contributions made by cheque or any other legal tender.

However, if an employer hires employees under a registered collective agreement the employer is not obligated to offer choice. In this case the employer may be prepared to make contributions to a preferred fund under certain conditions. For example, where a government department makes superannuation contributions for its employees under a collective agreement, the department is meeting its choice obligations. Such a department may agree to contribute to an employee's nominated fund on condition that the fund accepts electronic transfers.

## My employee wants to choose a fund that requires me to become a participating employer (or provide additional registration details), do I have to agree?

Some super funds require you to become a 'participating employer' before you can pay contributions to them. Being a participating employer may mean you have to make superannuation payments more regularly (such as, monthly instead of quarterly).

If you agree, complete all the necessary details before you start making payments.

If you don't agree, and the superannuation fund refuses to accept contributions from you, you can reject the employee's choice and continue making contributions to your employer nominated fund.

You do not have to accept a choice if, at the time of making the choice, the employee's chosen fund is not willing or able to accept contributions from you.

## Can an employee choose a self managed superannuation fund as their chosen fund?

Yes. An employee can choose a self managed superannuation fund (SMSF) as their chosen fund. If their chosen fund is a SMSF, your employee should also provide you with evidence from us that it is a complying super fund.

## Can I pass on administration fees to the employee?

No. Employers will be subject to the superannuation guarantee charge if they impose a fee on employees for implementing their choice of super fund.

## Do directors need to be offered a choice?

Directors are considered employees for superannuation guarantee purposes. If the director is a new eligible employee, you must provide them with a *Standard choice form*.

## More information

To obtain a copy of our publications or for more information:

- phone the publications ordering service on **1300 720 092**
- phone our choice of super fund information line on **13 28 64** between 8.00am and 6.00pm, Monday to Friday, or
- write to us at

**PO Box 3578  
ALBURY NSW 2640**

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.

If you have a hearing or speech impairment and have access to appropriate 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**.



Last Modified: Monday, 21 July 2008

---

## Copyright

© Commonwealth of Australia

This work is copyright. You may download, display, print and reproduce this material in unaltered form only (retaining this notice) for your personal, non-commercial use or use within your organisation. Apart from any use as permitted under the *Copyright Act 1968*, all other rights are reserved.

Requests for further authorisation should be directed to the Commonwealth Copyright Administration, Copyright Law Branch, Attorney-General's Department, Robert Garran Offices, National Circuit, BARTON ACT 2600 or posted at <http://www.ag.gov.au/cca>.