

MEDIA RELEASE

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Full Federal Court critical of FWC default super review

The Federal Court of Australia today published the reasons behind its decision the Fair Work Commission's Expert Panel is invalidly constituted and cannot continue with the selection of MySuper default funds.

On 6 June the Federal Court found the FWC Expert Panel lacked the number of superannuation experts required by law and that the FWC President had acted outside his legal powers by appointing himself to the Expert Panel.

Today the Court published the key reasons behind its decision.

The Court described the FWC process in relation to who was an Expert entitled to make key decisions in the process as "confusing, to say the least".

The Federal Court highlighted that the qualifications to be an Expert Panel Member are "distinct from those for ordinary members of the Commission." These qualifications are specified by law as finance, investment management and/or superannuation.

Further, the Federal Court concluded that the Fair Work Act does not permit the Expert Panel to convene with the President as its member and that it must have at least two expert panel members to have a quorum.

The Federal Court detailed the failure of the President of the FWC to accurately exercise his powers, deciding: "In making his decision that he should fill the casual vacancy himself it is evident that the President proceeded on an erroneous... reading of s622(3). Consequently, he lacked the power to do so and the panel is not currently constituted as contemplated by s620(1A)."

John Brogden, CEO of the Financial Services Council said: "The findings by the Federal Court highlight that the selection process for MySuper default funds is flawed."

"We urge the Government to reform the default superannuation selection process as a matter of urgency," he said.

"The consequences of not proceeding with reform are far-reaching," he said.

New research by Rafe Consulting for the Financial Services Council shows the superannuation arrangements of at least 2.25 million working Australians and 100,000 employers will be thrown into turmoil if the Fair Work Commission is allowed to complete its review of default superannuation in awards.

Mr Brogden said: "Every single MySuper product will need to be assessed, and every single fund will need to be replaced in every Modern Award if this process continues."

"This will cost consumers and employers a staggering \$400 million."

“Superannuation funds that offer competitive products and provide good service to their members have nothing to fear from competition,” he said.

“The closed shop of default superannuation is a risk not just for individuals who will have lower savings in retirement as a result of less competition, but for the Government which will ultimately bare the cost of lower fund balances in retirement through paying more in Age Pensions.”

“A genuinely competitive market will lead to more transparency, lower fees and better services for employers and employees,” he said.

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About the Financial Services Council

The Financial Services Council represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, trustee companies and Public Trustees. The Council has over 125 members who are responsible for investing more than \$2.3 trillion on behalf of 11 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world. The Financial Services Council promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.