



Australian Defence Force Superannuation Act 2015

No. 119, 2015

**An Act relating to the Australian Defence Force
Superannuation Scheme, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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[Assented to 10 September 2015]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Australian Defence Force Superannuation Act 2015*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day this Act receives the Royal Assent.	10 September 2015

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Simplified outline

This Act provides for a superannuation scheme, to be known as the Australian Defence Force Superannuation Scheme (ADF Super).

Generally, a person is eligible to become an ADF Super member if he or she is a member of the Permanent Forces or a continuous full-time Reservist on or after 1 July 2016. After that day, DFRDB and MSBS are closed to persons who commence with the Defence Force.

In some cases, a person who is eligible to become an ADF Super member becomes a member if he or she chooses to become a member. In other cases, a person automatically becomes an ADF Super member.

A person's membership of ADF Super continues until the occasion, or the last of the occasions, on which a benefit is paid to or in respect of the member.

The Department must pay contributions to ADF Super for the benefit of certain ADF Super members.

CSC is responsible for ADF Super.

4 Definitions

In this Act:

account-based pension has the same meaning as in the *Superannuation Industry (Supervision) Regulations 1994*.

ADF means the Australian Defence Force.

ADF Super: see *Australian Defence Force Superannuation Scheme*.

ADF Super Fund means the fund established, and vested in CSC, by the Trust Deed.

ADF Super member means a person who is an ADF Super member in accordance with section 12.

Australian Defence Force Superannuation Scheme or ***ADF Super*** means the superannuation scheme established by the Trust Deed.

continuous full-time Reservist means a member of the Reserves:

- (a) whose undertaking to render defence service of a continuous nature for a specified period has been accepted under:
 - (i) subsection 32A(3) of the *Naval Defence Act 1910*; or

Section 4

- (ii) subsection 50(3) of the *Defence Act 1903*; or
- (iii) subsection 4J(3) of the *Air Force Act 1923*; and
- (b) who is rendering that continuous service in accordance with the undertaking.

CSC (short for Commonwealth Superannuation Corporation) has the same meaning as in the *Governance of Australian Government Superannuation Schemes Act 2011*.

defence service has the meaning given for a declared member by section 6 of the *Military Rehabilitation and Compensation Act 2004*.

DFRDB (short for Defence Force Retirement and Death Benefits) means the scheme established by the *Defence Force Retirement and Death Benefits Act 1973*.

member spouse has the meaning given by section 9.

MSBS (short for Military Superannuation and Benefits Scheme) has the same meaning as **Scheme** has in the *Military Superannuation and Benefits Act 1991*.

non-member spouse has the meaning given by section 9.

Permanent Forces means:

- (a) the Permanent Navy established by the *Naval Defence Act 1910*; or
- (b) the Regular Army established by the *Defence Act 1903*; or
- (c) the Permanent Air Force established by the *Air Force Act 1923*.

preserved employer benefit means a preserved amount that includes an amount of employer benefit (within the meaning of the Rules made for the administration of MSBS).

Reserves means:

- (a) the Naval Reserve established by the *Naval Defence Act 1910*; or
- (b) the Army Reserve established by the *Defence Act 1903*; or
- (c) the Air Force Reserve established by the *Air Force Act 1923*.

rules means rules made under section 28.

splitting agreement has the meaning given by section 9.

splitting order has the meaning given by section 9.

superannuation interest has the meaning given by section 9.

this Act includes the rules (except in subsection 29(2)).

Trust Deed means:

- (a) the deed referred to in section 7; or
- (b) if the deed is amended—the deed as so amended.

5 Application of Act

This Act applies both within and outside Australia.

Part 2—The Trust Deed

6 Simplified outline of this Part

The Australian Defence Force Superannuation Scheme (known as ADF Super) is established by a deed made under this Part. The deed also establishes the ADF Super Fund (into which contributions and other money are paid). The deed is a legislative instrument.

The deed sets out the functions and powers of CSC in relation to ADF Super and the ADF Super Fund.

Generally, CSC must consent to any amendment of the deed.

7 Trust Deed to establish the Australian Defence Force Superannuation Scheme

- (1) Before 1 July 2016, the Minister must, for and on behalf of the Commonwealth, by deed:
 - (a) establish a superannuation scheme that:
 - (i) is to be known as the Australian Defence Force Superannuation Scheme; and
 - (ii) may also be known as ADF Super; and
 - (iii) is for the benefit of persons who will be members of ADF Super; and
 - (b) establish, and vest in CSC, a fund for the purposes of ADF Super; and
 - (c) set out the functions and powers of CSC in relation to ADF Super and the ADF Super Fund; and
 - (d) make rules for the administration of ADF Super.
- (2) The deed is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the deed.

8 Amendment of the Trust Deed

- (1) The Minister may, by writing, amend the Trust Deed.

Limitations on amending the Trust Deed

- (2) The Trust Deed must not be amended unless:
- (a) CSC has consented to the amendment; or
 - (b) the amendment:
 - (i) relates to a payment by an employer-sponsor within the meaning of the *Superannuation Industry (Supervision) Act 1993* that will, after the making of the amendment, be required or permitted to be made under this Act; or
 - (ii) relates solely to the termination of the ADF Super Fund; or
 - (iii) is made in circumstances covered by regulations made for the purposes of subparagraph 60(1)(b)(iii) of the *Superannuation Industry (Supervision) Act 1993*.

Note: This subsection does not apply in relation to an amendment of the Trust Deed for the purposes of subsection 19(1) (costs of administration of Act etc.) (see subsection 19(2)).

- (3) A provision of the Trust Deed that is amended under subsection (1) is invalid if the provision would have the effect that ADF Super:
- (a) would not be a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993*; or
 - (b) would not comply with that Act.

Instrument making amendment is a legislative instrument

- (4) An instrument under subsection (1) is a legislative instrument.
- (5) Despite section 44 of the *Legislative Instruments Act 2003*, section 42 (disallowance) of that Act applies to an instrument under subsection (1) of this section.

9 Family law interest splitting

- (1) Without limiting section 7 or 8, the Trust Deed:

Section 9

- (a) may provide that, when a splitting agreement or splitting order is received by CSC in respect of a superannuation interest under this Act:
 - (i) the non-member spouse is entitled to benefits determined in accordance with the Trust Deed; and
 - (ii) the benefits of the member spouse are reduced in accordance with the Trust Deed; and
 - (b) may include any other provision that is related to, or consequential on, provisions referred to in paragraph (a).
- (2) In this Act:
- member spouse** has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.
- non-member spouse** has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.
- splitting agreement** means:
- (a) a superannuation agreement (within the meaning of Part VIIIIB of the *Family Law Act 1975*); or
 - (b) a flag lifting agreement (within the meaning of Part VIIIIB of the *Family Law Act 1975*) that provides for a payment split (within the meaning of Part VIIIIB of the *Family Law Act 1975*).
- splitting order** has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.
- superannuation interest** has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

Part 3—Members of the Australian Defence Force Superannuation Scheme (ADF Super)

10 Simplified outline of this Part

Generally, a person is eligible to become an ADF Super member if the person is a member of the Permanent Forces or a continuous full-time Reservist on or after 1 July 2016.

Some persons must make an election in order to become an ADF Super member.

Other persons automatically become members of ADF Super. These persons can later make an election in accordance with Part 3A of the *Superannuation Guarantee (Administration) Act 1992* and choose another superannuation fund.

A person who has never previously been a member of the Defence Force and who becomes a member of the Permanent Forces or a continuous full-time Reservist on or after 1 July 2016 automatically becomes an ADF Super member.

A person who is already a member of MSBS must elect to become an ADF Super member. Otherwise, he or she remains a member of MSBS. (A person may have become a member of MSBS by becoming a member of the Permanent Forces or a continuous full-time Reservist before 1 July 2016, or, for those who have a preserved employer benefit, after that day.)

A former member of MSBS, who does not have a preserved employer benefit, and who becomes a member of the Permanent Forces or a continuous full-time Reservist on or after 1 July 2016 automatically becomes an ADF Super member.

A contributing member of DFRDB who became a member of the Permanent Forces or a continuous full-time Reservist before 1 July

Section 11

2016 is not eligible to become an ADF Super member. However, if a member of DFRDB leaves the Defence Force and, on or after 1 July 2016, again becomes a member of the Permanent Forces or a continuous full-time Reservist, he or she automatically becomes an ADF Super member.

11 Eligibility for membership of ADF Super

- (1) A person is eligible to become an ADF Super member if:
 - (a) the person is:
 - (i) a member of the Permanent Forces; or
 - (ii) a continuous full-time Reservist; or
 - (b) the person is a former member of MSBS (within the meaning of the Rules made for the administration of MSBS) or a former contributing member of DFRDB (within the meaning of the *Defence Force Retirement and Death Benefits Act 1973*) to whom an account-based pension may, if the person were an ADF Super member, be provided in accordance with the Trust Deed.
- (2) However, a person is not eligible to become an ADF Super member if the person is a contributing member (within the meaning of the *Defence Force Retirement and Death Benefits Act 1973*).
- (3) A person is not eligible to become an ADF Super member before 1 July 2016.

12 Becoming an ADF Super member

- (1) This section sets out the 2 situations in which a person can become an ADF Super member.

Choice to become a member

- (2) A person who is eligible to become an ADF Super member may, in a manner approved by CSC in writing under this subsection, choose to become an ADF Super member.

- (3) The person becomes an ADF Super member when the choice is made.

Note: A person who is a member of MSBS, who chooses to become an ADF Super member, cannot later again become an MSBS member (see subsection 7(3) of the *Military Superannuation and Benefits Act 1991*).

ADF Super is the person's mandated fund

- (4) A person becomes an ADF Super member at a particular time if:
- (a) the person is eligible to be an ADF Super member because the person becomes a member of the Permanent Forces or a continuous full-time Reservist on or after 1 July 2016; and
 - (b) the person does not have a preserved employer benefit in MSBS; and
 - (c) there is no chosen fund for the person (within the meaning of Part 3A of the *Superannuation Guarantee (Administration) Act 1992*).

Note 1: See also section 15 (ADF Super is the sole eligible choice fund in relation to certain members).

Note 2: For a continuous full-time Reservist whose undertaking spans 30 June 2016, see section 13.

13 Continuous full-time Reservists whose undertakings span 30 June 2016

For the purposes of paragraph 12(4)(a), if:

- (a) a person is an eligible member of the Defence Force (within the meaning of the *Defence Force Retirement and Death Benefits Act 1973*); and
- (b) the person becomes a continuous full-time Reservist as a result of an undertaking that is accepted before 1 July 2016; and
- (c) the period of the undertaking is extended on or after that day; then, in relation to service on or after that day, the person is taken to have become a continuous full-time Reservist on the day that period is extended.

Section 14

14 Duration of membership of ADF Super

- (1) A person ceases to be an ADF Super member at the following time:
 - (a) if there is only one occasion on which a benefit is payable to or in respect of the member in accordance with the Trust Deed:
 - (i) the time the benefit is paid; or
 - (ii) if the person dies before that benefit is paid—the time the person dies;
 - (b) if there are 2 or more occasions on which a benefit is paid to or in respect of the member in accordance with the Trust Deed:
 - (i) the time the last of those benefits is paid; or
 - (ii) if the person dies before the last of those benefits is paid—the time the person dies;
 - (c) in any other case—the time the person dies.
- (2) A person does not cease to be an ADF Super member merely because the person ceases to be eligible to become an ADF Super member.
- (3) This section does not prevent a person who ceases to be an ADF Super member from later becoming an ADF Super member.

15 ADF Super is the sole eligible choice fund in relation to certain members

ADF Super is, for the purposes of the application of subsection 32C(2) of the *Superannuation Guarantee (Administration) Act 1992* to a person, the sole eligible choice fund for the Commonwealth if:

- (a) either:
 - (i) the person is eligible to become an ADF Super member; or
 - (ii) the person is an ADF Super member; and
- (b) the person is a member of the Permanent Forces or a continuous full-time Reservist.

16 Contributions to ADF Super by the Department

- (1) The Department must pay to CSC, for the benefit of each ADF Super member, any contributions that are payable by the Department.

Note: See also section 21 (amounts payable to CSC).

- (2) The payments must be in accordance with this Act, the Trust Deed and the *Defence Act 1903*.

Part 4 Administration

Division 1 Simplified outline of this Part

Section 17

Part 4—Administration

Division 1—Simplified outline of this Part

17 Simplified outline of this Part

The functions and powers of CSC are set out in this Part and the Trust Deed. This Part also deals with costs, fees and information.

Division 2—Functions and powers of CSC

18 Functions and powers of CSC

- (1) The functions and powers of CSC in relation to ADF Super and the ADF Super Fund are those set out in the Trust Deed.
- (2) CSC is also responsible for the general administration of this Act.

Note: For other functions of CSC, see section 8 of the *Governance of Australian Government Superannuation Schemes Act 2011*.

Division 3—Costs of administration

19 Costs of administration of Act etc.

- (1) The costs of the administration of this Act and the Trust Deed, including the costs of and incidental to:
 - (a) the management of the ADF Super Fund by CSC; and
 - (b) the investment of money from the ADF Super Fund;are to be paid by CSC out of the ADF Super Fund in accordance with the Trust Deed.
- (2) Subsection 8(2) (limitations on amending the Trust Deed) does not apply in relation to an amendment made to the Trust Deed that relates to the costs of the administration of this Act and the Trust Deed.

20 Payment of fees

- (1) The rules may provide that, if a person requests CSC to reconsider one of its decisions under this Act, the rules or the Trust Deed, the person is liable to pay a fee to CSC.
- (2) Subsection (1) does not authorise the imposition of taxation within the meaning of section 55 of the Constitution.
- (3) The rules may make provision for and in relation to the refund of any fees paid under subsection (1).

Division 4—Other administrative matters

21 Amounts payable to CSC

- (1) Any amount (including an amount of contributions) that is payable to CSC under this Act or the Trust Deed may be recovered by CSC in a court of competent jurisdiction as a debt.
- (2) If:
 - (a) an amount (including an amount of contributions) is payable by a person to CSC under this Act or the Trust Deed; and
 - (b) the amount remains unpaid after the day on which payment was due;the person is liable to pay to CSC interest on any such amount that remains unpaid at such rate as CSC determines in writing under this subsection.
- (3) A determination under subsection (2) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the instrument.

22 Recovery of overpayments

If, for any reason (including the making of, or cancellation of, an election under the Trust Deed), CSC has paid an amount of benefit that was, or has become, not payable:

- (a) the amount so paid may be recovered by CSC in a court of competent jurisdiction as a debt; or
- (b) if the person to whom that amount was paid is receiving, or is entitled to receive, a benefit under the Trust Deed—the amount so paid, or such part of that amount as CSC determines, may, if CSC so directs, be recovered by deduction from that benefit.

23 CSC may rely on information supplied by the Department

- (1) For the purposes of the Trust Deed in its application to or in respect of a person who is or has been an ADF Super member,

Section 24

CSC may presume that any information provided to CSC by the Department is correct.

- (2) If a tribunal, authority or person is empowered:
- (a) to review a decision of CSC under this Act or the Trust Deed; and
 - (b) to vary, or make a decision in substitution for, CSC's decision under this Act or the Trust Deed;
- the tribunal, authority or person is not bound by any presumption made by CSC under subsection (1).

24 CSC may require the Department to distribute information etc. to members of ADF Super

- (1) CSC may:
- (a) send to the Department any document or written information that CSC is required to send to an ADF Super member under this or any other Act; and
 - (b) request the Department to give the document or information to the member.
- (2) The Department must comply with the request unless doing so would breach Chapter 7 of the *Corporations Act 2001*.
- (3) CSC must take reasonable steps to ensure that the confidentiality of any document or information sent to the Department for transmission to the member is preserved.

Part 5—Miscellaneous

25 Simplified outline of this Part

This Part deals with those who are subject to the Trust Deed, termination and variation of rights by later legislation, and rules made under this Act.

26 Persons subject to the Trust Deed

The following persons are subject to the Trust Deed (to the extent that the Trust Deed is applicable):

- (a) a person who is, or has ceased to be, an ADF Super member;
- (b) a person who is, or has ceased to be, a person to whom a benefit is payable under provisions of the Trust Deed;
- (c) the Department;
- (d) CSC.

27 Termination and variation of rights by later legislation

A right granted under this Act or the Trust Deed is granted on the basis that:

- (a) the right may be cancelled, revoked, terminated or varied by or under later legislation; and
- (b) no compensation is payable if the right is so cancelled, revoked, terminated or varied.

28 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted to be prescribed by this Act; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Section 29

Preconditions for making rules

- (2) Rules may not be made unless:
- (a) CSC has consented to the making of the rules; or
 - (b) the rules:
 - (i) relate to a payment by an employer-sponsor within the meaning of the *Superannuation Industry (Supervision) Act 1993* that will, after the making of the rules, be required or permitted to be made under this Act; or
 - (ii) relate solely to the termination of the ADF Super Fund; or
 - (iii) are made in circumstances covered by regulations made for the purposes of subparagraph 60(1)(b)(iii) of the *Superannuation Industry (Supervision) Act 1993*.

Limitation on rule-making power

- (3) To avoid doubt, the rules may not do the following:
- (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) amend this Act.

29 Rules relating to the operation of the *Superannuation Industry (Supervision) Act 1993* and certain other laws

- (1) The rules may make any provision that is necessary for the purpose of enabling ADF Super to satisfy any condition or requirement of, or made under, any of the following laws if that law is capable of applying in relation to ADF Super:
- (a) the *Corporations Act 2001*;
 - (b) the *Family Law Act 1975*;
 - (c) the *Financial Institutions Supervisory Levies Collection Act 1998*;

- (d) the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*;
 - (e) the *Superannuation Industry (Supervision) Act 1993*;
 - (f) the *Superannuation (Resolution of Complaints) Act 1993*;
 - (g) the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.
- (2) If rules made for the purposes of subsection (1) are inconsistent with a provision of this Act or the Trust Deed, the rules prevail and the provision, to the extent of the inconsistency, is of no effect.

*[Minister's second reading speech made in—
House of Representatives on 25 June 2015
Senate on 19 August 2015]*

(114/15)
