

Defence Force (Superannuation) (Productivity Benefit) Determination 1988

made under subsection 52(1) of the

Defence Act 1903

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**About this compilation**

**This compilation**

This is a compilation of the *Defence Force (Superannuation) (Productivity Benefit) Determination 1988* that shows the text of the law as amended and in force on 12 May 2015 (the ***compilation date***).

This compilation was prepared on 13 May 2015.

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

**Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on ComLaw (www.comlaw.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on ComLaw for the compiled law.

**Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

**Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on ComLaw for the compiled law.

**Self‑repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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1 Name of Determination

 This Determination is the *Defence Force (Superannuation) (Productivity Benefit) Determination 1988*.

2 Commencement

 This Determination shall be deemed to have commenced on 1 January 1988.

3 Interpretation

 (1) In this Determination, unless the contrary intention appears:

***annual interest rate***, for 2015 or a later calendar year, means a rate equal to the last annual yield on Commonwealth government 10‑year bonds published by the Reserve Bank of Australia before 1 January of the calendar year.

***annual rate of pay***,in relation to a member:

 (a) in relation to a period when the member is on long service leave on half pay ‑ means half the rate which would have been the rate applicable to the member if paragraph (b) had applied to the member, or

 (b) in any other case—has the same meaning as in the *DFRDB Act*.

***approved deposit fund*** has the same meaning as in the SIS Act.

***base amount*** means:

 (a) for a splitting agreement—the base amount specified in, or calculated under, the agreement; or

 (b) for a splitting order—the amount allocated under subsection 90MT(4) of the *Family Law Act 1975*.

***Chief Executive Medicare*** has the same meaning as in the *Human Services (Medicare) Act 1973*.

***ComSuper*** means the body established by section 4 of the *ComSuper Act 2011*.

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

***debt account discharge liability*** has the meaning given by section 133‑120 of Schedule 1 to the *Taxation Administration Act 1953*.

***Defence Act*** means the *Defence Act 1903*.

***DFRDB Act*** means the *Defence Force Retirement and Death Benefits Act 1973*.

***effective service*** means service other than non‑effective service.

***family law value*** means the amount determined in accordance with regulations under the *Family Law Act 1975* that apply for paragraph 90MT(2)(a) of that Act. In applying those regulations, the relevant date is taken to be the date on which the operative time occurs.

Note: The amount is determined by applying those regulations, whether or not an order has been made under subsection 90MT(1) of the *Family Law Act 1975*.

***legal personal representative*** has the same meaning as in the SIS Act.

***member*** means:

 (a) a member of the Permanent Forces; or

 (b) a member of the Reserve Forces or the Emergency Forces who is rendering continuous full time naval, military or air force service;

but does not include a member of any of those forces who is a member of the Military Superannuation and Benefits Scheme established by the Trust Deed under the *Military Superannuation and Benefits Act 1991*.

***member spouse*** has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

***non‑effective service***,in relation to a member, means a period that, under clause 4, is deemed tobe a period of non‑effective service in relation to the member.

***non‑member spouse*** has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

***operative time***, for a splitting agreement or splitting order, means the time that is the operative time for Part VIIIB of the *Family Law Act 1975* in relation to a payment split under the agreement or order.

***pay period***, in relation to a person who is, or has been, a member, means a fortnightly period in respect of which the person would ordinarily receive salary.

***payment split*** has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

***preservation age*** has the same meaning as in the SIS Regulations.

***productivity benefit***:

 (a) means a productivity superannuation benefit payable in accordance with this Determination; and

 (b) includes a debt account discharge liability.

***recipient member*** means a retired member in receipt of a pension who again becomes a member.

***scheme value*** has the meaning given by clause 14.

***service offence*** has the same meaning as in the *Defence Force Discipline Act 1982*.

***severe financial hardship*** has the same meaning as in subregulations 6.01(5) and (5A) of the SIS Regulations, applied as if references in those subregulations to the trustee of a superannuation entity (however described) were references to the CSC.

***SIS Act*** means the *Superannuation Industry (Supervision) Act 1993*.

***SIS Regulations*** means the *Superannuation Industry (Supervision) Regulations**1994*.

***splitting agreement*** means:

 (a) a superannuation agreement (within the meaning of Part VIIIB of the *Family Law Act 1975*); or

 (b) a flag lifting agreement (within the meaning of Part VIIIB of the *Family Law Act 1975*) that provides for a payment split.

***splitting order*** has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

***splitting percentage***means:

 (a) for a splitting agreement—the percentage specified in the agreement under subparagraph 90MJ(1)(c)(iii) of the *Family Law Act 1975*; or

 (b) for a splitting order—the percentage specified in the order under subparagraph 90MT(1)(b)(i) of the *Family Law Act 1975*.

***superannuation fund*** has the same meaning as in the SIS Act.

***surcharge debt account***, for a member, means the surcharge debt account kept for the member by the CSC under section 16 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

***surcharge deduction amount***, in relation to a member to or in respect of whom benefits become payable under this Determination, means the surcharge deduction amount that is specified in the determination made by the CSC, under clause 3A, in relation to the member.

***transfer amount*** means:

 (a) if a splitting percentage applies—the amount calculated by multiplying the splitting percentage by the greater of:

 (i) the family law value; and

 (ii) the scheme value; or

 (b) if a base amount applies and the scheme value is not more than the family law value—the base amount; or

 (c) if a base amount applies and the scheme value is more than the family law value—the amount calculated using the formula:

 (2) A reference in this Determination to a member who retires shall be read as a reference to a member who ceases to render continuous full time naval, military or air force service.

 (3) For the purposes of this clause a member who is rendering continuous full time service shall not be deemed to have ceased to render continuous full time service during any period that is deemed by clause 4 to be a period of non‑effective service in relation to the member.

 (4) Where a member retires and, without a break in the continuity of his or her service, again becomes a member who is rendering continuous full time service, the member shall, for the purposes of this Determination, be deemed not to have retired.

3A Surcharge deduction amount

 (1) If:

 (a) benefits become payable to or in respect of a member; and

 (b) the member’s surcharge debt account is in debit when those benefits became so payable;

the CSC must determine in writing the surcharge deduction amount that, in its opinion, it would be fair and reasonable to take into account in working out the amount of those benefits.

 (2) In making the determination, the CSC must have regard to the following:

 (a) the amount by which the member’s surcharge debt account is in debit when those benefits become payable;

 (b) the value of the employer‑financed component of those benefits;

 (c) the value of the benefits that, for the purpose of working out (under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*) the notional surchargeable contributions factors applicable to the member, were assumed to be likely to be payable to the member on his or her retirement;

 (d) whether the member has or had qualified for his or her maximum benefit entitlement under the DFRDB Act;

 (e) any other matter that the CSC considers relevant.

 (3) The amount determined by the CSC must not be more than the total of the following amounts:

 (a) 15% of the employer‑financed component of any part of the benefits payable to the member that accrued in the period starting on 21 August 1996 and ending at the end of 30 June 2003;

 (b) 14.5% of the employer‑financed component of any part of the benefits payable to the member that accrued in the period starting on 1 July 2003 and ending at the end of 30 June 2004;

 (c) 12.5% of the employer‑financed component of any part of the benefits payable to the member that accrued in the period starting on 1 July 2004 and ending at the end of 30 June 2005.

 (4) Reductions under Division 3 of Part VIA of the DFRDB Act are to be disregarded in applying subclause (3).

3B Very high income individuals

 (1) This clause applies in relation to a member if:

 (a) the Commissioner of Taxation has given the member a release authority in respect of a debt account discharge liability; and

 (b) the CSC has been given the release authority; and

 (c) no benefits have been paid in accordance with subclause 6A(2) or rolled over in accordance with subclause 6A(3) (disregarding any benefits paid in accordance with paragraph 6(1)(c) or (d)).

Note 1: A release authority relates to the assessment of an amount of Division 293 tax (within the meaning of Division 293 of the *Income Tax Assessment Act 1997*). Section 293‑5 of that Act describes persons who are liable to pay Division 293 tax as very high income individuals.

Note 2: The CSC may be given the release authority by the member or the Commissioner of Taxation.

 (2) The CSC must, as soon as practicable:

 (a) pay the debt account discharge liability set out in the release authority; and

 (b) ensure that the benefits that have not been paid to the member are reduced by the amount of the liability paid.

 (3) For subclause (2), the CSC must ensure that the reduction of the amount of the benefits, by the amount of the liability paid, occurs:

 (a) after any amount of the benefits is reduced by the surcharge deduction amount (if any); and

 (b) after the amount of the benefit is reduced in accordance with a payment split (if any).

 (4) The application of this Determination in relation to a member and a benefit is taken to be modified to the extent (if any) necessary to ensure that subclauses (2) and (3) are given effect.

4 Non‑effective service

 (1) Where a member was on leave of absence without pay for a period exceeding 21 consecutive days, the period shall be deemed to be a period of non‑effective service in relation to the member.

 (2) Where:

 (a) the salary and allowances of a member in respect of a period were forfeited, in whole or in part, under regulations made under the Defence Act; and

 (aa) the period exceeded 21 consecutive days; and

 (b) an amount equal to the amount of the salary and allowances forfeited was not subsequently paid, and is not payable, under those regulations to the member,

the period shall be deemed to be a period of non‑effective service in relation to the member.

 (3) Where:

 (a) a member was in custody under the *Defence Force Discipline Act 1982* awaiting or undergoing trial for a service offence; and

 (aa) the period for which the member was in custody awaiting or undergoing trial exceeded 21 consecutive days; and

 (b) the member was subsequently convicted of the offence or another service offence at the trial; and

 (c) either of the following subparagraphs apply:

 (i) the conviction was not quashed or set aside;

 (ii) the conviction was quashed or set aside and:

 (A) a conviction for another service offence was substituted; or

 (B) the member was ordered to be tried again for the offence of which the member was convicted, or for another service offence, and was convicted of a service offence at the subsequent trial;

the period shall be deemed to be a period of non‑effective service in relation to the member.

6 When benefit is payable in respect of a member

 (1) If, on or after 1 January 1988:

 (a) a member retires; or

 (b) a member dies; or

 (c) the CSC is satisfied that the member is in severe financial hardship; or

 (d) the Chief Executive Medicare determines that the member satisfies a condition of release on a compassionate ground under regulation 6.19A of the SIS Regulations;

a productivity superannuation benefit, or part of a productivity superannuation benefit, becomes payable in respect of the member.

 (2) If:

 (a) a member retires; and

 (b) a productivity benefit is payable in respect of the member; and

 (c) the member:

 (i) has reached preservation age, or a later age, and has retired from the workforce; or

 (ii) has not reached preservation age and is retired on the ground of invalidity or of physical or mental incapacity to perform his or her duties; and

 (d) the amount of the benefit is an amount to which the preservation standards set out in the SIS Regulations do not apply;

the productivity benefit is payable in respect of the member when the member retires.

 (3) A member does not meet the requirement in subparagraph (2)(c)(ii) unless the CSC:

 (a) has considered at least 2 certificates, each signed by a registered medical practitioner, giving the practitioner’s opinion of whether the member is likely to work again in gainful employment for which the member is reasonably qualified by education, training or experience; and

 (b) is satisfied that the member is unlikely to work again in gainful employment for which the member is reasonably qualified by education, training or experience.

 (4) If a member dies, and a productivity benefit is payable in respect of the member, the benefit must be paid to the member’s legal personal representative.

 (5) The CSC may, before paying a productivity benefit in respect of a member, seek evidence as to the circumstances in which that benefit becomes payable to the member under this Determination.

Part payments

 (6) An amount that becomes payable for a reason mentioned in paragraph (1)(c) or (d) is limited to so much of the benefit as is necessary to alleviate the financial hardship or to meet the expenses that give rise to the compassionate grounds.

 (7) If only part of a benefit is payable, that part may be reduced by part of the surcharge deduction amount before it is paid as a lump sum if the CSC considers that there may be insufficient benefit remaining unpaid to pay the surcharge deduction amount.

6A Preservation of productivity benefit

 (1) If a productivity benefit becomes payable in respect of a member, but is not payable in accordance with subclause 6(2) or (4), the benefit must be preserved in accordance with subclause (2) or (3).

 (2) The productivity benefit to be preserved in relation to a member must be paid to 1 of the following:

 (a) a superannuation fund:

 (i) that is nominated by the member; and

 (ii) of which the member is, or intends to become, a member; and

 (iii) that is required to preserve superannuation benefits in accordance with standards prescribed by the SIS Regulations;

 (b) an approved deposit fund that is:

 (i) nominated by the member; and

 (ii) required to preserve superannuation benefits in accordance with standards prescribed by the SIS Regulations;

 (c) a deferred annuity:

 (i) that is nominated by the member; and

 (ii) that cannot be surrendered or assigned before the member attains preservation age; and

 (iii) that does not pay benefits except in circumstances mentioned in subclause 6(1).

 (3) However, if the member does not make a nomination mentioned in subclause (2) within 2 calendar months after the benefit becomes payable in respect of the member, the benefit must be paid to a superannuation fund or approved deposit fund nominated by the CSC.

7 Accrual of productivity benefit

 (1) A productivity benefit in respect of a member accrues in respect of continuous full time service in the Defence Force rendered by the member on or after 1 January 1988.

 (2) A productivity benefit does not accrue in respect of service of a member that is non‑effective service.

8 Amount of productivity benefit in 1988

 (1) This clause applies in respect of service rendered by a member in 1988.

 (2) Where, in a pay period, a member renders 14 days effective service, then, subject to subclause (6), the amount of productivity benefit (exclusive of interest) to be credited to that member in respect of that pay period shall be calculated in accordance with the formula:

where ***ARP*** is the annual rate of pay applicable to the member.

 (3) Where, in a pay period, a member renders a period of effective service of less than 14 days, then, subject to subclause (6), the amount of productivity benefit (exclusive of interest) to be credited to that member in respect of that pay period shall be calculated in accordance with the formula:

where:

***B*** is the amount of benefit in respect of a member in respect of the pay period ascertained in accordance with the formula specified in subclause (2); and

***D*** is the number of days of effective service in the pay period.

 (4) Where, in a pay period, a member renders 14 days effective service, then, subject to subclause (6), the amount of productivity benefit (being interest) to be credited to that member in respect of that pay period shall be calculated in accordance with the formula:

where ***B*** is the amount of benefit (including interest) that has accrued in respect of the member immediately before the commencement of the pay period.

 (5) Where, in a pay period, a member renders a period of effective service of less than 14 days, then, subject to subclause (6), the amount of productivity benefit (being interest) to be credited to that member in respect of that pay period shall be calculated in accordance with the formula:

where:

***B*** is the amount of benefit (including interest) that has accrued in respect of the member immediately before the commencement of the pay period; and

***D*** is the number of days of effective service in the pay period.

 (6) Where an amount ascertained in accordance with subclause (2), (3), (4) or (5) includes a fraction of a cent:

 (a) if the fraction is one‑half or greater, the amount shall be deemed to be increased by one cent; or

 (b) if the fraction is less than one‑half, the fraction shall be disregarded.

8A Amount of productivity benefit after 1988 and before 1 July 1992

 (1) This clause applies in respect of service rendered by a member after 1988 and before 1 July 1992.

 (2) Where, in a pay period, a member renders 14 days effective service, then, subject to subclause (6), the amount of productivity benefit (exclusive of interest) to be credited to that member in respect of that pay period shall be calculated in accordance with the formula:

where ***ARP*** is the annual rate of pay applicable to the member.

 (3) Where, in a pay period, a member renders a period of effective service of less than 14 days, then, subject to subclause (6), the amount of productivity benefit (exclusive of interest) to be credited to that member in respect of that pay period shall be calculated in accordance with the formula:

where:

***B*** is the amount of benefit in respect of a member in respect of the pay period ascertained in accordance with the formula specified in subclause (2); and

***D*** is the number of days effective service in the pay period.

 (4) Where, in a pay period, a member renders 14 days service, then, subject to subclause (6), the amount of productivity benefit (being interest) to be credited to that member in respect of that pay period shall be calculated in accordance with the formula:

where:

***B*** is the amount of benefit (including interest) that has accrued in respect of the member immediately before the commencement of the pay period; and

***I*** is the factor specified in column 2 of the Schedule opposite to the reference to the calendar year specified in column 1 of the Schedule which is the calendar year in which the pay period concludes.

 (5) Where, in a pay period, a member renders a period of service of less than 14 days, then, subject to subclause (6), the amount of productivity benefit (being interest) to be credited to that member in respect of that pay period shall be calculated in accordance with the formula:

where:

***B*** is the amount of benefit (including interest) that has accrued in respect of the member immediately before the commencement of the pay period;

***D*** is the number of days service in the pay period; and

***I*** is the factor specified in column 2 of the Schedule opposite to the reference to the calendar year specified in column 1 of the Schedule which is the calendar year in which the pay period concludes.

 (6) Where an amount ascertained in accordance with subclause (2), (3), (4) or (5) includes a fraction of a cent:

 (a) if the fraction is one‑half or greater, the amount shall be deemed to be increased by one cent; or

 (b) if the fraction is less than one‑half, the fraction shall be disregarded.

8AA Amount of productivity benefit on or after 1 July 1992

 (1) This clause applies in respect of service rendered by a member on or after 1 July 1992.

 (2) Where, in a pay period, a member whose total period of effective service is less than 20 years renders 14 days effective service, then, subject to subclause (7), the amount of productivity benefit (exclusive of interest) to be credited to that member in respect of that pay period is calculated using the formula:

where:

***ARP*** is the annual rate of pay applicable to the member; and

***percentage*** is the percentage specified in subclause (2A), (2B) or (2C) in respect of the member for the date on which the pay period ends.

 (2A) For the definition of ***percentage*** in subclause (2), the following table specifies the percentage in respect of non‑recipient members and recipient members with at least 12 months service for a pay period ending between 1 July 1992 and 30 June 2015.

| Percentages—non‑recipient members and certain recipient members from 1992 to 2015 |
| --- |
| Item | Date pay period ends | Percentage |
| 1 | Between 1 July 1992 and 31 December 1992 | 3.6 |
| 2 | Between 1 January 1993 and 30 June 1995 | 4.5 |
| 3 | Between 1 July 1995 and 30 June 1998 | 5.4 |
| 4 | Between 1 July 1998 and 30 June 2013 | 9.0 |
| 5 | Between 1 July 2013 and 30 June 2014 | 9.25 |
| 6 | Between 1 July 2014 and 30 June 2015 | 9.5 |

 (2B) For the definition of ***percentage*** in subclause (2), the following table specifies the percentage in respect of recipient members with less than 12 months service for a pay period ending between 1 July 1992 and 30 June 2015.

| Percentages—recipient members with less than 365 days service from 1992 to 2015 |
| --- |
| Item | Date pay period ends | Percentage |
| 1 | Between 1 July 1992 and 31 December 1992 | 4.0 |
| 2 | Between 1 January 1993 and 30 June 1995 | 5.0 |
| 3 | Between 1 July 1995 and 30 June 1998 | 6.0 |
| 4 | Between 1 July 1998 and 30 June 2013 | 9.0 |
| 5 | Between 1 July 2013 and 30 June 2014 | 9.25 |
| 6 | Between 1 July 2014 and 30 June 2015 | 9.5 |

 (2C) For the definition of ***percentage*** in subclause (2), the percentage in respect of all members for a pay period ending on or after 1 July 2015 is the charge percentage specified in the table in subsection 19(2) of the *Superannuation Guarantee (Administration) Act 1992* for the financial year in which the pay period ends.

 (3) Where, in a pay period, a member whose total period of effective service is not less than 20 years renders 14 days effective service, then, subject to subclause (7), the amount of productivity benefit (exclusive of interest) to be credited to that member in respect of that pay period is calculated using the formula:

where ***ARP*** is the annual rate of pay applicable to the member.

 (4) Where, in a pay period, a member renders a period of effective service of less than 14 days, then, subject to subclause (7), the amount of productivity benefit (exclusive of interest) to be credited to that member in respect of that pay period is calculated in accordance with the formula

 where:

***B*** is the amount of benefit in respect of a member in respect of the pay period ascertained using the formula in subclause (2) or (3) as the case may be; and

***D*** is the number of days effective service in the pay period.

 (5) Where, in a pay period, a member renders 14 days service, then, subject to subclause (7), the amount of productivity benefit (being interest) to be credited to that member in respect of that pay period is calculated using the formula:

 where:

***B*** is the amount of benefit (including interest) that has accrued in respect of the member immediately before commencement of the pay period; and

***I*** is:

 (a) if the pay period ends on or before 31 December 2014—the factor specified in the Schedule for the calendar year in which the pay period ends; or

 (b) if the pay period ends on or after 1 January 2015—the annual interest rate for the calendar year in which the pay period ends, divided by 100.

Note: ***Annual interest rate*** is defined in subclause 3(1).

 (6) Where, in a pay period, a member renders a period of service of less than 14 days, then, subject to subclause (7), the amount of productivity benefit (being interest) to be credited to that member in respect of that pay period is calculated using the formula:

 where:

***B*** is the amount of benefit (including interest) that has accrued in respect of the member immediately before commencement of the pay period; and

***D*** is the number of days service in the pay period; and

***I*** is:

 (a) if the pay period ends on or before 31 December 2014—the factor specified in the Schedule for the calendar year in which the pay period concludes; or

 (b) if the pay period ends on or after 1 January 2015—the annual interest rate for the calendar year in which the pay period concludes, divided by 100.

Note: ***Annual interest rate*** is defined in subclause 3(1).

 (7) Where an amount ascertained in accordance with subclause (2), (3), (4), (5) or (6) includes a fraction of a cent:

 (a) if the fraction is one‑half or greater, the amount is increased by one cent; or

 (b) if the fraction is less than one‑half, the fraction is disregarded.

 (8) In the application of subclauses (5) and (6) in respect of a period of service of the member in a pay period which concludes in the period from and including 1 July 1992 to and including 31 December 1992, the factor in the Schedule for the calendar year 1992 is reduced by 15%.

 (9) For the purposes of this clause, where a member completes 20 years’ effective service in a pay period, the member is regarded as being, in relation to that pay period, a member whose total period of effective service is not less than 20 years.

8AB Reduction of productivity benefit

 (1) Where a member who has been credited with productivity benefit in accordance with subclause 8AA(2) becomes a member to whom subclause 8AA(3) applies, the amount of productivity benefit credited to that member is, by force of this subclause, reduced by the amount by which the last‑mentioned benefit exceeds the benefit which would have accrued if the member had, at all relevant times, been a member to whom subclause 8AA(3) had applied.

 (2) Where a member who has been credited with productivity benefit in accordance with subclause 8AA(2), not being a member to whom subclause (1) has applied, retires and:

 (a) on his or her retirement, he or she is entitled to retirement pay or invalidity pay under the DFRDB Act; or

 (b) on or after his or her retirement, he or she is or becomes:

 (i) a person in respect of whom a transfer value is payable under section 77 of that Act; or

 (ii) a person in respect of whom deferred benefits are applicable under section 78 of that Act;

the amount of productivity benefit credited to that person is, by force of this subclause, reduced by the amount by which that benefit exceeds the productivity benefit which would have accrued if the person had, at all relevant times, been a member to whom subclause 8AA(3) applied.

 (3) Where:

 (a) subclause (2) has effect in relation to a person because the person was a person to whom deferred benefits were applicable under section 78 of the DFRDB Act; and

 (b) under subsection 78(6) of that Act those benefits subsequently ceased to be applicable in respect of that person;

the person is credited with an amount calculated in accordance with the formula:

 where:

***Notional amount*** means the amount that would have been paid to or in respect of the member in accordance with clause 6 on his or her retirement from the Defence Force if he or she had not been a member referred to in subclause (2); and

***Amount paid*** means the amount that was paid to or in relation to the member in accordance with clause 6 upon the member’s retirement from the Defence Force; and

***Interest*** means the interest which would have accrued under this Determination in respect of the amount (in this subclause called the ‘additional credit’) by which the notional amount exceeds the amount paid if:

 (a) the member had not retired from the Defence Force and had remained a member until the amount payable under this subclause is paid; and

 (b) interest had been credited under this Determination in respect of the additional credit.

 (3A) Where a member who has been credited with productivity benefit in accordance with subclause 8AA(2), not being a member to whom subclause (1) has applied, retires and becomes entitled to invalidity benefit under subsection 32(2) of the DFRDB Act, the amount of productivity benefit credited to that member is, by force of this subclause, reduced by the amount by which the sum of:

 (a) that invalidity benefit; and

 (b) that productivity benefit;

exceeds the greater of:

 (c) an amount equal to the sum of:

 (i) the member’s refunded contributions; and

 (ii) the member’s lump sum payment; and

 (iii) the member’s notional productivity benefit; or

 (d) an amount equal to the sum of:

 (i) the member’s refunded contributions; and

 (ii) the member’s additional productivity benefit; and

 (iii) the member’s notional productivity benefit.

 (4) Where a member who has been credited with productivity benefit in accordance with subclause 8AA(2), not being a member to whom subclause (1) has applied, dies before his or her retirement and a pension becomes payable under Part VI of the DFRDB Act in respect of the deceased member, the amount of productivity benefit credited to that person is, by force of this subclause, reduced by the amount by which that benefit exceeds the productivity benefit which would have accrued if the person had, at all relevant times, been a member to whom subclause 8AA(3) applied.

 (5) Where a member who has been credited with productivity benefit in accordance with subclause 8AA(2), not being a person to whom subclause (1) has applied, dies before his or her retirement and a lump sum becomes payable under subsection 48(1) or 48A(1) of the DFRDB Act in respect of the deceased person, the amount of productivity benefit credited to that person is, by force of this clause, reduced by the amount by which the sum of:

 (a) that lump sum; and

 (b) that productivity benefit;

exceeds the greater of:

 (c) an amount equal to the sum of:

 (i) the amount payable in respect of the deceased member under subsection 48(1) or 48A(1) of the DFRDB Act; and

 (ii) the deceased members notional productivity benefit; or

 (d) an amount equal to the sum of:

 (i) two thirds of the amount referred to in paragraph (a); and

 (ii) the deceased member’s additional productivity benefit; and

 (iii) the deceased member’s notional productivity benefit.

 (6) In this clause:

***additional productivity benefit*,** in relation to a member or deceased member, means so much of the productivity benefit credited to the member under clause 8AA as exceeds the amount of productivity benefit which would have been credited to the member if clause 8A had continued to apply to the member after 30 June 1992 instead of clause 8AA;

***lump sum payment*** in relation to a member, means the lump sum payment payable to the member under paragraph 32(2)(b) of the DFRDB Act;

***notional productivity benefit***, in relation to a member or deceased member, means the amount of productivity benefit which would have been credited to the member if clause 8A had continued to apply to the member after 30 June 1992 instead of clause 8AA;

***refunded contributions***, in relation to a member, means the contributions refundable to the member under paragraph 32(2)(a) of the DFRDB Act.

8B Amount payable

 (1) Where a productivity benefit becomes payable in respect of a person, the amount of that benefit is the sum of the amounts credited to that person under clauses 8, 8A and 8AA.

 (2) However, a benefit payable under clause 8AA is reduced by the surcharge deduction amount if no election has been made under section 124 of the DFRDB Act.

8BA Credit of productivity benefit (being interest) in respect of certain persons who ceased to be members on 1 July 1992

 (1) This clause applies to a person who:

 (a) was a member of the Emergency Forces or the Reserve Forces on 30 June 1992; and

 (b) was a member within the meaning of this Determination on that date; and

 (c) ceased to be a member referred to in paragraph (b) by reason only of the coming into force of the amendments made to the *Military Superannuation and Benefits Act 1991* by the *Superannuation Guarantee (Consequential Amendments) Act 1992*.

 (2) Despite a person to whom this clause applies having ceased to be a member for the reason given in paragraph (1)(c), this Determination applies to the person as if he or she continued to be a member until the person ceased or ceases to render the period of continuous full‑time service which the person was rendering on 30 June 1992 with the exception that no productivity benefit is to be credited to the person under subclause 8AA(2), (3) or (4) in respect of any service rendered by the person after that date.

8C Interest payable where payment of benefit delayed

 (1) Where a productivity benefit is payable in respect of a person and the payment of the benefit is delayed, the amount of the benefit payable is increased by an amount of interest calculated, in relation to the amount of benefit accrued and in respect of the relevant period, at the annual interest rate for the calendar year in which the relevant period ends.

Note: ***Annual interest rate*** is defined in subclause 3(1).

 (2) In subrule (1):

***relevant period***, in relation to a person, means the period beginning on the day immediately following the day on which the person (being a member) retired or died, as the case may be, and ending 14 days after the day on which the amount of the productivity benefit payable is determined.

9 Assignment of productivity benefit

 A productivity benefit is not capable of being assigned or charged.

10 No set off or counter claim

 Where a productivity benefit becomes payable in respect of a person the Commonwealth shall not be entitled to withhold that productivity benefit or any part thereof by way of set off or counter claim in right of the Commonwealth.

11 Reconsideration of decision of CSC

 (1) A person affected by a decision made by the CSC under subclause 6(3) may apply to the CSC for reconsideration of the decision.

 (2) An application may be in writing addressed to the CSC and setting out particulars of the decision that the person wishes to be reconsidered.

 (3) After taking into account, in relation to the decision, any matter that the CSC considers relevant, the CSC must, by instrument in writing setting out the reasons for doing so, affirm or vary the decision or set it aside and substitute another decision for it.

 (4) The CSC must make a copy of an instrument referred to in subclause (3) available to the applicant not later than 28 days after the making of the instrument.

12 Review of decisions of CSC

 Applications may be made to the Administrative Appeals Tribunal for review of decisions of the CSC under clause 11.

13 Delegation of function of CSC

 The CSC may, by instrument in writing, delegate the CSC’s functions under subclause 6(3) to:

 (a) the CEO of ComSuper; or

 (b) a member of the staff of ComSuper who holds, or is for the time being performing the duties of, an office with a classification not lower than Executive Level 1.

14 Scheme value

 For the definition of ***scheme value*** the scheme value in relation to a member spouse is determined as follows:

|  |
| --- |
| Step 1 Identify the methodology and factors set out in regulations made for section 90MT of the *Family Law Act 1975* that would be used to determine the family law value in relation to the member spouse in accordance with that section as if that section applied in relation to the member spouse.Note: The family law value is determined in accordance with the *Family Law (Superannuation) Regulations 2001* that are made for paragraph 90MT(2)(a) of the *Family Law Act 1975*. The process of determining the family law value may include reliance on methodology and factors approved by the Attorney‑General under subsection 90MT(3) of that Act. |
| Step 2 Substitute the factors with factors nominated by an actuary for this clause. |
| Step 3 Use the methodology identified in step 1, and the factors substituted in step 2, to determine the scheme value in relation to the member spouse. |

15 Reduction of productivity superannuation benefit

 (1) For subsection 52(5) of the Defence Act, this clause applies to a productivity superannuation benefit in respect of the original interest if the benefit becomes payable at a time after the operative time.

 (2) The amount to which the productivity benefit payable to the member spouse after the operative time is to be reduced is to be worked out in accordance with the benefit reduction methodology developed and maintained by an actuary for this clause.

Schedule—Factors concerned in the calculation of interest applicable in respect of certain calendar years

Note: See clauses 8A and 8AA.

| Column 1 | Column 2 |
| --- | --- |
| Calendar year | Factor |
| 1989 | 0.1286 |
| 1990 | 0.1293 |
| 1991 | 0.1201 |
| 1992 | 0.0951 |
| 1993 | 0.0760 |
| 1994 | 0.0572 |
| 1995 | 0.0853 |
| 1996 | 0.0695 |
| 1997 | 0.0626 |
| 1998 | 0.0514 |
| 1999 | 0.0426 |
| 2000 | 0.0588 |
| 2001 | 0.0490 |
| 2002 | 0.0511 |
| 2003 | 0.0439 |
| 2004 | 0.0476 |
| 2005 | 0.0453 |
| 2006 | 0.0442 |
| 2007 | 0.0501 |
| 2008 | 0.0633 |
| 2009 | 0.0399 |
| 2010 | 0.0565 |
| 2011 | 0.0551 |
| 2012 | 0.0367 |
| 2013 | 0.0327 |
| 2014 | 0.0423 |

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Endnotes about misdescribed amendments and other matters are included in a compilation only as necessary.

**Abbreviation key—Endnote 2**

The abbreviation key sets out abbreviations that may be used in the endnotes.

**Legislation history and amendment history—Endnotes 3 and 4**

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

**Misdescribed amendments**

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the amendment is set out in the endnotes.

Endnote 2—Abbreviation key

|  |  |
| --- | --- |
| A = Act | orig = original |
| ad = added or inserted | par = paragraph(s)/subparagraph(s) |
| am = amended |  /sub‑subparagraph(s) |
| amdt = amendment | pres = present |
| c = clause(s) | prev = previous |
| C[x] = Compilation No. x | (prev…) = previously |
| Ch = Chapter(s) | Pt = Part(s) |
| def = definition(s) | r = regulation(s)/rule(s) |
| Dict = Dictionary | Reg = Regulation/Regulations |
| disallowed = disallowed by Parliament | reloc = relocated |
| Div = Division(s) | renum = renumbered |
| exp = expires/expired or ceases/ceased to have | rep = repealed |
|  effect | rs = repealed and substituted |
| F = Federal Register of Legislative Instruments | s = section(s)/subsection(s) |
| gaz = gazette | Sch = Schedule(s) |
| LI = Legislative Instrument | Sdiv = Subdivision(s) |
| LIA = *Legislative Instruments Act 2003* | SLI = Select Legislative Instrument |
| (md) = misdescribed amendment | SR = Statutory Rules |
| mod = modified/modification | Sub‑Ch = Sub‑Chapter(s) |
| No. = Number(s) | SubPt = Subpart(s) |
| o = order(s) | underlining = whole or part not |
| Ord = Ordinance |  commenced or to be commenced |

Endnote 3—Legislation history

| Name | FRLI registration or gazettal | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- |
| Defence Force (Superannuation Interim Arrangement) Determination  | 5 Sep 1988 (gaz 1988, No S263 | 1 Jan 1988 |  |
| Defence Force (Superannuation Interim Arrangement) Determination (Amendment) (No. 1 of 1989) | 29 June 1989 (gaz 1989, No S215) | 1 Jan 1989 | — |
| Defence Force (Superannuation Interim Arrangement) Determination (Amendment) (No. 1 of 1990) | 9 Jan 1991 (gaz1991, No GN1) | 1 Jan 1990 | — |
| Defence Force (Superannuation Interim Arrangement) Determination (Amendment) (No. 2 of 1990) | 17 Oct 1990 (gaz 1990, No GN41) | 1 July 1990 | — |
| Defence Force (Superannuation Interim Arrangement) Determination (Amendment) (No. 1 of 1991) | 17 Apr 1991 (gaz 1991, No GN14) | 1 Jan 1991 | — |
| Defence Force (Superannuation Interim Arrangement) Determination (Amendment) (No. 2 of 1991) | 16 Oct 1991 (gaz 1991 No GN40) | 1 Oct 1991 | — |
| Defence Force (Superannuation Interim Arrangement) Determination (Amendment) (No. 1 of 1991) | 5 Feb 1992 (gaz 1992, No GN5) | 1 Jan 1992 | — |
| Defence Force (Superannuation Interim Arrangement) Determination (Amendment) (No. 2 of 1991) | 29 Apr 1992 (gaz 1992, No GN17) | 1 Jul 1992 | — |
| Defence Force (Superannuation Interim Arrangement) Determination (Amendment) (No. 3 of 1992) | 21 July 1992 (gaz 1992, No S203) | 21 July 1992 | — |
| Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 1993) | 10 Feb 1993 (gaz 1993, No GN5) | Item 12: 1 Jan 1993Remainder: 10 Feb 1993 | — |
| Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 1994) | 23 Feb 1994 (gaz 1994, No GN7) | Item 5: 1 Jan 1994Remainder: 23 Feb 1994 | — |
| Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 1995) | 5 Apr 1995 (gaz 1995, No GN13) | Item 3: 1 Jan 1995Remainder: 5 Apr 1995 | — |
| Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 2 of 1995) | 30 June 1995 (gaz 1995, No S250) | Item 3 and subitem 4.4: 1 July 1992Subitems 4.1–4.3: 1 July 1995 | — |
| Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 1996) | 21 Feb 1996 (gaz 1996, No GN7) | Item 3: 1 Jan 1996Remainder: 21 Feb 1996 | — |
| Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 1997) | 29 Jan 1997 (gaz 1997, No GN4) | Item 3: 1 Jan 1997Remainder: 29 Jan 1997 | — |
| Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 1998) | 21 Jan 1998 (gaz 1998, No GN3) | Item 3: 1 Jan 1998Remainder: 21 Jan 1998 | — |
| Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 2 of 1998) | 6 May 1998 (gaz 1998, No GN18) | 6 May 1998 | — |
| Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 3 of 1998) | 1 July 1998 (gaz 1998, No GN26) | 1 July 1998 | Withdrawn |
| Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 4 of 1998) | 19 Aug 1998 (gaz 1998, No GN33) | 1 July 1998 | — |
| Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 1999) | 27 Jan 1999 (gaz 1999, No GN4) | Item 3: 1 Jan 1999Remainder: 27 Jan 1999 | — |
| Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 2000) | 26 Apr 2000 (gaz 2000, No GN16) | Item 3: 1 Jan 2000Remainder: 26 Apr 2000 | — |
| Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 2001) | 14 Mar 2001 (gaz 2001, No GN10) | Item 3: 1 Jan 2001Remainder: 14 Mar 2001 | — |
| Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 2002) | 13 Feb 2002 (gaz 2002, No GN6) | Item 3: 1 Jan 2002Remainder: 13 Feb 2002 | — |
| Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 2003) | 26 Mar 2003 (gaz 2003, No GN12) | 1 Jan 2003 | — |
| Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 2004) | 25 Feb 2004 (gaz 2004, No GN8) | 1 Jan 2004 | — |
| Defence Force (Superannuation) (Productivity Benefit) Amendment Determination 2004 (No. 2) | 20 May 2004 (gaz 2004, No S166) | 18 May 2004 (c 2) | — |
| Defence Force (Superannuation) (Productivity Benefit) Determination No. 1 of 2005 | 29 Apr 2005 (F2005L00990) | 1 Jan 2005 | — |
| Defence Force (Superannuation) (Productivity Benefit) Determination No. 1 of 2006 | 8 May 2006 (F2006L01285) | 1 Jan 2006 | — |
| Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 2007) | 26 June 2007 (F2007L01908) | 1 Jan 2007 | — |
| Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 2008) | 1 Oct 2008 (F2008L03617) | 1 Jan 2008 | — |
| Defence Force (Superannuation) (Productivity Benefit) Amendment Determination 2009 (No. 1) | 8 May 2009 (F2009L01472) | 9 May 2009 | — |
| Defence Force (Superannuation) (Productivity Benefit) Amendment Determination 2010 (No. 1) | 18 Mar 2010 (F2010L00694) | 1 Jan 2010 | — |
| Defence Force (Superannuation) (Productivity Benefit) Amendment Determination 2011 (No. 1) | 4 Apr 2011 (F2011L00562) | 1 Jan 2011 | — |
| Defence Force (Superannuation) (Productivity Benefit) Amendment Determination 2012 (No. 1) | 8 Aug 2012 (F2012L01666) | 1 Jan 2012 | — |
| Defence Force (Superannuation) (Productivity Benefit) Amendment Determination 2013 (No. 1) | 25 Mar 2013 (F2013L00549) | Sch 1: 1 Jan 2013 (s 2(1) item 1)Sch 2: 1 July 2013 (s 2(1) item 2) | — |
| Military Superannuation Legislation Amendment (Sustaining the Superannuation Contribution Concession) Instrument 2013 | 9 July 2013 (F2013L01334) | Sch 1 (items 1–3): 10 July 2013 (s 2) | — |
| Defence Force (Superannuation) (Productivity Benefit) Amendment (Interest Factor) Determination 2014 | 19 Mar 2014 (F2014L00310) | 1 Jan 2014 (s 2) | — |
| Defence Force (Superannuation) (Productivity Benefit) Amendment (Interest Factor and other Measures) Determination 2015 | 11 May 2015 (F2015L00667) | 12 May 2015 ( s 2) | — |

Endnote 4—Amendment history

| Provision affected | How affected |
| --- | --- |
| Title  | am No 1992 NoNo 3; 2009 NoNo 1 |
| c 1  | am 1992 No 3 |
|  | rs 2009 No 1 |
| c 3  | am 1991 No 2; 1992 No 3; 1993 No 1; 1994 No 1; 1995 No 2; 1998 No 2; 2004 No 1; 2004 No 2; 2009 No 1; 2012 No 1; F2013L01334; F2015L00667 |
| c 3A  | ad 1998 No 2 |
|  | am 2009 No 1; 2012 No 1 |
| c 3B  | ad F2013L01334 |
| c 4  | am 1992 No 3; 2012 No 1 |
| c 5  | am 1992 No 3 |
|  | rep 1993 No 1 |
| c 6  | am 1992 No 3; 1993 No 1; 1998 No 4; 2004 No 2 |
|  | rs 2009 No 1 |
|  | am 2012 No 1 |
| c 6A  | ad 2009 No 1 |
|  | am 2012 No 1 |
| c 7  | am 1992 No 3 |
| c 8  | am 1989 No 1; 1992 No 3 |
| c 8A  | ad 1989 No 1 |
|  | am 1992 No 2;1992 No 3; 1993 No 1 |
| c 8AA  | ad 1993 No 1 |
|  | am 1995 No 2; 1998 No 4; No 1, 2013; F2015L00667 |
| c 8AB  | ad 1993 No 1 |
|  | am 1994 No 1 |
| c 8B  | ad 1989 No 1 |
|  | am 1992 No 3; 1993 No 1; 1998 No 2; 2012 No 1 |
| c 8BA  | ad 1993 No 1 |
| c 8C  | ad 1992 No 3 |
|  | rs 1993 No 1 |
|  | am F2015L00667 |
| c 9  | am 1992 No 3 |
| c 10  | ad 1990 No 2 |
|  | am 1992 No 3 |
| c 11  | ad 1993 No 1 |
|  | am 2009 No 1; 2012 No 1 |
| c 12  | ad 1993 No 1 |
|  | am 2012 No 1 |
| c 13  | ad 1993 No 1 |
|  | am 2003 No 1; 2009 No 1 |
|  | rs 2012 No 1 |
| c 14  | ad 2004 No 2 |
| c 15  | ad 2004 No 2 |
| **Schedule** |  |
| Schedule  | ad 1989 No 1 |
|  | am 1990 No 1; 1991 No 1; 1992 No 1; 1993 No 1; 1994 No 1; 1995 No 1; 1996 No 1; 1997 No 1; 1998 No 1; 1999 No 1; 2000 No 1; 2001 No 1; 2002 No 1; 2003 No 1; 2004 No 1; 2005 No 1; 2006 No 1; 2007 No 1; 2008 No 1; 2009 No 1; 2010 No 1; 2011 No 1; 2012 No 1; No 1, 2013; F2014L00310; F2015L00667 |