

**Superannuation (Productivity Benefit) (Penalty Interest) Amendment Determination
1999 (No. 1) 1999 No. 138**

EXPLANATORY STATEMENT

STATUTORY RULES 1999 No. 138

SUPERANNUATION (PRODUCTIVITY BENEFIT) ACT 1988

ISSUED BY THE AUTHORITY OF THE MINISTER FOR FINANCE AND ADMINISTRATION

DECLARATION UNDER SECTION 4G

PENALTY INTEREST

The *Superannuation (Productivity Benefit) Act 1988* (the PB Act) provides the mechanism by which the Superannuation Guarantee (SG) minimum superannuation contribution is made available to Australian Government employees (and certain other employees) who have no other employersponsored superannuation cover. Prior to 1 July 1992, the PB Act provided productivity superannuation to these employees.

Since 1 July 1990, the designated employers of employees covered by the PB Act arrangements have been required to pay periodic contributions based on the salary of the employee to the superannuation fund nominated by the Minister for Finance and Administration, or another superannuation fund approved by the Minister. Where the employee is eligible, contributions may be paid to a regulated fund as defined by the Superannuation Industry Supervision legislation.

Employers are required to pay to the same fund, on a once only basis, an amount being the entitlement accrued under the then *Superannuation Benefit (Interim Arrangement) Act 1988* and an amount in respect of contributions which would have been paid after 1 July 1990 had the employee joined a fund on that date. The employer of an employee who has joined a fund is required to pay penalty interest in respect of any period of delay between the date when an amount should have been paid into a fund and the date when it was paid. Such a payment takes into account the loss of interest since the contributions began to accumulate on behalf of the employee and as well penalises the employer for having failed to meet its obligations.

Section 4G of the PB Act provides that the interest fixed under it for the purposes of sections 4E, 4EA and 4F is calculated in a way determined by the Minister.

Paragraph 4E(b) of the PB Act provides for interest to be paid on the amount accrued as an interim benefit under section 8A where the amount was not paid into a fund on the day on which the employee became a member of that fund. Interest is payable in respect of the period commencing on the day on which payment should have been made and ending on the day before the day when payment was made.

Section 4EA of the PB Act provides for interest to be paid on the amount accrued as an interim benefit under section 8A where the amount was not paid on the day on which the employee became a member of the superannuation scheme established under the *Superannuation Act 1976* or the *Superannuation Act 1990*. Interest is payable in respect of the period commencing on the day on which payment should have been made and ending on the day before the day when payment was made.

Paragraph 4F(1)(b) of the PB Act provides for interest to be paid on an instalment of continuing contributions which was not paid into the fund on the day on which it was payable (either the employee's pay day or a day agreed between the employer and the fund trustees). Interest is payable in respect of the period commencing on the day on which payment should have been made and ending on the day before the day when payment was made.

This Determination cited as the **Superannuation (Productivity Benefit) (Penalty Interest) Amendment Determination 1999 (No. 1)** amends the Principal Determination to provide for interest to be calculated on all amounts which should have been paid on a given day in respect of the period of delay. It is based on an interest rate of 7.51 per cent per annum which is equivalent to 2 per cent per annum, higher than the rate used to establish the first and second interest factors for benefit calculation purposes under the Act. The formula used to calculate penalty interest during the 19992000 financial year is specified in the Determination.

The Determination commenced on gazettal.