

Superannuation (PSS) Maximum Benefits (2009-2010) Determination 2009 – Explanatory Statement

1 Name of Determination

This determination is the *Superannuation (PSS) Maximum Benefits (2009-2010) Determination 2009*.

2 Commencement

This determination takes effect on 1 July 2009.

3 Purpose

The purpose of the determination is to set new maximum benefits for the Public Sector Superannuation (PSS) scheme to apply for the financial year beginning on 1 July 2009.

4 Background

Establishment of the PSS Scheme

The PSS scheme is established by the *Superannuation Act 1990*, a Trust Deed and Rules.

The PSS Rules were renumbered with effect from 1 July 1995, as a result of amendments made by the Ninth Amending Trust Deed.

The PSS Rules were amended by the Twenty-Eighth Amending Trust Deed executed in 2007 by the deletion of a “B” before each rule with effect from 29 June 2007.

Maximum Benefits

The PSS Rules contain specific rules specifying maximum benefits for scheme members and employees of the Australian Federal Police (AFP).

The lump sum and pension maximum benefits for AFP employees who are PSS members are designed to take into account a special superannuation entitlement paid by the AFP. The maximum benefits for these members place a limit on the combined AFP special benefit and the PSS benefit.

The maximum benefits also place a cap on the employer cost of the PSS.

Relevant Rules

Under the renumbered PSS Rules that came into effect on 1 July 1995, rules 5.6.1, 5.7.1 and 5.7.2 set out the *Table of Maximum Benefits Rates*.

In particular, the rules dealt with the following:

- rule 5.6.1 – maximum lump sum benefits for members;
- rule 5.7.1 – maximum lump sum benefits for AFP employees; and
- rule 5.7.2 – maximum pension benefits for AFP employees.

The amounts in the tables in rules 5.6.1 and 5.7.1 are the same.

Each rule sets out a table containing the maximum benefits to apply from 1 July 1995 until amended.

Power to Amend Maximum Benefits

Pursuant to rules 5.6.5 and 5.7.7 the Australian Reward Investment Alliance (ARIA) is empowered to determine maximum benefits for the purposes of the PSS scheme, with effect from 1 July 1995 each year:

- under rule 5.6.5 ARIA has the power to determine the amounts to be substituted into the *Table - Maximum Benefits* in rule 5.6.1.
- under rule 5.7.7 ARIA has the power to determine the amounts to be substituted into the *Table - AFP Preliminary Maximum Benefits - Lump Sums* in rule 5.7.1 and the *Table - AFP Preliminary Maximum Benefits - Pensions* in rule 5.7.2.

Delegation

ARIA has delegated its power under rules 5.6.5 and 5.7.7 to relevant officers of the scheme administrator, Commonwealth Superannuation Administration (ComSuper).

Maximum Benefits in the Period 1 July 1996 - 30 June 2005

In the period from 1 July 1996 to 30 July 2005, the amounts set out in the tables in rules 5.6.1, 5.7.1 and 5.7.2 were replaced on 1 July each year, pursuant to the *PSS (Maximum Benefits) Determination No. 1*, which was amended each year. That Determination was revoked on 1 July 2005 by the *Superannuation (PSS) Maximum Benefits (2005-2006) Determination 2005* which set out the maximum benefits for the financial year commencing on 1 July 2005.

Maximum Benefits in the Period from 1 July 2005 – 31 December 2007

Maximum benefits in the period from 1 July 2005 to 31 December 2007 are set out in annual determinations that apply for the financial year commencing on 1 July each year.

Maximum Benefits in the Period from 1 January 2008 – 30 June 2008

The Twenty-Ninth Amending Trust Deed inserts new maximum benefit tables into rules 5.6.1, 5.7.1 and 5.7.2 of the PSS Rules, to apply with effect from 1 January 2008 until 30 June 2008.

The Twenty-Ninth Amending Trust Deed also amends rules 5.6.5 and 5.7.7 of the PSS Rules.

Maximum Benefits in the Period from 1 July 2008

Under new rules 5.6.5 and 5.7.7, the maximum benefits set out in rules 5.6.1, 5.7.1 and 5.7.2 are amended by determination. The *Superannuation (PSS) Maximum Benefits (2008-2009) Determination 2008* amends the tables contained in rules 5.6.1, 5.7.1 and 5.7.2 for the financial year commencing on 1 July 2008.

5 New Maximum Benefits

The new maximum benefits that apply with effect from 1 July 2009 are set out in the determination.

6 Consultation

As the instrument is for internal machinery of Government purposes only, no consultation was considered necessary with other persons (see sections 17 and 18 of the *Legislative Instruments Act 2003*).

7 Note – Amendment of Rule 5.7.7 by the Twenty-Ninth Amending Deed

Subclause 3.20 of the Twenty-Ninth Amending Deed amends rule 5.7.7 of the PSS Rules. However, there is a typographical error in subclause 3.20, as it states that “rule 5.5.7” is being replaced. Rule 5.5.7 is not an existing PSS Rule and did not exist at the date of commencement the Twenty-Ninth Amending Deed.

Due to the typographical error, the current consolidation of the PSS Rules, including amendments up to and including the Thirty-Second Amending Deed (ComLaw Reference: F2008C00065), does not include the version of rule 5.7.7 inserted by subclause 3.20 of the Twenty-Ninth Amending Deed. (A note to rule 5.7.7 in the consolidated Rules advises of the issue.)

The clear intention of subclause 3.20 of the Twenty-Ninth Amending Deed is to replace rule 5.7.7 of the PSS Rules. The Explanatory Statement to the Twenty-Ninth Amending Deed confirms this intention. The Department of Finance and Deregulation has advised that typographical errors of this nature may be corrected under the slip rule in order to give effect to the intent of the amending subclause. Accordingly, this determination is being issued pursuant to the version of rule 5.7.7 inserted by the Twenty-Ninth Amending Deed.

The Department of Finance and Deregulation has stated that the consolidated PSS Rules will be updated as soon as practicable to reflect the amendment of rule 5.7.7 made by subclause 3.20 of the Twenty-Ninth Amending Trust Deed.