

EXPLANATORY STATEMENT

ISSUED BY THE MINISTER FOR FINANCE AND DEREGULATION

SUPERANNUATION (PRODUCTIVITY BENEFIT) ACT 1988

DETERMINATION UNDER SECTION 4G

**SUPERANNUATION (PRODUCTIVITY BENEFIT) (PENALTY INTEREST)
AMENDMENT DETERMINATION 2012 (NO. 1)**

The *Superannuation (Productivity Benefit) Act 1988* (the PB Act) provides superannuation arrangements, based on the minimum employer superannuation requirements in the *Superannuation Guarantee (Administration) Act 1992*, for certain Australian Government employees, office holders and contractors (employees).

The superannuation arrangements under the PB Act were closed to new employees from 1 July 2006. However, they continue to apply to persons who were covered by the Act on 30 June 2006 until they cease relevant employment or become a member of an Australian Government superannuation scheme.

Sections 4E, 4EA and 4F of the PB Act provide for the employer superannuation contributions that are to be paid to a fund in respect of an employee under the Act. Where the payment is made late, the employer is also required to pay extra amounts, as penalty interest, to take account of interest foregone because the employer has delayed paying contributions on behalf of the employee. Penalty interest is payable 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.

Section 4G of the PB Act provides that the interest for the purposes of sections 4E, 4EA and 4F is calculated in a way determined by the Minister. The *Superannuation (Productivity Benefit) (Penalty Interest) Determination 1995* (the Principal Determination), made under section 4G of the PB Act, provides that penalty interest is a daily rate calculated by dividing an annual interest rate for the relevant financial year specified in the Principal Determination by 365.

The Determination, cited as the **Superannuation (Productivity Benefit) (Penalty Interest) Amendment Determination 2012 (No. 1)**, amends the Principal Determination to provide that the interest rate for the 2012-2013 financial year is 5.67 per cent. This is 2 percentage points higher than the 10 year Treasury Bond rate for April 2012, as published by the Reserve Bank of Australia.

The Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LI Act).

No consultation was undertaken in relation to the Determination. In accordance with paragraph 18(2)(a) of the LI Act, consultation was considered to be unnecessary because the instrument is of a minor or machinery nature.

The Determination commences on 1 July 2012.

A Statement of Compatibility with Human Rights is at [Attachment A](#).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Superannuation (Productivity Benefit) (Penalty Interest) Amendment Determination 2012 (No. 1)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Superannuation (Productivity Benefit) Act 1988* (the PB Act) provides superannuation arrangements for certain Australian Government employees, office holders and contractors (employees).

Where the payment of employer superannuation contributions is made late, the employer is also required to pay extra amounts, as penalty interest, to take account of interest foregone because the employer has delayed paying contributions on behalf of the employee.

The *Superannuation (Productivity Benefit) (Penalty Interest) Determination 1995* (the Principal Determination), made under section 4G of the PB Act, provides that penalty interest is a daily rate calculated by dividing an annual interest rate for the relevant financial year specified in the Principal Determination by 365. The Determination amends the Principal Determination to provide that the interest rate for the 2012-2013 financial year is 5.67 per cent.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.