

DEFENCE FORCE RETIREMENT AND DEATH BENEFITS (FAMILY LAW SUPERANNUATION) AMENDMENT ORDER 2012 (NO. 1)

ISSUED BY THE MINISTER FOR DEFENCE SCIENCE AND PERSONNEL

Section 49F(1) of the *Defence Force Retirement and Death Benefits Act 1973* (the Act) empowers the Minister to make Orders prescribing matters required or permitted to be prescribed for the purposes of the Family Law splitting arrangements in Part VIA of the Act.

The Act provides for Defence Force Retirement and Death Benefits (DFRDB) pension recipients (referred to in the Act as ‘recipient members’) to re-enter the Australian Defence Force (ADF) for a period of service. If a recipient member re-enters the ADF for a period of further service of 12 months or more and elects under section 61B(1) of the Act (before commencing that service) to again become a contributing DFRDB member, the DFRDB pension is cancelled under section 62 of the Act and is then recalculated when the re-entered service is completed to take account of the person’s total ADF service.

Part 2 of Schedule 6 of the *Superannuation Legislation Amendment Act 2007* inserted subsection 49E(1A) into the Act to address an anomaly that occurred when the initial Family Law amendments were applied to the Act. The subsection provides for a payment split within the meaning of Part VIII B of the *Family Law Act 1975* to apply to a second or subsequent (or later) pension that becomes payable; the pension is to be reduced to the amount calculated under Ministerial Orders.

The amendment to the *Defence Force Retirement and Death Benefits (Family Law Superannuation) Orders 2004* made by the *Defence Force Retirement and Death Benefits (Family Law Superannuation) Amendment Order 2012 (No.1)* formalises a method developed by the Australian Government Actuary in 2011 for recalculating a previously reduced DFRDB pension as a result of a payment split following a further period of re-entered service of 12 months or more that is subject to a subsequent payment split.

The methodology in this amending Order is taken to have commenced on 1 January 2008 to be consistent with the date of commencement of Part 2 of Schedule 6 of the *Superannuation Legislation Amendment Act 2007*.

ComSuper, the administrator of the DFRDB scheme, has advised that it was only in early 2011 that the first of seven recipient members whose previously reduced DFRDB pensions again became the subject of a payment split following a further period of service of 12 months or more. The methodology in the amending order has been applied to the seven cases in these unusual circumstances. There is no one that is adversely impacted by the retrospective application of the methodology from 1 January 2008.

Individual amendments

Clause 1 – Name of order

This clause is formal and names the amending Order that amends the *Defence Force Retirement and Death Benefits (Family Law Superannuation) Orders 2004*.

Clause 2 – Commencement

This clause provides for the amending Order to commence on 1 January 2008, the date of commencement of Part 2 of Schedule 6 of the *Superannuation Legislation Amendment Act 2007*.

Clause 3 – Amendment of the *Defence Force Retirement and Death Benefits (Family Law Superannuation) Orders 2004*

This clause identifies that the principal orders are being amended.

Schedule 1

Item 1

This item formalises the methodology for splitting later standard pensions and associated reversionary pensions.

- Proposed order 2.09 formalises the methodology to calculate the reduction of second or subsequent (or later) standard pensions and associated reversions not payable as a spouse's pension on the death of a contributing member.
- Proposed order 2.10 formalises the methodology to calculate the reduction of second or subsequent (or later) standard pensions payable as a spouse's pension on the death of a contributing member.

Legislative Instrument Act

This amended Determination is a legislative instrument for the purpose of subsection 44(2) of the *Legislative Instruments Act 2003* (LIA) and is not subject to disallowance in accordance with item 39 of the table in subsection 44(2) or sunseting in accordance with item 42 of the table in subsection 54(2) of the LIA because it is an instrument relating to superannuation (that is, it formalises a method for reducing the superannuation benefits of a recipient member following a payment split within the meaning of Part VIII B of the *Family Law Act 1975*).

Both the Australian Government Actuary and ComSuper, the administrator of the DFRDB scheme, have been consulted. Further consultation was considered unnecessary pursuant to paragraph 18(2)(a) of the LIA because the instrument does not substantially alter existing arrangements that have been applied since the first case for which the methodology was developed was identified in early 2011.

A regulation impact statement is not required.

Statement of Compatibility with Human Rights

As this legislative instrument is not subject to disallowance, Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* does not apply. Nevertheless, 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*.

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.

Authority:

Section 49F of the *Defence Force Retirement
and Death Benefits Act 1973*