

EXPLANATORY STATEMENT

Defence Force (Superannuation) (Productivity Benefit) Amendment Determination 2012 (No.1)

ISSUED BY THE MINISTER FOR DEFENCE SCIENCE AND PERSONNEL

Section 52 of the *Defence Act 1903* empowers the Minister to make determinations providing a superannuation productivity benefit in respect of continuous full time service by members of the Defence Force who are contributors to the Defence Force Retirement and Death Benefits (DFRDB) Scheme.

The Defence Force (Superannuation) (Productivity Benefit) Determination 1988 (the Principal Determination), made under section 52, makes provision for a 3% productivity benefit in line with the Conciliation and Arbitration Commission's June 1986 National Wage decision.

The productivity benefit is a notional superannuation benefit accrued by DFRDB scheme members during their service and is paid from the Consolidated Revenue Fund when a member claims a benefit. The productivity benefit becomes part of the DFRDB superannuation unfunded liability and notional interest is calculated on the benefit.

The *Governance of Australian Government Superannuation Schemes Act 2011*, the *Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011* and the *ComSuper Act 2011* were part of a package of three Acts giving effect to Government decisions in 2008 and 2009 to modernise Australian Government superannuation and establish new governance arrangements for the Commonwealth superannuation schemes.

The enactment of these Acts requires that the Principal Determination be amended to reflect the single trustee arrangements. Subitem 9(1) of Division 2 of Part 3 of Schedule 2 and subitem 11(3) of Division 3 of Part 3 of Schedule 2 of the *Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011* provides for the retrospective substitution of the Commonwealth Superannuation Corporation, the single trustee of the Commonwealth Superannuation schemes, for the Defence Force Retirement and Death Benefits Authority and the Commissioner for Superannuation respectively in the Principal Determination.

There is also an amendment to reflect the fact that the *Superannuation Legislation Amendment (Early Release of Superannuation) Act 2011* changed the regulator that could consider the early release of superannuation on compassionate grounds from the Australian Prudential Regulation Authority to the Chief Executive Officer of Medicare.

Factor used in the calculation of interest

The Principal Determination credits notional interest on the 3% productivity benefit and superannuation guarantee top-up in accordance with factors set out in the schedule to the Principal Determination. It is necessary to amend the schedule to the

Principal Determination to add the factor concerned in the calculation of interest applicable in respect of the period 1 January 2012 to 31 December 2012.

The factor taken into account is the 10 year Treasury Bond yield, declared on 30 December 2010 by the Reserve Bank of Australia and has been sourced from the Reserve Bank of Australia's website.

Individual amendments

1. Name of determination

This clause is formal and names the amending Determination that amends the Principal Determination.

2. Commencement

This clause provides for the amendments to have effect from 1 January 2012. No person, other than the Commonwealth, will be disadvantaged by this retrospective commencement.

3. Amendment of Defence Force (Superannuation)(Productivity Benefit) Determination 1988

This clause provides that schedule 1 of the amending Determination sets out the amendments to the Principal Determination and is formal.

Schedule 1 Amendments

Item [1]

This item removes the definition of ***DFRDB Act 1973*** – effectively, this item combined with item [7] removes a superfluous reference to '***1973***' when referring to the '***DFRDB Act***' which is defined in item [7] to be the *Defence Force Retirement and Death Benefits Act 1973*.

Item [2]

The role of the Defence Force Retirement and Death Benefits Authority is now performed by the Commonwealth Superannuation Corporation (CSC). This item removes the definition of ***Authority*** made redundant by the new governance arrangements for the Commonwealth superannuation schemes.

Item [3]

The item inserts a definition of ***Chief Executive Medicare*** to reflect the fact that the *Superannuation Legislation Amendment (Early Release of Superannuation) Act 2011* changed the regulator that could consider the early release of superannuation on compassionate grounds.

Item [4]

This item removes the reference to **Commissioner** made redundant by the new governance arrangements for the Commonwealth superannuation schemes. The role of Commissioner of Superannuation is now performed by the Chief Executive Officer of ComSuper as set out in the *ComSuper Act 2011*.

Item [5]

This item inserts a definition of **ComSuper** to reflect the new governance arrangements for Commonwealth superannuation schemes. **ComSuper** is the entity established by the *ComSuper Act 2011*.

Item [6]

This item inserts a definition of **CSC** to reflect the new governance arrangements for Commonwealth superannuation schemes. **CSC** is the Commonwealth Superannuation Corporation established under the *Governance of Australian Government Superannuation Schemes Act 2011*.

Item [7]

This item inserts a definition for the *Defence Force Retirement and Death Benefits Act 1973* – effectively, this item combined with item [3] removes a superfluous reference to **1973**.

Item [8]

This item effectively removes a reference to the Commissioner for Superannuation and inserts a reference to CSC to reflect the new governance arrangements.

Items [9] and [10]

These items change the headings to clauses 11 and 12 respectively of the Principal Determination to insert a reference to decisions made by CSC to reflect the new governance arrangements.

Item [11]

This item substitutes a new clause 13 to enable CSC to delegate its functions under subclause 6(3) (that is, its power to determine whether a productivity benefit is to be paid on the grounds of invalidity) to the Chief Executive Officer of ComSuper or a member of ComSuper staff at the Executive 1 Level. Previously, the Commissioner for Superannuation was the decision maker in these cases and he could delegate his decision making power to an officer at that level as defined in the *Public Service Act 1922*.

Item [12]

This item amends the Principal Determination by adding the factor concerned in the calculation of interest applicable in respect of the period 1 January 2012 to 31 December 2012.

Item [13]

In line with the other changes made in this determination, this item replaces references to ***Authority*** and ***Commissioner*** throughout the Principal Determination with CSC to reflect the new governance arrangements.

A reference to ***Australian Prudential Regulation Authority*** in paragraph 6(1)(d) of the Principal Determination is replaced with a reference to the ***Chief Executive Medicare*** to reflect the change brought about by the *Superannuation Legislation Amendment (Early Release of Superannuation) Act 2011*.

This item also inserts a reference to the ***DFRDB Act*** in paragraph 3A(2)(d) and subclauses 3A(4) and 8B(2) to reflect the definition set out in item [7] above. It also changes a reference to the *Defence Act 1903* in paragraph 4(2)(a) to effectively remove the superfluous reference to ***1903*** – the ***Defence Act*** is defined in clause 3 of the Principal Determination to be the *Defence Act 1903*.

Legislative Instrument Act

This amended Determination is a legislative instrument for the purpose of section 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.

Consultation was considered inappropriate and unnecessary pursuant to paragraph 18(2)(g) of the LIA because the changes that are made to reflect the new governance arrangements simply reflect what is incorporated in the *Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011* and the Principal Determination relates to the service of members of the Australian Defence Force.

A regulation impact statement is not required.

Statement of Compatibility with Human Rights

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

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 52 of the *Defence Act 1903*