

Defence Force Retirement and Death Benefits (Surcharge Deduction Amount—Conversion Factors) Determination 2015 – Explanatory Statement

1 Name of Determination

This Determination is the Defence Force Retirement and Death Benefits (Surcharge Deduction Amount—Conversion Factors) Determination 2015.

2 Commencement

This Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

3 Authority for this Determination

This Determination is made under subsection 124A(1) of the *Defence Force Retirement and Death Benefits Act 1973* (the DFRDB Act).

4 Purpose and operation of this Determination

Background

The *Superannuation Legislation Amendment (Superannuation Contributions Tax) Act 1997* (No.187/1997) amended the DFRDB Act by inserting section 6C into the Act.

Under section 6C of the DFRDB Act, if a member's surcharge debt account applicable under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* is in debit at the time a benefit becomes payable to or in respect of the member, Commonwealth Superannuation Corporation (CSC), the statutory body legally responsible for the administration of the DFRDB Act, must determine in writing the surcharge deduction amount that, in its opinion, it would be fair and reasonable to take into account in working out the amount of those benefits.

Member election

Subsection 124(1) of the DFRDB Act provides that a member of the DFRDB scheme whose surcharge debt account is in debit when benefits (other than deferred benefits) become payable to the member under the DFRDB Act may elect in writing that those benefits (instead of any productivity superannuation benefit) be adjusted to take the member's surcharge deduction amount into account.

For example, a person entitled to retirement pay under section 23 of the DFRDB Act may make an election under subsection 124(1) of the DFRDB Act. The person's retirement pay is then reduced in accordance with the formula set out in subsection

23(6) of the DFRDB Act, instead of having the surcharge debt applied to the person's productivity superannuation benefit.

Election in respect of a deceased member

Subsection 124(2) of the DFRDB Act provides that when a benefit becomes payable in respect of the member under subsection 48(1) or 48A of the Act, the deceased person's personal representative (or, if there is no legal personal representative, another person determined by CSC) may elect in writing that that benefit (instead of any productivity superannuation benefit payable to the member) be adjusted to take the member's surcharge deduction amount into account.

Determination of conversion factors

Subsection 124A(1) of the DFRDB Act provides that CSC must, in accordance with advice from the Australian Government Actuary (AGA), determine in writing the conversion factor that, having regard to the age of a member of the scheme when a benefit becomes payable and any other relevant factors is applicable for the purpose of working out, in relation to the member, the yearly amount that would have to be paid to discharge a liability equal to the member's surcharge deduction amount.

In general terms, in order to discharge the surcharge deduction amount liability to or in respect of a member, a standard rate of reduction is applied to the starting rate of the benefit, using the conversion factors determined by CSC, having regard to the person's age when the benefit becomes payable.

Advice from the Australian Government Actuary

On 22 September 2015 the AGA advised CSC of updated conversion factors for the purposes of subsection 124(1) of the DFRDB Act. These updated conversion factors are intended to replace the factors last provided by the AGA in 2003.

Application of new factors

DFRDB benefits payable to or in respect of a member after the commencement date of this Determination will apply the conversion factors set out in this Determination in order to calculate, where necessary, the reduction in benefits to discharge the surcharge deduction amount.

Repeal of previous determination

The conversion factors in this Determination replace any conversion factors previously determined under subsection 124(1) of the DFRDB Act.

Accordingly, Schedule 1 of this Determination repeals the Superannuation (DFRDB Scheme) (Surcharge Deduction Amount – Conversion Factors) Determination No. 1: ComLaw reference: <https://www.comlaw.gov.au/Series/F2008B00368>.

5 Legislative Instruments Act 2003

This Determination is a legislative instrument for the purposes of section 5 of the *Legislative Instruments Act 2003* (LIA). However, as this Determination is an instrument relating to superannuation, it is exempted from disallowance by item 39 of the table in subsection 44(2) of the LIA.

The publication requirement specified in subsection 124A(2) of the DFRDB Act is satisfied by registration of this Determination on the Federal Register of Legislative Instruments – see section 56 of the LIA.

6 Consultation

Section 17 of the LIA specifies that rule-makers should consult before making legislative instruments. Actuarial advice was obtained regarding the factors included in this Determination.

7 Statement of Compatibility with Human Rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires a Statement of Compatibility with Human Rights for all legislative instruments subject to disallowance under section 42 of the LIA. As mentioned above, this Determination is exempt from disallowance which means that a Statement of Compatibility with Human Rights is not required.