

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Defence Personnel

Australian Defence Force Superannuation Act 2015

*Australian Defence Force Superannuation Amendment
(Trust Deed—Contributions) Instrument 2020*

This Instrument amends the *Australian Defence Force Superannuation Trust Deed 2015* (the Trust Deed), as made under the *Australian Defence Force Superannuation Act 2015* (the Act), to allow certain former long-term ADF members to elect ADF Super as their fund of choice for their new employment and continue to make contributions to their ADF Super account.

The Act was recently amended to clarify that this change is permitted under the Act.

The original policy intent of the ADF Super scheme was to allow serving ADF members and their “employer” (Defence) to contribute to the scheme. Since the scheme’s introduction however, Government policy now encourages individuals to maintain as few superannuation accounts as possible. As such, as part of the Government’s election commitment, the Prime Minister announced that modification to ADF Super would be made to enable former long-term ADF members to continue to contribute to ADF Super in their subsequent employment after leaving the ADF.

This Instrument does not make changes to contributing or preserved members, or pension recipients of the other (now closed) military superannuation schemes (being the Defence Forces Retirement Benefits (DFRB) scheme, the Defence Force Retirement and Death Benefits (DFRDB) scheme or the Military Superannuation and Benefits (MSB) scheme).

Amendments to the statutory death and invalidity scheme, ADF Cover, as established under the *Australian Defence Force Cover Act 2015* are not required, as ADF Cover will remain available only to ADF Super members receiving contributions in relation to their ADF service. This Instrument will allow the Commonwealth Superannuation Corporation (CSC) to introduce other insurance arrangements for former long-term ADF members.

Details of the Instrument are set out in the [Attachment A](#).

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

Section 8 of the Act specifies that CSC must consent to the amendments to the Trust Deed, unless the amendments relate to certain matters. CSC has confirmed their consent to the amendments in a letter to the Minister for Defence Personnel on 11 February 2020.

The Instrument would be a legislative instrument for the purposes of the *Legislation Act 2003*.

Commencement

The Instrument would commence the day after registration.

Regulatory Impact Statement

The Office of Best Practice Regulation advised that no regulatory impact statement was required (OBPR ID 42642).

Consultation

Section 17 of the *Legislation Act 2003* specifies that rule-makers should consult before making legislative instruments.

As the Instrument implements a Budget Measure, and the changes are of a beneficial nature to ADF members generally (by providing greater choice when they leave ADF service), Defence determined that consultation with persons who may be affected by the Instrument is not required. Appropriate communication products were distributed to ADF Super members by CSC to inform them of these changes.

Authority: Section 8 of the
Australian Defence Force Superannuation Act 2015

Details of the Australian Defence Force Superannuation Amendment (Trust Deed—Contributions) Instrument 2020

Section 1 sets out the name of the Instrument.

Section 2 of this Instrument provides the commencement date of each provision in the Instrument.

Section 3 provides that this Instrument has authority under the *Australian Defence Force Superannuation Act 2015*.

Section 4 provides that each instrument that is specified in a Schedule to the Instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments to the Australian Defence Force Superannuation Trust Deed (Part 1 — Main Amendments)

Item 1 amends section 4 of Chapter 1 of the Trust Deed. This amendment inserts an additional paragraph in the simplified outline of the Trust Deed so as to outline CSC’s ability to provide insurance options to certain ADF Super members.

Item 2 and Item 3 amends section 5 of the Trust Deed, which provides definitions for the Trust Deed. The term ‘contribution’ is amended by inserting paragraph (ab) to clarify that the employer of a former long-term ADF member may now make contributions into the fund for the benefit of that individual. The terms ‘employer’, ‘former long-term ADF member’, ‘insurance company’, and ‘permanent incapacity’ have been inserted into the list of defined terms.

Item 4 inserts a new paragraph 8(1)(ba) into the Trust Deed. The new provision allows insurance claims to form part of a former long-term ADF member’s ADF Super account.

Item 5 and Item 6 amends section 10 of the Trust Deed. This amendment inserts a new paragraph 10(ab), which provides that the CSC must pay insurance premiums for former long-term ADF members from the ADF Super Fund. The amendment also removes the second occurring “and” at paragraph 10(b).

Item 7 amends subsection 11(2) to ensure CSC can manage their investments in such a way that if funds are required to pay insurance premiums to an insurer for the benefit of former long-term ADF Super members, funds will be available for this purpose.

Item 8 inserts a new paragraph 14(ca) to allow CSC to provide former long-term ADF members with information on insurance that may be offered or provided to them.

Item 9 inserts a new paragraph 15(ca) to allow CSC to take out insurance policies with an insurance company or companies, in order to be able to provide insurance to former long-term ADF members.

Item 10 inserts a new Section 17A to allow CSC to accept contributions from employers of former long-term ADF members.

Item 11 inserts a new section 18A to allow CSC to accept contributions from former long-term ADF members and their spouses.

Item 12 amends section 19 to include reference to section 18A.

Item 13 repeals and substitutes paragraph 20(b) which provides that when CSC receives contributions from the Commissioner of Taxation for the benefit of a serving ADF Super member, they must pay this contribution into the ADF Super Fund. The new paragraph expands that contributions from the Commissioner of Taxation includes those that are for the benefit of former long-term ADF members.

Item 14 repeals and substitutes section 23 which provides that contributions from serving ADF Super members can be received in the form of a rollover superannuation benefit. The new section expands that rollover superannuation benefits can be accepted from former long-term ADF members.

Item 15 inserts a new Part 1A in relation to insurance (sections 24A-24D). New sections 24A and 24B to allow CSC to arrange and offer insurance to former long-term ADF members in relation to permanent incapacity and death, with CSC's ability to debit an insurance premium provided under section 24D. Section 24C has also been inserted to allow CSC to make a claim against the policy if an insured ADF Super member dies or a claim application is made.

Item 16 amends section 26 by inserting a note clarifying CSC's ability to credit a member's account with an amount that is paid from the insurance company in response to an amount claimed.

Item 17 inserts a new subparagraph 44(c)(ia) to allow credits stemming from insurance claims to be credited to a member's ADF Super account.

Item 18 inserts a new paragraph 45(ab) to allow debits stemming from insurance premiums to be debited from a member's ADF Super account.

Schedule 1 – Amendments to the Australian Defence Force Superannuation Trust Deed (Part 2 — Contingent Amendments)

Item 19 amends section 5 by inserting new paragraphs (da) and (db) into the note of the section heading. This note provides a list of the terms defined in the Act.

Item 20 and Item 21 repeal the definitions of 'employer' and 'former long-term ADF member'.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Australian Defence Force Superannuation Amendment (Trust Deed—Contributions) Instrument 2020

The *Australian Defence Force Superannuation Amendment (Trust Deed—Contributions) Instrument 2020* (the 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 Instrument

1. Since 1 July 2016, ADF Super has been the default superannuation fund for permanent ADF members and Reserve members rendering continuous full-time service. For members who joined the ADF since that date, Defence makes contributions to ADF Super (or another complying superannuation fund chosen by the member) at 16.4% of their salary.
2. ADF members who are members of the now closed Military Superannuation and Benefits (MSB) scheme, may choose to opt-out of MSB and become an ADF Super members.
3. At present, when an ADF Super member leaves the ADF, they can no longer make contributions to ADF Super. Any superannuation contributions from a subsequent civilian employer, for example, must be made to a different superannuation fund. The Instrument amends the current arrangements so that when ADF Super members leave the ADF, they can continue to make contributions to the fund.
4. This Instrument does not make amendments to the other ADF superannuation schemes.
5. This Instrument does not amend the current provisions under ADF Cover, which will remain available only to ADF Super members receiving contributions in relation to their ADF service. This Instrument will allow CSC to introduce other insurance arrangements for former long-term ADF Super members.
6. These amendments increase superannuation choice for ADF Super members when they leave the permanent ADF or are no longer rendering continuous full-time service.

Human rights implications

This Instrument promotes the following human rights:

- Article 7, International Covenant on Economic, Social and Cultural Rights (ICESCR), the right to just and favourable conditions of work
- Article 9, ICESCR, the right to social security
- Article 11, ICESCR, the right to an adequate standard of living

This Instrument proposes to extend the existing superannuation arrangements, which provide just and favourable conditions of work for ADF members. The new arrangements will allow employer contributions from employers other than the ADF to contribute to scheme, and for members to also make personal contributions. This will provide an enhanced standard of living and social security arrangements for former ADF members.

Conclusion

7. The Instrument is compatible with human rights because it promotes and advances favourable condition of work and social security, and does not otherwise engage any human rights.