



Defence Force (Superannuation) (Productivity Benefit) Determination

as amended

made under subsection 52 (1) of the

Defence Act 1903

This compilation was prepared on 27 June 2007
taking into account amendments up to *Defence Force (Superannuation) (Productivity
Benefit) Determination (Amendment) (No. 1 of 2007)*

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

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1 Citation [see Note 1]

This Determination may be cited as the Defence Force (Superannuation) (Productivity Benefit) Determination.

2 Commencement

This Determination shall be deemed to have commenced on 1 January 1988.

3 Interpretation

(1) In this Determination, unless the contrary intention appears:

DFRDB Act 1973 means the *Defence Force Retirement and Death Benefits Act 1973*.

annual rate of pay, in relation to a member:

- (a) in relation to a period when the member is on long service leave on half pay - means half the rate which would have been the rate applicable to the member if paragraph (b) had applied to the member, or
- (b) in any other case — has the same meaning as in the *DFRDB Act*.

approved deposit fund has the same meaning as in the SIS Act.

Authority means the Defence Force Retirement and Death Benefits Authority established under the *DFRDB Act 1973*.

base amount means:

- (a) for a splitting agreement — the base amount specified in, or calculated under, the agreement; or
- (b) for a splitting order — the amount allocated under subsection 90MT (4) of the *Family Law Act 1975*.

Commissioner means the person who for the time being:

- (a) holds the office of; or
- (b) is acting as;

Commissioner for Superannuation under Part II of the *Superannuation Act 1976*.

Defence Act means the *Defence Act 1903*.

effective service means service other than non-effective service.

family law value means the amount determined in accordance with regulations under the *Family Law Act 1975* that apply for paragraph 90MT (2) (a) of that Act. In applying those regulations, the relevant date is taken to be the date on which the operative time occurs.

Note The amount is determined by applying those regulations, whether or not an order has been made under subsection 90MT (1) of the *Family Law Act 1975*.

member means:

- (a) a member of the Permanent Forces; or
- (b) a member of the Reserve Forces or the Emergency Forces who is rendering continuous full time naval, military or air force service;

but does not include a member of any of those forces who is a member of the Military Superannuation and Benefits Scheme established by the Trust Deed under the *Military Superannuation and Benefits Act 1991*.

member spouse has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

non-effective service, in relation to a member, means a period that, under clause 4, is deemed to be a period of non-effective service in relation to the member.

non-member spouse has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

operative time, for a splitting agreement or splitting order, means the time that is the operative time for Part VIIIIB of the *Family Law Act 1975* in relation to a payment split under the agreement or order.

pay period, in relation to a person who is, or has been, a member, means a fortnightly period in respect of which the person would ordinarily receive salary.

payment split has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

productivity benefit means a productivity superannuation benefit payable in accordance with this Determination.

recipient member means a retired member in receipt of a pension who again becomes a member.

scheme value has the meaning given by clause 14.

service offence has the same meaning as in the *Defence Force Discipline Act 1982*.

SIS Act means the *Superannuation Industry (Supervision) Act 1993*.

SIS Regulations means the *Superannuation Industry (Supervision) Regulations 1994*.

splitting agreement means:

- (a) a superannuation agreement (within the meaning of Part VIIIIB of the *Family Law Act 1975*); or
- (b) a flag lifting agreement (within the meaning of Part VIIIIB of the *Family Law Act 1975*) that provides for a payment split.

splitting order has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

splitting percentage means:

- (a) for a splitting agreement — the percentage specified in the agreement under subparagraph 90MJ (1) (c) (iii) of the *Family Law Act 1975*; or
- (b) for a splitting order — the percentage specified in the order under subparagraph 90MT (1) (b) (i) of the *Family Law Act 1975*.

superannuation fund has the same meaning as in the SIS Act.

surcharge debt account, for a member, means the surcharge debt account kept for the member by the Authority under section 16 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

surcharge deduction amount, in relation to a member to or in respect of whom benefits become payable under this Determination, means the surcharge deduction amount that is specified in the determination made by the Authority, under clause 3A, in relation to the member.

transfer amount means:

- (a) if a splitting percentage applies — the amount calculated by multiplying the splitting percentage by the greater of:
 - (i) the family law value; and
 - (ii) the scheme value; or
- (b) if a base amount applies and the scheme value is not more than the family law value — the base amount; or
- (c) if a base amount applies and the scheme value is more than the family law value — the amount calculated using the formula:

$$\text{Scheme value} \times \frac{\text{Whole dollars in base amount}}{\text{Whole dollars in family law value}}$$

- (2) A reference in this Determination to a member who retires shall be read as a reference to a member who ceases to render continuous full time naval, military or air force service.
- (3) For the purposes of this clause a member who is rendering continuous full time service shall not be deemed to have ceased to render continuous full time service during any period that is deemed by clause 4 to be a period of non-effective service in relation to the member.
- (4) Where a member retires and, without a break in the continuity of his or her service, again becomes a member who is rendering continuous full time service, the member shall, for the purposes of this Determination, be deemed not to have retired.

3A Surcharge deduction amount

- (1) If:
 - (a) benefits become payable to or in respect of a member; and
 - (b) the member's surcharge debt account is in debit when those benefits became so payable;
 the Authority 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.
- (2) In making the determination, the Authority must have regard to the following:
 - (a) the amount by which the member's surcharge debt account is in debit when those benefits become payable;
 - (b) the value of the employer-financed component of those benefits;
 - (c) the value of the benefits that, for the purpose of working out (under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*) the notional surchargeable contributions factors applicable to the

Clause 4

member, were assumed to be likely to be payable to the member on his or her retirement;

- (d) whether the member has or had qualified for his or her maximum benefit entitlement under the DFRDB Act 1973;
 - (e) any other matter that the Authority considers relevant.
- (3) The amount determined by the Authority may not be more than 15% of the employer-financed component of that part of the benefits payable to the member that accrued after 20 August 1996.

4 Non-effective service

- (1) Where a member was on leave of absence without pay for a period exceeding 21 consecutive days, the period shall be deemed to be a period of non-effective service in relation to the member.

- (2) Where:

(a) the salary and allowances of a member in respect of a period were forfeited, in whole or in part, under regulations made under the *Defence Act 1903*; and

(aa) the period exceeded 21 consecutive days; and

(b) an amount equal to the amount of the salary and allowances forfeited was not subsequently paid, and is not payable, under those regulations to the member,

the period shall be deemed to be a period of non-effective service in relation to the member.

- (3) Where:

(a) a member was in custody under the *Defence Force Discipline Act 1982* awaiting or undergoing trial for a service offence; and

(aa) the period for which the member was in custody awaiting or undergoing trial exceeded 21 consecutive days; and

(b) the member was subsequently convicted of the offence or another service offence at the trial; and

(c) either of the following subparagraphs apply:

(i) the conviction was not quashed or set aside;

(ii) the conviction was quashed or set aside and:

(A) a conviction for another service offence was substituted;
or

(B) the member was ordered to be tried again for the offence of which the member was convicted, or for another service offence, and was convicted of a service offence at the subsequent trial;

the period shall be deemed to be a period of non-effective service in relation to the member.

6 When benefit payable

- (1) Where, on or after 1 January 1988, a member retires or dies, a productivity superannuation benefit becomes payable in respect of the person.
- (2) Where on a member's retirement, a productivity benefit is payable in respect of the person and:
 - (a) the person:
 - (i) has reached the age of 55 years and has retired from the workforce; or
 - (ii) has not reached the age of 55 years and is retired from the workforce on the ground of permanent incapacity or permanent invalidity; or
 - (iii) is about to leave Australia permanently on or before 30 June 1998; or
 - (b) the amount of the benefit is an amount to which the preservation standards set out in the SIS Regulations do not apply;
the benefit is payable to the person at the time when the benefit becomes payable in respect of the person.
- (2A) A benefit is not payable to a person in the circumstances described in subparagraph (2) (a) (ii) unless the Commissioner is satisfied that the person is unlikely ever to be able to work again in employment for which the person is reasonably qualified by education, training or experience or for which the person could reasonably be qualified after retraining.
- (2B) In making a decision under subclause (2A), the Commissioner is to have regard to at least 2 certificates, each signed by a registered medical practitioner, giving the opinion of the practitioner of the likelihood of the person being ever be able to work again in employment for which the person is reasonably qualified by education, training or experience or for which the person could reasonably be qualified after retraining.
- (4) Where a productivity benefit is payable in respect of a person following the death of the person, the benefit shall be paid to the person's personal representative.
- (6) Where a productivity benefit becomes payable in respect of a person and is not payable under subclause (2) or (4), the benefit shall be preserved in accordance with subclause (7) until:
 - (a) the person has attained the age of 55 years and has retired from the workforce; or
 - (b) the person retires from the workforce before attaining the age of 55 years on the ground of permanent incapacity or permanent invalidity; or
 - (d) the person dies; or
 - (e) the Australian Prudential Regulation Authority determines that the person satisfies a condition of release on a compassionate ground under subregulation 6.19A (2) of the SIS Regulations; or

Clause 7

- (f) the Authority is satisfied the person is in severe financial hardship within the meaning of subregulation 6.01 (5) of the SIS Regulations.
- (6A) An amount that becomes payable under paragraph (6) (e) or (f) is limited to so much of the benefit as is necessary to meet the expenses that give rise to the compassionate grounds or as is necessary to alleviate financial hardship.
- (6B) If only part of a benefit payable under subclause (6) is payable because of subclause (6A), that part may be reduced by part of the surcharge deduction amount before it is paid as a lump sum if the Authority considers that there may be insufficient benefit remaining unpaid to pay the surcharge deduction amount.
- (7) A productivity benefit payable in respect of a person that is required by subclause (6) to be preserved shall:
 - (a) be paid to, for preservation in relation to the person:
 - (i) a superannuation fund nominated by the person, being a superannuation fund of which the person is, or intends to become, a member and that is required to preserve superannuation benefits in accordance with standards prescribed by the SIS Regulations; or
 - (ii) an approved deposit fund nominated by the person, being a fund that is required to preserve superannuation benefits in accordance with standards prescribed by those regulations; or
 - (iii) a deferred annuity nominated by the person, being an annuity that cannot be surrendered or assigned before the person attains the age of 55 years and that does not pay benefits except in the circumstances mentioned in subclause (6); or
 - (b) if the person does not make such a nomination within 2 months after the benefit becomes payable in respect of the person - be paid to such a superannuation fund or approved deposit fund nominated by the Commissioner.
- (8) The Commissioner may, before paying a productivity benefit to a person, seek evidence as to the circumstances in which that benefit becomes payable to the person under this Determination.

7 **Accrual of productivity benefit**

- (1) A productivity benefit in respect of a member accrues in respect of continuous full time service in the Defence Force rendered by the member on or after 1 January 1988.
- (2) A productivity benefit does not accrue in respect of service of a member that is non-effective service.

8 **Amount of productivity benefit in 1988**

- (1) This clause applies in respect of service rendered by a member in 1988.

- (2) Where, in a pay period, a member renders 14 days effective service, then, subject to subclause (6), the amount of productivity benefit (exclusive of interest) to be credited to that member in respect of that pay period shall be calculated in accordance with the formula:

$$\frac{14 \times \text{ARP}}{365} \times \frac{3}{200}$$

where **ARP** is the annual rate of pay applicable to the member.

- (3) Where, in a pay period, a member renders a period of effective service of less than 14 days, then, subject to subclause (6), the amount of productivity benefit (exclusive of interest) to be credited to that member in respect of that pay period shall be calculated in accordance with the formula:

$$\frac{B \times D}{14}$$

where:

B is the amount of benefit in respect of a member in respect of the pay period ascertained in accordance with the formula specified in subclause (2); and

D is the number of days of effective service in the pay period.

- (4) Where, in a pay period, a member renders 14 days effective service, then, subject to subclause (6), the amount of productivity benefit (being interest) to be credited to that member in respect of that pay period shall be calculated in accordance with the formula:

$$\frac{B \times 0.1286 \times 14}{365}$$

where **B** is the amount of benefit (including interest) that has accrued in respect of the member immediately before the commencement of the pay period.

- (5) Where, in a pay period, a member renders a period of effective service of less than 14 days, then, subject to subclause (6), the amount of productivity benefit (being interest) to be credited to that member in respect of that pay period shall be calculated in accordance with the formula:

$$\frac{B \times D \times 0.1286}{365}$$

where:

B is the amount of benefit (including interest) that has accrued in respect of the member immediately before the commencement of the pay period; and

D is the number of days of effective service in the pay period.

- (6) Where an amount ascertained in accordance with subclause (2), (3), (4) or (5) includes a fraction of a cent:

Clause 8A

- (a) if the fraction is one-half or greater, the amount shall be deemed to be increased by one cent; or
- (b) if the fraction is less than one-half, the fraction shall be disregarded.

8A Amount of productivity benefit after 1988 and before 1 July 1992

- (1) This clause applies in respect of service rendered by a member after 1988 and before 1 July 1992.
- (2) Where, in a pay period, a member renders 14 days effective service, then, subject to subclause (6), the amount of productivity benefit (exclusive of interest) to be credited to that member in respect of that pay period shall be calculated in accordance with the formula:

$$\frac{14 \times \text{ARP}}{365} \times \frac{3}{100}$$

where **ARP** is the annual rate of pay applicable to the member.

- (3) Where, in a pay period, a member renders a period of effective service of less than 14 days, then, subject to subclause (6), the amount of productivity benefit (exclusive of interest) to be credited to that member in respect of that pay period shall be calculated in accordance with the formula:

$$\frac{B \times D}{14}$$

where:

B is the amount of benefit in respect of a member in respect of the pay period ascertained in accordance with the formula specified in subclause (2); and

D is the number of days effective service in the pay period.

- (4) Where, in a pay period, a member renders 14 days service, then, subject to subclause (6), the amount of productivity benefit (being interest) to be credited to that member in respect of that pay period shall be calculated in accordance with the formula:

$$\frac{B \times I \times 14}{365}$$

where:

B is the amount of benefit (including interest) that has accrued in respect of the member immediately before the commencement of the pay period; and

I is the factor specified in column 2 of the Schedule opposite to the reference to the calendar year specified in column 1 of the Schedule which is the calendar year in which the pay period concludes.

- (5) Where, in a pay period, a member renders a period of service of less than 14 days, then, subject to subclause (6), the amount of productivity benefit (being interest) to be credited to that member in respect of that pay period shall be calculated in accordance with the formula:

$$\frac{B \times D \times I}{365}$$

where:

B is the amount of benefit (including interest) that has accrued in respect of the member immediately before the commencement of the pay period;

D is the number of days service in the pay period; and

I is the factor specified in column 2 of the Schedule opposite to the reference to the calendar year specified in column 1 of the Schedule which is the calendar year in which the pay period concludes.

- (6) Where an amount ascertained in accordance with subclause (2), (3), (4) or (5) includes a fraction of a cent:
- (a) if the fraction is one-half or greater, the amount shall be deemed to be increased by one cent; or
 - (b) if the fraction is less than one-half, the fraction shall be disregarded.

8AA Amount of productivity benefit on or after 1 July 1992

- (1) This clause applies in respect of service rendered by a member on or after 1 July 1992.
- (2) Where, in a pay period, a member whose total period of effective service is less than 20 years renders 14 days effective service, then, subject to subclause (7), the amount of productivity benefit (exclusive of interest) to be credited to that member in respect of that pay period is calculated using the formula:

$$\frac{14 \times \text{ARP}}{365} \times \frac{\text{Percentage}}{100}$$

where:

ARP is the annual rate of pay applicable to the member; and

Percentage is the number specified in the following tables in relation to the period in which the pay period ends:

- (a) In respect of non-recipient members and recipient members with more than 12 months service; or

Period	Percentage
Period ending 31 December 1992	3.6
Period from 1 January 1993 to 30 June 1995	4.5
Period from 1 July 1995 to 30 June	5.4

Clause 8AA

1998	
Period commencing 1 July 1998	9.0

- (b) In respect of recipient members with less than 365 days service who are non contributors.

Period	Percentage
Period ending 31 December 1992	4.0
Period from 1 January 1993 to 30 June 1995	5.0
Period from 1 July 1995 to 30 June 1998	6.0
Period commencing 1 July 1998	9.0

- (3) Where, in a pay period, a member whose total period of effective service is not less than 20 years renders 14 days effective service, then, subject to subclause (7), the amount of productivity benefit (exclusive of interest) to be credited to that member in respect of that pay period is calculated using the formula:

$$\frac{14 \times ARP}{365} \times \frac{3}{100}$$

where *ARP* is the annual rate of pay applicable to the member.

- (4) Where, in a pay period, a member renders a period of effective service of less than 14 days, then, subject to subclause (7), the amount of productivity benefit (exclusive of interest) to be credited to that member in respect of that pay period is calculated in accordance with the formula

$$\frac{B \times D}{14}$$

where:

B is the amount of benefit in respect of a member in respect of the pay period ascertained using the formula in subclause (2) or (3) as the case may be; and

D is the number of days effective service in the pay period.

- (5) Where, in a pay period, a member renders 14 days service, then, subject to subclause (7), the amount of productivity benefit (being interest) to be credited to that member in respect of that pay period is calculated using the formula:

$$\frac{B \times I \times 14}{365}$$

where:

B is the amount of benefit (including interest) that has accrued in respect of the member immediately before commencement of the pay period; and

I is the factor specified in column 2 of the Schedule opposite to the reference to the calendar year specified in column 1 of the Schedule which is the calendar year in which the pay period concludes.

- (6) Where, in a pay period, a member renders a period of service of less than 14 days, then, subject to subclause (7), the amount of productivity benefit (being interest) to be credited to that member in respect of that pay period is calculated using the formula:

$$\frac{B \times D \times I}{365}$$

where:

B is the amount of benefit (including interest) that has accrued in respect of the member immediately before commencement of the pay period; and

D is the number of days service in the pay period; and

I is the factor specified in column 2 of the Schedule opposite to the reference to the calendar year specified in column 1 of the Schedule which is the calendar year in which the pay period concludes.

- (7) Where an amount ascertained in accordance with subclause (2), (3), (4), (5) or (6) includes a fraction of a cent:
- (a) if the fraction is one-half or greater, the amount is increased by one cent; or
 - (b) if the fraction is less than one-half, the fraction is disregarded.
- (8) In the application of subclauses (5) and (6) in respect of a period of service of the member in a pay period which concludes in the period from and including 1 July 1992 to and including 31 December 1992, the factor in the Schedule for the calendar year 1992 is reduced by 15%.
- (9) For the purposes of this clause, where a member completes 20 years' effective service in a pay period, the member is regarded as being, in relation to that pay period, a member whose total period of effective service is not less than 20 years.

8AB Reduction of productivity benefit

- (1) Where a member who has been credited with productivity benefit in accordance with subclause 8AA(2) becomes a member to whom subclause 8AA(3) applies, the amount of productivity benefit credited to that member is, by force of this subclause, reduced by the amount by which the last-mentioned benefit exceeds the benefit which would have accrued if the member had, at all relevant times, been a member to whom subclause 8AA(3) had applied.
- (2) Where a member who has been credited with productivity benefit in accordance with subclause 8AA (2), not being a member to whom subclause (1) has applied, retires and:

Clause 8AB

- (a) on his or her retirement, he or she is entitled to retirement pay or invalidity pay under the DFRDB Act; or
- (b) on or after his or her retirement, he or she is or becomes:
 - (i) a person in respect of whom a transfer value is payable under section 77 of that Act; or
 - (ii) a person in respect of whom deferred benefits are applicable under section 78 of that Act;

the amount of productivity benefit credited to that person is, by force of this subclause, reduced by the amount by which that benefit exceeds the productivity benefit which would have accrued if the person had, at all relevant times, been a member to whom subclause 8AA (3) applied.

- (3) Where:
 - (a) subclause (2) has effect in relation to a person because the person was a person to whom deferred benefits were applicable under section 78 of the DFRDB Act; and
 - (b) under subsection 78 (6) of that Act those benefits subsequently ceased to be applicable in respect of that person;the person is credited with an amount calculated in accordance with the formula:

$$(\text{Notional Amount} - \text{Amount paid}) + \text{Interest}$$

where:

Notional amount means the amount that would have been paid to or in respect of the member in accordance with clause 6 on his or her retirement from the Defence Force if he or she had not been a member referred to in subclause (2); and

Amount paid means the amount that was paid to or in relation to the member in accordance with clause 6 upon the member's retirement from the Defence Force; and

Interest means the interest which would have accrued under this Determination in respect of the amount (in this subclause called the 'additional credit') by which the notional amount exceeds the amount paid if:

- (a) the member had not retired from the Defence Force and had remained a member until the amount payable under this subclause is paid; and
- (b) interest had been credited under this Determination in respect of the additional credit.

- (3A) Where a member who has been credited with productivity benefit in accordance with subclause 8AA (2), not being a member to whom subclause (1) has applied, retires and becomes entitled to invalidity benefit under subsection 32 (2) of the DFRDB Act, the amount of productivity benefit credited to that member is, by force of this subclause, reduced by the amount by which the sum of:
 - (a) that invalidity benefit; and
 - (b) that productivity benefit;

exceeds the greater of:

- (c) an amount equal to the sum of:
 - (i) the member's refunded contributions; and
 - (ii) the member's lump sum payment; and
 - (iii) the member's notional productivity benefit; or
 - (d) an amount equal to the sum of:
 - (i) the member's refunded contributions; and
 - (ii) the member's additional productivity benefit; and
 - (iii) the member's notional productivity benefit.
- (4) Where a member who has been credited with productivity benefit in accordance with subclause 8AA (2), not being a member to whom subclause (1) has applied, dies before his or her retirement and a pension becomes payable under Part VI of the DFRDB Act in respect of the deceased member, the amount of productivity benefit credited to that person is, by force of this subclause, reduced by the amount by which that benefit exceeds the productivity benefit which would have accrued if the person had, at all relevant times, been a member to whom subclause 8AA(3) applied.
- (5) Where a member who has been credited with productivity benefit in accordance with subclause 8AA (2), not being a person to whom subclause (1) has applied, dies before his or her retirement and a lump sum becomes payable under subsection 48 (1) or 48A (1) of the DFRDB Act in respect of the deceased person, the amount of productivity benefit credited to that person is, by force of this clause, reduced by the amount by which the sum of:
- (a) that lump sum; and
 - (b) that productivity benefit;
- exceeds the greater of:
- (c) an amount equal to the sum of:
 - (i) the amount payable in respect of the deceased member under subsection 48 (1) or 48A (1) of the DFRDB Act; and
 - (ii) the deceased members notional productivity benefit; or
 - (d) an amount equal to the sum of:
 - (i) two thirds of the amount referred to in paragraph (a); and
 - (ii) the deceased member's additional productivity benefit; and
 - (iii) the deceased member's notional productivity benefit.

- (6) In this clause:

additional productivity benefit, in relation to a member or deceased member, means so much of the productivity benefit credited to the member under clause 8AA as exceeds the amount of productivity benefit which would have been credited to the member if clause 8A had continued to apply to the member after 30 June 1992 instead of clause 8AA;

lump sum payment in relation to a member, means the lump sum payment payable to the member under paragraph 32 (2) (b) of the DFRDB Act;

notional productivity benefit, in relation to a member or deceased member, means the amount of productivity benefit which would have been credited to the member if clause 8A had continued to apply to the member after 30 June 1992 instead of clause 8AA;

refunded contributions, in relation to a member, means the contributions refundable to the member under paragraph 32 (2) (a) of the DFRDB Act.

8B Amount payable

- (1) Where a productivity benefit becomes payable in respect of a person, the amount of that benefit is the sum of the amounts credited to that person under clauses 8, 8A and 8AA.
- (2) However, a benefit payable under clause 8AA is reduced by the surcharge deduction amount if no election has been made under section 124 of the DFRDB Act 1973.

8BA Credit of productivity benefit (being interest) in respect of certain persons who ceased to be members on 1 July 1992

- (1) This clause applies to a person who:
 - (a) was a member of the Emergency Forces or the Reserve Forces on 30 June 1992; and
 - (b) was a member within the meaning of this Determination on that date; and
 - (c) ceased to be a member referred to in paragraph (b) by reason only of the coming into force of the amendments made to the *Military Superannuation and Benefits Act 1991* by the *Superannuation Guarantee (Consequential Amendments) Act 1992*.
- (2) Despite a person to whom this clause applies having ceased to be a member for the reason given in paragraph (1) (c), this Determination applies to the person as if he or she continued to be a member until the person ceased or ceases to render the period of continuous full-time service which the person was rendering on 30 June 1992 with the exception that no productivity benefit is to be credited to the person under subclause 8AA (2), (3) or (4) in respect of any service rendered by the person after that date.

8C Interest payable where payment of benefit delayed

- (1) Where a productivity benefit is payable in respect of a person and the payment of the benefit is delayed, the amount of the benefit payable is increased by an amount of interest calculated, in relation to the amount of benefit accrued and in respect of the relevant period, at a rate per annum ascertained by expressing the factor specified in column 2 of the Schedule opposite to the reference to the last calendar year specified in column 1 of that Schedule as a percentage.

- (2) In subrule (1):

relevant period, in relation to a person, means the period beginning on the day immediately following the day on which the person (being a member) retired or died, as the case may be, and ending 14 days after the day on which the amount of the productivity benefit payable is determined.

9 Assignment of productivity benefit

A productivity benefit is not capable of being assigned or charged.

10 No set off or counter claim

Where a productivity benefit becomes payable in respect of a person the Commonwealth shall not be entitled to withhold that productivity benefit or any part thereof by way of set off or counter claim in right of the Commonwealth.

11 Reconsideration of decision of Commissioner

- (1) A person affected by a decision made by the Commissioner under subclause 6 (2A) may apply to the Commissioner for reconsideration of the decision.
- (2) An application may be in writing addressed to the Commissioner and setting out particulars of the decision that the person wishes to be reconsidered.
- (3) After taking into account, in relation to the decision, any matter that the Commissioner considers relevant, the Commissioner must, by instrument in writing setting out the reasons for doing so, affirm or vary the decision or set it aside and substitute another decision for it.
- (4) The Commissioner must make a copy of an instrument referred to in subclause (3) available to the applicant not later than 28 days after the making of the instrument.

12 Review of decisions of Commissioner

Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Commissioner under clause 11.

13 Delegation of function of Commissioner

The Commissioner may, by instrument signed by him or her, delegate the Commissioner's function under subclause 6 (2A) to an officer within the meaning of the Public Service Act 1922 who holds, or is for the time being performing the duties of, an office the classification of which is not lower than Executive Level 1.

14 Scheme value

For the definition of *scheme value* the scheme value in relation to a member spouse is determined as follows:

Step 1 Identify the methodology and factors set out in regulations made for section 90MT of the *Family Law Act 1975* that would be used to determine the family law value in relation to the member spouse in accordance with that section as if that section applied in relation to the member spouse.

Note The family law value is determined in accordance with the *Family Law (Superannuation) Regulations 2001* that are made for paragraph 90MT (2) (a) of the *Family Law Act 1975*. The process of determining the family law value may include reliance on methodology and factors approved by the Attorney-General under subsection 90MT (3) of that Act.

Step 2 Substitute the factors with factors nominated by an actuary for this clause.

Step 3 Use the methodology identified in step 1, and the factors substituted in step 2, to determine the scheme value in relation to the member spouse.

15 Reduction of productivity superannuation benefit

- (1) For subsection 52 (5) of the Defence Act, this clause applies to a productivity superannuation benefit in respect of the original interest if the benefit becomes payable at a time after the operative time.
- (2) The amount to which the productivity benefit payable to the member spouse after the operative time is to be reduced is to be worked out in accordance with the benefit reduction methodology developed and maintained by an actuary for this clause.

Schedule **Factors concerned in the calculation
of interest applicable in respect of
certain calendar years**

(clause 8A)

Column 1	Column 2
Calendar year	Factor
1989	0.1286
1990	0.1293
1991	0.1201
1992	0.0951
1993	0.0760
1994	0.0572
1995	0.0853
1996	0.0695
1997	0.0626
1998	0.0514
1999	0.0426
2000	0.0588
2001	0.0490
2002	0.0511
2003	0.0439
2004	0.0476
2005	0.0453
2006	0.0442
2007	0.0501

Table of Instruments**Notes to the *Defence Force (Superannuation) (Productivity Benefit) Determination*****Note 1**

The *Defence Force (Superannuation) (Productivity Benefit) Determination* (in force under subsection 52 (1) of the *Defence Act 1903*) as shown in this compilation is amended as indicated in the Tables below.

Under the *Legislative Instruments Act 2003*, which came into force on 1 January 2005, it is a requirement for all non-exempt legislative instruments to be registered on the Federal Register of Legislative Instruments.

Table of Instruments

Title	Date of notification in Gazette or FRLI registration	Date of commencement	Application, saving or transitional provisions
<i>Defence Force (Superannuation Interim Arrangement) Determination</i>	5 Sep 1988 (see Gazette 1988, No. S263)	1 Jan 1988	
<i>Defence Force (Superannuation Interim Arrangement) Determination (Amendment) (No. 1 of 1989)</i>	29 June 1989 (see Gazette 1989, No. S215)	1 Jan 1989	—
<i>Defence Force (Superannuation Interim Arrangement) Determination (Amendment) (No. 1 of 1990)</i>	9 Jan 1991 (see Gazette 1991, No. GN1)	1 Jan 1990	—
<i>Defence Force (Superannuation Interim Arrangement) Determination (Amendment) (No. 2 of 1990)</i>	17 Oct 1990 (see Gazette 1990, No. GN41)	1 July 1990	—
<i>Defence Force (Superannuation Interim Arrangement) Determination (Amendment) (No. 1 of 1991)</i>	17 Apr 1991 (see Gazette 1991, No. GN14)	1 Jan 1991	—
<i>Defence Force (Superannuation Interim Arrangement) Determination (Amendment) (No. 2 of 1991)</i>	16 Oct 1991 (see Gazette 1991, No. GN40)	1 Oct 1991	—
<i>Defence Force (Superannuation Interim Arrangement) Determination (Amendment) (No. 1 of 1991)</i>	5 Feb 1992 (see Gazette 1992, No. GN5)	1 Jan 1992	—
<i>Defence Force (Superannuation Interim Arrangement) Determination (Amendment) (No. 2 of 1991)</i>	29 Apr 1992 (see Gazette 1992, No. GN17)	1 Jul 1992	—
<i>Defence Force (Superannuation Interim Arrangement) Determination (Amendment) (No. 3 of 1992)</i>	21 July 1992 (see Gazette 1992, No. S203)	21 July 1992	—

Table of Instruments

Title	Date of notification in Gazette or FRLI registration	Date of commencement	Application, saving or transitional provisions
<i>Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 1993)</i>	10 Feb 1993 (see <i>Gazette</i> 1993, No. GN5)	Item 12: 1 Jan 1993 Remainder: 10 Feb 1993	—
<i>Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 1994)</i>	23 Feb 1994 (see <i>Gazette</i> 1994, No. GN7)	Item 5: 1 Jan 1994 Remainder: 23 Feb 1994	—
<i>Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 1995)</i>	5 Apr 1995 (see <i>Gazette</i> 1995, No. GN13)	Item 3: 1 Jan 1995 Remainder: 5 Apr 1995	—
<i>Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 2 of 1995)</i>	30 June 1995 (see <i>Gazette</i> 1995, No. S250)	Item 3 and subitem 4.4: 1 July 1992 Subitems 4.1–4.3: 1 July 1995	—
<i>Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 1996)</i>	21 Feb 1996 (see <i>Gazette</i> 1996, No. GN7)	Item 3: 1 Jan 1996 Remainder: 21 Feb 1996	—
<i>Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 1997)</i>	29 Jan 1997 (see <i>Gazette</i> 1997, No. GN4)	Item 3: 1 Jan 1997 Remainder: 29 Jan 1997	—
<i>Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 1998)</i>	21 Jan 1998 (see <i>Gazette</i> 1998, No. GN3)	Item 3: 1 Jan 1998 Remainder: 21 Jan 1998	—
<i>Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 2 of 1998)</i>	6 May 1998 (see <i>Gazette</i> 1998, No. GN18)	6 May 1998	—
<i>Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 3 of 1998)</i>	1 July 1998 (see <i>Gazette</i> 1998, No. GN26)	1 July 1998	Withdrawn
<i>Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 4 of 1998)</i>	19 Aug 1998 (see <i>Gazette</i> 1998, No. GN33)	1 July 1998	—
<i>Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 1999)</i>	27 Jan 1999 (see <i>Gazette</i> 1999, No. GN4)	Item 3: 1 Jan 1999 Remainder: 27 Jan 1999	—

Table of Instruments

Title	Date of notification in Gazette or FRLI registration	Date of commencement	Application, saving or transitional provisions
<i>Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 2000)</i>	26 Apr 2000 (see Gazette 2000, No. GN16)	Item 3: 1 Jan 2000 Remainder: 26 Apr 2000	—
<i>Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 2001)</i>	14 Mar 2001 (see Gazette 2001, No. GN10)	Item 3: 1 Jan 2001 Remainder: 14 Mar 2001	—
<i>Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 2002)</i>	13 Feb 2002 (see Gazette 2002, No. GN6)	Item 3: 1 Jan 2002 Remainder: 13 Feb 2002	—
<i>Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 2003)</i>	26 Mar 2003 (see Gazette 2003, No. GN12)	1 Jan 2003	—
<i>Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 2004)</i>	25 Feb 2004 (see Gazette 2004, No. GN8)	1 Jan 2004	—
<i>Defence Force (Superannuation) (Productivity Benefit) Amendment Determination 2004 (No. 2)</i>	20 May 2004 (see Gazette 2004, No. S166)	18 May 2004 (see c. 2)	—
<i>Defence Force (Superannuation) (Productivity Benefit) Determination No. 1 of 2005</i>	29 Apr 2005 (see F2005L00990)	1 Jan 2005	—
<i>Defence Force (Superannuation) (Productivity Benefit) Determination No. 1 of 2006</i>	8 May 2006 (see F2006L01285)	1 Jan 2006	—
<i>Defence Force (Superannuation) (Productivity Benefit) Determination (Amendment) (No. 1 of 2007)</i>	26 June 2007 (see F2007L01908)	1 Jan 2007	—

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Title	am. 1992 No. 3
C. 1	am. 1992 No. 3
C. 3	am. 1991 No. 2; 1992 No. 3; 1993 No. 1; 1994 No. 1; 1995 No. 2; 1998 No. 2; 2004 Nos. 1 and 2
C. 3A	ad. 1998 No. 2
C. 4	am. 1992 No. 3
C. 5	am. 1992 No. 3 rep. 1993 No. 1
C. 6	am. 1992 No. 3; 1993 No. 1; 1998 No. 4; 2004 No. 2
C. 7	am. 1992 No. 3
C. 8	am. 1989 No. 1; 1992 No. 3
C. 8A	ad. 1989 No. 1 am. 1992 Nos. 2 and 3; 1993 No. 1
C. 8AA	ad. 1993 No. 1 am. 1995 No. 2; 1998 No. 4
C. 8AB	ad. 1993 No. 1 am. 1994 No. 1
C. 8B	ad. 1989 No. 1 am. 1992 No. 3; 1993 No. 1; 1998 No. 2
C. 8BA	ad. 1993 No. 1
C. 8C	ad. 1992 No. 3 rs. 1993 No. 1
C. 9	am. 1992 No. 3
C. 10	ad. 1990 No. 2 am. 1992 No. 3
C. 11	ad. 1993 No. 1
C. 12	ad. 1993 No. 1
C. 13	ad. 1993 No. 1 am. 2003 No. 1
C. 14	ad. 2004 No. 2
C. 15	ad. 2004 No. 2
Schedule	
Schedule	ad. 1989 No. 1 am. 1990 No. 1; 1991 No. 1; 1992 No. 1; 1993 No. 1; 1994 No. 1; 1995 No. 1; 1996 No. 1; 1997 No. 1; 1998 No. 1; 1999 No. 1; 2000 No. 1; 2001 No. 1; 2002 No. 1; 2003 No. 1; 2004 No. 1; 2005 No. 1; 2006 No. 1; 2007 No. 1