

EXPLANATORY STATEMENT

**ISSUED BY THE AUTHORITY OF THE MINISTER FOR FINANCE AND
ADMINISTRATION**

SUPERANNUATION (PRODUCTIVITY BENEFIT) ACT 1988

DETERMINATION UNDER SECTION 4G

**SUPERANNUATION (PRODUCTIVITY BENEFIT) (PENALTY INTEREST)
AMENDMENT DETERMINATION 2007 (NO. 1)**

PENALTY INTEREST

The *Superannuation (Productivity Benefit) Act 1988* (the PB Act) provides the mechanism by which the Superannuation Guarantee (SG) minimum employer superannuation contribution is made for Australian Government employees and certain other persons (employees) who have no other employer-sponsored superannuation cover. Prior to 1 July 1992, the PB Act provided productivity superannuation to these employees.

The PB Act was amended by the *Superannuation (Consequential Amendments) Act 2005* to close the superannuation arrangements under that Act to new employees from 1 July 2006. However, the PB Act will continue to apply to employees covered by the Act as at 30 June 2006 until they no longer meet the qualifications for PB Act coverage (i.e. because they cease relevant employment or, if eligible, become members of an Australian Government superannuation scheme). The annual revision of instruments setting amounts payable by employers on behalf of employees will therefore need to continue until those employees no longer meet the qualifications for PB Act coverage.

Since 1 July 1990, the designated employers of employees covered by the PB Act arrangements have been required to pay periodic contributions in respect of those employees to a superannuation fund nominated or approved by the Minister for Finance and Administration. More recently, where the employee is eligible, employers have been able to pay contributions to another regulated superannuation fund as defined by the *Superannuation Industry (Supervision) Act 1993*. The contribution rates are set down in the PB Act or in instruments under the PB Act.

Employers are also required to pay to the same fund, on a once only basis, any entitlement accrued by the employee under the then *Superannuation Benefit (Interim Arrangement) Act 1988*, in respect of employment with that employer before 1 July 1990.

The employer of an employee who has joined a fund is required to pay penalty interest in respect of any period of delay between the date when an amount should have been paid into a fund and the date when it was paid. Such a payment takes into account the loss of interest since the contributions became payable on behalf of the employee and also penalises the employer for having failed to meet its obligations.

Section 4G of the PB Act provides that the interest fixed under it for the purposes of sections 4E, 4EA and 4F is calculated in a way determined by the Minister. These determinations are included in the *Superannuation (Productivity Benefit) (Penalty Interest) Determination 1995* (the Principal Determination).

Paragraph 4E(b) of the PB Act provides for interest to be paid on the amount accrued as a benefit under section 8A where the amount was not paid into a fund on the day on which the employee became a member of that fund. Interest is payable in respect of the period commencing on the day on which payment should have been made and ending on the day before payment was made.

Section 4EA of the PB Act provides for interest to be paid on the amount accrued as a benefit under section 8A where the amount was not paid on the day on which the employee became a member of the superannuation scheme established under the *Superannuation Act 1976* or the *Superannuation Act 1990*. Interest is payable in respect of the period commencing on the day on which payment should have been made and ending on the day before payment was made.

Paragraph 4F(1)(b) of the PB Act provides for interest to be paid on an instalment of contributions under the PB Act which was not paid into a fund on the day on which it was payable (either the employee's pay day or a day agreed between the employer and the fund trustees). Interest is payable in respect of the period commencing on the day on which payment should have been made and ending on the day before the payment was made.

This Determination, cited as the **Superannuation (Productivity Benefit) (Penalty Interest) Amendment Determination 2007 (No. 1)**, amends the Principal Determination to provide for interest to be calculated on all amounts which should have been paid on a given day but were not paid on that day in respect of the period of delay for the 2007-2008 financial year. The interest rate for the 2007-2008 financial year is 7.88 per cent per annum. This is 2 per cent per annum higher than the rate used to establish the first and second interest factors used for benefit calculation purposes under the PB Act. The formula to be used to calculate penalty interest to be applied for each day during the 2007-2008 financial year until the payment is made is specified in the Principal Determination.

The Determination also amends the Principal Determination to incorporate the penalty interest rate for the 2001-2002 financial year. This amendment is required to continue the effect of the *Superannuation (Productivity Benefit) (Penalty Interest) Amendment Determination 2001 (No.1)* which has lapsed in accordance with the deadline for the registration of instruments under the *Legislative Instruments Act 2003* (LI Act).

The Declaration is a legislative instrument for the purposes of the LI Act.

No consultation was undertaken in relation to this Declaration. In accordance with paragraph 18(2)(a) of the LI Act, consultation was considered to be unnecessary because the instrument is of a minor or machinery nature.

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