

EXPLANATORY STATEMENT

Safety, Rehabilitation and Compensation (Defence-related Claims) (Weekly Interest on the Lump Sum) Notice 2019 (Instrument 2019 No. M38)

EMPOWERING PROVISION

Subsection 21(5) of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA).

PURPOSE

The attached instrument (Instrument 2019 No M38) specifies the rate which is used for the purposes of the definition of “weekly interest on the lump sum” in the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA). The specified rate of interest is used to calculate the amount that is deemed to accrue on the (superannuation) lump sum of retired ADF members who are in receipt of compensation under the DRCA. The weekly incapacity payment to which the veteran is entitled is reduced by the deemed amount of interest.

Subsection 21(5) of the DRCA allows the Minister to specify the rate that applies for a period of 12 months commencing on 1 July in any year, for the purposes of the definition of “weekly interest on the lump sum” in subsection 21(3) and subsection 21A(3).

Section 21 of the DRCA applies when an injured Australian Defence Force (ADF) member has received a lump sum superannuation benefit as a result of retirement. Section 21A of the DRCA applies when the injured ADF member has received both a lump sum superannuation benefit and superannuation pension following retirement. In both cases, the weekly amount of the incapacity benefit to which the member is entitled is reduced by the weekly interest on the lump sum.

The weekly interest amount is calculated by multiplying the value of the lump sum benefit by the interest rate specified by the Minister, by this instrument, and dividing the result by 52.

This instrument specifies the rate of 2.52 per cent as the applicable interest rate for the period 1 July 2019 to 30 June 2020.

This rate has been derived by obtaining the daily 10 year Government Bond rates from the Reserve Bank of Australia, averaging them for the period 1 April 2018 to 31 March 2019 and rounding to two decimal places. Over this period, the average 10 year Government Bond rate has been calculated to be 2.52 per cent.

This instrument specifies the same interest rate as is specified under an equivalent instrument made for the same period under the *Safety, Rehabilitation and Compensation Act 1988* (SRCA). The SRCA establishes the Commonwealth workers’ compensation and rehabilitation scheme for employees of the Commonwealth, Commonwealth authorities and licensed corporations. Prior to 12 October 2017, employees who were members of the ADF were covered by the SRCA.

The instrument is taken to have commenced on 1 July 2019 and will be revoked on 1 July 2020.

CONSULTATION

Section 17 of the *Legislation Act 2003* requires the rule-maker to be satisfied that any consultation that is considered appropriate and reasonably practicable to undertake, has been undertaken.

Consultation was undertaken with the Safety Compensation and Institutions Branch, Workplace Relations Legal Division, |Attorney-General's Department to ensure a consistent rate to the rate specified in the instrument under equivalent provisions of the SRCA.

Routine specification of the interest rate to be applied on the (superannuation) lump sum has been determined in accordance with a well-established method, the Government Bond rates, for a number of years. This method of calculating the weekly interest rate has not changed and is well known.

Further consultation was not considered necessary as the proposal is minor in nature and does not have regulatory impacts on businesses, community organisations or individuals.

In these circumstances it is considered that the requirements of section 17 of the *Legislation Act 2003* have been met.

RETROSPECTIVITY

The instrument will be taken to have commenced on 1 July 2019 and will operate retrospectively from that date.

Any such retrospective commencement will not contravene subsection 12(2) of the *Legislation Act 2003* (a provision of a legislative instrument is of no effect if it takes effect before registration and disadvantages a person or imposes liabilities on a person other than the Commonwealth) because the changes implemented by the attached instrument are beneficial in nature; the changes do not disadvantage any person or impose a liability on a person other than the Commonwealth.

Under sections 21 and 21A of the DRCA, the weekly amount of the incapacity benefit is reduced by the weekly interest on the lump sum. The specified rate of interest of 2.52 per cent is lower than the specified rate of interest for the previous year which was 2.64 per cent. Consequently, the weekly interest on the lump sum will be lower and the weekly amount of the incapacity benefit payable to the veteran will be higher which is financially advantageous to them.

DOCUMENTS INCORPORATED BY REFERENCE

None.

REGULATORY IMPACT

None.

HUMAN RIGHTS STATEMENT

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 by the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Human rights implications

Article 9 of the *International Covenant on Economic, Social and Cultural Rights* provides for the right of every one to social security, including social insurance. General Comment 19 by the Committee on Economic, Social and Cultural Rights elaborates on Article 9, stating that the ‘States parties should ... ensure the protection of workers who are injured in the course of employment or other productive work’.¹ Workers’ compensation is analogous to social insurance in that it provides payment of wages and medical costs to employees for injuries occurring as a result of their employment.

Overview

The purpose of this legislative instrument is to specify the annual rate of weekly interest deemed to accrue on the (superannuation) lump sum of retired ADF members who are in receipt of compensation under the DRCA. Where a retired injured ADF member has received a lump sum benefit under a superannuation scheme, the weekly amount of the incapacity benefit payable under section 21 or 21A is reduced by the weekly interest on the lump sum.

The instrument specifies a rate of 2.52 per cent per annum for the period 1 July 2019 to 30 June 2020 as the interest on the lump sum. The calculation of the rate of the weekly interest on the lump sum has been determined in accordance with a well-established method, the Government Bond rates. This method has been used to determine the rate of the weekly interest on the lump sum for the purposes of the SRCA for the past ten years and is considered to conservatively reflect interest rates able to be earned on long term investments.

Conclusion

The attached instrument is compatible with human rights.

Minister for Veterans and Defence Personnel
Rule-Maker

FURTHER EXPLANATION OF PROVISIONS

See: Attachment A

¹ Committee on Economic, Social and Cultural Rights, *General Comment 19: The Right to Social Security (art. 9)*, U.N. Doc E/C.12/GC/19 (2008), [17].

FURTHER EXPLANATION OF PROVISIONS

Section 1

This section provides that the name of the instrument is the *Safety, Rehabilitation and Compensation (Defence-related Claims) (Weekly Interest on the Lump Sum) Notice 2019*.

Section 2

This section provides that the instrument is taken to have commenced on 1 July 2019.

Section 3

This section provides that the instrument is revoked on 30 June 2020.

Section 4

This section sets out the primary legislation that authorises the making of the instrument, namely, subsection 21(5) of the DRCA.

Section 5

This section specifies the rate of interest for the purposes of the definition of *weekly interest on the lump sum* in subsections 21(3) and 21A(3) of the DRCA. The specified rate is 2.52 per cent per annum.