

Superannuation (PSS) Maximum Benefits (2021-2022) Determination 2021 – Explanatory Statement

1 Name of Determination

This determination is the *Superannuation (PSS) Maximum Benefits (2021-2022) Determination 2021*.

2 Commencement

This determination commences on 1 July 2021.

3 Purpose

The purpose of the determination is to set new maximum benefits for the Public Sector Superannuation (PSS) scheme to apply for the financial year starting on 1 July 2021.

4 Background

Establishment of the PSS Scheme

The PSS scheme is established by the *Superannuation Act 1990*, a Trust Deed and Rules.

The PSS Rules were renumbered with effect from 1 July 1995, as a result of amendments made by the Ninth Amending Trust Deed.

The PSS Rules were amended by the Twenty-Eighth Amending Trust Deed executed in 2007 by the deletion of a “B” before each rule with effect from 29 June 2007.

Maximum Benefits

The PSS Rules contain specific rules specifying maximum benefits for scheme members and employees of the Australian Federal Police (AFP).

The lump sum and pension maximum benefits for AFP employees who are PSS members are designed to take into account a special superannuation entitlement paid by the AFP. The maximum benefits for these members place a limit on the combined AFP special benefit and the PSS benefit.

The maximum benefits also place a cap on the employer cost of the PSS.

Relevant Rules

Under the renumbered PSS Rules that came into effect on 1 July 1995, rules 5.6.1, 5.7.1 and 5.7.2 set out the *Table of Maximum Benefits Rates*.

In particular, the rules dealt with the following:

- rule 5.6.1 – maximum lump sum benefits for members;
- rule 5.7.1 – maximum lump sum benefits for AFP employees; and
- rule 5.7.2 – maximum pension benefits for AFP employees.

The amounts in the tables in rules 5.6.1 and 5.7.1 are the same.

Each rule sets out a table containing the maximum benefits to apply from 1 July 1995 until amended.

Power to Amend Maximum Benefits

Pursuant to rules 5.6.5 and 5.7.7 the Commonwealth Superannuation Corporation (CSC) is empowered to determine maximum benefits for the purposes of the PSS scheme, with effect from 1 July 1995 each year:

- under rule 5.6.5 CSC has the power to determine the amounts to be substituted into the *Table - Maximum Benefits* in rule 5.6.1.
- under rule 5.7.7 CSC has the power to determine the amounts to be substituted into the *Table - AFP Preliminary Maximum Benefits - Lump Sums* in rule 5.7.1 and the *Table - AFP Preliminary Maximum Benefits - Pensions* in rule 5.7.2.

Delegation

CSC has delegated its power under rules 5.6.5 and 5.7.7 to relevant officers of the organisation.

Maximum Benefits in the Period 1 July 1996 – 30 June 2005

In the period from 1 July 1996 to 30 July 2005, the amounts set out in the tables in rules 5.6.1, 5.7.1 and 5.7.2 were replaced on 1 July each year, pursuant to the *PSS (Maximum Benefits) Determination No. 1*, which was amended each year. That Determination was revoked on 1 July 2005 by the *Superannuation (PSS) Maximum Benefits (2005-2006) Determination 2005* which set out the maximum benefits for the financial year commencing on 1 July 2005.

Maximum Benefits in the Period from 1 July 2005 – 31 December 2007

Maximum benefits in the period from 1 July 2005 to 31 December 2007 are set out in annual determinations that apply for the financial year commencing on 1 July each year.

Maximum Benefits in the Period from 1 January 2008 – 30 June 2008

The Twenty-Ninth Amending Trust Deed inserts new maximum benefit tables into rules 5.6.1, 5.7.1 and 5.7.2 of the PSS Rules, to apply with effect from 1 January 2008 until 30 June 2008.

The Twenty-Ninth Amending Trust Deed also amends rules 5.6.5 and 5.7.7 of the PSS Rules.

Maximum Benefits in the Period from 1 July 2008 – 30 June 2014

Under new rules 5.6.5 and 5.7.7, the maximum benefits set out in rules 5.6.1, 5.7.1 and 5.7.2 are amended by an annual determination that applies for the financial year commencing on 1 July each year.

Maximum Benefits in the Period from 1 July 2014

The Thirty-Eighth Amending Trust Deed amended the PSS Rules to update the method of indexing increases to the maximum benefits tables in response to the change in frequency of the Average Weekly Earnings survey by the Australian Bureau of Statistics, from a quarterly survey to a biannual survey.

The Thirty-Eighth Amending Trust Deed inserted a new paragraph (a) into rules 5.6.5 and 5.7.7, with each rule now referring to an indexation factor calculated under new rule 5.6.5A or 5.6.5B, whichever is applicable:

- rule 5.6.5A sets out the manner in which the maximum benefits indexation factor is to be calculated in the period from 1 July 2008 to 30 June 2014.
- rule 5.6.5B sets out the manner in which the maximum benefits indexation factor is to be calculated with effect from 1 July 2014 and each later financial year.

Under new rule 5.6.5B, the indexation factor is the greater of 1, or the number calculated by “New AWOTE” divided by “Old AWOTE”, where “AWOTE” is the index number of the full-time adult average weekly ordinary time earnings last published by the Australian Statistician. This ensures that the maximum benefits amounts are not reduced if AWOTE was to decrease over a relevant period.

New AWOTE is the last AWOTE figure published by the ABS before 1 May of the financial year immediately preceding the financial year that the determination applies to. For example, for the determination made to apply for the 2017-18 financial year, the figure last published before 1 May 2017 has been used.

Old AWOTE is the corresponding AWOTE figure published one year prior to New AWOTE.

For the purposes of this determination, the AWOTE that has been used is the AWOTE – Original published by the Australian Statistician.

The arrangements whereby under rules 5.6.5 and 5.7.7 the maximum benefits set out in rules 5.6.1, 5.7.1 and 5.7.2 are amended by an annual determination that applies for the financial year commencing on 1 July each year continue to apply.

5 New Maximum Benefits

The new maximum benefits that apply with effect from 1 July 2021 are set out in the determination.

6 References to CSC

Section 5 of the *Governance of Australian Government Superannuation Schemes Act 2011* provides that “the board established by section 20 of the *Superannuation Act 1990* as the Australian Reward Investment Alliance continues in existence by force of that section as a body corporate, under and subject to the provisions of this Act, under the name Commonwealth Superannuation Corporation (CSC)”.

In accordance with section 25B of the *Acts Interpretation Act 1901*, any reference to Australian Reward Investment Alliance (ARIA) in an instrument made prior to 1 July 2011 shall be construed as a reference to the CSC.

7 Consultation

As the instrument is for internal machinery of Government purposes only, no consultation was considered necessary with other persons (see sections 15J(2) and 17 of the *Legislation Act 2003*).

Statement of Compatibility with Human Rights

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

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.