EXPLANATORY STATEMENT
INSTRUMENT NO 1 OF 1992

ISSUED BY THE AUTHORITY OF THE MINISTER FOR DEFENCE

MILITARY SUPERANNUATION AND BENEFITS TRUST DEED (AMENDMENT)

The Schedule to the Trust Deed made by the Minister for Defence under section 5 of the Military Superannuation and Benefits Act 1991 ("the MSB Act") contains Rules ("the MSB Rules") which deal with:

a. the contributions to be made by members of the Defence Force who are members of the Military Superannuation and Benefits Scheme ("the MSB scheme") established by the Trust Deed in accordance with section 4 of the MSB Act; and

b. the benefits to be provided to members of the MSB scheme upon retirement or to dependants of deceased members of the scheme.

The Minister is empowered, by subsection 5(1) of the MSB Act, to amend the Trust Deed (including the MSB Rules), by an instrument which, by subsection 49(1) of the MSB Act, is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

1. Interpretation

This clause defines expressions used in the Instrument.

2. Amendment

This clause is formal.

3. Rule 2(Definitions and interpretation)

Rule 2 of the MSB Rules lists the expressions defined or interpreted in the Glossary in Schedule 1 to the Rules. This clause adds to the list a reference to the expression interpreted by Part 3A inserted in Schedule 1 by clause 6.

4. Rule 13(Benefits on retirement for redundancy or retrenchment etc. or on attaining retiring age of less than 55 years)

Rule 13 of the MSB Rules specifies the benefits applicable to members of the scheme retired on the ground of retrenchment or redundancy or on attaining a statutory retiring age of less than 55 years. Briefly, the benefits applicable are immediate payment of the person's member benefit (ie the person's contributions plus interest) as a lump sum, and preservation of the person's employer benefit (ie the employer's contributions plus interest) until the person reaches the age of 55, when it becomes payable as a lump sum or as a pension or part lump sum and part pension. Either benefit may also be preserved up to age 65. A special
option at time of retirement is the conversion of the whole of the employer benefit to a non-commutable pension.

The Chief and Vice Chief of the Defence Force and the Service Chiefs of Staff hold appointments under section 9 or 9AA of the Defence Act 1903. Where, on completion of the period of the appointment, no further appointment commensurate with the officer’s rank is available, the officer may need to be "compulsorily retired" before reaching retiring age. This clause amends rule 13 to apply it to such an officer if the officer was notified by the Minister before the officer’s appointment that the officer would be expected to resign on completion of the appointment, and the officer resigns accordingly.

The amendment provides the officer with the same kind of benefits as an officer who retires on reaching a retiring age of less than 55 years: in particular, that he or she may elect to receive a non-commutable pension on retirement and, if his or her service terminates before 2 years have elapsed since he or she transferred from the Defence Force Retirement and Death Benefits Scheme, he or she is not subject to the "phasing-in" requirements which would normally operate to reduce the officer's retirement benefits.

Corresponding provisions exist under the Commonwealth Superannuation Scheme and the Public Sector Superannuation Scheme for Secretaries of Departments and Statutory Office holders who are involuntarily retired or not re-appointed.


Where a member of the DFRDB scheme transfers to the MSB scheme, the member is credited on transfer with his or her contributions to the DFRDB scheme and notional interest on those contributions. Access to the lump sum which these amounts represent could be an incentive to resign at an early age after transfer, with a sudden and unpredictable increase in wastage rates from the Defence Force.

Rule 16 operates as a restraining mechanism on resignations during the first 2 years of the new scheme by providing that a transferee who retires during the 2-year period (otherwise than on reaching retiring age or on the ground of invalidity, retrenchment or redundancy) will incur a proportionate reduction in the notional interest element of his or her lump sum.

This clause inserts a reference to a person retiring from a limited tenure appointment consequent on the amendment made to rule 13.

6. Schedule 1(Glossary)

Schedule 1 to the Rules defines expressions used in the Rules.

Subclause 4.1 inserts a new Part 3A which is related to the amendment to rule 13 in that it defines the meaning of "retire on completion of limited tenure appointment". Paragraph 4A describes what is meant by a reference to a member who retired on completion of a limited tenure appointment, and paragraph 4B excludes an officer who holds such an appointment and is offered a further such appointment which he or she declines. Paragraph 4C expands the meaning of resigning an office.