EXPLANATORY STATEMENT

INSTRUMENT NO 3 OF 1992

ISSUED BY THE AUTHORITY OF THE MINISTER FOR DEFENCE SCIENCE
AND PERSONNEL

MILITARY SUPERANNUATION AND BENEFITS TRUST DEED
(AMENDMENT)

The Schedule to the Trust Deed made by the Minister for Defence Science and
Personnel 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.

The MSB Rules make provision (in Schedule 6) for members of the Defence Force
Retirement and Death Benefits Scheme ("the DFRDB scheme") who transferred to the
MSB scheme to be given a credit (in the form of eligible service for the member's
employer benefit) in respect of certain service rendered while a member of the DFRDB
scheme. The Rules also make provision (in Schedule 10) for members of the DFRDB
scheme who transferred to MSBS to be given a credit (in the form of a transfer value)
towards the member's member benefit, in respect of certain contributions paid while a
member of the DFRDB scheme.

The member benefit consists of several elements including, in the case of a transferred
member, the person's transfer value and notional interest thereon. The elements
constituting transfer value are listed in Schedule 10, and include previous contributions
made by the person when a member of the DFRDB scheme. The expression "previous
contributions" is defined in Schedule 1 to the MSB Rules to exclude any contributions
refunded to the member under the Defence Force Retirement and Death Benefits Act
1973 ("the DFRDB Act").

Under the DFRDB scheme, provision exists for members to "purchase" prior service
and this can be done by lump sum payment or fortnightly instalments. The Defence
Force Retirement and Death Benefits Scheme Review Committee recommended that
such ongoing repayments should not be brought into the MSB scheme. The
Committee recognised that an immediate pay out of the amount due, as a condition of
transfer to the MSB scheme, was likely to be too onerous for most members with
outstanding repayments and likely to deter them from transferring to the MSB scheme.
The Committee accordingly recommended that a procedure be provided under which a
member with outstanding repayments who elected to transfer would have the debt extinguished on entry by offset against the value of the credit given on entry for the member's previous contributions. Schedule 10 provides accordingly.

A member's transfer value is ascertained under Schedule 10 by adding together the member's unrefunded contributions under the DFRDB scheme and notional interest thereon and subtracting any unpaid amount in respect of previous service which the member was repurchasing and any amount which the member was required to repay under the DFRDB Act in respect of gratuities etc which remained unpaid.

Some members in this situation repaid their outstanding debts before transferring to the MSB scheme. The manner in which Schedule 10 operated with regard to the transfer value of such a member resulted in Schedule 10 being perceived as creating an anomaly in that it resulted in the double-counting of certain previous contributions.

Instrument No 2 of 1992 made by the Minister under subsection 5(1) of the MSB Act amended the MSB Rules to remove the perceived anomaly in the operation of Schedule 10 but this amendment was disallowed by the Senate on 9 September 1992 on the ground that members who repaid their outstanding debts before transfer to the MSB scheme were deprived by the amendment of the proper value of their contributions under the DFRDB Act. In the debate on the disallowance motion, the Minister for Defence announced that, if the Instrument were disallowed (thus removing the reduction in the amount of transfer value for members who transferred on or after 9 September 1992 and who repaid their outstanding debts before transfer), he would amend the Military Superannuation and Benefits Rules to provide members, who had transferred before 9 September 1992, with an equal opportunity to pay to the Commonwealth the amount that could have been paid to repurchase prior service etc (in place of the offset procedure which had applied to them) if they wish to do so. Instrument No 3 makes the necessary amendments.

Since contributions made under the DFRDB Act are paid into consolidated revenue and do not accrue interest, it is to the financial advantage of a re-entered member of the DFRDB scheme who elects to purchase prior service to defer repayment of contributions for as long as possible. Consequently, it is the invariable practice for re-entered members to elect repayment by instalments instead of by lump sum and to repay the outstanding balance as a lump sum immediately before retirement. It was assumed that members with outstanding repayments would not repay before transfer to the MSB scheme and would therefore be subject to the offset procedure.

The information kits and other information provided to each member to enable him or her to make an informed judgement on whether to transfer to the MSB scheme, did not inform members with outstanding repayments of the fact that repayment before transfer was an option to the offset procedure, nor did it provide any information about the financial effect of repaying debts before transfer. On grounds of equity, these members should also be given an opportunity to pay to the Commonwealth an amount which could have been used to repurchase prior service instead of the member being subject to the offset procedure. The amendments made by Instrument No 3 are accordingly extended to all members who transferred since the beginning of the MSB scheme on 1 October 1991 and to whom the offset procedure applied.

In the case of serving members, the amendments provide for an adjustment to be made to the person's transfer value. Members who have retired, or who will have retired
before having an opportunity to take advantage of the amendments made by Instrument No 3 relating to the transfer value, will have already been paid the member benefit (of which the transfer value is a component) or will have preserved the member benefit in the Fund, and in these cases it is appropriate to provide for additional member benefit instead of adjusting the transfer value.

1. Interpretation

This clause defines expressions used in the Instrument.

2. Amendment

This clause is formal.

3. Schedule 9 (CALCULATION OF MEMBER BENEFIT)

Schedule 9 to the MSB Rules describes what a member benefit comprises, namely, contributions and interest and, in the case of transferees from the DFRDB scheme, the person’s transfer value plus notional interest on the transfer value.

Subclause 3.1 clarifies the reference in subparagraph 1(e) to a person who has retired.

Subclause 3.3. In calculating the additional member benefit for a person who pays an amount to the Commonwealth under new paragraph 3 of Schedule 9 or new paragraph 3 of Schedule 10 (inserted by subclauses 3.4 and 4.1, respectively, of Instrument No 3), the existing subparagraph 1(e) would have the effect of crediting the person with notional interest on the amount paid with effect from the person’s date of transfer to the MSB scheme. However, the Commonwealth should not be liable to pay interest in respect of a period before it is paid the amount in question, and subclause 3.3 amends subparagraph 1(e) of Schedule 9 to exclude interest in respect of this period from the additional member benefit which becomes payable as a result of any payment made by a person under the amended provisions.

Subclause 3.4 inserts new paragraphs 2 and 3.

New paragraph 2 deals with a transferred person (who has retired) who was affected by the disallowed instrument on retirement. It deals with a member who repaid all of the outstanding repayments before transfer to the MSB scheme and a member who repaid part of the outstanding repayments. It provides, by way of additional member benefit, for payment to the person of the additional amount to which the person would have been entitled if the disallowed amendments had not been made. In the case of members who repaid part of the outstanding repayments before transfer and to whom the offset procedure applied in respect of the unpaid amount, the question of the unpaid amount is dealt with in new paragraph 3.

New paragraph 3 deals with a transferred person (who has retired) to whom the offset procedure applied and provides him or her with an opportunity to pay to the Commonwealth, within 90 days after the commencement of Instrument No 3, an amount equal to all or part of the amount which was offset on transfer. If the person makes such a payment, the person receives an addition to the member benefit.
4. Schedule 10 (TRANSFER VALUE)

Schedule 10 to the MSB Rules provides for a transfer value in respect of members who transferred to the MSB scheme from the DFRDB scheme, the transfer value being a notional amount which was credited to a transferee, on transfer, in respect of his or her contributions under the DFRDB scheme and notional interest on that amount up to the date of transfer. Provision is made for the amount so calculated to be reduced by any amounts unpaid by the member in respect of service that was being repurchased immediately before transfer.

Subclause 4.1 amends Schedule 10 by adding new paragraph 3 which allows persons who transferred to MSBS to whom the offset procedure applied (other than members who have since retired, for whom provision is made by the amendments made to Schedule 9) to pay to the Commonwealth, within 90 days after the commencement of Instrument No 3, all or part of the amount which was offset on transfer. If a member makes such a payment, the transfer value applicable is increased accordingly.