EXPLANATORY STATEMENT

INSTRUMENT NO 3 OF 1993

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 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.

Operation of the MSB scheme revealed unintended effects of the MSB Rules with regard to the counting of contributions under previous Defence Force retirement benefits schemes towards a person's member benefit under the MSB scheme. Instrument No 2 of 1992 made by the Minister under subsection 5(1) amended the MSB Rules to remove these unintended effects.

As explained below, contributions which are not to count are excluded by the operation of the definition of "previous contributions" in Schedule 1 to the MSB Rules. The amendments made by Instrument No 2 of 1992 added three classes of contributions to be excluded, ie:


b. Contributions made towards a pension under the 1973 Act by a retirement pensioner under that Act.

c. Contributions relevant to a transfer value of a person who was a contributor to either of the previous Defence Force retirement benefits schemes and elected to have a transfer value paid to a public service superannuation scheme.
Objection was raised in the Senate to excluding the contributions referred to in paragraph a., and Instrument No 2 was disallowed on that account on 9 September 1992. No objection was raised to excluding the contributions referred to in paragraphs b and c except for the fact that the MSBS Board of Trustees had not been consulted on these amendments. The Board subsequently agreed that these amendments are necessary and the purpose of the new Instrument is to remake these amendments.

1. Interpretation

This clause defines expressions used in the Instrument.

2. Amendment

This clause is formal.

3. Schedule 1 (GLOSSARY)

Schedule 9 to the MSB Rules describes how a person's member benefit is calculated.

The member benefit consists of several elements including, in the case of a transferred member, the person’s transfer value and notional interest thereon or, in the case of a 1973 scheme (deferred benefit) re-entrant, the person’s carry over value and notional interest thereon. The elements constituting transfer value and carry over value are listed in Schedules 10 and 10A, respectively, to the MSB Rules, and include in each case 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 either of the previous Defence Force retirement benefits schemes.

Two other cases have been identified in which the counting towards transfer value or carry over value of contributions made during particular service provides a member with benefits in excess of those intended to apply.

This clause amends the definition to exclude the contributions in question. The two cases are:

* Para (b). Contributions made towards a pension under the 1973 Act by a retirement pensioner under that Act.

* Para (c). Contributions relevant to a transfer value of a person who was a contributor to either of the previous Defence Force retirement benefits schemes and
I elected to have a transfer value paid to a public service superannuation scheme.