Commonwealth of Australia

Military Superannuation and Benefits Act 1991

Military Superannuation and Benefits Trust Deed (Amendment) (No. 2 of 1994)¹

I, GARY FRANCIS PUNCH, Minister for Defence Science and Personnel, under subsection 5 (1) of the Military Superannuation and Benefits Act 1991, make the following amendments of the Military Superannuation and Benefits Trust Deed.


[Signature]

Minister for Defence Science and Personnel

1. Commencement
1.1 These Rules commence on 8 November 1994.

2. Amendment
2.1 The Military Superannuation and Benefits Trust Deed² is amended as set out in this instrument.

3. Rule 51 (Payment of employer benefit etc., included in preserved benefit to person of less than 55 years of age)
3.1 After subrule 51 (1), insert:

"(1A) If, in relation to a person:
(a) to whom a preserved benefit applies; and
(b) who is less than 55 years of age; and
(c) to whom paragraph (1) (c), (d) or (e) does not apply:

Federal Register of Legislative Instruments F2005B00751
the Insurance and Superannuation Commissioner approves, because of particular circumstances, the payment of part of the employer benefit included in the preserved benefit, that part of the employer benefit becomes payable to the person as a lump sum on the date which is the later of:

(d) the date of the approval; or

(e) the date on which the circumstances occur;

except as provided in subrule (1B).

"(1B) A payment of the kind described in subrule (1A) approved by the Insurance and Superannuation Commissioner on or after 9 May 1994 and before 8 November 1994 becomes payable to the person as a lump sum immediately after 8 November 1994.".

4. Rule 52 (Payment of employer benefit included in preserved benefit to person of 55 years of age or more)

4.1 Subrule 52 (1):
Omit all the words before "he or she may,", substitute:

"Subject to subrules (2) and (3), if employer benefit is included in a preserved benefit that applies to a person aged 55 years or more,".

4.2 Paragraph 52 (1) (c):
Omit "instead", substitute "in the case of a person to whom subrule 51 (1A) does not apply—instead".

4.3 Subrule 52 (1):
Add at the end:

"; or (d) in the case of a person to whom subrule 51 (1A) applies—instead of the residual employer benefit being paid in full to him or her, elect that a specified part of the residual employer benefit, being:

(i) if the residual employer benefit does not exceed the notional employer benefit—not less than one-half of the notional employer benefit; or

(ii) if the residual employer benefit exceeds the notional employer benefit—not less than one-half of an amount calculated to be the sum of the amount of the residual employer benefit and the"
amount of benefit that was paid to the person under subrule 51 (1A); be converted into a pension payable to him or her, and if he or she so elects: (iii) that part of the residual employer benefit is so converted; and (iv) the balance of the residual employer benefit is payable to him or her as a lump sum.

4.4 Add at the end:

“(3) Paragraphs (1) (b) and (d) do not apply to a person:
(a) whose residual employer benefit is less than one-half of his or her notional employer benefit; or
(b) whose notional employer benefit is less than the amount prescribed in rule 65B.

“(4) In this rule:

‘employer benefit’, in the case of a person to whom subrule 51 (1A) applies, means the residual employer benefit applicable to the person;

‘notional employer benefit’ means the benefit applicable to a person calculated, in accordance with Schedule 4A, at the date of the person’s election to convert his or her residual employer benefit into a pension under paragraph (1) (b) or (d);

‘residual employer benefit’ means the part of the employer benefit included in a preserved benefit applicable to a person that, at the date of the person’s election under paragraph (1) (a), (b) or (d), has not been paid as a lump sum under subrule 51 (1A).”.

5. Rule 65B (Prescribed minimum amount for conversion of lump sum to pension)
5.1 Omit “51 (2) and 52 (2),”., substitute “51 (2), 52 (2) and 52 (3),”.
6. New Schedule 4A
6.1 After Schedule 4, insert:

"SCHEDULE 4A

CALCULATION OF NOTIONAL EMPLOYER BENEFIT

Interpretation

1. In this Schedule:

'notional employer benefit' means the sum of:

(a) the amount of the employer benefit included in a preserved benefit that applied to a person at the date of the person's retirement; and

(b) the amount by which the amount referred to in paragraph (a) is calculated to have increased, under clauses 2 and 3, in the period that begins on the date of the person's retirement and ends on the date of the person's election to convert the benefit to a pension.

Calculating increase in the notional employer benefit in any year

2. (1) A person's notional employer benefit is taken to have increased in a financial year (in this clause called the 'relevant year'):

(a) if the all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the March quarter of the year immediately preceding the relevant year exceeds the highest all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the March quarter of any earlier year (except a year earlier than the year that commenced on 1 July 1989); and

(b) in the circumstances described in paragraph (a)—by an amount equal to the prescribed percentage of the person's notional employer benefit as at the end of the previous financial year.
“(2) The 'prescribed percentage' is A - B, expressed as a percentage of B, where:

'A' is the all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the March quarter of the year immediately preceding the relevant year; and

'B' is the highest all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the March quarter of any year earlier than the year immediately preceding the relevant year (except a year earlier than the year that commenced on 1 July 1989).

“(3) If the percentage calculated is or includes a fraction of one-tenth of 1%:

(a) that is less than one-half of one-tenth—the fraction is to be disregarded; and

(b) that is not less than one-half of one-tenth—the fraction is taken to be one-tenth.

Calculating increase in notional employer benefit in an incomplete year

“3. (1) If, in a financial year:

(a) a person retires on a day other than 1 July; or

(b) a person elects to convert his or her residual employer benefit to a pension on a day other than 30 June;

the amount by which the notional employer benefit increases in that year is calculated in accordance with the formula:

\[
\text{Full increase} \times \frac{\text{Number of months}}{12}
\]

where:

'full increase' means:

(a) if the date of retirement and the date of election do not occur in the same financial year—the amount, calculated in accordance with clause 2, by which the person's notional employer benefit would have increased in the relevant financial year if the person had:
Military Superannuation and Benefits Trust Deed
(Amendment) No. 2 of 1994

(i) retired on 1 July; or
(ii) elected to convert his or her residual employer benefit to a pension on 30 June;
as the case may be; or

(b) if the date of retirement and the date of election occur in the same financial year—the amount, calculated in accordance with clause 2, by which the person’s notional employer benefit would have increased in that year if the person had retired on 1 July and had elected to convert his or her residual employer benefit to a pension on 30 June;

‘number of months’ means:

(a) if the date of retirement and the date of election do not occur in the same financial year—the number of months in the period that begins:
   (i) on the date of retirement and ends on 30 June in that financial year; or
   (ii) on 1 July in the financial year in which the election occurs and ends on the date of election;
as the case may be; or

(b) if the date of retirement and the date of election occur in the same financial year—the number of months in the period that begins on the date of retirement and ends on the date of election.

“(2) If the period referred to in subclause (1) is less than one month, that period is taken to be one month.

“(3) If the period referred to in subclause (1) consists of at least one whole month and a part of a month:
(a) if the number of days in that part is less than one-half of the number of days in that month—that part is disregarded; and
(b) if the number of days in that part is more than one-half of the number of days in that month—that part is taken to be a whole month.
Military Superannuation and Benefits Trust Deed
(Amendment) No. 2 of 1994

Interpretation

"4. (1) Subject to subclause (2), if at any time, whether before or after the commencement of these Rules, the Statistician has published or publishes in respect of a particular March quarter an all groups consumer price index number for the weighted average of the 8 capital cities in substitution for an index number published by him or her in respect of that quarter, the publication of the later index number is disregarded for the purposes of this Schedule.

"(2) If, at any time, whether before or after the commencement of these Rules, the Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of the application of this Schedule after the change took place or takes place, regard is to be had only to index numbers published in terms of the new reference base."

NOTES
