EXPLANATORY STATEMENT

MILITARY SUPERANNUATION AND BENEFITS TRUST DEED
(AMENDMENT)(NO.2 OF 1994)

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

The Schedule of 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.

Rules 12 and 13 of the MSB Rules provide for the employer benefit of a member who separates from the Defence Force before reaching retiring age to be preserved. Rule 14 provides for benefits on or after attaining age 55 years.

Subrule 51(1) provides for the release of the preserved employer benefit before age 55 where:

a. the person is unable to work again due to physical or mental incapacity;

b. the person intends to leave Australia permanently: or

c. the Insurance and Superannuation Commissioner (ISC) approves early release of the entire preserved benefit in other circumstances (which in practice has been confined to where a person is experiencing financial hardship).

Paragraph 51(1)(e) is the provision which provides for partial release of the employer benefit where approval has been granted by the ISC. In many cases, applicants have been advised that the ISC considers that circumstances warrant release of part of the employer benefit only, which is not permitted in the existing Rules. This instrument makes amendments to the rules to allow partial release of a preserved employer benefit, when the ISC approves.
Rule 52 provides for the release of the preserved employer benefit when a member reaches 55 years of age. Subrule 52(1)(c) allows a member to convert at least 50% of the preserved employer benefit to a pension. This instrument makes consequential amendments to the rules to allow the conversion of at least 50% of the preserved employer benefit to pension, taking into account any partial release of the preserved employer benefit which was approved by the ISC.

1. Commencement

This clause sets the date on which the instrument becomes operative.

2. Amendment

This clause is formal.

3. Rule 51 (Payment of employer benefit etc. included in preserved benefit to person of less than 55 years of age)

Subclause 3.1 inserts a new subrule 51(1A) which provides for a person who has a preserved employer benefit, and is under the age of 55 years, to receive partial release of that preserved employer benefit. The ISC must approve this partial release of the preserved employer benefit and will specify the amount to be paid. The benefit must be paid in the form of a lump sum.

Subrule 51(1B) provides for the immediate payment of a partial release where persons have a current approval from the ISC. An approval is applicable from the date the ISC signs the request for partial release and is current for six calendar months after the date of approval.

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

Clause 4 amends rule 52 to accommodate the consequential effects on pension conversion where a member who has received a partial release of a preserved employer benefit under the new subrule 51(1A) elects to receive his or her remaining employer benefit on or after reaching age 55.

Subclauses 4.1 and 4.2 make consequential amendments to subrule 52(1) and paragraph 52(1)(c).

Subclause 4.3 inserts a new paragraph 52(1)(d) which sets out the conditions under which a person who has received a partial release of his or her preserved employer benefit (under subrule 51(1A)) may, after reaching the age of 55, elect to convert part of the remaining employer benefit to pension instead of taking it all as a lump sum or converting it all into a pension. The existing rules on pension conversion require that at least 50% of a person's preserved employer benefit is converted to pension. The new subrule introduces the concepts of Notional Employer Benefit and Residual Employer Benefit, which ensure that the conversion to pension option remains...
consistent with the current rules. Once the amount to be converted to pension has been determined, any remaining employer benefit is paid as a lump sum.

Subclause 4.4 inserts new sub-rules 52(3) and 52(4). Subrule 52(3) has been inserted to set out the circumstances where a person who has received a partial release of the preserved employer benefit under the new subrule 51(1A) is excluded from being able to convert any part of the remaining employer benefit to pension on or after reaching age 55. The exclusions are where the residual employer benefit is less than half the notional employer benefit or where the notional employer benefit is less than the amount determined under Rule 65B.

The new subrule 52(4) sets out the definitions for use in the revised rule 52.

"Employer benefit" means the residual employer benefit in the case of a person who has received a partial release of the employer benefit under subrule 51(1A).

"Notional employer benefit" means the employer benefit calculated in accordance with Schedule 4A at the date of a person's election to convert their residual employer benefit into a pension. The notional employer benefit represents the amount that a person's initial preserved employer benefit would have grown to (in line with the Consumer Price Index (CPI)) had not that person received a partial release of that preserved employer benefit under subrule 51(1A).

"Residual employer benefit" means the remainder of the preserved benefit applicable to a person to whom rule 51(1A) applies at the date of the person's election under rule 52.

5. Rule 65B (Prescribed minimum amount of conversion of lump sum to pension)

Clause 5.1 provides for the recognition of subrule 52(3) as an affected provision with respect to the operation of rule 65B. Rule 65B sets the minimum amount of the employer benefit which can be converted to pension. This amount is equal to 10 times the minimum amount which must be preserved in accordance with the preservation standards of the Occupational Superannuation Standard Regulations.

6. New Schedule 4a

Calculation of Notional Employer Benefit

Interpretation

This is a new schedule to the MSB Rules for the purpose of calculating the notional employer benefit for members who have taken a partial release of their employer benefit prior to attaining age 55. The new schedule describes how a person's notional employer benefit is calculated.

The "notional employer benefit" in this schedule is the sum of the employer benefit applicable to a person on the date of retirement from the Defence Force (the preserved employer benefit) and the amount by which that preserved employer benefit would
have increased in line with the CPI over the period extending from the date of retirement until the date the person elects to convert the residual employer benefit to a pension.

Calculating increase in the notional employer benefit in any year.

Subclause 2(1) explains the method for calculating the amount by which the notional employer benefit has increased in line with the CPI in a particular financial year.

Subclause 2(2) provides the formula for calculating the CPI percentage increase to be applied in subclause 2(1).

Subclause 2(3) provides the formula for rounding the CPI percentage increase up or down.

Calculating increase in notional employer benefit in an incomplete year.

Subclause 3(1) provides a formula for the application of the CPI increase where the period of preservation extends over part of a financial year. This formula will apply for all circumstances where a person's date of preservation of the employer benefit on retirement occurs on a date other than 1 July and that person's date of election to receive the residual employer benefit is a date other than 30 June.

Subclauses 3(2) and 3(3) describe how part months are to be treated when applying the formula in subclause 3(1).

Interpretation

Subclause 4(1) and 4(2) deal with certain technicalities with regard to index numbers, reference bases, etc., in relation to the calculation of the Consumer Price Index (CPI).