EXPLANATORY STATEMENT

MILITARY SUPERANNUATION AND BENEFITS TRUST DEED
(AMENDMENT)(NO.1 OF 1995)

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.

It is necessary to amend the MSB Rules to meet Superannuation Guarantee requirements, and to provide for compliance of the MSB Rules with the Superannuation Industry (Supervision) Act 1993 (the SIS Act).

Amendment to meet Superannuation Guarantee requirements

Generally, the Superannuation Guarantee scheme requires employers to make minimum superannuation contributions, or pay Superannuation Guarantee Charge (SGC). The Commonwealth is an exception, having no liability to pay SGC (see subsection 5(1) of the Superannuation Guarantee (Administration) Act (SGA)). However, the MSB Board has decided, in line with Government policy, that the MSB Scheme should conform to Superannuation Guarantee requirements.

In order to do this, MSB employer contributions need to comply with the minimum prescribed by the SGA. The minimum is determined by reference to a formula (see sections 18 and 19 of the SGA). That formula incorporates a charge percentage, the amount of which is prescribed in subsection 20(3) for employers with payroll in excess of $1 million. The charge percentage currently applicable to such employers, in respect of each employee, is prescribed to be 5% of total salary paid to the employee.

When the Superannuation Guarantee scheme commenced, the MSB Rules were amended to ensure that MSB employer contribution percentages were in line with that scheme (see MSB Instrument No. 1 of 1993). The MSB percentages (in paragraphs 5
and 10 of Schedule 8 of the MSB rules), as amended, reflect the amount of employer contribution needed to meet the current 5% charge percentage.

From 1 July 1995, the charge will increase from 5% to 6%. Accordingly, the instrument increases certain MSB percentages in paragraphs 5 and 10 of Schedule 8.

The MSB percentages have been increased to the amounts specified by the Australian Government Actuary, in his draft benefit certificate, as those which are required for compliance with the Superannuation Guarantee scheme.

The amendment to paragraphs 5 and 10 of Schedule 8 covers the period until June 1998. The MSB percentages inserted are:

<table>
<thead>
<tr>
<th>Completed years of eligible service</th>
<th>Percentage period commencing 1 July 1995</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>40</td>
</tr>
<tr>
<td>1</td>
<td>40</td>
</tr>
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<td>6</td>
<td>75</td>
</tr>
<tr>
<td>7</td>
<td>100</td>
</tr>
</tbody>
</table>

The MSB percentages previously prescribed for the periods ending 31 December 1992, and the period from 1 January 1993 to 30 June 1995 are not affected by the increase. Benefits for members with 4 years completed service or more were previously at the same level as the new minimum. Members with 3 years completed service had an MSB percentage of 30, and members with 0-2 years completed service had an MSB percentage of 25.

Amendment for compliance with SIS scheme

The SIS Act establishes a framework for the supervision of superannuation funds. For the Act to apply to the MSB scheme, the MSB Board of Trustees must elect that the MSB fund become a regulated superannuation fund (see section 19 of the SIS Act). The Board intends to make this election by 30 June 1995. It was therefore necessary to amend the MSB Rules so that they would comply with the SIS Act.

Subclause 3(3) of the MSB Trust Deed provided that in exercising its powers and functions the Board shall have regard to Government policy, as requested by the Minister. With some exceptions (not applicable here), section 58 of the SIS Act prevents the rules of regulated superannuation funds from subjecting the Trustees to direction. In order to ensure compliance with section 58, the Instrument provides expressly for the requirement in subclause 3(3) to be subject to the SIS Act. This means that the MSB Board of Trustees may decline a request from the Minister to
have regard to Government policy. The new provision replaces a requirement in old subclause 3(3) that the MSB Board comply with the Occupational Superannuation Standards (OSS) Act and Regulations, the regulatory scheme which preceded the SIS scheme.

With the election to become a regulated superannuation fund, it was necessary to also replace other references in the MSB Rules to the OSS scheme, with references to the SIS Act or Regulations.

The references to the OSS scheme occurred in benefit payment provisions in subrule 15(2), 15(3), 15(5) and 53(2) and, through a reference in rule 65B, to pension conversion provisions. In subrule 15(5) the reference was in a definition of “preservation fund”, which identified funds to which benefits may be transferred under certain benefit payment options. The remaining references operated to set a threshold dollar amount (prescribed in rule 12 of the OSS Regulations to be $500), for determining whether certain payment options were applicable to a member. The Instrument replaces the references to the OSS scheme with references to the SIS Regulations, which will have an equivalent effect.

The amendments will commence on 30 June 1995.

Individual amendments

1. Commencement

This clause sets the dates on which the provisions in the instrument become operative.

2. Amendment

This clause is formal.

3. Clause 3 (Function and powers of the Board)

This clause provides that, in subclause 3(3) of the Trust Deed, the requirement that the Board have regard to Government policy as requested by the Minister is subject to the SIS Act.

4. Rule 2 (Definitions and interpretation)

This clause inserts a new definition of “SIS preservation threshold amount”.

5. Rule 15 (Payment of benefits where rule 12, 13 and 14 applies and person has less than 12 months’ eligible service).

This clause omits references to the Occupational Superannuation Standards scheme and substitutes references to the SIS preservation threshold amount.
6. Rule 53 (compulsory payment of preservation benefit)

This clause omits a reference to the Occupational Superannuation Standards scheme and substitutes a reference to the SIS preservation threshold amount.

7. Rule 65B (Prescribed amount for conversion of a lump sum to a pension).

This clause omits a reference to the Occupational Superannuation Standards scheme and substitutes a reference to SIS preservation threshold amount.

8. Schedule 1 (Glossary).

This clause inserts a new definition in the glossary of “SIS preservation threshold amount”. The definition specifies the provision in the SIS Regulations which determines the SIS preservation threshold amount.

9. Schedule 8 (Calculation of employer benefit).

Schedule 8 to the MSB Rules provides for a person’s employer benefit to be calculated. Paragraph 5 of Schedule 8 deals with a retiree with less than 7 years’ eligible service and paragraph 10 deals with a retiree who had an earlier period of service which is aggregated with the service just completed by him or her for the purpose of calculating the 7 year period.

This clause amends paragraphs 5 and 10 of Schedule 8 to increase MSB employer contribution percentages to the level required by the SGC scheme as it applies up to the year ending on 30 June 1998.