EXPLANATORY STATEMENT

MILITARY SUPERANNUATION AND BENEFITS TRUST DEED
(AMENDMENT) (NO. 4 OF 1998)

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

The Schedule to the Trust Deed made by the Minister for Defence Industry, 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 the benefits to be provided to members of the MSB scheme upon retirement or to dependants of deceased member of the scheme. The benefits payable are a member benefit based on member contributions and interest accrued and an employer benefit which includes employer contributions.

The Minister is empowered, by section 5 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 Military Superannuation and Benefits Trust Deed (Amendment) (No 4 of 1998) amends provisions in the Rules dealing with the classification of a member in respect of invalidity and the calculation of the employer benefit for a member with fewer than 7 years service. Military Superannuation and Benefits Trust Deed (Amendment) (No 4 of 1998) replaces Military Superannuation and Benefits Trust Deed (Amendment) (No 3 of 1998) which was invalidated by expiry of the date for tabling of the instrument. There is no change to the content of the instrument and since the changes are beneficial, there is no detriment to any members of the scheme.

Classification in respect of invalidity

Rules 22 and 22A of the MSB Rules, provide that where a member is retired on the grounds of invalidity, the Board or the Committee, must determine the percentage of incapacity in relation to civil employment of the invalidity retiree and must classify the retiree according to the percentage of incapacity as Class A, B, or C. (The classification determines the nature of the invalidity payments payable to the retiree.) At present these rules do not allow ComSuper, the administrator of the MSBS, to determine the invalidity classification of a member until he or she is actually discharged. Rules 22 and 22A will apply if the member is not disqualified by Rule 32 due to a pre-existing condition, Rule 33 due to invalidity as a result of an intentional act or Rule 34 due to invalidity arising during absence without leave exceeding 21 days.

The amendments will allow invalidity classifications to be determined prior to a member’s discharge and will enable an income stream to be in place when the member discharges. This amendment is also in line with the recommendations of the 1997 Inquiry into Military Compensation arrangements for the Australian Defence Force.
Amendment to meet Superannuation Guarantee requirements

Generally, the Superannuation Guarantee (SG) scheme requires employers to make minimum superannuation contributions, or pay the 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, MSBS employer contributions need to comply to the minimum prescribed by the SGA. The minimum is determined by reference to a formula (see section 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 6% of total salary paid to the employee.

When the SG scheme commenced, the MSBS employer contribution percentages were in line with the SG scheme (see MSB instrument No. 1 1993). The MSBS percentages (in paragraphs 5 and 10 of Schedule 8 of the MSB rules), reflect the amount of employer contribution needed to meet the current 6% charge percentage.

From 1 July 1998, the charge will increase from 6% to 7%. However, the MSB Board of Trustees at its meeting on 24 April 1998 recommended that the phase-in provision of the employer benefit accrual rate for members with less than 7 years service be removed entirely. This amendment ensures that the employer benefit accrual rate meets the SG not only for the increase from 6% to 7%, but also for subsequent increases in the year 2000 (from 7% to 8%) and 2002 (from 8% to 9%). In addition, the removal of phase-in provisions would assist with the proposed implementation of flexible career management. This would be achieved by ensuring that ADF members who serve fewer than 7 years would accrue the full employer contribution rate. With the removal of phase-in provisions the MSBS employer contribution will continue to exceed the SG, and, therefore be regarded as meeting the provisions of the proposed Choice of Funds legislation.

Clause 1 - Commencement

This clause sets the date on which the provisions in the instrument become operative. The date of commencement is the same as for Military Superannuation and Benefits Trust Deed (Amendment) (No 3 of 1998), since the provisions of the instrument seek to clarify current procedures in respect of classification in respect of invalidity and to improve benefits for members of the scheme.

Clause 2 - Amendment

This clause is formal.
Clause 3 - Schedule (Military Superannuation and Benefits Rules)

This clause is formal.

SCHEDULE

Item 1 - Rule 22 (Classification in respect of incapacity)

This rule provides a system of classification of incapacity for civil employment of members who have been retired on the ground of invalidity. The classification given governs the entitlements of the person under the rules.

This item amends Rule 22 to allow members who are retired or are about to be retired on the grounds of invalidity to be classified.

Item 2 - Rule 22A (Interim Classification)

When a member retires on the ground of invalidity, it may take some time to accumulate the information required to assess the degree of incapacity of the person for civil employment. In these circumstances the Board or the Incapacity Classification Committee (ICC) can determine an interim pension at the Class B rate if they are reasonably satisfied that the person’s incapacity will be at least a Class B but cannot immediately determine whether the person should be classified Class A or B.

This item amends Rule 22A to allow the Board or the Committee to make a decision regarding an interim pension at the time when a member is retired or is about to be retired on invalidity grounds.

Item 3 - Rule 32 (Pre-existing condition)

This rule disqualifies a person for invalidity benefits where the person is retired within 2 years of entry because of a medical condition which pre-dated the person’s entry into the Defence Force. This rule also provides that, if the person is a re-entry into the Defence Force and is subsequently again retired on the grounds of invalidity, it is the person’s medical condition on re-entry which is relevant.

As a consequence to Rules 22 and 22A, this item amends Rule 32 to allow the Board or the Committee to make a decision regarding a pre-existing condition at the time when a member is retired or is about to be retired on invalidity grounds.

Item 4 - Rule 33 (Invalidity due to intentional act)

This rule disqualifies a person for invalidity benefits where the person is retired on the ground of invalidity because of a condition intentionally incurred in order to obtain invalidity benefits. This rule also provides that the person is not disqualified if the medical condition was not wholly due to the person’s intentional act or the person’s action was caused by a physical or mental condition.
As a consequence to Rules 22 and 22A, this item amends Rule 33 to allow the Board or the Committee to make a decision regarding invalidity due to an intentional act at the time when a member is retired or is about to be retired on invalidity grounds.

**Item 5 - Rule 34 (Invalidity arising during absence without leave exceeding 21 days)**

This rule disqualifies a person for invalidity benefits where the person is retired on the grounds of invalidity because of a condition which was incurred while the person was absent without leave for a period exceeding 21 days. This rule also provides that the person is not disqualified if there are sufficient mitigating circumstances.

As a consequence to Rules 22 and 22A, this item amends Rule 34 to allow the Board or the Committee to make a decision regarding invalidity arising during absence without leave exceeding 21 at the time when a member is retired or is about to be retired on invalidity grounds.

**Item 6 - 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 employer benefit.

This item amends paragraphs 5 and 10 of Schedule 8 to fully vest the MSBS employer contribution to 100% for members with less than 7 years service.