1. Interpretation

1.1 In this Instrument:

"the Rules" means the rules, being the Military Superannuation and Benefits Rules, set out in the Schedule to the Trust Deed;

"Trust Deed" means the Trust Deed made, and in force, under section 4 of the Military Superannuation and Benefits Act 1991.

1.2 Unless the contrary intention appears, words and expressions used in this Instrument have the same meanings as in the Rules.

2. Commencement

2.1 This Instrument commences on 25 June 1993.

3. Amendment

3.1 The Rules are amended as set out in this Instrument.

4. Application and saving

4.1 The amendments made by this Instrument apply in relation to any benefits payable under the Rules in respect of a deceased person who was, at the time of his or her death:

(a) a member; or

(b) a retirement pensioner; or
(c) a person in respect of whom a preserved benefit consisting wholly or in part of an employer benefit was applicable;

only if the person dies on or after 25 June 1993.

4.2 The Rules, as in force immediately before 25 June 1993, continue to apply in relation to any benefits payable under the Rules in respect of a deceased person who was, at the time of his or her death:

(a) a member; or

(b) a retirement pensioner; or

(c) a person in respect of whom a preserved benefit consisting wholly or in part of an employer benefit was applicable;

and who died before 25 June 1993.

5. Rule 2(Definitions and interpretation)

5.1 Subrule (1): Insert in the list of expressions, in correct lexicographical order:

"marital relationship (see Part 1A)".

5.2 Subrule (1): Omit "spouse (see Part 5)", substitute "spouse who survives a deceased person (see Part 5)".

6. Schedule 1(GLOSSARY)

6.1 Paragraph 1: Definition of "child": Omit the definition, substitute:

"child", in relation to a person who has died, includes:

(a) a person who:

(i) is an ex-nuptial child of the deceased person; or

(ii) is, immediately before the death of the deceased person, a stepchild, an adopted child, a foster child or a ward, of the deceased person; and

(b) a person who:

(i) is a child or ex-nuptial child of a spouse who survives the deceased person; and

(ii) was wholly or substantially dependent upon the deceased person at the time of the deceased person's death;".

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6.2 After Part 1, insert:

PART 1A

MARITAL RELATIONSHIP

*1A. For the purposes of these Rules, a person had a marital relationship with another person at a particular time if the person ordinarily lived with that other person as that other person's husband or wife on a permanent and bona fide domestic basis at that time.

*1B. For the purpose of this Part:

(a) a person is regarded as ordinarily living with another person as that other person's husband or wife on a permanent and bona fide domestic basis at a particular time only if:

(i) the person had been living with that other person as that other person's husband or wife for a continuous period of at least 3 years up to that time; or

(ii) the person had been living with that other person as that other person's husband or wife for a continuous period of less than 3 years up to that time and the Board, having regard to any relevant evidence, is of the opinion that the person ordinarily lived with that other person as that other person's husband or wife on a permanent and bona fide domestic basis at that time;

whether or not the person was legally married to that other person; and

(b) a person is taken to be living with another person if the Board is satisfied that the person would have been living with that other person except for a period of:

(i) temporary absence; or

(ii) absence because of special circumstances (for example, absence because of the person's illness or infirmity or a posting of the person); and

(c) a marital relationship begins at the beginning of the continuous period mentioned in subparagraph (a)(i) or (ii).

*1C. For the purposes of paragraph 1B, relevant evidence includes, but is not limited to, evidence establishing any of the following:

(a) the person was wholly or substantially dependent on that other person at the time;

(b) the persons were legally married to each other at the time;

(c) the persons had a child who was:

(i) born of the relationship between the persons; or

(ii) adopted by the persons during the period of the relationship;
(d) the persons jointly owned a home which was their usual residence."

6.3 Part 5:
Paragraphs 9 to 11(inclusive):
Omit the paragraphs, substitute:

"9. For the purposes of these Rules, a person is a spouse who survives a deceased person if:

(a) the person had a marital relationship with the deceased person at the time of the death of the deceased person (in this paragraph called "the death"); and

(b) in the case of a deceased person who was a retirement pensioner (in this paragraph called "the pensioner") at the time of the death:

(i) the marital relationship began before the pensioner became a pensioner; or

(ii) the marital relationship began after the pensioner became a pensioner but before the pensioner reached 60; or

(iii) in any other case - the marital relationship had continued for a period of at least 5 years up to the time of the death.

"10. In spite of paragraph 9, a person is taken to be a spouse who survives a deceased person if:

(a) the person had previously had a marital relationship with the deceased person; and

(b) the person did not, at the time of the death, have a marital relationship with the deceased person but was legally married to the deceased person; and

(c) in the case of a marital relationship that began after the pensioner became a pensioner and reached 60 - the relationship began at least 5 years before the deceased person’s death; and

(d) in the Board’s opinion, the person was wholly or substantially dependent upon the deceased person at the time of the death.".

NOTE ABOUT HEADING

The heading to Part 5 of Schedule 1 is amended to read: "SPOUSE WHO SURVIVES A DECEASED PERSON".

OTHER NOTES


2. Trust Deed made on 18 September 1991, as amended by Instruments No. 1 of 1991, Nos. 1, 2 and 3 of 1992 and Nos 1, 2 and 3 of 1993

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