Military Superannuation and Benefits Amendment Trust Deed 2004 (No. 2)

I, MALCOLM THOMAS BROUGH, Minister for Employment Services, for the Minister for Defence, make this Trust Deed under subsection 5 (1) of the Military Superannuation and Benefits Act 1991.

Dated 14 June 2004

MAL BROUGH
Minister for Employment Services
for the Minister for Defence

1 Name of Trust Deed
This Trust Deed is the Military Superannuation and Benefits Amendment Trust Deed 2004 (No. 2).

2 Commencement
This Trust Deed commences on 12 August 2004.

3 Amendment of Military Superannuation and Benefits Trust Deed
Schedule 1 amends the Military Superannuation and Benefits Trust Deed made under the Military Superannuation and Benefits Act 1991.
Schedule 1 Amendments

( section 3 )

[1] Rules, subrule 2 (1)  
   after allocation  
   insert allowance

[2] Rules, subrule 2 (1)  
   after Department  
   insert Determination No. 6 of 1992

[3] Rules, subrule 2 (1)  
   after financial year  
   insert flying allowance

[4] Rules, subrule 2 (1)  
   after previous legislation  
   insert Q & S component

[5] Rules, subrule 2 (1)  
   after SIS Regulations  
   insert special action forces allowance  
   specialist operations allowance
[6] **Rules, subrule 2 (1)**

*after* Statistician

*insert* submarine service allowance


*omit* the salary and allowances of a member in respect of a period are

*insert* the salary of a member in respect of a period is

[8] **Rules, subrule 4 (7)**

*substitute*

(7) In a case to which paragraph (6) (b) applies, the member’s salary for the purpose of calculating the contribution payable by the member is taken not to include an allowance unless:

(a) the allowance was payable to the member on the day immediately preceding the commencement of the period; and

(b) an appropriate authority of the Defence Force has notified the Board that, but for the member’s absence on leave without pay, the allowance would have been payable to the member in respect of the whole of the period of his or her absence on that leave.

[9] **Rules, paragraph 8 (1) (b)**

*substitute*

(b) the salary so assumed to be paid did not include an allowance unless:

(i) the allowance was payable to the member on the day immediately before the commencement of the period; and

(ii) an appropriate authority of the Defence Force has notified the Board that, but for the member’s absence on leave without pay, the allowance would have been payable to the member in respect of the whole of the period of his or her absence on that leave.
Rules, paragraph 34 (1) (c)

substitute
(c) the salary of the member in respect of the period was forfeited under regulations made under the Defence Act 1903, and an amount equal to the amount of the salary so forfeited was not subsequently paid, and is not payable, under those regulations to him or her;

Rules, paragraph 40 (4) (b)

substitute
(b) the salary of the deceased member in respect of the period of absence without leave was forfeited under regulations made under the Defence Act 1903, and an amount equal to the amount of the salary forfeited was not subsequently paid, and is not payable, under those regulations to the deceased member’s personal representative;

Rules, Schedule 1, Part 1, after definition of allocation

insert
allowance means an allowance determined by the Defence Force Remuneration Tribunal under section 58H of the Defence Act 1903.

Rules, Schedule 1, Part 1, after definition of Department

insert
Determination No. 6 of 1992 means Determination No. 6 of 1992, Salaries, made under section 58H of the Defence Act 1903, as in force from time to time.

Rules, Schedule 1, Part 1, after definition of financial year

insert
flying allowance means the allowance of that name established by Determination No. 7 of 1997, Flying Allowance, made under section 58H of the Defence Act 1903, as in force from time to time.

Rules, Schedule 1, Part 1, after definition of previous legislation

insert
Q & S component, of an allowance, means the qualifications and skill component of the allowance.
[16] Rules, Schedule 1, Part 1, definition of salary

substitute

salary has the meaning given by Part 10 of this Schedule.

[17] Rules, Schedule 1, Part 1, definition of service allowance

substitute

service allowance means the allowance of that name established under Determination No. 11 of 1994, Service Allowance, made under section 58H of the Defence Act 1903, as in force from time to time.

[18] Rules, Schedule 1, Part 1, after definition of SIS Regulations

insert

special action forces allowance means the allowance of that name established by Determination No. 11 of 2002, Special Action Forces Allowance, made under section 58H of the Defence Act 1903, as in force from time to time.

specialist operations allowance means the allowance of that name established by Determination No. 19 of 2002, Specialist Operations Allowance, made under section 58H of the Defence Act 1903, as in force from time to time.

[19] Rules, Schedule 1, Part 1, after definition of Statistician

insert

submarine service allowance means the allowance of that name established by Determination No. 9 of 1995, Submarine Service Allowance, made under section 58H of the Defence Act 1903, as in force from time to time.

[20] Rules, Schedule 1, after Part 9

insert

Part 10 Salary

18 (1) Subject to this section, salary, in relation to a person who is a member of the Scheme on a particular day, means the sum of:

(a) the annual rate of salary of the member on that day under Determination No. 6 of 1992, as in force from time to time; and

(b) for a member to whom service allowance is payable — an amount equal to the annual rate of the service allowance that is applicable in respect of service by the member on that day; and
(c) for a member to whom higher duties allowance is payable — an amount equal to the annual rate of the higher duties allowance that is applicable in respect of service by the member on that day; and

(d) for a member to whom the Q & S component of:

(i) flying allowance; or
(ii) special action forces allowance; or
(iii) specialist operations allowance; or
(iv) submarine service allowance;

is payable — an amount equal to the annual rate of the Q & S component that is applicable in respect of service by the member on that day.

(2) For a member holding the office of Chief of the Defence Force, Vice Chief of the Defence Force, Chief of Navy, Chief of Army or Chief of Air Force on a particular day, salary means the annual rate of salary on that day of a holder of that office as determined by the Remuneration Tribunal under subsection 7 (3) of the Remuneration Tribunal Act 1973.

(3) A reference in this section to the annual rate of salary of a member on a day under Determination No. 6 of 1992 is taken to be a reference to the amount that would be the annual rate of salary of the member on that day under that Determination if the expression rank, when used in that Determination, had the meaning given to that expression by subsection 3 (1) of the 1973 Act and did not have the meaning given to that expression by that Determination.

Note The definition of rank in subsection 3 (1) of the 1973 Act is:

rank, in relation to a member of the Defence Force, means:

(a) his substantive rank or, if he is appointed provisionally or on probation, the rank to which he is so appointed; or

(b) if he is provisionally promoted to another rank—that other rank.

[21] Rules, Schedule 2, paragraph 1 (a)

substitute

(a) the salary of a member in respect of a period was, on or after the date of his or her entry into the Scheme, forfeited, in whole or in part, under regulations made under the Defence Act 1903; and

[22] Rules, Schedule 2, paragraph 1 (c)

omit

and allowances