EXPLANATORY STATEMENT
MILITARY SUPERANNUATION AND BENEFITS AMENDMENT TRUST
DEED 2005 (No. 1)

ISSUED BY THE AUTHORITY OF THE MINISTER FOR VETERANS' AFFAIRS

The Schedule to the Trust Deed made by the Minister for Veterans' Affairs 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 members of the scheme. The benefits payable are a member benefit based on member contributions, accrued MSB Fund earnings 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 amendments made by the Military Superannuation and Benefits Amendment Trust Deed 2005 (No. 1) change the MSB Rules to introduce additional ancillary benefits and provide for their administration within the MSB Fund.

Military Superannuation and Benefits Amendment Trust Deed 2005 (No. 1) will commence on 1 August 2005. The amendments are beneficial and, in accordance with the provisions of subsection 48(2) of the Acts Interpretation Act 1901, no member of the MSB Scheme will be disadvantage upon implementation of the amendments.

For equity reasons, MSB Scheme ancillary benefits will also be available to serving Australian Defence Force (ADF) members who are contributing to the Defence Force Retirement and Death Benefits (DFRDB) Scheme. The DFRDB Scheme is totally unfunded and has no investment account capable of accepting additional contributions from DFRDB members. DFRDB members will not have access to the primary member and employer benefits provided via the MSB Act and Rules.

Consultation has taken place between the Military Superannuation and Benefits Board of Trustees No. 1, Commonwealth Superannuation Administration (the administrator of the MSB Scheme), the Office of Legislative Drafting, the First Assistant Secretary Budget and Financial Planning Department of Defence and the Directorate of Military Superannuation Department of Defence.
Clause 1 - Name of Trust Deed

This clause is formal.

Clause 2 - Commencement

This clause provides for commencement on 1 August 2005.

Clause 3 - Amendment of Military Superannuation and Benefits Trust Deed

This clause is formal.

Schedule 1 Amendments

Item 1 - Trust Deed, subclause 3 (3)

This item omits the term "Superannuation Industry (Supervision) Act 1993" and inserts the term "SIS Act". A definition of "SIS Act" which would parallel with the existing definition of "SIS Regulations" has been inserted into the Glossary.

Item 2 - Rules, subrule 7 (4)

This item omits subrule 7 (4). The term "spouse" is now defined in Schedule 1, Part 1, after the definition of "specialist operations allowance".

Item 3 - Rules, subrule 10 (4), definition of prescribed arrangement, paragraph (b)

This item omits the term "Superannuation Industry (Supervision) Regulations 1994" and inserts the term "SIS Regulations". The opportunity is being taken to bring old references to the SIS Regulations into line with the definition in the Glossary.

Item 4 - Rules, rule 11 P

This item is a drafting change to allow for the inclusion of subrule 11P (2) to be inserted into the Rules.

Item 5 - Rules, rule 11P

This item inserts subrule 11P (2). Subject to rule 11R, the Board must allocate a contribution on the day that the contribution is received.

Item 6 - Rules, subrule 11Q (2)

This item omits subrule 11 Q (2). A definition for the term "investment nomination" has been substituted in Schedule 1, Part 1.

Item 7 - Rules, paragraph 11 Q (5) (b)

This item omits the term "the Investment Divisions" and inserts the term "1 or more of the Investment Divisions". It is possible that a change to Investment Divisions might only affect one of the Divisions. It is therefore appropriate that the subrule reflects this possibility.
Item 8 - Rules, subrule 11Q (6)

This item substitutes a new subrule. The term "made by a member or the Department after 30 June 2002" which is no longer relevant is omitted and the term "to be allocated to an Investment Division in accordance with this rule" has been inserted. Subject to Rule 11 R, the Board must still allocate a contribution to an Investment Division on the day that the contribution is received.

Item 9 - Rules, subrule 11 R (1)

This item omits the term "by members or the Department". Although subrule 104 (3) is expressed to be subject to rule 11R, the words to be omitted by this amendment might have been taken as implying that rule 11 R was not applicable to the allocation of ancillary contributions.

Item 10 - Rules, paragraphs 51 (1) (e) and (f)

This item omits the term "Superannuation Industry (Supervision) Regulations 1994" and inserts the term "SIS Regulations". A definition of "SIS Regulations" already exists in the Glossary in Schedule 1.

Item 11 - Rules, after subrule 85 (2)

This item inserts subrule 85 (2A). The ancillary contribution that is taken to be made by a spouse under rule 110 is vested in the name of the spouse and held for the benefit of the spouse for paragraph (2) (b).

Item 12 - Rules, Part 14

This item substitutes a revised Part 14 into the Rules to allow for the acceptance of a package of ancillary contributions. Ancillary contributions may be in the form of Government co-contributions and Superannuation Guarantee payments, amounts transferred from regulated superannuation funds, Retirement Savings Accounts, Approved Deposit Funds and the Special Account, salary sacrifice, additional personal contributions and contributions for the benefit of the spouse of a member.

Part 14 - Contributions to ancillary benefit

101 - Definitions

In this part definitions have been inserted for "approved deposit fund", "contribution", "Government co-contribution" and "Special Account".

102 - Part 2 does not apply

The rules applying to contributions in Part 2 (compulsory member contributions and compulsory employer contributions in relation to the member) do not apply to contributions received under Part 14.
103 - Certain investment nominations to continue in operation

(1) This subrule provides for an investment nomination form, in force under subrule 103 (2) immediately before the commencement of this rule and made by a member of the MSBS, to have been made under subrule 11 Q (1). The investment nomination will remain in force until the member changes the investment nomination under subrule 11 Q (4). This item also provides for an investment nomination, in force under subrule 103 (2) immediately before the commencement of this rule and made by a DFRDB member, to have been made under rule 104 and that investment nomination will remain in force until it is changed under rule 104.

(2) Subrule (1) does not apply to a former nomination made by a member if the member had made an investment nomination under subrule 11 Q (1) and this nomination had the same effect as the former nomination and was in force immediately before the commencement of this rule.

104 - Investment nominations by DFRDB members and spouses

A DFRDB member and a person taken to be making contributions under rule 110 may nominate their Investment Division or Investment Divisions to the Board. The contribution should be allocated from the day specified in the nomination. A DFRDB member and a spouse of an MSBS or DFRDB member may change their investment nomination at any time.

105 - Allocation of contributions

This rule describes how and when the Board must allocate contributions for a person. If the Board cannot allocate the ancillary contribution as nominated by the person or cannot comply with the investment nomination, or if the Board has not received an investment nomination, then the Board must allocate the contribution to the default Investment Division. Subject to rule 11 R, the contribution must be allocated to the Investment Division on the day it is received. A contribution allocated under this rule becomes an ancillary benefit for the person.

106 - Government co-contribution and SG charge payments

This rule allows the Board to receive a Government co-contribution in respect of a member or DFRDB member. The co-contribution is taken to be a contribution by the member or DFRDB member under rule 105. The Board may also receive an amount payable under Part 8 of the "Superannuation Guarantee (Administration) Act 1992", in respect of an MSBS or DFRDB member. This amount is taken to be a contribution by the member of DFRDB member for rule 105.

107 - Amounts transferred from regulated superannuation funds, etc

This rule permits the consolidation of a member's or DFRDB member's superannuation amounts into one scheme. This additional superannuation could arise from pre-Australian Defence Force employment or from additional private superannuation contributions made while in the Australian Defence Force. These additional superannuation contributions would be transferred, in part or full, from another regulated superannuation fund, a Retirement Savings Account, an approved deposit fund, or the Special Account. The transfer must be made in accordance with the SIS Act. This item does not enable the transfer into the Scheme of a DFRDB member's benefit in the Defence Force Retirements and Death Benefits Scheme. The transfer benefit is taken to be a contribution by the member or DFRDB member for rules 105.
108 - Salary sacrifice

This rule permits the acceptance of salary sacrifice contributions from a member or DFRDB member. The contributions received are treated as employer contributions and are derived from pre-tax salary. The amount deducted under this rule and accepted by the Board is taken to be a contribution by the member or DFRDB member for rule 105.

109 - Additional personal contributions

This rule permits the acceptance of additional post-tax personal contributions from a member or DFRDB member. An MSBS member must continue to make member contributions in accordance with Part 2 of the MSBS Rules and a DFRDB member must continue to contribute to the DFRDB Scheme in accordance with Part III of the DFRDB Act 1973.

110 - Contributions for the benefit of the spouse of a member

This rule allows a member or DFRDB member to request the Board to establish a superannuation interest for the spouse of the member or DFRDB member. A member or DFRDB member may make contributions on behalf of the spouse directly to the Board. The contribution, if accepted by the Board, is taken to be a contribution by the member's spouse for rule 105. Any contributions made into the Scheme under this rule are held for the benefit of the spouse.

Part 15 - Transitional

This part contains provisions for the reallocation of existing amounts of ancillary benefit in a person's account prior to 1 August 2005.

111 - Definitions

This rule inserts definitions for the terms "allocated contributions" and "relevant amount".

112 - Transfer of certain amounts

This rule determines how and when the Board must transfer the relevant amount for a member or DFRDB member. It also determines when the Board must request a member to complete an investment nomination form. If the Board does not receive the investment nomination from the member within 5 working days, then the Board must transfer the amount for the member to the member's investment nomination under subrule 11 Q (1).

The member's investment nomination(s) under subrules 11 Q (1) and 103 (2) cease to have effect "at the time that the Board transfers the relevant amount". These words make it clear that the revocation is prospective.

This rule does not prevent members or DFRDB members from transferring units from one Investment Division to another Investment Division in relation to the ancillary benefit of the member or DFRDB member. It also does not prevent the member or DFRDB member making a further investment nomination in respect of future amounts of Government cocontribution to another Investment Division or Investment Divisions. The Board must comply with the investment nomination as far as possible.

Subrule (10) ensures that no member or DFRDB member would suffer a loss on the transfer of relevant amounts.
113 - Allocation of Government co-contribution

This rule is intended to enable co-contributions received before 1 August 2005 but not allocated before that date, to be allocated under subrule 105.

114 - Expiration and saving

This rule allows for Part 15 to cease having effect at the end of 31 January 2006. An investment nomination made under subrule 112 (3) will remain in force as if it was made under subrule 11Q (1). Rule 114 (3) defines the term "subrule 112 (3) investment nomination".

Item 13 - Rules, Schedule 1, Part 1, definition of investment nomination

This item substitutes a new definition for the term "investment nomination".

Item 14 - Rules, Schedule 1, Part 1, definition of preservation age

This item omits the term "Superannuation Industry (Supervision) Regulations 1994" and inserts the term "SIS Regulations".

Item 15 - Rules, Schedule 1, Part 1, definition of regulated superannuation fund

This item omits the term "Superannuation Industry (Supervision) Act 1993 and inserts the term "SIS Act".

Item 16 - Rules, Schedule 1, Part 1, after definition of retirement pensioner

This item inserts a definition for the term "RSA".

Item 17 - Rules, Schedule 1, Part 1, after definition of service offence

This item inserts a definition for the term "SIS Act".

Item 18 - Rules, Schedule 1, Part 1, definition of SIS preservation threshold amount

This item omits the term "Superannuation Industry (Supervision) Regulations" and inserts the term SIS Regulations.

Item 19 - Rules, Schedule 1, Part 1, after the definition of specialist operations allowance

This item inserts a definition for the term "spouse".

Item 20 - Rules, Schedule 1, Part 1A, paragraph 1A

This item substitutes a new definition for the term "marital relationship" and links the Rules as a whole. Therefore the words "For the purposes of these Rules" are no longer required. Paragraph 1 A has also been recast in the present tense in accordance with general drafting practice.
Item 21 - Rules, Schedule 1, Part 5, paragraph 9

This item omits the term “For the purposes of these Rules, a person” and inserts the term “A person”. As with the previous amendment the words "For the purposes of these Rules" are no longer needed.