

EXPLANATORY STATEMENT

MILITARY SUPERANNUATION AND BENEFITS TRUST DEED (AMENDMENT)(NO.3 OF 1994)

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*.

Under the Defence Force Retirement and Death Benefits (DFRDB) Scheme, members who had resigned and had been refunded their DFRDB contributions were able to buy back their previous period of service for superannuation purposes if they re-entered the Defence Force. This could be achieved through a lump sum payment or fortnightly repayments which were in addition to their normal DFRDB contributions. The latter meant that a previous service debt had been created. This situation cannot arise in the MSB Scheme which does not allow purchase of previous service.

Between 1 October 1991 and 30 September 1992 all DFRDB Scheme members were required to elect to continue being a member of the DFRDB Scheme, or to transfer to the MSB Scheme. A member who was purchasing previous service and wished to transfer to the MSB Scheme could extinguish the previous service debt by a lump sum payment, or the debt could be offset against the MSB transfer value which was the member's DFRDB contributions and notional interest on those contributions. These alternatives had very different effects on a member's commencing equity in the MSB Scheme. There was a significant financial advantage to be gained by a member making a lump sum repayment to extinguish the debt as opposed to the alternative of using the offset arrangements.

MSB Instrument No 2 of 1992 came into effect on 25 May 1992 and would have excluded contributions used to buy back previous service from the transfer values of members transferring to the MSB Scheme where those members had not repaid their

outstanding previous service debt before 1 October 1991. This was to be done by amending the definition of "previous contributions" in Schedule 1 to the MSB Rules. That Instrument was disallowed by the Senate on 9 September 1992 on the grounds that members affected by the amendment would be deprived of the proper value of their DFRDB contributions.

In the debate on the disallowance the Minister for Defence stated that, if the Instrument were disallowed, a change would be made to the MSB Rules to allow members who had already transferred to the MSB Scheme the opportunity of repaying their previous service debts by lump sum within a period of 90 days. The amendment was made by MSB Instrument No 3 of 1992 which inserted the necessary provisions in Schedule 9 to cover retired members, and in Schedule 10 to cover serving members.

ComSuper, the administrator of the military superannuation schemes, recently advised that a number of members who had transferred to the MSB Scheme with a previous service debt, which had been extinguished by the offset arrangement rather than a lump sum had not been identified when MSB Instrument No 3 of 1992 was made and, as a consequence, were not informed of the options made available to them under that instrument. The MSB Board of Trustees considered this matter on 15 April 1994 and decided that it would be appropriate to amend the MSB Rules to remove the disadvantage suffered by the members who had not been informed of their options.

The Instrument amends Schedule 10 to provide that affected MSB Scheme members be given a further period of 90 days to make a lump sum payment where the MSB Board of Trustees is satisfied that the members were not informed of their right to pay a lump sum within the 90 day period provided for under MSB Instrument No 3 of 1992.

1. Amendment

Clause 1.1 is formal.

2. Schedule 10 (Transfer Value)

Clause 2.1 inserts new paragraphs 4 and 5 of Schedule 10 of the MSB Rules.

Paragraph 4(a) identifies a transferred member who had the right to pay to the Commonwealth, within a specified time frame, (being 90 days from the date of notice) an amount equal to or less than the amount deducted from the transfer value at date of transfer to the MSB Scheme.

Paragraph 4(b) requires the Board to be satisfied that the member identified in paragraph 4(a) had not previously been informed within the time frame specified (90 days) of his or her right to pay an amount equal to or less than the past service debt owing at date of transfer to the MSB Scheme.

The Board must give the member notice in writing informing the member of his or her rights to pay to the Commonwealth, before the end of 90 days after the day on which

the notice is given, an amount equal to or less than the past service debt at the date of transfer to the MSB Scheme.

The paragraph 4 provision is not extended to a person who has since retired.

Paragraph 5 allows for the amount that is paid to the Commonwealth to be credited to the member's account on the day before the member became a transferred person (ie 30/9/1991).
