

EXPLANATORY STATEMENT
INSTRUMENT NO 4 OF 1993

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

MILITARY SUPERANNUATION AND BENEFITS TRUST DEED
(AMENDMENT)

The Schedule to 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*.

The *Commonwealth Superannuation Schemes Amendment Act 1992* made amendments to superannuation legislation to remove discrimination on the ground of marital status. The Instrument makes corresponding amendments to the MSB Rules.

The amendments define "spouse", in relation to a deceased member of the MSB scheme, in a way which does not discriminate between legally married and de facto spouses. The basic elements of the amended definition are that the persons were living together as husband and wife in a permanent and bona fide domestic relationship, whether or not they were legally married to each other. A number of criteria are provided to establish that such a relationship exists.

The amendments also redefine "child" to remove discrimination between nuptial and ex-nuptial children.

1. Interpretation

This clause defines expressions used in the Instrument.

2. Commencement

This clause provides for the commencement of the amendments on 25 June 1993., which is the date on which amendments to the superannuation provisions of the Sex Discrimination Act 1984, which were made in 1991, will commence.

3. Amendment

This clause is formal.

4. Application and saving

Subclause 4(1) provides that the amendments made to the MSB Rules by the Instrument only apply in respect of benefits payable as a result of the death of a member or retirement pensioner on or after 25 June 1993.

Subclause 4(2) provides that the existing MSB Rules continue to apply in respect of benefits payable. Under those rules as a result of the death of a member or retirement pensioner before 25 June 1993.

5. Rule 1 (Definition and interpretation)

This clause makes formal amendments consequent. On the amendments to Schedule 1.

6. Schedule 1 (Glossary)

Schedule 1 to the MSB Rules defines expressions used in the Rules and provides interpretation provisions.

Subclause 6.1 replaces the definition of "child" with a new definition which removes the requirement for dependency to be established in the case of an ex-nuptial child of the deceased person.. In the case of an ex-nuptial child of a spouse who survives the deceased person, dependency will need to be established.

Subclause 6.2 inserts a new Part 1A which is an interpretation provision dealing with marital relationship. This supersedes part of the existing Part 5.

Paragraph 1A of Part 1A provides the basic rule that a person had a marital relationship with another person at a particular time if the person then ordinarily lived with the other person as that other person's husband or wife on a permanent and bona fide domestic basis.

Paragraph 1B qualifies the basic rule by:

- a. Subparagraph (a): requiring either the person had lived with the other person as the other person's husband or wife (whether legally married to each other or not) for a continuous period of at least 3 years up to that time or, where the continuous period was less than 3 years, that the Board of

Trustees is of the opinion, on relevant evidence, that the person ordinarily lived with the other person on a permanent and bona fide domestic basis at the time.

- b. Subparagraph (b): treating persons as living together notwithstanding temporary absences, such as when they are separated by a member's posting or infirmity.
- c. Subparagraph (c): specifying when a marital relationship is taken to have begun.

Paragraph 1C provides that relevant evidence for arriving at an opinion that a person in a relationship of less than 3 years' duration ordinarily lived with the other person on a permanent and bona fide domestic basis includes evidence that the person was wholly or substantially dependent on the other person, that they were legally married to each other, that they had a child born of, or adopted during, their relationship, or that they jointly owned a home which was their usual residence. The Board of Trustees is not limited to these examples.

Subclause 6(3) replaces the interpretation of "spouse" in Part 5 with an interpretation of "spouse who survives a deceased person".

New paragraph 9 in effect defines "spouse who survives a deceased person" as being a person who had a marital relationship with the deceased person at the time of the latter's death with the additional requirement, where the deceased was a retirement pensioner, that the marital relationship began before the pensioner became a pensioner or, if it began after the pensioner became a pensioner, it began before the pensioner turned 60 or, if it began after the pensioner turned 60, that the relationship had continued for not less than 5 years to the time of death.

New paragraph 10 specifies circumstances in which a separated spouse can be treated as a spouse under the MSB scheme. It extends the meaning of "spouse who survives a deceased person" to include a separated spouse who was legally married to the deceased person when the deceased person died and the Board of Trustees is of the opinion that the person was wholly or substantially dependent on the deceased person when the latter died. If the marital relationship began after the retirement pensioner became a pensioner and had turned 60, the additional requirement applies that the marital relationship must have been of at least 5 years' duration.

Note about heading

The note alters the heading to Part 5 of Schedule 1 to reflect the changes made to that Part.