

## **MILITARY SUPERANNUATION AND BENEFITS ACT 1991**

### **MILITARY SUPERANNUATION AND BENEFITS TRUST DEED AMENDMENT 2008 (No.2)**

#### **EXPLANATORY STATEMENT**

##### **Issued by the authority of the Minister for Defence Science and Personnel**

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 the benefits to be provided to members of the MSB Scheme upon retirement, or to dependants of deceased members of the scheme. The Scheme benefits include both a member benefit (based on member contributions and accrued MSB Fund earnings) and an employer benefit (which includes employer contributions).

Section 5 of the MSB Act provides that the Minister may amend the Trust Deed (including the MSB Rules) by a signed instrument.

From 1 July 2008 defined benefit schemes, which had what are known as protected earnings bases for the purposes of assessing Superannuation Guarantee obligations, were required to assess their Superannuation Guarantee obligations against ordinary time earnings (OTE). In the case of the Defence Force Retirement and Death Benefits Scheme (DFRDB) and MSBS, the protected earnings bases were the superannuation salaries defined in the schemes' governing documents. Advice received from the Australian Taxation Office is that OTE for Australian Defence Force personnel should include some allowances which are not currently included in the schemes' definitions of superannuation salary. The Department has decided that to ensure compliance with its Superannuation Guarantee obligations, it will pay employer superannuation contributions of 9% of certain allowances which do not form part of superannuation salary into the ancillary section of the MSBS. The ancillary section of the MSBS provides fully funded accumulation benefits. The additional employer contributions will apply for both DFRDB and MSBS members.

The amendments made by the *Military Superannuation and Benefits Amendment Trust Deed 2008 (No.2)* change the MSB Rules to allow the MSB Board to accept superannuation guarantee top-up contributions made by the Department of Defence as ancillary contributions. These contributions will ensure the Department would not have an individual superannuation guarantee shortfall within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (SG Act) in respect of a person for any period in which the person is a member of either the scheme established under the *Defence Force Retirement and Death Benefits Act 1973* or the MSB Act.

Although the top-up contribution is an employer contribution, it will not form part of the funded employer benefit in the MSB scheme. To reinforce this separation and to avoid doubt, the top-up contribution is not required to be allocated to the default Investment Division as are other employer contributions.

The top-up contributions are paid into a MSB member's or DFRDB member's ancillary account. Nevertheless, they will be taken to be a contribution by the MSB member or DFRDB member for the purposes of allocating contributions to Investment Divisions within the MSB Scheme. This means the top-up contributions will vest immediately in the member and will be allocated in accordance with a member's wishes, including to the default Investment Division if the member has not nominated particular investment divisions for his/her contributions.

*The Military Superannuation and Benefits Amendment Trust Deed 2008 (No.2)* will commence on 24 December 2008 to enable the Australian Government Actuary to issue a benefit certificate required under the SG Act.

Although this instrument relates to the service of members of the Australian Defence Force and so may not of necessity require consultation for the purposes of paragraph 18(2)(g) of the *Legislative Instruments Act 2003* (LIA), the Military Superannuation and Benefits Board of Trustees No. 1, Commonwealth Superannuation Administration, and the Australian Government Actuary were consulted in the development of this instrument.

This is a legislative instrument for the purpose of section 44(2) of the *Legislative Instruments Act 2003* (LIA) and is not subject to disallowance in accordance with item 39 of the table in subsection 44(2) or sunseting in accordance with item 42 of the table in subsection 54(2) of the LIA.

A regulation impact statement is not required.

**Clause 1** cites the full title of the Trust Deed Amendment.

**Clause 2** provides for the commencement on 24 December 2008.

**Clause 3** provides for the amendment of the Trust Deed.

### **Schedule 1 – Amendments**

**Item [1] – Rules, rule 101, after the definition of *Government co-contribution***

Inserts definition of SG top-up contribution.

**Item [2] – Rules, after rule 106**

Inserts new rule 106A, which deals with the SG top-up contribution.

Rule 106A(1) enables the MSB Board to accept SG top-up contributions in respect of members and DFRDB members and to treat them as member contributions for the purpose of rule 105.

Rule 106A(2) makes it clear that the SG top-up contribution is not part of the funded employer contribution and is not required to be allocated for the default Investment Division.

Authority:      Section 5 of the  
                         *Military Superannuation and*  
                         *Benefits Act 1991*