

## EXPLANATORY STATEMENT

### MILITARY SUPERANNUATION AND BENEFITS AMENDMENT TRUST DEED 1999 (No. 1)

#### ISSUED BY THE AUTHORITY OF THE MINISTER FOR VETERANS' AFFAIRS AND THE MINISTER ASSISTING THE MINISTER FOR DEFENCE

The Schedule to the Trust Deed made by the Minister for Veterans' Affairs and Minister Assisting the *Minister* for Defence 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 and interest accrued 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*.

Military Superannuation and Benefits Trust Deed (Amendment) (No. 2 of 1998) amended the MSB Rules to allow for the adjustment of the employer benefit due to the Superannuation Contributions Tax ("the surcharge debt"). The amendments made by the Military Superannuation and Benefits Amendment Trust Deed 1999 (No. 1) change the MSB Rules to allow members to have greater flexibility in discharging their debt by allowing the member to elect which component of their benefit is to be adjusted.

Previously the member's employer benefit was reduced by the surcharge debt before it was paid as a lump sum or converted to a pension. This method disadvantaged those members who converted their employer benefit to a pension. Members will now be able to elect to have their surcharge debt discharged in one of the following ways:

by deduction from the member's employer benefit before it is paid to the member as a lump sum, or before it is converted into a pension;

by deduction from the member's member benefit before it is paid to the member as a lump sum;

by deduction from the pension payable to the member after conversion of the member's employer benefit.

If a member does not make an election the debt will be discharged according to the type of benefit claimed as follows:

by deduction from the member's employer benefit after it is converted into a pension;

if the member elects to receive part of their employer benefit either as a lump sum payment or converted into a pension - by deduction from the member's employer benefit after it is converted to a pension;

in any other case - by deduction from the member's employer benefit before it is paid as a lump sum.

**Clause 1- Name of Instrument**

This clause is formal.

**Clause 2- Commencement**

This clause provides for commencement on the date of gazettal.

**Clause 3 - Amendment of Trust Deed made under the *Military Superannuation and Benefits Act 1991*.**

This clause is formal.

**Schedule 1 - Amendments**

This schedule amends the Military Superannuation and Benefits Trust Deed (incorporating the MSB Rules) made under the MSB Act to allow members to have greater flexibility in the method of discharging their surcharge debt.

Item 30 of the Schedule introduces a new Part 10 titled "Surcharge deduction amount". This part, which is made up of new rules 80 and 81, details how the surcharge debt can now be discharged and includes a default provision if an election is not made.

As a consequence of introducing the new Part, subrules which previously stated the way in which the surcharge debt was to be discharged have been omitted and those rules which address the payment of the member's member benefit or employer benefit have been amended to make them subject to Part 10.

This means that subrules 13(4A), 14(6), 27(4), 28(4), 40(4A), 52(3A), 53(3) and 54(4A) have been omitted and subrules 12(2), 13(1){a}, 13(2)(d), 13{4}{b}, 14(1){c}, 14(1)(d), 14{3}{b}, 14{3}(c), 27{1}{a}, 27(1){b}, 28{1}(a); 28(1)(b), 40(1), 49(1), 51(1), 52(1), 53(1), 53(2), 54(2), 54(3), 54(4) and rule 39 have been amended.

Subrule 51(1B) has been amended to ensure that there will be sufficient funds available to discharge a surcharge debt if a member claims part of their preserved employer benefit under financial hardship or compassionate grounds.

Subrule 64(2A) has been inserted to allow a member to make an election under Part 10.

Items 31, 32 and 33 of the Schedule amend Schedule 12 of the MSB Rules to include reference to conversion factors, prepared by an actuary, to be used if a member or claimant elects to have the pension adjusted to discharge the surcharge debt.

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