

## EXPLANATORY STATEMENT

### MILITARY SUPERANNUATION AND BENEFITS AMENDMENT TRUST DEED 2000 (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 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*.

The amendments made by the Military Superannuation and Benefits Amendment Trust Deed 2000 (No. 1) change the MSB Rules to expand the role of the Reconsideration Advisory Committee (RAC) to include the ability to decide certain requests for reconsideration. The amendments also empower the Board to dismiss applications for reconsideration that are trivial, misconceived or lacking in substance and specify a time limit in which applicants can seek reconsideration. In addition, Schedule 7 of the MSB Rules is amended to adjust the calculation of the final average salary (FAS) for members who retire on invalidity grounds or die, whilst in trainee positions.

Previously, the role of the RAC was confined to examining each reconsideration application and making recommendations to the Board on whether the initial decision should be affirmed, varied or set aside. The amendments enable the RAC to decide those cases where a delegate of the Board, including the Incapacity Classification Committee took the initial decision. The Board retains the power to decide requests for reconsideration of initial decisions taken by the Board and also any requests for reconsideration of decisions taken by the RAC. In these instances the role of the RAC is to provide a recommendation to the Board, as it did previously.

Schedule 7 of the MSB Rules defines "final average salary" and specifies how it is calculated. Under the current provisions "salary" means the amount of salary payable to the person during his or her career. Accordingly, for members undergoing training, it reflects their trainee salaries, which are very low and result in very small benefits in the event of death or invalidity. The amendments set a minimum FAS to be used when calculating an invalidity retirement or death benefit, where trainee salaries form part or all of the FAS.

### **Clause 1 - Name of Instrument**

This clause is formal.

### **Clause 2- Commencement**

This clause provides for commencement on 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 provide for an expansion of the functions of the Reconsideration Advisory Committee (RAC). It also introduces a timeframe in which applicants can request reconsideration and enables the Board to dismiss applications that are trivial, misconceived or lacking in substance.

#### **Item 1 - Trust Deed, paragraph 3(2)(h)**

The functions and powers of the Board specified in paragraph 3(2)(h) of the Trust Deed provide for the establishment of a Reconsideration Advisory Committee or Committees and the purpose of such a Committee. This item expands paragraph 3(2)(h) to include in the purpose, the ability of the RAC to decide certain requests for reconsideration.

#### **Item 2 - Rule 17 (Incapacity Classification Committee)**

This item amends Rule 17 to ensure compatibility with paragraph 3(2)(g) of the Trust Deed. Rule 17 previously stated that the Board *must* establish an Incapacity Classification Committee, whereas the Deed states that the Board *may* establish an Incapacity Classification Committee.

#### **Item 3 - Rules, subrule 30(3)**

In addition to the amendments made in respect of the RAC provisions and the FAS calculation, a minor amendment has been made to subrule 30(3). This subrule provides that a person cannot apply under the provisions of subrule 30(I) to have their retirement deemed as retirement on the ground of invalidity unless there is a preserved benefit applicable.

...

The amendment is consequential to changes in the preservation rules that provide for the preservation of the member component as well as the employer component. As the member component can never be taken as a pension benefit it is necessary to amend subrule 30(3) to specify that subrule 30(1) does not apply unless the person has a preserved *employer* component.

**Item 4- Rule 72 (Reconsideration Advisory Committee)**

This item amends Rule 72 to ensure compatibility with paragraph 3(2)(h) of the Trust Deed. Rule 72 previously stated that the Board *must* establish a Reconsideration Advisory Committee or Committees, whereas the Deed states that the Board *may* establish a Reconsideration Advisory Committee or Committees.

**Item 5- Rule 74 (Functions of the RAC)**

This item expands the function of the RAC to include the ability to decide requests for reconsideration where a delegate of the Board (including the Incapacity Classification Committee) took the primary decision.

**Item 6 - Rule 76 heading**

This item amends the heading to make it clear that the Board and Committee may reconsider more than one decision.

**Item 7 - Rules, subrule 76(1)**

This item specifies a time limit (30 days) in which applicants can seek reconsideration of a delegate's decision. It also allows the Board to set a longer time limit if special circumstances exist.

**Item 8 - Rules, subrules 76(5), (6), (7) and (8)**

This item specifies the Board's and the Committee's responsibilities in cases where the Board has requested the Committee to make a decision.

**Item 9 - Rule 77 heading**

This item amends the heading to make it clear that the Board and Committee may reconsider more than one decision.

**Item 10- Rules, subrule 77 (1)**

This item specifies a time limit (30 days) in which applicants can seek reconsideration of a Board or Committee decision. It also allows the Board to set a longer time limit if special circumstances exist.

”””  
•   •  
**Item 11 - Rules, paragraph 77(2)(d)**

This item inserts the words "if any" to reflect more accurately that a fee may not necessarily be prescribed.

**Item 12- Rules, subrule 77(3)**

This item empowers the Board to dismiss applications for reconsideration where the evidence is trivial, lacking in substance or not relevant to the decision.

**Item 13 - Rules, subrules 77(8) and (9)**

This item specifies the Board's responsibilities in cases where it has requested the Committee to make a recommendation only.

**Item 14 - Rule 78**

This item extends rule 78 to include "the Committee" after "the Board". This will ensure that when the Committee makes a decision, it must provide the same content in the statement of reasons for decisions as that provided when the Board makes the decision.

**Item 15 - Rules, Schedule 1, Part 1, definition of *Committee***

This item amends the name of the Committee to reflect its expanded role.

**Item 16 - Rules, Schedule 1, Part 1, definition of *salary*, paragraph (a)**

This item substitutes the definition of salary to make it clear that the only allowances included are service allowance and higher duties allowance. This provides consistency with the definition of salary for retention benefit purposes that is contained in the MSB Act 1991.

**Item 17 - Rules, Schedule 7, after paragraph 2**

This item sets a minimum Final Average Salary (FAS) to be used when calculating an invalidity retirement or death benefit, where trainee salaries form part or all of the FAS.

**Item 18 - Rules, Schedule 7, paragraph (3), after the definition of *service***

This item inserts a definition of trainee for the purposes of Item 17.