



# Military Superannuation and Benefits Amendment Trust Deed 2002 (No. 1)

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I, DANNA SUE VALE, Minister for Veterans' Affairs, make this Trust Deed under subsection 5 (1) of the *Military Superannuation and Benefits Act 1991*.

Dated 4 July 2002

DANNA VALE  
Minister for Veterans' Affairs

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## **1 Name of Trust Deed**

This Trust Deed is the *Military Superannuation and Benefits Amendment Trust Deed 2002 (No. 1)*.

## **2 Commencement**

This Trust Deed commences on gazettal.

## **3 Amendment of Military Superannuation and Benefits Trust Deed**

Schedule 1 amends the Military Superannuation and Benefits Trust Deed made under the *Military Superannuation and Benefits Act 1991*.

*Note* Subsection 4 (2) of the *Military Superannuation and Benefits Act 1991* requires the Military Superannuation and Benefits Trust Deed made under subsection 4 (1) of the Act to be in the form set out in the Schedule to the Act.

Subclause 1 (1) of the Deed provides that a reference to the Deed includes a reference to the Military Superannuation and Benefits Rules, which are set out in the Schedule to the Deed.

## **Schedule 1 Amendments**

(section 3)

**[1] Trust Deed, paragraph 3 (1) (b)**

*omit*

Deed; and

*insert*

Deed;

**[2] Trust Deed, paragraph 3 (1) (c)**

*omit*

Scheme.

*insert*

Scheme;

**[3] Trust Deed, after paragraph 3 (1) (c)**

*insert*

- (d) after 30 June 2002, to determine, from time to time, the issue price and withdrawal price of a unit in an Investment Division of the Fund.

**[4] Trust Deed, subclause 10 (4)**

*substitute*

- (4) The Board must:
- (a) establish at least 1 Investment Division of the Fund as the means of investing the Fund; and
  - (b) establish an investment strategy for each Investment Division; and
  - (c) regularly review the effectiveness of each Investment Division and investment strategy; and
  - (d) maintain records to identify the assets, liabilities and income of each Investment Division; and
  - (e) maintain records to identify payments made from each Investment Division.
- (4A) The Board may:
- (a) create an Investment Division; or
  - (b) refuse to issue further units for an Investment Division; or
  - (c) wind up an Investment Division; or

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- (d) merge 2 or more Investment Divisions; or
  - (e) divide an Investment Division into 2 or more Investment Divisions;  
if the Board decides that it is necessary or desirable to do so.

(4B) In acting under subclause (4A), the Board may consult any person or body.

(4C) If the Board decides to act under subclause (4A), the Board must give the unitised members who would be affected by the action reasonable notice of the action before the action takes effect.

**[5] Trust Deed, after clause 10**

*insert*

**10A Unitisation of Investment Divisions**

The Board must:

- (a) divide each Investment Division of the Fund into units; and
- (b) issue units to each unitised member that represent the member's beneficial interest in the fund; and
- (c) record the issue, withdrawal and transfer of the units of each member in a unit record system maintained by the Board for the Fund.

**[6] Rules, subrule 2 (1)**

*after*

Actuary

*insert*

allocation

**[7] Rules, subrule 2 (1)**

*after*

contributory service

*insert*

default Investment Division

**[8] Rules, subrule 2 (1)**

*after*

employer benefit

*insert*

employer funded account

**[9] Rules, subrule 2 (1)**

*after*

invalidity retiree

*insert*

Investment Division

investment nomination

issue price

**[10] Rules, subrule 2 (1)**

*after*

member benefit

*insert*

member funded account

member unfunded account

**[11] Rules, subrule 2 (1)**

*after*

month

*insert*

net asset value

**[12] Rules, subrule 2 (1)**

*after*

total benefit

*insert*

transfer

transfer application

**[13] Rules, subrule 2 (1)**

*after*

unfunded preserved benefit

*insert*

unitised member

unit value

withdrawal price

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**[14] Rules, after Part 2***insert***Part 2A Unitisation of the Fund on 1 July 2002****11A Establishment of primary Investment Division**

- (1) The Board must establish and name an Investment Division that takes effect on 1 July 2002.
- (2) The Investment Division must comprise the whole of the Fund as it exists immediately before 1 July 2002.
- (3) As soon as practicable, the Board must divide the beneficial interest in the net assets of the Investment Division into units in the Division in accordance with Division 2 of Part 2B.

**11B Establishment of unitised accounts for members**

As soon as practicable, the Board must:

- (a) establish accounts in accordance with Division 3 of Part 2B for each person who is a unitised member of the Fund immediately after 30 June; and
- (b) for each of those persons:
  - (i) determine the funded component of the member benefit as at the end of 30 June 2002; and
  - (ii) credit the member funded account with units to the value of the funded component of the member benefit; and
  - (iii) determine the funded component of the employer benefit as at the end of 30 June 2002; and
  - (iv) credit the employer funded account with units to the value of the funded component of the employer benefit; and
- (c) in addition, for each of those persons who is a transferred person:
  - (i) determine the transfer value (if any) and the carryover value (if any) for the person as at the end of 30 June 2002; and
  - (ii) credit the member unfunded account with units to the value of the transfer value and the carryover value determined under subparagraph (i).

*Note* The Board may make additional arrangements for Investment Divisions at any time, in accordance with Part 2B.

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## Part 2B Administration of unitised Fund

### Division 1 Arrangements for Investment Divisions

#### 11C Investment Divisions — general

- (1) The Board may establish an Investment Division of the Fund at any time on or after 1 July 2002.
- (2) The Board may, at any time on or after 1 July 2002:
  - (a) refuse to issue further units for an Investment Division; or
  - (b) wind up an Investment Division; or
  - (c) merge 2 or more Investment Divisions; or
  - (d) divide an Investment Division into 2 or more Investment Divisions.
- (3) The Board:
  - (a) must name each Investment Division that it establishes (including an Investment Division established after a merger or division); and
  - (b) may change the name of an Investment Division.
- (4) There must be at least 1 Investment Division in existence at all times.
- (5) To avoid doubt, this rule applies in relation to the Investment Division mentioned in rule 11A.

#### 11D Default Investment Division

- (1) If the Fund has a single Investment Division in existence, that Division is the “**default Investment Division**”.
- (2) If the Fund has more than one Investment Division, the Board must designate one of them as the “**default Investment Division**”.
- (3) The Board may, at a later time, designate another Investment Division as the default Investment Division.

#### 11E Winding up of Investment Division

- (1) This rule applies if the Board decides to wind up an Investment Division.
- (2) Before winding up the Investment Division, the Board must:
  - (a) decide on the how units in the Investment Division held in accounts of a unitised member will be transferred to other Investment Divisions in the absence of a transfer application from the member; and
  - (b) give each unitised member notice under rule 11ZB; and
  - (c) if no transfer application is received by the member before the Investment Division is wound up, transfer the units in accordance with the decision under paragraph (a).

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- (3) The Board must:
    - (a) sell the assets of the Investment Division, make the necessary deductions from the proceeds of the sale to pay the debts of the Investment Division and transfer the remainder of the proceeds to another Investment Division; or
    - (b) reallocate the assets of the Investment Division to another Investment Division in accordance with Division 4.

#### **11F Net asset value**

- (1) The “**net asset value**” of an Investment Division is the amount determined by the Board to be the total value of the assets of the Investment Division, less any amount representing liabilities of the Investment Division.
- (2) The Board may include in the assessment of net asset value an amount representing the Board’s assessment of:
  - (a) actual or anticipated income tax liability; or
  - (b) an actual or anticipated benefit.
- (3) The Board may determine a net asset value from time to time, including more than once on a particular day.
- (4) The Board may require an asset of an Investment Division to be valued at any time, including more than once on a particular day.

### **Division 2 Unitisation procedure**

#### **11G Unitisation of an Investment Division**

- (1) The Board must determine the net asset value of an Investment Division that the Board establishes.
- (2) The Board may determine, from time to time, the method of determining the net asset value of a Fund Investment Division.
- (3) The Board must:
  - (a) divide the beneficial interest in the assets of an Investment Division into a number of units in the Division; and
  - (b) work out, for each day, the price of the units in accordance with rules 11J and 11K.
- (4) A unit does not confer an interest in any particular part of:
  - (a) the beneficial interest in the net assets of the Investment Division; or
  - (b) the assets of the Investment Division; or
  - (c) the Investment Division.
- (5) Subject to the terms on which the units are issued to a unitised member, each unit in a class of units of an Investment Division is of equal rank within the class.

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- (6) The Board must make and keep unit records for each Investment Division, including:
- (a) the name and contact details of each unitised member who has a unit in the Investment Division; and
  - (b) the number of units in the Investment Division held by each unitised member; and
  - (c) the aggregate value of those units.

#### **11H Classes of units**

- (1) The Board may divide the units in an Investment Division into 2 or more classes.
- (2) The unit value of units in 1 class may be different from the unit value of units in another class.

#### **11I Unit value**

- (1) Subject to these Rules, the **“unit value”** of a unit in a class of units held in an Investment Division in relation to member funded accounts and employer funded accounts for a particular day (the **“valuation day”**) that is a working day is the amount worked out using the formula:

net asset value for the class ÷ total number of units in the class

where:

**“net asset value for the class”** means the net asset value of the Investment Division attributed to the class as at the end of the valuation day;

**“total number of units in the class”** means the total number of units in the class held in relation to member funded accounts and employer funded accounts.

- (2) However, if the valuation day is not a working day, the unit value of the unit is the unit value for the last working day before the valuation day unless the Board calculates the net asset value for the valuation day.
- (3) The unit value of a unit in the class of units held in the Investment Division in relation to a member unfunded account for a particular day is the same as the unit value for a unit mentioned in subrule (1) for that day.
- (4) In this rule:  
**“working day”** means a day on which the Australian Stock Exchange is open for business.

#### **11J Issue price**

- (1) Subject to subrule (2), the **“issue price”** of a unit for a particular day is the amount worked out using the following formula:

unit value + estimate of acquisition costs



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where:

**“estimate of acquisition costs”** means the Board’s estimate of the costs associated with the acquisition of the assets underlying the unit that will be incurred by the Board on that day;

**“unit value”** means the unit value for the day.

- (2) The Board may, if it is satisfied that it is reasonable in the circumstances, set the issue price of a unit for a transaction as the unit value for the day.

### **11K Withdrawal price**

- (1) Subject to subrule (2), the **“withdrawal price”** of a unit for a particular day is the amount worked out using the following formula:

unit value - estimate of disposal costs

where:

**“estimate of disposal costs”** means the Board’s estimate of the costs associated with the disposal of the assets underlying the unit that will be incurred by the Board on that day;

**“unit value”** means the unit value of the unit for the day.

- (2) The Board may, if it is satisfied that it is reasonable in the circumstances, set the withdrawal price of a unit for a transaction as the unit value for the day.

### **11L Division or consolidation of units**

- (1) The Board may decide to divide or consolidate the units in an Investment Division.
- (2) If the Board decides to divide or consolidate units, the Board must:
- (a) give each unitised member with units in the Investment Division notice of the division or consolidation; and
  - (b) ensure that the member’s member funded account, member unfunded account and employer funded account are amended as appropriate to reflect the consolidation or division.

## **Division 3 Arrangements for unitised members**

### **11M Establishment and operation of unitised accounts**

- (1) As soon as practicable after 1 July 2002, the Board must establish and maintain the following accounts for each person who becomes a unitised member after 30 June 2002:
- (a) a member funded account;
  - (b) an employer funded account.

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- (2) The Board must also establish and maintain a member unfunded account for each of those persons who is a transferred person on 1 July 2002.
  - (3) An account established under subrule (1) or (2) is an account of units in Investment Divisions of the Fund that are held for the member.
  - (4) The Board must credit a unitised member's member funded account with units representing the contributions made by the member after 30 June 2002, allocated to Investment Divisions in accordance with any current investment nomination by the member.
  - (5) The Board must credit a unitised member's employer funded account with units representing the contributions made by the Department after 30 June 2002, allocated to Investment Divisions in accordance with rule 11P.
  - (6) The Board may debit a unitised member's member funded account or employer funded account to pay amounts owed to the Board or the Commissioner of Taxation.

#### **11N Annual statement**

As soon as practicable after the end of a financial year, the Board must give each unitised member a statement of the beneficial interest that the member holds in the Fund, including:

- (a) the number of units held in each Investment Division as at the date on which the statement was issued; and
- (b) the aggregate value of those units as at that date.

### **Division 4 Allocation of contributions to Investment Divisions**

#### **11O How contributions are allocated to an Investment Division**

For these Rules, a reference to the “**allocation**” of contributions to an Investment Division is a reference to the issue of units in the Investment Division to the value of the contribution at the issue price of the Investment Division on the day of issue.

#### **11P Allocation of employer contributions**

The Board must allocate contributions made by the Department to a unitised member's employer funded account to the default Investment Division.

#### **11Q Allocation of member contributions**

- (1) If the Fund has, or will have, more than one Investment Division, a unitised member may nominate to the Board the Investment Division or Investment Divisions to which contributions by the member should be allocated, from the day specified in the nomination.

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- (2) In these Rules, a nomination under subrule (1) is an **“investment nomination”**.
  - (3) The Board must, as far as possible, comply with a unitised member’s investment nomination.
  - (4) A unitised member may change an investment nomination at any time.
  - (5) If the Board:
    - (a) has not received an investment nomination from a unitised member; or
    - (b) cannot comply with an investment nomination in relation to all or part of a member’s contribution because the nomination is defective, or because the Investment Divisions have changed;the Board must allocate the member’s contributions, or the part of the member’s contributions, to the default Investment Division.
  - (6) Subject to rule 11R, a contribution made by a member or the Department after 30 June 2002 must be allocated to an Investment Division in accordance with this rule as at the day that the contribution is received.

#### **11R Suspension of allocations**

- (1) The Board may suspend the allocation to an Investment Division of contributions made to the Fund by members or the Department for a period if, during the period:
  - (a) because of an event that is beyond the control of the Board, the Board is unable to calculate the unit value for the Investment Division; or
  - (b) the Board is satisfied on reasonable grounds that it is in the interests of members to suspend the allocation.
- (2) If the Board suspends the allocation of contributions for a period under subrule (1), the Board must allocate the contributions on the first day after the period ends.

### **Division 5 Transferring units from one Investment Division to another**

#### **11S How units are transferred from one Investment Division to another**

For these Rules, a reference to a **“transfer”** of units from one Investment Division to a second Investment Division on a day is a reference to:

- (a) the withdrawal of the units from the first Investment Division, at the withdrawal price for the Investment Division on the day; and
- (b) the issue of units to the same value from the second Investment Division, at the issue price for the second Investment Division on the day.

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**11T Transfer of units in employer accounts on change of default Investment Division**

If there is a change in the default Investment Division, the Board must transfer the units in each member's employer funded account from the default Investment Division before the change to the default Investment Division after the change.

**11U Unitised member may apply for transfer of units**

- (1) A unitised member may apply to the Board to transfer some or all of the units in the member's member funded account or member unfunded account to another Investment Division or Investment Divisions (in this Division called "**the new Investment Division**").
- (2) For these Rules, the application is a "**transfer application**".

**11V Transfer applications — day of transfer**

- (1) This rule applies if a unitised member makes a transfer application.
- (2) If the Board approves a transfer application, the Board must effect the transfer on:
  - (a) if the application is complete —the day on which the Board receives the application, or a later day specified in the application; and
  - (b) if the application is incomplete —the day on which the Board receives the information from the member that is necessary to make the application complete, or a later day specified in the application.

**11W Limits applicable to transfers**

- (1) The Board may limit the number of times a unitised member may make transfer applications.
- (2) The Board may determine a minimum withdrawal amount and a minimum investment amount for a transfer application.

**11X Grounds for refusing transfer application**

The Board may refuse to approve a transfer application if:

- (a) the aggregate value of the units that would otherwise be issued in the new Investment Division in accordance with rule 11V is less than the minimum investment amount; or
- (b) the aggregate value of the units that would otherwise be withdrawn from the old Investment Division in accordance with that rule is less than the minimum withdrawal amount.

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**11Y Suspension of transfers**

- (1) The Board may suspend transfers of units from one Investment Division to a second Investment Division for a period if, during the period:
  - (a) because of an event that is beyond the control of the Board, the Board is unable to calculate the unit value for either Investment Division; or
  - (b) the Board is satisfied on reasonable grounds that it is in the interests of members to suspend the withdrawal of units of the first Investment Division or the issue of units of the second Investment Division.
- (2) If the Board suspends the transfer of units for a period under subrule (1), the Board must effect any approved transfers on the first day after the period ends.
- (3) A transfer application may be withdrawn during the suspension period.

**11Z Fees for transfers**

- (1) The Board may charge a fee for transferring a unitised member's beneficial interest under this Division.
- (2) The Board must not approve a transfer application unless the Board is satisfied that:
  - (a) the member is aware that a fee may be charged for the transfer; and
  - (b) the member has agreed to pay the fee.

**11ZA Closed or wound up Investment Division**

- (1) The Board may refuse to approve a transfer application if, before the application is processed, the Board decides:
  - (a) to merge an Investment Division nominated by the member with another Investment Division; or
  - (b) to refuse to issue further units for the Investment Division; or
  - (c) to wind up the Investment Division.
- (2) If the Board refuses to approve the transfer application, the Board must ask the member to nominate another Investment Division, or Investment Divisions, to which his or her beneficial interest may be allocated.
- (3) The Board may temporarily transfer the units to an Investment Division determined by the Board until the Board is able to transfer the units to an Investment Division nominated by the member.

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## **Division 6 Notice of proposed changes to Investment Divisions**

### **11ZB Members to be informed about proposed changes to Investment Divisions**

- (1) If it is proposed to make a change to the Investment Divisions of the Fund, the Board must, not less than 1 month before the day of the proposed change, give each unitised member a notice that includes:
  - (a) general information; and
  - (b) information about the proposed change; and
  - (c) information about the effect of the change on the unitised member.
- (2) The general information for paragraph (1) (a) is information about:
  - (a) the unitisation of the Fund and Investment Divisions; and
  - (b) the range of investment options available to unitised members; and
  - (c) the terms on which investments may be made; and
  - (d) the operation of the default Investment Division; and
  - (e) how to make an investment nomination under this Division; and
  - (f) how to make a transfer application; and
  - (g) the operation of Division 5.
- (3) The information about the proposed changes for paragraph (1) (b) is information about:
  - (a) the Investment Divisions and their investment strategies before and after the change; and
  - (b) when the change will be made; and
  - (c) how the change will operate by dividing, merging, creating or winding up Investment Divisions, or closing Investment Divisions to further contributions; and
  - (d) if the change includes a change in the default Investment Division, how that will affect unitised members.
- (4) The information about the effect of the change on the unitised member for paragraph (1) (c) is information about:
  - (a) any units held in an account of the member that are affected by the change; and
  - (b) how the units will be dealt with by the Board after the change if the Board does not receive a transfer application in relation to them; and
  - (c) any current investment nomination by the member that is affected by the change; and
  - (d) how the Board will allocate contributions of the member if the Board does not receive a new investment nomination.

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## Division 7                      Withdrawal of beneficial interest

### 11ZC      Payment of benefits

- (1) This rule applies if a person requests the Board to withdraw some or all of the units that are held in an Investment Division, or Investment Divisions, for the benefit of the person to make a payment of a benefit that is payable under these Rules in relation to the person.
- (2) The withdrawal price of the units is:
  - (a) if the request is received by the Board after the day on which the person ceases to be a member — the withdrawal price of the units for the day when the Board receives the application; and
  - (b) if the request is received by the Board before the end of the day on which the person ceases to be a member — the withdrawal price of the units for the day after the person ceases to be a member.
- (3) However, the Board may:
  - (a) refuse the request if it would be contrary to a law of the Commonwealth, a State or a Territory to act in accordance with the request; or
  - (b) suspend the withdrawal of units in accordance with rule 11ZD.

### 11ZD      Suspension of withdrawals

- (1) The Board may suspend withdrawals of units for rule 11Y that include withdrawals from a particular Investment Division for a period if, during the period:
  - (a) because of an event that is beyond the control of the Board, the Board is unable to calculate the unit value for the Investment Division; or
  - (b) the Board is satisfied on reasonable grounds that it is in the interests of members to suspend the withdrawal of units from the Investment Division.
- (2) If the Board suspends the withdrawal of units for a period under subrule (1), the Board must effect the withdrawals on the first day after the period ends.

### [15]      Rules, Schedule 1, after definition of “actuary”

*insert*

“allocation”, of a unit in an Investment Division, has the meaning given by rule 11O;

### [16]      Rules, Schedule 1, after definition of “contributory service”

*insert*

“default Investment Division” has the meaning given by rule 11D;

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**[17] Rules, Schedule 1, after definition of “employer benefit”**

*insert*

“**employer funded account**”, for a unitised member, means the account established under paragraph 11M (1) (b);

**[18] Rules, Schedule 1, definition of “funded employer benefit”**

*substitute*

“**funded employer benefit**”, in relation to a person, means:

- (a) before 1 July 2002 — the sum of:
  - (i) the amount of employer contributions paid by the Department, in relation to the person, under rule 10 less the amount of income tax paid or payable by the Fund in respect of those contributions; and
  - (ii) the interest (if any) in respect of the amount in subparagraph (i) in accordance with a determination or determinations by the Board as to rates of interest and the method of allocation of interest to such amounts; and
- (b) on or after 1 July 2002 — the sum of the values of units in the person’s employer funded account;

**[19] Rules, Schedule 1, after definition of “invalidity retiree”**

*insert*

“**Investment Division**” means the Investment Division established under rule 11A or an Investment Division established as a result of an action by the Board under rule 11C;

“**investment nomination**” has the meaning given by rule 11Q;

“**issue price**” has the meaning given by rule 11J;

**[20] Rules, Schedule 1, definition of “member benefit”**

*substitute*

“**member benefit**”, for a person, means:

- (a) before 1 July 2002 — an amount calculated in accordance with Schedule 9; and
- (b) on or after 1 July 2002 — the sum of the value of units in the person’s member funded account and member unfunded account;

“**member funded account**”, for a unitised member, means the account established under paragraph 11M (1) (a);

“**member unfunded account**”, for a unitised member, means the account established under paragraph 11M (2) (a);



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**[21] Rules, Schedule 1, after definition of “month”**

*insert*

“**net asset value**” has the meaning given by rule 11F;

**[22] Rules, Schedule 1, after definition of “total benefit”**

*insert*

“**transfer**”, of a unit in an Investment Division, has the meaning given by rule 11S;

“**transfer application**” has the meaning given by rule 11U;

**[23] Rules, Schedule 1, after definition of “unfunded preserved benefit”**

*insert*

“**unitised member**” means:

- (a) a member of the Fund; and
- (b) a person who has a preserved benefit (other than a person in respect of whom a death benefit is payable);

“**unit value**” has the meaning given by rule 11I;

“**withdrawal price**” has the meaning given by rule 11K;

**[24] Rules, Schedule 9, Title**

*substitute*

CALCULATION OF MEMBER BENEFIT BEFORE 1 JULY 2002