

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Veterans' Affairs

MILITARY SUPERANNUATION AND BENEFITS AMENDMENT TRUST DEED 2007 (No. 4)

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, 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. This is a legislative instrument for the purpose of section 44(2) of the *Legislative Instruments Act 2003*.

The amendments made by the *Military Superannuation and Benefits Amendment Trust Deed 2007 (No. 4)* changes the rules to improve access to reversionary benefits in certain circumstances where the retirement pensioner commenced a marital relationship after age 60 years. Generally, a spouse's pension under the military schemes is not payable if the pensioner who commences a marital relationship after age 60 dies within 5 years of the relationship commencing. This amendment removes the restrictions on the payment of benefits following such post-retirement relationships from 5 years to 3 years. However, a pro-rata rate of spouse's pension will be payable where the relationship existed for less than 3 years immediately before the pensioner's death. Where the resulting rate of annual pension is small the spouse will instead receive a lump sum payment. The *Superannuation Legislation Amendment Act 2007* provided similar amendments to the *Defence Force Retirement and Death Benefits Act 1973* (Act) which received royal assent on 25 September 2007.

The *Military Superannuation and Benefits Amendment Trust Deed 2007 (No. 4)* will commence on 1 January 2008 being the same commencement day for the Act amendments and the *Defence Force Retirement and Death Benefits Amendment Regulations 2007 (No.)*.

Consultation in respect of this instrument has taken place between the MSB Board of Trustees No. 1, the Australian Government Actuary and the Department of Finance and Administration.

A regulation impact statement is not required; the Office of Best Practice Regulation has been consulted.

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Clause 1 cites the full title of the Trust Deed amendment.

Clause 2 provides for commencement on 1 January 2008.

Clause 3 provides for the amendment to the Trust Deed.

Schedule 1 – Amendments

Item [1]-Schedule 1, subparagraph 9(b) (iii)

This item replaces the 5 year restriction for post retirement marriages to 3 years

Item [2] – Schedule 1, paragraph 10 (c)

This item replaces the 5 year restriction for post retirement relationship to 3 years.

Item [3] – Schedule 1, after rule 10

Inserts an new rule 11

The Application of rule 11

This item inserts rule 11 (1) to provide for a spouse's pension where the relationship existed for less than 3 years immediately before the pensioner's death.

Rate of spouse's pension

Inserts rule (11) (2) to provide the formula to calculate a pro rata spouse's pension if the relationship was less than 3 years immediately before the pensioner's death.

Minimum amount for lump sum payment

Inserts rule 11 (3) to make provision for a resulting annual rate of pension that is less than or equal to \$1407.79, (the minimum amount), the spouse is instead entitled to a lump sum payment.

Indexation of the amount mentioned in subrule (3) (the minimum amount)

Inserts rules 11(4) to (7) to provide the method of indexing the minimum amount specified in subrule (3) each half year in line with the consumer price index published in the March and September quarters.

Calculating the lump sum payment

Inserts rules 11(8) and (9) to provide the method for calculating the small resulting pension to a lump sum payment by using the spouses age factor provided by the Australian Government Actuary's 'methods and factors for valuing particular superannuation interests'.