

MILITARY SUPERANNUATION AND BENEFITS ACT 1991

MILITARY SUPERANNUATION AND BENEFITS TRUST DEED AMENDMENT 2011 (No. 1)

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Defence Personnel

The *Military Superannuation and Benefits Act 1991* (the MSB Act) in section 4 required the making of a deed (the Trust Deed) to establish an occupational superannuation scheme for members of the Australian Defence Force undertaking continuous full-time service and to set out the functions and powers of the Military Superannuation and Benefits Board of Trustees No. 1 (the MSB Board) established under Part 6 of the MSB Act.

The Schedule to the Trust Deed made under section 4 of the MSB Act contains Rules (the MSB Rules) which deal with various aspects of the scheme, including the benefits to be provided to members of the scheme upon retirement, or to dependants of deceased members of the scheme.

Section 5 of the MSB Act provides that the Trust Deed may be amended by legislative instrument signed by the Minister, with the consent of the MSB Board.

The Government made decisions in 2008 and 2009 to modernise Australian Government superannuation and establish governance arrangements for the Commonwealth superannuation schemes that are effective and more consistent with the broader superannuation industry. A package of three Acts, the *Governance of Australian Government Superannuation Schemes Act 2011* (the Governance Act), the *Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011* (the Consequentials Act) and the *ComSuper Act 2011*, facilitate the changes.

The Governance Act effectively merges the MSB Board and the Defence Force Retirement and Death Benefits (DFRDB) Authority with the Australian Reward Investment Alliance (ARIA, the trustee of the superannuation schemes applying to the Government's civilian employees), to form a single trustee body, the Commonwealth Superannuation Corporation (CSC).

From 1 July 2011, CSC will be responsible for managing the following Commonwealth military and civilian superannuation schemes:

- the Military Superannuation and Benefits (MSB) Scheme;
- the Defence Forces Retirement Benefits (DFRB) Scheme;
- the Defence Force Retirement and Death Benefits (DFRDB) Scheme;
- the Defence Force (Superannuation) (Productivity Benefit) Scheme (DFSPB);
- the Commonwealth Superannuation Scheme (CSS);
- the Public Sector Superannuation (PSS) Scheme;
- the Public Sector Superannuation Accumulation Plan (PSSAP);
- the superannuation scheme established by the *Superannuation Act 1922*; and

- the scheme provided for under regulations made by the *Papua New Guinea (Staffing Assistance) Act 1973*.

The Governance Act:

- establishes CSC as a body corporate with a separate legal identity from the Commonwealth;
- prescribes that CSC is a Commonwealth authority for the purposes of the *Commonwealth Authorities and Companies Act 1997*;
- sets out the functions and powers of CSC, noting that the “trustee” functions of CSC in relation to the superannuation schemes for which it has responsibility are set out in each scheme’s governing legislation or Deed;
- establishes a governing Board of CSC to ensure CSC carries out its functions in a proper, efficient and effective manner;
- sets out the procedures for meetings of the CSC governing Board;
- allows CSC to employ staff and engage consultants on terms and conditions determined by the CSC governing Board;
- sets out the financial and reporting requirements in relation to the superannuation schemes for which CSC is responsible; and
- deals with a number of miscellaneous issues relating to the operation of CSC, including the delegation arrangements for CSC.

As a consequence of the establishment of CSC, there is a need to amend various aspects of the Trust Deed, including the MSB Rules. Given the need for amendment, the opportunity has been taken to update the Trust Deed and MSB Rules to remove expired provisions, particularly in relation to members of the DFRDB Scheme who could elect to become MSB Scheme members between 1 October 1991 and 30 September 1992, incorporate additional amendments to the MSB Rules to make them clearer and to address some identified shortcomings.

The Trust Deed is being re-issued incorporating the changes.

Clause 1 sets out the manner in which this Instrument may be cited.

Clause 2 provides that this Instrument commences on 1 July 2011.

Clause 3 identifies that Schedule 1 of this instrument amends the Trust Deed.

Schedule 1

General – throughout the Trust Deed and the MSB Rules, references to “the Board” have been changed to references to “CSC” as necessary, to reflect the single trustee arrangements established by the Governance Act.

There has also been a number of "cosmetic" changes to reflect current drafting conventions (for example, referring to "the" Rules instead of "these" Rules, using the word "one" for the figure "1", changing the way in which subrules, paragraphs and items are referred, using the words "worked out" instead of "calculated" or "calculated in accordance with" and not capitalising particular words).

Item 1 amends clauses of the Trust Deed:

Clause 2 is amended to reflect that the MSB Scheme came into force on 1 October 1991 and that the Military Superannuation and Benefits Fund No. 1 (the MSB Fund), established at the same time, vests in CSC from 1 July 2011. An outdated reference to *members of the Emergency Forces and the Reserve Forces* has been changed to *members of the Reserves rendering continuous full-time service* to reflect the membership of the Scheme as set out in section 6 of the *Military Superannuation and Benefits Act 1991*.

Paragraph 3(1)(d) is amended to remove the reference to the commencing date of unitisation of the MSB Fund. There is no continuing need to refer to this date.

Paragraph 3(2)(i) is added to make it clear that CSC may establish one or more decision making committees to assist CSC on any matter that relates to the exercise of its powers and functions, which is consistent with the change to **Clause 12** allowing CSC to delegate all or any of its powers (other than its powers under **Part 9** of the Rules and its power of delegation under **Clause 12**) to committees.

Paragraph 3(2)(j) is renumbered (it was previously **paragraph 3(2)(i)**).

Original **Clauses 4** (appointment of trustees), **5** (termination of appointment), **6** (acting appointments), **7** (disclosure of interests) and **8** (meetings of the Board of Trustees) have been omitted as these are no longer necessary, being covered in the Governance Act.

Clause 12 has been changed to allow CSC to delegate all or any of its powers, other than its powers under Part 9 of the Rules and its power of delegation under this clause, to any person or committee mentioned in subsection 36(1) of the Governance Act (Note: due to the legal principle regarding impermissible sub-delegation, the current restriction on the MSB Board delegating its powers under Part 9 to review decisions of the Board or a Reconsideration Committee will continue once CSC assumes responsibility for the administration of the MSB Scheme).

Item 2 amends various Rules in the Schedule to the Trust Deed.

Rule 2 is amended to:

- a) incorporate the expressions:
 - i) ***aggregated service*** (to reflect changes to Schedule 8);
 - ii) ***CSC*** (as part of the new single trustee arrangements);
 - iii) ***Reserves*** (to update the reference);
 - iv) ***trainee allowance*** (which now forms part of salary), and
- b) to remove the expressions:
 - i) ***Determination No. 6 of 1992*** (this Determination has been repealed);
 - ii) ***Emergency Forces*** (an outdated reference);

- iii) *interim benefit* (an expired reference);
 - iv) *interim salary fortnight contribution* (an expired reference);
 - v) *Q & S component* (no longer necessary as the reference to the qualifications and skill component of particular allowances is part of salary defined in Part 10 of Schedule 1);
 - vi) *Reserve Forces* (an outdated reference);
- c) to add “(see Part 10)” after *salary* to ensure consistency in setting out how other expressions in the Rule that are not in Part 1 of the Glossary in Schedule 1 are presented; and
 - d) re-order the definitions to place those that begin with a figure first (for example, *1948 Act* - there has been no change to these particular definitions).

Subrule 4(1A) is omitted as it is an expired provision. It was initially inserted to deal with what was described as an administrative “flywheel effect” created when the contributions of a member of the DFRDB Scheme who had elected to transfer to the MSB Scheme in 1991 or 1992 were paid to the consolidated revenue instead of to the MSB Fund.

Subrules 9(1) and (2) have been substituted to omit a reference to *interim salary fortnight contribution*. The reference was inserted at the same time **subrule 4(1A)** was inserted to address the administrative “flywheel effect” and is now an expired reference.

Subrule 10(1A) provided that the Department was not required to pay an employer contribution in relation to an *interim salary fortnight contribution* because a member contribution would not have been paid into the MSB Fund. As the reference to an *interim salary fortnight contribution* is being omitted, the subrule is amended to omit that reference.

Part 2A (Rules 11A and 11B) is being omitted as an expired Part. This Part was included to provide for the unitisation of the MSB Fund on 1 July 2002. **Rule 11A** required the MSB Board to establish a new Investment Division (comprising the MSB Fund immediately before 1 July 2002) and to divide that Investment Division into units. **Rule 11B** provided for the MSB Board to establish and maintain accounts for each unitised member at 1 July 2002.

Subrules 11C(1) and (2) are amended to remove the reference to the commencing date of unitisation of the MSB Fund. There is no continuing need to refer to this date.

Subrule 11C(5) is omitted as a consequence of the omission of **Rule 11A**. The subrule referred to the Investment Division, comprising the MSB Fund immediately before 1 July 2002, that was established at 1 July 2002.

Subrule 11G(1) has been amended to make it clear that CSC must determine an asset value of any Investment Division that is established.

Subrule 11M(1) is amended to omit references to the commencing date of unitisation of the MSB Fund.

A note is inserted after **subrule 11Q(1)** to ensure an investment nomination received under expired transitional provisions in **Part 15**, that was in force immediately before **Part 15** expired, continues in force.

Rule 11ZB sets out the type of information to be provided to affected members at least one month before any changes to Investment Divisions are made by CSC. It was never intended that the information set out in **Rule 11ZB** be provided in circumstances where day to day changes to investment strategies are made to address vagaries in the markets, for example, where the changes do not impact the overall investment objective or the overall level of risk and return that has been decided would apply for each strategy.

Subrule 11ZB(1) makes it clear that CSC is only required to notify members at least one month before making the changes identified at **Subrule 11C(2)** and **Rules 11E** and **11L**. This is consistent with the requirement in **Subclause 10(4C)** of the Trust Deed.

The note under the heading “Members’ benefits” at **Part 3** is amended to clarify that a “member’s benefits” (in lieu of “a member benefit”) may have been affected by a family law superannuation split. This removes an ambiguity in the current wording (a “member benefit” is a separate component of a member’s total entitlements in the scheme).

Rule 16 acted as a restraining mechanism on the resignation of members during the first 2 years after transferring from the DFRDB Scheme in 1991 or 1992. It is an expired Rule and is omitted. As a consequence, a reference in **Schedule 11** to the definition of *pre-commencement notional interest* in **Rule 16** is removed.

Rule 26A is inserted to make it clear that a Family Law split of an invalidity benefit is to be taken into account when an invalidity retiree is reclassified under **Rule 23** subsequent to the split (that is, the recalculated invalidity pension payable on reclassification is based on the reduced invalidity pension that was calculated and paid as a result of the split). This complements a change to the Family Law superannuation interest splitting arrangements in **Part 13** (see new **subrule 89A(2)**).

Paragraph 32(1)(a), **Subrule 32(1A)** and **Subrule 32(3)** apply to a DFRDB Scheme member who transferred to the MSB Scheme in 1991 or 1992 and who retired within 1 year of the transfer because of a medical condition that pre-dated the member’s entry into the Defence Force. The reference to *other than a transferred person* in **Paragraph 32(1)(a)** is omitted and **Subrules 32(1A)** and **(3)** are omitted as they have expired.

Rule 39 originally provided for the disposal of the member benefit of a deceased serving member, *successively*:

- i) to the spouse; or, if no spouse,

- ii) to the eligible child or children; or, if neither a spouse nor eligible child,
- iii) to a dependant who is a beneficiary under the deceased person's will; or, finally,
- iv) to the deceased person's personal representative.

The Military Superannuation and Benefits Amendment Trust Deed 2004 (No 1) inserted **Subrules 39(ba)** and **39(bb)** with a view to mirroring Family Law changes that were made by **Part 12**, in particular, **Rule 88**.

In fact, **Rule 88** deals with the disposition of an Associate A, Associate B or ancillary benefit held for a *non-member spouse*. It has no relevance to the disposition of a deceased member's member benefit and is inconsistent with the requirements for the disposition of a deceased member's employer benefit at **Rule 40**, albeit that a child's pension is payable under this rule.

Subrules 39(ba) and **39(bb)** are omitted to reflect the original intent for the disposition of a deceased member's member benefit. However, **Subrules 39(a)**, **39(b)** and **39(c)** are changed to reflect the fact that a deceased member may have more than one spouse who satisfies the definition in **Schedule 1** of the Rules of a *spouse who survives a deceased person*. This latter change is consistent with the change being made to **Rule 47**.

Subrules 44(c) and **(d)** are amended to ensure consistency and reflect the fact that a member's retirement disabilities could be either physical or mental (see **Paragraphs 22(2)(c)**, **23(3)(c)**, **Subrule 23(1)** and the definition of *invalidity* in the Glossary at **Schedule 1**).

The current **Rule 47** only provides for the payment of a benefit to each of two spouses (each is to receive a minimum of 37.5% of the member benefit (if any) and 37.5% of the employer benefit. The Rule is silent on how the balance of the member and employer benefit is to be distributed to the two spouses, but it is usually distributed at the discretion of the trustee having regard to the financial needs of the respective spouses). This rule is unusually restrictive, could potentially disadvantage a spouse where there is more than two spouses and is not in keeping with practices within the broader superannuation industry.

Subrules 47(1) and **(3)** are amended to give CSC the power to determine to whom to pay a benefit when a deceased member or deceased retirement pensioner is survived by more than one spouse (for example, CSC may, in its discretion, decide to pay the benefit to only one spouse or to divide the benefit between the spouses, not necessarily in equal portions). New **Subrule 47(4)** is inserted to reflect that the spouses of a deceased member or a deceased retirement pensioner cannot elect to convert an employer benefit of \$5 000 or less to a pension, to avoid the expense of having to pay small or insignificant amounts of pension. This is consistent with other Rules (see **Subrules 14(4)**, **51(3)**, **52(2)**, **52(3)**, new **54(5)** and **Rule 65B**).

Paragraph 51(1)(c) is amended to use present tense *the date on which CSC so decides*. This brings the words in line with what is written at **Paragraph 87(2)(a)**.

A superannuation benefit can only be paid if a condition of release set out in Schedule 1 of the *Superannuation Industry (Supervision) Regulations 1994* is satisfied. Item 107 of Schedule 1 of those regulations provides for the release of part of a benefit on compassionate grounds if the regulator, the Australian Prudential Regulation Authority, determines that a payment can be made on those grounds. However, the final decision to release the benefits rests with the trustee.

Paragraph 51(1)(e) is amended to make it clear that the part of a preserved benefit released on compassionate grounds becomes payable on the date CSC approves payment of the benefit, which will necessarily be after the date that the regulator determines the benefit can be released on compassionate grounds.

Paragraph 52(1)(a) is amended to make it clear that the employer benefit is payable from the day CSC receives all necessary information (to enable a payment to be made) in an election to have the employer benefit included in a preserved benefit paid.

New **Subrule 54(5)** is inserted to ensure that a spouse cannot elect to convert an employer benefit of \$5 000 or less to pension to avoid the expense of having to pay small or insignificant amounts of pension. This is consistent with other Rules (see **Subrules 14(4), 47(4), 51(3), 52(2), 52(3)** and **Rule 65B**). Current **Subrule 54(5)** is renumbered as a consequence of the insertion of this new subrule.

Paragraph 55(1)(aa) is being amended to change the reference to *subparagraphs 1(a) or 3(a) of Schedule 3* to a reference to *subparagraphs 2(a) or 4(a) of Schedule 3*. Military Superannuation and Benefits Amendment Trust Deed 2007 (No.2) substituted new paragraphs 1, 2, 3 and 4 in Schedule 3 to provide clarity to the method used to calculate maximum benefits limits. Unfortunately, the reference in **paragraph 55(1)(aa)** was not changed to reflect the fact that subparagraphs 1(a) and 3(a) of Schedule 3 were incorporated into the new subparagraphs 2(a) and 4(a) respectively of Schedule 3.

Subrule 58(2) has been changed to correct a drafting error (paragraph (c) now immediately follows paragraph (b) instead of appearing after the words *became payable after 16 June or 16 December in the preceding half-year, the person is not entitled to the increase*).

The heading to **Rule 61A** is amended to remove the reference to *pensions* as the rule only applies to the indexation of *certain unfunded preserved benefits* (see heading to **Division 3**).

Rule 61A is amended to correct a drafting error. Military Superannuation and Benefits Amendment Trust Deed 2001 (No. 1) split **Division 2** of **Part 6** to allow for twice yearly indexation of pensions. That Division previously provided for the annual indexation of both pensions and unfunded preserved benefits.

Division 3 of **Part 6** was added at the same time to provide for the continued annual indexation of unfunded preserved benefits. **Division 3** of **Part 6** was intended to comprise the clauses previously included in **Division 2** of **Part 6** relating to the annual indexation of unfunded preserved benefits, but did not pick up a change to the

definition of "B" in the formula that was made by Item 16 of Instrument 2 of 1993 to correct an earlier drafting error.

The definition of "B" in the formula in **Subrule 61A(2)** is changed to reflect the earlier correction made by Item 16 of Instrument 2 of 1993. No one is disadvantaged by this change as the administrator, ComSuper, has been indexing unfunded preserved benefits in line with the earlier change.

Rule 65B is amended to include a reference to new **Subrules 47(4)** and **54(5)** and to correct a reference (to **Subrule 51(3)** in lieu of **51(2)**). The Rule removes the expense of having to pay small or insignificant amounts of pension.

Paragraph 76(1)(b) is amended to allow a Committee, in addition to CSC, to be able to determine whether special circumstances exist that would justify accepting an application for reconsideration of a delegate's decision after the expiration of the 30 day period specified. This is inserted to facilitate more flexible administrative arrangements by removing sole responsibility for this decision making process from CSC. It is in line with the requirement that CSC must refer any application for reconsideration of a delegate's decision to a Committee and may request the Committee to affirm, vary or set aside a decision of a delegate.

Paragraph 87(2)(b) is amended to make it clear that the part of an associate A benefit, an associate B benefit or an ancillary benefit released on compassionate grounds becomes payable on the date CSC approves payment of the benefit, which will necessarily be after the date that the regulator determines the benefit can be released on compassionate grounds. This is for the same reason and to be consistent with the change to **Paragraph 51(1)(e)**.

Part 13 incorporates Family Law superannuation interest splitting provisions for MSB scheme benefits in both growth and payment phases. The Part relies on valuation methodologies set out in the Family Law (Superannuation) Regulations and scheme specific valuation methodologies that have been developed by the Australian Government Actuary.

The Part seeks to identify specific entitlements of a member spouse that may be subject to a splitting agreement or splitting order. However, the Part does not deal with a situation where a member spouse may have a preserved member benefit, but also be in receipt of a pension entitlement (for example, an invalidity benefit). It also does not address the situation where an invalidity benefit that has been subject to a split is subsequently changed as a result of a reclassification of the member under **Rule 23**.

It is not possible to identify every scenario that may arise as a result of a Family law superannuation interest split, so new **Subdivision 1** is added to **Division 2** (as a consequence, the other subdivisions within **Division 2** are renumbered). New **Subrule 89A(1)** is inserted to provide a general rule to enable CSC to obtain (and have regard to) benefit reduction factors and methodologies from an actuary in circumstances where there are none to address specific circumstances. New **Subrule 89A(2)** is inserted to ensure that whenever the invalidity classification of a member whose invalidity benefits have been subject to a split is changed under

Rule 23, the Family Law split is to be taken into account when determining any new invalidity entitlement.

Paragraph 90(1)(c) is omitted as it precludes the operation of **Rule 90** in circumstances where a pension is being paid, but the member has a preserved member benefit that can only be paid as a lump sum. New **Subrule 91(9)** is inserted to provide for an actuary to determine benefit reduction factors for splitting an ancillary benefit, an associate A benefit or an associate B benefit. New **Subrule 95(4)** is inserted to provide for the splitting of a preserved benefit, an ancillary benefit or both when a member spouse is also in receipt of a pension.

Part 15 contains provisions for the reallocation of existing amounts of ancillary benefit in a person's account prior to 1 August 2005. It ceased to have effect on 31 January 2006. It is omitted as an expired Part.

Schedule 1 Glossary

A definition of *aggregated service* is included. The definition refers to the interpretation of that term in **Part 6** of **Schedule 8**.

The definition of *Board* is amended to reflect the changes brought about as a result of the merged board arrangements.

A definition of *CSC* is included to refer to the entity that continues in existence by section 4 of the *Governance of Australian Government Superannuation Schemes Act 2011*.

The definition of *Determination No. 6 of 1992* is omitted as this determination was repealed by *Determination No. 15 of 2008*. There is no need to specifically refer to *Determination No. 15 of 2008* in light of changes to the definition of *salary* in **Part 10**.

The definition of *Emergency Forces* is omitted as the term no longer exists in the *Defence Act 1903* following amendments to that Act by the *Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001*.

The definitions of *flying allowance*, *service allowance*, *special action forces allowance*, *specialist operations allowance* and *submarine service allowance* are amended to be consistent with the definition of *higher duties allowance*. The definitions reflect that these allowances are determined under Part IIIA of the *Defence Act 1903*.

The definition of *Investment Division* is amended to remove a reference to **Rule 11A** which is omitted.

The definition of *Fund* is amended to reflect the new merged board arrangements that vest the Fund in CSC from 1 July 2011.

The definitions of *interim benefit* and *interim salary fortnight contribution* are omitted as these are expired references (see also amendments to **subrules 4(1A), 9(1) and (2)**).

The definition of *Q & S component* is omitted as the term is no longer necessary - the reference to the qualifications and skill component of particular allowances is part of salary defined in **Part 10**.

The definition of *Reserve Forces* is omitted as the term no longer exists in the *Defence Act 1903* following amendments to that Act by the *Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001*.

A definition of *Reserves* is inserted to reflect what is included in the *Defence Act 1903* following amendments to that Act by the *Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001*.

A definition of *trainee allowance*, determined under Part IIIA of the *Defence Act 1903*, is added as this allowance forms part of *salary* which is defined in **Part 10**.

The definitions are re-ordered to place those that begin with a figure first (for example, *1948 Act* - there has been no change to these particular definitions).

Part 3 and **Part 3A** are amended to remove outdated references to *Emergency Forces* and *Reserve Forces* and to replace those references with a reference to **Reserves** to reflect changes to the *Defence Act 1903* following amendments to that Act by the *Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001*.

Part 5 is amended to reflect changes that were made to the *Defence Force Retirement and Death Benefits Act 1973* by the *Superannuation Legislation Amendment Act 2007* to improve access to reversionary benefits in certain circumstances where a retirement pensioner commenced a marital or couple relationship after age 60. Those changes were intended to apply to the MSB scheme.

Amended **section 8** of **Part 5** identifies a *deceased person* as a member, a former member or a retirement pensioner. Amended **Section 9** of **Part 5** simply identifies a spouse who survives a deceased person as someone who had a marital or couple relationship with the deceased person at the time of the deceased person's death. It removes any restriction that precluded a person who had a marital or couple relationship with a retirement pensioner from being identified as a spouse who survives a deceased person.

Amended **Section 10** of **Part 5** removes any restriction on the payment of a reversionary benefit where a marital or couple relationship that commenced after age 60 does not last for three years prior to the deceased person's death (**Subsection 10(c)** is omitted).

The heading to **Section 11** of **Part 5** is amended to make it more meaningful. **Subparagraph 11(1)(b)(i)** is also amended to make a reference to *retirement pensioner* in lieu of *member*. **Section 11** provides for the pro-rata of a reversionary

pension where the marital or couple relationship that began after the deceased person became a retirement pensioner did not last for three years prior to the deceased person's death. This reflects the changes to the *Defence Force Retirement and Death Benefits Act 1973*.

Subsection 18(1) of Part 10 has been amended to reflect that the *salary* of a member on a particular day is set out in a determination under Part IIIA of the *Defence Act 1903*. The qualifications and skill components of the identified allowances at **Paragraph (e)** have formed part of *salary* for some time, having been gradually included as *salary* in determinations under Part IIIA of the *Defence Act 1903* over a period of time. The note that has been added identifies the date that the last of the qualifications and skill components of an allowance mentioned in **Paragraph (e)** were included as *salary*.

Subsection 18(2) of Part 10 has been amended to include the Director of Military Prosecutions as a statutory office holder whose remuneration is determined under the *Remuneration Tribunal Act 1973*.

Original **subsection 18(3) of Part 10** is omitted as the need to refer to a *rank* is no longer required. New **Subsection 18(3) of Part 10** ensures that only those allowances mentioned in **Paragraphs 18(1)(b), (c) and (d)** and the qualifications and skill components of the allowances mentioned at **Paragraph 18(1)(e)** form part of *salary*.

Schedule 8 Calculation of employer benefit

Original **Parts 2 and 4 of Schedule 8** are omitted as 100% of benefits vest in a member. These Parts are no longer required as they provided for different vesting rates depending on length of service.

Part 3 has now been incorporated into **Part 1** and as a consequence, **Part 5** now only deals with the calculation of an employer benefit for members who have reached their maximum benefit limit.

Schedule 11 Annual rates of interest applicable in respect of certain unfunded amounts

Clause 1 of this Schedule refers to *pre-commencement notional interest* in **Subrule 16(1)**. This reference is being removed as Rule 16 is being omitted as an expired Rule.

This is a legislative instrument for the purpose of the *Legislative Instruments Act 2003*.

The administrator, ComSuper, and Defence Legal have been consulted in relation to these amendments. The Military Superannuation and Benefits Board of Trustees No. 1 has agreed with the amendments reflected in the revised Deed.

A regulation impact statement is not required as these are clarifying amendments.

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