

MILITARY SUPERANNUATION AND BENEFITS ACT 1991
MILITARY SUPERANNUATION AND BENEFITS AMENDMENT (TRUST
DEED – ADF SUPER CONSEQUENTIAL) INSTRUMENT 2016

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Defence

1. On 1 July 2016, the new military superannuation scheme for members of the Australian Defence Force (ADF), ADF Super, will commence. The current military superannuation scheme, the Military Superannuation and Benefits Scheme (MSBS), will close to new members.
2. When ADF members of the Permanent Forces and Reserves rendering continuous full-time service in MSBS retire from the ADF, they preserve their MSBS employer benefit. Former ADF members aged 55 or over may take their MSBS preserved employer benefit as a lump sum or elect to convert it to a pension.
3. The introduction of ADF Super on 1 July 2016 means that ADF members in MSBS will be able to transfer from MSBS to ADF Super. When ADF members transfer from MSBS to ADF Super, their MSBS employer benefit will be preserved in a similar way as if that ADF member had retired from the ADF.
4. Section 5 of the *Military Superannuation and Benefits Act 1991* provides that the Military Superannuation and Benefits Trust Deed (the Trust Deed) may be amended by legislative instrument signed by the Minister, with the consent of the Commonwealth Superannuation Corporation (CSC), the trustee of MSBS.
5. The purpose of this Instrument is to amend the Trust Deed to ensure that, after 1 July 2016, ADF members with an MSBS preserved employer benefit who are age 55 or over, must continue to retire from the ADF in order to access their MSBS preserved employer benefit.
6. CSC and Defence Legal have been consulted in relation to these amendments.
7. A regulation impact statement is not required as these are clarifying and minor administration amendments to facilitate ease of administration.

This Instrument

8. **Section 1** provides that the name of the Instrument is the *Military Superannuation and Benefits Amendment (Trust Deed – ADF Super Consequential) Instrument 2016*.
9. **Section 2** provides for the commencement of this Instrument, as set out in the table. The whole of this Instrument is to commence on 1 July 2016, the same date as the commencement of ADF Super.
10. **Section 3** provides the Instrument is made under section 5 of the *Military Superannuation and Benefits Act 1991*.
11. **Section 4** provides that the instruments referred to in the Schedule (the Trust Deed) are amended or repealed as set out in items in the Schedule and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments – *Military Superannuation and Benefits Trust Deed*

12. **Item 1** amends **subrule 51(1)** which provides for the payment of a MSBS preserved employer benefit in specific circumstances before a person with a preserved employer benefit reaches the age of 55. One of the circumstances is under **paragraph 51(1)(c)**. Under **paragraph 51(1)(c)** a benefit may be paid where CSC determines the member is unlikely ever to be able to work again in employment for which the person is reasonably qualified by education, training or experience or for which the person could reasonable be qualified after retraining because of physical or mental incapacity.
13. The amendment to **subrule 51(1)** makes clear that any payment of a preserved employer benefit is subject to new **subrule 51(1AA)**.
14. **Item 2** inserts new **subrule 51(1AA)** in **rule 51**. New **subrule 51(1AA)** provides that, where a person is still a current member of the Permanent Forces or is a member of the Reserves rendering continuous full-time service, **paragraph 51(1)(c)** does not apply.
15. Once a person ceases to be a member of the Permanent Forces or a member of the Reserves rendering continuous full-time service because of retirement from the ADF or other reason, they will again be eligible to receive the payment of a MSBS preserved employer benefit under **paragraph 51(1)(c)**.

16. **Item 3** amends **subrule 52(1)** which provides for the payment of a MSBS preserved employer benefit to a person who has reached the age of 55.
17. **Item 4** inserts new **subrule 52(1A)** in **rule 52**. New **subrule 52(1A)** provides that, where a person is still a current member of the Permanent Forces or is a member of the Reserves rendering continuous full-time service, **subrule 52(1)** does not apply.
18. Once a person ceases to be a member of the Permanent Forces or a member of the Reserves rendering continuous full-time service because of retirement from the ADF or other reason, they will again be eligible to receive the payment of a MSBS preserved employer benefit under **subrule 52(1)**.

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

STATEMENT OF COMPATABILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Military Superannuation and Benefits Amendment (Trust Deed – ADF Super Consequential) Instrument 2016

This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 4 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Instrument

When members of the Permanent Forces and Reserves rendering continuous full-time service in the Military Superannuation and Benefits Scheme (MSBS) retire, they preserve their MSBS employer benefit. Former ADF members age 55 or over may elect to convert their preserved MSBS employer benefit to a pension.

The introduction of the new military superannuation scheme, ADF Super, on 1 July 2016, means that ADF members in MSBS will be able to transfer from MSBS to ADF Super. When ADF members transfer from MSBS to ADF Super, their MSBS employer benefit will be preserved in a similar way to if that ADF member had retired from the ADF.

Schedule 1 of this Instrument amends Rules 51 and 52 of the *Military Superannuation and Benefits Trust Deed*. The purpose of the amendments is to ensure that, after 1 July 2016, ADF members with an MSBS preserved employer benefit who are age 55 or over, must continue to retire from the ADF in order to access their MSBS preserved employer benefit.

Human rights implications

This Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Instrument is compatible with human rights.