



## Military Superannuation and Benefits Amendment Trust Deed 2004 (No. 2)

I, MALCOLM THOMAS BROUGH, Minister for Employment Services, for the Minister for Defence, make this Trust Deed under subsection 5(1) of the *Military Superannuation and Benefits Act 1991*.

Dated 14/6/2004

Minister for Employment Services  
for the Minister for Defence

**1 Name of Trust Deed**

This Trust Deed is the *Military Superannuation and Benefits Amendment Trust Deed 2004 (No. 2)*.

**2 Commencement**

This Trust Deed commences on 12 August 2004.

**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*.

Schedule 1 Amendments

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## Schedule 1 Amendments

(section 3)

- [1] **Rules, subrule 2 (1)**  
*after*  
allocation  
*insert*  
allowance
- [2] **Rules, subrule 2 (1)**  
*after*  
Department  
*insert*  
Determination No. 6 of 1992
- [3] **Rules, subrule 2 (1)**  
*after*  
financial year  
*insert*  
flying allowance
- [4] **Rules, subrule 2 (1)**  
*after*  
previous legislation  
*insert*  
Q & S component
- [5] **Rules, subrule 2 (1)**  
*after*  
SIS Regulations  
*insert*  
special action forces allowance  
specialist operations allowance

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

*after*

Statistician

*insert*

submarine service allowance

[7] **Rules, paragraph 4 (5) (a)**

*omit*

the salary and allowances of a member in respect of a period are

*insert*

the salary of a member in respect of a period is

[8] **Rules, subrule 4 (7)**

*substitute*

(7) In a case to which paragraph (6) (b) applies, the member's salary for the purpose of calculating the contribution payable by the member is taken not to include an allowance unless:

- (a) the allowance was payable to the member on the day immediately preceding the commencement of the period; and
- (b) an appropriate authority of the Defence Force has notified the Board that, but for the member's absence on leave without pay, the allowance would have been payable to the member in respect of the whole of the period of his or her absence on that leave.

[9] **Rules, paragraph 8 (1) (b)**

*substitute*

- (b) the salary so assumed to be paid did not include an allowance unless:
  - (i) the allowance was payable to the member on the day immediately before the commencement of the period; and
  - (ii) an appropriate authority of the Defence Force has notified the Board that, but for the member's absence on leave without pay, the allowance would have been payable to the member in respect of the whole of the period of his or her absence on that leave.

[10] **Rules, paragraph 34 (1) (c)**

*substitute*

- (c) the salary of the member in respect of the period was forfeited under regulations made under the *Defence Act 1903*, and an amount equal to the amount of the salary so forfeited was not subsequently paid, and is not payable, under those regulations to him or her;

[11] **Rules, paragraph 40 (4) (b)**

*substitute*

- (b) the salary of the deceased member in respect of the period of absence without leave was forfeited under regulations made under the *Defence Act 1903*, and an amount equal to the amount of the salary forfeited was not subsequently paid, and is not payable, under those regulations to the deceased member's personal representative;

[12] **Rules, Schedule 1, Part 1, after definition of *allocation***

*insert*

***allowance*** means an allowance determined by the Defence Force Remuneration Tribunal under section 58H of the *Defence Act 1903*.

[13] **Rules, Schedule 1, Part 1, after definition of *Department***

*insert*

***Determination No. 6 of 1992*** means Determination No. 6 of 1992, Salaries, made under section 58H of the *Defence Act 1903*, as in force from time to time.

[14] **Rules, Schedule 1, Part 1, after definition of *financial year***

*insert*

***flying allowance*** means the allowance of that name established by Determination No. 7 of 1997, Flying Allowance, made under section 58H of the *Defence Act 1903*, as in force from time to time.

[15] **Rules, Schedule 1, Part 1, after definition of *previous legislation***

*insert*

***Q & S component***, of an allowance, means the qualifications and skill component of the allowance.

- [16] **Rules, Schedule 1, Part 1, definition of *salary***  
*substitute*  
*salary* has the meaning given by Part 10 of this Schedule.
- [17] **Rules, Schedule 1, Part 1, definition of *service allowance***  
*substitute*  
*service allowance* means the allowance of that name established under Determination No. 11 of 1994, Service Allowance, made under section 58H of the *Defence Act 1903*, as in force from time to time.
- [18] **Rules, Schedule 1, Part 1, after definition of *SIS Regulations***  
*insert*  
*special action forces allowance* means the allowance of that name established by Determination No. 11 of 2002, Special Action Forces Allowance, made under section 58H of the *Defence Act 1903*, as in force from time to time.  
*specialist operations allowance* means the allowance of that name established by Determination No. 19 of 2002, Specialist Operations Allowance, made under section 58H of the *Defence Act 1903*, as in force from time to time.
- [19] **Rules, Schedule 1, Part 1, after definition of *Statistician***  
*insert*  
*submarine service allowance* means the allowance of that name established by Determination No. 9 of 1995, Submarine Service Allowance, made under section 58H of the *Defence Act 1903*, as in force from time to time.
- [20] **Rules, Schedule 1, after Part 9**  
*insert*

**Part 10 Salary**

- 18 (1) Subject to this section, *salary*, in relation to a person who is a member of the Scheme on a particular day, means the sum of:
- (a) the annual rate of salary of the member on that day under Determination No. 6 of 1992, as in force from time to time; and
  - (b) for a member to whom service allowance is payable — an amount equal to the annual rate of the service allowance that is applicable in respect of service by the member on that day; and

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- (c) for a member to whom higher duties allowance is payable — an amount equal to the annual rate of the higher duties allowance that is applicable in respect of service by the member on that day; and
- (d) for a member to whom the Q & S component of:
- (i) flying allowance; or
  - (ii) special action forces allowance; or
  - (iii) specialist operations allowance; or
  - (iv) submarine service allowance;
- is payable — an amount equal to the annual rate of the Q & S component that is applicable in respect of service by the member on that day.

(2) For a member holding the office of Chief of the Defence Force, Vice Chief of the Defence Force, Chief of Navy, Chief of Army or Chief of Air Force on a particular day, *salary* means the annual rate of salary on that day of a holder of that office as determined by the Remuneration Tribunal under subsection 7 (3) of the *Remuneration Tribunal Act 1973*.

(3) A reference in this section to the annual rate of salary of a member on a day under Determination No. 6 of 1992 is taken to be a reference to the amount that would be the annual rate of salary of the member on that day under that Determination if the expression *rank*, when used in that Determination, had the meaning given to that expression by subsection 3 (1) of the 1973 Act and did not have the meaning given to that expression by that Determination.

*Note* The definition of *rank* in subsection 3 (1) of the 1973 Act is:

*rank*, in relation to a member of the Defence Force, means:

- (a) his substantive rank or, if he is appointed provisionally or on probation, the rank to which he is so appointed; or
- (b) if he is provisionally promoted to another rank—that other rank.

**[21] Rules, Schedule 2, paragraph 1 (a)**

*substitute*

- (a) the salary of a member in respect of a period was, on or after the date of his or her entry into the Scheme, forfeited, in whole or in part, under regulations made under the *Defence Act 1903*; and

**[22] Rules, Schedule 2, paragraph 1 (c)**

*omit*

and allowances

**EXPLANATORY STATEMENT**

**MILITARY SUPERANNUATION AND BENEFITS AMENDMENT TRUST  
DEED 2004 (No.2)**

**ISSUED BY THE AUTHORITY OF THE MINISTER FOR EMPLOYMENT  
SERVICES FOR THE MINISTER DEFENCE**

Subsection 5(1) of the *Military Superannuation and Benefits Act 1991* (the Act) provides, in part, that the Minister may amend the Trust Deed to change the Military Superannuation and Benefits Rules (MSB Rules), by a signed instrument which, by subsection 49(1) of the Act, is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

The Schedule to the Trust Deed made by the Minister for Employment Services under section 5 of the Act contains 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 member benefits which includes employer contributions.

The Military Superannuation and Benefits Amendment Trust Deed 2004 (No.2) removes a perceived inequity in the calculation of ADF members' superannuation entitlements by including certain allowances in the description of what constitutes salary for superannuation purposes.

Schedule 1 Part 1 of the MSB Rules previously defined salary for superannuation purposes. A members salary, as previously prescribed included the annual rate of pay applicable to the person on that day as prescribed by the Defence Force Retirement and Death Benefits Act 1973, Service Allowance and Higher Duties Allowance, but no other allowances. The major allowances in the nature of pay are Flying Allowance, Submarine Service Allowance, Specialist Operations Allowance, and Special Action Forces Allowance. Each allowance has a component paid for "Qualification and Skill" (Q&S). The Q&S component is payable during the period in which the member utilises the relevant qualification and skill and for an additional period of up to six years pursuant to meeting eligibility criteria.

A small proportion of appropriately qualified ADF members receive qualification and skill allowance components for substantial periods of their ADF employment. The allowance may constitute a significant proportion of a member's take home pay and is relevant for the purposes of calculating superannuation surcharge but was not previously relevant for the purpose of determining superannuation entitlements. There was a significant perception of inequity amongst ADF members in respect of this issue.

In August 2000, the Government endorsed a review of ADF remuneration arrangements, ('the Nunn Review'). The Report of the Nunn Review was released in August 2001. One of the recommendations was for the 'rolling in' of Q&S allowances into superannuable

salary. In March 2004 the Government agreed that the Q&S components of major salary related allowances be made relevant for the purpose of determining superannuation entitlements.

Military Superannuation and Benefits Amendment Trust Deed 2004 (No 2) amends the definition of salary contained within the MSB Rules, to include the Q&S components of Flying, Special Action Forces, Specialist Operations and Submarine Service Allowances, as determined pursuant to s 58H of the Defence Act, for the purposes of calculating superannuation entitlements.

**Clause 1 – Name of Trust Deed**

This clause is formal

**Clause 2 – Commencement**

This clause provides for commencement of the amendment to Schedule 1 from the 12 August 2004.

**Clause 3 – Amendment of Military Superannuation and benefits Trust Deed**

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 include the qualification and skill elements of Flying, Submarine Service, Specialist Operations and Special Action Forces Allowances as determined pursuant to s. 58H of the Defence Act, in the definition of salary.

**Item 1 – Rules, subrule 2(1)**

This item inserts the term 'allowance' in the list of expressions.

**Item 2 – Rules, subrule 2(1)**

This item inserts the term 'Determination 6 of 1992 in the list of expressions.

**Item 3 – Rules, subrule 2(1)**

This item inserts the term 'flying allowance' in the list of expressions.

**Item 4 – Rules, subrule 2(1)**

This item inserts the term 'Q & S component' in the list of expressions.

**Item 5– Rules, subrule 2(1)**

This item inserts the terms 'specialist action forces allowance' and 'special operations allowance' in the list of expressions.

**Item 6 – Rules, subrule 2(1)**

This item inserts the term 'submarine service allowance' in the list of expressions.

**Item 7 – Rules, paragraph 4 (5) (a)**

This item removes separate reference to allowances.

**Item 8 – Rules, subrule 4 (7)**

This item removes specific reference to Higher Duties Allowance as allowances have been subsumed in the new definition of 'salary' at Schedule 1 Part 10 (see item 20).

**Item 9 – Rules, paragraph 8 (1) (b)**

This item removes specific reference to Higher Duties Allowance as allowances have been subsumed in the new definition of 'salary' at Schedule 1 Part 10 (see item 20).

**Item 10 – Rules, paragraph 34 (1) (c)**

This item removes separate reference to allowances as allowances have been subsumed in new definition of 'salary' at Schedule 1 Part 10 (see item 15).

**Item 11 – Rules, paragraph 40 (4) (b)**

This item removes separate reference to allowances as allowances have been subsumed in new definition of 'salary' at Schedule 1 Part 10 (see item 15).

**Item 12 – Rules, Schedule 1, Part 1, definitions**

This item inserts a definition of 'allowance'.

**Item 13 – Rules, Schedule 1, Part 1, definitions**

This item inserts a definition of DFRT Determination 6 of 1992.

**Item 14 – Rules, Schedule 1, Part 1, definitions**

This item inserts a definition of 'Flying Allowance'.

**Item 15 – Rules, Schedule 1, Part 1, definitions**

This item inserts a definition of 'Q&S component'.

**Item 16 – Rules, Schedule 1, Part 1, definitions**

This item inserts a definition of salary by reference to Part 10 of the same schedule.

**Item 17 – Rules, Schedule 1, Part 1, definitions**

This item clarifies the definition of 'Service Allowance' by reference to Determination 11 of 1994.

**Item 18 – Rules, Schedule 1, Part 1, definitions**

This item inserts definitions of Special Action Forces and Specialist Operations Allowances.

**Item 19 – Rules, Schedule 1, Part 1, definitions**

This item inserts a definition of Submarine Service Allowance.

**Item 20 – Rules, Schedule 1, Part 10**

This item inserts a new definition of salary that includes, salary, Service Allowance, Higher Duties Allowance and the qualification and skill components of Flying Allowance, Special Action Forces, Specialist Operations and Submarine Service Allowance.

**Item 21 – Rules, Schedule 2, paragraph 1 (a)**

This item removes separate reference to ‘allowances’ as they are defined as part of salary at Part 10 of Schedule 1.

**Item 22 – Rules, Schedule 2, paragraph 1 (c)**

This item removes separate reference to ‘allowances’ as they are defined as part of salary at Part 10 of Schedule 1.

Authority: Subsection 5(1) of  
the *Military  
Superannuation  
and Benefits Act  
1991*