

1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

MILITARY SUPERANNUATION AND BENEFITS BILL 1991

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Defence
Science and Personnel, the Hon Gordon Bilney, MP)

MILITARY SUPERANNUATION AND BENEFITS BILL 1991

GENERAL OUTLINE

1. The purpose of this Bill is to establish a new superannuation scheme for members of the Defence Force to be implemented from 1 October 1991. The Bill also provides for the payment of a retention benefit to certain members on completion of 15 years service to encourage them to continue serving until they complete 20 years service. The scheme is to be called the Military Superannuation and Benefits Scheme (MSBS).
2. The Bill provides for the following:
 - a. A trust deed - the form of which is set out in the Schedule to the Bill - which is to be executed by the Minister on behalf of the Commonwealth.
 - b. Certain members of the Defence Force to be members of the scheme and certain other members to be eligible to join the scheme.
 - c. Transfer arrangements to allow existing members to transfer to MSBS.
 - d. Contributions to be made by members and the Commonwealth and benefits to be paid to members.
 - e. Financial arrangements between the Fund set up under the trust deed and the Commonwealth.
 - f. The appointment of a Board of Trustees.
 - g. The Commissioner for Superannuation to be responsible for the provision of administrative services to the Board.
 - h. Commonwealth Funds Management Limited to manage the moneys in the Fund until such time as other arrangements (if any) are made.
 - i. The payment of a retention benefit to certain members who undertake to complete 20 years service.
3. In accordance with the Occupational Superannuation Standards Act 1987, the scheme is to be set up by a trust deed administered by trustees. The trust deed sets out the functions and powers of the Board of Trustees, and the Rules, contained in a schedule to the trust deed, specify details of the contributions to be made and benefits to be provided.
4. While the employer part of the benefits is largely unfunded, the 3 per cent productivity benefit will be funded from 1 October 1991.

5. The Bill amends the Defence Force Retirement and Death Benefits Act 1973 ("DFRDB Act") to give members of the scheme under that Act 13 months from 1 September 1991 in which to decide whether to join the new scheme.

FINANCIAL IMPACT

6. The introduction of MSBS has a number of financial impacts resulting from:

- a. The funding of MSBS member contributions.
- b. The funding of the 3 per cent productivity benefit for MSBS members.
- c. The provision of a retention benefit to members of the requisite rank who have completed 15 years service.
- d. The credit of notional interest to the DFRDB contributions of members transferring to the MSBS.
- e. Increased administrative costs during the MSBS implementation period including the provision of advice to members on their transfer options.
- f. The change in the form of the primary superannuation benefit from a pension in the DFRDB scheme to a lump sum in the MSBS.
- g. The deferral of payment of the MSBS employer-financed superannuation benefit until members reach 55 years of age.

7. It should be recognised that these costings are dependent on assumptions made about future behaviour and circumstances (such as transfer rates, commutation decisions and CPI increases), many of which cannot be tested against actual experience for many years.

Short and medium term impacts

8. There are bring-forward costs associated with the introduction of MSBS in the short and medium terms. These will result mainly from the funding of member contributions and the 3 per cent productivity benefit in MSBS, the provision of the retention benefit, and the transfer provisions.

9. The estimated net impact of the introduction of MSBS on annual budgetary outlays for Defence Force superannuation during the transitional period - that is, 1991-92 to 1994-95 - is as follows, in December 1990 prices:

	1991-92 \$m	1992-93 \$m	1993-94 \$m	1994-95 \$m
Net increase in cost - DFRDB and MSBS	149.00	158.00	205.00	209.00
Plus: MSBS implementation costs	2.8	0.4	0.01	0.01
Net financing requirement	151.8	158.4	205.01	209.01

Budgetary savings are expected to commence in about 35 years.

Longer term impacts - current Defence Force membership

10. The Australian Government Actuary and the consulting actuaries have forecast that the expected net long-term employer costs, after tax and social security clawbacks, for current members who join MSBS will be less than the projected net long-term employer costs of the DFRDB scheme for these members if they remained in that scheme.

Net employer liabilities for current Defence Force membership

11. The estimated net costs of superannuation for the past and future service of current members of the Defence Force are:

	Net cost (\$m - 1989)
DFRDB scheme	6,559
Both schemes after transfers to MSBS	5,869
Reduction in cost	690

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clauses 1 and 2 - Short title and commencement

12. These clauses provide for the short title and commencement of the legislation.

13. Certain provisions of the Bill are to commence on Royal Assent to enable the appointment of the Board of Trustees so that the necessary arrangements can be made for the commencement of the scheme on 1 October 1991. Section 61, which inserts transfer provisions into the DFRDB Act, commences on 1 September 1991. The remaining provisions are to commence on 1 October 1991.

Clause 3 - Interpretation

14. This clause defines certain expressions used in the Bill.

PART 2 - THE TRUST DEED

Clause 4 - Deed to establish Superannuation Scheme etc.

15. **Subclause (1)** requires the Minister to establish the MSB scheme by a trust deed not later than 30 days after Royal Assent to the Bill and **subclause (2)** requires the trust deed to be in the form set out in the schedule to the Bill.

Clause 5 - Amendment of Trust Deed

16. **Subclause (1)** empowers the Minister to amend the trust deed by a signed instrument which, in accordance with paragraph 49(1)(a) of the Bill, would be a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

17. **Subclause (2)** provides that, where a provision as amended would cause the Fund not to comply with requirements under the Occupational Superannuation Standards Act 1987, that provision would be invalid.

PART 3 - MEMBERS OF SUPERANNUATION SCHEME

Clause 6 - Membership of Superannuation Scheme

18. **Subclause (1)** specifies the persons who are members of the MSB scheme. They are:

- a. Members of the Permanent Forces.

- b. Members of the Emergency or Reserve Forces on full time service for 12 months or more.
- c. Members of the Emergency or Reserve Forces on full time service for 3 months or more but less than 12 months who elect to become members of the scheme.
- d. Members of the Emergency or Reserve Forces on full time service for less than 3 months while on duty in an operational area who elect to become members of the scheme.

19. **Subclause (2)** prevents a person who is a member of the DFRDB scheme from being at the same time a member of the MSB scheme.

Clause 7 - Election by member of the Emergency Forces or Reserve Forces to be a member

20. **Subclause (1)** enables a member of the Emergency or Reserve Forces on full time service for 3 months or more but less than 12 months to elect to become a member of the scheme, and **subclause (2)** provides a similar entitlement to a member of those forces who is serving on full time service for less 3 months with a unit of the Defence Force allotted for duty in an operational area.

Clause 8 - Cases where person taken not to have ceased to be a member

21. This clause ensures that a person who, on ceasing to be a member, immediately again becomes a member is treated as having not ceased to be a member. This clause applies where, for example, a sailor, soldier or airman is discharged in order that he or she may immediately be appointed an officer, or a Permanent Forces member retires and immediately becomes a Reserve Forces member rendering full time service.

PART 4 - CONTRIBUTIONS

Clause 9 - Contributions of members to Superannuation Scheme etc, to be deducted from salary

22. This clause authorises the deduction of contributions from a member's salary and their payment to the Board.

Clause 10 - Contributions to Superannuation Scheme etc. by Department

23. **Subclause (1)** requires the Department to pay to the Board employer contributions that are payable by the Department.

24. **Subclause (2)** makes the Department liable to pay interest on overdue payments.

PART 5 - PAYMENTS OF BENEFITS**Clause 11 - Interpretation**

25. This clause is interpretative.

Clause 12 - Member benefits

26. This clause provides that, when a member benefit becomes payable, it is payable by the Board if it is fully funded. Otherwise the Board pays the funded portion to the Commonwealth and the Commonwealth pays the benefit.

Clause 13 - Employer benefits

27. This clause provides that, when an employer benefit becomes payable, the Board pays the funded portion to the Commonwealth and the Commonwealth pays the benefit.

Clause 14 - Preserved benefits

28. This clause provides that, when a preserved benefit becomes payable, **subclause (1)** provides for it to be paid by the Board if it is fully funded, otherwise (**subclauses (1) and (2)**) the Board pays the funded portion to the Commonwealth and the Commonwealth pays the benefit.

Clause 15 - Payment by or to the Commonwealth on reclassification of invalidity pensioner

29. **Subclause (1)** provides that, when an invalidity pensioner classified as class A or B is reclassified as class C, the Commonwealth pays the amount of the funded employer benefit to the Board.

30. **Subclause (2)** provides that, when an invalidity pensioner who was classified as Class A or B is reclassified as class C and is subsequently reclassified as Class A or B, the Board pays the funded portion to the Commonwealth.

Clause 16 - Payment by Commonwealth where an invalidity pensioner again becomes a member

31. Where an invalidity pensioner again becomes a member, the Commonwealth pays the funded employer benefit to the Board.

Clause 17 - Appropriation

32. This clause appropriates the Consolidated Revenue Fund in relation to payments by the Commonwealth under Part 5.

**PART 6 - THE MILITARY SUPERANNUATION AND BENEFITS BOARD
OF TRUSTEES No 1**

Clause 18 - Establishment

33. This clause establishes the Board of Trustees for the scheme.

Clause 19 - Incorporation etc.

34. **Subclause (1)** provides for the Board to be a body corporate, and **subclauses (2) and (3)** make provision for the Board's common seal.

Clause 20 - Functions etc.

35. **Subclause (1)** provides for the Board's functions to be set out in the trust deed and **subclause (2)** provides for the Board to be responsible for the general administration of the Act, other than Part 8 (which relates to the retention benefit).

Clause 21 - Membership of Board

36. **Subclause (1)** provides for the Board to comprise a part-time Chairperson and 4 other part-time trustees, and **subclause (2)** provides that they are to be appointed and hold office in accordance with the trust deed.

Clause 22 - Defective appointment not invalid etc.

37. **Subclause (1)** provides that the appointment of a person as, or to act as, Chairperson or trustee is not to be invalid because of a defect in the appointment, and **subclause (2)** provides that the actions of a person acting as Chairperson or trustee are not invalid in certain circumstances.

Clause 23 - Trustee Act of ACT to apply

38. This clause provides for the Trustee Act 1957 of the Australian Capital Territory to apply to the trustees acting as such.

Clause 24 - Exemption from taxation

39. Under **subclauses (1) and (3)**, the Board and the Fund (established under the trust deed) are not liable to taxation under:

- a. a Commonwealth law other than the Income Tax Assessment Act 1936; or
- b. a law of a State or Territory not applicable to the Commonwealth;

except where otherwise provided by the regulations.

40. **Subclause (2)** provides that income derived by the Board from its management and investment of the Fund is not taxable under State or Territory law.

Clause 25 - Application of Division 2 of Part XI of Audit Act

41. This clause modifies the application of Division 2 of Part XI of the Audit Act (which deals with the keeping of accounts by public authorities in accordance with commercial practice) to exclude the application of sections 63E (investment of money) and 63H (annual report and financial statements) of that Act, because the investment powers of the Board are contained in the trust deed and clause 26 of the Bill makes specific provision for the Board's annual report and financial statements.

Clause 26 - Annual report and financial statements

42. **Subclause (1)** requires the Board to report annually to the Minister on its performance and to provide financial statements regarding the Fund.

43. **Subclause (2)** requires the Board to first submit the financial statements to the Auditor-General who is required to report to the Minister on the proper keeping of the accounts, compliance with the Act and the trust deed, etc.

44. **Subclause (3)** requires the Minister to table in Parliament copies of the Board's report and financial statements and the Auditor-General's report.

45. Should the Board fail to report within 6 months after the end of a financial year, **subclauses (4), (5) and (6)** require the Board to give the Minister an interim report with interim financial statements and require the Minister to table copies of them in Parliament.

46. **Subclause (7)** requires any report of the Board under the clause to include particulars of any statement of government policy given to the Board during the year, the consideration given by the Board to the policy and any action taken by the Board.

PART 7 - COMMISSIONER FOR SUPERANNUATION

Clause 27 - Functions of Commissioner

47. Under **subclauses (1) and (2)**, responsibility for the provision of administrative services to the Board is vested in the Commissioner for Superannuation (an office established under the Superannuation Act 1976), who is required to act in accordance with the policies of, and directions given by, the Board.

48. **Subclause (3)** is a machinery provision deeming anything done by the Commissioner in this capacity to have been done by the Board.

Clause 28 - Other functions of Commissioner not to be prejudiced

49. This clause provides that the Commissioner is not required to do anything under the Act which would prejudice the performance of his or her functions under any other Act or regulations.

PART 8 - RETENTION BENEFIT

Clause 29 - Object of this Part

50. This clause states the object of Part 8, namely the provision of a retention benefit to certain members of the MSBS who have completed 15 years of continuous eligible service to induce them to serve for another 5 years.

Clause 30 - Interpretation

51. **Subclause (1)** defines expressions used in Part 8. Definitions of particular importance are:

"benefit computation day", which is the day from which the additional service, which a member who is paid retention benefit is required to render, begins to run.

"eligible member", which is discussed under clause 32 below.

"period of prospective service", which is the additional service which a member who is paid retention benefit is required to render.

"transferred member", who is a member who transfers to MSBS from the DFRDB scheme.

52. **Subclause (2)**, in effect, limits eligibility for retention benefit (where this depends upon a member holding a particular rank) to members who hold the rank substantively.

53. **Subclause (3)**, in effect, defines return of service obligation (ROSO), as meaning the period of service a member is bound to render who has been given certain expensive training, etc.

Clause 31 - Continuity of service

54. This clause provides that certain breaks in continuity of service are to be disregarded in calculating eligibility for retention benefit.

55. **Subclause (1)** is interpretative. **Subclause (2)**, **(3)** and **(4)** deal with certain periods of leave, and **subclause (5)** deals with the case of a person who ceases to be a member but immediately becomes a member again, for example a soldier who is discharged so that he or she may be appointed an officer.

Clause 32 - Eligibility for retention benefit

56. **Subclause (1)** sets out the general rule for eligibility for the retention benefit, namely that a person who is an eligible member is eligible if the member has completed 15 years continuous eligible service. In this connection:

"eligible member" is defined in clause 30 as, basically, a member of the MSB scheme who is:

- a. an officer and holds a rank not lower than Major or equivalent or was previously an enlisted member; or
- b. an enlisted member and holds the rank of Sergeant or equivalent; or
- c. a member declared by the Minister to be an eligible member. It is expected that it will be necessary to declare members who meet certain requirements in an employment category where the normal opportunities for promotion do not exist.

"eligible service" is defined in the Rules as, basically, service as a member of MSBS which counts as service for the calculation of "employer benefit" under the Rules.

57. **Subclause (2)** provides a special rule for members who are promoted to the required rank after completing 15 years' service.

58. **Subclause (3)** provides a special rule for persons who transfer from the DFRDB scheme to MSBS during the period 1 October 1991 - 30 September 1992.

Clause 33 - Election to receive retention benefit

59. **Subclauses (1)** and **(3)** provide that a person to whom the general rule will apply may, up to 90 days before becoming eligible, elect in writing to receive the benefit, and **subclauses (2)** and **(3)** provide that other members who become eligible may so elect within 90 days after becoming eligible. Since the election will contain an undertaking to render the required service, members will be required (**subclause (4)**) to use an approved form when making the election.

Clause 34 - Revocation of election

60. **Subclause (1)** enables a member who makes an election under subclause 33(1) to revoke the election at any time before the 90-day period expires. In other cases (**subclause (2)**) the election cannot be revoked .

Clause 35 - Payment of retention benefit

61. **Subclause (1)** provides for the benefit to be payable if the member elects to receive it and is medically fit for further service. A member may be found to be temporarily unfit, in which case **subclause (2)** revives the member's eligibility upon his or her regaining medical fitness. If the member does not regain medical fitness, he or she would be retired on the ground of invalidity. **Subclause (3)** is interpretative.

Clause 36 - Suspension of payment of retention benefit

62. In the admittedly unlikely event of a member with 15 year's service committing a service offence or a civil offence of so serious a nature as to justify the termination of his or her service if convicted, or the member's behaviour being so unsatisfactory as to cause his or her commanding officer to apply for the termination of the member's service, it is necessary to have the facility to withhold payment of the retention benefit pending the outcome of the case. **Subclauses (1)** and **(3)** empower the chief of staff or an authorised officer to order this and **subclauses (2)** and **(4)** cause the orders to lapse if the outcome is favourable to the member.

Clause 37 - Amount of benefit

63. This clause provides (**subclause (1)**) that the amount of the benefit is a year's salary unless (**subclause (2)**) the prospective period of service is less than 5 years, in which case a proportionate amount is payable. The amount paid is subject to normal rates of income tax.

Clause 38 - Payment of interest

64. Where payment of retention benefit is made but there has been a delay in payment under clause 35(2) (medical cases) or clause 36 (disciplinary cases), this clause provides for payment of interest on the retention benefit for the period of the delay. **Subclause (1)** deals with disciplinary cases and **subclause (2)** with medical cases.

Clause 39 - Appropriation

65. This clause appropriates the Consolidated Revenue Fund in relation to payments of retention benefit.

Clause 40 - Partial repayment of retention benefit

66. **Subclause (1)** provides that a member who resigns or whose service is terminated for a prescribed reason before the expiration of the period of prospective service is required to make a pro rata repayment of the retention benefit. **Subclause (2)** enables a repayment to be deducted from the member's Defence Force salary and allowances.

PART 9 - MISCELLANEOUS

Clause 41 - Commonwealth Funds Management Limited as investment manager of Fund

67. **Subclause (1)** provides for Commonwealth Funds Management Limited to be investment manager of the Fund's money available for investment and **subclause (2)** provides that the appointment may be terminated at any time.

68. **Subclause (3)** allows the Board to appoint another manager to manage a particular part of the Fund's money.

Clause 42 - Cost of administration of Act etc.

69. This clause provides for the costs of administration of the Act and the trust deed (other than the costs of the Board's management and investment of the Fund) to be met by the Commonwealth.

Clause 43 - Recovery of unpaid contributions etc.

70. **Subclause (1)** provides that the Board of Trustees may recover any money payable to it under the Act or the Rules (including unpaid contributions) in a court.

79. **Subclause (2)** enables any contributions remaining unpaid by a person at the time he or she ceases to be a member to be deducted by the Board of Trustees from the amount of any benefit payable to the person under the rules.

80. **Subclause (3)** provides that, where for any reason the Board of Trustees has paid to a person an amount of benefit that was not payable, the Board may recover the amount from the person.

Clause 44 - Payment of fees

81. **Subclause (1)** provides for a person who under the rules asks the Board of Trustees to reconsider one of its decisions to pay to the Commonwealth a fee prescribed in the regulations. This does not apply to a decision of a delegate as these are reviewable without payment of any fee.

82. Under **subclause (2)**, the regulations may provide for the refund of a fee.

Clause 45 - Assignment of benefits

83. This clause prevents a person from assigning a pension or other benefit payable under the scheme.

Clause 46 - Member etc bound by the Rules

84. This clause provides that a person who is or has been a member of the scheme, and the Commonwealth, are bound by the rules to the extent that the rules are applicable to them.

Clause 47 - Indemnification of trustees etc

85. **Subclause (1)** indemnifies against personal liability for anything done or not done, in good faith, by the following in the performance of their functions or duties:

- * A member of the Board of Trustees.
- * The Commissioner for Superannuation.
- * Staff assisting the Commissioner.

86. **Subclause (2)** provides that this does not preclude the Board of Trustees (as a body) from being subject to any action, etc.

Clause 48 - Financial institution not liable in respect of certain payments out of account of deceased pensioner

87. Where a pensioner dies and is survived by a spouse, the rate of pension payable to the spouse would normally be less than the rate payable to the pensioner, but the rules will provide for the spouse's pension to be payable at 100% of the pensioner's rate for 6 complete fortnights after the death of the pensioner.

88. Where a pensioner dies and pension payments are continued by the Board to the pensioner's account with a financial institution (because the Board has not been notified of the pensioner's death), the usual practice would be to recover the overpayment from the financial institution and then pay the amount recovered to the surviving spouse.

89. The rules provide for the Board to set off amounts paid by the financial institution to a surviving spouse from the pensioner's account during the 6 complete fortnights after the pensioner's death against the pension payments payable to the spouse. This clause indemnifies the financial institution against any liability for payments it makes from the pensioner's account to the surviving spouse in these circumstances, not exceeding the sum of the instalments of pension paid in the 6 fortnights after the death of the pensioner.

Clause 49 - Disallowable instruments

90. **Subclause (1)** provides for instruments made by the Minister which amend the trust deed or which declare persons to be members of the scheme to be disallowable instruments for the purposes of section 46A of the Acts Interpretation Act 1901. Under **subclause (2)**, the latter declarations are to be Statutory Rules for the purposes of the Statutory Rules Publication Act 1903.

Clause 50 - Tabling of statement of Government policy

91. Under subclause 3(3) of the trust deed, the Minister may give the Board of Trustees a statement of Government policy relevant to any functions of the Board with a request that the Board consider that policy in performing its functions. This clause requires the Minister to table in Parliament any such statement within 15 sitting days of having given the statement to the Board. Under subclause 26(7), the Board is required to report their response to any such statement.

Clause 51 - Delegation by Minister

92. This clause empowers the Minister to delegate any of his or her powers under the Act or regulations to the Board of Trustees or certain specified persons.

Clause 52 - Regulations

93. This clause enables regulations to be made under the Act.

**PART 10 - AMENDMENTS OF THE DEFENCE FORCE RETIREMENT AND
DEATH BENEFITS ACT 1973**

94. This Part makes the necessary amendments of the Defence Force Retirement and Death Benefits Act 1973 ("DFRDB Act") to:

- a. require contributing members of the DFRDB scheme to elect whether to remain in that scheme or join the MSB scheme;
- b. require pensioners under the DFRDB scheme who resume continuous full time service for not less than 3 months to make a similar election;
- c. make consequential amendments necessary to give effect to elections so made.

Clause 53 - Principal Act

95. This clause defines an expression used in Part 10 of the Bill to refer to the DFRDB Act.

Clause 54 - Interpretation

96. This clause amends section 3 of the DFRDB Act, which defines expressions used in that Act. The principal amendments are to the definition of "eligible member of the Defence Force" to exclude from that definition members who join MSBS.

Clause 55 (New section 5A)

New section 5A - Persons excluded from definition of "eligible member of the Defence Force"

97. This proposed section excludes (subsection (1)) from becoming contributors to the DFRDB scheme, persons who join the Defence Force on or after the commencement of MSBS with the exception (subsection (2)) of:

- a. Members of the DFRDB scheme who are released from service in order to contest an election and re-enter following failure to be elected.
- b. Re-entered DFRDB pensioners who elect under proposed new section 61B to be contributors to the DFRDB scheme rather than to MSBS.
- c. Re-entered DFRDB non-pensioners who re-enter within 90 days of previous retirement and elect to purchase their previous service.

Clause 56 - Commutation of retirement pay

98. Under section 24 of the DFRDB Act a member who retires and is entitled to a pension may commute a portion of the pension and be paid a lump sum. Subsection (1A) provides, in effect, that a re-entrant may not commute. With a change in policy allowing the re-entry of former invalidity pensioners, it is necessary that subsection (1A) should not apply to these re-entrants. This clause amends section 24 accordingly.

Clause 57 - Classification in respect of incapacity

99. Under section 30 of the DFRDB Act, the DFRDB Authority is required to classify members (with minor exceptions), who are retired on invalidity grounds, as class A, B or C, representing the degree of incapacity for civil employment. Under section 62 of that Act, if such a person recovers his or her health sufficiently to again join the Defence Force, his or her invalidity pay is cancelled. This clause amends section 30 to provide in such a case that the classification of the person under that section ceases to have effect.

Clause 58 (new sections 61B - 61D)**New section 61B - Election by recipient member intending to resume full-time service**

100. This proposed section requires pensioners, or persons entitled to deferred benefits, under the DFRDB Act who resume full time service for not less than 3 months to elect whether to become a member of the MSB scheme or, except in the case of members of the Emergency Forces or the Reserve Forces rendering service for less than 12 months, to become contributing members of the DFRDB scheme.

New section 61C - Recipient member in receipt of retirement pay who becomes member of MSB scheme.

101. This proposed section deals with the effect on the retirement pay of a retirement pensioner under the DFRDB scheme who joins the MSB scheme under new section 61B. **Subsection (1)** suspends the pensioner's DFRDB retirement pay and **subsection (2)** lifts the suspension when the pensioner ceases continuous full time service.

102. If a retirement pensioner dies while his or her retirement pay is suspended under subsection (1), subsection (3) provides, in effect, that benefits are to be payable to the deceased pensioner's spouse or children as if the deceased pensioner had been entitled to invalidity pay immediately before his or her death.

New section 61D - Recipient member on invalidity pay who becomes member of MSB scheme

103. This proposed section cancels the invalidity pay of an invalidity pensioner who becomes a member of the MSB scheme.

Clause 59 - Person entitled to deferred benefits again becoming a member etc. before benefits payable

104. Under section 78 of the DFRDB Act, deferred benefits become applicable to a member of the DFRDB scheme who retires from the Defence Force and enters public employment within 90 days and a transfer value does not become payable to the relevant superannuation scheme. This clause amends section 83 of the DFRDB Act so that the deferred benefits cease to be applicable if the person becomes a member of MSBS.

Clause 60 - Application of increase to suspended pension benefits

105. The DFRDB Act provides for pensions to be increased having regard to increases in the consumer price index. This clause amends section 98C of the DFRDB Act so that such increases will apply to pensions suspended under new section 61C.

Clause 61 (new Part XIII-TRANSFER TO MSB SCHEME)

106. This clause inserts a new Part XIII into the DFRDB Act to provide for transfers of members from the DFRDB scheme to MSBS. This clause will commence on 1 September 1991 in order to allow those members who wish to transfer to MSBS from the beginning of the scheme (1 October) to do so. Access to the retention benefit as soon as possible after 1 October will be an attraction for many members.

New section 132 - Election to remain member of scheme or to join MSB scheme

107. This proposed section requires members of the Defence Force who are "eligible members of the Defence Force" (ie members of the Defence Force who are rendering continuous full time service and are contributors to the DFRDB scheme) to decide whether or not to join MSBS.

108. **Subsection (1)** requires a person who is an eligible member of the Defence Force to elect to continue in the DFRDB scheme or to become a member of MSB. An election is required to be made on or before "election day" which, under **subsection (2)**, is 30 September 1992 or, if the member's service is due to terminate before that date, the due termination date.

109. **Subsection (3)** excludes a re-entered pensioner who is a contributing member under subsection 17(1A) of the DFRDB Act although he or she is rendering service for less than 3 months, and **subsection (4)** excludes a member whose service terminates or is due to terminate before the commencing date of the scheme

New section 133 - Election where member dies

110. This proposed section deals with the situation where a serving member of the DFRDB scheme dies before 1 October 1992 without having made an election under new section 132 and, in effect, transfers the right of election to the surviving spouse or a person acting on behalf of the deceased member's children.

111. The section provides that where (**subsection (1)**) a serving member is unable to make an election because of illness or physical or mental incapacity, then (**subsection (2)**) the election may be made by someone acting on his or her behalf.

112. The section also provides that where (**subsection (1)**) a serving member of the DFRDB scheme dies, without having made an election, before (**subsection (5)**) 1 October 1992 then (**subsection (3)**) the surviving spouse must make the election or (**subsection (4)**), if there is no surviving spouse, a person acting on behalf of the surviving child or children must make the election.

Subsection (7) provides that such an election is taken to be an election made immediately before death by the deceased member.

113. A member may, under the DFRDB scheme, have "purchased", prior service under that scheme, or have been paid a repayable gratuity, and may have repayments still outstanding in respect of that prior service or gratuity. **Subsection (6)** provides that an election by the surviving spouse or children is not effective unless such repayments are made.

New section 134 - Effect of election

114. This proposed section provides for cessation of membership of the DFRDB scheme of a person who elects to join the MSB scheme.

115. The section terminates the membership of a member from the end of the day on which the election is made (or taken to be made) but not before 1 October 1991.

New section 135 - Loss of entitlement to benefits etc

116. This proposed section provides that a person who transfers (or is taken to transfer) to MSBS is not entitled to benefits (including refund of contributions) under the DFRDB Act.

New section 136 - Failure to make election

117. Although proposed section 132 requires every member who is an "eligible member of the Defence Force" to make an election to transfer to MSBS or to remain with the DFRDB scheme, members cannot be compelled to elect because there is no penalty for non-compliance with the section. This proposed section accordingly provides **(subsection (1))** that a member who fails to make an election is taken to have elected to remain in the DFRDB scheme, and **(subsection(2))** that a similar outcome applies where it falls to the dependant of a deceased member to make the election and he or she fails to do so.

New section 137 - Certain persons liable to make repayments to Commonwealth on making of election

118. This proposed section deals with a person who elects to transfer to the MSBS but had previously received a gratuity or an advance of gratuity which is repayable in certain circumstances. **Subsection (1)** specifies the provisions of Acts, regulations, etc, dealing with repayments of such amounts, and **subsection (2)** provides that, on a member making an election, any such repayment becomes payable. Where repayment is outstanding on transfer, the Rules will provide for such an amount to be offset against the notional amount to be credited to the

transferee in respect of his or her service before transfer.

New section 138 - Persons precluded from transferring to MSB scheme

119. This proposed section deals with a person who elects to transfer to the MSBS but had previously elected to purchase prior service to be counted as "effective service" under the DFRDB Act. Where repayment is outstanding on transfer, the Rules will provide for such an amount to be offset against the notional amount to be credited to the transferee in respect of his or her service before transfer. A case could occur where the notional amount is insufficient to offset the whole of the amount owing (combined perhaps with the amount of a repayment under proposed section 137), in which case this proposed section will prevent the member's transfer to MSBS.

120. **Subsection (1)** specifies the members referred to above and in proposed section 137. **Subsection (2)** specifies the date on which such a member, who pays the outstanding amounts, becomes a member of MSBS, and **subsection (3)** has the effect of preventing an election made before 1 October 1991 from having effect until that day. **Subsection (4)** provides that, if the amount is not paid before 1 October 1992, the person remains a member of the DFRDB scheme.

SCHEDULE
FORM OF TRUST DEED

121. By clause 4 of the Bill, the Minister is required, by deed in the form set out in the schedule to the Bill, to establish an occupational superannuation scheme for members of the Defence Force who comprise the Permanent Forces and certain reservists rendering continuous full time service.

Recital

122. The recital sets out the authority for making the Deed.

Clause 1. Interpretation

122. **Subclause (1)** provides that a reference in the Deed to the Deed is generally to be read as including a reference to the Rules set out in the schedule to the Deed but in the event of inconsistency the Deed prevails.

123. **Subclause (2)** provides that definitions in the Act or Rules of words and expressions generally apply to those words or expressions when used in the Deed.

124. **Subclause (3)** defines the word "Minister".

Clause 2. Establishment of the Superannuation Scheme and the Fund

125. This clause:

- a. establishes (**subclause (1)**) the Military Superannuation and Benefits Scheme and provides for it to come into operation on 1 October 1991; and
- b. establishes (**subclause (2)**) the Military Superannuation and Benefits Fund No. 1 and provides for it to be vested in the Board (ie the Military Superannuation and Benefits Board of Trustees No. 1 established by clause 13 of the Bill).

The Fund will not form part of the Commonwealth Public Account.

Clause 3. Functions and powers of the Board

126. **Subclause (1)** describes the functions of the Board as being to administer the scheme and to manage and invest the Fund in accordance with the Act and the Deed. It also describes certain specific functions.

127. **Subclause (2)** describes the powers of the Board as being to do anything (in or out of Australia) which is necessary or convenient to be done in the performance of its functions. It also describes certain specific powers.

128. **Subclause (3)** requires the Board, in performing its functions and exercising its powers, to have regard to:

- a. the interests of members and the Commonwealth (ie as employer); and
- b. any statement of Government policy relevant to the Board's functions, duties or powers given to the Board by the Minister with a request that the Board consider it.

The subclause requires the Board to observe the overriding operation of the Occupational Superannuation Standards Act 1987 and regulations thereunder.

Clause 4. Appointment of trustees

129. The Bill provides (clause 23) for the Board to consist of a part-time Chairperson and 4 other part-time members.

130. **Subclause (1)** requires that, of the 4 other trustees, 2 are to be persons with experience in, and knowledge of, Government policy and public administration, and the other 2 are to be nominated by the Chief of the Defence Force, one being an officer and the other a member other than an officer.

131. They are to be appointed by the Minister.

132. **Subclause (2)** provides for the Chairperson to be appointed by the Minister after consultation with the Minister for Finance.

133. **Subclause (3)** provides that the Chairperson and the Defence Force representatives are to be appointed for terms not exceeding 3 years and that the other trustees are to hold office at pleasure.

134. **Subclauses (4) to (9)** make provision for various matters affecting the trustees such as remuneration and leave of absence.

Clause 5. Termination of appointment

135. This clause sets out the various grounds upon which a trustee's appointment may be terminated.

Clause 6. Acting appointments

136. This clause empowers the Minister to appoint acting trustees. Specifically:

- a. **Subclauses (1) to (4):** A person who meets the criteria for the position may be appointed to act as Chairperson or a trustee where there is a vacancy in the office or where the occupant is absent from Australia or otherwise unable to perform his or her duties, and an appointment may be expressed to have effect only in specified circumstances.
- b. **Subclause (5):** A person who is acting may exercise all the powers of the officeholder.
- c. **Subclauses (6) and (7):** The Minister is to determine terms and condition of acting appointees; he may terminate an acting appointment at any time; the acting appointee may resign at any time.

Clause 7. Disclosure of interests

137. **Subclause (1)** requires each trustee, on appointment then annually, to provide the Board with a statement of his or her interests likely to conflict with the proper performance of the trustee's duties, **subclause (2)** requires each statement to be incorporated in the minutes of the Board and **subclause (3)** requires any interests subsequently acquired to be disclosed and similarly treated.

138. **Subclauses (4) to (7)** deal with the case of a trustee who has a pecuniary interest in a matter being considered by the Board and require immediate disclosure to the Board and that the trustee is not, unless the other trustees or the Minister determines, to be present during deliberations of the Board or take part in a decision by the Board, on the matter.

Clause 8. Meetings of the Board of Trustees

139. This clause provides for:

- a. **Subclause (1):** the Board to hold such meetings as are necessary and (**subclause (2)**) the Chairperson to convene a meeting at the request of another trustee;
- b. **Subclause (3):** the Chairperson to preside if present and another trustee to preside in his or her absence;
- c. **Subclause (4):** 4 trustees to constitute a quorum and decisions to require a majority of 4 votes of the trustees present and voting (this provision is consistent with the requirements of the Occupational Superannuation Standards which provide that a decision shall require a majority of not less than two-thirds of the trustees);
- d. **Subclause (5):** the Board to keep accurate records of its meetings.

Clause 9. Operation of the Fund

140. **Subclause (1)** requires moneys paid to the Board to be held in trust by the Board in the Fund, which is to be managed and invested by the Board in accordance with the Act and the Deed.

141. **Subclause (2)** provides for the Fund to comprise contributions by members and the Commonwealth, other moneys paid to the Board under the Act or the Deed, income from investments and moneys arising from sale of investments, etc.

142. **Subclause (3)** requires the Board to use the Fund to pay benefits to members, to pay money to the Commonwealth when funded amounts are included in benefits to be paid by the Commonwealth, and to meet the cost of management and investment of the Fund.

Clause 10. Investment of the Fund

143. **Subclause (1)** defines "invest" and "profit" for the purposes of the clause.

144. **Subclause (2)** requires the Board to invest Fund moneys not for the time being required for the making of payments under the Act or the Deed, but to so manage the Fund that moneys are available to pay benefits as they are payable.

145. **Subclause (3)** empowers the Board to invest Fund moneys in any manner including jointly with another person, but **subclause (5)** requires the Board to invest only through an investment manager or managers. (As provided for in clause 34 of the Bill, the Commonwealth Funds Management Limited is to be the initial investment manager.)

146. **Subclause (4)** requires the Board to determine an investment strategy and policy, to review them regularly and, as necessary or desirable, to change them.

147. **Subclause (6)** requires the Board to ensure that its investment manager operates within the Board's investment powers and its investment strategy and policy and reports to the Board as required on the state of the Board's investments and the investment market.

Clause 11. Requests by Minister for information

148. This clause requires the Board to provide the Minister with such information as he requires regarding the general administration and operation of the Scheme and the Fund.

Clause 12. Delegation by the Board

149. This clause empowers the Board to delegate its powers under the Deed except its power of delegation and its power under the Rules to review decisions.

SCHEDULE**MILITARY SUPERANNUATION AND BENEFITS RULES****OUTLINE OF THE SCHEME**

150. In brief, the scheme provides for:

- * Contributions by members at optional rates within the range 5 to 10 per cent of salary.
- * Members' contributions to be paid into a fund together with the government's 3% productivity contribution.
- * A members' contributions to cease when the member's prospective benefits would exceed a limit approximating to the pension reasonable benefits limit established by the Occupational Superannuation Standards Regulations.
- * A member to have the option of ceasing contributions when the member's prospective benefits reach a limit approximating to the lump sum reasonable benefit limit established under those regulations.
- * Benefits payable to comprise a member benefit and an employer benefit.
- * The member benefit to comprise a member's contributions with interest and to be payable as a lump sum on termination of service.
- * The option to be available of leaving the member benefit in the fund for access at a later time of the person's choice.
- * The employer benefit to comprise the funded element (the 3% productivity benefit with interest) and an unfunded element (to be paid from the Consolidated Revenue Fund when the benefit becomes payable).
- * The employer benefit to be based on a member's average annual salary over the 3 years preceding the member's retirement.
- * The employer benefit not to be generally payable until age 55 years or later retirement from the Defence Force.
- * The employer benefit to be generally payable as a lump sum with the option converting into a pension at least 50% of the employer benefit, when payable.
- * Where a member retires on reaching his or her statutory retiring age which is less than 55 years

or is retired on the ground of redundancy or retrenchment, the option of a non-commutable pension to be available.

- * The option to be available of leaving the employer benefit in the scheme as a preserved benefit for access before or at age 65.
- * Members who retire before completing 7 year's service to receive reduced benefits according to a scale related to period of service.
- * Invalidity pensions to be payable to members invalidated from the service who have a significant residual disability for civilian employment.
- * Invalidity pensions to be calculated on the basis of service rendered and prospective service to 55 years of age, or statutory retiring age if greater.
- * Benefits to be payable to surviving spouses and children of serving members or pensioners who die.
- * All pensions and preserved benefits to be indexed annually in line with movement in the consumer price index.

151. The Bill provides for the MSBS to be administered by a Board of Trustees which will be required to take decisions having regard to the interests of members. This should eliminate many of the problems that can arise with a fully legislatively based scheme. This approach has enabled the Rules to provide the Board of Trustees with discretion to resolve unusual cases, rather than try to foresee every possible contingency and legislate for it.

152. The Occupational Superannuation Standards Act 1987 provides for the administration of superannuation schemes to be vested in trustees. This requirement means that powers of review have to be vested in trustees rather than external review bodies, although courts of law are available as a final resort. Accordingly the Rules provide for a review procedure to be available to members.

PART 1 - PRELIMINARY

Rule 1. Citation

153. This rule is formal.

Rule 2. Definitions and interpretation

154. This rule lists the words and phrases which are defined in Schedule 1.

PART 2 - CONTRIBUTIONS**Rule 3. Contributions by members**

155. This rule requires members to pay fortnightly contributions to the Fund.

156. **Subrule (1)** requires a member to pay contributions to the Fund except as otherwise provided.

157. **Subrule (2)** allows the Board to make special arrangements for members whose contributions fall due during a period of leave without pay. This is necessary because there is no salary from which contributions may be deducted.

Rule 4. Amount of contributions

158. This rule deals with the election by a member of the amount of his or her contributions.

159. **Subrules (1) and (10)** allow a member to elect a percentage (any whole number from 5 to 10) and set the percentage at 5 if the member fails to make an election.

160. **Subrule (2)** identifies when the election takes effect and **subrule (3)** prevents excessive chopping and changing by limiting the frequency of changes. It requires a minimum of 3 months between each change made by a member.

161. **Subrule (4)** prevents a member from paying a contribution on a day included in certain periods described in Schedule 2 (which relates to periods exceeding 21 days during which a member forfeits salary, etc).

162. **Subrule (5)** deals with periods of 21 days or less in respect of which salary is forfeited and provides that, in calculating the amount of contributions, salary is taken not to have been forfeited.

163. **Subrule (6)** requires a member who is on long service leave with half pay or on leave without pay for a period not exceeding 21 days to keep contributing at the full rate during the period of leave.

164. **Subrule (7)** specifies when higher duties allowance is to be treated as part of salary for the purpose of calculating contributions payable when a member is on leave without pay.

165. **Subrule (8)** requires full salary to be used as the basis for calculating the amount of contribution to be paid. The fact that deductions may be made for allotments to spouses, insurance companies, etc, is to be disregarded.

166. **Subrule (9)** provides a formula for rounding off contributions which include a fraction of a cent.

Rule 5. Cessation of contributions on reaching maximum benefit limit.

167. Operating standards for superannuation schemes are set by the Occupational Superannuation Standards Act 1987. That Act sets reasonable benefit limits for members of superannuation schemes. There is no formal prohibition against exceeding these limits but the benefits in excess of the limits attract a much higher rate of tax. It is desirable that a government scheme should be seen to comply with the limits set by the Parliament. The limits provided in the Occupational Superannuation Standards Regulations (OSSR) will apply to the benefits finally payable to a member of the MSBS, including certain benefits from sources other than the MSBS. These latter benefits are unknown and cannot be taken into account by the Rules. As to the benefits payable under the Rules, a simplistic application of the formula in the OSSR to a member's right to contribute could result in a member's benefits in certain cases exceeding the limits.

168. Rule 5 accordingly provides limits to contributions based on the member's total benefit in relation to the person's pension maximum benefit limit or lump sum maximum benefit limit, which take into account the manner in which the capital value of a pension is assessed by the OSSR. These maximum benefit limits are based on actuarial calculations. The rule uses the expression "maximum benefit limit" (MBL) instead of "reasonable benefit limit" (which is used in the OSSR) because the meanings of the expressions are different, although the ultimate result is intended to be similar.

169. **Subrule (1)** prevents a member from contributing after being notified that his or her total benefit equals his or her pension MBL, which is defined in Schedule 1. The expression "total benefit" is defined in Schedule 1 as meaning the sum of the member's employer benefit and member benefit.

170. **Subrule (2)** provides that a member may elect to cease contributing after his or her total benefit equals or exceeds the member's lump sum MBL (a member's lump sum MBL is a much lower amount than the member's pension MBL).

171. **Subrule (3)** provides that rule 5 overrides other rules dealing with contributions.

Rule 6. Contributions while on leave without pay in connection with birth of child, etc.

172. This rule allows a member who is on "unpaid maternity leave" or "unpaid paternity leave" to

continue to pay contributions in respect of so much of that leave as does not exceed 9 months, or a part of the period of leave, if the member wishes to do so.

Rule 7. Contributions while on other leave without pay

173. This rule deals with the circumstances in which a member who is on leave without pay for other purposes may continue to pay contributions. It will be noted that, where a period of leave without pay is 21 days or less, a member's contributions are required to continue.

174. **Subrule (1)** is interpretative. **Subrule (2)** allows a member, who has been granted leave without pay to engage in officially approved full time employment or in some other activity which is relevant to the requirements of the Defence Force, or who is on "unpaid sick leave", to pay contributions in respect of all or part of the period of leave if the member wishes to do so.

175. **Subrule (3)** deals with the situation where the spouse of a member is also a member of MSBS (or is a serving member of the Defence Force who has remained under the 1973 Scheme) and the member is obliged to take leave without pay to relocate with his or her spouse. The subrule provides that the member may elect to pay contributions in respect of all or part of the period of leave but not exceeding 2 years. **Subrule (4)** defines "spouse" to include de facto relationships.

Rule 8. General conditions applicable to contributions under rules 6 and 7

176. This is a machinery provision which ensures (**subrule (1)**) that the conditions in rule 4 regarding contributions apply to contributions under rules 6 and 7, and (**subrule (2)**) that a member may revoke an election made under rule 6 or 7.

Rule 9. Member contributions to be paid to Board

177. This rule requires a member's contributions to be paid to the Board.

Rule 10. Liability of Department to pay employer contributions

178. **Subrule (1)** requires the Department to pay to the Board an employer contribution on each salary pay-day on which a member is required or permitted to pay contributions. Under **subrule (3)** the amount of the contribution is set at 3%. Apart from this 3%, the employer element is unfunded.

179. **Subrule (2)** provides two exceptions:

- (a) in a case where the member is on leave without pay for the purpose of engaging in employment, paragraph

(a) provides that the employer contribution is not payable after the expiration of 1 year unless the person's employer is paying an employer contribution to the Commonwealth under an arrangement described in subrule (4);

(b) in a case where both husband and wife are members and one partner is obliged to take leave without pay to relocate with his or her spouse, paragraph (b) provides that the employer contribution is not payable in respect of the spouse on leave without pay.

180. **Subrule (4)** is interpretative.

Rule 11. Payment of contributions into Fund

181. This rule requires the Board to pay member and employer contributions into the Fund.

PART 3 - MEMBERS' BENEFITS

Division 1 - Benefits other than Invalidity Benefits

182. The benefits which become payable to members are termed "member benefit" and "employer benefit", as indicating the benefits financed by the member and employer, respectively.

183. The expression "member benefit" is described in Schedule 9 as comprising, briefly, the member's contributions plus interest. It includes, in the case of transferees from the DFRDB Scheme, the person's "transfer value" (as described in Schedule 10) which is calculated in accordance with that Schedule as the contributions made by the person under the previous legislation plus appropriate interest, less certain outstanding repayments due to the Commonwealth in respect of previous non-contributory service repurchased by the member.

184. The amount of "employer benefit" is to be calculated in accordance with Schedule 8.

Rule 12. Benefits on retirement before reaching 55 years of age or earlier retiring age, otherwise than for retrenchment or redundancy, etc

185. This rule describes the benefits applicable to a member who, before reaching 55 years of age or earlier statutory retiring age, resigns, is retired on invalidity grounds but is not entitled to invalidity pension or is discharged for disciplinary reasons or dismissed.

186. **Subrule (1)** identifies the members whose entitlements are provided for by this rule. **Subrule (2)** provides that a member is entitled to be paid his or her member benefit (ie, member contributions plus interest -

see description of "member benefit" in Schedule 9) as a lump sum, with the employer benefit being treated as a preserved benefit. A preserved benefit generally becomes accessible by a person on attaining 55 years of age - see rule 52.

187. **Subrule (3)** allows the member to elect not to take the member benefit as a lump sum but to leave it invested in the Fund as a preserved benefit.

Rule 13. Benefits on retirement for retrenchment or redundancy or on attaining retiring age of less than 55 years

188. This is a special rule for members retired on the ground of retrenchment or redundancy or on attaining a statutory retiring age of less than 55 years.

189. **Subrules (1), (2) and (3)** deal with benefits in the same manner as rule 15, but **subrule (4)** allows the member to elect to have the employer benefit converted into a non-commutable pension.

190. **Subrule (5)** deals with a member who, having retired and come under subrule (2) (that is, retired on reaching retiring age of less than 55 years) again becomes a member and again retires. On re-entry, the member's pension (if any) would have been suspended by rule 35 and subrule (5) treats the member as if he or she were still governed by subrule (2), the effect being to give the member the opportunity to elect under subrule (4) to have the additional employer benefit converted into a pension.

Rule 14. Benefits on retirement on or after attaining age of 55 years

191. This rule provides that when a member retires on or after attaining the age of 55 years a preserved benefit of the sum of his or her member benefit and employer benefit becomes applicable.

192. Under rule 52, the member may elect to have the employer benefit converted into a pension, or part pension (not less than 50%) and part lump sum.

Rule 15. Payment of benefits where rule 12 applies and the person has less than 12 months' eligible service

193. This rule makes special provision for persons who resign, etc, with less than 12 months' eligible service and whose benefits are correspondingly small. The rule is designed to have the effect of limiting the number of very small benefits which the Board would otherwise be required to administer.

194. **Subrule (1)** describes the persons concerned including the fact that the person's employer benefit

consists only of funded employer benefit (ie the 3% productivity benefit).

195. **Subrule (2)** deals with a member whose employer benefit is an amount which the Occupational Superannuation Standards Regulations require to be preserved and permits the person to elect to have the employer benefit rolled over into a preservation fund or used to purchase a deferred annuity. If the person does so he or she is not permitted to leave his or her member benefit in the Fund.

196. **Subrule (3)** deals with a member whose employer benefit is less than the amount which the Occupational Superannuation Standards Regulations require to be preserved and allows the member to require the benefit to be paid to him or her, in which case the member is required to also take his or her member benefit out of the MSBS Fund.

197. **Subrule (4)** with the reverse (so to speak) of subrules (2) and (3) and provides that if a member takes his or her member benefit as a lump sum, he or she is not permitted to leave the employer benefit as a preserved benefit in the MSBS Fund. In that case, the employer benefit would have to be dealt with as described above.

Rule 16. Limitation on certain benefits in case of certain transferees who retire before completing 731 days' service after 30 September 1991.

198. Where a member transfers to the new Scheme, the member is credited on transfer with his or her contributions to the 1973 Scheme and notional interest on those contributions (see calculation of "transfer value" in Schedule 10). Access to the lump sum which these amounts represent could be an incentive to resign at an early age after transfer, with a sudden and unpredictable increase in wastage rates from the Defence Force.

199. This rule is intended to operate as a restraining mechanism on resignations during the first 2 years of the new scheme. **Subrule (1)** provides that a transferee who retires during the 2-year period (otherwise than on reaching retiring age or on the ground of invalidity, retrenchment or redundancy) will incur a proportionate reduction in the notional interest element of his or her lump sum.

200. **Subrules (2) and (3)** are interpretative.

Division 2 - Invalidity Benefits

Subdivision A - Incapacity Classification

201. This subdivision provides a 3-tiered system of invalidity classification and subdivision B provides benefits commensurate with the effect that a person's

medical condition has on his or her ability to obtain civil employment.

202. Power to classify and reclassify members retired on medical grounds is vested in the Board, and also in a statutory committee which would normally exercise this power on behalf of the Board.

Rule 17. Establishment of Incapacity Classification Committee

203. This rule requires the Board to appoint an Incapacity Classification Committee.

Rule 18. Membership of Committee

204. This rule provides for the number of members, and their qualifications, to be determined by the Board.

Rule 19. Functions of Committee

205. **Subrule (1)** empowers the Committee to exercise the power of classification and reclassification under rules 22 and 23, subject to any directions of the Board.

206. **Subrule (2)** requires the Committee to take into account relevant material provided to it and empowers the Committee to take steps to obtain any other relevant evidence, and **subrule (3)** requires the Board to make available to the Committee any relevant medical, etc, evidence held by it.

Rule 20. Proceedings of Committee

207. This rule empowers the Committee to regulate its proceedings, subject to any directions of the Board.

Rule 21. Decisions by Committee

208. This rule requires the Committee to notify the Board, with reasons, of its decision as to a person's incapacity.

Rule 22. Classification in respect of invalidity

209. This rule provides a system of classification of incapacity for civil employment of members retired on the ground of invalidity. The classification given governs the entitlements of the person under the Rules.

210. In brief, the system provides for members retired on the ground of invalidity to be classified as A, B or C, according to their incapacity for civil employment.

211. Persons with an incapacity of 60% or more are classified as class A and receive a full invalidity pension. Persons with an incapacity of 30% or more but less than 60% are classified as class B and receive a

half-rate invalidity pension. Persons with less than 30% incapacity are classified as class C and, being regarded as not appreciably incapacitated for civil employment, are not entitled to invalidity benefits.

212. The condition of invalidity pensioners classified class A or B may be reviewed and their classifications may be altered from A to B or C or from B to A or C. When a pensioner is reclassified to class C, entitlement to invalidity pension ceases but the person's condition remains liable to review and the person could later be reclassified as class B or A.

213. The classification of persons classified as Class C on exit from the Defence Force is not reviewable, because their medical condition does not appreciably affect their employability in the civil workforce and, in most cases, can work to normal retiring age.

214. **Subrule (1)** requires the Board or the Committee to classify members who are retired on the ground of invalidity as A, B or C, according to their degree of incapacity, which is to be determined according to guidelines in **subrule (2)**.

215. **Subrule (3)** ensures that an invalidity retiree who died after his or her invalidity retirement may nevertheless be classified (so the appropriate benefits may be paid to the surviving spouse and children).

Subrule (4) is interpretative.

Rule 23. Reclassification in respect of incapacity

216. This rule empowers the Board or the Committee to review the classification of an invalidity pensioner or former invalidity pensioner and thus allows account to be taken of any improvement or deterioration in the person's capacity for civil employment.

217. **Subrule (1)** empowers the Board or the Committee to vary the classification of an invalidity pensioner in accordance with the guidelines in **subrule (3)**.

218. **Subrule (2)** provides, in effect, that after a person has reached 55 years of age his or her classification cannot be reduced.

219. **Subrule (4)** requires the Board or the Committee to specify the date from which a reclassification has effect and **subrule (5)** provides, in effect, that a reclassification is not to be retrospective unless the retrospectivity would advantage the person and special circumstances justify the retrospectivity.

220. **Subrule (6)** overrides **subrule (5)** in the special case of a person who was retired otherwise than on the ground of invalidity and it is subsequently discovered

that a medical condition existed which could have justified the person being retired on the ground of invalidity (see rule 30). In such a case it may be necessary to classify the person from the date of retirement and reclassify him or her from an intermediate date.

221. **Subrule (7)** ensures that the Board may reclassify a person who has died.

222. **Subrule (8)** ensures that a person who has previously been declassified from class A or B to class C may be reclassified.

223. **Subrule (9)** provides that a person who has reached 65 years of age may not be reclassified (because the classifications relate to the person's incapacity for civil employment).

224. **Subrule (10)** provides expanded definitions of "invalidity pensioner" and "prescribed physical or mental impairment".

Rule 24. Decision as to classification or reclassification to be notified to invalidity retiree

225. This rule requires the Board to notify an invalidity retiree of the result of his or classification or reclassification and the reasons therefor.

Rule 25. Power of Board to require persons to be medically examined, etc.

226. In order for the Board to meet its obligations under rule 23 as to review of invalidity classifications, it is necessary for the Board to be empowered to require an invalidity pensioner to undergo a medical examination and provide information as to employment.

227. **Subrule (1)** empowers the Board to require an invalidity pensioner to undergo a medical examination or to provide information as to employment.

228. **Subrule (3)** provides that, in the event of unreasonable non-compliance, the Board may suspend the person's pension and **subrule (6)** provides that the Board may lift the suspension.

229. **Subrule (7)** allows a person whose pension is suspended to apply for the suspension to be lifted and **subrules (9) and (10)** require the Board to act on the application and either lift the suspension or, if the person has unreasonably failed to comply with the Board's requirements, refuse to lift the suspension.

230. **Subrules (2), (4) and (8)** require the Board to inform the person of the consequences of failure to

comply with the Board's notices and **subrules (5), (11), (12) and (13)** are machinery provisions.

Subdivision B - Invalidity Benefits

Rule 26. Entitlement to invalidity benefits

231. This rule provides that persons classified as class A or class B are entitled to invalidity benefits in accordance with the Division.

Rule 27. Invalidity benefits for person classified as Class A

232. **Subrule (1)** provides that a person who is classified as class A is entitled to be paid his or her member benefit as a lump sum, with the employer benefit being converted into a pension payable from the date of classification as class A, and **subrule (2)** allows the member to elect not to take his or her member benefit as a lump sum but to have it treated as a preserved benefit.

Rule 28. Invalidity benefits for person classified as Class B

233. This rule makes similar provision to rule 26 except that the rate of pension is half the class A pension or is the rate at which pension would be payable if the person's employer benefit were to be converted into a pension, whichever is the greater.

Rule 29. Effect of change of invalidity classification on preserved benefit

234. **Subrule (1)** provides that when a person is reclassified from class A or class B to class C, his or her invalidity pension is cancelled and a preserved benefit of the amount of the person's employer benefit becomes applicable.

235. **Subrule (2)** provides that if the person is subsequently reclassified as class A or B, the preserved benefit ceases to be applicable and a pension becomes payable.

Rule 30. Person may be treated as having been retired on ground of invalidity

236. This rule deals with the case of a person who was retired otherwise than on the ground of invalidity and it is subsequently discovered that a medical condition existed which could have justified the person being retired on the ground of invalidity.

237. **Subrule (1)** empowers the Board to treat the person as having been retired on the ground of invalidity.

238. **Subrule (2)** provides that, if the person is classified as class A or B, the preserved benefit previously applicable ceases to apply.

Subdivision C - Invalidity benefits not payable

Rule 31. Person classified as Class C

239. This rule provides that a person classified as class C is not entitled to invalidity benefits.

Rule 32. Pre-existing condition

240. **Subrule (1)** disqualifies a person for invalidity benefits where the person is retired within 2 years of entry because of a medical condition which pre-dated the person's entry into the Defence Force.

241. **Subrule (2)** provides that, if the person is a re-entry into the Defence Force and is subsequently again retired on the ground of invalidity, it is the person's medical condition on re-entry which is relevant.

Rule 33. Invalidity due to intentional act

242. **Subrule (1)** disqualifies a person for invalidity benefits where the person retired on the ground of invalidity because of a condition intentionally incurred in order to obtain invalidity benefits.

243. **Subrule (2)** provides that the person is not disqualified if the relevant medical condition was not wholly due to the person's intentional act or the person's action was caused by a physical or mental condition.

Rule 34. Invalidity arising during absence without leave exceeding 21 days

244. **Subrule (1)** disqualifies a person for invalidity benefits where the person is retired on the ground of invalidity because of a condition which was incurred while the person was absent without leave for a period exceeding 21 days.

245. **Subrule (2)** provides that the person is not disqualified if there are sufficiently mitigating circumstances.

Division 3 - Person rejoining the Scheme

Rule 35. Suspension of pension of person in receipt of pension under Division 1

246. This rule suspends the pension of a person (not being an invalidity pensioner) who again becomes a member of the Scheme.

Rule 36. Cancellation of pension, etc, of invalidity retiree

247. This is a machinery provision which operates automatically to change certain matters upon the re-employment of an invalidity retiree. The rule cancels the person's incapacity classification and invalidity pension (if any) and provides that the person, on subsequent retirement, is not to be treated as having been retired on invalidity grounds merely because of the original invalidity retirement.

Rule 37. Continuation of previous election to cease paying contributions

248. This rule deals with the case of a member who rejoins and was not paying contributions immediately before his or her previous retirement because he or she had reached his or her lump sum MBL and had elected to cease contributing. The rule provides that the person is bound by that election on re-entry.

PART 5 - SPOUSES' AND CHILDREN'S BENEFITS

Division 1 - Death of a Member

Rule 38. Applicability of benefits

249. This rule provides that benefits are payable in accordance with Division 1 to the spouse and children of a member who dies.

Rule 39. Payment of deceased member's member benefit

250. This rule provides for the disposal of the member benefit of a serving member who dies. It is payable successively to the spouse or, if no spouse, to the eligible child or children or, if neither, to a dependant who is a beneficiary under the deceased person's will or, finally, to the deceased person's personal representative.

Rule 40. Payment of deceased member's employer benefit

251. This rule provides for the disposal of the employer benefit of a serving member who dies.

252. **Subrule (1)** provides for the employer benefit to be disposed of as follows:

- a. if there is a spouse, with or without children: lump sum payable; or
- b. if there is an eligible child or children but no spouse: pension at appropriate rate; or
- c. if there is neither spouse nor eligible child: to a dependant who is a beneficiary under the deceased

person's will (providing the deceased person had notified the Board of these facts); or

d. to the deceased person's personal representative.

253. **Subrule (2)** entitles a spouse to elect to be paid a pension instead of the lump sum or a lesser pension instead of part of the lump sum.

254. **Subrules (3) and (5)** provide that the lump sum and pension payable are to be calculated as if the deceased person had been an invalidity pensioner.

255. **Subrule (4)** provides that the advantages provided by **subrules (2) and (3)** do not apply in the case of a member who dies while absent without leave for a period exceeding 21 consecutive days, unless the Board decides that there are mitigating circumstances.

Division 2 - Death of a Retirement Pensioner

Rule 41. Applicability of benefits

256. This rule provides that benefits are payable in accordance with this Division to the spouse and children of a pensioner who dies.

Rule 42. Pensions payable

257. This rule deals with the pensions payable on the death of a pensioner.

258. **Subrules (1) and (3)** respectively provide for the payment of pensions to the spouse or, if there is no surviving spouse, to the children, in accordance with the relevant percentages, in Schedule 4, of the deceased pensioner's pension.

259. **Subrule (2)** provides for the surviving spouse of a deceased pensioner to receive pension at the rate formerly applicable to the deceased pensioner for the first 6 full fortnights after the pensioner's death; the pension then reverts to the (lower) normal rate applicable to a spouse.

260. **Subrule (4)** is interpretative.

Rule 43. Final benefit payable in relation to deceased retirement pensioner

261. This rule deals with the case where a retirement pensioner dies without dependants or where there cease to be dependants to whom benefits are payable.

262. **Subrule (1)** deals with the case where the retirement pensioner dies (without dependants who are entitled to benefits under the Rules) not later than 10 years after his or her pension became payable and provides for the

deceased person's personal representative to be paid the amount (if any) by which the person's employer benefit exceeds the amount of pension paid to the person.

263. **Subrule (2)** deals with the case where the retirement pensioner dies leaving dependants who are entitled to benefits under the Rules and who in turn die not later than 10 years after his or her pension became payable and provides for the deceased person's personal representative to be paid the amount (if any) by which the person's employer benefit exceeds the amount of pensions paid to the person and his or her dependants.

Rule 44. Death in certain cases due to retirement disabilities

264. This rule deals with the case of a member who becomes an invalidity pensioner and subsequently dies from the condition (or a causally connected condition) which caused him or her to be invalidated. The effect of the rule is that the spouse and children are entitled to benefits as if the deceased pensioner had been in receipt of a class A invalidity pension, although he or she may have been in receipt of a class B pension or may have been reclassified as class C and not in receipt of an invalidity pension.

Rule 45. Effect of death of invalidity pensioner while pension suspended

265. This rule deals with the case of a member who dies while his or her invalidity pension is suspended under rule 25. The effect of the rule is that the spouse and children are entitled to benefits as if the pension had been payable.

Division 3 - Death of spouse

Rule 46. Child's benefit upon death of spouse

266. This rule deals with the case of a spouse in receipt of a spouse's pension who dies leaving an eligible child or children.

267. **Subrule (1)** provides for the child of children to receive the appropriate pension. **Subrule (2)** is interpretative.

Division 4 - Miscellaneous

Rule 47. Entitlements where two spouses

268. This rule provides (**subrule (1)**) for the Board to determine the rates of pensions (subject to a prescribed maximum) applicable where a deceased member or retirement pensioner is survived by 2 persons who are spouses as defined in Schedule 1.

269. **Subrule (2)** provides that the sum of the pensions as determined by the Board is not to exceed the amount of pension that would have been payable if there had been only 1 spouse.

270. **Subrule (3)** ensures that each spouse is entitled to commute his or her share of the lump sum and receive a pension.

Rule 48. Payment of balance of benefit where pension becomes payable to child in certain circumstances

271. When a member or a pensioner has died and a child or children are the only remaining persons who are entitled to benefits, this rule allows the residue of the deceased person's employer benefit, after allowing for the capital value of the pension payable to the child or children, to be paid to the appropriate beneficiaries, instead of waiting until the last child ceases to be entitled to a pension.

272. **Subrule (1)** applies in relation to the child of a serving member who dies, **subrule (2)** in relation to the child of a deceased non-invalidity retirement pensioner and **subrule (3)** in relation to the child of a deceased invalidity pensioner.

273. **Subrule (4)** provides for payment to be made to a dependant who is a beneficiary under the deceased person's will (providing the deceased person had notified the Board of these facts) or, failing such a person, to the deceased person's personal representative.

274. **Subrule (5)** requires the Board to obtain, and have regard to, the advice of a qualified actuary in fixing the capital value of a pension.

PART 5 - PAYMENT OF PRESERVED BENEFITS

Rule 49. Drawing on member benefit contained in preserved benefit

275. This rule enables a person to draw on a member benefit included in his or her preserved benefit.

276. **Subrule (1)** enables the person to withdraw amounts from the preserved benefit, and **subrule (2)** provides that withdrawals must be in whole number multiples of \$10,000 or the amount remaining in the Fund, whichever is the less, and that only 1 withdrawal is permitted every 6 months. These limitations are imposed to prevent excessive administrative costs.

Rule 50. Fee for payment of part of person's member benefit

277. This rule provides for the payment of a fee for each withdrawal by a person after the first withdrawal.

Rule 51. Payment of employer benefit included in preserved benefit before person attains age of 55 years

278. This rule permits the payment of an employer benefit as a lump sum, before the person attains the age of 55 years, in special circumstances, namely:

- a. Where the person is unlikely, through ill health, ever to be able to work again in suitable employment.
- b. Where the person is leaving Australia permanently.
- c. In any other case approved by the Insurance and Superannuation Commissioner.

Rule 52. Payment of preserved benefit to person on or after attaining 55 years of age

279. This rule provides a person with access to the employer benefit included in a preserved benefit on or after attaining 55 years of age. The person has the option of:

- a. having paid as a lump sum;
- b. being paid a full pension and the member benefit paid as a lump sum; or
- c. being paid a pension (not less than 50) and the balance of the preserved benefit paid as a lump sum.

Rule 53. Compulsory payment of preserved benefit to person on attaining 65 years of age

280. This rule requires the balance of any preserved benefit to be paid out upon a person attaining 65 years of age.

Rule 54. Payment of deceased former member's preserved benefit

281. **Subrule (1)** provides that, upon the death of a former member, his or her preserved benefit is to be disposed of in accordance with the rule.

282. **Subrule (2)** provides for the preserved benefit to be disposed of as follows:

- a. if there is a spouse, with or without children: to the spouse as a lump sum; or
- b. if there is an eligible child or children but no spouse: to the eligible child or children as a pension; or

c. a dependant who is a beneficiary under the deceased person's will (providing the deceased person had notified the Board of these facts); or

d. to the deceased person's personal representatives.

283. **Subrule (3)** provides that if a pension becomes payable to children where there is no surviving spouse the member benefit is also to be paid to the children.

284. **Subrule (4)** gives the surviving spouse the usual options of pension instead of lump sum, or part pension and part lump sum.

285. Subrule (5) is interpretative.

PART 6 - INCREASES IN MAXIMUM BENEFIT LIMITS, PENSIONS AND CERTAIN UNFUNDED PRESERVED BENEFITS

286. In order that maximum benefit limits remain at an appropriate level and pensions and unfunded preserved benefits retain their value, this Part makes provision for them to be updated annually.

Division 1 - Increases in Maximum Benefit Limits

Rule 55. Increases in maximum benefit limits

287. **Subrules (1) and (5)** makes provision for the maximum benefit limits to be updated each July if there has been an increase in average weekly ordinary time earnings.

288. **Subrules (2), (3) and (4)** merely deal with certain technicalities with regard to index numbers, reference bases, etc., and **subrule (5)** is interpretative.

Division 2 - Increases in Pensions and Certain Unfunded Preserved Benefits

Rule 56. Increases in pensions and certain unfunded preserved benefits

289. **Subrule (1)** provides for pensions and the unfunded employer element of preserved benefits to be increased in July each year in line with the percentage increase in the consumer price index (the "CPI").

290. **Subrule (2)** provides the formula for calculating the increase.

291. **Subrule (3)** deals with case of a pensioner who dies on 30 June and ensures that the increase applies to the spouse or child of the deceased pensioner.

Rule 57. Application of increase to suspended pension

292. This rule ensures that the CPI increase is not prevented from applying merely by reason of the technicality that the pension, being under suspension, was not payable immediately before the commencement of the prescribed year. In this case, the increase has effect from the resumption of payments.

Rule 58. Proportionate increase for part of a year

293. This rule deals with the application of the CPI increase where a person had not been entitled to a pension for the whole of the preceding year.

294. **Subrule (1)** describes the pensions to which the rule applies.

295. **Subrule (2)** provides that where the pension was payable only for less than 14 days at the end of the year the increase does not apply.

296. **Subrule (3)** provides a formula for calculating the proportion of the increase payable in other cases, and **subrules (4) and (5)** describe how periods of part of a month are to be treated.

297. **Subrule (6)** empowers the Board to determine the amount by which the unfunded employer element of a preserved benefit is to be increased. The Board is required by the rule to observe the principle of subrule 57(2).

298. **Subrule (7)** is interpretative.

Rule 59. Adjustment in connection with invalidity reclassification

299. This rule deals with the application of the CPI increase where a person is reclassified from one invalidity classification to another during a prescribed year.

300. **Subrule (1)** ensures that the increase applies appropriately where the person is reclassified from class A to class B or vice versa.

301. **Subrule (2)** deals with the case of a person who was in receipt of a class A or B pension, was then reclassified as class C and was further reclassified as class A or B. (This can occur with variations in a person's physical or mental condition.) The rule provides, in effect, for the rate of pension to include any CPI increase that occurred but did not apply to the person when the person was classified as class C and hence not in receipt of a pension.

302. **Subrule (3)** provides a similar rule for the case of a person whose reclassification occurs posthumously.

303. **Subrule (4)** makes the necessary increase in the unfunded employer element of a person's preserved benefit.

Rule 60. Date of effect of increase

304. **Subrule (1)** provides for CPI increases to apply from the first pension pay-day occurring after 30 June.

305. **Subrule (2)** provides for CPI increases to the unfunded employer element of a preserved benefit to apply from 1 July except in the case of a preserved benefit that became payable during the prescribed year, in which case the increase applies up to the date on which the benefit became payable.

Rule 61. Interpretation

306. This rule merely deals with certain technicalities with regard to index numbers, reference bases, etc.

PART 7 - CANDIDATES AT PARLIAMENTARY ELECTIONS

307. The Defence (Parliamentary Candidates) Act 1969 (the "PCA") makes provision for the release from service of members of the Defence Force who wish to stand as candidates at parliamentary elections and for their reinstatement if not successful in being elected. The PCA provisions are necessary because of the operation of section 44 of the Constitution which disqualifies members of the regular forces from standing or being elected to the federal Parliament (and corresponding provisions of State Constitutions or of the laws relating to territory legislatures).

308. This Part dealt with the consequences with regard to the Scheme.

Rule 62. Reinstated member

309. This rule provides (**subrule (1)**) that a person reinstated under the PCA is to be treated as having been, for the purposes of the Rules, a member and on pay during the period of his or her absence from the Service, provided the person repays, within 60 days, any benefit paid to him or her under the Rules.

310. **Subrule (2)** provides that benefits paid to the person are taken not to have been payable and that the person's previous rate of contribution to the Fund applied during the period of absence.

Rule 63. Death or physical or mental incapacity of person.

311. This rule provides that a person released under the PCA who dies or, in certain cases, becomes physically or mentally incapacitated during the period of his or her

absence, is to be treated as having died, or retired on the ground of invalidity, while a member.

PART 8 - GENERAL PROVISIONS APPLICABLE TO CONTRIBUTIONS AND BENEFITS

Rule 64. Provisions applicable to elections under the Rules.

312. In many places in the Rules, members, pensioners and spouses are afforded the opportunity to elect from several courses of action. This rule contains some general provisions which apply to elections.

313. **Subrule (1)** requires all elections to be in writing.

314. **Subrule (2)** enables a person who is entitled to make an election under Part 3 in relation to the benefits payable under that part to make the election up to 3 months before, or up to 3 months after, becoming entitled.

315. **Subrule (3)** empowers the Board to recognise a later election if it considers it appropriate.

316. **Subrule (4)** empowers the Board to allow another person to make an election on behalf of a person who is unable to do so because of physical or mental incapacity.

317. **Subrule (5)** enables an election made under Part 3, 4 or 5 to be cancelled at the person's request where the Board considers it appropriate. Where an election is cancelled, the Rules have effect as if the election had not been made.

318. **Subrule (6)** deals with the case of a person who dies before making an election under Part 3 or 5 and empowers the spouse or, where there is no spouse but an eligible child only, a person permitted by the Board, to make the election.

Rule 65. Rate of pension where lump sum converted into pension

319. This rule deals with the formula for calculating the conversion of a lump sum into pension. The formula is set out in Schedule 5.

Rule 66. Benefits in unusual or exceptional circumstances

320. It is impossible to foresee every circumstance that may arise with regard to entitlements to benefits or the amount of benefits under the Rules and this rule empowers the Board to determine the point at issue in a particular case.

321. The Board can only exercise this power when the Board considers that the Rules produce a result not in

the spirit of the Rules and the circumstances of the case are unusual or exceptional. Moreover, in exercising this power, the Board is required to have regard to the principles underlying the Rules and the need to maintain equity between members.

Rule 67. Instalments of pensions

322. **Subrule (1)** requires pensions to be paid fortnightly and **subrules (2), (3) and (4)** deal with the manner of calculating the fortnightly amount. **Subrule (2)** reverts to the manner of calculation used in the Defence Forces Retirement Benefits Act 1948.

Rule 68. Set off against pension in certain cases

323. **Subrule 42(2)** entitles the spouse of a pensioner who dies to 100% of the pension that would have been payable to the pensioner if he or she had not died, for the first 6 full pension pay-days after the pensioner's death. It may be that by the time that the Board receives news of the death 1 or 2 instalments may have been made to the deceased pensioner's account with a bank, etc, and paid out of the account to the spouse.

324. This rule enables the Board to offset payments so made against the entitlement under **subrule 42(2)**.

Rule 69. Interest payable where payment of benefit delayed

325. Prompt payment of member's entitlements is important. This is particularly the case with lump sum payments. This rule accordingly provides for interest to be paid where delays occur which are not the fault of the recipient.

326. **Subrule (1)** provides for payment of interest in the case of lump sum payments and **subrule (2)** provides similarly for pensions. **Subrule (3)** limits payments in relation to pensions to cases where the amount would be significant.

327. **Subrule (4)** empowers the Board to determine the rate of interest. **Subrule (5)** is interpretative.

Rule 70. Payment of benefit otherwise than to person entitled.

328. This rule empowers the Board, in certain circumstances, to pay all or part of a benefit to a person other than the person otherwise entitled to receive it

329. **Subrule (1)** relates to the payment of that part of a spouse's pension which is attributable to a child. The Board may pay that part of the pension to a person other than the spouse where the child is not in the custody of

the spouse, or for some other proper reason, and **subrule (2)** defines what is meant by the part attributable to a child.

330. **Subrule (3)** relates to the payment of a pension or any other benefit where the recipient is of unsound mind or in prison, etc. The Board may pay the pension or benefit to another person.

331. **Subrule (4)** expresses the intention that a benefit in respect of a child be applied for the maintenance, education or other benefit of the child. This is not binding but could be taken into account by a court.

Rule 71. Withholding payment of benefit where required information not supplied.

332. This rule enables the Board to withhold the whole or part of a benefit from a person who fails to provide information required by the Board in relation to the person's entitlement to the benefit.

PART 9 - RECONSIDERATION OF DECISIONS

333. The Administrative Appeals Tribunal Act 1975 is not to apply in relation to decisions under the Rules because the Board will be making decisions on the merits of the case and to have the Board subject to external review could result in the Board having to breach its responsibilities as trustee, or the Scheme not complying with the Occupational Superannuation Standards Act 1987, which requires the Board to control the Scheme. There is, however, to be an internal review mechanism which is provided under this Part.

Rule 72. Establishment of Reconsideration Advisory Committees

334. This rule requires (**subrule (1)**) the Board to establish a Reconsideration Advisory Committee. **Subrule (2)** enables the Board to establish more than 1 committee.

Rule 73. Membership of Committee

335. **Subrules (1)** and **(2)** empower the Board to decide the number of members and the qualifications or experience required for membership.

336. **Subrule (3)** enables the Board to include a member of the Board as a member of a committee.

Rule 74. Functions of Committee

337. This rule sets out the functions of a committee. These are (**subrule (1)**) to review decisions and make recommendations to the Board.

338. **Subrule (2)** requires a committee to take into account relevant evidence made available or submitted to

it and empowers a committee to take steps to obtain other necessary evidence.

Rule 75. Proceedings of Committee

339. This rule empowers a committee to determine its own procedures, subject to any directions of the Board.

Rule 76. Reconsideration of decision made by delegate

340. Under the Trust Deed, the Board is empowered to delegate its powers. This rule provides for reconsideration of decisions made by delegates.

341. **Subrule (1)** provides a person affected by a decision of a delegate with a right to have the decision reconsidered and **subrule (2)** deals with the form of an application for reconsideration.

342. **Subrule (3)** requires the Board to refer an application to a committee and **subrule (4)** empowers the Board of its own volition to refer a decision of a delegate to a committee.

343. **Subrule (5)** describes how the Board is to act on receiving a recommendation from a committee and **subrule (6)** requires the Board to provide an applicant with a copy of its decision in the matter.

Rule 77. Reconsideration of decision made by Board

344. This rule provides for reconsideration of decisions made by the Board.

345. **Subrule (1)** provides a person affected by a decision of the Board with a right to have the decision reconsidered and **subrule (2)** deals with the form of an application for reconsideration.

346. **Subrules (3), (4) and (5)** provide that a decision of the Board is to be reconsidered only if there is new evidence, and that an application not supported by new evidence is to be dismissed but that such a dismissal does not preclude a further application being made.

347. **Subrule (6)** requires the Board to refer an application to a committee and **subrule (7)** empowers the Board of its own volition to refer a decision of its own to a committee.

348. **Subrule (8)** describes how the Board is to act on receiving a recommendation from a committee and **subrule (9)** requires the Board to provide an applicant with a copy of its decision in the matter.

Rule 78. Content of statements of reasons for decisions

349. This rule requires the Board, where it is required under this Part to give written reasons for its decision, to also set out its findings on material questions of fact and refer to the material on which its findings were based. This rule repeats section 25D of the Acts Interpretation Act 1901 because that Act will not apply to the Trust Deed and the Rules.

Rule 79. Interpretation

350. This rule treats a determination or decision of the Incapacity Classification Committee established under rule 17 as a decision of a delegate thus making those determinations and decisions subject to reconsideration under this Part.

Schedule 1. Glossary

351. This schedule contains definitions and interpretations of expressions used in the Rules. These are self-explanatory. Some definitions which are important elements of the Scheme are defined by reference to the respective Schedules, each of which is described below.

352. Because of the non-application of the Acts Interpretation Act 1901, definitions of "financial year" and "month" are included, and provisions relating to parts of speech and grammatical form, number, reckoning of time and attainment of a particular age are included in parts 6 to 9 of the Schedule. These are taken from sections 22, 18A, 23, 36 and 25E of that Act.

Schedule 2. Prescribed periods for the purposes of Rule 4.

353. This schedule describes certain service (other than leave without pay, which is dealt with in rules 6 and 7) in respect of which, under subrule 4(4), a member is not permitted to pay contributions. Only periods or aggregated periods in excess of 21 days are involved.

354. The service in question is as follows:

- a. **paragraph 1:** Service in respect of which a member's salary and allowances are forfeited (ie absence without leave or time in civil custody or undergoing imprisonment or detention);
- b. **paragraphs 2 and 3:** Service during which a member is in service custody awaiting or undergoing trial and is subsequently convicted;
- c. **paragraphs 4, 5 and 6:** a continuous period comprising a mixture of periods described in paragraphs 1, 2 and 3.

Schedule 3. Calculation of maximum benefit limits

355. **Paragraphs 1 and 2** describe how to calculate a member's lump sum maximum benefit limit, and **paragraphs 3 and 4** describe how to calculate a member's pension maximum benefit limit. The monetary amounts shown are taken from the Occupational Superannuation Standards Regulations.

Schedule 4. Percentage of employer benefit or deceased pensioner's pension applicable to spouse or eligible child

356. This schedule prescribes the percentages used to calculate spouse's and children's pensions. **Table 1** relates to spouses with or without children, and **Table 2** relates to orphans.

Schedule 5. Calculation of rate of pension by conversion of employer benefit

357. This rule provides a formula for calculating the conversion of a lump sum into pension. **Paragraph 1** provides the formula for calculating the amount of pension and **paragraph 2** provides a special rule for invalidity pensions which, in addition to the member's service, takes into account the prospective service which he or she could have served if the person had continued to serve until reaching 55 years of age or retiring age (if greater).

Schedule 6. Calculation of eligible service

358. This defines eligible service for the purpose of calculating the employer benefit. **Subparagraph 1(b)** includes a person's prospective service for the purpose of calculating invalidity service. **Subparagraph 1(c)** includes service under the 1973 Scheme in the case of a person who transferred from that scheme.

359. **Subparagraphs 2(a), (b), (c) and (d)** exclude certain service in respect of which the member did not pay contributions. **Subparagraph 2(e)** excludes service where the member's employer benefit was paid to him or her, it being less than the minimum amount required to be preserved - see subrule 15(3).

Schedule 7. Calculation of final average salary

360. This Schedule describes final average salary, a concept principally used in calculating a member's employer benefit. **Paragraph 1** provides that it generally means the average annual salary payable to the person in his or her last 3 years of eligible service. In the case of a person with less than 3 years' service, a formula is provided for calculating the final average salary.

361. **Paragraph 2** ensures that a period during which a member did not pay contributions because he or she had reached a maximum benefit limit counts towards service for calculating final average salary.

362. **Paragraph 3** provides that, in calculating a member's final average salary, the member is to be treated as having been on full salary during periods of half-pay or when not in receipt of salary.

Schedule 8. Calculation of employer benefit

363. This schedule describes how a person's employer benefit is calculated.

364. **Part 1** provides a general rule which applies, with certain exceptions, to persons with not less than 7 years' service and to persons who are invalidity retirees or who transferred from the 1973 Scheme.

365. **Part 2** provides a special rule for other persons who retire before completing 7 years service. In this case, the employer benefit is increased on a sliding scale which expires at 7 years service.

366. Parts 3 and 4 make corresponding provision for 1973 Scheme re-entrants, 1991 scheme re-entrants and foreign service members. In **Part 3**, the aggregated service under the 1973 and 1991 Schemes is used in ascertaining what is a period of eligible service for the purpose of determining the factor used in calculating the employer benefit but only service under the 1991 Scheme counts in making the actual calculation. In **Part 4**, the aggregated service is used in ascertaining the percentage (if any) to apply to a person in accordance with the table in that Part, and hence the reduction (if any) to apply to the employer benefit.

367. **Part 5** makes corresponding provision for a person who has ceased paying contributions because he or she has reached his or her lump sum or pension maximum benefit limits.

368. **Part 6** is interpretative.

Schedule 9. Calculation of member benefit

369. This describes what a member benefit comprises, ie:

Para (a). A member's contributions to the Fund.

Para (b). In the case of a re-entered member - the relevant amount of his preserved benefit (ie, his member benefit from previous service, if he left it in the Fund).

Paras (c) and (d). Interest and notional interest on the amounts referred to in para (a) and (b).

Para (e). Notional contributions and interest in respect of effective service under the 1973 Scheme in the case of a member who has not retired since transferring from the 1973 Scheme. Corresponding amounts for members who have retired since transferring are covered by paras (b) and (d).

Schedule 10. Transfer value

370. **Paragraph 1** provides for the calculation of a notional amount which is credited to a person who transfers from the 1973 Scheme, in respect of his or her contributions under that scheme and notional interest on that amount. It also provides for certain amounts to be deducted, such as service repurchased and advance payments of gratuities, which were not repaid under the 1973 Scheme.

371. This amount and notional interest form part of a person's "member benefit" discussed above under Schedule 9.

372. **Paragraph 2** allows for the fact that departmental records of amounts of fortnightly contributions paid under the Defence Forces Retirement Benefits Act 1948 (which was replaced from 1 October 1972 by the DFRDB Act) exist only as annual amounts. Based on actuarial advice, this paragraph provides that calculations of notional interest are made as if the contributions had been paid at the mid-point of the particular period. Some members may have kept official slips showing individual fortnightly contributions and if these are produced, the paragraph allows for the calculations to be based on them.

Schedule 11. Rates of interest applicable in respect of certain unfounded amounts

373. This Schedule provides, in a table, rates of interest (which are rates of interest issued by the Reserve Bank of Australia applicable to 10-year Commonwealth Treasury Bonds) for application to members' service under the DFRB Act and the DFRDB Act which is to count under the MSB Scheme. **Paragraph (a)** makes the rates shown applicable to the last salary pay day in a financial year and **paragraph (b)** makes provision for a fortnightly adjustment in the rate between each end of financial year rate.



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