

**EIGHTH AMENDING DEED TO THE
DEED
TO ESTABLISH AN OCCUPATIONAL
SUPERANNUATION SCHEME FOR COMMONWEALTH
EMPLOYEES AND CERTAIN OTHER PERSONS**

Pursuant to

**SECTION 5 OF THE
SUPERANNUATION ACT 1990**

**Australian Government Solicitor
Robert Garran Offices
BARTON ACT 2600**

THIS DEED is made on ²⁸June 1994 by THE COMMONWEALTH OF AUSTRALIA (in this Deed called the "the Commonwealth").

WHEREAS the Commonwealth Minister of State for Finance, for and on behalf of the Commonwealth, pursuant to section 4 of the Superannuation Act 1990, established by Deed dated 21 June 1990 (in this Deed called "the Trust Deed") an occupational superannuation scheme (in the Deed called the "Superannuation Scheme") in order to provide benefits for certain of its employees and for certain other persons;

AND WHEREAS section 5 of the Superannuation Act 1990 provides that the Minister may, by signed instrument, amend the Trust Deed;

AND WHEREAS by Deeds dated 21 June 1990, 1 July 1991, 30 June 1992, 21 December 1992, 16 June 1993, 24 January 1994 and 7 March 1994 (the First, Second, Third, Fourth, Fifth, Sixth and Seventh Amending Deeds, respectively) the Minister amended the Trust Deed and the Rules for the administration of the Superannuation Scheme set out in the Schedule to the Trust Deed;

NOW THIS DEED WITNESSES that the Trust Deed and the Rules for the administration of the Superannuation Scheme set out in the Schedule to the Trust Deed are amended as follows:

1. Subject to this clause this Deed has effect from 1 July 1994.
 - 1.1 Subclause 2.1 has effect from the date that the Board has complied with subsection 19(4), as amended from time to time, of the *Superannuation Industry (Supervision) Act 1993*.
 - 1.2 Subclause 3.13 has effect from 29 June 1994.
2. The Trust Deed is amended as follows:
 - 2.1 Clause 3 is amended by:
 - (a) deleting subclause (3) and inserting the following subclause in its place:

"(3) In exercising its functions and powers the Board shall comply with the requirements of the *Superannuation Industry (Supervision) Act 1993*

and Regulations made under that Act, including having regard to the interests of members, their employers and persons who have preserved benefits and notwithstanding anything contained in the Deed, the Board shall, in exercising its functions and powers:

- (a) act honestly in all matters concerning the Superannuation Scheme and the Fund;
- (b) exercise, in relation to all matters affecting the Superannuation Scheme and the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
- (c) ensure that the Board's duties and powers are performed and exercised in the best interests of members and persons who have preserved benefits;
- (d) keep the money and other assets of the Fund separate from any money and assets, respectively:
 - (i) that are held by the Board personally or members of the Board personally; or
 - (ii) that are money or assets, as the case may be, of a standard employer-sponsor, or an associate of a standard employer-sponsor, as defined in the *Superannuation Industry (Supervision) Act 1993*, of the Fund;
- (e) not enter into any contract, or do anything else, that would prevent the Board from, or hinder the Board in, properly performing or exercising the Board's functions and powers;
- (f) formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including, but not limited to, the following:

- (i) the risk involved in making, holding and realising, and the likely return from, the Fund's investments having regard to its objectives and its expected cash flow requirements;
 - (ii) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
 - (iii) the liquidity of the Fund's investments having regard to its expected cash flow requirements;
 - (iv) the ability of the Fund to discharge its existing and prospective liabilities;
 - (g) if there are any reserves of the Fund - formulate and to give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
 - (h) allow a member or a person who has a preserved benefit access to any information or any documents prescribed in Regulations under the *Superannuation Industry (Supervision) Act 1993*."; and
- (b) inserting new subclause (4):

"(4) The Board must cause proper records to be kept in respect of:

- (a) contributions paid into the Fund; and
- (b) benefits paid under the Act and this Deed (whether out of the Fund or out of the Consolidated Revenue Fund); and
- (c) amounts that, under the Act and this Deed, are:

- (i) paid out of the Consolidated Revenue Fund into the Fund;
or
- (ii) out of the Fund into the Consolidated Revenue Fund."

2.2 Clause 5 is amended by inserting new subclauses (3) and (4) as follows:

- "(3) The Minister may not terminate the appointment of a Trustee who was nominated for appointment by the Australian Council of Trade Unions unless the ACTU has consented to the termination.
- (4) Before deciding whether to consent to a proposed termination of the appointment of a Trustee referred to in subclause (3), the ACTU must consult with relevant organisations referred to in subsection 28(7) of the Act."

2.3 Clause 9 is amended by inserting new subclauses (4) and (5) as follows:

- "(4) The remuneration and allowances of the Chairperson are to be paid out of the Fund.
- (5) The remuneration and allowances of the Trustees other than the Chairperson may be paid, as determined by the Minister under subsection 34(1) of the Act:
 - (a) out of the Fund; or
 - (b) out of the Consolidated Revenue Fund; or
 - (c) partly out of the Fund and partly out of the Consolidated Revenue Fund."

3. The Rules are amended as follows:

3.1 Rule 1.1.1 is amended by:

- (a) deleting the definition of "deferred annuity" and inserting the following definition in its place:

"deferred annuity", means an annuity of the type referred to in regulation 5.01 of the Regulations under the *Superannuation Industry (Supervision) Act 1993*; and

- (b) deleting paragraph (a) in the definition of **"eligible child"** and inserting the following paragraph in its place:

"(a) is a child in relation to the deceased person other than (where the deceased person was a retirement pensioner at the time of his or her death) a person who became a child of the deceased person after the deceased person became a retirement pensioner and reached age 60 unless:

- (i) the child:
- (A) was born of a marital relationship between the pensioner and another person; or
 - (B) became a stepchild of the pensioner as a result of a marital relationship between the pensioner and another person; or
 - (C) is a child of a person with whom the pensioner had a marital relationship;

and one of the following subparagraphs applies:

- (D) the marital relationship began before the pensioner became a retirement pensioner;
- (E) the marital relationship began after the pensioner became a retirement pensioner but before the pensioner reached age 60;
- (F) in the case of neither subparagraph (D) or (E) of this subparagraph applying - the marital relationship began at least 5 years before the deceased person's death; or

- (ii) the child is an adopted child or a person whom the Board determines under the definition of "child" is to be treated as a child of the retirement pensioner, and had been such an adopted child or person determined by the Board to be a child for a period of not less than 5 years before the death of the retirement pensioner; and"
- (c) adding the following definition after the definition of "**eligible child**":

"eligible roll-over fund", means a fund in respect of which a declaration by the Insurance and Superannuation Commissioner under section 243 of the *Superannuation Industry (Supervision) Act 1993* is in force;"; and
- (d) deleting the definition of "**equivalent employment**" and inserting the following definition in its place:

"equivalent employment", in relation to the sale or transfer of an organisation, business, service or asset or the transfer of a function, means the definition determined by the Board having regard to the definition (if any) agreed upon for equivalent employment, comparable employment or any like term for the purposes of that sale or transfer;"; and
- (e) adding at the end of the definition of "**minimum retiring age**" the following:

"or, where there is none, the age of 55 years;"; and
- (f) amending the definition of "**partially dependent child**" by:
 - (i) adding "is not an eligible child in relation to the deceased person and who is" after "means a person who"; and
 - (ii) deleting paragraph (a) of the definition and inserting the following paragraph in its place:

"(a) is a child of the deceased person other than (where the deceased person was a retirement pensioner at the time of his or her death) a

person who became a child of the deceased person after the deceased person became a retirement pensioner and reached age 60 unless:

- (i) the child:
 - (A) was born of a marital relationship between the pensioner and another person; or
 - (B) became a stepchild of the pensioner as a result of a marital relationship between the pensioner and another person; or
 - (C) is a child of a person with whom the pensioner had a marital relationship; and

one of the following subsubparagraphs applies:

- (D) the marital relationship began before the pensioner became a retirement pensioner;
- (E) the marital relationship began after the pensioner became a retirement pensioner but before the pensioner reached age 60;
- (F) in the case of neither subsubparagraph (D) or (E) of this subparagraph applying - the marital relationship began at least 5 years before the deceased person's death; or

- (ii) the child is an adopted child or a person whom the Board determines under the definition of "child" to be treated as a child of the retirement pensioner, and had been such an adopted child or person determined by the Board to be a child for a period of not less than 5 years before the death of the retirement pensioner; and"; and

- (g) deleting paragraph (d) in the definition of "**permanent full-time employee**" and inserting the following paragraph in its place:

"(d) a person declared by the Board in agreement with the Minister to be a permanent full-time employee;"; and

- (h) deleting paragraph (d) in the definition of "**permanent part-time employee**" and inserting the following paragraph in its place:

"(d) a person declared by the Board in agreement with the Minister to be a permanent part-time employee;"; and

- (i) deleting the definition of "**preservation fund**" and inserting the following definition in its place:

"**preservation fund**", means a fund that preserves benefits paid into it in accordance with standards prescribed under the *Superannuation Industry (Supervision) Act 1993*;

3.2 Rule 1.1.7 is amended by replacing "Occupational Superannuation Standards Act 1987" in paragraph (d) with "*Superannuation Industry (Supervision) Act 1993*".

3.3 Rule 1.3.25 is amended by replacing "paragraph 8.1.1(a) or (b)" with "paragraphs 8.1.1(a), (b) or (d)".

3.4 Rule 1.3.27 is amended by replacing "paragraph 8.1.1(a) or (b)" with "paragraphs 8.1.1(a), (b) or (d)".

3.5 Rule 1.3.28 is amended by replacing "paragraph 8.1.1(a) or (b)" with "paragraphs 8.1.1(a), (b) or (d)".

3.6 The Table in rule 1.4.1 is amended by replacing:

(a) "\$28,372" wherever occurring with "\$29,173"; and

(b) "\$226,972" with "\$233,383"; and

(c) "\$45,360" wherever occurring with "\$46,640"; and

(d) "\$90,720" with "\$93,280"; and

(e) "\$84,230" wherever occurring with "\$86,610"; and

(f) "\$343,410" with "\$353,110".

- 3.7 Rule 1.4.3 is amended by:
- (a) replacing "\$28,372" with "\$29,173"; and
 - (b) replacing "\$226,972" with "\$233,383".
- 3.8 Rule 1.4.9 is amended by deleting ", in a manner similar to the indexation of the salary ranges and benefits for the purposes of the reasonable benefit limits under the Occupational Superannuation Standards Act 1987".
- 3.9 Rule 1.4.10 and its heading are deleted.
- 3.10 The definition of "aggregate adjustment payment" in Rule 1.5.1 is amended by replacing "Occupational Superannuation Standards Act 1987 and Regulations" in paragraph (a) with "*Income Tax Assessment Act 1936*".
- 3.11 Rule 1.5.3 is amended by:
- (a) replacing "\$28,372" with "\$29,173"; and
 - (b) replacing "\$226,972" with "\$233,383".
- 3.12 The Table in rule 1.5.8 is amended by replacing:
- (a) "\$28,372" wherever occurring with "\$29,173"; and
 - (b) "\$319,185" with "\$328,196"; and
 - (c) "\$45,360" wherever occurring with "\$46,640"; and
 - (d) "\$136,080" with "\$139,920"; and
 - (e) "\$84,230" wherever occurring with "\$86,610"; and
 - (f) "\$388,770" with "\$399,750".
- 3.13 Rule 3.1.1A and its heading are added after Rule 3.1.1 as follows:
- "Contribution day for transferring staff members under the Moomba-Sydney Pipeline System Sale Act 1994**
- 3.1.1A. 29 June 1994 is to be taken to be a contribution day for the purposes of these Rules in relation to a staff member of the Pipeline Authority who

is a transferring staff member as defined in the *Moomba-Sydney Pipeline System Sale Act 1994*, if the sale day under that Act is 30 June 1994."

- 3.14 Rule 3.1.7 and its heading are deleted and the following rules and headings are inserted in its place:

"Leave of absence without pay

3.1.7. Except where rules 3.1.12 and 3.1.13 apply, this rule applies to a person if:

- (a) the person is, or at any time has been, a member; and
- (b) the person, while a member, has been on leave of absence without pay for a period longer than 6 fortnights; and
- (c) the period of leave of absence without pay is not an excluded period of leave of absence, as specified in rule 3.1.7AA.

3.1.7AA. For the purposes of rule 3.1.7, the following periods of leave of absence are, subject to rule 3.1.7AC, excluded periods of leave of absence:

- (a) a period of leave of absence during which the person's liability to make contributions is deferred under rule 3.1.17;
- (b) a period of sick leave without pay;
- (c) a period of compensation leave granted under the *Safety, Rehabilitation and Compensation Act 1988*;
- (d) a period of leave of absence granted for the purpose of undertaking a course of studies approved by the person's employer except:
 - (i) a period in respect of which the person elects not to make contributions; or
 - (ii) if the period of leave of absence is a continuous period of 2 years or longer - the part of the period that begins on the last day of those 2 years;

- (e) subject to rule 3.1.7AB, a period of leave of absence for the purpose of engaging in other employment (other than employment by an approved organisation) if:
 - (i) in respect of a person who is employed in a Department (within the meaning of the *Public Service Act 1922*) - the Secretary (within the meaning of that Act) of the Department is satisfied that the engaging by the person in the other employment is in the interests of the Australian Public Service; or
 - (ii) in respect of any other person - the person's employer is satisfied that the engaging by the person in the other employment is in the employer's interests;
- (f) subject to rule 3.1.7AB, a period of leave of absence for the purpose of engaging in employment by an approved organisation;
- (g) subject to rule 3.1.7AF, a period of leave of absence in respect of which there is in force an agreement made (whether before or after the end of the period) between the Minister and the Board declaring the period to be an excluded period of leave of absence.

3.1.7AB. Subject to rule 3.1.7AD, paragraph 3.1.7AA(e) or (f) does not apply in respect of a period, or part of a period, of leave of absence granted to a person unless the following requirements have been complied with:

- (a) if the person is ordinarily employed by one of the following Governments, authorities or bodies (the '**usual employer**'):
 - (i) the Government of the Australian Capital Territory;
 - (ii) an authority or body established by or under a law of the Australian Capital Territory;
 - (iii) another authority or body declared by the Minister, by signed writing, to be an authority or body to which this subparagraph applies;

the person's employer in respect of the employment engaged in during the period, or the part of the period, of leave of absence (the **'temporary employer'**) makes payments to the usual employer of such amounts, or at such rates, as are determined in respect of the person during the period or the part of the period by:

- (iv) if the usual employer is an authority or body established by or under a law of the Australian Capital Territory - the Government of the Australian Capital Territory; or
 - (v) otherwise - the usual employer;
- (b) if the person is ordinarily employed by one of the following authorities or bodies (the **'usual employer'**) that is not an authority or body referred to in paragraph (a):
- (i) an approved authority;
 - (ii) another authority or body referred to in subsection 19(1) of the 1990 Act;

the person's employer in respect of the employment engaged in during the period, or the part of the period, of leave of absence (the **'temporary employer'**):

- (iii) makes payments to the usual employer of such amounts, or at such rates, as the Minister determines in respect of the person during the period or the part of the period; and
 - (iv) makes those payments at the times at which payments are required to be made to the Commonwealth under section 19 of the 1990 Act by authorities or bodies to which that section applies;
- (c) if the person is ordinarily employed by someone other than a Government, authority or body referred to in paragraph (a) or (b) - the person's employer in respect of the employment engaged in during the

period, or the part of the period, of leave of absence (the '**temporary employer**') makes payments to the Commonwealth of such amounts or at such rates, and at such times, as the Minister determines in respect of the person during the period or the part of the period.

3.1.7AC. Subject to rule 3.1.7AD, except in respect of a person who, under an agreement made between the Minister and the Board, is exempted from the operation of this rule, rule 3.1.7AA does not apply in respect of a period, or a part of a period, of leave of absence granted to a person unless:

- (a) if the leave of absence was granted so that the person could engage in other employment - the other employer; or
- (b) otherwise - the permanent employer of the person;

makes payments to the Board in respect of the person, during the period, or the part of the period, of leave of absence, of productivity contributions of the amounts worked out under rule 3.2.2 and, where applicable, contributions for additional death and invalidity cover.

3.1.7AD. Rules 3.1.7AB and 3.1.7AC have effect in relation to a particular period of leave of absence granted to a person, or a particular part of such a period, subject to any modifications agreed between the Minister and the Board in relation to the person in respect of the period or the part of the period, as the case may be.

3.1.7AE. In paragraphs 3.1.7AA(e) and (f):

'**approved organisation**' means:

- (a) an organisation registered under *the Industrial Relations Act 1988* whose membership includes people who are members of the Superannuation Scheme or eligible employees under the 1976 Act; or
- (b) a body consisting of organisations referred to in paragraph (a).

3.1.7AF. An agreement made under rule 3.1.7AA(g) in respect of a period of leave of absence may be subject to such conditions as are set out in the

agreement, and, if any such conditions are contravened in relation to the period or a part of the period, that paragraph does not apply in respect of the period or the part of the period, as the case may be.

3.1.7AG. The Minister and the Board may at any time vary or terminate an agreement made under rule 3.1.7AA(g).

Savings provisions in relation to leave of absence without pay

3.1.7AH. Rules 3.1.7 to 3.1.7AG inclusive apply only to periods of leave of absence beginning on or after 1 July 1994 and, in spite of rules 3.1.7 to 3.1.7AG inclusive, rules 3.1.7, 3.1.8 and 3.1.9 as in force immediately before 1 July 1994 continue to have effect in respect of periods of leave of absence beginning before that date as if the amendments to rules 3.1.7, 3.1.8 and 3.1.9 that came into effect on 1 July 1994 had not been made.

3.1.7AI. If a person was granted leave of absence before 1 July 1994 for a period (the '**relevant period**') beginning before that date but ending on or after that date, the reference in rule 3.1.7AH to a period of leave of absence beginning before that date:

- (a) includes a reference to the part of the relevant period that occurs on or after that date; but
- (b) does not include a reference to the period of any extension of the relevant period that is granted on or after that date."

3.15 Rules 3.1.8 and 3.1.9 are deleted.

3.16 The Table in rule 3.2.2 is amended by replacing:

- (a) "\$933.33" wherever occurring with "\$947.33"; and
- (b) "\$28.00" with "\$28.42"; and
- (c) "\$1,503.33" wherever occurring with "\$1,526.00"; and
- (d) "\$2,255" wherever occurring with "\$2,289"; and

(e) "\$45.10" with "\$45.78".

3.17 Rule 4.2.1 is amended by:

(a) deleting paragraph (c) and inserting the following paragraph in its place:

"(c) the person is retired under section 76W of the *Public Service Act 1922* or the person's employment or appointment is terminated, otherwise than under that Act, on a ground similar to a ground specified in that section, provided that this paragraph shall not apply where that retirement or termination is a result of:

(i) the termination under the *Public Sector Management Act 1994* of the Australian Capital Territory, of an appointment made under that Act if:

(A) the appointment was made on probation; and

(B) the appointment had not been confirmed when the termination was effected; or

(ii) a sale or transfer of an organisation, business, service, or asset, or the transfer of a function, in which case paragraph (e) shall apply; or"; and

(b) replacing "before 1 January 1992;" with "before 1 January 1992; or" in paragraph (j); and

(c) adding a new paragraph (k) after paragraph (j) as follows:

"(k) the person is retired under section 127, 128 or 137 of the *Public Sector Management Act 1994* of the Australian Capital Territory;"

3.18 Rule 4.2.13 is deleted and the following rule inserted in its place:

4.2.13. When a person makes an election under rule 4.2.12, he or she is entitled to:

(a) where the amount of his or her final benefit accrual, less the amount of his or her accumulated member contributions, is \$500 or more:

- (i) payment of both the amount of his or her accumulated employer contributions and an amount as determined by the Board, having regard to the minimum preservation requirements referred to in the *Superannuation Industry (Supervision) Act 1993* and the Regulations under that Act and such matters that the Board considers relevant, to a preservation fund or in the purchase of a deferred annuity, as specified in the election; and
- (ii) payment to him or her of a lump sum equal to the amount of his or her final benefit accrual less the amounts payable under subparagraph 4.2.13(a)(i); or

(b) in any other case, payment of a lump sum of his or her final benefit accrual."

- 3.19 Rule 4.8.2 and its heading are deleted.
- 3.20 Rule 4.8.3 is amended by replacing "Subject to rule 4.8.2, a person" with "A person".
- 3.21 Rule 4.8.4 is amended by replacing "Subject to rule 4.8.2, where a person" with "Where a person".
- 3.22 Rule 4.8.5 is amended by replacing "Subject to rule 4.8.2, where a person" with "Where a person".
- 3.23 The Division heading in Division 4 of Part 6 is replaced by "**Division 4 - Access to preserved benefits for certain former members where membership ceased on sale of assets or transfer of functions**" and rule 6.4.1 and its heading are deleted and following rule and heading inserted in its place:

"Applicability of Division

6.4.1. Where a person:

- (a) was employed by an organisation, business, service or asset or function nominated by the Minister and agreed by the Board immediately before

the date of sale of that organisation, business, service, asset or the transfer of that function; and

- (b) accepted an offer of employment made by the new owner or transferee of the organisation, business, service, asset or function; and
- (c) did not have the option to continue to be a member after the sale or transfer; and
- (d) became entitled to a preserved benefit under rule 4.8.5; and
- (e) remains continuously in employment with the new owner or transferee, or any subsequent owner, or transferee, of the organisation, business, service, asset or function; and
- (f) is subsequently retired by the new owner or transferee, or any subsequent owner, or transferee, of the organisation, business, service, asset or function on involuntary grounds similar to that provided under paragraph 4.2.1(a) within a period of three years of the date of the first sale or transfer of the organisation, business, service, asset or function.

the person shall be entitled to benefits in accordance with rule 6.4.2 or rule 6.4.3."

3.24 Rule 6.4.2 is amended by:

- (a) replacing "Where rule 6.4.1 applies to a person who is retired in accordance with paragraph 6.4.1(e) before minimum retiring age, he or she can elect to have one of the following benefits apply:" with "Subject to rule 6.4.5, where a person to whom rule 6.4.1 applies is retired in the circumstances referred to in paragraph 6.4.1(f) before minimum retiring age, he or she can elect within 3 months after the date of retirement, to have one of the following benefits apply:";
- (b) deleting paragraphs (b) and (c) and inserting the following paragraphs in their place:
 - "(b) where the amount of his or her preserved benefit, less the amount of his or her accumulated member contributions, is \$500 or more:

- (i) payment of both the amount of his or her accumulated employer contributions and an amount as determined by the Board, having regard to the minimum preservation requirements referred to in the *Superannuation Industry (Supervision) Act 1993* and Regulations under that Act and such matters that the Board considers relevant, to a preservation fund or in the purchase of a deferred annuity, specified in the election; and
- (ii) payment to him or her of a lump sum equal to the amount of his or her preserved benefit less the amounts payable under subparagraph 6.4.2(b)(i); or
- (c) where the amount of his or her preserved benefit, less the amount of his or her accumulated member contributions (if any), is less than \$500, payment of a lump sum of the amount of his or her preserved benefit; or"

3.25 Rule 6.4.3 is amended by replacing "in accordance with paragraph 6.4.1(e) on or after attaining minimum retiring age, he or she can elect to have one of the following benefits apply:" with "in the circumstances referred to in paragraph 6.4.1(f) on or after attaining minimum retiring age he or she can elect within 3 months after the date of retirement, to have one of the following benefits apply:".

3.26 New rules and headings are added after rule 6.4.4 as follows:

"Benefits available on involuntary retirement before minimum retiring age on or after 1 July 2000

6.4.5. Where a person:

- (a) to whom rule 6.4.1 applies is retired on or after 1 July 2000 in circumstances referred to in paragraph 6.4.1(f) before minimum retiring age; and
- (b) rule 6.4.2 applies to him or her;

he or she can elect to have one of the benefits in rule 6.4.2 apply, other than the benefit in paragraph 6.4.2(b).

Savings provision in relation to certain former members employed by the new owner of Repatriation General Hospital, Hollywood

6.4.6. The organisation responsible for the conduct of the hospital known as Repatriation General Hospital, Hollywood immediately before the date of sale of that hospital by the Commonwealth is deemed, for the purposes of this Division, to be an organisation nominated by the Minister and agreed by the Board immediately before the date of sale of that hospital."

- 3.27 Rule 8.1.1 is amended by replacing "membership." with "membership; or" and adding a new paragraph (d) as follows:

"(d) an amount payable to, or in relation to, the member in accordance with Part 8 of the *Superannuation Guarantee (Administration) Act 1992*."

- 3.28 Rule 8.1.2 is amended by deleting paragraph (c) and inserting the following paragraph in its place:

"(c) in any other case - the later of:

- (i) the member's first day of membership; and
- (ii) the date the transfer value or values became payable."

- 3.29 Rule 8.1.3. is amended by replacing "paragraph 8.1.1(a) or (b)" with "paragraph 8.1.1(a), (b) or (d)".

- 3.30 Rule 8.2.1 is amended by deleting the rule and its heading and inserting the following rules and headings in its place:

"Public employment

8.2.1. The Minister and the Board may agree that employment, whether within or outside Australia, by a person, or by persons included in a class of persons, is public employment for the purposes of this Division.

8.2.1A. The Minister and the Board may at any time vary or terminate an agreement made under rule 8.2.1.

8.2.1B. An agreement made under rule 8.2.1 may be expressed to have taken effect on a day earlier than the day on which the agreement is made but not earlier than 1 July 1990.

8.2.1C. An agreement made under rule 8.2.1 or a variation of such an agreement:

- (a) may be expressed to apply only in relation to employment of a person included in a class of persons referred to in the agreement; and
- (b) may be expressed to apply only until a time stated in the agreement;

8.2.1D. The Board must cause notice of the making of an agreement under rule 8.2.1, or of the variation or termination of such an agreement, to be published in the *Gazette*.

Savings provision in relation to public employment

8.2.1E. A declaration made by the Board under rule 8.2.1 as in force immediately prior to amendment on 1 July 1994 is taken, for the purposes of rule 8.2.1 as in force after that amendment, to be an agreement made thereunder."

3.31 Rules 8.2.2 and 8.2.4 are deleted.

3.32 Rule 8.2.5 is amended by deleting the rule and its heading and inserting the following rules and headings in its place:

"Eligible superannuation schemes

8.2.5. Subject to rule 8.2.5D, the Minister and the Board may agree that a superannuation scheme is an eligible superannuation scheme for the purposes of this Division.

8.2.5A. The Minister and the Board may at any time terminate an agreement made under rule 8.2.5.

8.2.5B. An agreement made under rule 8.2.5 may be expressed to have taken effect on a day earlier than the day on which the agreement is made but not earlier than 1 July 1990.

8.2.5C. The Board must cause notice of the making of an agreement under rule 8.2.5, or of the termination of such an agreement, to be published in the *Gazette*.

8.2.5D. An agreement may not be made under rule 8.2.5 in relation to a superannuation scheme (the '**relevant scheme**') unless:

- (a) the relevant scheme is a public sector superannuation scheme; and
- (b) the trustee of the relevant scheme has given a written undertaking to the Board stating that:
 - (i) the relevant scheme will accept transfer values paid from, and pay transfer values to, the Superannuation Scheme or any other eligible superannuation scheme; and
 - (ii) the relevant scheme will provide equitable benefits in return for a transfer value so accepted; and
- (c) the trustee of the relevant scheme has given a written undertaking to the Board stating that, except as provided by rule 8.2.5F, the scheme will not pay out:
 - (i) the whole or any part of the employer component of a transfer value paid to the relevant scheme from the Superannuation Scheme; or
 - (ii) any part of any other transfer value paid to the relevant scheme that represents the whole or a part of the employer component of a transfer value paid from the Superannuation Scheme; and
- (d) the trustee of the relevant scheme has given a written confirmation to the Board stating that the undertaking does not conflict with the trust

instrument, other document or legislation, or combination of them, governing the establishment and operation of the relevant scheme;

or the Minister and the Board are satisfied that there are special circumstances that make it desirable for the relevant scheme to be treated as an eligible superannuation scheme for the purposes of this Division even though one or more of the paragraphs of this rule are not complied with.

8.2.5E. In rule 8.2.5D:

'public sector superannuation scheme' means a scheme for the payment of superannuation, retirement or death benefits that is established:

- (a) by or under a law of the Commonwealth, of a State or of a Territory;
or
- (b) under the authority of:
 - (i) the Commonwealth, a State or a Territory; or
 - (ii) a municipal corporation, another local governing body, or a public authority constituted by or under a law of the Commonwealth, of a State or of a Territory; or
 - (iii) a company or other body corporate in which the Commonwealth, a State, a Territory, a municipal corporation, another local governing body or a public authority referred to in subparagraph (ii) has, or any 2 or more of them together have, a controlling interest;

'trustee', in relation to a superannuation scheme of which there is no trustee (within the ordinary meaning of that expression), means the person who manages the scheme.

8.2.5F. The whole or part of an employer component, or the part of a transfer value that represents the whole or a part of an employer component, referred to in subparagraph 8.2.5D(c)(i) or (ii), as the case may be, may only be paid out as follows:

- (a) except where the amount proposed to be paid is the whole or a part of a lump sum retrenchment benefit to which paragraph (b) applies, payment may be made:
 - (i) to an eligible superannuation scheme; or
 - (ii) in the same circumstances, and to the same extent, as benefits that are required to be compulsorily preserved under the *Superannuation Industry (Supervision) Act 1993* and the regulations under that Act may be paid;
- (b) if the amount proposed to be paid is the whole or a part of a lump sum retrenchment benefit that has become payable before 1 July 2000:
 - (i) payment may be made of any part of the amount other than the amount (the '**preserved part of the amount**') required to be compulsorily preserved under the *Superannuation Industry (Supervision) Act 1993* and the regulations under that Act; and
 - (ii) payment may be made of the preserved part of the amount in the circumstances provided for under that Act and those regulations.

8.2.5G. A superannuation scheme to which an agreement made under rule 8.2.5 relates is not an eligible superannuation scheme in relation to a person if rule 8.3.3 or 8.3.4 applies in respect of the person because of his or her having become a member of the superannuation scheme.

8.2.5H. A person is taken, for the purposes of this Division, to have been a member of an eligible superannuation scheme at a particular time if, and only if, the person was at that time a member of a superannuation scheme in respect of which:

- (a) if that time was before 1 July 1994 - a declaration by the Board under rule 8.2.5 as in force at that time was, or is taken to have been, in force; or

- (b) if that time was on or after 1 July 1994 - an agreement was in force under rule 8.2.5 as in force on or after that date.

Savings provision in relation to eligible superannuation schemes

8.2.5J. A declaration made by the Board under rule 8.2.5 as in force immediately prior to amendment on 1 July 1994 is taken, for the purposes of rule 8.2.5 as in force after that amendment, to be an agreement made thereunder."

3.33 Rule 8.2.6 is deleted.

3.34 Rule 9.1.5C and its heading are added after rule 9.1.5B as follows:

"Payment of unclaimed money to eligible roll-over fund

9.1.5C. If:

- (a) a lump sum benefit or preserved benefit applicable to a person is payable under these Rules to a person; and
- (b) the person fails, within 90 days after the benefit becomes payable, to tell the Board in writing how the person wishes the benefit to be paid;

the Board may pay the amount of the benefit to an eligible roll-over fund."

3.35 Rule 9.1.9A and its heading are added after rule 9.1.9 as follows:

"Board may determine alternative arrangements for payment of contributions and other related matters in respect of certain members

9.1.9A. Where a designated employer pays members other than in respect of fortnights ending on the day before a contribution day, the Board and the designated employer may agree to substitute other days in lieu of contribution days and the Board, having regard to these Rules and the need for equity between members, may adjust the calculation and payment of contributions and benefits under these Rules."

3.36 Rule 9.3.2 is amended by replacing "he or she shall, where considered appropriate by the Board in accordance with any principles advised to Board by the Minister"

with "he or she shall, where considered appropriate by the Board in agreement with the Minister,".

- 3.37 Rule 12.2.3 is amended by replacing "Where paragraph 12.2.2(b)" with "Subject to rule 12.2.8, where paragraph 12.2.2(b)".
- 3.38 Rule 12.2.5 is amended by replacing "Pre-assessment payments" with "Subject to rule 12.2.8, pre-assessment payments".
- 3.39 Rule 12.2.8 and its heading are added after rule 12.2.7 as follows:

"Board to determine commencement date and amount of pre-assessment payments in certain circumstances"

12.2.8. Where:

- (a) the Board decides not to make pre-assessment payments to a person under paragraph 12.2.2(a); and
- (b) the Board subsequently decides to make pre-assessment payments to the person under paragraph 12.2.2(b) as a result of:
 - (i) a request for pre-assessment payments made by the person after the date of the Board's decision in paragraph (a); or
 - (ii) a request for reconsideration under Part 11 of the Board's decision in paragraph (a) made by the person more than three months after the date of the Board's decision in paragraph (a);

the Board shall determine:

- (i) the date the pre-assessment payments commence, having regard to the principles in rule 12.2.3, the need for equity between members and any other matters that the Board considers relevant, provided that the date is no later than a contribution day coincident with or next following the date the Board decides to make pre-assessment payments to the person; and

- (ii) the fortnightly amount of the pre-assessment payments, having regard to the principles in rule 12.2.5, the date determined by the Board for the commencement of the pre-assessment payments, the need for equity between members and any other matters that the Board considers relevant."

IN WITNESS WHEREOF this Deed has been executed the day and year first hereinbefore written.

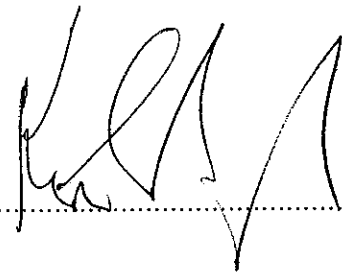
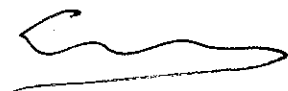
SIGNED, SEALED AND DELIVERED)

by the Honourable KIM C. BEAZLEY,)

Minister for Finance, for and on behalf of)

THE COMMONWEALTH OF)

AUSTRALIA, in the presence of:)

(name))

Gary Geoffrey O'NEILL

(address))

37 Gawler Crs.
Deakin ACT 2601

(description))

Senior adviser