

THIS DEED is made on 20 August 2001 by THE COMMONWEALTH OF AUSTRALIA (in this Deed called “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 (which Deed, as previously amended, is in this Deed called “the Trust Deed”) an occupational superannuation scheme (in the Trust Deed called the “Public Sector 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 for Finance and Administration may, by signed instrument, amend the Trust Deed but that the Minister may not amend the Trust Deed unless the Board has consented to the amendment or the amendment falls within any of sub-paragraphs (b)(i), (ii) or (iii) of sub-section 5(1A);

AND WHEREAS by Deeds dated 21 June 1990, 1 July 1991, 30 June 1992, 21 December 1992, 16 June 1993, 24 January 1994, 7 March 1994, 28 June 1994, 22 June 1995, 29 January 1996, 10 December 1996, 25 March 1998 and 5 December 1999 (the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth and Thirteenth Amending Deeds, respectively) the Minister amended the Trust Deed and the Rules for the administration of the Public Sector Superannuation Scheme set out in the Schedule to the Trust Deed;

NOW THIS DEED WITNESSES that the Rules for the administration of the Public Sector Superannuation Scheme set out in the Schedule to the Trust Deed are amended as follows and that the amendments do not require the consent of the Board:

1. The amendments of the Rules made by this Deed come into effect on the later of:
  - (a) the date of gazettal [see the *Acts Interpretation Act 1901*, sections 46A and 48]; and
  - (b) the time when the *Superannuation Legislation Amendment (Post-retirement Commutations) Act 2001* commences.
2. The Rules are amended as follows:
  - 2.1 Rule 1.2.1 is amended by inserting the following definition after the definition of **APS employee**:

<b>“assessment</b>	has the same meaning as in the <i>Superannuation Contributions Tax (Assessment and Collection) Act 1997</i> .”
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  - 2.2 Rule 1.2.1 is amended by inserting the following definition after the definition of **statutory office**:

<b>“surcharge</b>	has the same meaning as in the <i>Superannuation Contributions Tax (Assessment and Collection) Act 1997</i> .
<b>surchargeable contributions</b>	means surchargeable contributions (within the meaning of the <i>Superannuation Contributions Tax (Assessment and Collection) Act 1997</i> ) that are attributable to the operation of these Rules.”

2.3 The following Rule is inserted after Rule 9.4.2:

“**9.4.3** When apportioning a reversionary **pension** under Rule 9.4.1, or re-apportioning a reversionary **pension** under Rule 9.4.2, the **Board** must:

- (a) disregard any reduction in **pension** that results from an election under Rules 15.2.1 or 15.3.1; and
- (b) not apportion, or re-apportion, among other beneficiaries so much of any **pension** that is commuted under Part 15 of the Rules.”

2.4 The following Rule is inserted after Rule 12.1.5:

“

### **Cancelling a commutation election**

**12.1.6** If:

- (a) a person makes an election under Rules 15.1.1, 15.2.1 or 15.3.1; and
- (b) no payment has been made in accordance with the election; and
- (c) the **Board** is satisfied that the election should be cancelled;

the **Board** may direct that the election is to be cancelled and, if it so directs, these Rules have effect as if the election had not been made.”

2.5 The following Part is inserted after Part 14:

“

## **PART 15 – COMMUTATION OF PENSION: PAYMENT OF SURCHARGE LIABILITY**

### **Division 1**

#### **Commutation of former member’s pension**

#### **Election**

**15.1.1** If:

- (a) a person is a **pensioner**; and
- (b) an **assessment** is made of the **surcharge** on the person’s **surchargeable contributions** for a financial year; and

- (c) the person becomes liable to pay the **surcharge** under the **assessment** in accordance with paragraph 10(4)(c) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*;

the person may, within:

- (d) three months after the **assessment** was made; or
- (e) such longer period as the **Board** allows;

give the **Board** a written notice electing to commute the whole or a part of the person's **pension** to a lump sum benefit equal to the amount specified in the election.

**15.1.2** An election must be accompanied by:

- (a) a written notice requesting that the amount of the lump sum benefit be:
  - (i) paid to the Commissioner of Taxation; and
  - (ii) wholly applied in payment of **surcharge** under the **assessment**; and
- (b) a copy of the notice of **assessment**.

### Surcharge Commutation Amount

**15.1.3** The amount specified in the election:

- (a) must be equal to or less than the amount of the **surcharge** under the **assessment**; and
- (b) must not have the effect of reducing the **pension** below zero; and
- (c) is to be known as the Surcharge Commutation Amount for the purposes of this Division.

### Entitlement to lump sum benefit

**15.1.4** If a person makes an election under Rule 15.1.1 in relation to a **pension**, the person is entitled to a lump sum benefit equal to the Surcharge Commutation Amount.

**15.1.5** If a person is entitled to a lump sum benefit under Rule 15.1.4, the liability to pay that benefit must be discharged by:

- (a) paying the amount of that benefit to the Commissioner of Taxation in accordance with the person's request; and
- (b) informing the Commissioner of Taxation of the person's request that the amount be wholly applied in payment of **surcharge** under the **assessment** concerned.

## Reduction of pension

**15.1.6** If a person makes an election under Rule 15.1.1 in relation to a **pension**, the annual rate of the **pension** is to be reduced, with effect from the beginning of the day of the election, so that it equals the amount worked out using the following formula:

$$\text{Pre – commutation Election Pension Rate} \quad - \quad \frac{\text{Surcharge Commutation Amount}}{\text{Conversion Factor}}$$

where:

Conversion Factor means the factor that is applicable to the person under the determination made by the **Board** under Rule 15.1.9.

Pre-commutation Election Pension Rate means the annual rate at which the **pension** was payable to the person immediately before the election was made.

## One election per assessment

**15.1.7** A person is not entitled to make more than one election under Rule 15.1.1 in relation to a particular **assessment**.

## Elections made before the first pension payday in a financial year

**15.1.8** If an election under Rule 15.1.1 is made during the period:

- (a) beginning at the start of a financial year; and
- (b) ending at the end of the first **pension payday** in that year;

this Division has effect as if the election had been made on the first day after that **pension payday**.

## Conversion factor in relation to Surcharge Commutation Amount

**15.1.9** The **Board** must, in accordance with advice received from an actuary, determine in writing, in relation to persons who are pensioners, the conversion factor that, having regard to:

- (a) a person's age when he or she makes an election under Rule 15.1.1; and
- (b) other relevant factors (if any);

is applicable for the purpose of working out, in relation to the person, the yearly amount that would have to be paid to discharge a liability equal to the person's Surcharge Commutation Amount.

## Division 2

## Commutation of spouse's pension

### Election

#### 15.2.1 If:

- (a) a person (the Deceased Person) dies and:
  - (i) the Deceased Person was a **member**; or
  - (ii) the Deceased Person was a **pensioner**; and
- (b) the Deceased Person is survived by a **spouse**; and
- (c) the **spouse** is entitled to a **pension**; and
- (d) an **assessment** is made of the **surcharge** on the Deceased Person's **surchargeable contributions** for a financial year; and
- (e) the **spouse** becomes liable to pay the **surcharge** under the **assessment** in accordance with paragraph 10(4)(ca) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*;

the **spouse** may, within:

- (f) three months after the **assessment** was made; or
- (g) such longer period as the **Board** allows;

give the **Board** a written notice electing to commute the whole or a part of that **pension** to a lump sum benefit equal to the amount specified in the election.

#### 15.2.2 An election must be accompanied by:

- (a) a written notice requesting that the amount of the lump sum benefit be:
  - (i) paid to the Commissioner of Taxation; and
  - (ii) wholly applied in payment of **surcharge** under the **assessment**; and
- (b) a copy of the notice of **assessment**.

### Surcharge Commutation Amount

#### 15.2.3 The amount specified in an election in relation to a particular **pension**:

- (a) must be equal to or less than the amount of the **surcharge** under the **assessment**; and
- (b) must not have the effect of reducing the **pension** below zero; and

- (c) is to be known as the Surcharge Commutation Amount for the purposes of this Division.

### Entitlement to lump sum benefit

**15.2.4** If a **spouse** makes an election under Rule 15.2.1 in relation to a **pension**, the **spouse** is entitled to a lump sum benefit equal to the Surcharge Commutation Amount.

**15.2.5** If a **spouse** is entitled to a lump sum benefit under Rule 15.2.4, the liability to pay that benefit must be discharged by:

- (a) paying the amount of that benefit to the Commissioner of Taxation in accordance with the spouse's request; and
- (b) informing the Commissioner of Taxation of the spouse's request that the amount be wholly applied in payment of **surcharge** under the **assessment** concerned.

### Reduction of pension

**15.2.6** If a **spouse** makes an election under Rule 15.2.1 in relation to a **pension**, the annual rate of the **pension** is to be reduced in accordance with the method determined by the **Board** under Rule 15.2.10. The reduction takes effect from the beginning of the day of the election.

### One election per assessment

**15.2.7** A **spouse** is not entitled to make more than one election under Rule 15.2.1 in relation to a particular **assessment**.

### Elections made before the first pension payday in a financial year

**15.2.8** If an election under Rule 15.2.1 is made during the period:

- (a) beginning at the start of a financial year; and
- (b) ending at the end of the first **pension payday** in that year;

this Division has effect as if the election had been made on the first day after that **pension payday**.

### Part of pension

**15.2.9** To avoid doubt, if a **pension** is apportioned under Division 4 of Part 9, this Division has effect, in relation to the portion applicable to a particular **spouse**, as if a reference to the **pension** were a reference to that portion.

## Method for reduction of spouse's pension in relation to Surcharge Commutation Amount

**15.2.10** The **Board** must, following consultation with an actuary, determine in writing, in relation to persons who are receiving a spouse's **pension**, the method that, having regard to:

- (a) a person's age when he or she makes an election under Rule 15.2.1; and
- (b) other relevant factors (if any);

is applicable for the purpose of working out, in relation to the person, the yearly amount that would have to be paid to discharge a liability equal to the person's Surcharge Commutation Amount.

## Division 3

### Commutation of child's pension

#### Election

**15.3.1** If:

- (a) a person (the Deceased Person) dies; and
- (b) either:
  - (i) the Deceased Person is not survived by a **spouse** but is survived by a child or children of the Deceased Person; or
  - (ii) the Deceased Person is survived by a **spouse**, the **spouse** dies, and the **spouse** is survived by a child or children of the **deceased person**; and
- (c) a **pension** is payable in respect of the child or children; and
- (d) an **assessment** is made of the **surcharge** on the Deceased Person's **surchargeable contributions** for a financial year; and
- (e) the person to whom the **pension** is payable (the Eligible Person) (who may be the child or one of the children) becomes liable to pay the **surcharge** under the **assessment** in accordance with paragraph 10(4)(ca) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*;

the Eligible Person may, within:

- (f) three months after the **assessment** was made; or
- (g) such longer period as the **Board** allows;

give the **Board** a written notice electing to commute the whole or a part of that **pension** to a lump sum benefit equal to the amount specified in the election.

**15.3.2** The election must be accompanied by:

- (a) a written notice requesting that the amount of the lump sum benefit be:
  - (i) paid to the Commissioner of Taxation; and
  - (ii) wholly applied in payment of **surcharge** under the **assessment**; and
- (b) a copy of the notice of **assessment**.

### Surcharge Commutation Amount

**15.3.3** The amount specified in the election:

- (a) must be equal to or less than the amount of the **surcharge** under the **assessment**; and
- (b) must not have the effect of reducing the **pension** below zero; and
- (c) is to be known as the Surcharge Commutation Amount for the purposes of this Division.

### Entitlement to lump sum benefit

**15.3.4** If an Eligible Person makes an election under Rule 15.3.1 in relation to a **pension**, the Eligible Person is entitled to a lump sum benefit equal to the Surcharge Commutation Amount.

**15.3.5** If an Eligible Person is entitled to a lump sum benefit under Rule 15.3.4, the liability to pay that benefit must be discharged by:

- (a) paying the amount of that benefit to the Commissioner of Taxation in accordance with the Eligible Person's request; and
- (b) informing the Commissioner of Taxation of the Eligible Person's request that the amount be wholly applied in payment of **surcharge** under the **assessment** concerned.

### Reduction of pension

**15.3.6** If an Eligible Person makes an election under Rule 15.3.1 in relation to a **pension**, the annual rate of the **pension** is to be reduced in accordance with the method determined by the **Board** under Rule 15.3.10. The reduction takes effect from the beginning of the day of the election.

### One election per assessment

**15.3.7** An Eligible Person is not entitled to make more than one election under Rule 15.3.1 in relation to a particular **assessment**.



### **Elections made before the first pension payday in a financial year**

**15.3.8** If an election under Rule 15.3.1 is made during the period:

- (a) beginning at the start of a financial year; and
- (b) ending at the end of the first **pension payday** in that year;

this Division has effect as if the election had been made on the first day after that **pension payday**.

### **Part of pension**

**15.3.9** To avoid doubt, if a **pension** is apportioned under Division 4 of Part 9, this Division has effect, in relation to the portion applicable to a particular child or to particular children, as if a reference to the **pension** were a reference to that portion.

### **Method for reducing pension in relation to Surcharge Commutation Amount**

**15.3.10** The **Board** must, following consultation with an actuary, determine in writing, in relation to persons to whom a **pension** is payable in respect of a child or children, the method that, having regard to:

- (a) the age of the child, or the ages of the children, when the person makes an election under Rule 15.3.1; and
- (b) other relevant factors (if any);

is applicable for the purpose of working out, in relation to the person, the yearly amount that would have to be paid to discharge a liability equal to the person's Surcharge Commutation Amount."

3. Rules 15.1.1 to 15.1.8, Rules 15.2.1 to 15.2.9 and Rules 15.3.1 to 15.3.9 of the Rules as amended by this Deed apply in relation to an assessment, whether made before, at or after the commencement of this clause.
4. Rules 15.2.1 and 15.3.1 of the Rules as amended by this Deed apply to a death, whether the death occurred before, at or after the commencement of this clause.
5. The first set of determinations made under Rule 15.1.9, 15.2.10 or 15.3.10 of the Rules as amended by this Deed may be expressed to have taken effect at the commencement of the Rule concerned.

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

SIGNED, SEALED AND DELIVERED )

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by the Honourable JOHN JOSEPH FAHEY )

SIGNED

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Minister for Finance and Administration )

)

for and on behalf of )

)

THE COMMONWEALTH OF )

)

AUSTRALIA, in the presence of: )

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(name) )

Matthew Brine

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