

EXPLANATORY STATEMENT

ISSUED BY AUTHORITY OF THE MINISTER FOR FINANCE AND ADMINISTRATION

SUBJECT: FIFTEENTH 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

AUTHORITY

The Minister for Finance, for and on behalf of the Commonwealth, established an occupational superannuation scheme to provide benefits for certain of the Commonwealth's employees and for certain other people by Deed dated 21 June 1990 under section 4 of the *Superannuation Act 1990*. In this statement the Deed is called "the Trust Deed". The occupational superannuation scheme is known as the Public Sector Superannuation Scheme (PSS).

2. Section 5 of the *Superannuation Act 1990* (1990 Act) provides that the Minister for Finance and Administration may amend the Trust Deed by signed instrument, subject to obtaining the PSS Board's consent to the amendment where necessary.

3. The Minister has amended the Trust Deed and the Rules for the Administration of the Superannuation Scheme set out in the Schedule to the Trust Deed by the following signed instruments:

Trust Deed	Date
First Amending Deed	21 June 1990
Second Amending Deed	1 July 1991
Third Amending Deed	30 June 1992
Fourth Amending Deed	21 December 1992
Fifth Amending Deed	16 June 1993
Sixth Amending Deed	24 January 1994
Seventh Amending Deed	7 March 1994
Eighth Amending Deed	28 June 1994
Ninth Amending Deed	22 June 1995
Tenth Amending Deed	29 January 1996
Eleventh Amending Deed	10 December 1996
Twelfth Amending Deed	25 March 1998
Thirteenth Amending Deed	5 December 1999
Fourteenth Amending Deed	20 August 2001

4. On 25 September 2001 the Minister for Finance and Administration amended the Rules for the Administration of the PSS set out in the Schedule to the Trust Deed by signed instrument. That instrument is called the Fifteenth Amending Deed in this statement.
5. Section 5 of the 1990 Act deals with amendments made to the Trust Deed. This section allows the Minister to amend the Trust Deed provided that the PSS Board has consented to the amendment. However, paragraph 5(1A)(b) prescribes a number of exemptions where the PSS Board's consent is not required to an amendment to the Trust Deed.
6. Sub-paragraph 5(1A)(b)(i) exempts an amendment that relates to a payment by an employer-sponsor (within the meaning of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act)) that will, after the making of the amendment, be required or permitted to be made under the 1990 Act. Subsection 5(1B) provides that for the purposes of that sub-paragraph a payment under the Trust Deed or the Rules is taken to be a payment by an employer-sponsor.
7. The amendments included in the Fifteenth Amending Deed provide for twice yearly indexation of PSS pensions. As scheme pensions are payable under the PSS Rules and are paid by the Commonwealth, the amendments relate to a payment by an employer-sponsor because of subsection 5(1B). The amendments therefore did not require the consent of the PSS Board.

DATE OF EFFECT OF THE FIFTEENTH AMENDING DEED

8. **Clause 1** specifies that the amendments of the Rules made by the Fifteenth Amending Deed come into effect on the later of:
 - (a) the date of gazettal; and
 - (b) the time when the *Superannuation Legislation Amendment (Indexation) Act 2001* commences.

AMENDMENTS TO THE RULES

Background

9. The *Superannuation Legislation Amendment (Indexation) Act 2001* amended the *Superannuation Act 1922* and the *Superannuation Act 1976* to provide for the twice yearly indexation of pensions paid under those Acts in place of the previous annual indexation. The Fifteenth Amending Deed amended the PSS Rules to provide for the twice yearly indexation of PSS pensions.
10. Pensions payable under the PSS Rules were previously indexed on an annual basis. An increase was payable from the first payday in July and was based on any annual increase in the Consumer Price Index (CPI) as measured in the preceding March quarter. Pensions were not reduced when there is a decrease in the CPI, however, that decrease was offset against the next or subsequent increase in calculating the indexation amount.
11. The Fifteenth Amending Deed amended the PSS Rules to provide that, from January 2002, indexed pensions payable under the Rules may be increased in January and July of every year. Pensions will be increased where, after any offsets, there has been a half yearly increase in the CPI as measured at the previous September or March quarter respectively.

AMENDMENTS TO THE RULES – DETAILED DESCRIPTION

Pension increases

12. Division 6 of Part 9 specifies how PSS pension are to be increased. **Subclause 2.1** replaced Division 6 of Part 9 with a new Division that provides for twice yearly indexation of PSS pensions. The method of indexation has not changed but is applied in July and January of any following year where there has been an increase (adjusted for any offsets for previous decreases in the CPI) in the half-yearly CPI as measured in the previous March or September quarter respectively.

13. New Rules 9.6.1 and 9.6.2 provide for July pension increases and new Rules 9.6.3 and 9.6.4 provide for January pension increases. These new Rules mirror the approach used in the old Rules 9.6.1 and 9.6.2. New Rule 9.6.5, which deals with the adjustment of partial invalidity pensions, is identical to old Rule 9.6.3.

Reduction or Suspension of Invalidity Pension

14. **Subclause 2.2** replaced the definition of Notional Income in Rule 10.11.9 with a new definition. This definition is used when determining the amount of any reduction or suspension of invalidity pension payments while a pensioner is in receipt of income from invalidity pension and personal earnings over a certain threshold. That threshold, known as Notional Income, is the greater of two possible rates, 75% of the person's updated superannuation salary at the time of invalidity retirement, usually the salary of the position held by the person at the time, and a rate which is a fixed amount indexed to CPI on an annual basis by reference to Division 6 of Part 9.

15. As a consequence of the new Division 6 of Part 9 it was necessary to amend the definition of Notional Income in Rule 10.11.9 to allow it to continue to operate as intended. The new definition ensures that the threshold amount is indexed on a twice-yearly basis in the same way as the pension payments. The rate to apply immediately before 1 January 2002 is the updated rate that has been calculated to apply before that date under the operation of previous definition, that is, \$33,732.

Commutation of Pension

16. Part 15 of the Rules makes provision for a person who has received a post-retirement surcharge assessment to commute a portion of their PSS pension in order to pay the surcharge to the Australian Taxation Office. Previously, where a person made an election between the last date of a financial year and the first fortnightly payment period in the next financial year the reduction did not take effect until after the indexation provisions have been applied.

Subclauses 2.3, 2.4 and 2.5 replaced paragraphs (a) and (b) of Rules 15.1.8, 15.2.8 and 15.3.8 as a consequence of the change to half-yearly indexation.

Application provisions

17. **Clause 3** specifies that the amendments of the Rules made by the Deed apply for the purposes of working out increases for the half-year beginning on 1 January 2002 and subsequent half-years and other related provisions. **Clause 4** provides, to put the matter beyond doubt, that the amendments of the Rules made by the Deed do not affect any increase arising from the amended or repealed provisions prior to that date.