

## EXPLANATORY STATEMENT

### ISSUED BY AUTHORITY OF THE MINISTER FOR FINANCE AND ADMINISTRATION

**SUBJECT: EIGHTEENTH 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 a 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* 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:

<b>Trust Deed</b>	<b>Date</b>	<b>Trust Deed</b>	<b>Date</b>
First Amending Deed	21 June 1990	Eleventh Amending Deed	10 Dec 1996
Second Amending Deed	1 July 1991	Twelfth Amending Deed	25 Mar 1998
Third Amending Deed	30 June 1992	Thirteenth Amending Deed	5 Dec 1999
Fourth Amending Deed	21 Dec 1992	Fourteenth Amending Deed	20 Aug 2001
Fifth Amending Deed	16 June 1993	Fifteenth Amending Deed	25 Sep 2001
Sixth Amending Deed	24 Jan 1994	Sixteenth Amending Deed	26 Jun 2002
Seventh Amending Deed	7 May 1994	Seventeenth Amending Deed	3 April 2003
Eighth Amending Deed	28 June 1994		
Ninth Amending Deed	22 June 1995		
Tenth Amending Deed	29 Jan 1996		

4. On 27 June 2003 the Minister for Finance and Administration amended the Trust Deed and 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 Eighteenth 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.
6. Paragraph 5(1A)(b) of the 1990 Act, however, prescribes a number of exemptions where the PSS Board's consent is not required to an amendment to the Trust Deed. 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 PSS Board has consented to the amendments included in subclauses 2.1, 2.2, 3.16, 3.17, 3.24 and 3.27 of the Eighteenth Amending Deed.
8. The other amendments included in the Eighteenth Amending Deed affect benefits that are payable under the PSS Rules and are paid by the Commonwealth. This means that the amendments relate to a payment by an employer-sponsor because of subsection 5(1B). These amendments therefore did not require the consent of the PSS Board.

#### **DATE OF EFFECT OF THE EIGHTEENTH AMENDING DEED**

9. **Clause 1** specifies that, subject to subclause 1.1, the amendments of the Trust Deed and Rules made by the Eighteenth Amending Deed come into effect on the later of:
  - (a) the date of gazettal; and
  - (b) the time when the *Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Act 2003* receives the Royal Assent.
10. **Subclause 1.1** specifies that the amendments of the Rules made by subclauses 3.8, 3.9, 3.10 and 3.23 of the Eighteenth Amending Deed come into effect on 1 July 2003.

#### **AMENDMENTS TO THE TRUST DEED**

11. **Subclause 2.1** replaces subclause 12.1 with new subclauses 12.1 to 12.5 that allow the PSS Board to delegate its power to reconsider decisions to a Reconsideration Advisory Committee.
12. The new provisions also allow a person to whom the Board has delegated its power to sub delegate that power to one of the other persons to whom the power may be delegated. Provisions of the *Acts Interpretation Act 1901* apply to the sub delegation as if it were a delegation.
13. **Subclause 2.2** replaces subclause 13.1 in the Trust Deed to replace a reference to "officer" with "APS employee" which is the definition currently used in the *Public Service Act 1999*.

## **AMENDMENTS TO THE RULES**

### **Overview**

14. Most of the amendments to the PSS Rules, no matter how minor in nature, have been implemented by replacement of the relevant Rule, rather than by way of intricate description of insertions and/or deletions. This approach has been taken to improve the readability of the Amending Deed.

15. The changes made to the Rules by this Eighteenth Amending Deed do not adversely affect members' benefits or rights. The changes included in the Eighteenth Amending Deed are outlined below and largely mirror the changes made to the *Superannuation Act 1976* by the *Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Act 2003*. An amendment relating to the Superannuation (Government Co-contribution for Low Income Earners) Bill has also been included in the proposed Eighteenth Amending Deed.

16. Whenever a person is affected by a decision of the Board under the Rules, the scheme's internal review mechanisms are available to a person and the person would be able to appeal to the Superannuation Complaints Tribunal.

17. The most significant changes made by the Eighteenth Amending Deed are outlined below.

### **Salary and Allowances**

18. The annual rate of salary agreed between the member and his or her employer through a certified agreement or Australian Workplace Agreement and other flexible remuneration arrangements recognises that in flexible workplace agreement matters some members may wish to have recognised a salary for superannuation purposes, for example, by trading off some cash salary for increased superannuation salary, which is different from what would otherwise be the case. The Rules have been amended to provide for a member's annual rate of salary to be an amount agreed between the member and his or her employer. If there is no agreement, the existing provisions continue to apply.

### **Spouse's benefit - post retirement relationship**

19. Access to superannuation spouses benefits has been improved for the spouse of a retirement pensioner who commenced a marital relationship after retirement and after age 60 years. Before these amendments, a spouse's pension generally was not payable if the pensioner died within 5 years of the post-retirement relationship commencing. This 5 year requirement has been removed and a pro-rata benefit is payable where the relationship has existed for less than 3 years prior to the death.

20. Where this pro-rata rate of spouse's pension is less than an amount per annum determined by the PSS Board, the spouse may elect that the pension be commuted to a lump sum.

### **Payment of contributions while on leave without pay**

21. Since 1 July 1995 all participating employers have been required to make payments to the Commonwealth towards the benefits payable to their employees who are PSS members. The Rules have been changed to provide that a member may pay contributions while on leave without pay where the member's employer continues to make payments to the Commonwealth in relation that member's future benefits.

***Reduction in pension for an increase in reversionary benefits***

22. Pensioners, other than invalidity pensioners, may opt for a reduction in their pension entitlements to increase reversionary benefits payable to their spouse or to any children of the retiree to 93 percent of their original entitlement. The resulting reversionary benefits will increase from 67 percent of the retiree's pension to 85 percent of the pension being paid at the time of the retiree's death.

23. Corresponding increases apply in relation to pensions paid in respect of any children. The rate increases to an aggregate of 97% where there is one eligible child or 108% where there are two or more eligible children. The rate of 108% of the actual benefit payable is equal to 100% of the benefit that would have been payable at death if the pensioner had not elected for a reduced initial rate of pension.

## AMENDMENTS TO THE RULES

### ***Detailed Description - Introduction***

24. In the introduction to the Rules Division 2 of Part 1 defines words and phrases and some concepts used in the Rules. **Subclause 3.1** replaces the definition of “basic salary” to include in salary an amount agreed between a member and employer and remove the reference to a workplace bargaining supplement.

25. **Subclause 3.2** replaces the definition of “eligible child” to remove that part of the definition referring to the eligibility of a child of a deceased pensioner where the former member became a pensioner after he or she has reached age 60. The definitions for “partially dependent child” in **subclause 3.3** and “spouse” in **subclause 3.4** have been replaced for the same reason.

26. **Subclause 3.5** replaces the definition of “recognised allowances” to include in allowances an amount agreed between a member and employer.

27. **Subclause 3.6** replaces the definition of “transfer amount” to include in a transfer amount payments in respect of performance pay or productivity contributions.

28. **Subclause 3.7** deletes the definition of “workplace bargaining supplement”.

### ***Salary for regular members***

29. Division 3 of Part 3 of the Rules provide for the maintenance of salary and allowances when a member suffers a reduction in pay. **Subclause 3.8** replaces Rule 3.3.2, 3.3.3 and 3.3.4. Rule 3.3.2 provides for salary and allowances where the reduction in pay occurred before 1 July 2003 to be maintained at the rate which existed on 30 June 2003 or increased from 1 July 2003 in accordance with any increase in the full-time adult average weekly ordinary time earnings (AWOTE) index. Allowances paid to partial invalidity pensioners are also to be increased in accordance with AWOTE.

30. Rule 3.3.3 provides for salary and allowances where the reduction in pay occurred after 30 June 2003 to be maintained at the annual rate, or if a partial invalidity pension is payable in respect of the reduction in the rate, at the rate which existed at the time of that reduction in accordance with any increase in the AWOTE index.

### ***Contributions – including periods of leave without pay***

31. Division 1 of Part 4 of the Rules sets out the circumstances when a member must pay contributions and Division 2 of Part 4 sets out the circumstances when contributions are payable on leave without pay. A member generally cannot pay contributions while on leave without pay except in particular circumstances. Where a member is permitted to pay contributions in these circumstances, full employer benefits also accrue during the period. Because employer-funded benefits are based on the Final Average Salary payable to the person on cessation and paid by the Commonwealth, it was reasonable to restrict the circumstances in which a person on leave without pay may contribute where they are employed during that leave by employers outside the umbrella of the Commonwealth.

32. However, because since 1 July 1995 all participating employers have been required to make payments to the Commonwealth towards the benefits payable to their employees who are PSS members it is now possible to simplify the provision to provide that a member may pay contributions while on leave without pay where the member’s employer continues to make payments to the Commonwealth in relation to that member’s future benefits.

33. **Subclause 3.9** replaces Rule 4.1.1 to provide that contributions are not payable where a PSS member is on leave without pay if the member's designated employer does not continue to make payments to the Commonwealth in respect of the benefits payable to the person under the Rules. The new Rule 4.1.1 also provides that the previous arrangements continue to apply to any period of leave without pay that commenced prior to 1 July 2003, although not to any extension of such a period of leave without pay.

34. **Subclause 3.10** deletes paragraph (d) of Rule 4.2.1 to remove a specific provision in relation to study leave without pay. Where an employer grants study leave and is willing to continue to make employer payments during the period the amendments made by **subclause 3.9** will ensure that full employer benefits will accrue during the period.

35. **Subclause 3.11** replaces paragraph (f) of Rule 4.2.2 to update a reference to the old *Industrial Relations Act 1988* with a reference to the new *Workplace Relations Act 1996*.

### **Default benefits**

36. Part 6 of the Rules specifies the benefit options available to members depending on their mode of exit. Some of the Rules specify the available options, but do not indicate which of these options should be the default benefit if a member fails to make a choice. In this situation, it is unclear as to how the PSS Board should handle the member's benefit.

37. **Subclauses 3.12, 3.13, 3.14 and 3.15** replace Rules 6.2.1, 6.2.2, 6.3.3, 6.5.2 and 6.6.2 to specify a default benefit of leaving the final benefit accrual in the scheme as a deferred benefit. These amendments do not affect the benefit options available to members, who are free to choose a benefit option other than the default.

### **Transfer of member funds to other schemes**

38. Division 8 of Part 6 of the Rules provides for the PSS Board and the Minister to agree that a particular public sector superannuation scheme should be an eligible superannuation scheme in order to allow the payment of transfer values from the PSS to that scheme. The requirements to be satisfied before the Board and the Minister agree are complex and restrictive and no new schemes have agreed to enter into these arrangements for some time. It is therefore proposed that no new agreements be made under the section with the exception of a successor scheme to an existing eligible scheme.

39. **Subclause 3.16** replaces Rules 6.8.1 and 6.8.2 to provide that no further schemes can become eligible schemes after 30 June 2003. However, **subclause 3.17** inserts a new Rule 6.8.12 so that the Board may determine that a successor scheme to an existing eligible scheme is an eligible superannuation scheme after that date.

### **Benefits on the death of a pensioner**

40. Division 3 of Part 7 of the Rules sets out the circumstances when a reversionary benefit is payable on the death of a pensioner to include the extension of the eligibility requirements to the spouse and eligible children referred to in paragraphs 16 and 17 above. **Subclause 3.18** replaces Rules 7.3.1 and 7.3.2 to enable the new benefits to be calculated in accordance with Rules 9.3.11 and 9.3.13.

### ***Early access to part of a preserved benefit***

41. Division 3 of Part 8 of the Rules sets out the circumstances when a preserved benefit member can obtain early access to part of their preserved benefit. **Subclauses 3.19 and 3.20** replace Rules 8.3.3, 8.3.6 and 8.3.7 to refer to a new body, the Australian Prudential Regulatory Authority (APRA), which on 1 July 1998 took over the powers of the Insurance and Superannuation Commission (ISC) to approve the early release of preserved benefits.

### ***Retirement and preserved benefit pensions calculations***

42. Division 2 of Part 9 of the Rules sets out the circumstances for the payment of a retirement or a preserved benefit pension. **Subclause 3.21** replaces the Division so that when a member chooses to take a lower initial pension and make a more generous provision for their dependants on their death the calculation of the benefits are as set out in this Division.

43. Rule 9.2.2 sets out the method of calculating pensions including in the calculation a reduction factor for those who choose to take a lower initial pension.

44. There is no change to the rules concerning the calculation of invalidity pensions which are now set out in Rules 9.2.3 to Rule 9.2.5.

45. Rules 9.2.6 and 9.2.7 set out the method of calculating preserved benefit pensions, including a reduction factor for those who choose to take a lower initial pension.

### ***Reversionary pensions on death calculations***

46. **Subclause 3.22** replaces Division 3 of Part 9 of the Rules to include in the calculation of pension benefits the circumstances where a member chooses to take a reduced initial pension to make a more generous provision for their dependants on their death.

47. Rule 9.3.1 now includes a reference to the new Rule 9.3.11 and the table in Rule 9.3.1 includes the reduced pension factors.

48. Rules 9.3.2 to 9.3.10 remain unchanged except for the references to the table in Rule 9.3.1.

49. Rule 9.3.11 is an additional Rule to provide for a pro-rata reduced reversionary pension benefit where the relationship has existed for less than 3 years prior to the death and the member chose to take a reduced initial pension to make a more generous provision for his or her dependants on their death.

50. Rule 9.3.12 is an additional Rule to provide the formula for calculating the reversionary pension benefit in these circumstances.

51. Rule 9.3.13 is an additional Rule to provide for a lump sum to be taken in lieu of a small pension in these circumstances.

### ***Reduction or suspension of invalidity pension***

52. **Subclause 3.23** replaces Rules 10.11.9 to 10.11.14 with Rules 10.11.9 to 10.11.16 which deal with the reduction or suspension of invalidity pension payments while a pensioner is earning income. The method of calculating the notional income after 30 June 2003 is to be based on any increase in the AWOTE index from that date. The text of these Rules otherwise remains unchanged.

### ***Transfer of amounts into the PSS***

53. Part 11 sets out the conditions for the transfer of accumulated amounts into the PSS when a person becomes a member of the PSS. Under an industrial agreement that earlier applied to the Australian Public Service, performance based pay (PBP) was available to some PSS members. Members could elect to pay 5% of that PBP to certain superannuation funds that were declared funds under the *Superannuation (Productivity Benefit) Act 1988* (the PB Act). This contribution was matched by an additional amount equal to 15% of the PBP also paid to those funds in respect of the member by his or her employer. This arrangement is no longer available and some PSS members have small amounts in those funds which cannot, under the current arrangements, be transferred to the PSS.

54. In order to allow PSS members to consolidate their superannuation benefits they may elect to transfer those PBP amounts into the PSS.

55. **Subclause 3.24** replaces Part 11 of the Rules with a new Part 11.

56. Rule 11.1.1 has been expanded to allow transfers of amounts from any superannuation entity, instead of being limited to another occupational superannuation scheme. Rule 11.1.1 has also been expanded to allow transfers of amounts payable in respect of a person under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*. Rules 11.1.1 and 11.1.3 no longer contain the restriction that payment must be received by the Board within six months of the later of the person becoming a member, or the amount becoming payable on cessation of the employment to which the payment relates.

57. New Rule 11.1.2 allows PBP amounts, and any additional amounts in the member's accounts at the time, to be paid to the PSS Fund. These amounts will remain in the Fund until other benefits become payable, accumulating interest as determined by the PSS Board. When a member becomes entitled to the payment of benefits from the fund, the employer component of the new accumulation is treated as a preserved benefit under the SIS Act and paid accordingly. PBP amounts transferred to the PSS do not attract any further employer subsidy from the Commonwealth.

58. Divisions 2, 3 and 4 of Part 11 are unchanged. New Division 5 of Part 11 sets out the benefit entitlement on cessation for the transferred PBP and any additional amounts.

### ***Consequential amendment – benefit option on behalf of child***

59. **Subclause 3.25** replaces Rule 12.1.2 with a new Rule 12.1.2 so that the Board can permit another person to choose a benefit option on behalf of a child. This amendment is consequential to the replacement Division 3 of Part 9 made by **subclause 3.22**, which give spouses or children the option to convert their reversionary pension to a lump sum in certain circumstances.

### ***Consequential amendment – unclaimed money and lost members***

60. **Subclause 3.26** replaces Rule 12.2.4 to reflect the new requirements relating to unclaimed money and lost members, following the commencement of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.



***Delegation to a Reconsideration Advisory Committee***

61. **Subclause 3.27** replaces Part 13 of the Rules with a new Part 13, to reflect the fact that the Board can delegate its power to reconsider decisions to a Reconsideration Advisory Committee. The new Part 13 ensures that the Board can decide in what circumstances the Reconsideration Advisory Committee can exercise the reconsideration power, and the Board can also choose to impose limits on the decisions that a Reconsideration Advisory Committee can make. The Reconsideration Advisory Committee can also decide not to exercise any reconsideration power that has been delegated to it, and instead to refer the matter to the Board for decision.