

## EXPLANATORY STATEMENT

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

### SUBJECT: NINETEENTH 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:

<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	Eighteenth Amending Deed	27 June 2003
Ninth Amending Deed	22 June 1995		
Tenth Amending Deed	29 Jan 1996		

4. On 26 November 2003 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 Nineteenth 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 Nineteenth Amending Deed affect the amount of surcharge deductions that are made from the employer component of PSS benefits (see below). As employer benefits are payable under the PSS Rules and are paid by the Commonwealth, these 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 NINETEENTH AMENDING DEED**

8. **Clause 1** specifies that the amendments of the Rules made by the Nineteenth Amending Deed come into effect on 1 July 2003, which reflects the commencement date for the first of the progressive reductions in the maximum surcharge rates (see below). As the amendments made by the Nineteenth Amending Deed change the amount by which a PSS benefit can be reduced, to reflect a reduction in the maximum surcharge rate, the retrospectivity of the Deed does not disadvantage PSS members or impose liabilities on PSS members.

## **AMENDMENTS TO THE RULES**

### ***Background***

9. The surcharge is an extra charge levied on the surchargeable superannuation contributions of higher income individuals. The *Superannuation (Surcharge Rate Reduction) Amendment Act 2003* (the Surcharge Act) amended a range of superannuation legislation to reduce the maximum surcharge rates progressively from 15% to 12.5% over each of the three income years commencing from 1 July 2003 and made other consequential changes.
10. The Nineteenth Amending Deed amended the PSS Rules to change the amount by which a PSS benefit can be reduced where the member has a surcharge debt, to reflect the reduction in the maximum surcharge rate.

### ***Amendments to the PSS Rules***

11. Division 2 of Part 12 specifies the powers of the PSS Board relating to benefits.
12. Rule 12.2.9 previously prevented the PSS Board from reducing the benefits of a member who has a surcharge debt by more than 15% of the employer financed component of that part of the benefits payable to the member that accrued after 20 August 1996. The reference to '15%' reflected the previous maximum surcharge rate.
13. **Subclause 2.1** replaced Rule 12.2.9 to reflect the reduction in the maximum rates.