

THIRTY-SECOND AMENDMENT
of the
PUBLIC SECTOR SUPERANNUATION SCHEME TRUST DEED

THIS DEED is made on 16 December 2008 by THE COMMONWEALTH OF AUSTRALIA.

WHEREAS section 4 of the *Superannuation Act 1990* (the Act) provides for the Minister to establish an occupational superannuation scheme to be administered by the Board established under section 20 of the Act (the Board);

AND WHEREAS the Public Sector Superannuation Scheme (the PSS) was established by a Trust Deed dated 21 June 1990 (the Trust Deed)¹;

AND WHEREAS the Schedule to the Trust Deed contains Rules for the administration of the PSS (the Rules);

AND WHEREAS the Trust Deed and the Rules have been amended from time to time by various Deeds;

AND WHEREAS section 5 of the Act provides for the Minister, by instrument in writing, to amend the Trust Deed, and requires the consent of the Board to amendments in certain circumstances;

AND WHEREAS consent of the Board is not required to the amendments provided for in this Deed.

NOW THIS DEED WITNESSES as follows:

1. Commencement of amendments

The amendments in the Deed take effect as follows:

- (a) clause 3 and clause 5: immediately after Schedule 1 to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008* commences;
- (b) in all other cases: the day after this Deed is registered on the Federal Register of Legislative Instruments.

2. Interpretation

Unless a contrary intention appears, a word or phrase in this Deed has the same meaning that it has in the Trust Deed and the Rules.

¹ Section 3 of the Act defines “Trust Deed” to include that deed as subsequently amended. A note listing particulars of the Trust Deed and the amending deeds is set out at the end of this Deed.

3. Application of Amendments – payment of reversionary death benefits

The amendments made by clause 5 of this Deed apply in relation to a benefit payable under the Rules in respect of a person who dies on or after the day on which those amendments commence, if at the time of his or her death the deceased person was:

- (a) a member (including a limited benefits member); or
- (b) a preserved benefit member; or
- (c) a pensioner.

4. Application of Amendments – payment of contributions on unpaid maternity or parental leave

The amendment made by clause 6 of this Deed applies in relation to leave commencing on or after the day on which the amendment commences.

5. Amendments – payment of reversionary death benefits

5. The Rules are amended as follows:

5.1 **Rule 1.2.1** is amended by repealing the definition of **marital relationship** and replacing it with the following term and definition:

“marital or couple relationship means a relationship at a particular time between a **member**, a **preserved benefit member** or a **pensioner** and another person, whether or not they were legally married to each other at the time of the relationship, under which they had been living with each other:

- as husband and wife, or **partners**, on a permanent and bona fide domestic basis for a continuous period of at least 3 years up to that time; or
- for a continuous period of less than 3 years up to that time but, in the opinion of the **Board**, were living with each other as husband and wife, or **partners**, on a permanent and bona fide domestic basis at that time, having regard to any evidence relevant in that respect, which includes evidence establishing any of the following:
 - that the other person was wholly or substantially dependent on the **member**, **preserved benefit member** or **pensioner**;
 - that they were legally married to each other;
 - that the relationship was registered under a law of a State or Territory prescribed for the purposes of section 22B of the *Acts Interpretation Act 1901*, as a kind of relationship prescribed for the purposes of that section;

- that a child was born of the relationship or was adopted during the period of the relationship;
- that there is a child of both of the persons within the meaning of the *Family Law Act 1975*;
- that they jointly owned a home which was their usual residence;
- any other matters that the **Board** considers relevant.”

5.2 **Rule 1.2.1** is further amended by replacing the definition of **eligible child** with the following definition:

“eligible child

in relation to a **deceased member**, a **deceased pensioner**, a **deceased preserved benefit member** or a **deceased limited benefits member**, is a child of the former **member** (including an adopted child, an ex-nuptial child, a step-child, a child of the former **member** within the meaning of the *Family Law Act 1975* or any other person whom the Board determines is to be treated as a child of the former **member**) who:

- has not reached age 16; or
- is age 16 or more but less than age 25 and:
 - is receiving full-time education at a school, college or university; and
 - is not ordinarily employed or self-employed;

and

- immediately before the death of the former **member**:
 - ordinarily lived with the former **member**; or
 - was, in the opinion of the **Board**, wholly or substantially dependent upon the former **member**; or
 - is born after the death of the former **member**, and would have, in the opinion of the **Board**, ordinarily lived with, or been wholly or substantially dependent on, the former **member** if the **child** had been born before the death of the former **member**.”

5.3 The following note is inserted after the definition of **eligible child**:

“*Note* Rule 1.2.6 is relevant for determining if a child is a step-child.”

5.4 **Rule 1.2.1** is further amended by replacing the definition of **partially dependent child** with the following definition:

“partially dependent child in relation to a **deceased member**, a **deceased pensioner**, a **deceased preserved benefit member** or a **deceased limited benefits member**, is a child of the former **member** (including an adopted child, an ex-nuptial child, a step-child, a child of the former **member** within the meaning of the *Family Law Act 1975* or any other person whom the Board determines is to be treated as a child of the former **member**) who:

- is not an **eligible child**; and
- is aged less than 16, or is aged 16 or more but less than age 25 and:
 - is receiving a full-time education at a school, college or university; and
 - is not ordinarily employed or self-employed;

and

- in respect of whom, immediately before the death of the former **member**,
 - the former **member** was voluntarily making, or required by a Court to make, regular maintenance payments; or
 - in the opinion of the **Board**, the former **member** would have been voluntarily making, or required by a Court to make, such payments if the **child** had been born before the death of the former **member**.”

5.5 The following note is inserted after the definition of **partially dependent child**:

“Note Rule 1.2.6 is relevant for determining if a child is a step-child.”

5.6 **Rule 1.2.1** is further amended by inserting the following new definition in alphabetical order:

“partner a person is the **partner** of another person if the two persons have a relationship as a couple (whether the persons are the same sex or different sexes).”

5.7 **Rule 1.2.1** is further amended by replacing the definition of **spouse** with the following definition:

“spouse in relation to a **deceased member**, a **deceased limited benefits member**, a **deceased preserved benefit member** or a **deceased pensioner**, means:

- another person who had a **marital or couple relationship** with the deceased person at the time of the deceased person's death; or
- another person who did not have a **marital or couple relationship** with the deceased person at the time of the deceased person's death but who had previously had a **marital or couple relationship** with the deceased person, and:
 - at the time of the deceased person's death, that other person was legally married to the deceased person; and
 - in the opinion of the **Board**, that other person was wholly or substantially dependent upon the deceased person at the time of the deceased person's death."

5.8 The following Rule is to be inserted immediately following **Rule 1.2.5**:

“1.2.6 Without limiting who is a step-child for the purposes of the Rules, someone who is a child of a **partner** of the person is the step-child of the person, if he or she would be the person's step-child except that the person is not legally married to the **partner**.”

5.9 **Rule 9.3.11** and the note following the Rule are amended by replacing the term “**marital relationship**” (wherever occurring) with the term “**marital or couple relationship**”.

5.10 **Rule 9.3.11** is further amended by inserting the following new subparagraph immediately after subparagraph (b)(i)(A):

“(AB) is, within the meaning of the *Family Law Act 1975*, a child of the **deceased pensioner** and the person with whom the **deceased pensioner** had a **marital or couple relationship**; or”

5.11 **Rule 9.3.12** is amended by replacing the term “**marital relationship**” (wherever occurring) with “**marital or couple relationship**”.

6. Amendment – payment of contributions on unpaid maternity or parental leave

6.1 The following Rule is to be inserted immediately following **Rule 4.2.4**:

“4.2.4A The reference in Rule 4.2.4 to the birth of a child of the person includes a reference to the birth of a child who is a child of the person within the meaning of the *Family Law Act 1975*.”

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 NICK SHERRY)

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Minister for Superannuation and Corporate Law)

acting for and on behalf of)

the Minister for Finance and Deregulation)

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for and on behalf of)

)

THE COMMONWEALTH OF)

)

AUSTRALIA, in the presence of:)

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)

(name)) Adam Wand

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)

(address)) Parliament House

) CANBERRA ACT 2600

)

(description)) Chief of Staff

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Note to the Deed: TABLE LISTING TRUST DEED AND AMENDING DEEDS

Before 1 January 2005, section 45 of the *Superannuation Act 1990* provided, in part, that instruments under subsection 5(1) of that Act amending the Trust Deed were disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*. The effect of these provisions was that amending instruments were required to be notified in the *Gazette* and take effect from the date of gazettal (unless the instrument provided otherwise).

From 1 January 2005, paragraph 6(d) of the *Legislative Instruments Act 2003* declared disallowable instruments (such as the instruments amending the Trust Deed) to be legislative instruments. Legislative instruments are registered on the Federal Register of Legislative Instruments instead of being notified in the *Gazette*.

Date of making	Number	Gazette details / Registration details
21 June 1990	Trust Deed	GN 25, 27 June 1990, p1728
21 June 1990	First	GN 25, 27 June 1990, p1728
1 July 1991	Second	S 180, 1 July 1991
30 June 1992	Third	S 181, 1 July 1991
21 December 1992	Fourth	GN 1, 13 January 1993, p110
16 June 1993	Fifth	S 181, 18 June 1993
24 January 1994	Sixth	GN 4, 2 February 1993, p366
7 March 1994	Seventh	S 89, 15 March 1994
28 June 1993	Eighth	S 246, 29 June 1994
22 June 1995	Ninth	GN 25, 28 June 1995, p2285
29 January 1996	Tenth	S 41, 1 February 1996
10 December 1996	Eleventh	GN 50, 18 December 1996
25 March 1998	Twelfth	GN 13, 1 April 1998, p901
5 December 1999	Thirteenth	S 590, 6 December 1999
20 August 2001	Fourteenth	S 342, 22 August 2001
25 September 2001	Fifteenth	GN 39, 3 October 2001, p2972
26 June 2002	Sixteenth	S 225, 27 June 2002
3 April 2003	Seventeenth	GN 17, 30 April 2004, p 1398

Date of making	Number	<i>Gazette details / Registration details</i>
27 June 2003	Eighteenth	S 245, 27 June 2003
26 November 2003	Nineteenth	S 446, 1 December 2003
23 March 2004	Twentieth	S 89, 24 March 2004
9 May 2004	Twenty-first	S 146, 11 May 2004
5 July 2004	Twenty-second	S 277, 9 July 2004
9 August 2004	Twenty-third	S 330, 12 August 2004
8 June 2005	Twenty-fourth	F2005L01613, 27 June 2005
24 June 2005	Twenty-fifth	F2005L01860, 29 June 2005
22 August 2005	Twenty-sixth	F2005L02372, 25 August 2005
20 June 2006	Twenty-seventh	F2006L01969, 26 June 2006
21 June 2007	Twenty-eighth	F2007L01943, 28 June 2007
28 August 2007	Twenty-ninth	F2007L03519, 31 August 2007
19 December 2007	Thirtieth	F2007L04993, 24 December 2007
29 July 2008	Thirty-first	F2008L02863, 1 August 2008