

EXPLANATORY STATEMENT

Issued by authority of the Minister for Finance and Deregulation

Superannuation Act 1990

Thirty-eighth Amending Deed to the Trust Deed to establish an occupational superannuation scheme for Australian Government employees and certain other persons pursuant to section 5 of the Superannuation Act 1990 (1990 Act).

An occupational superannuation scheme to provide benefits for certain of the Commonwealth's employees and for certain other people was established by Trust Deed dated 21 June 1990, under section 4 of the 1990 Act. The occupational superannuation scheme is called the Public Sector Superannuation Scheme (PSS).

Section 5 of the 1990 Act provides that the Minister may amend the Trust Deed by signed instrument, subject to obtaining the consent of the Commonwealth Superannuation Corporation (CSC) to the amendment, where necessary, as required under subsection 5(1A) of that Act. CSC is the trustee for the PSS.

Thirty-eighth Amending Deed

The Minister for Finance and Deregulation amended the Rules for the PSS set out in the Schedule to the Trust Deed by signed instrument. That instrument is called the Thirty-eighth Amending Deed in this statement.

The purpose of the Thirty-eighth Amending Deed is to amend the Trust Deed to:

- update the method of indexing increases to the maximum benefits tables in response to the change in frequency of the Average Weekly Earnings survey by the Australian Bureau of Statistics, from a quarterly survey to a biannual survey; and
- make consequential changes to allow a person to be paid a lump sum amount from the PSS to pay their liability for any assessed Division 293 of the *Income Tax Assessment Act 1997* tax (Division 293 tax) and for their PSS benefit to be reduced accordingly.

Background information on the changes and the details of the Thirty-eighth Amending Deed are set out in [Attachment A](#).

CSC Approval

Although subsection 5(1) of the 1990 Act allows the Minister to amend the PSS Trust Deed, subsection 5(1A) of the 1990 Act requires CSC to consent to the amendments in most circumstances. However, CSC consent was not required for the amendments in the Thirty-eighth Amending Deed, as they fall under sub-paragraph 5(1A)(b)(i) of the 1990 Act.

Legislative Instruments Act 2003

The Thirty-eighth Amending Deed is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA). Although section 44 of the LIA exempts superannuation instruments from disallowance, the Thirty-eighth Amending Deed is subject to disallowance in accordance with section 45 of the 1990 Act.

Consultation

Section 17 of the LIA specifies that rule-makers should consult before making legislative instruments. CSC and ComSuper have been consulted on the amendments contained in the Thirty-eighth Amending Deed.

Commencement

The amendments in the Thirty-eighth Amending Deed come into effect on the day after registration on the Federal Register of Legislative Instruments.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is at [Attachment B](#).

ATTACHMENT A

BACKGROUND TO AND DETAILS OF THE THIRTY-EIGHTH AMENDING DEED**Commencement**

Clause 1 specifies the commencement date for the amendments to the Rules made by the Amending Deed to be the day after registration on the Federal Register of Legislative Instruments.

Interpretation

2. **Clause 2** indicates that, unless a contrary intention appears, a word or phrase in the Amending Deed has the same meaning that it has in the Trust Deed and the Rules.

Maximum benefits determinations

3. Divisions 6 and 7 of Part 5 of the Trust Deed contain tables setting out the maximum benefits that a member may accrue in the PSS. Rules 5.6.5 and 5.7.7 allow for the figures in these tables to be updated in accordance with movements in Average Weekly Ordinary Time Earnings (AWOTE) in Australia. The indexation of increases had referenced the March-to-March movement in Average Weekly Ordinary Time Earnings in Australia, and allowed the March quarter figures published by the Australian Bureau of Statistics (ABS) to be used.

4. The ABS has reduced the frequency of the Average Weekly Earnings survey from quarterly to biannually. The purpose of clauses 3 and 4 of the Amending Deed is to update the method of indexing increases to the maximum benefit tables as a consequence of the change in the frequency of the Average Weekly Earnings survey conducted and published by the ABS.

5. **Clause 3** provides that the amendments made by clause 4 apply in relation to determinations made under Rule 5.6.5 and Rule 5.7.7 that apply for the 2014-15 financial year and later financial years.

6. **Subclauses 4.1 and 4.3** amend Rules 5.6.5 and 5.7.7 to replace paragraph (a) of each rule to remove the existing methodology of calculating the indexation factor to be applied for determinations of maximum benefits. The new paragraph (a) of each rule refers to an indexation factor calculated under new Rule 5.6.5A or 5.6.5B, whichever is applicable.

7. **Subclause 4.2** inserts new Rules 5.6.5A and 5.6.5B to set out the indexation factor that applies for the purposes of Rules 5.6.5 and 5.7.7. New Rule 5.6.5A is used for determinations applying to the 2008-09 financial year and each later financial year ending on or before 30 June 2014. The Rule maintains the previous methodology of calculating the indexation factor for determinations that have already been made.

8. New Rule 5.6.5B is used for determinations applying to the 2014-15 financial year and each later financial year. The indexation factor is the greater of 1, or the number calculated by new AWOTE divided by old AWOTE. This ensures that the maximum benefits amounts are not reduced if AWOTE was to decrease over a relevant period.

9. New AWOTE is the last AWOTE figure published by the ABS before 1 May of the financial year immediately preceding the financial year that the determination applies to. For example, for the determination made to apply for the 2014-15 financial year, the figure last published before 1 May of 2014 would be used.

10. The old AWOTE is the corresponding AWOTE figure published one year prior to New AWOTE. For example, if new AWOTE corresponded to February 2014, old AWOTE would be the figure corresponding to February 2013. That is, an annual percentage increase in AWOTE is applied to the maximum benefits amounts.

11. New Rule 5.6.5B also allows for the retrospective substitution of previously published AWOTE figures by the ABS, and potential changes to the AWOTE reference base.

Sustainable Superannuation Concessions

12. Schedule 3 to the *Tax and Superannuation Laws Amendment (Increased Concessional Contributions Cap and Other Measures) Act 2013* amended a number of Acts including the *Taxation Administration Act 1953* (TAA 1953) and the *Income Tax Assessment Act 1997* (ITAA 97) to reduce the tax concession that individuals with incomes above \$300,000 receive on their concessional tax superannuation contributions from 30 per cent to 15 per cent (Division 293 tax).

13. The Amending Deed makes consequential amendments to PSS Rules to allow a PSS member to be paid a lump sum from the PSS to meet their Division 293 tax and have their PSS benefit reduced accordingly.

14. **Clause 5** provides that the amendments made by clause 6 and 7 applying to release authorities received by CSC on or after the commencement of the Amending Deed.

15. **Subclause 6.1** amends the definition of release authority contained in Rule 1.2.1 of the Trust Deed. The definition is amended to include a release authority issued by the Commissioner of Taxation under item 1 and 2 of the table in subsection 135-10(1) of Schedule 1 to the TAA 1953 for the purposes of the Rules except for the purposes of Part 17. For the purposes of Part 17, the definition is also amended to include a release authority issued under item 3 of the table in subsection 135-10(1) of Schedule 1 to the TAA 1953.

16. **Subclause 7.1** inserts a new Part 17 immediately after Part 16 to set out the conditions for the release of benefits to meet a deferred tax liability incurred under Division 293 of the *Income Tax Assessment Act 1997* and the subsequent reduction of a person's benefit to take account of the release authority lump sum.

17. New Rule 17.1.1 allows a release authority lump sum to be paid by CSC if a person presents a release authority issued under item 3 of the table in subsection 135-10(1) in Schedule 1 to the TAA 1953 and, at the time they provide a release authority to CSC, the person gives a written notice to CSC specifying which of their benefits is to be reduced to take account of the release authority lump sum.

18. In order to allow CSC to pay a release authority lump sum amount, new Rules 17.1.2 and 17.1.3 provides that the member must specify which of their benefits is to be reduced to reflect the release amount. This benefit can be either a lump sum to which the person is entitled to be paid, or about to become entitled to be paid, or a pension that the person is entitled to be paid, or has started to be paid. While the person may specify more than one benefit to be reduced to cover the release amount, all of one benefit must first be reduced to zero before the next benefit can be reduced.

19. New Rules 17.1.4 and 17.1.5 specify that the amount of a release authority lump sum must not have the effect of reducing the person's benefit(s) specified in the election below zero, after first taking into account a person's surcharge deduction amount, then any early

reduction under Rule 12.4.5 related to an early release of benefits, and then any family law reductions. This is in addition to the release amount provisions contained in subsection 135–85 of Schedule 1 to the TAA 1953.

20. New Rule 17.1.6 provides that where a member elects to receive a release authority lump sum from a lump sum PSS benefit, the PSS benefit is to be reduced by the release authority lump sum amount.

21. New Rule 17.1.7 provides that if a person specifies that their pension is to be reduced, the person’s annual rate of pension prior to the reduction (‘pre-reduction annual rate of pension’) is to be reduced by the following formula:

$$\text{Pre-reduction rate} - \frac{\text{Reduced release authority lump sum}}{\text{Conversion factor}}$$

22. For the purposes of the formula, the ‘pre-reduction rate’ of pension will be the actual rate of pension otherwise payable to the person, noting that this includes any other provision in the *Superannuation Act 1990* or the Trust Deed that affects the rate of pension.

23. New Rule 17.1.8 provides that CSC may by legislative instrument determine conversion factors or the method for working out conversion factors for the purpose of new Rule 17.1.7.

24. New Rule 17.1.9 provides that if the pension to be reduced has not started to be paid, then the pension is to be reduced from the first pension pay day. If the pension has started to be paid, then the pension is to be reduced from the first pension pay day that occurs 14 days after the release authority is provided to CSC.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Public Sector Superannuation Scheme – Thirty-eighth Amending Deed

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the Thirty-eighth Amending Deed is to amend the Trust Deed to:

- update the method of indexing increases to the maximum benefits tables in response to the change in frequency of the Average Weekly Earnings survey by the Australian Bureau of Statistics, from a quarterly survey to a biannual survey; and
- make consequential changes to allow a person to be paid a lump sum amount from the PSS to pay their liability for any assessed Division 293 of the Income Tax Assessment Act 1997 tax (Division 293 tax) and for their PSS benefit to be reduced accordingly.

Human Rights Implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Senator the Hon Penny Wong, Minister for Finance and Deregulation