



Superannuation Amendment (PSS Trust Deed) Instrument 2018

I, MATHIAS HUBERT PAUL CORMANN, Minister for Finance, make the following instrument.

Dated 29 May 2018

MATHIAS HUBERT PAUL CORMANN
Minister for Finance

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1 Name

This instrument is the *Superannuation Amendment (PSS Trust Deed) Instrument 2018*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered on the Federal Register of Legislation.	
2. Schedule 1	The day after this instrument is registered on the Federal Register of Legislation.	
3. Schedule 2, Part 1	The later of: (a) If the Civil Law and Justice Legislation Amendment Bill 2017 is enacted, immediately after the commencement of Schedule 6, Part 3 of that enactment; and (b) the day after this instrument is registered on the Federal Register of Legislation. However, the provision(s) do not commence at all if the event mentioned in paragraph (a) does not occur.	
4. Schedule 2, Parts 2, 3 and 4	The day after this instrument is registered on the Federal Register of Legislation.	
5. Schedule 3	The day after this instrument is registered on the Federal Register of Legislation	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 5 of the *Superannuation Act 1990*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendment of the PSS Trust Deed

1 Subclause 1.3AA

Omit “*Financial Management and Accountability Act 1997*”, substitute “*Public Governance, Performance and Accountability Act 2013*”.

2 Paragraph 12.1(b)

Repeal the paragraph.

3 Paragraph 12.1(c)

Repeal the paragraph.

4 Subparagraph 12.3(a)(ii)

Omit “(b), (c),”.

5 Paragraph 12.3(b)

Repeal the paragraph.

6 Paragraph 12.3(c)

Omit “(c),”.

7 Paragraph 13.1(a)

After “CSC,” insert “or a member of the staff of CSC”.

8 Paragraph 13.1(b)

Omit “; or”, substitute “.”.

9 Paragraph 13.1(c)

Repeal the paragraph.

Schedule 2—Amendment of the PSS Rules

Part 1 – Amendments consequent on commencement of Schedule 6, Part 3 of the Civil Law and Justice Legislation Amendment Bill 2017

1 Rule 16.1.2 (definition of base amount)

Omit “90MT(4)”, substitute “90XT(4)”.

2 Rule 16.1.2 (definition of family law value)

Omit “90MT(2)(a)”, substitute “90XT(2)(a)”.

3 Rule 16.1.2 (note at the end of definition of family law value)

Omit “90MT(1)”, substitute “90XT(1)”.

4 Rule 16.1.2 (definition of splitting percentage)

Omit “90MJ(1)(c)(iii)”, substitute “90XJ(1)(c)(iii)”.

5 Rule 16.1.2 (definition of splitting percentage)

Omit “90MT(1)(b)(i)”, substitute “90XT(1)(b)(i)”.

Part 2 – Amendments consequential to the Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2017

6 Rule 1.2.1 (definition of compensation leave)

After “*Safety, Rehabilitation and Compensation Act 1988*”, insert “or the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*”.

7 Paragraph 4.2.1(c)

After “*Safety, Rehabilitation and Compensation Act 1988*”, insert “, the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*”.

8 Rule 10.7.5

Repeal paragraphs (c), (d) and (e), substitute:

(c) the practicality of either:

- (i) the member’s employer providing a job the **member** would be reasonably qualified for, or reasonably could be qualified for after retraining; and/or
- (ii) the **member** obtaining such a job with another employer; and

(d) where the **member** is on **compensation leave** (or is suffering from a compensable condition) resulting from an injury or disease within the meaning of the *Safety, Rehabilitation and Compensation Act 1988*, the assessment of the member’s medical condition by **Comcare** or other appropriate body; or

(e) where the **member** is on **compensation leave** (or is suffering from a compensable condition) resulting from:

(i) a service injury or disease within the meaning of the *Military Rehabilitation and Compensation Act 2004*; or

(ii) an injury or disease within the meaning of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*,

any views of the **Military Rehabilitation and Compensation Commission** that are provided to CSC regarding the member's medical condition.

***Part 3 – Amendments consequential to the Marriage Amendment
(Definition and Religious Freedoms) Act 2017***

9 Rule 1.2.1 (definition of marital or couple relationship)

Omit the definition, substitute:

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, spouses, 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 **CSC**, were living with each other as husband and wife, spouses, 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 **CSC** considers relevant.

Despite the definition of ‘spouse’ in Rule 1.2.1, the reference to spouse in this definition is a reference to spouse within the meaning of section 2CA of the *Acts Interpretation Act 1901*.

Part 4 – Amendments relating to release authorities and other matters

10 Rule 1.2.1 (definition of early release lump sum)

Omit “has the meaning given by”, substitute “means the lump sum paid under”.

11 Rule 1.2.1 (definition of release authority)

Omit:

- a release authority received from a **member** or **preserved benefit member** or the Commissioner of Taxation under section 292-410 of the *Income Tax Assessment Act 1997*; or
- a transitional release authority received from a **member** or **preserved benefit member** under section 292-80B of the *Income Tax (Transitional Provisions) Act 1997*; or
- a release authority issued by the Commissioner of Taxation under item 1 or 2 of the table in subsection 135-10(1) of Schedule 1 to the *Taxation Administration Act 1953*.

substitute:

- a release authority issued under **taxation legislation** for the release of an amount from a member's superannuation interest.

12 Rule 1.2.1

After the definition of **surchargeable contributions**, insert:

taxation legislation means the *Taxation Administration Act 1953*, the *Income Tax Assessment Act 1997* and the *Income Tax (Transitional Provisions) Act 1997*.

13 Rule 1.2.1 (definition of totally and permanently incapacitated)

Omit "reasonable", substitute "reasonably".

14 Rule 6.2.1

Repeal the Notes, substitute:

Note 1: Part 8 – Preserved Benefits applies to benefits preserved under Rule 6.2.1. This means, for example, that if a **member** aged 65 or over ceases membership on voluntary retirement, resignation or dismissal and chooses to preserve part or all of his/her **final benefit accrual** in the scheme, the **preserved benefit** will be immediately payable in accordance with Rules 8.1.1, 8.2.1 and 8.2.1A (as applicable).

Note 2: Until specific conditions are met, a casual employee is not considered to have ceased membership simply because contributions are not being made (*see Rule 6.2.5*).

Note 3: Those members who are gainfully employed for at least ten hours a week are taken to have remained in the workforce. This requirement comes from the definition of “gainfully employed” in the **SIS Act**.

15 Rule 6.3.3

Repeal the Note, substitute:

Note 1: The term **involuntary retirement** used in these rules does not include some loss of employment situations that might usually be thought of as involuntary retirement, retrenchment or redundancy. For example, members who are dismissed from their employment or forfeit their office are **NOT** entitled to involuntary benefits.

The definition of **involuntary retirement** in Part 1 – INTRODUCTION – should be checked to ensure benefits are payable under this Division, especially where **temporary employees** are involved.

Special conditions govern whether **involuntary retirement** is regarded as having occurred when a **fixed-term employee**'s term of appointment/employment expires and is not renewed, or is terminated. Division 4 sets out these conditions.

Note 2: Part 8 – Preserved Benefits applies to benefits preserved under Rule 6.3.3. This means, for example, that if a **member** aged 65 or over ceases membership on **involuntary retirement** and chooses to preserve part or all of his/her **final benefit accrual** in the scheme, the **preserved benefit** will be immediately payable in accordance with Rules 8.1.1, 8.2.1 and 8.2.1A (as applicable).

16 Rule 6.5.2

At the end of the Rule insert:

Note:

Part 8 – Preserved Benefits applies to benefits preserved under Rule 6.5.2. This means, for example, that if a **member**, including a **limited benefits member**, aged 65 or over ceases membership on **invalidity retirement** and chooses to preserve his/her **final benefit accrual** in the scheme, the **preserved benefit** will be immediately payable in accordance with Rules 8.1.1, 8.2.1 and 8.2.1A.

17 Rule 6.6.2

At the end of the Rule insert:

Note:

Part 8 – Preserved Benefits applies to benefits preserved under Rule 6.6.2. This means, for example, that if a **member** aged 65 or over chooses to preserve his or her **final benefit accrual** in the scheme as a **preserved benefit** under Rule 6.6.2, the benefit will be immediately payable in accordance with Rules 8.1.1, 8.2.1 and 8.2.1A. This is the case regardless of whether he or she has a separate benefit accruing under another current **period of membership**.

18 Rule 6.6.3

At the end of the Rule insert:

Note:

Part 8 – Preserved Benefits applies to benefits preserved under Rule 6.6.3. This means, for example, that if a **member** aged 65 or over chooses to preserve his or her **final benefit accrual** in the scheme as a **preserved benefit** under Rule 6.6.3, the benefit will be immediately payable in accordance with Rules 8.1.1, 8.2.1 and 8.2.1A. This is the case regardless of whether he or she has a separate benefit accruing under another current **period of membership**.

19 Rule 6.6.5

At the end of the Rule insert:

Note:

Part 8 – Preserved Benefits applies to benefits preserved under Rule 6.6.5. This means, for example, that if a **member** aged 65 or over chooses to preserve part or all of his/her **final benefit accrual** in the scheme under Rule 6.6.5, the **preserved benefit** will be immediately payable in accordance with Rules 8.1.1, 8.2.1 and 8.2.1A (as applicable). This is the case regardless of whether he or she has a separate benefit accruing under another current **period of membership**.

20 Rule 8.2.1

Repeal the Rule, substitute:

8.2.1 A **preserved benefit member** whose **preserved benefit** has become payable under Rule 8.1.1(a) is entitled to a lump sum of the **preserved benefit** plus the **superannuation guarantee additional amount** (if any) that is applicable to the **preserved benefit member** unless the **preserved benefit member** makes a benefit choice in accordance with Rule 8.2.1A.

21 Rule 8.2.1

After Rule 8.2.1, insert the following new Rules:

8.2.1A A person whose **preserved benefit** will or has become payable under Rule 8.1.1(a) may, within the period commencing three months before the **preserved benefit** becomes payable and ending three months after the **preserved benefit** becomes payable, choose to take his/her **preserved benefit**:

- (a) entirely as a **pension**; or
- (b) as part **pension**, by converting half or more of the **preserved benefit** into **pension**, and the balance paid as a lump sum;

provided the **preserved benefit** includes all of his/her **accumulated member contributions** (other than any refunded Excess Contribution Multiple), **accumulated productivity contributions** and **unfunded preserved benefit**.

8.2.1B A **preserved benefit member** whose **preserved benefit** has become payable under Rule 8.1.1 on the date chosen by the **preserved benefit member** under paragraph 8.1.1(b) may choose:

- (a) to take his/her **preserved benefit**:
 - (i) entirely as a **pension**; or
 - (ii) as part **pension**, by converting half or more of the **preserved benefit** into **pension**, and the balance paid as a lump sum;

provided the **preserved benefit** includes all of his/her **accumulated member contributions** (other than any refunded Excess Contribution Multiple), **accumulated productivity contributions** and **unfunded preserved benefit**; or

-
- (b) to be paid a lump sum of the **preserved benefit** plus the **superannuation guarantee additional amount** (if any) that is applicable to the **preserved benefit member**.

22 Division 3 of Part 8

Repeal the Note following the heading “Early Access to Part of a Preserved Benefit”, insert:

Note:

Preserved benefit members can obtain early access to their **accumulated member contributions** if they change employers, or cease employment, on or after the date of preservation of the benefit. Preserved benefit members can also obtain early access to all or part of the employer component of their **preserved benefit** in the circumstances outlined below.

Since 1 April 1998 the PSS Rules have allowed preserved benefit members to obtain early access to all or part of their preserved benefits if payment of the amount is approved in line with the **SIS Act** on the grounds of severe financial hardship (*see Rule 8.3.5*), or on compassionate grounds (*see Rule 8.3.6*).

The **SIS Act** specifies the criteria that must be met before a **preserved benefit** can be released on the grounds of severe financial hardship or on compassionate grounds. The regulations also specify the maximum amount that can be paid on those grounds.

23 Rule 8.3.3

Repeal the Rule, including the Heading “Access to accumulated productivity contributions – application before 1 July 1997”.

24 Rule 8.3.4

Repeal the Rule, including the Heading “Transitional arrangements for certain pre-1 July 1996 preserved benefit members”.

25 Heading before Rule 8.3.5

Omit “- application after 30 June 1997”.

26 Rule 8.3.5

Omit “to CSC after 30 June 1997”.

27 Rule 8.3.5

Omit “approved by CSC”, substitute “determined in accordance with the **SIS Act**”.

28 Rule 8.3.6

Omit “to the Insurance and Superannuation Commissioner or the Australian Prudential Regulation Authority after 30 June 1997”.

29 Rule 8.3.6

Omit “approved by the Australian Prudential Regulation Authority”, substitute “determined in accordance with the **SIS Act**”.

30 Rule 8.3.7

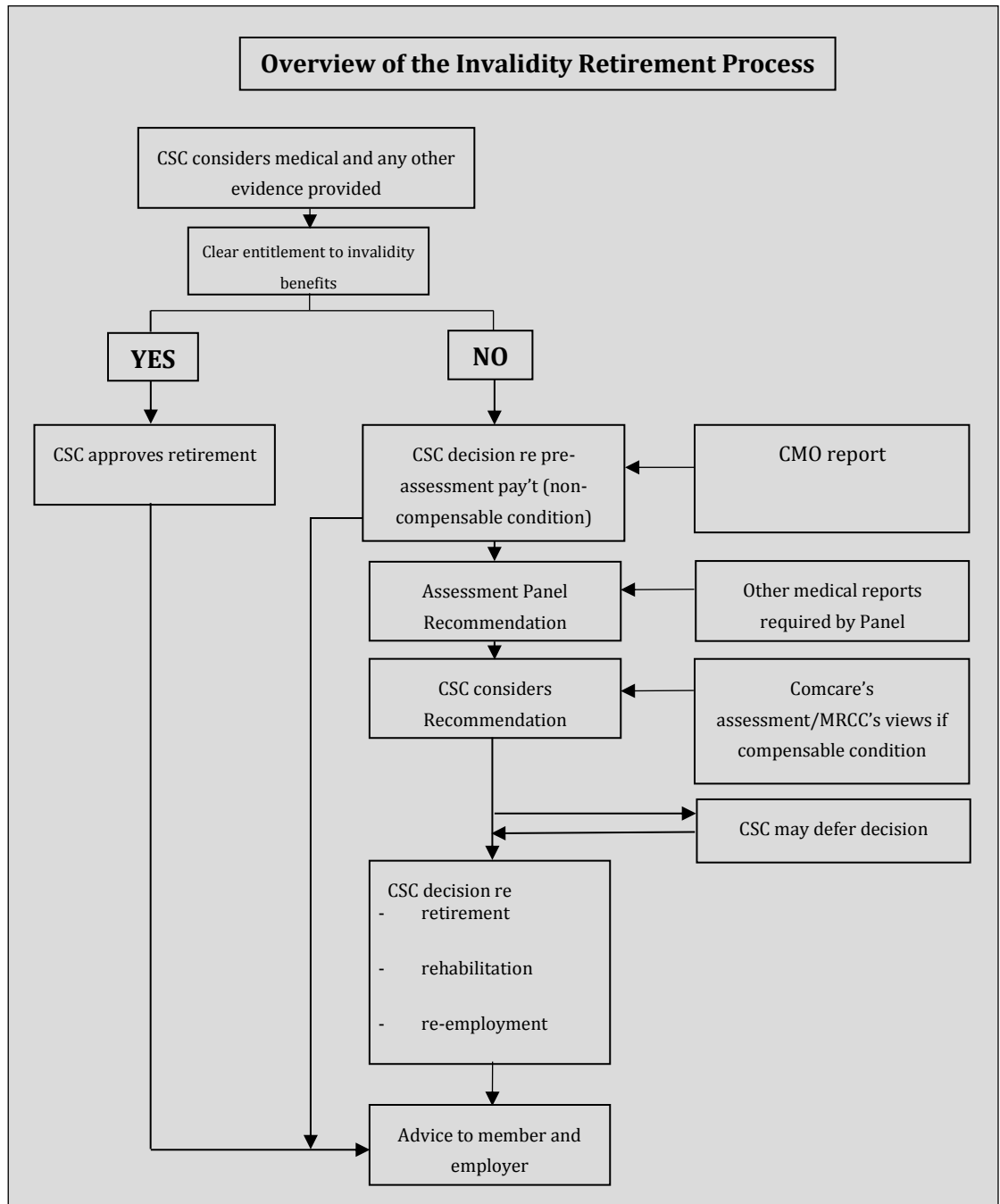
Omit “8.3.3, 8.3.4,”.

31 Rule 8.3.7

Omit “approved by the Australian Prudential Regulation Authority, or **CSC**, as the case may be”, substitute “determined in accordance with the **SIS Act**”.

32 Flowchart following the Heading to Division 7 of Part 10

Repeat the Flowchart, substitute:



33 Rule 11.2.1

Omit “is entitled to”, substitute “is, subject to Rule 11.2.1A, entitled to”.

34 Rule 11.2.1

After Rule 11.2.1 insert the following new Rule:

11.2.1A A **member** may not elect to preserve his/her **accumulated transfer amount** in the **PSS scheme** under Rule 11.2.1 where no part of his/her **final benefit accrual** is preserved in the **PSS scheme** under Part 6.”

35 Rules 11.2.5, 11.4.11 and 11.5.5

After “SIS Act”, insert “and **taxation legislation**”.

36 Rules 11.2.5 and 11.5.5

Omit:

“equal to the lesser of:

- (a) the amount (if any) requested by the **member** or **preserved benefit member** or the Commissioner of Taxation;
- (b) the amount specified in the **release authority**; or
- (c) the **accumulated transfer amount** in respect of the **member** or **preserved benefit member**”

37 Rule 11.3.7

Omit “is entitled to”, substitute “is, subject to Rule 11.3.7A, entitled to”.

38 Rule 11.3.7

After Rule 11.3.7, insert the following new Rule:

11.3.7A A **member** may not elect to preserve his/her **accumulated transfer amount**, together with the amount (if any) by which the Transfer Multiple Amount exceeds the **accumulated transfer amount**, in the **PSS scheme** under Rule 11.3.7 where no part of his/her **final benefit accrual** is preserved in the **PSS scheme** under Part 6.”

39 Rule 11.4.11

Omit:

“equal to the lesser of:

- (a) the amount (if any) requested by the **member** or **preserved benefit member** or the Commissioner of Taxation;
- (b) the amount specified in the **release authority**; or
- (c) the Accumulated Additional Contributions in respect of the **member** or **preserved benefit member**”

40 Rule 11.5.1

Omit “is entitled to”, substitute “is, subject to Rule 11.5.1A, entitled to”.

41 Rule 11.5.1

After Rule 11.5.1, insert the following new Rule:

11.5.1A A **member** may not elect to preserve his/her **accumulated transfer amount** in the **PSS scheme** under Rule 11.5.1 where no part of his/her **final benefit accrual** is preserved in the **PSS scheme** under Part 6.”

42 Rule 12.1.1

After “and” (last occurring), insert “, subject to Rule 12.1.1A,”.

43 Rule 12.1.1

After Rule 12.1.1, insert the following new Rule:

12.1.1A Where a benefit has been paid or has commenced being paid to a person in accordance with Rule 8.2.1 or Rule 8.2.1A **CSC** may not allow him/her a further period to make a benefit choice under Part 6 of these Rules.

44 Rule 12.1.5

After Rule 12.1.5 insert the following new Rule:

12.1.5A For the purposes of Rules 12.1.4 and 12.1.5, a person who has been paid a benefit in accordance with Rule 8.2.1 is to be treated as having made a benefit choice under Rule 8.2.1.

45 Rule 16.1.2 (definition of scheme value)

Omit “under Rule 16.2.2”, substitute “in accordance with Rules 16.2.2, 16.2.2A, 16.2.2B, 16.2.2C, 16.2.2D and 16.2.2E, as relevant”.

46 After Rule 16.2.9

Insert the following new Rules, including the Heading and the Note:

Associate benefit if operative time in both payment and growth phase

16.2.10 If at the **operative time**, the **member spouse** is in receipt of a **standard pension** and also has a preserved **accumulated transfer amount**, then the **non-member spouse** is entitled to **associate standard pension** in accordance with Division 2 of this Part and **associate preserved benefit** in accordance with Division 3 of this Part.

16.2.11 The **associate standard pension** and **associate preserved benefit** to which the **non-member spouse** is entitled is to be determined by **CSC** by apportioning the **separation amount** to the **member spouse's standard pension** and preserved **accumulated transfer amount** in accordance with factors and a method determined by an actuary.

Note:

Rules 16.2.10 and 16.2.11 are relevant to a small group of people who, prior to changes to Rules 11.2.1, 11.3.7 and 11.5.1 and the commencement of Rules 11.2.1A, 11.3.7A and 11.5.1A, elected to preserve their **accumulated transfer amount** in the **PSS scheme** despite no part of their **final benefit accrual** being preserved in the **PSS scheme**.

47 Rule 16.3.10

Omit "to **CSC**".

48 Rule 16.3.10

Omit "approved by **CSC**", substitute "determined in accordance with the **SIS Act**".

49 Rule 16.3.11

Omit "to the Australian Prudential Regulation Authority".

50 Rule 16.3.11

Omit "approved by the Australian Prudential Regulation Authority", substitute "determined in accordance with the **SIS Act**".

51 Rule 16.3.12

Omit "approved by the Australian Prudential Regulation Authority, or **CSC**, as the case may be", substitute "determined in accordance with the **SIS Act**".

52 After Division 6 of Part 16

Insert:

Reduction of benefits for member spouse – operative time in payment and growth phase

Division 6A

16.6A.1 If a **non-member spouse** is entitled to receive benefits in accordance with Rules 16.2.10 and 16.2.11, **CSC** must reduce the **member spouse's standard pension** and preserved **accumulated transfer amount** in accordance with factors and a method determined by an actuary.

Schedule 3—Amendment of the PSS Rules – Transitional Provisions

1 After Part 17

Insert:

PART 18 – TRANSITIONAL PROVISIONS
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Division 1

Benefit options relating to preserved benefits

18.1.1 For the purposes of Rule 8.2.1A, a **preserved benefit member** whose **preserved benefit** became payable under Rule 8.1.1(a) prior to commencement of Rule 8.2.1A has three months from commencement to make a benefit choice in accordance with Rule 8.2.1A.

Note:

A **preserved benefit member** aged 65 or over at the time of the commencement of Rule 8.2.1 will immediately be entitled to a lump sum of the **preserved benefit** plus any **superannuation guarantee additional amount** that is applicable to the **preserved benefit member** under that rule. The transitional rule ensures that a **preserved benefit member** in this situation has three months from commencement of Rule 8.2.1A to make an alternative benefit choice under Rule 8.2.1A.