

THIRD 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

Australian Government  
Solicitor  
Robert Garran Offices  
BARTON ACT 2600

THIS DEED is made on <sup>ed</sup> 30 June 1992 by THE COMMONWEALTH OF AUSTRALIA (in this Deed called "the Commonwealth").

WHEREAS the Commonwealth Minister of State for Finance, for and on behalf of the Commonwealth, pursuant to section 4 of the Superannuation Act 1990, established by Deed dated 21 June 1990 (in this Deed called "the Trust Deed") an occupational superannuation scheme (in this Deed called the "Superannuation Scheme") in order to provide benefits for certain of its employees and for certain other persons;

AND WHEREAS section 5 of the Superannuation Act 1990 provides that the Minister may, by signed instrument, amend the Trust Deed;

AND WHEREAS by Deeds dated 21 June 1990 and 1 July 1991 (the First and Second Amending Deeds, respectively) the Minister amended the Trust Deed and the Rules for the administration of the Superannuation Scheme set out in the Schedule to the Trust Deed;

NOW THIS DEED WITNESSES that the Trust Deed and the Rules for the administration of the Superannuation Scheme set out in the Schedule to the Trust Deed are amended as follows:

1. The Trust Deed is amended as follows:

1.1 Clause 3 is amended by:

- (a) replacing "to pay benefits to or in respect of members" in paragraph (a) of subclause 3(1) with "to pay benefits to or in respect of members and persons who have preserved benefits";

- (b) replacing "to provide members and potential members of" in paragraph (b) of subclause 3(1) with "to provide members and potential members of, and persons who have preserved benefits in,";
- (c) replacing "relating to members' entitlements to benefits;" in paragraph (h) of subclause 3(2) with "relating to members' entitlements to benefits and the entitlements of persons who have preserved benefits;"; and
- (d) replacing "the interests of members and their employers" in paragraph (a) of subclause 3(3) with "the interests of members, their employers and persons who have preserved benefits".

1.2 Clause 10 is amended by:

- (a) replacing "The Superannuation Fund Investment Trust has, by the Act, been appointed as the investment manager in respect of the period commencing 1 July 1990 and ending on 30 June 1995." in subclause 10(5) with:

"Commonwealth Funds Management Limited has, by the Act, been appointed as the investment manager in respect of the period commencing on 1 July 1991 and ending on 30 June 1995."; and

- (b) replacing "the Superannuation Fund Investment Trust" in subclause 10(6) with "Commonwealth Funds Management Limited".

2. The Rules are amended as follows:

2.1 Rule 1.1.1 is amended by:

- (a) deleting the definition of "administering authority"; and
- (b) adding the following definitions after the definition of "minimum retiring age":

"MSB Act" means the Military Superannuation and Benefits Act 1991;

"MSB Rules" means the Rules for the administration of the superannuation scheme established by the Trust Deed under the MSB Act;

"MSB Scheme" means the superannuation scheme established by the Trust Deed under the MSB Act;.

2.2 Rule 1.3.9 is amended by deleting paragraph 1.3.9(a) and inserting the following paragraph in its place:

- "(a) (i) who ceases to be a member because of invalidity retirement or death before reaching the age of 60 years; or
- (ii) who has been deemed by the Board under rule 6.1.17 to have ceased to be a member on the person's last day of membership because of invalidity retirement before reaching the age of 60 years; and".

2.3 Rule 1.4.1 is amended by replacing:

"subject to rules 1.4.2, 1.4.3, 1.4.4, 1.4.7, 1.4.8, 1.4.9 and 1.4.10"

with:

"subject to rules 1.4.3, 1.4.4, 1.4.7, 1.4.8, 1.4.9, 1.4.10 and Division 5 of this Part".

2.4 The Table in rule 1.4.1 is amended by replacing:

- (a) "\$26,883" wherever occurring with "\$28,052"; and
- (b) "\$215,063" with "\$224,412"; and
- (c) "\$42,980" wherever occurring with "\$44,850"; and
- (d) "\$85,960" with "\$89,700"; and
- (e) "\$79,810" wherever occurring with "\$83,280"; and
- (f) "\$325,390" with "\$339,540".

2.5 Rule 1.4.2 is deleted.

2.6 Rule 1.4.3 is amended by:

- (a) replacing "Where" with "Subject to Division 5 of this Part, where";
- (b) replacing "\$26,883" with "\$28,052";

(c) replacing "\$215,063" with "\$224,412."; and

(d) by deleting:

"less, if the person is entitled to an adjustment payment in accordance with the Australian Federal Police Act 1979, the amount of that payment".

2.7 Division 5 is added to the end of Part 1 as follows:

**Division 5 - Maximum benefits where Australian Federal Police adjustment payment is payable**

**Definitions**

1.5.1. In this Division:

"adjusted maximum benefit", in relation to a person who has received, or is entitled to, an adjustment payment in accordance with the Australian Federal Police Act 1979, means an amount calculated in accordance with rules 1.5.2 to 1.5.7 inclusive; and

"aggregate adjustment payment", in relation to a person who has received, or is entitled to, an adjustment payment in accordance with the Australian Federal Police Act 1979 means:

- (a) where there is one adjustment payment, the amount of that payment updated where relevant to the last day of membership of the person in the same manner as prescribed in the Occupational Superannuation Standards Act 1987 and Regulations for the updating of an eligible termination payment previously received for the purpose of applying the Reasonable Benefit Limits; and
- (b) where there is more than one adjustment payment, the sum of the values of those payments updated in the manner described in (a) above.

#### **Amount of maximum benefit**

1.5.2. Where a person has received, or is entitled to, an adjustment payment in accordance with the Australian Federal Police Act 1979, the amount of his or her adjusted maximum benefit for the purposes of determining the final benefit accrual of the person is, subject to rules 1.5.3 to 1.5.8 inclusive, the amount calculated under rule 1.4.1 as at the person's last day of membership, less the amount of the person's aggregate adjustment payment.

#### **Maximum benefit on invalidity or death where Australian Federal Police adjustment payment payable**

1.5.3 Subject to rules 1.5.4 to 1.5.8, inclusive, where a person to whom rule 1.5.2 refers ceases to be a member because of invalidity retirement or death, and the amount of the person's average salary on his or her last day of membership is less than \$28,052, his or her maximum benefit is whichever is the greater of:

- (a) the amount of 8 times the amount of his or her average salary; and
- (b) the benefit accrual that would have applied to him or her if paragraph 1.3.3(a) had been omitted in calculating his or her benefit factor;

provided that in either case the maximum benefit shall not exceed \$224,412 less, if the person has received, or is entitled to, an adjustment payment in accordance with the Australian Federal Police Act 1979, the amount of the person's aggregate adjustment payment.

**Adjusted maximum benefit where pension taken on ceasing to be a member**

1.5.4 Where a person to whom rule 1.5.2 refers makes an election for a pension under rules 4.1.2, 4.1.10, 4.2.3 or 4.2.9, the person's adjusted maximum benefit will be an amount equal to the lesser of:

- (a) the sum of:
  - (i) the amount calculated from the table in rule 1.5.8 as at the person's last day of membership; and
  - (ii) the person's undeducted contributions as defined in section 27A of the Income Tax Assessment Act 1936; and



- (iii) 20% of that part of the person's unfunded benefit accrual at the person's last day of membership that is converted into a pension, plus 15% of the remaining balance of the person's unfunded benefit accrual;

less

- (iv) the amount of the person's aggregate adjustment payment;

or

- (b) the amount calculated in accordance with rule 1.4.1.

#### Adjusted maximum benefit on invalidity

1.5.5 Where a person to whom rule 1.5.2 refers becomes entitled to a benefit under rules 4.3.3 or 4.3.5, the person's adjusted maximum benefit will be an amount equal to the lesser of:

- (a) the sum of:

- (i) the amount calculated from the table in rule 1.5.8 as at the person's last day of membership; and
- (ii) the person's undeducted contributions as defined in section 27A of the Income Tax Assessment Act 1936; and

- (iii) 20% of that part of the person's unfunded benefit accrual (excluding the part of the benefit accrual attributable to the prospective multiple) at the person's last day of membership; and
  - (iv) the product of the person's prospective multiple and average salary as at the person's last day of membership;
- less
- (v) the amount of the person's aggregate adjustment payment;

or

- (b) the amount calculated in accordance with rule 1.4.1.

#### **Adjusted maximum benefit on death**

1.5.6 Where a benefit becomes payable under Division 2 of Part 5 or paragraph 6.1.1(d) in respect of a member to whom rule 1.5.2 refers, the amount of the person's adjusted maximum benefit is the amount calculated under rule 1.4.1 as at the person's last day of membership.

Adjusted maximum benefit where preserved benefit taken as a pension

1.5.7 Where a benefit becomes payable under Part 6 to a person to whom rule 1.5.2 refers and that person makes an election under rule 6.1.6, the person's adjusted maximum benefit will be an amount equal to the lesser of:

(a) the sum of:

(i) the amount calculated from the table in rule 1.5.8 as at the person's last day of membership; and

(ii) the person's undeducted contributions as defined in section 27A of the Income Tax Assésment Act 1936; and

(iii) 20% of that part of the person's unfunded benefit accrual that is obtained by the formula:

$$A \times B$$

where:

A is the amount of the person's unfunded benefit accrual;

B is the fraction of the person's unfunded preserved benefit that is converted into a pension;

plus 15% of the remaining balance  
of the person's unfunded benefit  
accrual;

less

(iv) the amount of the person's aggregate  
adjustment payment;

or

(b) the amount calculated in accordance with  
rule 1.4.1.

Maximum benefit table where Australian Federal Police  
adjustment payment payable and pension benefit taken

1.5.8 The table referred to in rules 1.5.4,  
1.5.5 and 1.5.7 is as follows:

Average Salary	Amount
less than \$28,052	\$315,585
\$28,052 or more but less than \$44,850	11.25 times amount of average salary
\$44,850 or more but less than \$83,280	\$134,550 plus 8.25 times amount of average salary
\$83,280 or more	\$384,390 plus 5.25 times amount of average salary

2.8 Rule 2.1.1 is amended by:

- (a) deleting paragraph (b) from the first definition of "annual rate of superannuation salary",

and replacing it with the following:

"(b) if he or she received throughout that year the hourly rate applicable to his or her duties on that day or, where the member had no duties on that day, the hourly rate applicable on that day to the duties that he or she undertook:

- (i) when next engaged in employment after that day; or

- (ii) where he or she did not engage in employment after that day, when he or she last engaged in employment before that day;" and

- (b) deleting "person" from subparagraph (b)(ii) in the second definition of "annual rate of superannuation salary".

2.9 Rule 3.1.17 and its heading are amended by:

- (a) adding "and MSB Act" after "DFRDB Act" in the heading to the Rule;
- (b) adding "or the MSB Act" after "liable to contribute under the DFRDB Act"; and
- (c) adding "or subrule 4(4) or rule 6 or 7 of the MSB Rules" after "section 18 of the DFRDB Act" in paragraph 3.1.17(a).

2.10 Rule 3.1.18 is deleted and the following rule is inserted in its place:

"3.1.18 Rule 3.1.17 does not apply to a member who, immediately before becoming liable to contribute under the DFRDB Act or the MSB Act:

- (a) is entitled to retirement pay under the DFRDB Act; or
- (b) has received or commenced to receive an employer benefit under the MSB Rules; or
- (c) is entitled to a pension under the Defence Forces Retirement Benefits Act 1948 or that Act as amended and in force from time to time; or
- (d) has received or commenced to receive retirement benefits under any other Act that relates to retirement benefits for members of the Defence Force and modifies or affects the provisions of the Defence Forces Retirement Benefits Act 1948 or that Act as amended and in force from time to time."

2.11 Rule 3.1.19 is deleted and the following rule is inserted in its place:

"3.1.19 Rule 3.1.17 does not apply, and shall be deemed never to have applied, to a member who, upon ceasing to be liable to contribute under:

- (a) the DFRDB Act, becomes entitled to retirement pay under section 23 of that Act; or

(b) the MSB Rules, has received or commenced to receive an employer benefit under the MSB Rules."

2.12 The Table in rule 3.2.2 is amended by replacing:

(a) "\$904" wherever occurring with "\$902"; and

(b) "\$27.12" with "\$27.06"; and

(c) "\$1,442" wherever occurring with "\$1,453.33";  
and

(d) "\$2,163" wherever occurring with "\$2,180"; and

(e) "\$43.26" with "\$43.60".

2.13 Rule 4.1.1 is amended by replacing "and 4.4.5," with  
", 4.1.13, 4.4.5 and 4.8.2A,".

2.14 Rule 4.1.9 is amended by replacing "6.1.3" with  
"4.1.13 and 6.1.3".

2.15 The following rule and its heading are inserted after  
4.1.12:

**"Preserved benefit where person joins Judges' Pensions  
Scheme**

4.1.13 Where a person elects to have the Judges' Pensions Act 1968 apply to him or her and on that election ceases to be a member on or after his or her minimum retiring age, there is applicable to him or her a preserved benefit of his or her accumulated member contributions and his or her accumulated employer contributions."

2.16 Rule 4.2.1 is amended by:

- (a) deleting paragraph (c) and inserting in its place:

"(c) the person is retired under section 76W of the Public Service Act 1922 or the person's employment or appointment is terminated, otherwise than under that Act, on a ground similar to a ground specified in that section, provided that this paragraph shall not apply where a person is so retired as a result of a sale or transfer of an organisation, business, service or asset, or the transfer of a function, in which case paragraph (e) shall apply; or"; and

- (b) deleting paragraph (h) and inserting in its place:

"(h) the person is retired under section 76L of the Public Service Act 1922 or the person's employment is terminated, otherwise than under that Act, on a ground similar to a ground that is specified in that section, provided that this paragraph shall not apply where a person is so retired as a result of a sale or transfer of an organisation, business, service or asset, or the transfer of a function, in which case paragraph (e) shall apply; or"; and

- (c) inserting "before 1 January 1992" after "Australian Federal Police Act 1979" in paragraph (j).



2.17 Rule 4.4.1 and its heading are amended by:

- (a) inserting "before 1 July 1992" after "cessation" in the heading to the rule; and
- (b) replacing "a person ceases to be a member" in paragraph (a) with "a person last ceased to be a member before 1 July 1992".

2.18 The heading to rule 4.4.2 is amended by inserting "before 1 July 1992" after "cessation".

2.19 Rule 4.4.3 and its heading are amended by:

- (a) inserting "before 1 July 1992" after "cessation" in the heading to the rule; and
- (b) replacing "a person ceases to be a member" in paragraph (a) with "a person last ceased to be a member before 1 July 1992".

2.20 The heading to rule 4.4.4 is amended by inserting "before 1 July 1992" after "cessation".

2.21 The following rules are inserted after rule 4.4.4:

**"Preserved benefit on cessation after 30 June 1992**

**4.4.4A** Subject to rules 4.4.5, 4.4.7 and 4.8.2A, where:

- (a) after 30 June 1992, a person ceases to be a member before attaining his or her minimum retiring age, except because of death; and

- (b) the person is not otherwise entitled to benefits under these Rules, except under Division 6 of this Part, as a result of the cessation; and
- (c) the person does not make an election under rule 4.4.4B; and
- (d) the person does not elect, in accordance with Part 8, that a transfer value be payable in relation to him or her;

there is applicable to the person a preserved benefit of his or her final benefit accrual.

#### Other options on cessation after 30 June 1992

4.4.4B Subject to rule 4.4.4C, a person who ceases to be a member after 30 June 1992 and to whom a preserved benefit is applicable in accordance with rule 4.4.4A, except a person who is continuously employed by the same employer before and after ceasing to be a member, may elect that, instead of that benefit being applicable:

- (a) he or she be paid a lump sum of his or her accumulated member contributions less any amount payable under rule 4.6.5; and
- (b) there be applicable to him or her a preserved benefit of his or her final benefit accrual less the amount of the lump sum in paragraph 4.4.4B(a).

4.4.4C Where a person, except a person who is continuously employed by the same employer before and after ceasing to be a member, ceases to be a member after 30 June 1992 and his or her final benefit accrual, less the amount of his or her accumulated member contributions, is less than \$500, he or she may elect to be paid his or her final benefit accrual as a lump sum."

2.22 The following rule and its heading are inserted after rule 4.4.6:

"Preserved benefit where person joins Judges' Pensions Scheme

4.4.7 Where a person elects to have the Judges' Pensions Act 1968 apply to him or her and on that election ceases to be a member before attaining his or her minimum retiring age, there is applicable to him or her a preserved benefit of his or her accumulated member contributions and his or her accumulated employer contributions."

2.23 Rule 4.8.1 is amended by:

(a) deleting paragraph (c) and replacing it with:

"(c) accepted that offer before the date of sale or transfer or, where a period in which an offer can be accepted expires after the date of sale or transfer, accepted the offer before the expiry of the period; and";

(b) replacing "transfer; and" with "transfer." in paragraph (e); and

(c) deleting paragraph (f).

2.24 A new rule is inserted after rule 4.8.2 as follows:

"4.8.2A. A person to whom this Division is applicable is not entitled to benefits under Division 1 or 4 of this Part as a result of the change of employer, other than any entitlement that arises, or may arise, by virtue of being able to continue as a member."

2.25 Rule 6.1.1 is amended by:

(a) inserting in paragraph 6.1.1(c) after:

"where the Board has decided"

the words:

", in accordance with Division 1 of Part 12 or Division 4 of Part 11,"; and

(b) inserting "permanently" after the word "Australia" in paragraph 6.1.1(e).

2.26 Rule 6.1.2 is amended by inserting "(if any)" after "amount" in paragraph (c).

2.27 Rule 6.1.3 is amended by replacing:

"Where:"

with:

"Subject to rule 6.1.3A, where:".

2.28 The following rule is inserted after rule 6.1.3:

"6.1.3A. Where, in accordance with rule 8.3.4, a person becomes entitled to a preserved benefit of his or her final benefit accrual as a result of becoming a member of an authorised superannuation scheme within the meaning of rule 8.3.1, for the purposes of these rules, the person is deemed not to have changed employers, or ceased employment, where the person's employment continues and the authority or body employing the person:

- (a) becomes a statutory authority or body; or
- (b) becomes an authority or body in a different form or with a different name; or
- (c) is incorporated; or
- (d) is amalgamated with a statutory authority or body or with an incorporated body; or
- (e) is acquired by an incorporated body."

2.29 Rule 6.1.4A is amended by:

- (i) replacing "Where:" with "Subject to rule 6.1.4B, where:"; and
- (ii) replacing "(b) the Insurance" with "(c) the Insurance".

2.30 Rule 6.1.4B is added after rule 6.1.4A as follows:

"6.1.4B. Subject to the Board's approval, where:

- (a) a person ceased to be a member before 1 July 1991; and
- (b) a preserved benefit is applicable to the person; and
- (c) the person applied to the Insurance and Superannuation Commission before 1 July 1992 for release of all or part of the preserved benefit in circumstances other than those provided in rule 6.1.1 as it applied at 30 June 1992; and
- (d) the Insurance and Superannuation Commission has approved the payment of the whole or part of the person's preserved benefit or has agreed that payments of preserved benefits may be made at the Board's discretion;

the person is entitled to payment of a part or the whole of his or her preserved benefit and the amount of the preserved benefit applicable to the person shall be reduced accordingly.

2.31 Rule 6.1.8 is amended by replacing "less than 11." with "greater than 11.".

2.32 Rule 6.1.14(d) is amended by replacing "greater of:" with "lesser of:".

2.33 New rules are added after rule 6.1.15 as follows:

"Invalidity retirement benefit where person has a preserved benefit and was totally and permanently incapacitated on last day of membership

6.1.16 A person who has a preserved benefit applicable to him or her and who on his or her last day of membership:

- (a) was not a limited benefits member; and
- (b) had not attained the age of 60 years;

may make application to the Board for payment of an invalidity retirement benefit on the ground that he or she was totally and permanently incapacitated on his or her last day of membership.

6.1.17 Where the Board has decided, in accordance with Division 1 of Part 12 or Division 4 of Part 11, that a person who has made application under rule 6.1.16 was totally and permanently incapacitated on his or her last day of membership, the person shall be deemed to have ceased to be a member on the person's last day of membership because of invalidity retirement.

6.1.18 Subject to rule 6.1.19, a person to whom rule 6.1.17 applies:

- (a) ceases to be entitled to a preserved benefit; and
- (b) shall be deemed to have been entitled on the person's last day of membership to benefits calculated in accordance with rules 4.3.3, 4.3.4, 4.3.5, 4.3.7 and 4.3.8.

6.1.19 Where a person to whom rule 6.1.17 applies has been paid an amount or amounts in respect of benefits becoming payable on or after his or her last day of membership, before calculating benefits under rules 4.3.3, 4.3.4, 4.3.5, 4.3.7 and 4.3.8:

(a) the person's final benefit accrual shall be reduced by an amount or amounts equivalent on his or her last day of membership to the amount or amounts paid; and

(b) the amount of the person's accumulated member contributions included in the final benefit accrual applying in accordance with rule 6.1.18 shall be reduced by an amount or amounts equivalent on his or her last day of membership to the amount or amounts (if any) paid in respect of accumulated member contributions.

2.34 Paragraph 6.2.7(d) is amended by replacing "greater of:" with "lesser of:".

2.35 Rule 8.2.7 is amended by:

(a) inserting "by a person who last ceased to be a member before 1 July 1992" after "under rule 8.2.14" in paragraph 8.2.7(b); and

(b) replacing "under rule 4.4.4." with "under rule 4.4.4; and" in sub- subparagraph 8.2.7(b)(iii)(C); and



(c) adding a new paragraph 8.2.7(c) as follows:

"(c) where the transfer value is payable by virtue of an election made under rule 8.2.14 by a person who last ceased to be a member after 30 June 1992 - the amount of the preserved benefit applicable to the person immediately before the date of payment of the transfer value."

2.36 Rule 8.2.8 and its heading are amended by:

(a) adding "or MSB Act" after "DFRDB Act" in the heading to the Rule; and

(b) replacing paragraph 8.2.8(a) with:

"(a) at the time when he or she ceased to be a member, he or she had not ceased to be a member of the MSB Scheme or had not ceased to be an eligible member of the Defence Force as defined by sub-section 3(1) of the DFRDB Act; or".

2.37 Rule 8.2.20. is deleted.

2.38 Division 3 is added after Division 2 of Part 8 as follows:

**"Division 3 - Transfers of Certain Persons to the Scheme under the Superannuation Act 1976 and to Approved and Authorised Superannuation Schemes**

**Definitions**

**8.3.1. In this Division:**

**"approved superannuation scheme"** means a superannuation scheme approved in writing by the Minister under section 33C of the 1990 Act that provides benefits for persons who are employed by, or are members of the staff of, an authority or body; and

**"authorised superannuation scheme"** means a superannuation scheme declared in writing by the Minister under section 33G of the 1990 Act that provides benefits for persons who are employed by, or are members of the staff of, an authority or body.

**Election by certain persons to join the Scheme under the Superannuation Act 1976**

**8.3.2.** Where, pursuant to subsection 6A(3) of the 1990 Act, a person ceases to be a member, he or she ceases to be entitled to benefits under the Rules, unless he or she again becomes a member.

**Members who transfer to approved superannuation schemes**

**8.3.3. Where a member:**

- (a) is employed by, or is a member of the staff of, an authority or body; and

- (b) becomes a member of an approved superannuation scheme within such period as the Minister determines in writing under section 33C of the 1990 Act; and
- (c) ceases to be a member upon becoming a member of the approved superannuation scheme,

he or she shall not be entitled to benefits under the Rules, unless he or she again becomes a member.

#### **Members who transfer to authorised superannuation schemes**

##### **8.3.4. Where a member:**

- (a) is employed by, or is a member of the staff of, an authority or body; and
- (b) becomes a member of an authorised superannuation scheme within such period as the Minister determines in writing under section 33G of the 1990 Act; and
- (c) ceases to be a member upon becoming a member of the authorised superannuation scheme,

he or she becomes entitled to a preserved benefit of his or her final benefit accrual under Part 6 of the Rules."

2.39 Rule 9.1.8 and its heading are amended by:

- (a) adding "or MSB Act" after "DFRDB Act" in the heading to the Rule;

- (b) adding "or the MSB Act" after "the DFRDB Act" in paragraph 9.1.8(b); and
- (c) replacing "under these Rules and the DFRDB Act" with "under these Rules and the DFRDB Act or under these Rules and the MSB Act".

2.40 Rule 9.5.1 is amended by inserting "or death" after "invalidity retirement" in subparagraph 9.5.1(b)(ii).

2.41 Rule 11.4.4A is amended:

- (a) by replacing paragraph 11.4.4A(a) with the following:

"(a) a request has been made to the Board for reconsideration of a decision (in this rule the "original decision") concerning:

- (i) the approval or otherwise of the invalidity retirement of a person; or
- (ii) the payment or otherwise of a preserved benefit of a person to whom paragraph 6.1.1(c) applies; or
- (iii) the payment or otherwise of an invalidity retirement benefit to a person to whom rule 6.1.16 applies; and";

- (b) by replacing the words:

"the Board shall furnish the new evidence," after paragraph 11.4.4A(c);

with:

"subject to rule 11.4.4B, the Board shall furnish the new evidence,"; and

- (c) by replacing paragraph 11.4.4A(d) with the following:

"(d) in the case of:

(i) subparagraph 11.4.4A(a)(i) and 11.4.4A(a)(ii) - whether the person is totally and permanently incapacitated; or

(ii) subparagraph 11.4.4A(a)(iii) - whether the person was totally and permanently incapacitated on his or her last day of membership; and".

- 2.42 A new rule is inserted after rule 11.4.4A as follows:

"11.4.4B Where the Board, after consideration of any new evidence provided in accordance with rule 11.4.3 together with any other evidence considered by the Board to be relevant, has no reasonable doubt that it should decide in favour of the person seeking reconsideration, it will decide in favour of the person seeking reconsideration, it may so decide without recourse to the process in rule 11.4.4A."

- 2.43 Rule 12.1.1 is amended by replacing:

"... decisions whether or not to approve invalidity retirement for members who have not reached the age of 60 years."

with:

"... decisions whether or not to:

- (a) approve invalidity retirement for members who have not reached the age of 60 years; or
- (b) pay a preserved benefit pursuant to paragraph 6.1.1(c); or
- (c) pay an invalidity benefit to a person who has made application under rule 6.1.16."

2.44 Rule 12.1.5 is amended by replacing paragraphs 12.1.5(a) and 12.1.5(b) with:

- "(a) where the Board has to make a decision of the kind in paragraph 12.1.1(a) or (b), whether the person, is totally and permanently incapacitated; and
- (b) where the Board has to make a decision of the kind in paragraph 12.1.1(c), whether the person was totally and permanently incapacitated on his or her last day of membership; and
- (c) on any other matters that the panel considers relevant or the Board may require."

2.45 Rule 12.1.6 is amended by:

- (a) replacing "person." at the end of paragraph (b) with "person; or"; and
- (b) adding the following paragraph:

"(c) where the Board has to make a decision of the kind in paragraph 12.1.1(b) or 12.1.1(c) - the date the Board was asked to approve the payment of the benefit."

2.46 Rule 12.1.7 is amended by replacing subparagraphs 12.1.7(a)(i) and (ii) with:

"(i) where the administration of that Act in respect of the person's compensable condition lies with the person's employer (not being Comcare) or a body other than Comcare - also ascertain whether the employer or other body recommends that the person be retired because he or she is totally and permanently incapacitated; and

(ii) in any other case - also ascertain whether Comcare recommends that the person be retired because he or she is totally and permanently incapacitated; and"

2.47 A new rule is inserted after rule 12.1.7 as follows:

"12.1.7A Where the Board has to make a decision of the kind in paragraph 12.1.1(b) or (c), before deciding whether or not to approve the payment of the benefit to the person in respect of whom the decision is required, the Board shall, subject to rule 12.1.9:

(a) require the person to undergo a medical examination by a Commonwealth Medical Officer or other approved medical practitioner within 6 months, or such other period as the Board approves, after the date the Board was asked to approve the payment of the benefit; and

- (b) forward the report of that examination, together with any other medical evidence considered by the Board to be relevant, to the panel for assessment.

2.48 Rule 12.1.8 and its heading are amended by:

- (a) replacing

"Board to make decision on invalidity retirement

with:

"Board to make decision on invalidity retirement or payment of preserved benefit or invalidity benefit"; and

- (b) inserting ", in relation to a decision of the kind in paragraph 12.1.1(a) in respect of a person," after "The Board".

2.49 A new rule is inserted after rule 12.1.8 as follows:

"12.1.8A The Board, after having regard to the recommendations under rule 12.1.5:

- (a) in relation to a decision of the kind in paragraph 12.1.1(b) in respect of a person, shall decide whether or not to approve payment of the person's preserved benefit; or
- (b) in relation to a decision of the kind in paragraph 12.1.1(c) in respect of a person, shall decide whether or not to approve payment of an invalidity retirement benefit to the person."



2.50 Rule 12.1.9 is deleted and the following rule inserted:

"12.1.9 Where the Board, after consideration of:

- (a) any report or reports of a medical practitioner or practitioners submitted with a request to:
  - (i) approve the invalidity retirement of a person; or
  - (ii) pay a preserved benefit of a person under rule 6.1.1(c); or
  - (iii) pay an invalidity retirement benefit to a person under rule 6.1.16; and
- (b) any other matters that the Board considers relevant,

decides that:

- (c) in the case of a person to whom subparagraph (a)(i) applies, the person's physical or mental condition is such that there is no reasonable doubt that he or she is totally and permanently incapacitated - the Board may decide to approve the invalidity retirement of the person without recourse to the process in rules 12.1.7 and 12.1.8; or

(d) in the case of a person to whom subparagraph (a)(ii) applies, the person's physical or mental condition is such that there is no reasonable doubt that he or she is totally and permanently incapacitated - the Board may decide to pay the preserved benefit of the person without recourse to the process in rules 12.1.7A and 12.1.8A; or

(e) in the case of a person to whom subparagraph (a)(iii) applies, the person's physical or mental condition on his or her last day of membership was such that there is no reasonable doubt that he or she was totally and permanently incapacitated on his or her last day of membership - the Board may decide to approve payment of an invalidity benefit to the person without recourse to the process in rules 12.1.7A and 12.1.8A."

2.51 Rule 12.1.10 is amended by replacing "or 12.1.9" with "or paragraph 12.1.9(c)".

2.52 The following rule and its heading are added after rule 12.1.10:

**"The Board's decision to be advised to person**

12.1.11 The Board's decision under rule 12.1.8A or paragraph 12.1.9(d) or (e) shall be communicated to the person concerned, together with a statement of the reasons for the decision and a copy of the recommendation made by the panel (if any)."

2.53 Rule 12.3.1 is deleted and the following rule inserted:

"12.3.1 Where the Board receives a report under paragraph 12.1.5(c) or rule 12.2.2 that, although there is a likelihood of the person becoming totally and permanently incapacitated, a program of rehabilitation may prevent that total and permanent incapacity, the Board may consult with:

(a) Comcare; or

(b) where the administration of the Commonwealth Employee's Rehabilitation and Compensation Act 1988 lies with the person's employer (not being Comcare) or a body other than Comcare - the person's employer or the other body,

as appropriate, with a view to implementing such a program. If the Board considers that the cost of a program of rehabilitation is likely to be cost-effective in reducing the likelihood of the person's invalidity retirement, it may arrange for, and meet the cost of, such a program."

3. This Deed has effect from 1 July 1992.

