

**SEVENTH 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 Garren Offices**  
**BARTON ACT 2600**

THIS DEED is made on 7<sup>th</sup> MARCH 1994 by THE  
COMMONWEALTH OF AUSTRALIA (in this Deed called the "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 the 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, 1 July 1991, 30 June 1992, 21 December 1992, 16 June 1993 and 24 January 1994 (the First, Second, Third, Fourth, Fifth and Sixth 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 Rules are amended as follows:
  - 1.1 Rule 1.1.1 is amended by:
    - (a) replacing "rule 4.2.1" with "Division 2 of Part 4" in the definition of "involuntary retirement"; and
    - (b) deleting the definition of "mobility allowance"; and
    - (c) deleting paragraph (e) of the definition of "permanent full-time employee" and replacing the words "permanent full-time employee; or" at the end of paragraph (d) with the words "permanent full-time employee."
  - 1.2 Rule 2.1.4A and its heading are deleted.
  - 1.3 Rule 2.3.1 is amended by deleting paragraph (h) and replacing the words "members; or" at the end of paragraph (g) with the word "members."

1.4 Rule 3.1.7 is amended by deleting "3.1.9A,".

1.5 Rule 3.1.9A is deleted.

1.6 Rule 4.2.1 is amended by:

- (a) replacing "A person shall be deemed" with "Subject to rules 4.2.1E, 4.2.1F, 4.2.1G, 4.2.1H, 4.2.1J, 4.2.1R, 4.2.1S, 4.2.1T, 4.2.1U and 4.2.1V, a person shall be deemed"; and
- (b) deleting paragraph (d).

1.7 The following rules and headings are inserted after rule 4.2.1:

**"4.2.1A.** In this Division, **"fixed-term employee"** means:

- (a) a person who holds an office of Secretary under an appointment that is a fixed-term appointment for the purposes of section 37 of the *Public Service Act 1922*; or
- (b) a person who holds a Senior Executive Service office under an appointment that is a fixed-term appointment for the purpose of section 44 of the *Public Service Act 1922*; or
- (c) a person who is employed for a fixed term under section 82AD or 82AE of the *Public Service Act 1922*; or
- (d) a person who holds an appointment, or is employed, otherwise than under the *Public Service Act 1922*, by the Commonwealth for a fixed term; or
- (e) a person who holds an appointment, or is employed, by an approved authority for a fixed term; or
- (f) a person who holds an appointment, or is employed, for a fixed term, and who is:
  - (i) a person to whom Division 3 of Part IV of the *Public Service Act 1922* applies; or

- (ii) is an approved person for the purposes of Part IV of the *Commonwealth Legal Aid Act 1977*; or
- (iii) a person who is a member by virtue of a declaration under paragraph 6(1)(j) of the 1990 Act.

**4.2.1B.** For the purposes only of this Division, if, after ceasing to hold an office of Secretary under the *Public Service Act 1922*, a person continues as an officer by virtue of a direction under subsection 37(6) of that Act, the following provisions have effect:

- (a) if the person ceased to hold the office of Secretary because the office was abolished, the office is to be taken to have been abolished at the same time as the person ceases to be an officer by virtue of the direction, and the person is to be taken to have ceased to be a member because of the abolition of the office;
- (b) if the person ceased to hold the office of Secretary because the term of his or her appointment to the office expired, that term is to be taken to have expired at the same time as the person ceases to be an officer by virtue of the direction, and the person is to be taken to have ceased to be a member because of the expiration of the term of the appointment;
- (c) if the person ceased to hold the office of Secretary because his or her appointment to the office was terminated before the expiration of the term of the appointment, the appointment is to be taken to have been terminated at the same time as the person ceases to be an officer by virtue of the direction, and the person is to be taken to have ceased to be a member because of the termination of the appointment.

**4.2.1C.** For the purposes only of this Division, if, after ceasing to hold a Commonwealth office within the meaning of Part IV of the *Public Service Act 1922*, a person continues as an officer by virtue of a direction under subsection 87ZCA(1) of that Act, the following provisions have effect:

- (a) if the person ceased to hold the Commonwealth office because the office was abolished, the office is to be taken to have been abolished at the same time as the person ceases to be an officer by virtue of the direction, and the person is to be taken to have ceased to be a member because of the abolition of the office;
- (b) if the person ceased to hold the Commonwealth office because the term of his or her appointment to the office expired, that term is to be taken to have expired at the same time as the person ceases to be an officer by virtue of the direction, and the person is to be taken to have ceased to be a member because of the expiration of the term of the appointment;
- (c) if the person ceased to hold the Commonwealth office because his or her appointment was terminated before the expiration of the term of the appointment, the appointment is to be taken to have been terminated at the same time as the person ceases to be an officer by virtue of the direction, and the person is to be taken to have ceased to be a member because of the termination of the appointment.

#### **Special provisions regarding certain holders of statutory offices**

**4.2.1D.** Rule 4.2.1E applies to a person who:

- (a) ceases to be a member; and
- (b) immediately before ceasing to be a member, is the holder of a statutory office (in this Division called the "**relevant statutory office**"); and
- (c) immediately before becoming the holder of the relevant statutory office:
  - (i) was a Secretary, officer or employee under the *Public Service Act 1922*, otherwise than as a fixed-term employee; or

- (ii) was a fixed-term employee (other than a person referred to in paragraph 4.2.1A(d), (e) or (f)) who would have been deemed, by a provision of this Division, for the purposes of these Rules, to have retired involuntarily on the expiration of the fixed-term of the appointment or employment by virtue of which the person was a fixed term employee had he or she not been appointed to the relevant statutory office; or
- (iii) was an employee (other than as a fixed-term employee) of the authority or body that is liable to pay the remuneration of the holder of the relevant statutory office; or
- (iv) as a fixed-term employee, held office under an appointment, or was employed, by the authority or body that is liable to pay the remuneration of the holder of the relevant statutory office and would have been deemed, by a provision of this Division, for the purposes of these Rules, to have retired involuntarily on the expiration of the fixed term of the appointment or employment by virtue of which the person was a fixed-term employee had he or she not been appointed to the relevant statutory office; or
- (v) held a statutory office and would have been deemed, by a provision of this Division, for the purposes of these Rules, to have retired involuntarily on the expiration of the term of his or her appointment to that office had he or she not been appointed to the relevant statutory office.

**4.2.1E.** A person to whom this rule applies shall be deemed, for the purposes of these Rules, to have retired involuntarily on the expiration of the term of his or her appointment to the relevant statutory office if:

- (a) the person was eligible to be re-appointed to the office; and
- (b) he or she desired to be so re-appointed; and
- (c) he or she was not so re-appointed; and

- (d) he or she does not cease to be a member because of invalidity retirement.

**4.2.1F. If:**

- (a) a person who is the holder of a statutory office ceases to be a member on the expiration of the term of his or her appointment to the office; and
- (b) the person is not a person to whom rule 4.2.1E applies; and
- (c) the person is eligible to be re-appointed to the office; and
- (d) although the person desires to be so re-appointed, he or she is not re-appointed;

the person is not to be deemed, for the purposes of these Rules, to have retired involuntarily.

**4.2.1G. If:**

- (a) it is provided in the document by means of which a person is appointed to a statutory office, or it is a term or condition of the appointment, that rule 4.2.1E is not to apply to the person in relation to the office; and
- (b) the term of the appointment expires; and
- (c) the person is eligible to be re-appointed to the office; and
- (d) although the person desires to be so re-appointed, he or she is not re-appointed; and
- (e) but for this rule, the person would have been deemed to have retired involuntarily;

the person is not to be deemed, for the purposes of these Rules, to have retired involuntarily.

**4.2.1H.** If:

- (a) it is provided in the document by means of which a person is appointed to a statutory office, or it is a term or condition of the appointment, that rule 4.2.1F is not to apply to the person in relation to the office; and
- (b) the term of appointment expires; and
- (c) the person is eligible to be re-appointed to the office; and
- (d) although the person desires to be so re-appointed, he or she is not re-appointed; and
- (e) but for this rule, the person would not have been deemed, for the purposes of these Rules, to have retired involuntarily;

the person is to be deemed, for the purposes of these Rules, to have retired involuntarily.

**4.2.1J.** If a person who is the holder of a statutory office ceases to be a member because the person's appointment to the statutory office is terminated before the expiration of the term of the appointment, the following provisions have effect:

- (a) if:
  - (i) the document by means of which the person was appointed to the office provided that, in the events that have happened, the person was not to be deemed to have retired involuntarily; or
  - (ii) it was a term or condition of the appointment that, in the events that have happened, the person was not to be deemed to have retired involuntarily;

the person is not to be deemed, for the purposes of these Rules, to have retired involuntarily;



- (b) in any other case, the person is to be deemed, for the purposes of these Rules, to have retired involuntarily.

**4.2.1K.** The document by means of which a person is appointed to a statutory office must not include provision of the kind mentioned in paragraph 4.2.1H(a) except with the approval of the Minister.

**4.2.1L.** An appointment of a person must not be made on the basis that it is a term or condition of the appointment that rule 4.2.1F is not to apply to the person in relation to the office unless the Minister has approved the making of the appointment on that basis.

**4.2.1M.** The inclusion of a provision in a document in contravention of rule 4.2.1K is ineffective for the purposes of paragraph 4.2.1H(a), but the document is as effective in all other respects as it would be apart from this rule.

**4.2.1N.** If an appointment is made in contravention of rule 4.2.1L, the term or condition referred to in that rule is ineffective, but all other terms and conditions of the appointment are as effective in all other respects as they would be apart from this rule.

**4.2.1P.** In the case of a person who has ceased to be a member on more than one occasion, rules 4.2.1D to 4.2.1N inclusive and this rule cannot have effect except in relation to the last such occasion.

#### **Special provisions regarding certain fixed-term employees**

**4.2.1Q.** Rule 4.2.1R applies to a person who:

- (a) ceases to be a member; and
- (b) immediately before ceasing to be a member, is a fixed-term employee under employment (in this Division called the "**latest employment**"); and
- (c) immediately before becoming a fixed-term employee under the latest employment:

- (i) was a Secretary, officer or employee under the *Public Service Act 1922*, otherwise than as a fixed-term employee; or
- (ii) was an employee (other than as a fixed-term employee) of the authority or body that appointed him or her as a fixed-term employee under the latest employment; or
- (iii) was employed by the Commonwealth (otherwise than as a fixed-term employee) under the same law (not being the *Public Service Act 1922*) as that under which he or she was employed in the latest employment; or
- (iv) was a fixed-term employee (other than a person referred to in paragraph 4.2.1A(d), (e) or (f)) who would have been deemed, by a provision of this Division, for the purposes of these Rules, to have retired involuntarily on the expiration of the fixed term of the appointment or employment by virtue of which the person was a fixed-term employee had he or she not been appointed or employed as a fixed-term employee under the latest employment; or
- (v) was:
  - (A) a fixed-term employee of the authority or body that appointed or employed him or her under the latest employment; or
  - (B) a fixed-term employee of the Commonwealth under the same law (not being the *Public Service Act 1922*) as that under which he or she was employed in the latest employment;

who would have been deemed, by a provision of this Division, for the purposes of these Rules, to have retired involuntarily on the expiration of the fixed-term of the appointment or employment by virtue of which the person was a fixed-term

employee had he or she not been appointed or employed as a fixed-term employee under the latest employment; or

- (vi) held a statutory office and would have been deemed, by a provision of this Division, for the purposes of these Rules, to have retired involuntarily on the expiration of the term of his or her appointment to that office had he or she not become a fixed-term employee.

**4.2.1R.** A person to whom this rule applies is to be deemed, for the purposes of these Rules, to have retired involuntarily on the expiration of the fixed term of his or appointment or employment as a fixed-term employee if:

- (a) the person was eligible to be re-appointed or re-employed as a fixed-term employee; and
- (b) he or she desired to be so re-appointed or re-employed; and
- (c) he or she was not so re-appointed or re-employed; and
- (d) he or she does not cease to be a member because of invalidity retirement.

**4.2.1S.** If:

- (a) a person who is a fixed-term employee ceases to be a member on the expiration of the fixed term of his or her appointment or employment as a fixed-term employee; and
- (b) the person is not a person to whom rule 4.2.1R applies; and
- (c) the person is eligible to be re-appointed or re-employed as a fixed-term employee; and
- (d) although the person desires to be so re-appointed or so re-employed, he or she is not re-appointed or re-employed;

the person is not to be deemed, for the purposes of these Rules, to have retired involuntarily.

**4.2.1T. If:**

- (a) it is provided in the document by means of which a person is appointed or employed as a fixed-term employee, or it is a term or condition of the appointment or employment, that rule 4.2.1R is not to apply to the person in relation to the appointment or employment; and
- (b) the fixed term of the appointment or employment expires; and
- (c) the person is eligible to be re-appointed or re-employed as a fixed-term employee; and
- (d) although the person desires to be so re-appointed or so re-employed, he or she is not re-appointed or re-employed; and
- (e) but for this rule, the person would have been deemed to have retired involuntarily;

the person is not to be deemed, for the purposes of these Rules, to have retired involuntarily.

**4.2.1U. If:**

- (a) it is provided in the document by means of which a person is appointed or employed as a fixed-term employee, or it is a term or condition of the appointment or employment, that rule 4.2.1S is not to apply to the person in relation to the appointment or employment; and
- (b) the fixed term of the appointment or employment expires; and
- (c) the person is eligible to be re-appointed or re-employed as a fixed-term employee; and
- (d) although the person desires to be so re-appointed or re-employed, he or she is not so re-appointed or re-employed; and

- (e) but for this rule, the person would not have been deemed to have retired involuntarily;

the person is to be deemed, for the purposes of these Rules, to have retired involuntarily.

**4.2.1V.** If a person who is a fixed-term employee ceases to be a member because his or her appointment or employment is terminated before the expiration of the fixed term, the following provisions have effect:

- (a) if:
  - (i) the document by means of which the person was appointed or employed in the position or office provided that, in the events that have happened, the person was not to be deemed to have retired involuntarily; or
  - (ii) it was a term or condition of the appointment or employment that, in the events that have happened, the person was not to be deemed to have retired involuntarily;

the person is not to be deemed, for the purposes of these Rules, to have retired involuntarily;

- (b) in any other case, the person is to be deemed, for the purposes of these Rules, to have retired involuntarily.

**4.2.1W.** A document by means of which a person is appointed or employed as a fixed-term employee must not include provision of the kind mentioned in rule 4.2.1U(a) except with the approval of the Minister.

**4.2.1X.** A person must not be appointed or employed as a fixed-term employee on the basis that it is a term or condition of the appointment or employment that rule 4.2.1S is not to apply to the person in relation to the appointment or employment unless the Minister has approved the appointment or employment of the person on that basis.

**4.2.1Y.** The inclusion of a provision in a document in contravention of rule 4.2.1W is ineffective for the purposes of paragraph 4.2.1U(a), but the document is as effective in all other respects as it would be apart from this rule.

**4.2.1Z.** If a person is appointed or employed in contravention of rule 4.2.1X, the term or condition referred to in that rule is ineffective, but all other terms and conditions of the appointment or employment are as effective in all other respects as they would be apart from this rule.

**4.2.1ZA.** In the case of a person who has ceased to be a member on more than one occasion, rules 4.2.1Q to 4.2.1Z inclusive and this rule cannot have effect except in relation to the last such occasion.

**Savings provisions in relation to holders of statutory office and fixed-term employees**

**4.2.1ZB.** In spite of rules 4.2.1A to 4.2.1P inclusive if:

- (a) immediately before the date of effect of rules 4.2.1A to 4.2.1P inclusive, a person was the holder of a statutory office; and
- (b) after that date, the person ceases to be a member because the term of his or her appointment to the statutory office expires; and
- (c) though the person is eligible for re-appointment to the office and desires to be so re-appointed, he or she is not so re-appointed;

the person is to be deemed, for the purposes of these Rules to have retired involuntarily on ceasing to hold the statutory office.

**4.2.1ZC.** Rule 4.2.1ZB does not apply to a person who ceases to be a member because of invalidity retirement.

**4.2.1ZD.** In spite of rules 4.2.1A, 4.2.1B and 4.2.1C and rules 4.2.1Q to 4.2.1ZA inclusive if:

- (a) immediately before the date of effect of rules 4.2.1A, 4.2.1B and 4.2.1C and rules 4.2.1Q to 4.2.1ZA inclusive, a person was a member

because of the appointment or employment of the person in a position or office for a fixed term; and

- (b) after that date, the person ceases to be a member because the fixed term of his or her appointment expires; and
- (c) though the person is eligible for re-appointment to, or re-employment in, the position or office and desires to be so re-appointed or re-employed, he or she is not so re-appointed or re-employed;

the following have effect:

- (d) if the person would have been deemed, under these Rules as in force immediately before the commencement of rules 4.2.1A, 4.2.1B and 4.2.1C and rules 4.2.1Q to 4.2.1ZA inclusive, to have retired involuntarily, the person is to be deemed, for the purposes of these Rules, including rules 4.2.1A, 4.2.1B and 4.2.1C and rules 4.2.1Q to 4.2.1ZA inclusive, to have retired involuntarily;
- (e) if the person would not have been deemed, under these Rules as in force immediately before the commencement of rules 4.2.1A, 4.2.1B and 4.2.1C and rules 4.2.1Q to 4.2.1ZA inclusive, to have retired involuntarily, the person is not to be deemed, for the purposes of these Rules, including rules 4.2.1A, 4.2.1B and 4.2.1C and rules 4.2.1Q to 4.2.1ZA inclusive, to have retired involuntarily.

**4.2.1ZE.** In spite of rules 4.2.1A, 4.2.1B and 4.2.1C and rules 4.2.1Q to 4.2.1ZA inclusive, if:

- (a) immediately before the date of effect of rules 4.2.1A, 4.2.1B and 4.2.1C and rules 4.2.1Q to 4.2.1ZA inclusive, a person was a member because the person was a temporary employee in such circumstances that, if rules 4.2.1A, 4.2.1B and 4.2.1C and rules 4.2.1Q to 4.2.1ZA inclusive, had been in force, the person would have been a fixed-term employee within the meaning of Rule 4.2.1A; and

- (b) after that date, the person ceases to be a member because the position or office ceases to exist, whether by reason of its being abolished or otherwise;

the person is not to be deemed, for the purposes of these Rules, to have retired involuntarily.

4.2.1ZF. Paragraph 4.2.1ZD(d) does not apply to a person who ceases to be a member because of invalidity retirement."

[NOTE: This Deed commences on gazettal: see *Acts Interpretation Act 1901*, ss. 46A and 48.].

IN WITNESS WHEREOF this Deed has been executed the day and year first hereinbefore written.

SIGNED, SEALED AND DELIVERED )

)

by the Honourable KIM C. BEAZLEY, )

)

Minister for Finance, for and on behalf of )

)

THE COMMONWEALTH OF )

)

AUSTRALIA, in the presence of: )

)

DAVID JOHN PHILLIPS )

(name) )

)

35 FROME ST GRIFFITH ACT )

(address) )

)

CONSULTANT )

(description) )

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