

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

THIS DEED is made on 26th July 2013 by THE MINISTER FOR FINANCE AND DEREGULATION.

WHEREAS section 4 of the *Superannuation Act 1990* (the Act) provides for the Minister to establish an occupational superannuation scheme to be administered by the Board established under section 20 of the Act before its repeal by the *Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011*;

AND WHEREAS the body corporate, that was previously constituted as the Board under repealed section 20 of the Act, is continued in existence under the name Commonwealth Superannuation Corporation (CSC) by section 5 of the *Governance of Australian Government Superannuation Schemes Act 2011*;

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

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

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

AND WHEREAS section 5 of the Act provides for the Minister, by instrument in writing, to amend the Trust Deed, and under subsection 5(1A) requires the consent of CSC to amendments in certain circumstances;

AND WHEREAS CSC consent was not required for the amendments in this Deed.

NOW THIS DEED WITNESSES as follows:

1. Commencement of amendments

The amendments in this Deed take effect on the day after it is registered on the Federal Register of Legislative Instruments.

2. Interpretation

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

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

3. Application of amendments – maximum benefits determinations

The amendments made by clause 4 of this Deed 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.

4. Amendments – maximum benefits determinations

4. The Rules are amended as follows:

4.1 Rule 5.6.5 is amended by deleting paragraph (a) and replacing it with the following new paragraph (a):

“(a) first, applying an indexation factor, calculated under Rule 5.6.5A or 5.6.5B, whichever is applicable, to the average salary amount;”

4.2 The following new Rules are inserted immediately after Rule 5.6.5:

“5.6.5A For the purposes of Rules 5.6.5 and 5.7.7, the indexation factor for a determination that applies for the 2008-9 financial year and each later financial year ending on or before 30 June 2014 must reflect the immediately preceding March-to-March movement in Average Weekly Ordinary Time Earnings in Australia.

5.6.5B For the purposes of Rules 5.6.5 and 5.7.7, the indexation factor for a determination that applies for the 2014-15 financial year and each later financial year is the greater of:

(a) 1; or

(b) the number calculated by the formula below:

$$\frac{\text{New AWOTE}}{\text{Old AWOTE}}$$

where:

New AWOTE is the index number of the full-time adult average weekly ordinary time earnings last published by the Australian Statistician before 1 May of the financial year immediately preceding the financial year that the determination applies to;

Old AWOTE is the index number of the full-time adult average weekly ordinary time earnings published by the Australian Statistician and preceding New AWOTE by one year.

provided:

- (A) the factor is to be rounded up or down to the nearest one thousandth; and
- (B) any index number that is published by the Australian Statistician in substitution for an earlier published Old AWOTE or New AWOTE index number is to be disregarded for the purposes of this Rule if it is published on or after 1 May of the financial year immediately preceding the financial year that the determination applies to; and
- (C) if the Australian Statistician changes the reference base for the index of full-time adult average weekly ordinary time earnings, regard shall only be had to index numbers published in terms of the new reference base.”

4.3 Rule 5.7.7 is amended by deleting paragraph (a) and replacing it with the following new paragraph (a):

“(a) first, applying an indexation factor, calculated under Rule 5.6.5A or 5.6.5B, whichever is applicable, to the average salary amount;”

5 Application – release of benefits to meet a Division 293 Tax Liability

The amendments made by clauses 6 and 7 of this Deed apply in relation to release authorities received by CSC on or after the commencement of the Deed.

6. Amendment – definition of release authority

6. The Rules are amended as follows:

6.1 Rule 1.2.1 is amended by replacing the definition of “release authority” with the following definition:

“**release authority** means:

for the purposes of Part 17:

- a release authority issued by the Commissioner of Taxation under item 3 of the table in subsection 135-10(1) of Schedule 1 to the *Taxation Administration Act 1953*; and

for the purposes of these Rules, except for Part 17:

- 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*.”

7 New Part – payment of a deferred tax liability incurred under Division 293 of the Taxation Administration Act 1953

7.1 The following new Part, Division, Headings and Rules are inserted immediately after Part 16:

“

PART 17 – RELEASE OF BENEFITS: PAYMENT OF A DEFERRED TAX LIABILITY

Division 1

Release of Benefits to Meet a Deferred Tax Liability

Release of benefits under a release authority

17.1.1 **CSC** may pay a lump sum (the release authority lump sum) at a time in compliance with a **release authority** issued to a person and given to **CSC** in accordance with Subdivision 135-B in that Schedule if, at or before that time, the person gives **CSC** written notice of the person’s election under Rule 17.1.2 (which deals with the reduction of benefits to reflect the release authority lump sum).

Note: The purpose of the **release authority** is to allow a lump sum to be paid to the Commissioner to meet a debt the person has under Subdivision 133-C in Schedule 1 to the *Taxation Administration Act 1953*. In this Part 17 the reference to a **release authority** means such an authority issued under item 3 of the table in subsection 135-10(1) in Schedule 1 to the *Taxation Administration Act 1953* (see Rule 1.2.1)

Election specifying which benefit is to be reduced

17.1.2 If a person gives **CSC a release authority** in accordance with Division 135 in Schedule 1 to the *Taxation Administration Act 1953* and that person is entitled (or is about to become entitled) to:

- (a) a lump sum benefit; and/or
- (b) a pension benefit;

under this Deed, that person may make an election specifying which of those benefits is to be reduced to reflect the release authority lump sum.

17.1.3 Where a person is entitled, or about to become entitled, to 2 or more benefits, the person cannot specify in an election under Rule 17.1.2 that 2 or more benefits are to be reduced to reflect a release authority lump sum unless the person elects to reduce all, or all but one, of the specified benefits to zero.

Note: A reference to a ‘lump sum benefit’ also includes a reference to any lump sum benefit under Part 11.

Limit on amount that may be released

17.1.4 In addition to any requirements in Division 135 in Schedule 1 to the *Taxation Administration Act 1953*, the amount of a release authority lump sum must not have the effect that a benefit specified in an election under Rule 17.1.2 is reduced below zero.

17.1.5 For the purpose of Rule 17.1.4, the effect of a release authority lump sum on the amount of a benefit specified in an election under Rule 17.1.2 is to be worked out after taking account of:

- (a) the person’s surcharge deduction amount (if any); and
- (b) any reduction under Rule 12.4.5 (which deals with reductions for early release lump sums); and
- (c) any reductions under Division 4 or 5 of Part 16 of this Deed (which deals with family law splitting).

Apart from this rule, the amount of a release authority lump sum is not to be reduced under any provision of this Deed.

Amount that may be released

17.1.6 If a release authority lump sum is paid in relation to a **release authority** issued to a person, the benefits to which the person is entitled under this Deed must be

reduced to reflect the release authority lump sum, in accordance with the person's election under Rule 17.1.2.

17.1.7 If the election specifies that a pension is to be reduced (but not to zero), the annual rate of the pension is to be reduced so that it equals the amount calculated using the following formula:

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

where:

Conversion Factor means the factor that is applicable to the person under the determination made by CSC under Rule 17.1.8.

Pre-Reduction Rate means the annual rate of the pension that would, apart from this section (but having regard to any other provisions of this Deed that affect that rate), be payable to the person on the **pension reduction day** mentioned in Rule 17.1.9.

Reduced release authority lump sum means the amount of the release authority lump sum, reduced by the sum of each reduction made under a previous application of this section to a benefit to which the person is entitled.

17.1.8 CSC may, by legislative instrument, determine the conversion factors, or the method for working out the conversion factors, for the purposes of Rule 17.1.7.

17.1.9 A reduction under Rule 17.1.7 is to take effect from the day (the pension reduction day) that is:

- (a) if the pension has not started to be paid—the first pension pay day; or
- (b) if the pension has started to be paid—the first pension pay day that occurs 14 days after the **release authority** was given to CSC.

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

SIGNED, SEALED AND DELIVERED)

)

by)

)

Senator the Hon PENELOPE YING YEN WONG) Penelope Wong

)

Minister for Finance and Deregulation)

)

in the presence of:)

)

)

(name)) MARCUS GANLEY

)

)

(address)) MG 70 PARLIAMENT HOUSE

) CAPITAL HILL, ACT, 2600

)

(description)) SENIOR ADVISER.

)

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

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

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

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

Date of making	Number	<i>Gazette details / Registration details</i>
27 June 2003	Eighteenth	S 245, 27 June 2003
26 November 2003	Nineteenth	S 446, 1 December 2003
23 March 2004	Twentieth	S 89, 24 March 2004
9 May 2004	Twenty-first	S 146, 11 May 2004
5 July 2004	Twenty-second	S 277, 9 July 2004
9 August 2004	Twenty-third	S 330, 12 August 2004
8 June 2005	Twenty-fourth	F2005L01613, 27 June 2005
24 June 2005	Twenty-fifth	F2005L01860, 29 June 2005
22 August 2005	Twenty-sixth	F2005L02372, 25 August 2005
20 June 2006	Twenty-seventh	F2006L01969, 26 June 2006
21 June 2007	Twenty-eighth	F2007L01943, 28 June 2007
28 August 2007	Twenty-ninth	F2007L03519, 31 August 2007
19 December 2007	Thirtieth	F2007L04993, 24 December 2007
29 July 2008	Thirty-first	F2008L02863, 1 August 2008
16 December 2008	Thirty-second	F2008L04706, 18 December 2008
22 June 2009	Thirty-third	F2009L02530, 25 June 2009
17 May 2011	Thirty-fourth	F2011L00855, 25 May 2011
29 June 2011	Thirty-fifth	F2011L01393, 30 June 2011
5 July 2011	Thirty-sixth	F2011L01488, 13 July 2011
31 May 2013	Thirty-seventh	F2013L00966, 13 Jun 2013
