



Superannuation Act 2005

No. 80, 2005

**An Act about the Public Sector Superannuation
Accumulation Plan (PSSAP), and for related
purposes**

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Superannuation Act 2005

No. 80, 2005

An Act about the Public Sector Superannuation Accumulation Plan (PSSAP), and for related purposes

[Assented to 29 June 2005]

The Parliament of Australia enacts:

Part 1—Introduction

1 Short title

This Act may be cited as the *Superannuation Act 2005*.

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2 Commencement

- (1) Each provision of this Act 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
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	29 June 2005
2. Sections 3 to 46	The later of: (a) the day on which this Act receives the Royal Assent; and (b) the day on which the <i>Superannuation (Consequential Amendments) Act 2005</i> receives the Royal Assent. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	29 June 2005 (paragraph (a) applies)

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Simplified outline

The following is a simplified outline of this Act:

- This Act provides for a superannuation scheme, to be known as the Public Sector Superannuation Accumulation Plan (PSSAP).

- Generally, a person is eligible to become a member of PSSAP if he or she is a public sector employee who starts work on or after 1 July 2005.
- Generally, if a person is eligible to become a member of PSSAP, he or she becomes a member if:
 - (a) he or she chooses to become a member; or
 - (b) PSSAP is his or her mandated fund.
- A person's membership of PSSAP continues until the occasion, or the last of the occasions, on which a benefit is paid to or in respect of the member.
- Employers must pay contributions to PSSAP for the benefit of ordinary employer-sponsored members of PSSAP.
- The PSS Board is responsible for PSSAP.

4 Definitions

In this Act:

approved authority has the meaning given by section 8.

basic employer contribution has the same meaning as in the Rules.

Board has the same meaning as in the *Superannuation Act 1990*.

designated employer has the meaning given by section 19.

employed has a meaning affected by section 6.

exempt overseas employee has the meaning given by subsection 5(2).

invalidity, in relation to a person, means the person's inability, because of any mental or physical condition, to perform the duties of his or her employment or office.

modifications includes additions, omissions and substitutions.

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ordinary employer-sponsored member of PSSAP has the meaning given by section 18.

Parliamentary Department means a Department of the Parliament.

PSS means the Public Sector Superannuation Scheme within the meaning of the *Superannuation Act 1990*.

PSSAP: see **Public Sector Superannuation Accumulation Plan**.

PSSAP Fund means the fund established, and vested in the Board, by the Trust Deed.

PSS Fund has the same meaning as in the *Superannuation Act 1990*.

public sector employee has the meaning given by section 5.

Public Sector Superannuation Accumulation Plan or **PSSAP** means the superannuation scheme established by the Trust Deed.

Rules means the Rules for the administration of PSSAP set out in the Schedule to the Trust Deed.

statutory office has the meaning given by section 7.

Trust Deed means:

- (a) the deed referred to in section 10; or
- (b) if the deed is amended—the deed as so amended.

trustee has the same meaning as in the *Superannuation Act 1990*.

5 Public sector employees

- (1) For the purposes of this Act, a person is a **public sector employee** if, and only if, the person is:
 - (a) either:
 - (i) employed by the Commonwealth or an approved authority; or
 - (ii) the holder of a statutory office; and
 - (b) not an exempt overseas employee.

- (2) For the purposes of this Act, a person is an *exempt overseas employee* if the person is:
- (a) engaged or appointed for employment outside Australia only; and
 - (b) not specified in a written declaration made by the Minister under this paragraph.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

Declarations

- (3) A declaration under paragraph (2)(b) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
- (4) Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act applies to a declaration under paragraph (2)(b) of this section.
- (5) A declaration under paragraph (2)(b) may be expressed to have taken effect on a day not earlier than 12 months before the making of the declaration.
- (6) If:
- (a) a declaration is made under paragraph (2)(b); and
 - (b) before the start of the 12-month period ending immediately before the making of the declaration, basic employer contributions were accepted or purportedly accepted in respect of a person to whom the declaration relates;
- the declaration may be expressed to have taken effect on a day not earlier than the earliest day on which those contributions were accepted or purportedly accepted.

6 Extended meaning of *employed*

Directors of companies and other bodies corporate

- (1) For the purposes of this Act, if:
- (a) a person is a full-time director of a company or other body corporate; and
 - (b) the company or other body is an approved authority; and

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(c) the company or other body is incorporated under a law of the Commonwealth or of a State or Territory; and

(d) the person is not specified in a written declaration made by the Minister under this paragraph;

the person is employed by the company or other body.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

(2) The Minister may, by writing, declare that, for the purposes of this Act, a specified person is employed by a company or other body corporate, so long as:

(a) the person is a director of the company or other body; and

(b) the person is not a full-time director of the company or other body; and

(c) the company or other body is an approved authority; and

(d) the company or other body is incorporated under a law of the Commonwealth or of a State or Territory.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

Declarations

(3) A declaration under paragraph (1)(d) or subsection (2) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

(4) Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act applies to a declaration under paragraph (1)(d) or subsection (2) of this section.

7 Statutory offices

(1) For the purposes of this Act, a *statutory office* is:

(a) an office established by or under:

(i) an Act; or

(ii) regulations made under an Act; or

(iii) a law of a Territory; or

(b) an office specified in a written declaration made by the Minister under this paragraph.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

Declarations

- (2) A declaration under paragraph (1)(b) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
- (3) Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act applies to a declaration under paragraph (1)(b) of this section.
- (4) A declaration under paragraph (1)(b) may be expressed to have taken effect on a day not earlier than 12 months before the making of the declaration.
- (5) If:
 - (a) a declaration is made under paragraph (1)(b); and
 - (b) before the start of the 12-month period ending immediately before the making of the declaration, basic employer contributions were accepted or purportedly accepted in respect of a holder of the office to whom the declaration relates;the declaration may be expressed to have taken effect on a day not earlier than the earliest day on which those contributions were accepted or purportedly accepted.

8 Approved authorities

- (1) This section sets out the 2 situations in which an authority or body is an ***approved authority*** for the purposes of this Act.

Approved authorities under the Superannuation Act 1990

- (2) An authority or body is an ***approved authority*** if:
 - (a) the authority or body was, at the end of 30 June 2005, an approved authority for the purposes of the *Superannuation Act 1990*; and
 - (b) the authority or body is not specified in a written declaration made by the Minister under this paragraph.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

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Ministerial declarations

- (3) The Minister may, by writing, declare that an authority or body is an **approved authority** for the purposes of this Act, so long as the authority or body is:
- (a) a body corporate incorporated for a public purpose by:
 - (i) an Act; or
 - (ii) regulations made under an Act; or
 - (iii) a law of a Territory; or
 - (b) an authority or body (other than a body corporate) established for a public purpose by or under:
 - (i) an Act; or
 - (ii) regulations made under an Act; or
 - (iii) a law of a Territory; or
 - (c) a company or other body corporate:
 - (i) that is incorporated under an Act or a law of a State or Territory; and
 - (ii) in which the Commonwealth has a controlling interest; or
 - (d) an authority or body that is wholly or substantially financed (whether directly or indirectly) by money provided by the Commonwealth; or
 - (e) a company or other body corporate incorporated under an Act or a law of a State or Territory, where:
 - (i) an authority or body covered by paragraph (a), (b), (c) or (d), or that is an approved authority because of subsection (2), has a controlling interest in the company or body; or
 - (ii) the Commonwealth and one, or more than one, such authority or body together have a controlling interest in the company or body; or
 - (iii) 2 or more such authorities or bodies together have a controlling interest in the company or body.
- (4) The Minister must not declare an authority or body to be an approved authority under subsection (3) if the authority or body is an approved authority because of subsection (2).

Declarations

- (5) A declaration under paragraph (2)(b) or subsection (3) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
- (6) Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act applies to a declaration under paragraph (2)(b) or subsection (3) of this section.
- (7) A declaration under subsection (3) may be expressed to have taken effect on a day not earlier than 12 months before the making of the declaration.

9 Application of Act

This Act applies both within and outside Australia.

Part 2—The Trust Deed

10 Deed to establish PSSAP etc.

- (1) Before 1 July 2005, the Minister must, for and on behalf of the Commonwealth, by deed:
 - (a) establish a superannuation scheme that:
 - (i) is to be known as the Public Sector Superannuation Accumulation Plan; and
 - (ii) may also be known as PSSAP; and
 - (iii) is for the benefit of persons who will be members of PSSAP; and
 - (b) establish, and vest in the Board, a fund for the purposes of PSSAP; and
 - (c) set out the functions and powers of the Board in relation to PSSAP and the PSSAP Fund.
- (2) The deed under subsection (1) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but section 42 of that Act does not apply to the deed.

11 Amendment of Trust Deed

- (1) The Minister may, by writing, amend the Trust Deed.
- (2) If compliance with a provision of the Trust Deed as amended under subsection (1) would have the effect that PSSAP:
 - (a) would not be a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993*; or
 - (b) would not comply with that Act;that provision is invalid.
- (3) An instrument under subsection (1) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

- (4) Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act applies to an instrument under subsection (1) of this section.

12 Family law interest splitting

- (1) Without limiting section 10 or 11, the Rules:
- (a) may provide that, when a splitting agreement or splitting order is received by the Board in respect of a superannuation interest under this Act:
 - (i) the non-member spouse is entitled to benefits determined in accordance with the Rules; and
 - (ii) the benefits of the member spouse are reduced in accordance with the Rules; and
 - (b) may include any other provision that is related to, or consequential on, provisions referred to in paragraph (a).

- (2) In this section:

member spouse has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

non-member spouse has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

splitting agreement means:

- (a) a superannuation agreement (within the meaning of Part VIIIIB of the *Family Law Act 1975*); or
- (b) a flag lifting agreement (within the meaning of Part VIIIIB of the *Family Law Act 1975*) that provides for a payment split (within the meaning of Part VIIIIB of the *Family Law Act 1975*).

splitting order has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

superannuation interest has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

Part 3—Members of Public Sector Superannuation Accumulation Plan (PSSAP)

13 Eligibility for membership of PSSAP

- (1) Subject to subsections (2) and (3), a person is eligible to become a member of PSSAP if the person is:
- (a) a public sector employee; or
 - (b) specified in a written declaration made by the Minister under this paragraph.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

- (2) A person is not eligible to become a member of PSSAP if:
- (a) the person is a member of PSS; or
 - (b) the person is a former member of PSS in respect of whom a preserved benefit under PSS has not yet been paid; or
 - (c) the person is a PSS invalidity pensioner (within the meaning of the *Superannuation Act 1990*); or
 - (d) the person is entitled to make an election under section 7 or 8 of the *Superannuation Act 1990* that would result in the person becoming a member of PSS; or
 - (e) the person is an eligible employee for the purposes of the *Superannuation Act 1976*; or
 - (f) the person is a person to whom the *Judges' Pensions Act 1968* applies; or
 - (g) the person is covered by paragraph 6(2)(ba) of the *Superannuation Act 1990*; or
 - (h) the person is specified in a written declaration made by the Minister under this paragraph.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

- (3) A person is not eligible to become a member of PSSAP before 1 July 2005.

Declarations

- (4) A declaration under paragraph (1)(b) or (2)(h) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
- (5) Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act applies to a declaration under paragraph (1)(b) or (2)(h) of this section.
- (6) A declaration under paragraph (1)(b) may be expressed to have taken effect on a day not earlier than 12 months before the making of the declaration.
- (7) If:
 - (a) a declaration is made under paragraph (1)(b); and
 - (b) before the start of the 12-month period ending immediately before the making of the declaration, basic employer contributions were accepted or purportedly accepted in respect of a person to whom the declaration relates;the declaration may be expressed to have taken effect on a day not earlier than the earliest day on which those contributions were accepted or purportedly accepted.

14 Becoming a member of PSSAP

- (1) This section sets out the 2 situations in which a person can become a member of PSSAP.

Choice to become a member

- (2) If a person is eligible to become a member of PSSAP, the person may, in a manner approved by the Board in writing under this subsection, choose to become a member of PSSAP.
- (3) The effect of making a choice under subsection (2) is that the person becomes a member of PSSAP when the choice is made.

PSSAP is the person's mandated fund

- (4) Subject to subsections (5) and (6), if:
 - (a) at a particular time:

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- (i) a person is in particular employment or holds a particular statutory office; and
 - (ii) the person is eligible to be a member of PSSAP because of that employment or holding that office; and
 - (iii) there is no chosen fund for the person (within the meaning of Part 3A of the *Superannuation Guarantee (Administration) Act 1992*); and
 - (iv) assuming that the person were to become a member of PSSAP and the person's employer (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) were to make a basic employer contribution to PSSAP for the benefit of the person, the employer would rely on subsection 32C(2), (4A) or (6) of that Act to satisfy the choice of fund requirements in relation to the contribution; and
 - (v) the person's salary or wages (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) would be taken into account for the purpose of making a calculation under section 19 of that Act; and
- (b) immediately before that time, the person was not a member of PSSAP;

the person is taken to have become a member of PSSAP at that time.

Note: See also section 16 (PSSAP is the sole eligible choice fund in relation to APS employees etc. for certain purposes).

- (5) Subsection (4) does not apply to a person if the person's employer (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*):
- (a) gives; or
 - (b) has given; or
 - (c) proposes to give;

the person a standard choice form (within the meaning of Part 3A of the *Superannuation Guarantee (Administration) Act 1992*) that sets out the name of a fund (within the meaning of that Part) other than PSSAP that the employer will contribute to if the person does not make a choice.

- (6) Subsection (4) does not apply to a person at a particular time if:

- (a) the following conditions are satisfied:
 - (i) at that time, the person is the holder of a statutory office (within the meaning of the *Superannuation Act 1990*);
 - (ii) the person's current term of appointment included a day in the financial year beginning on 1 July 2005; or
- (b) the following conditions are satisfied:
 - (i) at that time, the person is a temporary employee (within the meaning of the *Superannuation Act 1990*);
 - (ii) if the person's employment is for a fixed term—the term included a day in the financial year beginning on 1 July 2005;
 - (iii) if the person's employment is not for a fixed term—the period of employment included a day in the financial year beginning on 1 July 2005.

15 Duration of membership of PSSAP

- (1) If a person becomes a member of PSSAP, the person's membership continues until:
 - (a) if there is only one occasion on which a benefit is payable to or in respect of the member in accordance with the Rules:
 - (i) that benefit is paid; or
 - (ii) if the person dies before that benefit is paid—the death of the person; or
 - (b) if there are 2 or more occasions on which a benefit is paid to or in respect of the member in accordance with the Rules:
 - (i) the last of those benefits is paid; or
 - (ii) if the person dies before the last of those benefits is paid—the death of the person; or
 - (c) in any other case—the death of the person.
- (2) A person does not cease to be a member of PSSAP merely because the person ceases to be eligible to become a member of PSSAP.
- (3) If a person ceases to be a member of PSSAP, this section does not prevent the person from subsequently becoming a member of PSSAP.

Section 16

16 PSSAP is the sole eligible choice fund in relation to APS employees etc. for certain purposes

- (1) If:
- (a) either:
 - (i) a person is eligible to become a member of PSSAP because of particular employment; or
 - (ii) a person is a member of PSSAP, and if the person were not a member of PSSAP, the person would be eligible to become a member because of particular employment; and
 - (b) that employment is:
 - (i) employment as an APS employee; or
 - (ii) specified in a written determination made by the Minister under this subparagraph; and
 - (c) PSSAP is covered by a paragraph of section 32D of the *Superannuation Guarantee (Administration) Act 1992*;
- then, for the purposes of the application of subsection 32C(2) of the *Superannuation Guarantee (Administration) Act 1992* to the person, PSSAP is the sole eligible choice fund for the person's employer.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

- (2) A determination under subparagraph (1)(b)(ii) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
- (3) Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act applies to a determination under subparagraph (1)(b)(ii) of this section.
- (4) In this section:

employment has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992*.

Note: See also section 18A of the *Acts Interpretation Act 1901* (parts of speech and grammatical forms).

Part 4—Contributions

17 Contributions to PSSAP by designated employers

- (1) This section applies to a person who is an ordinary employer-sponsored member of PSSAP in respect of particular employment or the holding of a particular office.
- (2) The designated employer of the member must pay to the Board, in accordance with the Rules, any contributions that, under the Rules, are payable by the employer in respect of the member.

Note: See also section 39 (amounts payable to the Board).

18 Ordinary employer-sponsored member of PSSAP

- (1) This section sets out the 3 situations in which a person is an *ordinary employer-sponsored member* of PSSAP.

PSSAP is the person's chosen fund

- (2) If, at a particular time:
 - (a) a person is a member of PSSAP; and
 - (b) if the person had not been a member of PSSAP, the person would have been eligible to become a member because of particular employment or holding a particular office; and
 - (c) assuming that the person's employer (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) were to make a basic employer contribution to PSSAP for the benefit of the person, the employer would rely on subsection 32C(1) of that Act to satisfy the choice of fund requirements in relation to the contribution; and
 - (d) the person's salary or wages (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) would be taken into account for the purpose of making a calculation under section 19 of that Act;the person is an *ordinary employer-sponsored member* of PSSAP in respect of that employment or the holding of that office.

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PSSAP is the person's mandated fund

- (3) Subject to subsection (4), if, at a particular time:
- (a) a person is a member of PSSAP; and
 - (b) if the person had not been a member of PSSAP, the person would have been eligible to become a member because of particular employment or holding a particular office; and
 - (c) there is no chosen fund for the person (within the meaning of Part 3A of the *Superannuation Guarantee (Administration) Act 1992*); and
 - (d) assuming that the person's employer (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) were to make a basic employer contribution to PSSAP for the benefit of the person, the employer would rely on subsection 32C(2), (4A) or (6) of that Act to satisfy the choice of fund requirements in relation to the contribution; and
 - (e) the person's salary or wages (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) would be taken into account for the purpose of making a calculation under section 19 of that Act;

the person is an **ordinary employer-sponsored member** of PSSAP in respect of that employment or the holding of that office.

- (4) Subsection (3) does not apply to a person if the person's employer (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*):
- (a) gives; or
 - (b) has given; or
 - (c) proposes to give;

the person a standard choice form (within the meaning of Part 3A of the *Superannuation Guarantee (Administration) Act 1992*) that sets out the name of a fund (within the meaning of that Part) other than PSSAP that the employer will contribute to if the person does not make a choice.

Superannuation Guarantee (Administration) Act 1992 does not apply to the person

- (5) Subject to subsection (6), if:

- (a) a person is a member of PSSAP; and
- (b) if the person had not been a member of PSSAP, the person would have been eligible to become a member because of particular employment or holding a particular office; and
- (c) the person's salary or wages (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) would not be taken into account for the purpose of making a calculation under section 19 of that Act;

the person is an **ordinary employer-sponsored member** of PSSAP in respect of that employment or the holding of that office.

- (6) Subsection (5) does not apply to a person in relation to particular employment or holding a particular office if:
 - (a) the person has, in a manner approved by the Board in writing under this paragraph, chosen not to be an ordinary employer-sponsored member of PSSAP in respect of that employment or the holding of that office; and
 - (b) that choice has not been withdrawn.

19 Designated employers

- (1) This section applies to a person who is an ordinary employer-sponsored member of PSSAP in respect of particular employment or the holding of a particular office.
- (2) For the purposes of this Act, the following table defines the **designated employer** of the member.

Designated employers		
Item	In this case...	the <i>designated employer</i> of the member is...
1	(a) the member is employed by the Commonwealth; and (b) the remuneration in respect of the member's employment is paid wholly or mainly out of money appropriated by an annual Appropriation Act in respect of an Agency (within the meaning of the <i>Public Service Act 1999</i>)	the Agency.

Part 4 Contributions

Section 19

Designated employers		
Item	In this case...	the <i>designated employer</i> of the member is...
2	(a) the member is employed by the Commonwealth; and (b) the remuneration in respect of the member's employment is paid wholly or mainly out of money appropriated by an annual Appropriation Act in respect of a Parliamentary Department	the Parliamentary Department.
3	(a) the member is employed by the Commonwealth; and (b) the remuneration in respect of the member's employment is paid wholly or mainly out of money appropriated by an Act other than an annual Appropriation Act	(a) an Agency (within the meaning of the <i>Public Service Act 1999</i>) determined by the Minister in writing under this item; or (b) a Parliamentary Department determined by the Minister in writing under this item.
4	(a) the member is the holder of a statutory office; and (b) the remuneration in respect of the office is paid by an approved authority	the approved authority.
5	(a) the member is the holder of a statutory office; and (b) the remuneration in respect of the office is not paid by an approved authority	(a) an Agency (within the meaning of the <i>Public Service Act 1999</i>) determined by the Minister in writing under this item; or (b) a Parliamentary Department determined by the Minister in writing under this item; or (c) a person determined by the Minister in writing under this item.
6	none of the above items apply to the member	the authority or body by which the member is employed.

(3) A determination under item 3 or 5 of the table in subsection (2) may be expressed to relate to a class of members.

- (4) A determination under item 3 or 5 of the table in subsection (2) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
- (5) Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act applies to a determination under item 3 or 5 of the table in subsection (2) of this section.

Part 5—Administration

Division 1—The Board

20 Functions and powers

- (1) The functions and powers of the Board in relation to PSSAP and the PSSAP Fund are those set out in the Trust Deed.
- (2) The Board is also responsible for the general administration of this Act.

Note: See also section 22 of the *Superannuation Act 1990* (functions in relation to PSS and the PSS Fund).

21 Trustee Act of ACT to apply

Except in so far as it is inconsistent with a law of the Commonwealth, the *Trustee Act 1925* of the Australian Capital Territory applies to, and in relation to, the trustees acting in the performance of their functions, or the exercise of their powers, under the Trust Deed.

22 Exemption from taxation

- (1) Subject to this section, neither:
 - (a) the Board (in so far as it performs functions, or exercises powers, in relation to PSSAP or the PSSAP Fund); nor
 - (b) the PSSAP Fund;are subject to:
 - (c) taxation under a law of the Commonwealth other than:
 - (i) the *A New Tax System (Goods and Services Tax) Act 1999*; or
 - (ii) the *Income Tax Assessment Act 1936*; or
 - (iii) the *Income Tax Assessment Act 1997*; or
 - (iv) the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*; or

- (d) taxation under a law of a State or Territory, if the Commonwealth is not subject to the taxation.
- (2) The regulations may provide that subsection (1) does not apply in relation to taxation under a specified law.
- (3) This section has effect subject to such modifications (if any) as are prescribed by the regulations.
- (4) The regulations may provide that this section ceases to have effect at a specified time.

23 Banking

The Board must pay all money received by it in respect of the PSSAP Fund into an account maintained by it with a bank (within the meaning of the *Commonwealth Authorities and Companies Act 1997*).

24 Accounting records

- (1) The Board must keep proper accounts and records of the PSSAP Fund's transactions and affairs, in accordance with the accounting principles generally applied in commercial practice.
- (2) The Board must do all things necessary to ensure that:
 - (a) all payments out of the PSSAP Fund are correctly made and properly authorised; and
 - (b) adequate control is maintained over:
 - (i) the assets of the PSSAP Fund; and
 - (ii) the incurring of liabilities by the Board in respect of the PSSAP Fund.

25 Audit

- (1) At least once a financial year, the Auditor-General must:
 - (a) inspect and audit:
 - (i) the accounts and records of the PSSAP Fund's financial transactions; and
 - (ii) the records relating to assets of the PSSAP Fund; and

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- (b) report to the Minister the results of the inspection and audit.
- (2) However, the Auditor-General may decide to dispense with all or any part of the detailed inspection and audit of the accounts and records.
- (3) The Auditor-General must, as soon as practicable, report to the Minister any irregularity disclosed by the inspection and audit that the Auditor-General thinks is sufficiently important to be reported.
- (4) A report under subsection (1) or (3) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Note: For the information-gathering powers of the Auditor-General, see Part 5 of the *Auditor-General Act 1997*.

26 Annual report and financial statements

- (1) The Board must, as soon as practicable after the end of:
 - (a) the financial year starting on 1 July 2005; and
 - (b) each later financial year;prepare and give to the Minister:
 - (c) a report on the performance of its functions in relation to PSSAP and the PSSAP Fund during the year; and
 - (d) financial statements in respect of the management of the PSSAP Fund during the year, in a form agreed between the Minister and the Board.
- (2) Before giving the financial statements to the Minister, the Board must submit them to the Auditor-General, who must report to the Minister:
 - (a) whether the statements are based on proper accounts and records; and
 - (b) whether the statements are in agreement with the accounts and records and show fairly the financial transactions and the state of the PSSAP Fund; and
 - (c) whether:
 - (i) the receipt of money into the PSSAP Fund; and
 - (ii) the payment of money out of the PSSAP Fund; and
 - (iii) the investment of money standing to the credit of the PSSAP Fund;

during the year have been in accordance with this Act and the Trust Deed; and

- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported.
- (3) The Minister must cause a copy of:
- (a) the report prepared by the Board; and
 - (b) the financial statements prepared by the Board; and
 - (c) the report of the Auditor-General in respect of the financial statements;
- to be tabled in each House of the Parliament within 15 sitting days of that House after the receipt of whichever of those documents was last received by the Minister.
- (4) If the Board has not complied with subsection (1) within a period of 6 months after the end of a financial year, the Board must, within 14 days after the end of that period, give to the Minister an interim report on the performance of its functions in relation to PSSAP and the PSSAP Fund during that year together with interim financial statements in respect of the management of the PSSAP Fund during that year.
- (5) The financial statements given to the Minister under subsection (4) must be in the form approved by the Minister for the purposes of subsection (1) but need not be accompanied by a report of the Auditor-General.
- (6) If the Board gives a report and financial statements to the Minister under subsection (4), the Minister must:
- (a) cause a copy of the report and a copy of the financial statements to be tabled in each House of the Parliament within 15 sitting days of that House after their receipt by the Minister; and
 - (b) make the report and financial statements available to the public.
- (7) A report under subsection (1) or (4) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

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27 Money in the PSSAP Fund is not public money etc.

To avoid doubt:

- (a) money standing to the credit of the PSSAP Fund is not public money for the purposes of the *Financial Management and Accountability Act 1997*; and
- (b) the assets of the PSSAP Fund are not public property for the purposes of the *Financial Management and Accountability Act 1997*.

28 Delegation by Board

Delegations by Board

- (1) The Board may, by writing, delegate to:
 - (a) a trustee; or
 - (b) the Commissioner for Superannuation; or
 - (c) a member of the staff assisting the Commissioner for Superannuation in the performance of his or her functions under this Act; or
 - (d) an APS employee in the Department; or
 - (e) an officer or employee of a person who is responsible for investing money forming part of a superannuation fund vested in or managed by the Board; or
 - (f) any other person who performs duties in connection with the operation of this Act; or
 - (g) a committee consisting of 2 or more persons each of whom is a person referred to in any of the above paragraphs;all or any of its powers under this Act, the regulations or the Trust Deed.

Sub-delegations

- (2) If the Board delegates a power under subsection (1) to a trustee, the trustee may, by writing, sub-delegate the power to:
 - (a) another trustee; or
 - (b) a person referred to in paragraph (1)(b), (c), (d), (e) or (f).

- (3) If the Board delegates a power under subsection (1) to the Commissioner for Superannuation, the Commissioner may, by writing, sub-delegate the power to a person referred to in paragraph (1)(c), (d), (e) or (f).
- (4) If the Board delegates a power under subsection (1) to a person referred to in paragraph (1)(c), (d), (e) or (f), the delegate may, by writing, sub-delegate the power to:
 - (a) another person referred to in the same paragraph; or
 - (b) a person referred to in another of those paragraphs.
- (5) Section 34AA and paragraphs 34AB(a), (b) and (d) of the *Acts Interpretation Act 1901* apply in relation to a sub-delegation in a corresponding way to the way in which they apply to a delegation.
- (6) Section 34A and paragraphs 34AB(c) and (d) of the *Acts Interpretation Act 1901* apply to a sub-delegation as if it were a delegation.

29 Indemnification of trustees etc.

- (1) Anything done, or omitted to be done, in good faith by:
 - (a) a trustee in the performance of his or her functions under the Trust Deed; or
 - (b) the Commissioner for Superannuation in the performance of his or her duties under this Act; or
 - (c) a member of the staff assisting the Commissioner for Superannuation in the performance of those duties; or
 - (d) a delegate of the Board in the performance of his or her functions under this Act, the regulations or the Trust Deed; or
 - (e) a person who is a member of a Reconsideration Advisory Committee established under the Trust Deed in the performance of his or her functions under the Trust Deed;does not subject him or her personally to any action, liability, claim or demand.
- (2) Subsection (1) does not prevent the Board from being subject to an action, liability, claim or demand.
- (3) Except in cases where the *Superannuation Industry (Supervision) Act 1993* or regulations under that Act do not so permit, any money

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becoming payable by the Board in respect of an action, liability, claim or demand in relation to this Act, the regulations or the Trust Deed is to be paid out of the PSSAP Fund.

- (4) If an amount is paid out of the PSSAP Fund under subsection (3), an equivalent amount is to be paid to the PSSAP Fund out of the Consolidated Revenue Fund, which is appropriated accordingly.
- (5) This section has effect subject to such modifications (if any) as are prescribed by the regulations.
- (6) The regulations may provide that this section ceases to have effect at a specified time.

Division 2—Commissioner for Superannuation

30 Functions of Commissioner for Superannuation

- (1) Subject to this Division, the Commissioner for Superannuation is responsible for the provision of administrative services to the Board in the performance of its functions in relation to PSSAP.
- (2) In the discharge of functions under this Act, the Commissioner for Superannuation must act in accordance with any policies determined, and any directions given, by the Board.
- (3) This section has effect subject to such modifications (if any) as are prescribed by the regulations.
- (4) The regulations may provide that this section ceases to have effect at a specified time.

31 Other functions of Commissioner for Superannuation not to be prejudiced

The Commissioner for Superannuation is not required under this Division to do anything that would prejudice the performance of:

- (a) the Commissioner's functions under any other Act (including any function that the Commissioner has as the Chairman of the Defence Force Retirement and Death Benefits Authority);
or
- (b) the Commissioner's functions under any regulations made under an Act.

Division 3—Ministerial powers

32 Making of certain legislative instruments

- (1) This section applies to a declaration, determination or instrument that is:
 - (a) made by the Minister under this Act (other than section 10 or 16); and
 - (b) a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
- (2) The Minister may not make the declaration, determination or instrument unless:
 - (a) the Board has consented to the making of the declaration, determination or instrument; or
 - (b) the declaration, determination or instrument:
 - (i) relates to a payment by an employer-sponsor within the meaning of the *Superannuation Industry (Supervision) Act 1993* that will, after the making of the declaration, determination or instrument, be required or permitted to be made under this Act; or
 - (ii) relates solely to the termination of the PSSAP Fund; or
 - (iii) is made in circumstances covered by regulations made for the purposes of subparagraph 60(1)(b)(iii) of the *Superannuation Industry (Supervision) Act 1993*.
- (3) For the purposes of subparagraph (2)(b)(i), a payment by a designated employer under the Trust Deed or the Rules is taken to be a payment by an employer-sponsor referred to in that subparagraph.

33 Delegation by Minister

The Minister may, by writing, delegate all or any of his or her powers under this Act or the regulations to:

- (a) the Board; or
- (b) the Commissioner for Superannuation; or

- (c) a member of the staff assisting the Commissioner of Superannuation in the performance of his or her functions under this Act; or
- (d) an APS employee in the Department.

Division 4—Costs of administration

34 Costs of administration of Act etc.

- (1) The costs of the administration of this Act and the Trust Deed, including the costs of and incidental to:
 - (a) the management of the PSSAP Fund by the Board; and
 - (b) the investment of its money;are to be paid as the Minister determines in writing under this subsection.
- (2) A determination under subsection (1) is to identify, whether by amount or otherwise:
 - (a) those costs payable by the Commonwealth; and
 - (b) those costs payable by the Board out of the PSSAP Fund.
- (3) This section has effect subject to such modifications (if any) as are prescribed by the regulations.
- (4) The regulations may provide that this section ceases to have effect at a specified time.
- (5) A determination under subsection (1) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but section 42 of that Act does not apply to the instrument.

35 Estimates

- (1) The Board may prepare an estimate of the costs referred to in subsection 34(1) that are likely to be incurred in respect of a financial year.
- (2) The Board, if the Minister by writing under this subsection requests it to do so, must prepare an estimate containing any information requested by the Minister in respect of any of those costs that are referred to in the request.

36 Certain authorities to pay part of estimated costs of administration

- (1) This section applies if, under subsection 35(1), the Board prepares an estimate of costs for a financial year.
- (2) The Minister may, by writing, direct an authority or body to pay to the Commonwealth such part of the costs as:
 - (a) relates to the period specified in the direction; and
 - (b) is determined by the Minister having regard to such matters (if any) as are prescribed; and
 - (c) is specified in the direction.
- (3) The period specified in the direction must be:
 - (a) the financial year; or
 - (b) included in the financial year.
- (4) The Minister must not direct an authority or body under subsection (2) unless, during the period specified in the direction, the authority or body is or will be a designated employer of ordinary employer-sponsored members of PSSAP.
- (5) An authority or body that is required to make a payment under subsection (2) may apply for that purpose any money under its control.
- (6) This section has effect subject to such modifications (if any) as are prescribed by the regulations.
- (7) The regulations may provide that this section ceases to have effect at a specified time.

37 Payment of fees

- (1) The regulations may provide that, if a person requests the Board to reconsider one of its decisions, the person is liable to pay a fee to the Board.
- (2) Subsection (1) does not authorise the imposition of taxation within the meaning of section 55 of the Constitution.

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- (3) The regulations may make provision for and in relation to the refund of any fees paid under subsection (1).

38 Board liable to pay surcharge under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*

To avoid doubt:

- (a) for the purposes of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, the Board in its capacity as a superannuation provider is an entity distinct from the Commonwealth; and
- (b) consequently, section 33 of that Act does not affect the liability of the Board under that Act to pay surcharge on the surchargeable contributions of members of PSSAP.

Division 5—Other administrative matters

39 Amounts payable to the Board

- (1) Any amount (including an amount of contributions) that is payable to the Board under this Act or the Rules may be recovered by the Board in a court of competent jurisdiction as a debt.
- (2) If:
 - (a) an amount (including an amount of contributions) is payable by a person to the Board under this Act or the Rules; and
 - (b) the amount remains unpaid after the day on which payment was due;the person is liable to pay to the Board interest on any such amount that remains unpaid at such rate as the Board determines in writing under this subsection.
- (3) A determination under subsection (2) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but section 42 of that Act does not apply to the instrument.

40 Recovery of overpayments

If, for any reason (including the making of, or cancellation of, an election under the Rules), the Board has paid an amount of benefit that was, or has become, not payable:

- (a) the amount so paid may be recovered by the Board in a court of competent jurisdiction as a debt; or
- (b) if the person to whom that amount was paid is receiving, or is entitled to receive, a benefit under the Rules—the amount so paid, or such part of that amount as the Board determines, may, if the Board so directs, be recovered by deduction from that benefit.

41 Board may rely on information supplied by employers or former employers

- (1) For the purposes of the Trust Deed in its application to or in respect of a person who is or has been a member of PSSAP, the

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Board may presume that any information provided to the Board by a designated employer or former designated employer of the person is correct.

- (2) If a tribunal, authority or person is empowered to review a decision of the Board and vary, or make a decision in substitution for, the Board's decision, the tribunal, authority or person is not bound by any presumption made by the Board under subsection (1).

42 Board may require employers to distribute information etc. to members of PSSAP

- (1) The Board may:
- (a) send to the designated employer of an ordinary employer-sponsored member of PSSAP any document or written information that under:
 - (i) this Act; or
 - (ii) any other Act;the Board is required to send to the member; and
 - (b) request the designated employer to give the document or information to the member.
- (2) The designated employer must comply with the request unless doing so would breach Chapter 7 of the *Corporations Act 2001*.
- (3) The Board must ensure that the confidentiality of any document or information sent to the designated employer for transmission to the member is preserved.

Part 6—Miscellaneous

43 Ordinary employer-sponsored member not to be retired on grounds of invalidity without Board certificate

- (1) This section applies to a person who is:
 - (a) under the age of 60; and
 - (b) an ordinary employer-sponsored member of PSSAP in respect of particular employment or the holding of a particular office.
- (2) The member is not capable of being retired from the employment or office on the ground of invalidity unless:
 - (a) the Board has approved, under the Rules, the invalidity retirement of the member; and
 - (b) the Board has certified in writing under this paragraph that, if the member is so retired, the member will be entitled to receive invalidity benefits under PSSAP.
- (3) A reference in subsection (2) to a member being retired from employment or office includes a reference to the services of the member being otherwise terminated.
- (4) Subsection (2) has effect despite anything contained in any Act, award, determination, agreement or contract of employment.

44 Persons subject to Rules

- (1) A person who is, or has ceased to be, a member of PSSAP is subject to the Rules to the extent that they are applicable in relation to the person.
- (2) A person who is, or has ceased to be, a person to whom a benefit is payable under provisions of the Rules authorised by section 12 is subject to the Rules to the extent that they are applicable in relation to the person.
- (3) An authority or body who is, or has been, the designated employer of an ordinary employer-sponsored member of PSSAP is subject to

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the Rules to the extent that they are applicable in relation to the authority or body.

- (4) The Commonwealth is subject to the Rules to the extent that they are applicable in relation to the Commonwealth because it is, or has been, the designated employer of an ordinary employer-sponsored member of PSSAP.

45 Regulations

- (1) The Governor-General may make regulations prescribing matters:
- (a) required or permitted to be prescribed by this Act; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Regulations may not be made unless:
- (a) the Board has consented to the making of the regulations; or
 - (b) the regulations:
 - (i) relate to a payment by an employer-sponsor within the meaning of the *Superannuation Industry (Supervision) Act 1993* that will, after the making of the regulations, be required or permitted to be made under this Act; or
 - (ii) relate solely to the termination of the PSSAP Fund; or
 - (iii) are made in circumstances covered by regulations made for the purposes of subparagraph 60(1)(b)(iii) of the *Superannuation Industry (Supervision) Act 1993*.
- (3) For the purposes of subparagraph (2)(b)(i), a payment under the Trust Deed or the Rules is taken to be a payment by an employer-sponsor referred to in that subparagraph.

46 Regulations relating to the operation of the *Superannuation Industry (Supervision) Act 1993* and certain other laws

- (1) The regulations may make any provision that is necessary for the purpose of enabling PSSAP to satisfy any condition or requirement of, or made under, any of the following laws if that law is capable of applying in relation to PSSAP:
- (a) the *Corporations Act 2001*;
 - (b) the *Family Law Act 1975*;

- (c) the *Financial Institutions Supervisory Levies Collection Act 1998*;
 - (d) the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*;
 - (e) the *Superannuation Industry (Supervision) Act 1993*;
 - (f) the *Superannuation (Resolution of Complaints) Act 1993*;
 - (g) the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.
- (2) If regulations made for the purposes of subsection (1) are inconsistent with a provision of this Act, the regulations prevail and the provision, to the extent of the inconsistency, is of no effect.

*[Minister's second reading speech made in—
House of Representatives on 12 May 2005
Senate on 14 June 2005]*

(53/05)
