

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Finance and Administration

*Superannuation Act 2005*

Determination under paragraph 34(1)

The *Superannuation Act 2005* (the Act) provides for the Public Sector Superannuation Accumulation Plan (PSSAP) to be established by Trust Deed to commence on 1 July 2005. The Trust Deed also establishes and vests in the Board a fund for the purposes of the PSSAP (PSSAP Fund). The PSSAP will generally apply in respect of Australian Government employees who commence employment on or after 1 July 2005 and certain other persons.

The PSSAP was originally established as a sub plan of the Public Sector Superannuation Scheme (PSS) to commence on 1 July 2005. The PSS was established by Trust Deed under the *Superannuation Act 1990* (1990 Act) and the deed was amended by the 20<sup>th</sup> Amending Deed to establish the PSSAP as a sub plan for most new employees who became PSS members on or after 1 July 2005.

The Act, together with the *Superannuation (Consequential Amendments) Act 2005* (Consequential Amendments Act), provides for the PSSAP to be established as a separate superannuation scheme and for new employees to have choice of superannuation fund. The Consequential Amendments Act closed the PSS to new employees from 1 July 2005.

Subsection 34(1) of the Act provides that the costs of the administration of the Act and the Trust Deed for the PSSAP are to be paid as the Minister determines in accordance with that subsection. These costs include the costs of and incidental to the management of the PSSAP Fund by the Board and the investment of its money.

Subsection 34(2) of the Act provides that a determination made under subsection 34(1) must identify, by amount or otherwise those costs that are payable by the Commonwealth and those costs that are payable by the Board out of the PSSAP Fund.

The **Superannuation (PSSAP) (Division of Costs) Determination 2005** (the Determination) identifies the costs payable by the Commonwealth and the costs payable by the PSS Board out of the PSSAP Fund.

The Determination is intended to replicate the same arrangements for the payment of costs as would have applied if the PSSAP had commenced on 1 July 2005 as a sub plan of the PSS.

The Determination includes provisions similar to those set out in:

- the *Superannuation Act 1990 (Division of Costs) Determination No. 2* (the PSS Costs Determination) which provides that the costs of and incidental to the management of the PSS Fund are to be paid by the Board from the Fund and other costs are to be paid by the Commonwealth;
- subclause 9.4 and paragraph 9.5(c) of the PSS Trust Deed in relation to the remuneration and allowances of the Board; and
- paragraph 3.2(m) of the PSS Trust Deed as amended by the 25<sup>th</sup> Amending Deed which provides for the Board to charge reasonable fees in relation to the administration of the PSSAP Fund, including arrangements connected with

PSSAP members and non-member spouses choosing particular investment strategies. Rules A5.4.1 and A7.5.13 provide for the Board to be able to determine an amount to be paid from a person's personal accumulation account or non-member spouse interest account, as appropriate, the cost of a member or a non-member spouse changing elections about the choice of investment strategy.

The details of the Determination are explained in the Attachment.

The Determination has been prepared in consultation with Minter Ellison Lawyers. The Office of Regulation Review has confirmed that a Regulation Impact Statement is not required as the Determination is not likely to have a direct or significant indirect effect on business or restrict competition. No further consultation is required as the instrument is machinery in nature and is not intended to alter the arrangements that would otherwise have applied if the PSS had not been closed to new members.

The Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Determination commences on 1 July 2005.

## ATTACHMENT

## **SUPERANNUATION (PSSAP) (DIVISION OF COSTS) DETERMINATION 2005**

### **Section 1**

This section provides that the name of the Determination is the Superannuation (PSSAP) (Division of Costs) Determination 2005.

### **Section 2**

This section provides for the Determination to commence on 1 July 2005.

### **Section 3**

This section defines terms commonly used in the Determination. Generally these terms refer to terms and expressions defined in the *Superannuation Act 1990* and the *Superannuation Act 2005* (the 1990 Act and 2005 Act respectively).

### **Section 4**

Subsection 4(1) provides that the costs described in Schedule 1 of the Determination are to be paid by the Board from the PSSAP Fund and the costs that are described in Schedule 2 are to be paid by the Commonwealth.

Subsection 4(2) is intended to clarify that the Determination does not limit the power of the Board under the Trust Deed to charge fees, costs or expenses to a PSSAP member or a non-member spouse within the meaning of the Rules. For example, the Board may seek to recover costs from PSSAP members where a member makes several changes of their investment strategy within a short time frame.

## **SCHEDULE 1 – COSTS TO BE PAID BY THE BOARD FROM THE PSSAP FUND**

**Item 1** provides that costs of and incidental to the management of the PSSAP Fund and the investment of its money are to be paid by the Board from the Fund. To remove doubt, these costs include:

- the remuneration and allowances of the Chairperson in relation to the Chairperson performing PSSAP functions in respect of the PSSAP Fund. The remuneration and allowances of the Chairperson in relation to the Chairperson performing PSS functions in respect of the PSS Fund are to be met from the PSS Fund;
- the remuneration and allowances of the trustees other than the Chairperson in relation to them performing PSSAP functions in respect of the PSSAP Fund. Like the Chairperson, the remuneration and allowances of the trustees in relation to them performing PSS functions in respect of the PSS Fund are to be met from the PSS Fund;
- those costs attributable to choosing particular investment strategies in relation to members and non-member spouses.

**Item 2** provides that the costs of the remuneration and allowances of the Chairperson in relation to the Chairperson performing PSSAP functions in respect of the PSSAP, other than those costs described in item 1, are to be paid by the Board from the PSSAP Fund.

## **SCHEDULE 2 – COSTS TO BE PAID BY THE COMMONWEALTH**

**Item 1** provides that all other costs of administration of the PSSAP are to be paid by the Commonwealth. To remove doubt, this item provides that these costs are taken to include the remuneration and allowances of the trustees other than the Chairperson in relation to them performing PSSAP functions in respect of the administration of the PSSAP.