

EXPLANATORY STATEMENT

Issued by authority of the Minister for Finance and Administration

Superannuation Act 2005

Trust Deed to establish the Public Sector Superannuation Accumulation Plan pursuant to section 10 of the Superannuation Act 2005.

The *Superannuation Act 2005* (the Act) makes provision for a superannuation scheme to be known as the Public Sector Superannuation Accumulation Plan.

Subsection 10(1) of the Act provides that, before 1 July 2005, the Minister for Finance and Administration must, for and on behalf of the Commonwealth, by deed, establish a superannuation scheme (the Public Sector Superannuation Accumulation Plan or PSSAP). Pursuant to subsection 10(1), the Minister must also establish, and vest in the PSS Board, a fund for the purposes of PSSAP (known as the PSSAP Fund) and set out the functions and powers of the PSS Board in relation to PSSAP and the PSSAP Fund. The PSS Board was established under section 20 of the *Superannuation Act 1990* (the Board).

- (a) Subsection 12(1) of the Act provides that the Rules set out in the Schedule to the Trust Deed (the Rules) may provide for non-member spouse benefit entitlements and the corresponding reduction of member spouse benefits when a superannuation splitting agreement or splitting order is received by the Board under the *Family Law Act 1975*. The Rules may also
- (a) include any other provision that is related to, or consequential on, such provisions.

On 29 June 2005, the Minister for Finance and Administration, Senator the Hon Nick Minchin, made the Trust Deed to establish the Public Sector Superannuation Accumulation Plan from 1 July 2005.

The PSS Board and the Community and Public Sector Union were consulted about the PSSAP Trust Deed. Details of the Trust Deed and Rules are set out in the [Attachment](#).

Subsection 10(2) of the Act provides that the Trust Deed 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. Accordingly, the Trust Deed is not an instrument that is disallowable by either House of Parliament.

The Trust Deed comes into effect the day following the day when it is registered on the Federal Register of Legislative Instruments in accordance with section 12 of the *Legislative Instruments Act 2003*.

ATTACHMENT**DETAILS OF THE DEED AND RULES****The Trust Deed****Introduction**

Provisions of the Trust Deed (the Deed) in relation to PSSAP and the PSSAP Fund are generally the same or analogous to those in the Trust Deed made under the *Superannuation Act 1990* (1990 Deed), which established the Public Sector Superannuation Scheme (PSS) and the PSS Fund.

Also, the Rules in the Schedule to this Deed are generally similar or analogous to section A of the Rules in the schedule to the 1990 Deed (1990 Rules), which provide for the establishment of a PSS accumulation plan (to operate from 1 July 2005). In this regard, public sector employees who joined the PSS before that date are generally required to remain in the PSS defined benefits plan (provided for in section B of the 1990 Rules).

The Table at Schedule 1 to this Explanatory Statement lists the provisions from the 1990 Deed and Rules that have been retained, amended or omitted in this Deed and Rules.

Clause 1 – Interpretation

Clause 1 defines a number of terms that are used in the Deed, a number of which were defined in the 1990 Deed. Additional defined terms include “PSSAP functions”, “PSSAP powers” and “PSSAP member”.

Clause 2 – Establishment of PSSAP and the PSSAP Fund

Subclause 2.1 establishes from 1 July 2005 a superannuation scheme to be known as the Public Sector Superannuation Accumulation Plan (PSSAP) for the benefit of PSSAP members and non-member spouses entitled to benefits, to be administered by the Board in accordance with the Deed.

Subclause 2.1 establishes and vests in the Board a fund for the purposes of the PSSAP to be known as the PSSAP Fund.

Clause 3 – Functions and powers of the Board in relation to PSSAP

Subclause 3.1 provides that the functions of the Board in relation to the PSSAP and the PSSAP Fund are to administer the PSSAP and to manage and invest the PSSAP Fund in accordance with the Act and the Deed. Paragraphs 3.1(a) to 3.1(e) list some of those functions, which are receipt of payments from employers of PSSAP members (designated employers), payment of benefits, provision of information on benefits to PSSAP members and non-member spouses, provision of advice to the Minister on proposed changes to the Act and the Deed and the determination of interest rates for the purposes of the PSSAP.

Subclause 3.2 provides that the Board has the power to do all things necessary or convenient to be done for, or in connection with the performance of its PSSAP functions and lists a range of particular powers in paragraphs 3.2(a) to 3.2(m). These powers relate to a range of matters, including giving guarantees, underwriting investments, borrowing moneys, engaging consultants, effecting insurance policies for PSSAP members, charging reasonable fees in

relation to particular features of the administration of the PSSAP Fund such as member investment choice and establishing a trust for the purpose of investing the PSSAP Fund.

Subclause 3.3 requires the Board, in exercising its PSSAP functions and powers to comply with the requirements of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) and regulations made under that Act and to have regard to the interests of PSSAP members, their employers and non-member spouses entitled to benefits.

Subclause 3.4 requires the Board to keep proper records in respect of contributions paid into the PSSAP Fund and benefits paid under the Act and the Deed.

Notes occurring immediately after subclause 3.4 explain (at Note 1) that under section 52 of the SIS Act, the Deed is taken to contain the covenants set out in that section and (at Note 2) that provisions for the appointment of trustees, termination of appointment, acting appointments and disclosure of interests are set out in clauses 4 to 7 respectively of the 1990 Deed.

Clause 4 – Meetings of the Board of Trustees

Subclause 4.1 provides that the Board shall hold such meetings as are necessary for the conduct of its affairs in relation to the PSSAP and the PSSAP Fund.

Subclauses 4.2, 4.3, 4.4, 4.5 and 4.6 deal with the convening and chairing of the meetings, the number of trustees required for a quorum, the number of votes to affirm decisions of the trustees and keeping of meeting records, respectively.

Clause 5 – Operation of the PSSAP Fund

Subclause 5.1 provides that all contributions and other moneys paid to the Board for the purposes of PSSAP, or as directed by the Board, shall be held in trust by the Board in the PSSAP Fund, which is to be managed and invested by the Board in accordance with the Act and the Deed.

Subclause 5.2 provides that the PSSAP Fund shall comprise contributions made by members and employers, other moneys paid or transferred to the Board or which become subject to the trusts of the Deed, any income arising from investments held within the PSSAP Fund and any accretions to or profits on realisation of investments held within the PSSAP Fund.

Subclause 5.3 provides that the Board must pay benefits to or in respect of PSSAP members and non-member spouses and the costs and expenses relating to PSSAP and the PSSAP Fund in accordance with section 34 of the Act.

Subclause 5.4 provides that remuneration and allowances of the Chairperson in relation to performing PSSAP functions are to be paid out of the PSSAP Fund.

Subclause 5.5 provides that the remuneration and allowances of the Trustees other than the Chairperson in relation to them performing PSSAP functions may be paid, as determined by the Minister under section 34 of the Act, out of the PSSAP Fund or the Consolidated Revenue Fund or partly out of the PSSAP Fund and partly out of Consolidated Revenue.

Clause 6 – Investment of the PSSAP Fund

Subclause 6.1 defines certain words for the purposes of clause 6.

Subclause 6.2 provides that moneys held in the PSSAP Fund that are not immediately required for payment of benefits are to be invested by the Board. The Board must ensure that moneys required from time to time to pay benefits are available for this purpose.

Subclause 6.3 allows moneys required to be invested by the Board under clause 6.2 to be invested in any manner, including jointly with another person or persons.

Subclause 6.4 requires the Board, in consultation with such persons or bodies as it thinks fit, to determine an investment strategy as soon as possible after 1 July 2005 and to regularly review its investment strategy and policy.

Subclause 6.5 requires the Board to invest moneys standing to the credit of the PSSAP Fund that are available for investment only through an investment manager or managers who undertake to invest and manage the investment of those funds on behalf of the Board.

Subclause 6.6 requires the Board to ensure that any investment manager engaged by the Board operates within the investment powers of the Board and its investment strategy. Investment managers must report to the Board in relation to the Board's investments and the investment market as required by the Board.

Clause 7 – Requests by the Minister for Information

Subclause 7.1 requires the Board to provide the Minister with information relating to the general administration of PSSAP and the PSSAP Fund.

Clause 8 – Delegation by the Board

Subclause 8.1 allows the Board to delegate to certain other persons all or any of its powers under the Deed other than its power to reconsider its own decisions or decisions made by its delegates. The persons to whom the Board may delegate its powers include a member of the Board, the Commissioner for Superannuation, a member of the staff of the Commissioner and certain Australian Public Servants.

Subclause 8.2 allows the Board to delegate to a Reconsideration Advisory Committee established under the Rules the Board's power to reconsider its own decisions or a decision made by its delegate in relation to PSSAP or the PSSAP Fund and to affirm, vary or set aside a decision or substitute another decision.

Subclause 8.3 allows certain delegates, to whom powers have been delegated under subclause 8.1, to sub-delegate those powers to certain persons (who are among those persons to whom the Board is able to delegate its powers).

Subclauses 8.4 and 8.5 provide for sections 34A, 34AA and 34AB of the *Acts Interpretation Act 1901* to apply in relation to a sub-delegation in a corresponding way to the way in which they apply to a delegation or sub-delegation of powers. These provisions of the *Acts Interpretation Act 1901* establish certain rules for the delegation of powers.

Clause 9 – Delegations by the Minister for Finance and Administration

Clause 9 allows the Minister for Finance and Administration to delegate all or any of his powers under the Deed (other than the power of delegation) to the Board, an Australian Public Servant in the Department of Finance and Administration, the Commissioner for Superannuation or a member of the Commissioner's staff.

The Rules

Part 1 - Introduction

Division 1 - Understanding the Rules

This Division outlines the structure of the Rules and explains that the Rules have been divided into 7 Parts, each dealing with a major aspect of the operation of the PSSAP (Rule 1.1.1). This Division also outlines how each Part is further divided up into Divisions addressing unique groupings within the Part and each Division is made up of Rules that contain specific provisions (Rule 1.1.2) and how to read the numbering of the Rules (Rule 1.1.3). Rule 1.1.4 sets out a typical layout of a page of the Rules.

Division 2 - Words and Phrases Used in the Rules

This Division defines certain words and phrases that have a special meaning when used in the Rules (Rule 1.2.1).

Part 2 – Membership and Contributions

Division 1 - Membership

This Division explains that a person becomes a PSSAP member under Part 3 of the Act, which also specifies the duration of the person's PSSAP membership and empowers the Minister to either declare that a particular person is eligible to become a PSSAP member or is not eligible to become a PSSAP member. The Division also explains that a designated employer is required to pay contributions only in respect of an ordinary employer-sponsored member. Part 4 of the Act sets out the situations in which a PSSAP member is an ordinary employer-sponsored member of PSSAP who is eligible to have employer superannuation contributions made on their behalf (see Division 2).

The Division provides that a person may hold concurrent membership if the person is an ordinary employer-sponsored member in respect of two or more concurrent employments (Rule 2.1.1).

The Division also provides that where such a person ceases to be an employee of one or more but not all of their designated employers, the person will not cease to be an ordinary employer sponsored member. Also, where an ordinary employer-sponsored member ceases to be employed by one designated employer but immediately afterwards becomes an employee of another designated employer, the person would not cease to be an ordinary employer-sponsored member (Rule 2.1.2).

Where a person holds concurrent membership of the PSSAP, the Board may maintain one personal accumulation account for the member (Rule 2.1.3).

Division 2 - Contributions by Employers

This Division outlines when employers are required to make contributions, when they may make additional contributions, the method of payment of employer contributions and reporting requirements.

Employers will be required to make basic employer contributions of 15.4% of an ordinary employer-sponsored member's superannuation salary to the PSS Board each pay day unless the PSSAP Fund is prevented by the *Superannuation Industry (Supervision) Act 1993* and Regulations under that Act (the SIS Act) from accepting the contributions or accepting the contributions could jeopardise the Fund's status as a complying superannuation fund (Rule 2.2.1).

The term “pay day” is defined in Rule 1.2.1 to mean each time a regular salary payment is made by a designated employer, and for ordinary employer-sponsored members who have their superannuation salary calculated on the basis of fortnightly contribution salary and who do not receive a salary payment from their designated employer due to being on certain types of unpaid leave, the day they would otherwise have received a salary payment from the designated employer.

The superannuation salary of an ordinary employer-sponsored member will be their “fortnightly contribution salary” (i.e. the amount that would have been the person’s fortnightly contribution salary had they become a PSS member rather than a PSSAP member), unless they are covered by circumstances where their superannuation salary is ordinary time earnings (Rule 2.2.2).

Alternatively, a person’s superannuation salary will be ordinary time earnings where a certified agreement, Australian workplace agreement or remuneration determination applying to the person specifies that their superannuation salary will be their ordinary time earnings. For a person not covered by a certified agreement, Australian workplace agreement or remuneration determination, their superannuation salary will be ordinary time earnings where this is specified in an agreement between them and their designated employer (Rule 2.2.3). Ordinary time earnings has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992*.

A designated employer may also make additional employer contributions to the Board in respect of ordinary employer-sponsored members unless the SIS Act prevents it or acceptance of the contributions could jeopardise the Fund’s status as a complying superannuation fund (Rule 2.2.4). This will allow employers to make contributions on behalf of a member through salary sacrifice arrangements and will also allow employers to provide superannuation contributions in circumstances where contributions would otherwise not be required. These circumstances differ depending upon whether basic employer contributions are based on ordinary time earnings or fortnightly contribution salary.

The Board may specify the way in which payments must be paid to it (Rule 2.2.5). If the Board specifies a way of making payments, designated employers are required to make payments in that way (Rule 2.2.6).

The Board is required to pay all employer contributions received into the PSSAP Fund (Rule 2.2.7).

For ordinary employer-sponsored members whose superannuation salary is ordinary time earnings, their employers are required to inform them in writing at least quarterly, of the amount of employer contributions made to the PSSAP (Rule 2.2.8).

For ordinary employer-sponsored members who have contributions made based on “fortnightly contribution salary”, employers are required to report to the ordinary employer-sponsored member and to the PSS Board about the amount of employer contributions made each quarter, expressed in dollars and cents, and as a percentage of ordinary time earnings (Rule 2.2.9). If the percentage of ordinary time earnings reported is less than 9%, the employer is required to notify the ordinary employer-sponsored member and the Board of the amount of the shortfall (expressed in dollars and cents) (Rule 2.2.10).

Information required to be provided by employers to ordinary employer-sponsored members can be provided in a pay advice document issued to the member (Rule 2.2.11).

Division 3 - Contributions by Members

This Division outlines when and how employee contributions and eligible spouse contributions may be made and how these payments will be dealt with.

Ordinary employer-sponsored members can pay employee contributions to the Board at any time in any amount provided the SIS Act does not prevent the PSSAP Fund from accepting the contributions or acceptance of the contributions would not jeopardise the Fund's status as a complying superannuation fund (Rule 2.3.1). The method of payment must also comply with any Board determination on payment methods. However, an ordinary employer-sponsored member is not required to make employee contributions (Rule 2.3.2). A PSSAP member who is not an ordinary employer-sponsored member may not make employee contributions (Rule 2.3.3).

Eligible spouse contributions may also be made for an ordinary employer-sponsored member at any time and in any amount provided the SIS Act does not prevent the PSSAP Fund from accepting the contributions (Rule 2.3.4). The payment must also comply with any Board determination on payment methods.

The Board can determine the way employee contributions and eligible spouse contributions are paid to the Board (Rule 2.3.5) and must pay any employee contributions and eligible spouse contributions into the PSSAP Fund (Rule 2.3.6).

Division 4 - Transfer Amounts

This Division outlines what amounts may be transferred to the PSSAP Fund and how the payments can be paid into the PSSAP Fund.

An ordinary employer-sponsored member may transfer any or all of the following amounts to the Board as a transfer amount: an amount payable to, or in respect of, the person by a superannuation entity as defined in the SIS Act, the amount of any eligible termination payment, an amount of shortfall component payable to, or in respect of, a person in accordance with the *Superannuation Guarantee (Administration) Act 1992* and an amount payable in respect of the person under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Rule 2.4.1).

The Board may determine the way in which transfer amounts must be paid to the Board (Rule 2.4.2) and must pay transfer amounts into the PSSAP Fund (Rule 2.4.3).

Part 3 – Benefits

Division 1 - Benefits

This Division outlines who may apply to be paid benefits and how benefits may be paid. This Division also deals with the roll-over of benefits and the payment of benefits to an eligible roll-over fund.

A benefit application, in a form acceptable to the Board, can be made to the Board by an ordinary employer-sponsored member who intends to cease to be an ordinary employer-sponsored member within a month of making the benefit application, has applied for invalidity retirement or is applying for income protection benefits, or, having attained their preservation age (55 to 60 depending on date of birth), is applying to have their benefits provided as a non-commutable income stream in accordance with transition to retirement arrangements. (Rule 1.2.1 provides that an ordinary employer-sponsored member who has attained preservation age meets the definition of “transitional member”.)

A benefit application can also be made by a PSSAP member who, at any time, has ceased to be an ordinary employer-sponsored member, a PSSAP member who is applying for payment of benefits on compassionate grounds or due to severe financial hardship, the legal personal representative of an ordinary employer-sponsored member, or a person claiming to be entitled to the benefit of a deceased ordinary employer-sponsored member (Rule 3.1.1).

Any application must include any supporting evidence of entitlement to the benefit as required by the Board (Rule 3.1.2).

If the Board receives a benefit application from an ordinary employer-sponsored member who intends to cease to be an ordinary employer-sponsored member within a month of making the benefit application, the Board must pay the benefit as soon as possible after the person ceases to be an ordinary employer-sponsored member, subject to the SIS Act (Rule 3.1.3). If the Board receives a benefit application from a PSSAP member who has ceased to be an ordinary employer-sponsored member, the Board must pay them such part of their total benefit as is permitted by the SIS Act (Rule 3.1.4).

If no benefit application has been made, the SIS Act may still require the Board to pay a benefit or part of a benefit to a PSSAP member (Rule 3.1.5).

If a benefit application is received by the Board from a PSSAP member seeking early release of benefits on compassionate grounds or due to severe financial hardship, the Board may pay the person such part of the person's total benefit as the SIS Act permits (Rule 3.1.6).

If a benefit application is received or is taken to have been received by the Board from an ordinary employer-sponsored member in respect of whom an application has been made to the Board for approval of their invalidity retirement, the Board must, if the person is subsequently retired on invalidity grounds, pay the person such part of their benefit as the SIS Act permits as soon as possible (Rule 3.1.7).

If a benefit application is received by the Board from an ordinary employer-sponsored member who has applied for income protection benefits, and the life insurance company agrees to pay income protection benefits in response to a claim by the Board, the member is entitled to be paid the benefits directly or after they have been paid into the PSSAP Fund (Rule 3.1.8).

If a benefit application is received by the Board from an ordinary employer-sponsored member who, having attained their preservation age (55 to 60 depending on date of birth) is applying to have their benefits provided as a non-commutable income stream in accordance with transition to retirement arrangements, the Board must arrange for the purchase by the member of an income product of the type so requested costing an amount equal to the total benefit set out in the benefit application (Rule 3.1.9)

If the Board receives a benefit application from the legal personal representative of a PSSAP member, the Board may pay the legal personal representative such part of the total benefit as the SIS Act permits, if the Board is satisfied that the PSSAP member is under a legal disability and is entitled to the payment of a benefit under the Rules (Rule 3.1.10).

When the Board receives an application for benefits from a person claiming to be entitled to the benefits of a deceased PSSAP member, or the Board becomes aware that a PSSAP member has died, the Board must determine who shall be paid the death benefits in accordance with Division 2 of Part 3 and pay the total benefit to the person or persons entitled to the benefit in such shares as the Board determines (Rule 3.1.11).

Where part of the total benefit of a PSSAP member is paid in accordance with this Division, the remainder of the benefit is retained in the personal accumulation account of the PSSAP member unless a roll-over application has been made in relation to the remainder of the benefit (Rule 3.1.12).

A roll-over application can be made to the Board by an ordinary employer-sponsored member who intends to cease to be an ordinary employer-sponsored member within one month of making the roll-over application, a PSSAP member who, at any time, has ceased to be an ordinary employer-sponsored member, an ordinary employer-sponsored member whose personal accumulation account contains accumulated member contributions or a transfer amount, or by an ordinary employer-sponsored member who, having attained their preservation age (55 to 60 depending on date of birth), is applying to have an amount of their benefits cashed as a non-commutable income stream (Rule 3.1.13). A roll-over application must be made in a form acceptable to the Board and must include any supporting evidence of entitlement as required by the Board (Rule 3.1.14).

If the Board receives a roll-over application from an ordinary employer-sponsored member who intends to cease to be an ordinary employer-sponsored member, the Board must roll-over or transfer so much of the person's total benefit as requested in the roll-over application to a superannuation entity, RSA or life insurance company as soon as possible after the person ceases to be an ordinary employer sponsored member (Rule 3.1.15).

When the Board receives a roll-over application from a PSSAP member who has ceased to be an ordinary employer-sponsored member, the Board must roll-over or transfer so much of the person's total benefit as is requested in the application to a superannuation entity, RSA or life insurance company (Rule 3.1.16).

If the Board receives a roll-over application from an ordinary employer-sponsored member whose personal accumulation account contains accumulated member contributions or a transfer amount, the Board must roll-over or transfer the amount requested to a superannuation entity, RSA or life insurance company provided it does not exceed the total of the person's accumulated member contributions and the transfer amount, adjusted in respect of fund earnings or losses on those amounts (Rule 3.1.17).

On receiving a roll-over application from an ordinary employer-sponsored member who, having attained their preservation age (55 to 60 depending on date of birth), has applied to have their benefits cashed as a non-commutable income stream, the Board must roll-over or transfer such part of the person's total benefit as is requested in the roll-over application to a superannuation entity or life insurance company (Rule 3.1.18).

If no benefit application or roll-over application is received upon a PSSAP member ceasing to be an employer-sponsored member, the total benefit is retained in the personal accumulation account of the PSSAP member unless the Board is able to pay a benefit to an eligible roll-over fund under Rule 3.1.20 (Rule 3.1.19).

The Board may pay a benefit to an eligible roll-over fund if a benefit has become compulsorily payable, 90 days have passed since the benefit became payable and the person in relation to whom the benefit is payable has not informed the Board in writing of how he/she wishes the benefit to be paid. The Board may also pay an amount to an eligible roll-over fund if it is unable to locate a PSSAP member and the SIS Act permits the Board to pay the benefit to an eligible roll-over fund (Rule 3.1.20)

Division 2 - Death Benefits

This Division outlines who is entitled to be paid death benefits.

If there is a binding member nomination in place for a PSSAP member, the person or persons specified in the notice are entitled to be paid death benefits by the Board (Rule 3.2.1).

If an effective binding member nomination is not in place, either or both of the following could be entitled to be paid death benefits: one or more dependants of the deceased PSSAP member or the legal personal representative of the deceased PSSAP member (Rule 3.2.2).

If, after making reasonable inquiries, the Board is unable to find a legal personal representative or a dependant of the deceased PSSAP member, the Board will pay or apply the deceased member's total benefit to or for the benefit of such one or more individuals as is determined by the Board (Rule 3.2.3).

Division 3 - Permanent Invalidity

This Division outlines how an application for approval of invalidity retirement should be made and the invalidity retirement process.

An ordinary employer-sponsored member, or the designated employer of an ordinary employer-sponsored member, may apply to the Board for approval of the ordinary employer-sponsored member's invalidity retirement (Rule 3.3.1). An ordinary employer sponsored member in respect of whom an application under Rule 3.3.1 is made is taken to have also made the benefit application (Rule 3.3.2).

Once the Board receives an application to approve the invalidity retirement of an ordinary employer-sponsored member, the Board may approve the member's retirement if it is satisfied that the member has a permanent incapacity (Rule 3.3.3). The Board may determine the process it will follow before approving the invalidity retirement of an ordinary employer-sponsored member (Rule 3.3.4).

The Board must advise an ordinary employer-sponsored member, and the designated employer, of a decision on invalidity retirement. The advice should include a statement of the reasons for the decision (Rule 3.3.5).

Division 4 - Income Protection Benefits

This Division outlines how a member may become entitled to income protection benefits, and the process for payment of such benefits.

An ordinary employer sponsored member may apply to the Board for income protection benefits if the ordinary employer-sponsored member is unable to work due to a temporary incapacity, and the ordinary employer sponsored member holds income protection cover (Rule 3.4.1).

When the Board receives an application for income protection benefits from a member who has income protection cover, the Board must make a claim against the policy providing the income protection cover (Rule 3.4.2).

Subject to the SIS Act, any amount paid by a life insurance company covering a policy providing income protection cover must either be paid into the PSSAP Fund and then paid from the PSSAP Fund to the ordinary employer-sponsored member as a non-commutable income stream, or be paid directly by the insurance company to the ordinary employer-sponsored member as a non-commutable income stream (Rule 3.4.3). Any such amount paid does not form part of the member's personal accumulation account (Rule 3.4.4).

The Board is not required to pay income protection benefits in respect of an ordinary employer-sponsored member who does not hold income protection cover or where a life insurance company refuses to pay an amount in response to a claim (Rule 3.4.5).

Division 5 - Retirement Income Products

This Division outlines that the Board, before 1 July 2006 may, and from 1 July 2006 must, enter into arrangements with a life insurance company to offer income products, including retirement income products, for purchase by persons in receipt of benefits under the Rules (Rule 3.5.1). A person in receipt of benefits may use the benefits to purchase income products arranged by the Board (Rule 3.5.2).

Part 4 – Insurance

Division 1 - Basic Death and Invalidity Cover

This Division outlines how the Board must arrange a basic death and invalidity policy or policies for ordinary employer-sponsored members on the terms and conditions, including the circumstances, agreed between the Board and the relevant life insurance company (Rule 4.1.1). The Division also covers how claims by the Board are managed, basic death and invalidity cover premiums and cessation of basic death and invalidity cover.

An ordinary employer-sponsored member will be provided with basic death and invalidity cover, subject to the terms and conditions of the basic death and invalidity cover policy, unless the life insurance company does not provide cover in respect of the member under that policy (Rule 4.1.2). The circumstances where an insurance provider may not provide basic death and invalidity cover include members being over a particular age (e.g. age 70), members being on leave without pay for extended periods and members working overseas for extended periods (usually more than 2 years).

When an ordinary employer-sponsored member dies, or if an application is made for approval of their invalidity retirement, the Board must make a claim against the policy providing the basic death and invalidity cover, unless the life insurance company does not provide cover in respect of the member under that policy (Rule 4.1.3).

Any amount paid in response to a claim against a policy providing basic death and invalidity cover must be paid into the PSSAP Fund and is credited to the personal accumulation account of the ordinary employer-sponsored member (Rule 4.1.4).

The Board will pay for basic death and invalidity cover premiums from the PSSAP Fund (Rule 4.1.5). The amount of premium payable in respect of each ordinary employer-sponsored member will be determined by the Board, being the same as the amount specified in the policy, and must be deducted from the member's personal accumulation account, subject to Rule 4.1.7 (concerning insufficient funds in the account to pay the premiums) (Rule 4.1.6).

The amount of premium payable for basic death and invalidity cover is not to be deducted from the personal accumulation account of the ordinary employer-sponsored member where the premium payable for such cover is greater than the amount in that account (Rule 4.1.7).

Basic death and invalidity cover ceases on the earliest of the occurrence of certain events. These events are a day specified in the death and invalidity cover policy, which is the day, or a day after the day, that the ordinary employer-sponsored member ceases to be an ordinary employer-sponsored member, the death or invalidity retirement of the ordinary employer-sponsored member, the day after the day on which cover ends due to non-payment of premiums in accordance with the policy and the date the insurer ceases to provide basic death and invalidity cover for the member (Rule 4.1.8).

Division 2 - Supplementary Death and Invalidity Cover

This Division outlines that the Board may arrange for supplementary death and invalidity cover policies with a life insurance company and that the policies will be on the terms and conditions, including the circumstances, agreed between the Board and the relevant life insurance company (Rule 4.2.1).

An ordinary employer-sponsored member may apply to the Board for supplementary death and invalidity cover at any time (Rule 4.2.2).

The Board may allow the ordinary employer-sponsored member to choose the policy providing the supplementary death and invalidity cover if the Board has taken out more than one policy (Rule 4.2.3).

An ordinary employer-sponsored member who applies for supplementary death and invalidity cover must provide any information and undergo any medical examinations the relevant life insurance company requires for it to determine whether it is prepared to provide the supplementary death and invalidity cover (Rule 4.2.4).

If an ordinary employer-sponsored member applies to the Board for supplementary death and invalidity cover, or applies to vary the existing cover, the Board must ask the life insurance company whether it is prepared to provide the cover for the ordinary employer-sponsored member and if so the cost of the premium. The Board must provide the information transferred between it and the life insurance company to the ordinary employer-sponsored member (Rule 4.2.5).

An ordinary employer-sponsored member can vary the amount of supplementary death and invalidity cover at any time before the cover ceases to be applicable, provided the relevant life insurance company is prepared to vary the cover (Rule 4.2.6). Variations take effect from the date specified in the policy or the date determined by the Board (Rule 4.2.7).

Supplementary death and invalidity cover ceases on the earliest of certain events. These events are a day specified in the supplementary death and invalidity cover policy, which is the day, or a day after the day, that the ordinary employer-sponsored member ceases to be an ordinary employer-sponsored member, the date the ordinary employer-sponsored member notifies the Board that they no longer wish to have supplementary death and invalidity cover, the death or invalidity retirement of the ordinary employer-sponsored member, the day after the day on which cover ceased due to non-payment of premiums in accordance with the policy and the date the insurer ceases to provide supplementary death and invalidity cover for the member (Rule 4.2.8).

When an ordinary employer-sponsored member with supplementary death and invalidity cover dies or an application is made for the person's invalidity retirement, the Board must make a claim against the policy providing the cover (Rule 4.2.9). Any amount paid by a life insurance company to the Board must be paid into the PSSAP Fund and is credited to the person's personal accumulation account (Rule 4.2.10).

The Board will pay supplementary death and invalidity premiums from the PSSAP Fund (Rule 4.2.11). The premium for supplementary death and invalidity cover must be deducted from the ordinary employer-sponsored member's personal accumulation account, subject to Rule 4.2.13 (concerning insufficient funds in the account to pay the premium) (Rule 4.2.12).

The amount of premium payable for supplementary death and invalidity cover is not to be deducted from the personal accumulation account of the ordinary employer-sponsored member where the premium payable for such cover is greater than the amount in that account (Rule 4.2.13).

Division 3 – Basic Income Protection Cover

This Division outlines that the Board must arrange a policy or policies to provide basic income protection cover for ordinary employer-sponsored members. The basic income protection policy or policies will be on the terms and conditions, including the circumstances, agreed between the Board and the relevant life insurance company, subject to the SIS Act (Rule 4.3.1).

An ordinary employer-sponsored member will be provided with basic income protection cover unless the member notifies the Board in writing that they do not wish to be provided with basic income protection cover, or the company refuses to provide cover to the ordinary employer-sponsored member (Rule 4.3.2). As well as the circumstances mentioned in relation to Rule 4.1.2, further circumstances where basic income protection cover may not be provided include members working part-time or casual hours (less than 15 hours per week) and members employed on contract for less than 3 months.

An ordinary employer-sponsored member's basic income protection cover ceases on the earliest of certain events. These events are a day specified in the basic income protection cover policy, which is the day, or a day after the day, that the ordinary employer-sponsored member ceases to be an ordinary employer-sponsored member, the date the ordinary employer-sponsored member notifies the Board that they no longer wish to have basic income protection cover, the death or invalidity retirement of the ordinary employer-sponsored member, the day after the day on which cover ceases due to non-payment of premiums in accordance with the policy and the date the insurer ceases to provide basic income protection cover for the member (Rule 4.3.3).

The Board will pay all premiums for basic income protection cover from the PSSAP Fund (Rule 4.3.4). The premium for income protection cover (the amount determined by the Board being the same as the amount specified in the cover policy) must be deducted from the personal accumulation account of the ordinary employer-sponsored member, subject to Rule 4.3.6 (concerning insufficient funds in the account to pay the premium) (Rule 4.3.5).

The amount of premium payable for basic income protection cover is not to be deducted from the personal accumulation account of the ordinary employer-sponsored member where the premium payable for such cover is greater than the amount in that account (Rule 4.3.6).

Division 4 – Supplementary Income Protection Cover

Subject to the SIS Act, the Board may take out a policy or policies with a life insurance company to provide supplementary income protection cover for ordinary employer-sponsored members. Supplementary income protection cover policy or policies will be on the terms and conditions, including the circumstances, agreed between the Board and the life insurance company (Rule 4.4.1).

An ordinary employer-sponsored member can apply to the Board for supplementary income protection cover at any time (Rule 4.4.2). The ordinary employer-sponsored member may choose the policy providing the supplementary income protection cover if the Board has taken out more than one policy (Rule 4.4.3).

An ordinary employer-sponsored member who applies for supplementary income protection cover must provide any information and undergo any medical examination the life insurance company requires to determine if the supplementary income protection cover will be provided to the ordinary employer-sponsored member (Rule 4.4.4).

If an ordinary employer-sponsored member applies for supplementary income protection cover, the Board must ask the life insurance company whether it is prepared to provide cover to the ordinary employer-sponsored member and the cost of the premium. The Board must provide the information from the life insurance company to the ordinary employer-sponsored member (Rule 4.4.5).

An ordinary employer-sponsored member may vary the amount of supplementary income protection cover at any time before the cover ceases, provided the life insurance company is prepared to vary the cover (Rule 4.4.6). Variations will take effect from the date specified in the policy or the date determined by the Board (Rule 4.4.7).

An ordinary employer sponsored member's supplementary income protection cover ceases on the earliest of certain events. These events are a day specified in the supplementary income protection cover policy, which is the day, or a day after the day, that the ordinary employer-sponsored member ceases to be an ordinary employer-sponsored member, the date the ordinary employer-sponsored member notifies the Board that they no longer wish to have supplementary income protection cover, the death or invalidity retirement of the ordinary employer-sponsored member, the day after the day on which cover ceases due to non-payment of premiums in accordance with the policy and the date the insurer ceases to provide supplementary income protection cover for the member (Rule 4.4.8).

All premiums for supplementary income protection cover are to be paid by the Board from the PSSAP Fund (Rule 4.4.9). The premium for supplementary income protection cover must be deducted from an ordinary employer-sponsored member's personal accumulation account, subject to Rule 4.4.11 (concerning insufficient funds in the account to pay the premiums) (Rule 4.4.10).

The amount of premium payable for supplementary income protection cover is not to be deducted from the personal accumulation account of the ordinary employer-sponsored member where the premium payable for such cover is greater than the amount in that account (Rule 4.4.11).

Part 5 – Other Matters

Division 1 - Personal Accumulation Account

This Division outlines that the Board must keep a personal accumulation account for each PSSAP member and defines what amounts make up a person's accumulation amount.

The Board must keep a personal accumulation account for each PSSAP member (Rule 5.1.1). The Board may keep only one personal accumulation account for each PSSAP member (Rule 5.1.2). This personal accumulation account records the accumulation amount of a PSSAP member (Rule 5.1.3).

The accumulation amount of a PSSAP member is the total of certain amounts credited to the person's personal accumulation account under Rule 5.1.5, minus the total of certain other amounts debited to the person's accumulation account under Rule 5.1.6 (Rule 5.1.4).

Any or all of the following amounts may be credited to the personal accumulation account of a PSSAP member: basic employer contributions; any additional employer contributions; employee contributions; eligible spouse contributions; interest credited in respect of fund earnings on the person's accumulation amount; any amount paid by a life insurance company to the Board in respect of the person in response to a claim against a life policy; any transfer amounts; any amount credited to the person's personal accumulation account as a result of

consolidating a non-member spouse account with the personal accumulation account (Rule 5.1.5).

Any or all of the following amounts must be debited from the personal accumulation account of an ordinary employer-sponsored member: income tax as determined by the Board; any insurance premiums paid from their accumulation account; the interest debited in respect of fund losses on the person's accumulation amount; any benefit paid to or in respect of the PSSAP member from their accumulation amount including any benefit paid as a roll-over or transfer; any administration fees, costs and expenses in relation to choice of investment strategy paid from the person's accumulation amount; and any surcharge payable by the Board in respect of the PSSAP member (Rule 5.1.6).

Division 2 - Crediting of Fund Earnings and Debiting of Fund Losses

This Division outlines how the Board will deal with crediting of earnings and debiting of losses.

The Board may determine the amounts to be credited or debited to a person's personal accumulation account, that will reasonably reflect the after tax earnings derived from the investment of the accumulation amount. The Board must also determine the portion of each of the amounts that is in respect of fund earnings or losses on the person's "accumulated member contributions". (Each portion is a component in the calculation of "accumulated member contributions", which may be rolled over along with any transfer amount under Rule 3.1.17.) (Rule 5.2.1).

1. In determining the amounts to be credited or debited to a person's personal accumulation account, the Board must have regard to the charges incurred in the investment of amounts in all personal accumulation accounts and any member investment choice (Rule 5.2.2). A note immediately after Rule 5.2.2 explains that the PSSAP is subject to provisions relating to financial management of funds (including solvency and winding up of accumulation funds) set out at Part 9 of the SIS Regulations.

Division 3 - Superannuation Surcharge

Under this Division the Board must pay from the PSSAP Fund any amount of surcharge payable in respect of an assessment for a PSSAP member (Rule 5.3.1). As well as covering possible surcharge assessments received in respect of surchargeable contributions made on or after 1 July 2005 (legislation has been introduced in Parliament to abolish the surcharge from 1 July 2005), Rule 5.3.1 will cover surcharge assessments received in relation to surchargeable contributions made before 1 July 2005 and transferred by PSSAP members to the PSSAP Fund.

Division 4 - Member Investment Choice

This Division outlines that the Board may offer PSSAP members the opportunity to elect to have amounts held in their personal accumulation account invested in accordance with a particular investment strategy (Rule 5.4.1). The Board may determine when and how a PSSAP member may make or change an election about their choice of investment strategy (Rule 5.4.2). The Board will also determine administration fees, costs and expenses in relation to choice of investment strategy, to be paid from a person's personal accumulation account (Rule 5.4.3).

Division 5 – Incorrectly paid amounts

This Division outlines that the Board must take corrective action where amounts have been incorrectly paid into or withdrawn from the PSSAP Fund (Rule 5.5.1) or the personal accumulation account of a PSSAP member (Rule 5.5.2).

Part 6 – Review of Decisions

Division 1 - Reconsideration Advisory Committees

This Division outlines that the Board will establish a Reconsideration Advisory Committee, with people holding such qualifications as the Board determines, and may refer a decision of the Board in relation to PSSAP, to this Committee (Rule 6.1.1). Subject to Board directions, a Reconsideration Advisory Committee will regulate its own affairs (Rule 6.1.2).

Where the Board has referred a decision in relation to PSSAP to a Reconsideration Advisory Committee for review and recommendation, the Board will provide the Committee with all relevant evidence and information (Rule 6.1.3). The Committee will make a recommendation to the Board whether to affirm, vary, substitute or set aside a Board decision under review (Rule 6.1.4).

Division 2 - Reconsidering Delegate's Decisions

This Division outlines how a request for reconsideration can be made. A person affected by a decision, made by a delegate of the Board, may request the Board to reconsider the original decision (Rule 6.2.1). The request for reconsideration must be made in writing, or any other form acceptable to the Board, and must set out the particulars of the decision to be reconsidered (Rule 6.2.2).

Where the Board accepts a request to reconsider a decision of the delegate of the Board in relation to the PSSAP, the Board must refer the request to the Reconsideration Advisory Committee to determine the matter, or itself review the decision after considering the recommendation of a Reconsideration Advisory Committee (Rule 6.2.3).

Any decision made by the Board or the Reconsideration Advisory Committee must be notified to the person requesting reconsideration of the original decision along with a statement of reasons for the decision (Rule 6.2.4).

Division 3 - Reconsidering Board Decisions

This Division outlines how a request for reconsideration of a Board decision in relation to PSSAP may be made to the Board (Rule 6.3.1). A request for reconsideration of such a decision must be made in writing, set out the particulars of the decision to be reconsidered, specify the grounds for the request, include new evidence, being evidence not previously known to the Board, supporting the grounds for the request, and be accompanied by the prescribed fee (Rule 6.3.2).

The Board must not proceed with a request for reconsideration of a decision if the request does not include new evidence or, in the opinion of the Board, the evidence included in the request does not support the grounds specified in the request. In this case the Board may refund the fee paid (if any). The Board may also subsequently proceed with the request if new evidence is provided (Rule 6.3.3).

If the Board accepts a request to reconsider a decision of the Board in relation to PSSAP, after considering the evidence provided and any other evidence the Board considers relevant, and the Board is satisfied there is no reasonable doubt, it should decide in favour of the person (Rule 6.3.4).

If the Board reconsiders a decision made by it in relation to PSSAP, the Board must refer the request to the Reconsideration Advisory Committee if the Board has delegated the power to the Committee for review and decision, or the Board must review the decision after considering the recommendation of the Reconsideration Advisory Committee and make a recommendation in relation to the decision after the Board or the Committee first obtaining, if appropriate, the

recommendation of an Assessment Panel. In this case, the Board or the Committee, as the case requires, may, at its discretion, refund the fee paid (Rule 6.3.5).

Any decision made by the Board or the Reconsideration Advisory Committee must be notified to the person requesting reconsideration of the original decision. The notification should include a statement of reasons for the decision (Rule 6.3.6).

Division 4 - Board Initiated Reconsiderations

This Division outlines that the Board, on its own motion, may initiate a reconsideration of a decision (Rule 6.4.1).

Part 7 – Family Law Superannuation Splitting

Division 1 – Board powers and duties: superannuation interests subject to payment split

Division 1 explains that, where an interest in the PSSAP Fund becomes subject to a payment split under the *Family Law Act 1975*, the Board has the same powers and duties in relation to the interest as a trustee under Part 7A of the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) in relation to the interest. Also, the right of the non-member spouse or the member spouse in relation to the interest is the same as under Part 7A of the SIS Regulations when applied to the interest (Rule 7.1.1).

Division 2 – Board to establish a non-member spouse interest account where a non-member spouse interest is created

Division 2 explains that where the Board creates a non-member spouse interest, the Board must create a non-member spouse interest account, to which the value of the non-member spouse interest is credited (Rule 7.2.1). A note immediately below Rule 7.2.1 explains that regulation 7A.20 of the SIS Regulations governs the apportionment of the non-member spouse interest among unrestricted non-preserved benefits, restricted non-preserved benefits and preserved benefits.

Where a person is both a non-member spouse with a non-member spouse interest account and a PSSAP member with a personal accumulation account, the Board is to consolidate the non-member spouse account with the personal accumulation account within 28 days of being asked to do so by the person (Rule 7.2.2)

Division 3 – Rights and restrictions applying to a non-member spouse interest

2. Division 3 explains the rights and restrictions applying to a non-member spouse interest. The Board may, in creating the non-member spouse interest, determine terms and conditions for the non-member spouse interest. This will need to be done in accordance with Part 7A of the SIS Regulations (Rule 7.3.1).

3. The rights of a non-member spouse or their legal personal representative applying for benefits or the roll-over of benefits are the same as those of a PSSAP member who has ceased to be an ordinary employer-sponsored member or their legal personal representative applying for benefits or the roll-over of their benefits (Rule 7.3.2). Similarly, the rights of a person claiming death benefits upon the death of a non-member spouse in relation to their non-member spouse interest are the same as the rights of persons claiming death benefits in relation to the interest of a deceased PSSAP member (Rule 7.3.3).

4. The Board may offer a non-member spouse the opportunity to elect to have amounts held in their non-member spouse interest account invested in accordance with a particular investment strategy (Rule 7.3.4). The Board may determine when and how a non-member spouse may make or change an election about their choice of investment strategy (Rule 7.3.5) and may also determine the administration fees to be paid from a person's non-member spouse interest account for changing elections about choice of investment strategy (Rule 7.3.6).

5. The Board shall not take out policies to provide insurance for a non-member spouse (Rule 7.3.7). Also, the Board shall not allow employee contributions, employer contributions or transfer amounts to be paid to the Board for the purpose of them being credited to the non-member spouse interest account (Rule 7.3.8).