

EXPLANATORY STATEMENT

Issued by authority of the Minister for Finance and Administration

Superannuation Act 2005

First Amending Deed made under section 11 of the Superannuation Act 2005 to amend the deed to establish the Public Sector Superannuation Accumulation Plan

On 29 June 2005, the Minister for Finance and Administration (the Minister), for and on behalf of the Commonwealth, made a deed (the Principal Deed) under section 10 of the *Superannuation Act 2005* (the Act) to, among other things, establish a superannuation scheme, to be known as the Public Sector Superannuation Accumulation Plan (PSSAP) and the PSSAP Fund from 1 July 2005. The Schedule to the Principal Deed includes rules for the administration of PSSAP (the Rules).

PSSAP is established for the benefit of employees of the Commonwealth and certain other persons.

PSSAP is administered by the Australian Reward Investment Alliance (ARIA). The ARIA is established under the *Superannuation Act 1990* (1990 Act). It also administers the Public Sector Superannuation Scheme (PSS) established under the 1990 Act and the Commonwealth Superannuation Scheme (CSS) provided for in the *Superannuation Act 1976*.

Section 11 of the Act provides that the Minister may, by writing, amend the Principal Deed. On 25 July 2006, the Minister amended the Principal Deed. The deed providing for these amendments is called the First Amending Deed in this explanatory statement.

Purpose of the First Amending Deed

The main purpose of the First Amending Deed is to amend the Principal Deed, including the Rules, to make a number of minor or technical amendments and amendments that are required as a consequence of other legislative changes. These amendments include changes to:

- allow accrued PSSAP benefits to be paid to a scheme member or another superannuation entity in circumstances permitted or required by the *Superannuation Industry (Supervision) Act 1993* or regulations under that Act (SIS), including to allow for portability of benefits where required by SIS;
- remove redundant provisions of the PSSAP Trust Deed as a consequence of changes made to the PSS Trust Deed by the PSS Twenty-seventh Amending Deed. The PSS Twenty-seventh Amending Deed included provision for the meetings of the ARIA in respect of the PSSAP, the CSS and the PSS in the PSS Trust Deed;
- allow the ARIA greater flexibility in arranging for PSSAP members to purchase income products including retirement income products; and
- update references to workplace agreements in the Rules to reflect the new terminology for workplace agreements included in the *Workplace Relations Act 1996* following amendments to that Act by the *Workplace Relations Amendment (Work Choices) Act 2005*.

ARIA approval

Although section 11 of the Act allows the Minister to amend the PSSAP Trust Deed, section 32 of the Act requires that ARIA consent to the amendments in most circumstances. The ARIA has consented to the amendments included in the First Amending Deed.

Legislative Instruments Act 2003

Section 17 of the *Legislative Instruments Act 2003* (LIA) specifies that rule-makers should consult before making legislative instruments. The First Amending Deed is a legislative instrument for the purposes of the LIA.

Consultation was undertaken with the ARIA in relation to the amendments to be made to the Trust Deed. As mentioned above, the ARIA has consented to the amendments in the First Amending Deed.

Commencement

The amendments made by the First Amending Deed commence on the later of 1 July 2006 or the day after the First Amending Deed is registered on the Federal Register of Legislative Instruments.

Details of the First Amending Deed are set out in the [Attachment](#).

ATTACHMENT**DETAILS OF THE FIRST AMENDING DEED****Amendments to the Trust Deed**

Clause 1 provides for the First Amending Deed to come into effect on the later of 1 July 2006 or the day after the deed is registered on the Federal Register of Legislative Instruments.

Clause 2 provides that, unless the contrary intention appears, a word or phrase in the First Amending Deed has the same meaning as it has in the Principal Deed.

Subclause 3.1 amends the preamble to the Principal Deed, which established the PSSAP, to be known as the *Superannuation (PSSAP) Trust Deed*. This naming convention is in keeping with the naming convention for other instruments made under the Act.

Subclause 3.2 deletes clause 4 of the Principal Deed as a consequence of the *Superannuation Legislation Amendment (Trustee Board and Other Measures) Act 2006* (the Trustee Act) and the 27th Amending Deed for the PSS. The Trustee Act amended the 1990 Act with effect from 1 July 2006 to provide that the PSS Board, which was responsible for both the PSS and PSSAP, to also take over responsibility for the CSS. The Board was then renamed the Australian Reward Investment Alliance (ARIA). The 27th Amending Deed made under the 1990 Act amended the PSS Trust Deed to provide for the meetings of the ARIA in relation to all of its functions and powers, including in respect of PSSAP. As a result, clause 4 of the Principal Deed, which relates to ARIA meetings in relation to PSSAP is not required.

Amendments to the Rules

Subclause 4.1 amends Rule 1.2.1 of the Principal Deed by deleting the definition of **accumulated member contributions** in the Principal Deed.

That definition was previously necessary for the purposes of ascertaining which components of a member's personal accumulation account, within the meaning of Rule 5.1.1 of the Principal Deed, could be rolled over or transferred in accordance with Rule 3.1.13. Following amendments to Rule 3.1.13 made by subclause 4.9, to allow benefits to be rolled over or transferred in any circumstance required by SIS this definition is no longer necessary.

Subclauses 4.2 to 4.7 update the references to various workplace agreements in the Rules as a consequence of amendments made to the *Workplace Relations Act 1996* by the *Workplace Relations Amendment (Work Choices) Act 2005* (Work Choices Act). The Work Choices Act renamed certified agreements and Australian Workplace Agreements and introduced a generic term "workplace agreement" to refer to various agreements made in accordance with the *Workplace Relations Act 1996*. The amendments made to the Rules are technical amendments only and do not affect the operation of the Rules.

Subclauses 4.2 to 4.6 amend Rule 1.2.1 of the Principal Deed by deleting the definition of "AWA" and "certified agreement" and inserting the definitions of "pre-reform AWA", "pre-reform certified agreement" and "workplace agreement". Subclause 4.7 substitutes a new Rule 2.2.3 of the Principal Deed to change the references in that Rule to reflect the new names for the various workplace agreements in the *Workplace Relations Act 1996*.

Subclause 4.8 substitutes a new paragraph 3.1.1(b) to allow PSSAP members to apply for benefits in a broader range of circumstances as permitted by SIS. Rule 3.1.1(b) of the Principal Deed allowed a benefit application to be made by a PSSAP member only in circumstances where the person had ceased to be an ordinary employer sponsored member within the meaning of the Act (for example, on ceasing relevant employment).

Except in limited circumstances SIS will not permit a superannuation scheme to pay a benefit to or for a scheme member who has not ceased gainful employment. However, SIS permits a scheme to pay any amount that is regarded as an unrestricted non preserved benefit within the meaning of SIS to a member at any time. The effect of the new paragraph 3.1.1(b) is to allow a PSSAP member to apply for the payment of such amounts at any time during their scheme membership.

Subclauses 4.9 to 4.13 amend the Rules to allow PSSAP benefits to be paid from the scheme by roll-over or transfer to another eligible superannuation entity, in any circumstances where required or permitted by SIS. Before these changes the Rules limited the amounts that could be rolled over or transferred while employer contributions were being paid to the PSSAP Fund for the member. Only voluntary contributions made by the member or any amount transferred to the PSSAP Fund by or for the member could be paid from the PSSAP Fund during that time. As SIS now requires that a scheme must roll-over a member's accrued benefits at a member's request in specified circumstances it was necessary to remove the restrictions on the amounts that could be paid from PSSAP.

Subclause 4.9 substitutes a new Rule 3.1.13 to allow a PSSAP member to apply for benefits to be rolled over in all circumstances as required or permitted by SIS.

This subclause also inserts a note, immediately below Rule 3.1.13, on the SIS provisions relating to requests for roll-overs from scheme members and the cashing of benefits by members who have reached their preservation age but have not ceased gainful employment.

Subclause 4.10 substitutes a new Rule 3.1.15 which provides that following receipt of a roll-over application from a PSSAP member under paragraph 3.1.13(a), the ARIA must roll over benefits where required under SIS, that is, as provided for in Division 6.5 of the SIS Regulations. In other circumstances the ARIA may roll over benefits where SIS permits.

This subclause also inserts a note after Rule 3.1.15 which explains that regulation 6.35 of the SIS Regulations sets out when a trustee may refuse to roll over or transfer an amount in response to a roll-over request from a scheme member.

Subclause 4.11 inserts a new Rule 3.1.15A after Rule 3.1.15. This Rule is a technical amendment, as a consequence of the rewording of paragraph 3.1.13(a). The Rule provides that where the ARIA receives a roll-over application under paragraph 3.1.13(a) from a PSSAP member who intends that employer contributions will cease to be paid for them (for example, because of cessation of employment) within one month of making the roll-over application, the roll-over or transfer must take place as soon as possible after the contributions cease to be paid.

Subclause 4.12 deletes Rules 3.1.16 and 3.1.17, each of which provided for the ARIA to act on a roll-over application made in paragraphs (b) and (c) of the replaced Rule 3.1.13 (see subclause 4.9). With the substitution of new Rule 3.1.13 and new Rule 3.1.15, Rules 3.1.16 and 3.1.17 are no longer necessary.

Subclause 4.13 substitutes a new Rule 3.1.18 which provides for the ARIA to act on a roll-over application from a transitional member (i.e. an ordinary employer-sponsored member who has reached preservation age and has not ceased employment). The new Rule 3.1.18 is substantially

the same as the replaced Rule except that it reflects the revised paragraph numbering in Rule 3.1.13 and that the ARIA is required to undertake the requested roll-over or transfer subject to the SIS Act.

Subclause 4.14 substitutes Rule 3.5.1 and the heading to that Rule to allow the Board to enter into arrangements with a provider to offer income products, including retirement income products, for purchase by persons in receipt of benefits under the Rules. The replaced Rule 3.5.1 provided that the PSS Board must by 1 July 2006 enter into arrangements with a life insurance company to offer income products. However, given the availability of various income products in the marketplace, this amendment will allow the ARIA more flexibility to arrange for a wider range of income products to suit the needs of PSSAP members. Also, the ARIA will not be required to facilitate the provision of income products where it considers that it is not appropriate to do so. A PSSAP member can roll out their PSSAP benefit to an external provider of income products when appropriate.

Subclause 4.15 substitutes a new Rule 5.2.1 as a consequence of the changes made by subclause 4.1 to delete the definition of accumulated member contributions. As a result, the requirement in the replaced Rule 5.2.1 in relation to the determination of the earnings or losses in the member's personal accumulation account that are attributable to the member's accumulated member contributions is no longer necessary.