

SECOND AMENDMENT
of the
SUPERANNUATION (PSSAP) TRUST DEED

THIS DEED is made on 21 June'07 by THE COMMONWEALTH OF AUSTRALIA.

WHEREAS section 10 of the *Superannuation Act 2005* (the Act) provides for the Minister to establish a superannuation scheme to be administered by the Board established under section 20 of the *Superannuation Act 1990* (the Board);

AND WHEREAS the Public Sector Superannuation Accumulation Plan was established by Trust Deed dated 29 June 2005¹ (the Principal Deed);

AND WHEREAS section 11 of the Act provides for the Minister, by instrument in writing, to amend the Principal Deed, and under section 32 requires the consent of the Board to amendments in certain circumstances.

AND WHEREAS the Board has consented to the amendments provided for in this Deed;

NOW THIS DEED WITNESSES as follows:

1. The amendments in this Deed and Rules come into effect as follows:
 - (a) subject to paragraph (b), on 1 July 2007; and
 - (b) in relation to clauses 3.1, 4.4 and 4.8, on the later of the day after this Deed or the Twenty-eighth Amendment of the Public Sector Superannuation Scheme Trust Deed is registered on the Federal Register of Legislative Instruments.
2. Unless a contrary intention appears, a word or phrase in this Deed has the same meaning it has in the Principal Deed.
3. The Principal Deed is amended as follows:
 - 3.1 The preamble is amended by replacing the words:

“(b) establish, and vest in the PSS Board established under section 20 of the *Superannuation Act 1990* (the “Board”), a fund for the purposes of PSSAP; and”

with the words

“(b) establish and vest in the Australian Reward Investment Alliance (formerly known at the PSS Board) established under section 20 of the *Superannuation Act 1990* (the “Board”), a fund for the purposes of the PSSAP; and”

¹ Section 4 of the Act defines “Trust Deed” to include that deed as subsequently amended. A note listing particulars of the Trust Deed and the amending deeds is set out at the end of this Deed.

4. The Rules are amended as follows:

4.1 Rule 1.2.1 is amended by inserting the following definition in alphabetical order:

“directed termination payment has the same meaning as in the *Income Tax (Transitional Provisions) Act 1997*.”

4.2 Rule 1.2.1 is further amended by replacing the definition of **eligible spouse contributions** with:

“eligible spouse contributions has the same meaning as in the **SIS Act**.”

4.3 Rule 1.2.1 is further amended by deleting the definition of **eligible termination payment**.

4.4 Rule 1.2.1 is further amended by deleting the definition of **PSS defined benefits plan**.

4.5 Rule 1.2.1 is further amended by inserting the following definition in alphabetical order:

“release authority means:

- (a) a release authority received from a **PSSAP member** or the Commissioner of Taxation under section 292-410 of the *Income Tax Assessment Act 1997*; or
- (b) a transitional release authority received from a **PSSAP member** under section 292-80B of the *Income Tax (Transitional Provisions) Act 1997*.”

4.6 Rule 1.2.1 is further amended by inserting the following definition in alphabetical order:

“roll-over superannuation benefit has the same meaning as the *Income Tax Assessment Act 1997*.”

4.7 Rule 1.2.1 is further amended by inserting the following definition in alphabetical order:

“transition to retirement income stream has the same meaning as in the **SIS Act**.”

4.8 Rule 2.2.2 is amended by replacing paragraph (b) with the following paragraph:

- “(b) in all other cases the amount that would have been the person’s “fortnightly contribution salary” if they were a **PSS member**.”

4.9 The following Rule is substituted for Rule 2.4.1:

“2.4.1 Subject to the SIS Act, an ordinary employer-sponsored member may transfer or roll-over any or all of the following amounts to the Board as a transfer amount:

- (a) a **roll-over superannuation benefit**;
- (b) a **directed termination payment**;
- (c) an amount of **shortfall component** payable to, or in respect of, the person in accordance with the *Superannuation Guarantee (Administration) Act 1992*; and
- (d) an amount payable in respect of the person under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*,

provided the method of payment complies with Rule 2.4.2.”

4.10 The following Rule is substituted for Rule 3.1.1:

“3.1.1 A benefit application may be made to the Board by:

- (a) an **ordinary employer-sponsored member** who:
 - (i) *paragraph deleted in the 2nd Amending Deed*;
 - (ii) has applied for approval of their invalidity retirement under Rule 3.3.1;
 - (iii) is applying for **income protection benefits** under Rule 3.4.1;
 - (iv) is a **transitional member** who is applying for an amount of benefits to be **cash**ed as an income product which may be a **transition to retirement income stream**, a **non-commutable allocated annuity**, a **non-commutable allocated pension**, a **non-commutable annuity** or a **non-commutable pension**;
- (b) a **PSSAP member** other than in the capacity of an **ordinary employer-sponsored member** applying under paragraph (a);
- (c) a **PSSAP member** who is applying for the payment of benefits on compassionate grounds or due to severe financial hardship;
- (d) the **legal personal representative** of a **PSSAP member**;

- (e) a person claiming to be entitled to the benefit of a deceased **PSSAP member**;
or
- (f) a **PSSAP member** or the Commissioner of Taxation, applying for the payment of a benefit pursuant to a **release authority**.”

4.11 Rule 3.1.3 is deleted.

4.12 The heading before Rule 3.1.5 and Rule 3.1.5 are deleted.

4.13 The following heading and Rule are inserted after Rule 3.1.11:

“Payment in accordance with a release authority

3.1.11A Subject to the **SIS Act**, where the **Board** receives a **release authority**, the **Board** must pay a lump sum benefit in respect of the **PSSAP member** equal to the lesser of:

- (a) the amount (if any) requested by the **PSSAP member** or Commissioner of Taxation;
- (b) the amount specified for release in the **release authority**; or
- (c) the **total benefit**.”

4.14 Rule 3.1.13 is amended by replacing paragraph (b) with the following paragraph:

- “(b) a **transitional member** who is applying for an amount of benefits to be **cash**ed as an income product, which may be a **transition to retirement income stream**, a **non-commutable allocated annuity**, a **non-commutable allocated pension**, a **non-commutable annuity** or a **non-commutable pension**.”

4.15 The following Rule is substituted for Rule 3.1.14:

“3.1.14 Subject to the **SIS Act**, a **roll-over application** must be made in a form acceptable to the **Board** and must include any supporting evidence of entitlement to the benefit required by the **Board**.”

4.16 The following Rule and note are substituted for Rule 3.1.15 and the note immediately following Rule 3.1.15:

“3.1.15 Subject to the **SIS Act**, if the **Board** receives a **roll-over application** from a **PSSAP member** under Rule 3.1.13(a), the **Board**, where required by the **SIS Act**, must, and, where not so required, may **roll-over** or **transfer** so much of the person’s **total benefit** as is requested in the **roll-over application** to a **superannuation entity, RSA or life insurance company**.

Notes:

1. 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 request from a scheme member.
2. Regulations 6.33 and 6.34 of the **SIS Regulations** set out that a trustee must **roll-over** or **transfer** an amount as soon as possible or within a timeframe allowed under the **SIS Regulations**, in response to a request from a scheme member.”

4.17 Rule 3.1.15A is deleted.

4.18 The following Rule is substituted for Rule 3.1.20:

“3.1.20 Subject to the **SIS Act**, the **Board** may pay a benefit to an **eligible roll-over fund** if the **Board** is unable to locate a **PSSAP member**.”

4.19 Rule 5.1.5 is amended by replacing paragraph (h) with the following paragraphs:

- “(h) any amount credited to the person’s **personal accumulation account** under Rule 7.2.2;
- (i) amount of any tax offset as determined by the **Board**.”

4.20 The following heading, Rule and note is inserted after Rule 5.5.2:

“Board must return contributions that should not have been accepted

5.5.3 If the **Board** becomes aware that it has accepted contributions in relation to a **PSSAP member** which should not be accepted into the **PSSAP Fund** under the **SIS Act**, the **Board** must repay, return or refund them to the contributor and make any adjustments it considers appropriate to the **personal accumulation account** of the **PSSAP member**. Subject to the **SIS Act**, the **Board** may adjust the repaid, returned or refunded contributions for:

- (a) **insurance premiums** paid from the person’s **personal accumulation account** during the period the contributions were held in the **PSSAP Fund**;

- (b) interest (if any) in respect of the fund earnings or fund losses for the period the contributions were held in the **PSSAP Fund**; and
- (c) fees, costs and expenses paid from the person's **personal accumulation account** during the period the contributions were held in the **PSSAP Fund**.

Note: Among other things, Rule 5.5.3 covers the situation where a member contributes an amount that exceeds the non-concessional contribution cap and the **Board** must return that amount, in accordance with the **SIS Act**.”

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

SIGNED, SEALED AND DELIVERED)
)
by the Honourable NICK MINCHIN) Nick Minchin
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Minister for Finance and Administration)
)
for and on behalf of)
)
THE COMMONWEALTH OF)
)
AUSTRALIA, in the presence of:) DWawn
)
DAVID WAWN)
(name))
)
Parliament House, Canberra)
(address))
)
CHIEF OF STAFF)
(description))
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TABLE LISTING TRUST DEED AND AMENDING DEEDS

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

Date	Number	Gazette / Registration details
29 June 2005	Trust Deed	F2005LO1901, 30 June 2005
25 July 2006	First	F2006L02524, 1 August 2006