

## **EXPLANATORY STATEMENT**

*Issued by authority of the Minister for Finance and Administration*

### *Superannuation Act 1990*

*Twenty-eighth Amending Deed to the Trust Deed to establish an occupational superannuation scheme for Australian Government employees and certain other persons pursuant to section 5 of the Superannuation Act 1990 (1990 Act).*

The Minister for Finance, for and on behalf of the Commonwealth, established an occupational superannuation scheme to provide benefits for certain of the Commonwealth's employees and for certain other people by Trust Deed dated 21 June 1990 under section 4 of the 1990 Act. The occupational superannuation scheme is known as the Public Sector Superannuation Scheme (PSS).

Section 5 of the 1990 Act provides that the Minister for Finance and Administration may amend the Trust Deed by signed instrument, subject to obtaining the consent of the Australian Reward Investment Alliance (ARIA) to the amendment where necessary. ARIA is the trustee for the PSS.

#### **Twenty-eighth Amending Deed**

On 21 June 2007 the Minister amended the Trust Deed and Rules for the PSS set out in the Schedule to the Trust Deed by signed instrument. That instrument is called the Twenty-eighth Amending Deed in this statement.

The purpose of the Twenty-eighth Amending Deed is to amend the Trust Deed and Rules to allow negative interest rates in the PSS and to remove redundant provisions relating to the PSSAP.

Background information on the changes and the details of the Twenty-eighth Amending Deed are set out in the [Attachment](#).

#### **Approval by ARIA**

Section 5 of the 1990 Act deals with amendments made to the Trust Deed. That section allows the Minister to amend the Trust Deed provided, in respect of certain amendments, that the Australian Reward Investment Alliance (ARIA), which is the trustee for the PSS and the PSSAP, has consented to those amendments.

ARIA has consented to the amendments included in the Twenty-eighth Amending Deed.

#### **Legislative Instruments Act 2003**

The Amending Deed is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA). Although section 44 of the LIA exempts superannuation instruments from disallowance, the Amending Deed is subject to possible disallowance in accordance with section 45 of the 1990 Act.

Section 17 of the LIA specifies that rule-makers should consult before making legislative instruments. ARIA was consulted about the Amending Deed. ARIA is a trustee board including representatives of both scheme members and their employers.

**Commencement**

The amendments concerning the PSSAP come into effect on the day after they are registered on the Federal Register of Legislative Instruments.

The amendments relating to the negative interest rates come into effect on 1 July 2007.

## ATTACHMENT

**BACKGROUND TO AND DETAILS OF THE TWENTY-EIGHTH AMENDING DEED****Background***Negative interest rates*

Benefits from the PSS include a funded component and an unfunded component. The funded component represents the member's personal contributions and the employer productivity (3%) contributions with interest on those contributions. The unfunded component is met by the Commonwealth at the time the benefit is paid. Member and employer productivity contributions are paid to the PSS Fund and invested by ARIA. Interest on those contributions is determined by ARIA.

Under arrangements that applied since the establishment of the PSS in 1990 ARIA has not been able to declare negative interest rates when investment losses were incurred. When there were insufficient reserves to absorb those losses in a given year and a zero interest rate was determined the resulting negative reserve had to be replenished before positive interest rates could be declared.

*Provisions for the PSSAP*

On 17 October 2003, the Minister for Finance and Administration, Senator the Hon Nick Minchin (the Minister), announced that the Australian Government would introduce changed superannuation arrangements for new employees who join the PSS from 1 July 2005. Those employees would receive fully funded accumulation benefits.

On 23 March 2004, the Minister made the Twentieth Amending Deed, which amended the Trust Deed and Rules for the PSS to establish the PSS accumulation plan (PSSAP) as a sub-plan of the PSS from 1 July 2005 and to make some technical amendments to the Trust Deed.

On 24 June 2005, the Minister made the Twenty-fifth Amending Deed, which amended the Trust Deed and Rules for the PSS to include additional features in the PSSAP and to address a number of other matters to facilitate the introduction of the PSSAP.

The *Superannuation Act 2005* (2005 Act) and *Superannuation (Consequential Amendments) Act 2005*, both commencing on 29 June 2005, provided for the PSS to be closed to new members from 1 July 2005 and for the PSSAP to be a new and separate scheme established by Trust Deed made under the 2005 Act, rather than a sub-plan of the PSS. PSSAP was established, with effect from 1 July 2005, by Trust Deed made by the Minister under the 2005 Act on 29 June 2005 in essentially the same form as the accumulation sub-plan provided for in the Twentieth and Twenty-fifth Amending Deeds for the PSS.

**Details of the Amending Deed****Commencement**

**Clause 1** specifies the commencement date for the amendments to the Trust Deed and Rules made by the Deed to come into effect on the day after they are registered on the Federal Register of Legislative Instruments. There is no time critical date by which the amendments are to commence.

**Clause 1** also makes it clear that the amendments made by the Deed do not affect the continuity of any determination or determinations by the Board as to rates of interest and method of allocation made under the Rules before 1 January 2006.

## **Context**

**Clause 2** indicates that, unless a contrary intention appears, a word or phrase in the Amending Deed has the same meaning that it has in the Trust Deed.

## **Amendments to the Trust Deed**

**Subclause 3.1** restores paragraph 3.2(i) of the Trust Deed to the wording of the paragraph as it existed before the Twentieth Amending Deed. The paragraph deals with the Board's power to effect policies with insurers.

The amendment removes references to insurance cover provided for in Section A of the Rules, which deals with the accumulation subplan. Section A is removed by clause 6 of this Amending Deed. The paragraph continues to apply to additional death and invalidity cover which is available to certain PSS members under the Rules.

**Subclause 3.2** deletes paragraph 3.2 (k) of the Trust Deed which provides for the purchase of income products as provided for in the Rules. Provisions of the Rules relating to income products are limited to Section A of the Rules, which deals with the accumulation sub-plan. Section A is removed by clause 6 of this Amending Deed.

**Subclause 3.3** deletes subclauses 10.7 and 10.8, which relate to investment strategies for the PSSAP. The PSSAP Trust Deed made under the 2005 Act includes equivalent provisions in relation to investment strategies for the PSSAP.

## **Amendments to the Rules**

### ***Amendments relating to the PSSAP***

**Clause 4** makes general changes to Section B of the Rules as a consequence of the removal of Section A of the Rules by clause 6 of this Amending Deed. It removes all references to the letter "B" as a prefix from the Part Headings, Rule numbers, references to Part numbers and references to Rule numbers. In conjunction with Clause 6 these changes restore Section B to its original status as the complete Rules for the PSS.

**Subclauses 5.2 to 5.11** make amendments arising from the renumbering of the Parts and Rules in the former Section B of the Rules. The effect of these changes is to remove references to "Section B" and the now unnecessary references to the PSS as the "defined benefits plan".

**Subclauses 5.12 and 5.13** amend definitions used in the former Section B of the Rules. The Twentieth Amending Deed amended the definitions for "casual member" and "regular member" to ensure that the definitions only applied to members of the defined benefits sub-plan of the PSS. As Clause 6 removes the accumulation subplan from the Rules there is no longer a requirement to distinguish between the sub-plans within the Rules.

**Subclauses 5.14** deletes the definitions for **category A member** and **PSS defined benefits plan** in the former Section B of the Rules. Category A members are PSSAP members as constituted under Section A of the Rules. As Section A of the Rules is to be removed by clause 6 of this Amending Deed these definitions are no longer required.

**Subclause 5.15** deletes Rules 2.1.1A and 2.1.1B which identified those PSS members who joined on or after 1 July 2005 who were to join the defined benefits subplan instead of the accumulation subplan. These were former employees with certain accrued rights in the scheme. From 1 July 2005 Schedule 1, Part 2 of the *Superannuation (Consequential Amendments) Act 2005* amended section 6 of the 1990 Act to close the PSS to new members. Former employees with certain accrued rights were either eligible or required to rejoin the PSS. These amendments duplicated the essence of Rules 2.1.1A and 2.1.1.B and as such these Rules

were made redundant.

**Subclause 5.16** replaces a note regarding membership of the defined benefits plan to reflect the removal of the PSSAP from the Rules and the amendments to section 6 of the 1990 Act to reflect the closure of the PSS.

**Clause 6** removes Section A from the Rules to remove the provisions for the PSSAP made unnecessary by its establishment as a separate scheme by the *Superannuation Act 2005*.

### ***Amendments to allow negative interest rates***

**Clause 8** will allow negative interest to be applied to PSS member accounts in the event of negative earnings on their account balance in the PSS Fund. The PSS Board requested, when the proposed introduction of member investment choice was announced in 2004, that the restriction on the Board declaring negative crediting rates be removed to bring arrangements in line with industry practice.

The amendments will have the effect that members will largely bear the investment risk relating to their account balances. This is appropriate as the monies in question are largely the member's own accumulated contributions and interest. Under arrangements that applied for a number of years in the PSS, scheme members to a large extent bore the effect of investment losses. This is because when there were insufficient reserves to absorb investment losses in a given year and a zero crediting rate was applied to members' accounts, the resulting negative reserve had to be replenished before a positive rate could be declared in the future.

The amendments will therefore provide ARIA with greater capacity than has applied in the past to equitably distribute earnings on the funded accumulation component of members' benefits, between members who leave the scheme and those who stay. The amendments will also allow ARIA more flexibility to accurately determine interest rates.

From 1 July 2007, ARIA will be able to make negative declarations of interest, however a member's account balance will be protected in line with the announcement by the Board (then named the PSS Board) made in September 2004 that a member's account balance in the Fund cannot fall below a certain level.

The protected amount from 1 July 2007 will generally be the member's account balance in the PSS Fund as at 1 July 2003 plus member contributions, including any transfer amounts, made between that date and 30 June 2007.

An example of how this will operate is the case of Mary. Mary had an account balance in the PSS Fund of \$200,000 as at 1 July 2003. She paid \$12,500 in contributions for the period 1 July 2003 to 30 June 2007 and has unallocated earnings of \$50,000 for that period. Mary subsequently pays \$2,500 in contributions and has \$10,000 in earnings for the period 1 July 2007 (when the amendment commenced) to 31 December 2007.

Mary's protected amount is \$212,500 (\$200,000 + \$12,500) and, if ARIA made a determination of interest as at 31 December 2007 that distributed all of the Fund earnings, giving Mary \$60,000 in interest (\$50,000 + \$10,000) her account balance will be \$275,000 as at that date.

If Mary was a PSS preserved benefit member (and had been since before 30 June 2003) her protected amount would be \$200,000.

*Amendment of definitions*

**Subclauses 8.1 and 8.3** amend the definitions of **accumulated funded productivity contributions** and **accumulated member contributions** in Rule 1.2.1 by omitting the words “together with the amount of any interest” and substituting the words “plus the amount of any interest”. This will allow for both positive and negative interest in relation to those contributions.

**Subclauses 8.2, 8.4 and 8.5** amend the definitions of **accumulated funded productivity contributions**, **accumulated member contributions** and **accumulated unfunded productivity contributions** in Rule 1.2.1 by omitting the words “the interest (if any) in respect of these amounts” and substituting the words “the interest (if any) on these amounts”. This will allow for both positive and negative interest in relation to those contributions.

*New definitions*

**Subclauses 8.6** inserts a new definition of **amount** in Rule 1.2.1 to make it clear that the term **amount** includes a nil amount.

**Subclause 8.8** inserts a new definition of **interest** in Rule 1.2.1 to make it clear that the term **interest** includes negative or zero interest. The new definition also makes it clear that the following words, when used in relation to interest, are also taken to include negative or zero interest - **accrue, accrued, accruing, accumulate, accumulated, accumulates**.

**Subclause 8.9** inserts a new definition of **notional interest** in Rule 1.2.1 to make it clear that the term **notional interest** includes negative or zero notional interest.

**Subclauses 8.7, 8.10, 8.11 and 8.12** insert new definitions of **cumulative, plus, sum** and **total**, in Rule 1.2.1 to make it clear that those terms have a meaning affected by new Rule 1.2.5.

*When the calculation of a sum is taken to be zero*

**Subclause 8.13** inserts a new Rule 1.2.5 to make it clear that where a provision of the Rules involves the calculation of a sum (whether the expression “cumulative”, “sum”, “total”, “plus” or any other expression is used) and the calculation involves negative interest or negative notional interest, then if apart from this new Rule the sum would be less than zero, the sum is taken to be zero.

*Allowing for negative interest*

**Subclause 8.14** replaces Rule 11.3.11 to allow for both positive and negative interest in relation to the contributions referred to in that Rule.

**Subclause 8.15** replaces subparagraph (a)(i) of Rule 12.1.5 to allow for both positive and negative interest in relation to the amount of lump sum referred to in that subparagraph.

*Determinations of zero interest*

**Clause 9** makes it clear, for the avoidance of doubt, that the amendments made by the Deed do not imply that zero interest or zero notional interest could not have been determined under the Rules before 1 July 2007.