

## **EXPLANATORY STATEMENT**

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

*Superannuation Act 2005*

*Fourth Amending Deed made under section 11 of the Superannuation Act 2005 to amend the Superannuation (PSSAP) Trust Deed*

On 29 June 2005, the Minister for Finance and Deregulation, for and on behalf of the Commonwealth, made a deed (the Trust 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 Trust Deed includes rules for the administration of PSSAP (the Rules).

The PSSAP is established for the benefit of most new Australian Government employees and statutory office holders. The PSSAP is managed and administered by the Australian Reward Investment Alliance (ARIA).

Section 11 of the Act provides that the Minister may, by writing, amend the Trust Deed. On 22 June 2009, the Minister amended the Trust Deed. The deed providing for these amendments is called the Fourth Amending Deed in this explanatory statement.

### **Purpose of the Fourth Amending Deed**

The purpose of the Fourth Amending Deed is to amend the Trust Deed, including the Rules, to make minor amendments as a consequence of the *Fair Work Act 2009* and the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (the FW Legislation).

The Fourth Amending Deed also makes amendments to allow ARIA to receive Government co-contributions for members who have ceased contributory membership, where the co-contributions relate to a period where the person was a contributing member.

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

### **ARIA Approval**

Although section 11 of the Act allows the Minister to amend the PSSAP Trust Deed, section 32 of the Act requires ARIA to consent to the amendments in most circumstances. ARIA has consented to the amendments included in the Fourth 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 Fourth Amending Deed is a legislative instrument for the purposes of the LIA.

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

**Commencement**

The amendments made by the Fourth Amending Deed that are consequential to the FW Legislation commence immediately after the relevant provisions of the FW Legislation commence. The other amendments commence on the day after registration.

Details of the Fourth Amending Deed are set out in the Attachment.

## BACKGROUND TO AND DETAILS OF THE FOURTH AMENDING DEED

### Background

1. The *Fair Work Act 2009* (FW Act) and related legislation (the FW Legislation) provide for a new workplace relations system. The effect of the FW Legislation is to repeal the *Workplace Relations Act 1996* (WR Act) except Schedules 1 and 10. The WR Act is being renamed the *Fair Work (Registered Organisations) Act 2009* (FWRO Act).
2. The Fourth Amending Deed (the Amending Deed) makes consequential changes to the Trust Deed to reflect the FW Legislation. The Amending Deed also makes amendments to expand the circumstances where ARIA can accept Government co-contributions.

### Commencement

3. **Clause 1** specifies the commencement dates for the amendments to the Trust Deed and Rules. The amendments that are consequential to the FW Legislation commence immediately after the relevant provisions of the FW Legislation commence. The other amendments commence on the day after registration.

### Context

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

### Details of the amendments

#### *Fair Work consequential amendments*

5. Rule 1.2.1 defines ‘other approved employment’ to include certain organisations registered under the WR Act. Rule 1.2.1 also defines ‘pay day’ to include the day an ordinary employer-sponsored member would otherwise have received a salary payment from the designated employer, if they are on leave of absence for the purposes of engaging in other approved employment. The definition of ‘pay day’ determines when a designated employer must pay contributions to the Board.
6. **Subclause 3.1** replaces the reference to the WR Act with a reference to the FWRO Act, reflecting the renaming of the WR Act. Subclause 3.1 also expands the definition of ‘other approved employment’ to cover the full range of organisations or associations registered or recognised under the FWRO Act, including State-registered associations and transitionally recognised associations.
7. The FW Act introduces new collective industrial instruments – ‘enterprise agreements’ and new types of ‘workplace determinations’. However, ‘AWAs’, ‘workplace agreements’, ‘pre-reform AWAs’ and ‘pre-reform certified agreements’ made under the WR Act will continue to operate as ‘transitional instruments’ under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (FWTPCA Act).
8. **Subclause 3.2** amends the definition of ‘AWA’ in Rule 1.2.1 to reflect the changing of the AWA to a transitional instrument, saved by Part 2 of Schedule 3 to the FWTPCA Act.

9. **Subclause 3.3** amends the definition of ‘pre-reform AWA’ in Rule 1.2.1 to reflect the continued transitional nature of the pre-reform AWA, saved by Part 2 of Schedule 3 to the FWTPCA Act.
10. **Subclause 3.4** amends the definition of ‘pre-reform certified agreement’ in Rule 1.2.1 to reflect the continued transitional nature of the pre-reform certified agreement, saved by Part 2 of Schedule 3 to the FWTPCA Act.
11. **Subclause 3.5** amends the definition of ‘workplace agreement’ in Rule 1.2.1 to reflect the changing of the workplace agreement to a transitional instrument, saved by Part 2 of Schedule 3 to the FWTPCA Act.
12. **Subclause 3.6** inserts a definition of ‘enterprise agreement’ into Rule 1.2.1 to reflect the new arrangements introduced by the FW Legislation.
13. **Subclause 3.7** inserts a definition of ‘workplace determination’ into Rule 1.2.1 to reflect the new arrangements introduced by the FW Legislation.
14. Rule 2.2.2 and 2.2.3 provide that the superannuation salary of an ordinary employer-sponsored member is the ordinary time earnings of the person if specified in Rule 2.2.3. Rule 2.2.3 specifies various workplace instruments and agreements, including those provided for by the former WR Act (AWAs, pre-reform AWAs, pre-reform certified agreements and workplace agreements).
15. **Subclause 3.8** amends Rule 2.2.3 to reference the new arrangements introduced by the FW Legislation, specifically enterprise agreements and workplace determinations.
16. Rule 2.2.4 allows a designated employer to pay additional contributions on top of basic contributions, provided this is not prevented by the *Superannuation Industry (Supervision) Act 1993*. **Subclause 3.9** amends the note to Rule 2.2.4 to add to the examples of circumstances where an employer may make additional contributions. Subclause 3.9 inserts the circumstance where additional superannuation cover is specified in an enterprise agreement or a workplace determination.

#### ***Co-contributions for non-contributing members***

17. Rule 2.4.1 provides the circumstances when an ordinary employer-sponsored member may transfer or roll-over amounts into the PSSAP Fund, including amounts payable in respect of a person under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*. As the Rule limits transfers to those made by ordinary employer-sponsored members, co-contribution amounts are unable to be paid into the PSSAP Fund once contributory membership ceases.
18. **Subclause 4.1** inserts a new Rule 2.4.1A to allow PSSAP members who are no longer ordinary employer-sponsored members to transfer a co-contribution amount into the PSSAP Fund where the amount, in total or part, relates to a period where the person was an ordinary employer-sponsored member.
19. **Subclause 4.2** amends the definition of ‘transfer amount’ under Rule 1.2.1 to include the new Rule 2.4.1A inserted by subclause 4.1.

**Application of the Amendments – transfer of Government Co-contributions**

20. **Clause 5** provides that the amendments to the Rules made by clause 4 of the Amending Deed only apply in relation to transfer amounts received on or after the day on which the amendment commences.