

EXPLANATORY STATEMENT

Issued by authority of the Minister for Finance and Deregulation

Superannuation Act 2005

Fifth Amending Deed made under section 11 of the Superannuation Act 2005 to amend the Superannuation (PSSAP) Trust Deed and Rules.

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 2005 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 Australian Reward Investment Alliance (ARIA) is the trustee for the PSSAP.

Section 11 of the 2005 Act provides that the Minister may amend the Trust Deed by signed instrument, subject to obtaining the consent of ARIA to the amendment where necessary.

Fifth Amending Deed

The Minister amended the Trust Deed and the Rules for the PSSAP set out in the Schedule to the Trust Deed by signed instrument. That instrument is called the Fifth Amending Deed in this statement.

The purpose of the Fifth Amending Deed is to amend the Trust Deed and Rules as part of public sector superannuation reforms provided for in the *Governance of Australian Government Superannuation Schemes Act 2011*. Background information on the changes and the details of the Fifth Amending Deed are set out in the Attachment.

Approval by ARIA

Although section 11 of the 2005 Act allows the Minister to amend the PSSAP Trust Deed, section 32 of the 2005 Act requires ARIA to consent to the amendments in most circumstances. ARIA has consented to the amendments included in the Fifth 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 11 of the 2005 Act.

Section 17 of the LIA specifies that rule-makers should consult before making legislative instruments. ARIA was consulted on the amendments included in the Fifth Amending Deed.

Commencement

The amendments in the Deed commence on the commencement of the *Governance of Australian Government Superannuation Act 2011*.

BACKGROUND TO AND DETAILS OF THE FIFTH AMENDING DEED

Background

The Fifth Amending Deed forms part of public sector superannuation reforms. The package of reforms involves the following:

- the *Governance of Australian Government Superannuation Schemes Act 2011* (Governance Act) which merged the Australian Reward Investment Alliance (ARIA), the Military Superannuation and Benefits Board and the Defence Force Retirement and Death Benefits Authority to form a consolidated trustee body;
- the *ComSuper Act 2011* which made changes to the governance framework for superannuation administration arrangements for the main civilian and military superannuation schemes; and
- the *Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011* (Consequentials Act) which contains the consequential and transitional provisions necessary to facilitate the merger and the changes to superannuation administration.

Effect of the Governance Act and consequential amendments

Before the commencement of the Governance Act, ARIA (referred to as ‘the Board’) had certain powers and functions in the *Superannuation Act 2005* (2005 Act) and the Public Sector Superannuation Scheme Accumulation Plan (PSSAP) Trust Deed and Rules made under that Act.

The Governance Act established the Commonwealth Superannuation Corporation (CSC) as a body corporate with a separate legal identity from the Commonwealth, by continuing in existence the body corporate that was previously called ARIA.

- As a consequence, references to “the Board” in a number of legislative instruments required amendment to refer to “CSC”.

CSC is the trustee of the superannuation schemes for which it is responsible. CSC has a governing board which comprises a Chair and ten directors (directors).

- As a consequence, references to “Trustees” in a number of legislative instruments required amendment to refer to “directors”.

CSC’s functions are set out in section 8 of the Governance Act and its powers and functions in relation to the PSSAP and PSSAP Fund are set out in the 2005 Act and the PSSAP Trust Deed and Rules made under that Act.

Effect of the *ComSuper Act 2011* and the *Consequentials Act*

The Commissioner for Superannuation was previously responsible for providing administrative services to the Board. The *ComSuper Act 2011* provides for a new position of the Chief Executive Officer (CEO) of ComSuper whose function is to provide administrative services to CSC.

Division 3 of Schedule 2 to the Consequentials Act contains transitional provisions providing for references in Acts and instruments to the Commissioner to have effect as if those references were to CSC, ComSuper or the CEO of ComSuper (whichever is appropriate).

- These provisions mean that there is no general need to update references to the Commissioner in legislative instruments. However, in some instances it was beneficial to update references to the Commissioner for the sake of clarity.

Details of the Amending Deed

Commencement

Clause 1 provides that the amendments in the Deed commence on the commencement of the Governance Act.

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 and the Rules.

Amendments to the Trust Deed

Clauses 3 to 7 amend the Trust Deed, as shown in the table below.

Clause	Provision being amended	Effect of amendment	Reason for amendment
3.1	1	Deletes 1.3, 1.6 and 1.8 Inserts note at end	Several defined terms were no longer needed in the Trust Deed, as the relevant provisions are now included in the Governance Act. The note informs readers of the deletions.
3.2 3.3	3.2, opening text, immediately before the term “functions” 3.3, immediately before the terms “functions” and “powers”	Deletes “PSSAP”	It is unnecessary to refer to “PSSAP functions” and “PSSAP powers” in these subclauses, as the entire clause relates to the PSSAP.
4.1 4.2	2.1 2.2	Substitutes the clause Substitutes the clause	To reflect the name of the consolidated trustee body.
5.1 5.2	Item 2 of the Notes, immediately following clause 3.4 5.4 and 5.5	Deletes the item Deletes the clauses, inserts a note after clause 5.3	Issues relating to the operation of the trustee body, which were previously dealt with in these clauses, are now dealt with in the Governance Act. The note informs readers of the deletions.
6.1	Wherever occurring in the Trust Deed, except for clause 2	Deletes “The Board”, substitutes “CSC”, along with variations on those terms	To reflect the name of the consolidated trustee body. This amendment does not apply to clause 2 of the Trust Deed as this clause is being amended by clause 4 of the Fifth Amending Deed.

Clause	Provision being amended	Effect of amendment	Reason for amendment
7.1	8 and 9, except for paragraphs 8.1(c) and 9.1(c)	Deletes “the Commissioner”, substitutes “the CEO of ComSuper”	To reflect the new position of CEO of ComSuper.
7.2	8.1(c)	Substitutes the paragraph	The amendments to paragraphs 8.1(c) and 9.1(c) require a slightly different wording to that used in the rest of clauses 8 and 9, but the effect is the same.
7.3	9.1(c)	Substitutes the paragraph	

Amendments to the Rules

Clause 8 amends the Rules, as shown in the table below.

Clause	Provision being amended	Effect of amendment	Reason for amendment
8.1	1.2.1	Inserts a definition of “ CSC ”	To reflect the name of the consolidated trustee body.
8.2	1.2.1	Inserts a definition of “ director ”	To reflect that members of the consolidated trustee body are now known as “directors” rather than “trustees”.
8.3	1.2.1	Deletes the definition of “ trustee ”	
8.4	Wherever occurring in the Rules, except for Rules 4.1.1 and 6.1.1	Deletes “ The Board ” substitutes “ CSC ”, along with variations on those terms	To reflect the name of the consolidated trustee body. This amendment does not apply to Rules 4.1.1 and 6.1.1 as these are being amended by other provisions of the Fifth Amending Deed.
8.5	4.1.1	Substitutes the Rule	To reflect the name of the consolidated trustee body and to clarify that death cover and invalidity cover may be taken out in separate policies. A note has been included with the Rule to further clarify that death cover and invalidity cover may be taken out in separate policies.
8.6	6.1.1	Substitutes the Rule	To reflect the name of the consolidated trustee body. To reflect that members of the trustee body are now known as “directors” rather than “trustees”.