

EXPLANATORY STATEMENT

Issued by authority of the Minister for Finance and Deregulation

Superannuation Act 2005

Sixth 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. Commonwealth Superannuation Corporation (CSC) 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 CSC to the amendment where necessary.

Sixth 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 Sixth Amending Deed in this Statement.

The purpose of the Sixth Amending Deed is to amend the Trust Deed as a consequence of amendments to the *Remuneration Tribunal Act 1973* contained in the *Remuneration and Other Legislation Amendment Act 2011* (the ROLA Act) relating to determining salary for Departmental Secretaries.

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

CSC Approval

Although section 11 of the 2005 Act allows the Minister to amend the PSSAP Trust Deed, section 32 of 2005 Act requires CSC to consent to the amendments in most circumstances.

However, CSC consent is not required for these amendments.

Legislative Instruments Act 2003

The Sixth 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 Sixth Amending Deed is subject to disallowance in accordance with section 11 of the 2005 Act. No consultation was required as the amendments are a consequence of machinery of government changes.

Commencement

The amendments in the Sixth Amending Deed come into effect on the day after the day of registration on the Federal Register of Legislative Instruments.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is at [Attachment B](#).

BACKGROUND TO AND DETAILS OF THE SIXTH AMENDING DEED

Commencement

Clause 1 specifies the commencement date for the amendments to the PSS Rules made by the Sixth Amending Deed (the Amending Deed) to be the day after the day of registration of the Amending Deed on the Federal Register of Legislative instruments.

Context

2. **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.

Application

3. **Clause 3** provides that the amendments to the Rules made by clause 4 of the Amending Deed only apply in relation to assignments made under subsection 14(3) of the *Remuneration Tribunal Act 1973* (the RT Act) on or after the day of commencement of the Amending Deed. For a Secretary who is subject to an assignment made prior to the commencement of the Amending Deed, employer contributions will continue to apply “fortnightly contribution salary” in accordance with PSSAP Rule 2.2.2. Contributions will not change to apply “ordinary time earnings” (under PSSAP Rules 2.2.2 and 2.2.3) until a subsequent assignment is made.

Amendments to the Rules in relation to basic salary and recognised allowances for Secretaries of Departments

4. Subsection 14(3) of the RT Act provides for the Secretary of the Department of the Prime Minister and Cabinet, in consultation with the Public Service Commissioner, to assign Departmental Secretaries to an amount of remuneration.

5. **Subclause 4.1** amends the definition of “remuneration determination” in Rule 1.2.1, expanding its meaning to include assignments made under subsection 14(3) of the RT Act. This amendment ensures that assignments made under subsection 14(3) of the RT Act are treated equivalently to other remuneration determinations made under the RT Act for the purposes of the Rules.

6. Under PSSAP Rule 2.2.2, fortnightly contribution salary for Public Sector Superannuation Scheme members is the applicable superannuation salary for an ordinary employer-sponsored member of the PSSAP, unless ordinary time earnings is specified in certain instruments, such as a remuneration determination. The present definition of remuneration determination does not include assignments under the RT Act.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Public Sector Superannuation Accumulation Plan – Sixth Amending Deed

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill/Legislative Instrument

The purpose of the Sixth Amending Deed is to amend the Trust Deed and Rules of the PSSAP as a consequence of amendments to the *Remuneration Tribunal Act 1973* (RT Act) contained in the *Remuneration and Other Legislation Amendment Act 2011* relating to determining salary for Departmental Secretaries.

The Sixth Amending Deed ensures that assignments made under subsection 14(3) of the RT Act are treated equivalently to other remuneration determinations made under that Act for the purposes of the Trust Deed and Rules.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Senator the Hon Penny Wong, Minister for Finance and Deregulation