

EXPLANATORY STATEMENT

Issued by authority of the Minister for Finance and Deregulation

Superannuation Act 2005

Seventh 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.

Seventh 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 Seventh Amending Deed in this Statement.

The purpose of the Seventh Amending Deed is to amend the Trust Deed as a consequence of amendments to the *Superannuation Industry (Supervision) Act 1993* that introduce MySuper products as default superannuation products. The amending legislation is the *Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012* and the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012*.

The Seventh Amending Deed ensures that the PSSAP complies with the MySuper requirements for offering a MySuper product to default fund members.

Background information on the changes and the details of the Seventh 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.

CSC has consented to the amendments contained in the Seventh Amending Deed.

Legislative Instruments Act 2003

The Seventh 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 Seventh Amending Deed is subject to disallowance in accordance with section 11 of the 2005 Act.

CSC and ComSuper have been consulted on the amendments.

Commencement

The amendments in the Seventh Amending Deed come into effect on 1 July 2013.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is at Attachment B.

ATTACHMENT A

BACKGROUND TO AND DETAILS OF THE SEVENTH AMENDING DEED**Commencement**

Clause 1 specifies the commencement date for the amendments to the PSSAP Rules made by the Seventh Amending Deed (the Amending Deed) to be 1 July 2013. Authorised Registrable Superannuation Entity licensees may offer a MySuper product from 1 July 2013.

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 amounts received by CSC on or after the day of commencement of the deed. This ensures that amounts received by CSC from 1 July 2013 in relation to a MySuper product comply with MySuper requirements.

Amendments to the Rules in relation to a MySuper product

4. **Subclause 4.1** amends the definition of ‘basic death and invalidity cover’ in Rule 1.2.1, expanding its meaning to include insurance coverage both provided or offered to PSSAP members and non-member spouse members under Division 1 of Part 4 of the Rules. The definition is expanded as a consequence of subclauses 4.6 and 4.7, which allow CSC to offer basic death and invalidity cover to PSSAP members and non-member spouse members who are not provided cover under Rule 4.1.1.

5. **Subclause 4.2** inserts a new definition of ‘MySuper product’ in Rule 1.2.1, having the same meaning as in the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

6. **Subclause 4.3** inserts a new Division 1A into Part 2 of the Rules to enable CSC to offer a MySuper product within the PSSAP.

7. Section 29TC establishes the requirements for the governing rules of a regulated superannuation fund for the offering of a MySuper product. New Rule 2.1A.1 specifies the general characteristics of a MySuper product, as required under paragraphs 29TC(1)(a) to (d) of the SIS Act. Paragraphs 29TC(1)(e) to (i) are not directly relevant to the PSSAP, but new paragraph 2.1A.1(e) ensures compliance with these provisions, and with all other MySuper requirements.

8. New Rule 2.1A.2 allows CSC to adopt a single diversified investment strategy that takes into account age and other prescribed factors and circumstances, as allowed for a MySuper product under subsection 29TC(2) of the SIS Act.

9. New Rule 2.1A.3 requires CSC to only deduct fees from a personal accumulation account or non-member spouse interest account in respect of a MySuper product in compliance with SIS Act requirements. The allowable fees for a MySuper product are set out in section 29V of the SIS Act.

10. New Rule 2.1A.3 does not provide an additional power for CSC to deduct fees, but acts as a restriction on CSC’s existing powers to deduct fees, in respect of MySuper products.

CSC may only deduct amounts from a personal accumulation account in accordance with Rule 5.1.6.

11. New Rule 2.1A.4 requires CSC to provide basic death and invalidity cover in respect of a MySuper product if required to by the SIS Act. Section 68AA of the SIS Act allows CSC to determine reasonable conditions for the provision of death and permanent incapacity cover. Where a member does not meet the reasonable conditions, CSC is not required to provide insurance cover to that person.

12. New Rule 2.1A.5 requires any basic death and invalidity cover provided in respect of a MySuper product to comply with MySuper requirements in the SIS Act.

13. **Subclause 4.4** amends Rule 3.1.13 to allow roll-over applications to be made in respect of PSSAP members, not just by PSSAP members. This amendment ensures that roll-over applications made on behalf of PSSAP members are allowable, and not just applications made by the member themselves, where the SIS Act allows an application to be made.

14. Paragraph 29TC(1)(i) of the SIS Act restricts the payment of pensions out of assets attributed to beneficial interest in a MySuper product. **Subclause 4.5** amends Rule 3.5.2 to ensure amounts in respect of a MySuper product are not used to purchase an income product arranged by CSC unless allowable under the SIS Act.

15. **Subclauses 4.6 to 4.12** amend and add to Division 1 of Part 4 of the Rules to allow CSC the discretion to offer basic death and invalidity insurance to non-ordinary employer-sponsored members. The existing basic death and invalidity requirements for ordinary employer-sponsored members are maintained. There is no requirement for CSC to offer basic death and invalidity insurance to non-ordinary employer-sponsored members, but the discretion allows CSC to offer insurance subject to any requirements under the SIS Act. This allows CSC to comply with any MySuper product requirements in relation to offering death and invalidity insurance.

16. **Subclauses 4.6 and 4.7** insert new Rules 4.1.1A and 4.1.2A, giving CSC the discretion to offer basic death and invalidity cover to PSSAP members and non-member spouse members not covered by a policy under Rule 4.1.1, subject to the terms and conditions of any policy taken out under new Rule 4.1.1A.

17. **Subclause 4.7** also inserts new Rule 4.1.2B giving CSC discretion to determine the terms and conditions of any basic death and invalidity cover offered to persons under new Rule 4.1.2A. These terms and conditions are to be consistent with the terms and conditions of the relevant policy (new Rule 4.1.2A). As noted, these terms and conditions allow CSC to determine how a person is able to elect to cease their insurance cover, as well whether they can elect to cease cover, for example, invalidity cover or both death and invalidity cover.

18. **Subclause 4.8** inserts new Rule 4.1.3A and Rule 4.1.3B. New Rule 4.1.3A requires CSC to make a claim against an insurance policy provided under Rule 4.1.2A if the person dies or makes a claim against their invalidity cover. As noted, CSC may determine the terms and conditions for a claim against a policy for invalidity cover. New Rule 4.1.3B ensures that amounts paid under a basic death and invalidity cover policy are paid into the PSSAP Fund and credited to the appropriate personal accumulation account or non-member spouse interest account.

19. **Subclauses 4.9 and 4.10** amend Rules 4.1.5 to 4.1.7 to expand their application to all basic death and invalidity cover provided under Rule 4.1.2 and new Rule 4.1.2A. This ensures that all premiums are paid by CSC from the PSSAP Fund and that premiums are deducted from

the personal accumulation account or non-member spouse interest account of the person receiving the insurance cover (unless the amount in that person's account is not sufficient to cover the premium).

20. **Subclause 4.11** amends Rule 4.1.8 to allow ordinary employer-sponsored members to elect to cease their basic death and invalidity cover. This conforms to MySuper product requirements for 'opt-out' insurance. **Subclause 4.12** inserts new Rule 4.1.9, allowing CSC to set the terms and conditions for any election made under new paragraph 4.1.8(e) to cease basic death and invalidity cover.

21. **Subclause 4.13** deletes the heading to Rule 7.3.7 and Rule 7.3.7, removing the prohibition against providing insurance to a non-member spouse. This allows CSC to determine whether non-member spouse's are offered insurance under Division 1 of Part 4 and ensures that CSC is able to comply with any requirements for insurance in respect of a MySuper product.

Amendments to the Rules in relation to a MySuper product

22. **Subclause 5.1** inserts a new definition of 'general insurance company', having the same meaning as in the *Income Tax Assessment Act 1997* (ITAA 97).

23. **Subclause 5.2** inserts a new definition of 'insurance company', meaning either a life insurance company or general insurance company.

24. **Subclauses 5.3 to 5.6** amend references to a 'life insurance company', replacing them with references to an 'insurance company', which is newly defined by subclause 5.2. These amendments allow CSC to offer insurance via general insurance companies, in addition to life insurance companies. This provides CSC with greater flexibility and is in conformance with Australian Prudential Regulation Authority's prudential standards for superannuation.

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 – Seventh 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 Seventh Amending Deed is to amend the Trust Deed as a consequence of amendments to the *Superannuation Industry (Supervision) Act 1993* that introduce MySuper products as default superannuation products.

The Seventh Amending Deed ensures that the PSSAP complies with MySuper requirements for offering a MySuper product to default fund members.

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