

EXPLANATORY STATEMENT

Issued by authority of the Minister for Finance and Deregulation

Superannuation Act 2005

Eighth 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.

Eighth 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 Eighth Amending Deed in this Statement.

The purpose of the Eighth Amending Deed is to amend the Trust Deed to allow PSSAP members to apply to CSC for account-based pensions.

Background information on the changes and the details of the Eighth 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 Eighth Amending Deed.

Legislative Instruments Act 2003

The Eighth 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 Eighth Amending Deed is subject to disallowance in accordance with section 11 of the 2005 Act. ComSuper have been consulted on the amendments contained in the Eighth Amending Deed.

Commencement

The amendments in the Eighth Amending Deed come into effect on the day after 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.

ATTACHMENT A

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

Clause 1 specifies the commencement date for the amendments to the Rules made by the Amending Deed to be the day after it is registered.

Interpretation

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.

Introduction of Account-based Pension Products

3. **Subclauses 3.1 to 3.4** include definitions of “account-based pension”, “pension account”, “PSSAP pensioner” and “reversionary beneficiary” into Rule 1.2.1 in alphabetical order.

4. Rule 3.1.1 provides for the circumstances where persons may make benefit applications to CSC. **Subclauses 3.5 to 3.7** amend Rule 3.1.1 by inserting new paragraphs (g) and (h), allowing PSSAP members to apply for a pension, and PSSAP members and reversionary beneficiaries to apply to commute their pension.

5. The notes to Rule 3.1.13 include a reference to PSSAP not directly providing income streams to members who have reached preservation age. **Subclause 3.8** removes this reference as the Eighth Amending Deed provides for income streams to be paid directly from the PSSAP in the form of account-based pensions.

6. **Subclause 3.9** inserts a new Division 6 into Part 3 of the Rules, providing for the account-based pensions to be provided by CSC.

7. New Rule 3.6.1 provides that CSC may provide an account-based pension to a person who applies for one under new paragraph 3.1.1(g). In providing a pension, CSC must comply with the *Superannuation Industry (Supervision) Act 1993* and the regulations under that Act (SIS Legislation). Provision of a pension is also conditional on any terms and conditions that CSC may determine under new Rule 3.6.2. Under the SIS Legislation, transition to retirement income streams are account-based pensions that meet certain additional requirements. Provided the requirements of the SIS Legislation are complied with, CSC may offer a transition to retirement pension as a form of account-based pension.

8. New Rule 3.6.2 allows CSC to determine the terms and conditions for the provision of an account-based pension. Any terms and conditions determined by CSC must be permitted by the SIS Legislation. The note to the new rule provides examples of terms and conditions that CSC may decide to determine.

9. New Rule 3.6.3 provides for minimum conditions to be met for pensions that are paid, in addition to any terms and conditions determined by CSC under new Rule 3.6.2. The conditions set out in new rule 3.6.3 are primarily based on SIS Legislation requirements for account-based pensions.

10. New Rule 3.6.4 provides that CSC shall establish and maintain a separate pension account for each pension. The pension account distinguishes amounts in it from those in a

member's personal accumulation account. A separate account for each pension allows CSC to provide multiple pensions to the same person whilst keeping each pension distinct, as the SIS Legislation does not allow contributions or rollovers to be added to an existing pension.

11. New Rule 3.6.5 provides that a PSSAP member's pension account balance is the net result of amounts credited to it, minus amounts debited from it. Amounts that are to be credited to a pension account are listed in new Rule 3.6.6 and amounts that are to be debited to a pension account are listed in new Rule 3.6.7.

12. Amounts that are to be credited to a pension account are:

- amounts transferred from a person's personal accumulation account and/or a non-member spouse interest account, as requested by the PSSAP member (this is the establishment amount for a pension, and cannot be added to by way of contribution or rollover);
- any interest in respect of fund earnings, as determined by CSC (these are the investment earnings applied in respect of amounts invested from the pension account); and
- any other amounts that CSC may determine (this covers amounts such as corrections for any incorrectly debited amounts; this does not give CSC a new power to accept transfers or rollovers into the pension account from other funds).

13. Amounts that are to be debited to a pension account are:

- any pension or lump sum payments paid in respect of the PSSAP pensioner or reversionary beneficiary;
- any interest in respect of fund losses, as determined by CSC (these are the investment losses applied in respect of amounts invested from the pension account);
- any fees, costs and expenses paid or deducted from a pension account, as determined under new Rule 3.6.9 (these are the fees, costs and expenses of providing the pension, which are paid for by the PSSAP pensioner);
- any amounts commuted under Rule 3.6.8; and
- any other amounts that CSC may determine (this covers amounts such as corrections for any incorrectly credited amounts).

14. New Rule 3.6.8 provides for the option to commute amounts held in a pension account. These commuted amounts can be rolled over or transferred to a superannuation entity or life assurance company, or paid directly to the person as a lump sum. If the person has a personal accumulation account or non-member spouse interest account, the respective account can be credited with the commuted amount.

15. New Rule 3.6.9 provides that any fees, costs and expenses in relation to a pension account are to be determined by CSC, and deducted from that pension account. This means that the charges applicable to the provision of a pension are payable by the PSSAP pensioner.

16. New Rule 3.6.10 allows CSC to change the investment options applying to the

pension account of a deceased pensioner prior to the payment of the death benefit. For example, CSC may decide to decrease the risk profile of the investments.

17. New Rule 3.6.11 ensures that a PSSAP pensioner or reversionary beneficiary will be able to apply for a benefit in an equivalent manner to a PSSAP member. Specifically, this rule will ensure that:

- A PSSAP pensioner may apply to cash an amount in respect of an account-based transition to retirement pension on compassionate or severe financial hardship grounds.
- Amounts can be paid to a legal personal representative where a PSSAP pensioner or reversionary beneficiary is has a legal disability.
- A person seeking a benefit of a deceased PSSAP pensioner or reversionary beneficiary may make a benefit application.
- A PSSAP pensioner or the Commissioner for Taxation may apply for the payment of an amount from a pension account pursuant to a release authority.
- CSC may pay amounts to an eligible rollover fund when a PSSAP pensioner or beneficiary cannot be found.

18. New Rule 3.6.12 provides that a person's total benefit for the purposes of Rule 3.1.6, Rule 3.1.10 and Rule 3.1.11A includes the balance of their pension account. This rule allows payments made in relation to compassionate and financial hardship grounds, to a member's legal personal representative, or in accordance with a release authority to be able to be made from both or either of the member's personal accumulation account and pension account.

19. New Rule 3.6.13 provides for the nomination of a reversionary beneficiary to receive the balance of a pension account upon the death of a PSSAP pensioner (including the timeframe for such a nomination).

20. New Rule 3.6.14 provides for the circumstance where a person dies in receipt of a pension. Paragraph (a) provides that where a person has validly nominated a reversionary beneficiary under new Rule 3.6.13, and where that nomination is valid at the date of death of the PSSAP pensioner, the pension is to continue to be paid to the reversionary beneficiary, subject to the SIS Legislation. In particular, Regulation 6.21(2A) of the *Superannuation Industry (Supervision) Regulations 1994*, restricts the payment of pensions to dependent children under 18 years of age, or under 25 years of age if financially dependent or having a disability of the kind described in subsection 8 (1) of the *Disability Services Act 1986*.

21. Paragraph (b) provides that where a nomination has not been made under new Rule 3.6.13, but a valid binding member nomination has been made, then CSC must deal with the payment of the balance of the pension account in accordance with the binding member nomination, subject to the SIS Legislation.

22. Paragraph (c) provides that where neither paragraph (a) or (b) apply, CSC is to determine the appropriate beneficiary or beneficiaries for any amount remaining in the pension account of a deceased PSSAP pensioner, subject to the SIS Legislation.

23. New Rule 3.6.15 provides that any amounts remaining in a reversionary beneficiary's pension account will be paid out as determined by CSC, subject to the SIS Legislation.

24. Rule 5.5.2 requires CSC to correct mistakes made in the crediting or debiting of amounts to or from a PSSAP member's personal accumulation account. **Subclause 3.10** replaces Rule 5.5.2 and its heading to include mistakes made to the personal accumulation account, pension account or non-member spouse interest account of a PSSAP member, PSSAP pensioner or reversionary beneficiary.

25. Rule 5.1.5 provides for the amounts that are to be credited to a PSSAP member's personal accumulation account. As amounts are debited from a person's personal accumulation account and credited to their pension account upon the establishment of an account-based pension, **subclause 3.11** provides that amounts in a pension account that are commuted under new Rule 3.6.8 are to be credited to the personal accumulation account.

Removing Reference to Previously Deleted Rule

26. The note immediately after Rule 3.1.4 makes reference to the payment of benefits under Rule 3.1.3 or Rule 3.1.4. **Subclause 4.1** removes the reference to Rule 3.1.3, as that rule was deleted by the Second PSSAP Amending Deed.

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 – Eighth 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 Eighth Amending Deed is to amend the Trust Deed and Rules of the PSSAP to introduce account-based pension products for PSSAP members. Previously, PSSAP members could only choose to take their benefit in the form of a lump sum, or have it rolled-over or transferred to another superannuation entity.

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