

EXPLANATORY STATEMENT

Issued by authority of the Minister for Finance and Deregulation

Superannuation Act 2005

Ninth 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 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.

Ninth Amending Deed

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

The purpose of the Ninth Amending Deed is to amend the Trust Deed to allow certain members of the Commonwealth Superannuation Scheme (CSS) and Public Sector Superannuation Scheme (PSS) to:

- make salary sacrifice contributions into the PSSAP;
- transfer certain funded amounts from the PSS into the PSSAP;
- transfer amounts from other funds into the PSSAP; and
- transfer a lump sum CSS or PSS benefit into the PSSAP for the purposes of purchasing a PSSAP pension product.

The Ninth Amending Deed also requires CSC to determine administration fees that are to be charged to CSS and PSS members who become members of the PSSAP.

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

Legislative Instruments Act 2003

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

Consultation

Section 17 of the LIA specifies that rule-makers should consult before making legislative instruments. ComSuper have been consulted on the amendments contained in the Ninth Amending Deed.

Commencement

The amendments in the Ninth Amending Deed come into effect on the day after registration on the Federal Register of Legislative Instruments, except:

- clauses 7 and 8, which come into effect on 1 July 2014; and
- clause 9, which comes into effect immediately after the commencement of the Seventh Amending Deed (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 NINTH AMENDING DEED**Commencement**

Clause 1 specifies the commencement date for the amendments to the Rules made by the Amending Deed as the day after registration on the Federal Register of Legislative Instruments, except:

- clauses 7 and 8, which commence on 1 July 2014; and
- clause 9, which commences immediately after the commencement of the Seventh Amending Deed (1 July 2013).

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.

Salary Sacrifice for Australian Government Superannuation Scheme Members

3. **Clause 3** provides that the amendments made by clause 4 apply in relation to contributions made on or after the commencement of clause 4 of the Amending Deed.

4. **Clause 4** allows contributory Commonwealth Superannuation Scheme (CSS) and Public Sector Superannuation Scheme (PSS) members, who make a valid election to become a PSSAP member, to make salary sacrifice contributions into the PSSAP. Eligibility for PSSAP membership for CSS and PSS contributory members is provided for in the definition of ‘Australian government superannuation scheme member’ under subsection 4(1) of the *Superannuation Act 2005* (2005 Act), subject to a declaration by the Finance Minister. The Superannuation (PSSAP) (Australian Government Superannuation Scheme Member) Declaration 2013 (No. 1) makes the relevant declaration.

5. A person eligible for PSSAP membership as an Australian government superannuation scheme member, and who validly elects to become a PSSAP member, is defined as a ‘current government scheme member’ (new definition inserted by **subclause 4.3**). A person only remains a current government scheme member when they are an Australian government superannuation scheme member.

6. Eligibility for PSSAP membership for CSS and PSS members with preserved benefits is also provided for under the definition of ‘former Australian government superannuation scheme member’ under subsection 4(1) of the 2005 Act, and declared in the Superannuation (PSSAP) (Australian Government Superannuation Scheme Member) Declaration 2013 (No. 1). However, former Australian government superannuation scheme members are not able to make salary sacrifice contributions into the PSSAP.

7. A person eligible for PSSAP membership as a former Australian government superannuation scheme member, and who validly elects to become a PSSAP member, is defined as a ‘former government scheme member’ (new definition inserted by **subclause 4.5**). A person only remains a former government scheme member when they are a former Australian government superannuation scheme member.

8. **Subclause 4.1** amends the definition of ‘additional employer contributions’ in Rule 1.2.1, expanding its meaning to include salary sacrifice contributions made in respect of current government scheme members.

9. **Subclause 4.2** inserts a new definition of ‘Australian government superannuation scheme member’ (and corresponding note) in Rule 1.2.1, having the same meaning as in the 2005 Act.

10. **Subclause 4.3** inserts a new definition of ‘current government scheme member’, meaning a person who has a PSSAP membership because they were, and continue to be, an Australian government superannuation scheme member (see paragraph 5 above). **Subclause 4.3** also inserts an explanatory note after the new definition, regarding concurrent employment.

11. **Subclause 4.4** amends the definition of ‘designated employer’ in Rule 1.2.1, expanding its meaning to include designated employers of current government scheme members, as determined in accordance with section 19 of the *Superannuation Act 2005*.

12. **Subclause 4.5** inserts a new definition of ‘former Australian government superannuation scheme member’ in Rule 1.2.1, having the same meaning as in the 2005 Act.

13. **Subclause 4.5** also inserts a new definition of ‘former government scheme member’, meaning a person who has a PSSAP membership because they were, and continue to be, a former Australian government superannuation scheme member (see paragraph 7 above).

14. **Subclause 4.5** also inserts a new definition of ‘government scheme member’, meaning a person who has a PSSAP membership because they are or were an Australian government superannuation scheme member or former Australian government superannuation scheme member. A person remains a government scheme member even when they no longer are eligible for membership as an Australian government superannuation scheme member or former Australian government superannuation scheme member.

15. **Subclause 4.6** amends the note immediately before Rule 2.1.1 to recognise that designated employers may also pay salary sacrifice contributions in respect of current government scheme members.

16. **Subclause 4.7** replaces the heading immediately before Rule 2.1.1 to distinguish between concurrent membership provisions for ordinary employer-sponsored members and current government scheme members.

17. **Subclause 4.8** replaces the note immediately after Rule 2.1.3 to recognise that PSSAP members may have a pension account in addition to, or in place of, a personal accumulation account (see paragraph 35 below).

18. **Subclause 4.9** inserts new Rules 2.1.4 to 2.1.8 to provide for concurrent membership for current government scheme members in respect of concurrent employments, and in respect of persons who have concurrent memberships as an ordinary employer-sponsor member and as a government scheme member.

19. New Rule 2.1.4 allows a person to be a current government scheme member in respect of two or more concurrent employments.

20. New Rule 2.1.5 provides that current government scheme membership does not cease when a member with concurrent employments ceases employment if they remain an employee of at least one designated employer. New Rule 2.1.5 also provides that current government scheme membership does not cease upon ceasing employment if that person becomes an employee of another designated employer immediately after.

21. New Rule 2.1.6 allows CSC to maintain a single personal accumulation account for a current government scheme member with concurrent employments.

22. New Rule 2.1.7 allows a person to have more than one concurrent PSSAP membership as an ordinary employer-sponsored member and as a government scheme member.

23. New Rule 2.1.8 allows CSC to maintain a single personal accumulation account for a person who is an ordinary employer-sponsored member and a government superannuation scheme member at the same time. New Rules 2.1.7 and 2.1.8 allow a person who has multiple PSSAP memberships to have a single personal accumulation account.

24. **Subclause 4.9** also inserts explanatory notes after new Rules 2.1.6 and 2.1.8, indicating the requirement under Rule 5.1.1 for CSC to keep a personal accumulation account and/or pension account for each PSSAP member.

25. **Subclause 4.10** inserts new Rule 2.2.4A to allow designated employers to make salary sacrifice contributions in respect of current government scheme members. For salary sacrifice contributions to be valid, members must elect a particular investment strategy and CSC must accept that particular investment strategy election. New Rule 2.2.4B provides that salary sacrifice contributions made under new rule 2.2.4A must not jeopardise the status of the PSSAP Fund as a complying superannuation fund, and meet any requirements under the *Superannuation Industry (Supervision) Act 1993* and regulations under that Act. **Subclause 4.10** also inserts an explanatory note after new Rule 2.2.4A regarding salary sacrifice contributions.

26. **Subclause 4.11** inserts new Rule 2.2.6A to provide that any salary sacrifice contributions in respect of current government scheme members are subject to determinations by CSC under Rule 2.2.5 (Rule 2.2.5 allows CSC to determine the method of payment of employer contributions).

27. **Subclause 4.12** inserts a new Division 5 into Part 2, requiring CSC to determine administration fees to be paid out of the personal accumulation account of a person who is a government scheme member. The reference to a 'government scheme member' means that these members continue to pay administration fees for the duration of their PSSAP membership, even when they cease to be a current government scheme member or a former government scheme member. **Subclause 4.12** also inserts an explanatory note after new Rule 2.5.1 regarding fees for PSSAP members.

28. **Subclause 4.13** inserts a new note immediately after Rule 5.1.1 to clarify that a PSSAP member includes an ordinary employer-sponsored member and a government scheme member.

29. **Subclause 4.14** amends Rule 5.1.6 to provide that administration fees paid under new Rule 2.5.1 are debited from the personal accumulation account of a PSSAP member.

30. Rule 5.4.2 allows CSC to determine when and how PSSAP members may make or change an election about their choice of investment strategy. **Subclause 4.15** amends Rule 5.4.2 to provide CSC with flexibility to also determine when and how particular PSSAP members may make or change an election about their choice of investment strategy.

31. **Subclause 4.16** makes a typographical correction to the heading immediately before Rule 7.3.7.

Transfer Amounts

32. **Clause 5** provides that the amendments made by clause 6 apply in relation to transfers or roll-overs made on or after the commencement of clause 6 of the Amending Deed.

33. **Subclause 6.1** amends the definition of ‘transfer amount’ in Rule 1.2.1, expanding its meaning to include amounts under new Rules 2.4.1B, 2.4.1C and 2.4.1D.

34. **Subclause 6.2** inserts new Rules 2.4.1B to 2.4.1D, which provide CSC with discretions to allow certain transfer amounts to be paid to CSC if the member has elected a particular investment strategy and CSC has accepted that election. These amounts are:

- roll-over superannuation benefits, including PSS accumulated transfer amounts and Accumulated Additional Contributions, in respect of a current government scheme member (new Rule 2.4.1B);
- PSS accumulated transfer amounts and Accumulated Additional Contributions in respect of a former government scheme member (new Rule 2.4.1C); and
- roll-over superannuation benefits paid from the PSS or CSS in respect of a PSSAP member if the member has made an application to use the benefits to purchase an account-based pension (new Rule 2.4.1D).

Subclause 6.2 also inserts an explanatory note after new Rule 2.4.1D highlighting certain conditions required for CSC to accept a transfer or roll-over under new Rules 2.4.1B, 2.4.1C and 2.4.1D.

35. **Subclause 6.3** amends Rule 3.6.6 to provide that amounts transferred or rolled-over under new Rule 2.4.1D are to be credited to a member’s pension account, unless that amount is credited to the member’s personal accumulation account.

36. **Subclause 6.4** amends Rule 5.1.1 to recognise the introduction of PSSAP account-based pensions, meaning members may have a pension account in addition to, or in place of, a personal accumulation account.

37. Rule 7.3.8 refers to transfer amounts, including those referred to in Rule 2.4.1. **Subclause 6.5** amends Rule 7.3.8 to expand the reference to include Part 2, Division 4, which encompasses the new Rules 2.4.1B to 2.4.1D that are inserted by the Amending Deed.

Transfer Amounts from 1 July 2014

38. **Clause 7** provides that the amendments made by clause 8 apply in relation to transfers or roll-overs made on or after the commencement of clause 8 of the Amending Deed.

39. The new Rules inserted by subclause 6.2 provide CSC with discretions to allow certain transfer amounts to be paid to CSC. **Subclauses 8.1 to 8.3** amend the new Rules inserted by subclause 6.2 to remove the discretions and entitle the relevant members to transfer the transfer amounts described by the new Rules from 1 July 2014. The discretions provided to CSC prior to 1 July 2014 in respect of these transfer amounts enable CSC to allow those transfer amounts to be paid before 1 July 2014 if the necessary administration changes are put in place before 1 July 2014.

Definition

40. **Clause 9** amends the definition of ‘general insurance company’ that is inserted by the Seventh Amending Deed from 1 July 2013. The definition is deleted and reinserted due to the new definitions introduced by subclause 4.5, which would otherwise result in the definition of general insurance company appearing out of alphabetical order.

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 – Ninth 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 Legislative Instrument

The purpose of the Ninth Amending Deed is to amend the Trust Deed to allow certain members of the Commonwealth Superannuation Scheme (CSS) and Public Sector Superannuation Scheme (PSS) members to:

- make salary sacrifice contributions into the PSSAP;
- transfer certain funded amounts from the PSS into the PSSAP;
- transfer amounts from other funds into the PSSAP; and
- transfer a lump sum CSS or PSS benefit into the PSSAP for the purposes of purchasing a PSSAP pension product.

The Ninth Amending Deed also requires CSC to determine administration fees that are to be charged to CSS and PSS members who become members of the PSSAP.

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