

EXPLANATORY STATEMENT

Issued by authority of the Minister for Finance and Deregulation

Superannuation Act 1990

Thirty-seventh Amending Deed to the Trust Deed to establish an occupational superannuation scheme for Australian Government employees and certain other persons pursuant to section 5 of the Superannuation Act 1990 (1990 Act).

An occupational superannuation scheme to provide benefits for certain of the Commonwealth's employees and for certain other people was established by Trust Deed dated 21 June 1990, under section 4 of the 1990 Act. The occupational superannuation scheme is called the Public Sector Superannuation Scheme (PSS).

Section 5 of the 1990 Act provides that the Minister may amend the Trust Deed by signed instrument, subject to obtaining the consent of the Commonwealth Superannuation Corporation (CSC) to the amendment, where necessary, as required under subsection 5(1A) of that Act. CSC is the trustee for the PSS.

Thirty-seventh Amending Deed

The Minister for Finance and Deregulation amended the Rules for the PSS set out in the Schedule to the Trust Deed by signed instrument. That instrument is called the Thirty-seventh Amending Deed in this statement.

The purpose of the Thirty-seventh Amending Deed is to amend the Trust Deed to allow greater flexibility for PSS members to roll-over certain funded amounts into other funds prior to exiting the PSS.

The Thirty-seventh Amending Deed also amends the Trust Deed to reflect the removal of the age limit for Superannuation Guarantee contributions. The amendments allow for accrual of benefits for members aged 75 and above, and for members aged 65 and above who are not gainfully employed on at least a part-time basis during the financial year.

Additionally, the Thirty-seventh Amending Deed modifies the effective date of a member's election to change their rate of contributions. The amendment provides that elections made on a contribution day will now take effect on that contribution day, rather than the next contribution day.

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

CSC Approval

Although subsection 5(1) of the 1990 Act allows the Minister to amend the PSS Trust Deed, subsection 5(1A) of the 1990 Act requires CSC to consent to the amendments in most circumstances. CSC has consented to the amendments contained in the Thirty-seventh Amending Deed.

Legislative Instruments Act 2003

The Thirty-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 Thirty-seventh Amending Deed is subject to disallowance in accordance with section 45 of the 1990 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 Thirty-seventh Amending Deed.

Commencement

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

- clauses 3 and 4, which come into effect immediately after the commencement of clause 4 of the Ninth Amendment of the Superannuation (PSSAP) Trust Deed;
- clauses 5, 6, 9 and 10, which come into effect on 1 July 2014; and
- clauses 7 and 8, which come into effect on 1 July 2013.

Statement of Compatibility with Human Rights

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

BACKGROUND TO AND DETAILS OF THE THIRTY-SEVENTH 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 registration on the Federal Register of Legislative Instruments, except:

- clauses 3 and 4, which commence immediately after the commencement of clause 4 of the Ninth Amendment of the Superannuation (PSSAP) Trust Deed;
- clauses 5, 6, 9 and 10, which commence on 1 July 2014; and
- clauses 7 and 8, which commence on 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.

Roll-over of Accumulated Transfer Amounts and Accumulated Additional Contributions

3. **Clause 3** provides that the amendments made by clause 4 apply in relation to roll-overs out of the PSS made on or after the commencement of clause 4 of the Amending Deed.

4. Rule 11.2.1 allows a member to roll-over post-1995 accumulated transfer amounts when they cease to be a member. **Subclause 4.1** inserts new Rules 11.2.3, 11.2.3A and 11.2.3B to enable CSC to allow PSS contributory members to roll-over the sum of all of their post-1995 accumulated transfer amounts to another superannuation fund once each financial year.

5. New Rule 11.2.3A defines a ‘post-1995 accumulated transfer amount’ to be an accumulated transfer amount in respect of a transfer amount transferred into the PSS under Rule 11.1.1 after 31 December 1995, the entitlement to which did not arise from employment during a period of leave of absence without pay that commenced on or before that date. Generally, these amounts are funded amounts that had been transferred into the PSS after 1995, plus interest, if any.

6. New Rule 11.2.3B clarifies the relevant date that a request to roll-over a post-1995 accumulated transfer amount is made, being the financial year in which a valid roll-over request is received. This provides certainty for the purposes of determining whether a roll-over request is the first for a particular financial year.

7. **Subclause 4.2** inserts new Rules 11.2.4A and 11.2.4B. New rule 11.2.4A enables CSC to allow PSS preserved benefit members to roll-over the sum of all of their post-1995 accumulated transfer amounts to another superannuation fund.

8. New Rule 11.2.4B defines a ‘post-1995 accumulated transfer amount’ to be an accumulated transfer amount in respect of a transfer amount transferred into the PSS under Rule 11.1.1 after 31 December 1995, the entitlement to which did not arise from employment during a period of leave of absence without pay that commenced on or before that date.

Basically, these amounts are funded amounts that had been transferred into the PSS after 1995, plus interest, if any.

9. **Subclause 4.2** also inserts new Rule 11.2.4C to allow CSC to determine fees in respect of roll-overs requested under new Rules 11.2.3 and 11.2.4A. If fees are charged, they are deducted from the accumulated transfer amount prior to roll-over.

10. For contribution days occurring before 1 July 2011, members were able to choose to pay additional contributions once they reached age 70. Additional contributions plus accumulated interest (if any) are called Accumulated Additional Contributions. **Subclause 4.3** inserts new Rule 11.4.10A to enable CSC to allow PSS members and preserved benefit members to roll-over the balance of their Accumulated Additional Contributions to another superannuation fund.

11. **Subclause 4.3** also inserts new Rule 11.4.10B to allow CSC to determine fees in respect of roll-overs requested under new Rule 11.4.10A. If fees are charged, they are deducted from the Accumulated Additional Contributions prior to roll-over.

Roll-over of Accumulated Transfer Amounts and Accumulated Additional Contributions from 1 July 2014

12. **Clause 5** provides that the amendments made by clause 6 apply in relation to roll-overs out of the PSS made on or after 1 July 2014.

13. The new Rules inserted by clause 4 provide CSC with discretions to allow roll-overs out of the PSS of post-1995 accumulated transfer amounts and Accumulated additional contributions. **Clause 6** amends the new Rules 11.2.3, 11.2.4A and 11.4.10A inserted by clause 4 to remove the discretions and allow the relevant members to roll-over the amounts described by the new Rules from 1 July 2014. The discretions provided to CSC prior to 1 July 2014 in respect of these amounts enable CSC to allow those amounts to be rolled-over before 1 July 2014 if the necessary administration changes are put in place before 1 July 2014.

Contributions from Age 75

14. **Clause 7** indicates that the amendments made by clause 8 apply in relation to contribution days occurring on or after 1 July 2013.

15. The Rules previously prevented members aged 75 and above from accruing PSS benefits, reflecting the age limit for employer contributions under the *Superannuation Guarantee (Administration) Act 1992* (the Superannuation Guarantee). From 1 July 2013, the Superannuation Guarantee age limit will be removed. **Clause 8** amends the Rules to reflect the removal of the Superannuation Guarantee age limit, allowing members aged 75 and above to accrue PSS benefits from 1 July 2013.

16. **Subclause 8.1** amends the definition of ‘contribution due day’ in Rule 1.2.1, expanding its meaning to include a contribution day where a zero contributions member would have been required to pay contributions under Part 4 if they were not a zero contribution member.

17. **Subclause 8.2** inserts a new definition of ‘zero contributions member’ in Rule 1.2.1, meaning a member for which the PSS Fund is unable to accept Part 4 contributions under the *Superannuation Industry (Supervision) Act 1993* (SIS Act) because they have reached age 75, or have reached age 65, but not age 75, and was not gainfully employed on at least a part-time basis during the financial year. The SIS Act does not allow a defined benefit scheme to accrue

benefits for a member under these circumstances unless they are attributable to mandated employer contributions. Part 4 contributions are member contributions (that is, not mandated employer contributions).

18. **Subclause 8.3** amends Rule 2.1.3, which allows further classifications of regular members and casual members, to recognise the introduction of a new membership classification of a zero contributions member.
19. **Subclauses 8.4 and 8.5** amends Rule 4.1.1 and 4.1.5 respectively, to remove paragraphs that make reference to contribution days occurring when a member reaches age 75. These references reflected the Superannuation Guarantee age limit of 75 that applied before July 2013, and prevented member contributions from being paid for members aged 75 and over. Although the Superannuation Guarantee age limit is removed, the SIS Act prevents accrual of benefits attributable to member contributions for members who have reached age 75, and for members who have reached age 65, but not age 75, and are not gainfully employed on at least a part-time basis during the financial year. This SIS Act restriction is captured by paragraph 4.1.1(e) and 4.1.5(b).
20. **Subclause 8.6** amends the note after Rule 4.3.1 to reflect the expanded definition of a contribution due day, as amended by subclause 8.1 (see paragraph 16 above).
21. **Subclauses 8.7 and 8.8** amend Rule 5.2.3 to allow regular members who are also zero contributions members to accrue a fortnightly contribution accrual on each contribution due day (contribution paid being 0%).
22. **Subclause 8.9** amends the note after Rule 5.2.3 to include a reference to a zero contributions member.
23. **Subclauses 8.10 and 8.11** amend Rule 5.3.3 to allow casual members who are also zero contributions members to accrue a fortnightly contribution accrual on each contribution due day (contribution paid being 0%).

Date of Effect of Changes to the Rate of Contribution

24. **Clause 9** provides that the amendments made by clause 10 apply in relation to contribution days occurring on or after the commencement of clause 10 of the Amending Deed (1 July 2014).
25. **Clause 10** amends Rule 4.1.3 to change the date of effect of changes to a member's rate of contributions. The amendment means that a member's request to change their rate of contribution will take effect on the contribution day when they make their request (if they make the request on the contribution day), or on the next contribution day (if they make the request on a day that is not a contribution day).

Statement of Compatibility with Human Rights

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

Public Sector Superannuation Scheme – Thirty-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 Legislative Instrument

The purpose of the Thirty-seventh Amending Deed is to amend the Trust Deed to allow greater flexibility for PSS members to roll-over certain funded amounts into other funds prior to exiting the PSS.

The Thirty-seventh Amending Deed also amends the Trust Deed to reflect the removal of the age limit for Superannuation Guarantee contributions. The amendments allow for accrual of benefits for members aged 75 and above, and for members aged 65 and above who are not gainfully employed on at least a part-time basis during the financial year.

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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