

EXPLANATORY STATEMENT

Issued by authority of the Minister for Finance

Superannuation Act 2005

Eleventh 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, 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 the 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.

Eleventh Amending Deed

The Minister amended the Rules by signed instrument. That instrument is called the Amending Deed in this Statement.

The existing PSSAP Rules allow Commonwealth Superannuation Scheme (CSS) and Public Sector Superannuation Scheme (PSS) contributory members to salary sacrifice and roll-over amounts into the PSSAP. PSS preserved members can transfer accumulation amounts in the PSS into the PSSAP. CSS and PSS members can also have their benefit paid into the PSSAP for the purposes of purchasing an account-based pension.

The purpose of the Amending Deed is to amend the Rules to allow PSSAP members greater options for adding amounts into the PSSAP for the purposes of purchasing an account-based pension. The amendments allow contributory CSS and PSS members to make after tax contributions into the PSSAP. They also allow post-tax contributions and roll-over amounts into the PSSAP at the time an account-based pension is purchased, or when combining with amounts from an existing account-based pension.

The Amending Deed also amends the Rules to allow CSC greater flexibility in offering insurance cover. The current insurance arrangements are that CSC are to provide basic death and invalidity cover to ordinary employer-sponsored members, and may offer death and invalidity cover to all other members and non-member spouses. However, the current rules also require CSC to cease basic death and invalidity cover when a person ceases being an ordinary employer-sponsored member. Basic and supplementary income protection cover can only be offered to ordinary employer-sponsored members.

The amendments allow CSC to offer continued death and invalidity insurance to members who cease being ordinary employer-sponsored members. The amendments also allow CSC to offer income protection insurance to all PSSAP members, not only ordinary employer-sponsored members.

Background information on the changes and the details of the 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 the 2005 Act requires CSC to consent to the amendments in most circumstances. CSC has consented to the amendments contained in the Amending Deed.

Legislative Instruments Act 2003

The 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 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. CSC have been consulted on the amendments contained in the Amending Deed.

Commencement

The amendments in the Amending Deed come into effect on the day after it is registered 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 AMENDING DEED

Commencement

Clause 1 specifies that the amendments to the PSSAP Rules made by the Amending Deed commence on the day after it is registered on the Federal Register of Legislative instruments.

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.

Trust Deed Amendments

3. **Subclause 3.1** updates the reference to the “Commonwealth Minister of State for Finance and Administration” in clause 1.4 of the Trust Deed to reflect the current title of the Minister as the “Commonwealth Minister of State for Finance”.

4. **Subclause 3.2** updates the reference to the “Minister for Finance and Administration” in the heading immediately after subclause 8.5 of the Trust Deed to reflect the current title of the Minister as the “Minister for Finance”.

Rules Amendments – Insurance

5. The existing PSSAP Rules require CSC to provide a minimum level of death and invalidity insurance cover to ordinary employer-sponsored members (i.e. basic death and invalidity cover), which ceases when the member ceases being an ordinary employer-sponsored member. CSC also may offer basic death and invalidity cover to non-member spouses, and to PSSAP members who are not ordinary employer-sponsored members. Supplementary death and invalidity insurance cover may also be offered to ordinary employer-sponsored members.

6. The existing PSSAP Rules also require CSC to provide a minimum level of income protection insurance cover to ordinary employer-sponsored members (i.e. basic income protection cover), which ceases when the member ceases being an ordinary employer-sponsored member, and allow CSC to offer supplementary income protection cover to ordinary employer-sponsored members. The existing PSSAP Rules do not allow CSC to offer income protection insurance to non-member spouses or PSSAP members who are not ordinary employer-sponsored members.

7. The Amending Deed amends the insurance provisions to allow CSC greater flexibility in offering insurance cover to all PSSAP members and non-member spouses. CSC must still provide death and invalidity and income protection insurance to ordinary employer-sponsored members. However, the Amending Deed provides that death and invalidity and income protection cover does not have to cease when the member ceases to be an ordinary employer-sponsored member.

8. **Subclause 4.1** updates the table immediately after Rule 1.1.1 that provides guidance to the structure of the Rules to reflect the new arrangements for death and invalidity and income protection insurance cover established by the Amending Deed.

9. **Subclauses 4.2 and 4.3** delete the definitions of “basic death and invalidity cover” and “basic income protection cover” respectively to reflect that there will no longer be a distinction in insurance cover between basic and supplementary cover, as CSC will have greater flexibility to determine insurance offerings.
10. **Subclause 4.4** inserts a new definition of “death and invalidity cover” into Rule 1.2.1 to reflect the new arrangements for death and invalidity and income protection insurance cover established by the Amending Deed, incorporating non-member spouses and all categories of PSSAP members. The new definition replaces the definitions of “basic death and invalidity cover” and “supplementary death and invalidity cover”, reflecting that there will no longer be a distinction in death and invalidity insurance cover between basic and supplementary cover.
11. **Subclause 4.5** updates the definition of “income protection cover” to encompass non-member spouses and all categories of PSSAP members and refer to the appropriate Division in the Rules. The new definition also replaces the definitions of “basic income protection cover” and “supplementary income protection cover”, reflecting that there will no longer be a distinction in income protection insurance cover between basic and supplementary cover.
12. **Subclause 4.6** expands the definition of “insurance premium” to encompass non-member spouses and all categories of PSSAP members.
13. **Subclauses 4.7 and 4.8** delete the definitions of “supplementary death and invalidity cover” and “supplementary income protection cover” respectively to reflect that there will no longer be a distinction in insurance cover between basic and supplementary cover, as CSC will have greater flexibility to determine insurance offerings.
14. **Subclauses 4.9 and 4.10** update Rules 2.1A.4 and 2.1A.5 respectively to remove the word “basic” as it appears before “death and invalidity cover”, to reflect that there will no longer be a distinction between basic and supplementary insurance cover, as CSC will have greater flexibility to determine insurance offerings.
15. **Subclause 4.11** deletes subparagraph (a)(iii) of Rule 3.1.1. **Subclause 4.12** inserts a new paragraph (i) in Rule 3.1.1, replacing subparagraph (a)(iii) to reflect that all PSSAP members, not only ordinary employer-sponsored members, may have income protection cover provided to them. Subclause 4.12 also modifies paragraph (h) to reflect that an additional new paragraph now follows it.
16. **Subclause 4.13** replaces the reference to “Rule 3.1.1(a)(iii)” in Rule 3.1.8 with a reference to “Rule 3.1.1(i)” to reflect the amendments made by subclauses 4.11 and 4.12.
17. **Subclauses 4.14 to 4.16, and 4.24** replace references to “ordinary employer-sponsored member” in Division 4 of Part 3 with references to “PSSAP member or non-member spouse”, to reflect that the Amending Deed allows CSC to offer income protection insurance cover to all PSSAP members and non-member spouses, not only ordinary employer-sponsored members.
18. **Subclauses 4.17 to 4.22** remove references to “basic” death and invalidity cover from Division 1 of Part 4 to reflect that there will no longer be a distinction in death and invalidity insurance cover between basic and supplementary cover, as CSC will have greater flexibility to determine insurance offerings.
19. Rule 4.1.8 currently provides for the cessation of basic death and invalidity cover for ordinary employer-sponsored members, including cessation of cover when the member ceases

being an ordinary employer-sponsored member. **Subclause 4.23** amends Rule 4.1.8 to reflect the greater flexibility CSC will have to determine insurance offerings. The amendment provides that death and invalidity cover provided to PSSAP members and non-member spouses will cease according to the terms and conditions agreed to between CSC and the relevant insurance company, subject to the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

20. **Subclause 4.25** deletes the note immediately after Rule 4.1.9 to reflect that the rule refers to all PSSAP members and non-member spouses, not only ordinary employer-sponsored members.

21. Divisions 2 and 4 of Part 4 provide for supplementary death and invalidity cover and income protection cover respectively. **Subclause 4.26** deletes Divisions 2 and 4 of Part 4 to reflect that there will no longer be a distinction in insurance cover between basic and supplementary cover, as CSC will have greater flexibility to determine insurance offerings.

22. **Subclauses 4.27, 4.28, 4.30, 4.32 and 4.34** remove references to “basic” income protection cover from Division 3 of Part 4 to reflect that there will no longer be a distinction in income protection insurance cover between basic and supplementary cover, as CSC will have greater flexibility to determine insurance offerings.

23. **Subclauses 4.29 and 4.31** inserts new Rules 4.3.1A, 4.3.2A and 4.3.2B into Division 3 of Part 4 to allow CSC to take out income protection insurance policies and offer income protection cover to some or all PSSAP members who are not ordinary employer-sponsored members and non-member spouses. The new rules do not require CSC to take out such policies or offer such cover. The terms and conditions of any cover provided is to be agreed between CSC and the relevant insurance company and is subject to the SIS Act.

24. Rule 4.3.3 currently provides for the cessation of basic income protection cover for ordinary employer-sponsored members, including cessation of cover when the member ceases being an ordinary employer-sponsored member. **Subclause 4.33** amends Rule 4.3.3 to reflect the greater flexibility CSC will have to determine insurance offerings. The amendment provides that income protection cover provided to PSSAP members and non-member spouses will cease according to the terms and conditions agreed to between CSC and the relevant insurance company, subject to the SIS Act.

25. Rules 4.3.5 and 4.3.6 provide for insurance premiums to be paid out of the personal accumulation accounts of ordinary employer-sponsored members. **Subclauses 4.35 and 4.36** replace references to “ordinary employer-sponsored member” in Rules 4.3.5 and 4.3.6, and in the note to Rule 4.3.5, with references to “PSSAP member or non-member spouse”, to reflect that the Amending Deed allows CSC to offer income protection insurance cover to all PSSAP members and non-member spouses, not only ordinary employer-sponsored members. Subclause 4.35 also inserts a reference to “non-member spouse interest account” in respect of one of the new references to “non-member spouse”.

Rules Amendments – Contributions and Transfers for Account-based Pensions

26. The existing PSSAP Rules allow contributory Commonwealth Superannuation Scheme (CSS) and Public Sector Superannuation Scheme (PSS) members to salary sacrifice and transfer roll-over amounts into the PSSAP. PSS preserved members can transfer accumulation amounts in the PSS into the PSSAP. CSS and PSS members could also have their benefit paid into the PSSAP for the purpose of purchasing an account-based pension.

27. Pension accounts may be commuted. However, there are limited circumstances where

a PSSAP member is able combine further amounts to a commuted amount to start another pension. The Amending Deed gives PSSAP members greater flexibility to contribute into their personal accumulation account – either immediately before they purchase an account-based pension, or when they wish to consolidate amounts with amounts in their pension account.

28. **Subclause 5.1** updates the definition of “employee contributions” to include amounts contributed under Rules 2.3A.1 or 2.3B.1 as well as 2.3.1. Rules 2.3A.1 and 2.3B.1 are new rules inserted by subclause 5.9, providing for employee contributions by current government scheme members and PSSAP members for the purposes of contributing to pension accounts.

29. **Subclause 5.2** amends Rule 2.2.4 to clarify that any additional employer contributions paid under the rule are subject to any CSC determinations made under Rule 2.2.5.

30. **Subclause 5.3** inserts a new paragraph (c) in Rule 2.2.4A to clarify that any salary sacrifice contributions paid under the rule are subject to any CSC determinations made under Rule 2.2.5. The amendment makes Rule 2.2.4A consistent with other contributions provisions inserted in Part 2 by subclause 5.9. Subclause 5.3 also modifies paragraph (b) to reflect that an additional new paragraph now follows it.

31. **Subclause 5.4** deletes the statement that “Current government scheme members cannot make personal post-tax member contributions or spouse contributions into the PSSAP Fund” in the note to Rule 2.2.4A. The Amending Deed allows current government scheme members to make personal post-tax member contributions.

32. **Subclause 5.5** updates the heading to Division 3 of Part 2 to reflect the new Divisions inserted by subclause 5.9.

33. **Subclause 5.6** replaces the reference to “contributions” with a reference to “employee contributions” to be consistent with Rule 2.3.2 and the definition of “employee contributions” in Rule 1.2.1.

34. **Subclause 5.7** amends Rule 2.3.3 to reflect that employee contributions can now be made by PSSAP members who are not ordinary employer-sponsored members under the new Divisions inserted by subclause 5.9.

35. **Subclause 5.8** amends Rule 2.3.5 to narrow the application of the rule to employee contributions received in accordance with Division 3 of Part 2, as a consequence of the new Divisions 3A and 3B that also refer to employee contributions.

36. **Subclause 5.9** inserts new Divisions 3A and 3B into Part 2 of the Rules.

37. New Division 3A allows current government scheme members (contributory CSS and PSS members) to pay post-tax contributions to CSC in any amount, at any time, provided members elect a particular investment strategy, CSC accepts the election of an investment strategy, and the method of payment complies with any CSC determinations under new Rule 2.3A.6. Eligible spouse contributions may also be paid on behalf of current government scheme members, provided the same requirements as for employee contributions are met.

38. CSC must pay any contributions received under new Division 3A into the PSSAP Fund, but must reject any contributions if the SIS Act prevents it, or if it would jeopardise the status of the PSSAP Fund as a complying fund.

39. New Division 3B allows PSSAP members to pay post-tax contributions to CSC in any amount for the purposes of commencing an account-based pension, provided members elect a

particular investment strategy, CSC accepts the election of an investment strategy, and the method of payment complies with any CSC determinations made under new Rule 2.3B.6. Eligible spouse contributions may also be paid on behalf of PSSAP members, provided the same requirements as for employee contributions are met.

40. CSC must pay any contributions received under new Division 3B into the PSSAP Fund, but must reject any contributions if the SIS Act prevents it, or if it would jeopardise the status of the PSSAP Fund as a complying fund.

41. Rule 2.4.1D currently allows PSSAP members to roll-over superannuation benefits paid from the CSS or PSS into the PSSAP for the purpose of commencing an account-based pension. **Subclauses 5.10 and 5.11** amend Rule 2.4.1D to allow greater flexibility for PSSAP members to roll-over amounts from the CSS, PSS and other funds into the PSSAP for the purpose of commencing an account-based pension, subject to the SIS Act.

42. **Subclause 5.12** amends the note to Rule 2.4.1D to reflect the changes made by subclauses 5.10 and 5.11.

43. **Subclause 5.13** inserts new Rule 2.4.1E immediately after Rule 2.4.1D to allow PSSAP pensioners to roll-over a superannuation benefit to combine with an amount commuted from an existing pension account, provided members elect a particular investment strategy, CSC accepts the election of an investment strategy, and the method of payment complies with any CSC determinations under Rule 2.4.2.

44. **Subclause 5.14** corrects the syntax of paragraph (e) of Rule 3.6.3.

45. **Subclause 5.15** amends Rule 3.6.8 to clarify that benefit applications under Rule 3.1.1(h) may be made by non-member spouses in addition to PSSAP pensioners and reversionary beneficiaries.

46. **Subclause 5.16** inserts a new paragraph (e) into Rule 3.6.8 to provide that a PSSAP member who does not have a personal accumulation account at the time they commute their pension will have one created and their commutation credited to that account.

47. **Subclause 5.17** replaces paragraphs (c) and (d) of Rule 5.1.5 to reflect that new Divisions 3A and 3B of Part 2 allow employee contributions to be made by current government scheme members, PSSAP members who are commencing a pension, and certain eligible spouse contributions on behalf of PSSAP members, and not only ordinary employer-sponsored members.

48. **Subclause 5.18** replaces paragraph (b) of Rule 5.1.6 to reflect the deletion of Divisions 2 and 4 of Part 4 by subclause 4.26.

49. **Subclause 5.19** inserts a new paragraph (g) into Rule 5.1.6 to clarify that a benefit cashed as an account-based pension under Rule 3.1.1(g) is debited from the PSSAP member's personal accumulation account. Subclause 5.19 also modifies paragraph (f) to reflect that an additional new paragraph now follows it.

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 – Eleventh 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 Eleventh Amending Deed is to amend the Rules to allow PSSAP members to make contributions into the PSSAP, and transfer roll-over amounts into the PSSAP, at the time they purchase an account-based pension.

The Amending Deed also amends the Rules to allow CSC greater flexibility in offering insurance cover. The amendments allow CSC to offer continued death and invalidity insurance to members who cease being ordinary employer-sponsored members. The amendments also allow CSC to offer income protection insurance to all PSSAP members, not only ordinary employer-sponsored 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 Mathias Hubert Paul Cormann, Minister for Finance