

## **EXPLANATORY STATEMENT**

*Issued by authority of the Minister for Finance*

*Superannuation Act 2005*

*Superannuation (PSSAP) Amendment (Administration Costs) Instrument 2015 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.

### **2015 Amending Deed**

The Minister has amended the Trust Deed by signed instrument, that is the Superannuation (PSSAP) Amendment (Administration Costs) Instrument 2015. That instrument is called the Amending Deed in this Statement.

Since the establishment of the PSSAP on 1 July 2005, members have not been required to pay administration fees. These have been paid by employer agencies. A decision was taken to deduct PSSAP administration fees from member accounts from 1 July 2015, consistent with the operation of other accumulation superannuation funds (the measure '*Public Sector Superannuation Accumulation Plan administration fees*' announced in the Mid-Year Economic and Fiscal Outlook 2014-15).

The *Governance of Australian Government Superannuation Schemes Legislation Amendment Act 2015* (Governance Amendment Act) amends the 2005 Act so that the costs of administering the PSSAP (the Act and the Trust Deed) are wholly paid out of the PSSAP Fund. These costs were previously determined by the Minister by legislative instrument and split between the PSSAP Fund (generally, costs of and incidental to the management of the fund and the investment of its money) and the Commonwealth (all other costs of administration of the Act and Trust Deed).

The purpose of the Amending Deed is to amend the PSSAP Trust Deed to allow CSC to determine administration fees to be paid by PSSAP members and to deduct these from PSSAP member accounts, as a consequence of the amendments made by the Governance Amendment Act to the 2005 Act.

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 consent is not required where an amendment to the Trust Deed relates to the costs of administration of the 2005 Act and Trust Deed (subsection 34(2) of the 2005 Act). The Amending Deed solely relates to the costs of administration of the 2005 Act and Trust 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 amendments to the Trust Deed are normally subject to disallowance in accordance with section 11 of the 2005 Act.

Item 4 of Schedule 3 to the Governance Amendment Act exempts from disallowance the first amending instrument made and commencing on or after the item's commencement, if that instrument solely relates to the costs of administration of the 2005 Act and Trust Deed. The Amending Deed solely relates to the costs of administration of the 2005 Act and Trust Deed.

## **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 commencement of item 4 of Schedule 3 to the Governance Amendment Act.

## **Statement of Compatibility with Human Rights**

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires a Statement of Compatibility with Human Rights for all legislative instruments subject to disallowance under section 42 of the LIA. As mentioned above, the Determination is exempt from disallowance which means that a Statement of Compatibility with Human Rights is not required.

## DETAILS OF THE AMENDING DEED

The purpose of the Amending Deed is to amend the Trust Deed to allow CSC to determine administration fees to be paid by PSSAP members and to deduct these from PSSAP member accounts.

### Name

2. **Section 1** provides that the name of the instrument is the *Superannuation (PSSAP) Amendment (Administration Costs) Instrument 2015*.

### Commencement

3. **Section 2** sets out the commencement provision for the Amending Deed. Item 1 of the table set out in subsection 2(1) provides that the Amending Deed commences at the same time as item 4 of Schedule 3 to the Governance Amendment Act. The note at the end of the table clarifies that the table only relates to provisions of the instrument as originally made, and that it will not be amended to deal with any later amendments of the instrument. Subsection 2(2) clarifies that the information in column 3 of the table is not part of the instrument.

### Authority

4. **Section 3** identifies the authority for the instrument as the *Superannuation Act 2005*.

### Schedule 1—Amendments to the Trust Deed

5. Subclause 3.2 lists particular powers that CSC has, which include the power to charge reasonable fees in relation to the PSSAP Fund. **Item 1** updates the wording in paragraph 3.2(m) to clarify that CSC may charge reasonable fees where they relate to the costs of administration of the 2005 Act and Trust Deed.

6. **Item 2** updates subclause 5.3 to clarify the amounts that CSC must pay out of the PSSAP Fund, being member benefits, costs of administration and taxes.

7. **Item 3** updates Division 5 of Part 2 of the PSSAP Rules to allow CSC to determine administration fees to be paid out of the personal accumulation account of members. The pre-existing Rule 2.5.1 only provides for fees to be determined for government scheme members (PSSAP members who are or were members of the Commonwealth Superannuation Scheme or Public Sector Superannuation Scheme).

8. **Item 4** inserts new Rules 7.2.1A and 7.2.1B to allow CSC to determine administration fees for non-member spouse interest accounts, and to deduct these fees from the accounts.