AUSTRALIAN DEFENCE FORCE SUPERANNUATION ACT 2015

AUSTRALIAN DEFENCE FORCE SUPERANNUATION TRUST DEED 2015

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Defence

1. The *Australian Defence Force Superannuation Act 2015* (ADF Super Act) gives effect to the Government's announcement to introduce new modern superannuation arrangements for people joining the Australian Defence Force (ADF) on and after 1 July 2016. A new superannuation scheme, to be known as the Australian Defence Force Superannuation Scheme or ADF Super, is being established to come into effect from this date. The scheme will be an accumulation (or defined contribution) scheme.

2. The ADF Super Act is part of a package of three Acts to establish the Australian Defence Force Superannuation Scheme or ADF Super. The other two Acts in the package are:

- the *Australian Defence Force Cover Act 2015* which provides for standalone statutory death and invalidity cover for members of ADF Super and those ADF personnel who would have been members of ADF Super but for choosing another fund to which Defence is to contribute; and
- the *Australian Defence Legislation Amendment (Superannuation and ADF Cover) Act 2015* which contains the consequential and transitional arrangements necessary to set up the new ADF Super arrangement. This Bill will also assist with the introduction of the ADF's future workforce model by providing flexible service arrangements for permanent members of the ADF.

3. Also included in the package is this ADF Super Trust Deed (Trust Deed). The Trust Deed relies substantially on the requirements set out in the superannuation regulatory regime provided for in the S*uperannuation Industry (Supervision) Act 1993* (SIS Act) and the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations), particularly as those requirements apply to the payment of benefits when members of the scheme satisfy a condition of release set out in the regulatory regime.

4. Section 7 of the ADF Super Act requires the Minister to make a Trust Deed to establish a superannuation scheme to commence on 1 July 2016 for members engaged on or after 1 July 2016 who are:

i) members of the Permanent Navy, established by the *Naval Defence Act 1910*;
ii) members of the Regular Army, established by the *Defence Act 1903*;
iii) members of the Permanent Air Force, established by the *Air Force Act 1923*;
iv) members of the Reserves whose undertaking to render defence service of a continuous nature for a specified period has been accepted under subsection 32A(3) of the *Naval Defence Act 1910*, or subsection 50(3) of the *Defence Act 1903*, or subsection 4J(3) of the *Air Force Act 1923* and

who is rendering that continuous service in accordance with the undertaking; and

v) members of the Military Superannuation and Benefits Scheme (MSBS) who are serving at 1 July 2016 who can elect to become members of ADF Super at any time in their career on or after 1 July 2016.

5. The Trust Deed is also to establish and vest in the trustees (the Commonwealth Superannuation Corporation or CSC) a fund (the ADF Super Fund) for the purposes of the scheme and to set out the functions and powers of CSC in relation to the scheme and the fund. The Trust Deed is also to make rules for the administration of the scheme.

6. This first Trust Deed is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but is not a disallowable instrument within the meaning of section 42 of that Act. The reason for this is that if the first trust deed was disallowed, ADF Super would be inoperable.

7. Part 6 of the *Legislative Instruments Act 2003* provides that an instrument relating to superannuation, such as the Trust Deed established under this section is not subject to sunsetting.

8. Section 8 of the ADF Super Act provides that the Trust Deed may be amended by legislative instrument signed by the Minister. Generally, CSC must consent to any amendment of the Trust Deed.

9. However, the Minister may amend the Trust Deed without CSC's consent if:

i) the amendment relates to a payment by Defence (the employer-sponsor) that will be required or permitted to be made under the Act after the amendment;
ii) the amendment terminates the ADF Super Fund; or if
iii) the following three basic preconditions are met:

- after the amendment is made, ADF Super would not become technically insolvent; and
- members' rights to accrued benefits are not adversely affected by the amendment; and
- the amendment is of a prescribed kind (for example, the amendment relates solely to non-mandated employer contributions or benefits related to those contributions or to the admission of new members).

10. The limitations on amending the Trust Deed do not apply if the amendment is made for the purposes of attributing the costs of the administration of the Act and the Trust Deed.

11. An amendment to the Trust Deed is invalid if it has the effect that ADF Super would no longer be a regulated superannuation fund within the meaning of the SIS Act or would no longer comply with that Act.

12. An instrument that amends the Trust Deed is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. An instrument to amend the Trust Deed is subject to disallowance by the Parliament under section 42 of the *Legislative Instruments Act 2003* and as a consequence, Item 39 of the table in section 44 of the *Legislative Instruments Act 2003*, which exempts superannuation legislative instruments (other than regulations) from the disallowance process, does not apply.

Trust Deed

Chapter 1 – Preliminary

13. **Section 1** provides for the name of the instrument - the Australian Defence Force Superannuation Trust Deed 2015.

14. **Section 2** provides for the commencement of the instrument on the day that it is registered.

15. **Section 3** sets out that the authority got the instrument is the Australian Defence Force Superannuation Act 2015.

16. **Section 4** is a simplified outline of the instrument. The simplified outline is included to assist readers to understand the substantive provisions of the instrument, but is not intended to be comprehensive. Readers should rely on the substantive provisions in the instrument.

17. **Section 5** provides definitions for terms used in the instrument. A note to the section identifies that a number expressions used in this instrument are defined in the ADF Super Act.

Chapter 2 – ADF Super and ADF Super Fund

Part 1 – Establishment of ADF Super

18. **Section 6** establishes the Australian Defence Force Superannuation Scheme or ADF Super. A note to the section points readers to Chapter 3 which sets out administrative rules for the scheme.

Part 2 – Division 1 – Establishment and nature of ADF Super Fund

19. **Section 7** establishes the ADF Super Fund and vests that Fund in the Commonwealth Superannuation Corporation (CSC).

20. **Section 8** sets out the content of the ADF Super Fund. Specifically, **subsection 8(1)** stipulates that the Fund is made up of:

a) contributions paid into the Fund (section 4 provides a definition of contributions); and
b) any other money paid or transferred to CSC under the ADF Super Act or this instrument and paid into the Fund (section 16 of the Act requires Defence to pay employer contributions to CSC which CSC must pay into

the Fund under Part 1 of Chapter 3 of this instrument. This Part also identifies other contributions that are paid or transferred to CSC and which must be paid into the Fund;

c) income from investing the Fund; and

d) any accretions to or profits on the realisation of investments held within the Fund.

21. A note to subsection 8(1) points readers to Part 1 of Chapter 3 of this instrument that requires CSC to pay contributions into the Fund in certain circumstances subject to subsection 8(2).

22. **Subsection 8(2)** precludes CSC from paying into the Fund any contribution or other money that the SIS Act would prevent being paid into the Fund. It also precludes CSC from accepting an amount if the acceptance of the amount would jeopardise the status of ADF Super as a complying superannuation fund.

23. **Section 9** provides CSC holds the ADF Super Fund in trust.

Part 2 – Division 2 – Payments from ADF Super Fund

24. **Section 10** provides that CSC must pay benefits to or in respect of ADF Super members, the costs of the administration of the ADF Super Act and this instrument and taxes relating to ADF Super and the ADF Super Fund from the ADF Super Fund. A note to this section reminds readers that the costs of the administration of the ADF Super Act and this instrument include costs related to the management of the ADF Super Fund and the investment of money from that fund.

Part 2 – Division 3 – Investments from ADF Super Fund

25. **Section 11** provides for the investment of moneys in the ADF Super Fund. **Subsection 11(1)** provides that moneys held in the Fund that are not immediately required for the payment of benefits or other amounts are required to be invested by CSC.

26. **Subsection 11(2)** provides that CSC must manage the Fund to ensure that that money required to pay benefits from time to time are available for the purpose.

27. **Section 12** provides for the manner in which CSC may invest the Fund. **Subsection 12(1)** allows CSC to invest in any manner, including jointly with another person or persons.

28. **Subsection 12(2)** requires CSC to invest moneys required to be invested through one or more investment managers who undertake to invest and manage those moneys on behalf of CSC.

29. **Subsection 12(3)** requires CSC to ensure that any investment manager engaged by CSC operates within CSC's investment strategy and policy. CSC must also ensure the investment manager or managers report to CSC in relation to CSC's investments and the investment market in a manner determined by CSC.

30. **Section 13** requires CSC to determine an investment strategy and policy in relation to the Fund as soon as possible after 1 July 2016 (**subsection 13(1)**) and to regularly review the strategy and policy (**subsection 13(2)**). CSC can change the strategy and policy when and if CSC thinks it appropriate to make that change (**subsection 13(3)**).

Part 3 - CSC's functions and powers relating to ADF Super and ADF Super Fund

31. **Section 14** provides that the functions of CSC in relation to ADF Super and the ADF Super Fund are to administer the scheme and to manage and invest the Fund in accordance with the ADF Super Act and the Trust Deed. Paragraphs 14(a) to (d) list some of those functions which are to receive payments, pay benefits, provide information about benefits, provide advice to the Minister on changes to the ADF Super Act and the Trust Deed and to determine the value of interests in the Fund.

32. **Section 15** provides that CSC has the power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions under the Trust Deed and lists a range of particular powers in paragraphs 15(a) to (j). These powers relate to a range of matters, including giving guarantees, underwriting investments, borrowing moneys, appointing agents and attorneys, acting as agent for other persons, engaging consultants and investment managers, taking action to protect investments, arranging for the purchase of income products and charging reasonable fees for the costs of the administration of the ADF Super Act and the Trust Deed.

33. **Section 16** provides that CSC must comply with the requirements of the SIS Act (defined in section 5 to include the SIS Regulations). A note to this section points to section 52 of the SIS Act which deems covenants set out in that section to be included in the Trust Deed.

Chapter 3 – Rules for administration of ADF Super

Part 1- Contributions

Part 1 - Division 1 – Contributions CSC must pay into ADF Super Fund

34. **Section 17** requires CSC to pay contributions from Defence into the Fund. A note to the section reminds readers that CSC must not pay any contribution or other money that the SIS Act would prevent being paid into the Fund. It also points out that CSC is precluded from paying an amount into the Fund if the payment would jeopardise the status of ADF Super as a complying superannuation fund.

35. **Section 18** provides CSC to pay contributions it receives from ADF Super members and from the spouse's of those members (made for those ADF Super members) into the Fund. A note to the section reminds readers that CSC must not pay any contribution or other money that the SIS Act would prevent being paid into the Fund. It also points out that CSC is precluded from paying an amount into the Fund if the payment would jeopardise the status of ADF Super as a complying superannuation fund.

36. **Section 19** is a general section, which does not limit section 18, but requires CSC to pay contributions into the Fund if:

a) the contribution is made by a member or the spouse of a member (for the member); and
b) the contribution is paid in a way determined by CSC under section 21; and
c) the member has applied to cash benefits, including the contribution, as an account-based pension; and
d) the member has chosen a particular investment strategy for the relevant pension account that is established for the account based pension; and
e) CSC has accepted the member's choice.

37. A note to the section reminds readers that CSC must not pay any contribution or other money that the SIS Act would prevent being paid into the Fund. It also points out that CSC is precluded from paying an amount into the Fund if the payment would jeopardise the status of ADF Super as a complying superannuation fund.

38. **Section 20** requires CSC to pay into the Fund Government co-contributions and superannuation guarantee shortfall amounts it receives from the Commissioner of Taxation on behalf of ADF Super members while they are members of the scheme (irrespective of whether the co-contributions or superannuation guarantee shortfall amounts arose while the person was not an ADF Super member).

39. A note to the section reminds readers that CSC must not pay any contribution or other money that the SIS Act would prevent being paid into the Fund. It also points out that CSC is precluded from paying an amount into the Fund if the payment would jeopardise the status of ADF Super as a complying superannuation fund.

40. **Section 21** provides that CSC may determine the way in which contributions, payments or transfers of particular kinds must be paid to it and may determine different ways for different kinds of payments or transfers (for example, CSC may determine that it will only receive payments of contributions by electronic fund transfer).

Part 1 - Division 2 – Special kinds of contributions ADF Super members may make

41. **Section 22** explains Division 2 sets out two special kinds of contributions an ADF Super member may make (**subsection 22(1)**) and provides that Division 2 does not limit the nature of contributions an ADF Super member may make (**subsection 22(2)**).

42. **Section 23** provides that an ADF Super member may make a contribution by way of rollover (consistent with the SIS Act) of a superannuation lump sum member benefit that:

a) is not precluded from being a superannuation benefit under the Income Tax Assessment Regulations 1997; and
b) is paid from a complying superannuation fund; or

c) is an unclaimed money payment; or
d) arises from the commutation of a superannuation annuity and is paid to purchase a superannuation annuity.

43. **Section 24** deals with lump sums from either the Defence Force Retirement and Death Benefits (DFRDB) scheme or the Military Superannuation and Benefits Scheme (MSBS).

44. **Subsection 24(1)** provides that the section applies to an ADF Super member who has received a lump sum payment:

a) as a result of commuting part of his or her DFRDB retirement pay; or
b) from MSBS (this scheme provides for the payment of a lump sum member benefit and a lump sum employer benefit (at least 50% of the employer benefit can be converted to pension)); or
c) from the scheme established by the Defence Force (Superannuation)(Productivity Benefit) Determination 1988.

45. **Subsection 24(2)** provides that the ADF Super member who has received such a lump sum may roll it over or transfer the amount (or part of the amount) if the member has applied to buy an account-based pension provided by CSC and has chosen a particular investment strategy for the pension account and CSC has accepted the choice of the investment strategy.

Part 2 – Application of benefits

46. The Trust Deed relies substantially on the requirements set out in the superannuation regulatory regime provided for in the S*uperannuation Industry (Supervision) Act 1993* (SIS Act) and the S*uperannuation Industry (Supervision) Regulations 1994* (SIS Regulations), particularly as those requirements apply to the payment of benefits when members of the scheme satisfy a condition of release set out in the regulatory regime.

Part 2- Division 1 – Benefits on death of accumulation account-holder

47. **Section 25** provides for the acceptance by CSC of an accumulation account-holder's binding death benefit nomination. An accumulations account-holder is an ADF Super member and a non-member spouse for whom non-member spouse's interests have been created.

48. Subsection 59(1A) of the SIS Act allows the governing rules of a fund to permit a member to give the trustees a notice setting out to whom the member's benefits are to be paid when the member dies (either to dependants or a legal personal representative). The trustees can only accept the binding nomination if they have given the member information the trustee reasonably believes the member needs to enable him or her to make an informed decision. A binding death benefit nomination is required to be regularly reviewed and confirmed to ensure currency (at least every three years).

49. **Subsection 25(1)** provides that section 25 applies if CSC gives an ADF Super member or a non-member spouse for whom non-member spouse's interests have been created the necessary information.

50. **Subsection 25(2)** allows an ADF Super member or a non-member spouse for whom non-member spouse's interests have been created to make a binding death benefit nomination requiring CSC to pay benefits on the death of the member or non-member spouse to the nominated beneficiaries. CSC is bound to comply with a nomination that is current (that is, it has been reviewed and confirmed by the member or non-member spouse within three years of the members/non-member spouse's death).

51. **Section 26** provides that CSC may determine to whom to pay a member's/non-member spouse's benefits on death where there is no binding death benefit nomination. CSC's determination of who is to benefit in these circumstances must be consistent with the SIS Act requirements.

Part 2 – Division 2 – Income products

52. **Section 27** enables CSC to enter into arrangements with a provider of products and/or services (other than the Commonwealth) to offer income products, including retirement income products that can be purchased by persons who are entitled to benefits under the Trust Deed. This would include those ADF Super members who use a lump sum from either the DFRDB, MSBS or the scheme established by the Defence Force (Superannuation)(Productivity Benefits) Determination 1988 to purchase an account-based pension.

53. **Section 28** provides that a person who receives a benefit under the Trust Deed may use the benefit to purchase income products arranged by CSC, subject to the SIS Act. This may include products that CSC are offering.

Part 2 – Division 3 – Account-based pensions provided by CSC

Subdivision A – When an account-based pension may be provided

54. **Section 29** enables CSC to provide one or more account-based pensions to an ADF Super member who applies to cash his/her benefits for the purposes of buying such a product offered by CSC. CSC must comply with SIS Act requirements to be able to provide the product.

55. **Section 30** gives CSC the opportunity to publish guidance on the matters it may take into account in exercising its powers under section 29 and its powers under the SIS Act in relation to account-based pensions.

Subdivision B – Payment and amount of pensions

56. **Section 31** provides that subdivision B applies if CSC provides an account based pension under subdivision A.

57. **Section 32** requires an account-based pension to be paid from the pension account that CSC keeps for the person. A note to the section points to section 46 which requires a pension account to be kept for every account-based pension provided under subdivision A.

58. **Section 33** requires any pension to be paid until the earlier of the death of the pensioner or the balance in the pension account is nil. A note to the section indicates that a pension could still be payable after the death of the pensioner to a reversionary beneficiary and refers readers to section 38.

59. **Section 34** sets limits on the amount of pension payment. **Subsection 34(1)** limits the amount of a pension payment at the time of payment to the balance in the pension account (that is, a pension payment cannot exceed the amount in the pension account).

60. **Subsection 34(2)** sets the amount of a pension payment to the limit specified in the regulatory regime. The note to the section refers to SIS subregulation 1.06(9A) and to Schedule 7 of the SIS Regulations that set a limit on the annual amount of pension that can be paid depending on the pensioner's age.

Subdivision C – Commuting account-based pension

61. **Subsection 35(1)** provides that if a pensioner applies to commute all or part of an account-based pension, CSC may:

a) roll over or transfer all or part of the balance in a pension account to a regulated superannuation fund, an approved deposit fund or a retirement savings account provider nominated by the pensioner; or
b) pay the applicant a lump sum of an amount that cannot exceed the amount in the pension account; or
c) if the applicant is an ADF Super member, credit an amount that cannot exceed the amount in the pension account to the member's accumulation account.

62. Note 1 to the section alerts readers to the fact that the SIS Regulations (1.06 and 1.07B) may prevent a pension being commuted if a certain amount of pension has not been paid during the year. Note 2 points out that a reversionary beneficiary who is also an ADF Super member may have a commuted amount paid to that person's member accumulation account.

63. **Subsection 35(2)** requires CSC to debit the pension account with any amount rolled over, transferred, paid or credited in response to an application by a pensioner to commute all or part of a pension.

Subdivision D – Pension transferable only on death of a recipient

64. **Section 36** provides that an account-based pension, including a pension paid to a reversionary beneficiary, is only transferable on the death of the pension recipient.

Subdivision E – Death of account-based pension recipient

65. The payment of death benefits to the beneficiaries or to the estate of a deceased member is one of the more important exercises of trustee discretionary powers. The following sections stipulate how pension benefits or the balance in a pension account are to be paid if the member has either nominated a reversionary beneficiary or has made a binding death benefit nomination. If neither of these nominations are present, then CSC must exercise its discretionary powers to determine to whom to pay the balance in the pension account. Those powers must be exercise within the confines of any limitations or requirements in the superannuation regulatory regime.

66. **Section 37** provides that a pensioner may nominate one dependant to whom the pension will revert on the pensioner's death. The nomination can be made before the account-based pension is first paid or at such other time that CSC allows.

67. **Subsection 38(1)** provides that the section applies if a pensioner dies.

68. **Subsection 38(2)** requires CSC to continue to pay the account-based pension to a nominated beneficiary if there is a valid nomination under section 37 and the SIS Act permits the payment to continue. CSC does not have to continue paying the pension if there is insufficient in the pension account to meet the payment.

69. **Subsection 38(3)** sets out how to deal with the balance in a pension account if there is no valid nomination and/or the SIS Act does not permit the continuing payment of the pension. CSC must pay the balance in the pension account to a dependant(s) or legal personal representative nominated in a binding death benefit nomination if permitted by the SIS Act.

70. **Subsection 38(4)** sets out how to deal with the balance in a pension account if either subsections 38(2) or 38(3) do not apply. CSC is to determine to whom to pay the balance in the pension account consistently with its obligations under the SIS Act.

71. **Section 39** requires CSC to determine to whom to pay the balance in a pension account when a reversionary beneficiary in receipt of a pension dies. Any determination is to be in line with requirements under the SIS Act.

72. **Section 40** enables CSC to change the investment strategy a pensioner or reversionary beneficiary has chosen for the balance in the pension account when it becomes aware of the death of the pensioner or reversionary beneficiary. It would do this to protect the balance in the pension account from the vagaries of the market until that balance can be disbursed to beneficiaries.

Subdivision F – Pension cannot be used as security for borrowings

73. **Section 41** precludes an account-based pension or the balance in a pension account to be used as security for any borrowings. SIS Regulations 13.12 and 13.13 provide that a trustee must not recognise, encourage or sanction an assignment of a member's superannuation interests or a charge over a member's benefits.

Part 3 – Personal accumulation accounts and pension accounts

Part 3 – Division 1 – Personal accumulation accounts

74. **Subsection 42(1)** requires CSC to keep a single personal accumulation account for each member and each non-member spouse for whom a non-member spouse interest has been created in order to be able to determine benefits to which each member and non-member spouse is entitled.

75. **Subsection 42(2)** enables CSC to close a personal accumulation account if the account has a nil balance (for example, when the amount in the account has been paid as a benefit).

76. **Subsection 42(3)** requires CSC to open a closed personal accumulation account if an event occurs (such as, the receipt of further contributions or other amounts for the member or non-member spouse or the crediting of investment earnings or the crediting of any tax offsets).

77. **Subsection 42(4)** allows CSC to amalgamate personal; accumulation accounts for a member who has also had a non-member interest created. CSC is required to amalgamate the personal accumulation accounts into one personal accumulation account if requested to do so by the member for whom a non-member spouse interest has been created.

78. **Section 43** provides that the balance of a personal accumulation account at any time is the net result of credits and debits made to that account under sections 44 and 45.

79. **Section 44** sets out the amounts that are to be credited to a personal accumulation account kept for an ADF Super member and for a non-member spouse.

80. **Section 45** sets out the amounts that are to be debited from a personal accumulation account kept for an ADF Super member and for a non-member spouse. A note to the section makes it clear that an amount transferred to a pension account is treated as the payment of a benefit under paragraph 45(a).

Part 3 – Division 2 – Pension accounts

81. **Subsection 46(1)** requires CSC to keep a separate pension account for every pension it provides to a member under section 29.

82. **Subsection 46(2)** requires CSC to continue to keep a pension account if a pensioner dies until the later of the time CSC ceases to make pension payments from the account (for example, because there is no balance in the pension account) and the death of the pensioner who has not nominated a reversionary or other dependant as a pension recipient (see section 38) or the death of a reversionary pensioner (see section 39).

83. **Subsection 46(3)** allows CSC to cease to keep a pension account after it has a nil balance (for example, after the balance of the account has been paid as a lump sum).

84. **Section 47** provides that the balance of a pension account at any time is the net result of credits and debits made to that account under sections 48 and 49.

85. **Subsection 48(1)** sets out the amounts that can be credited to a pension account.

86. **Subsection 48(2)** prevents further contributions or rollover amounts to be credited to a pension account once a pension commences.

87. **Section 49** sets out the amounts that can be debited to a pension account.

Part 3 – Division 3 – Crediting of fund earnings and debiting of fund losses

88. **Subsection 50(1)** allows CSC to determine amounts to be debited or credited to either a personal accumulation account or a pension account to reflect the after-tax earnings or losses arising from the investment of the account through the ADF Super Fund. These earnings or losses may be reflected as either direct debits or credits to an account or more likely, will be reflected in the unit prices of units in the investment strategy chosen by the member or pensioner.

89. A note to the subsection refers to subparagraph 44(c)(i) and paragraphs 48(1)(b), 45(b) and 49(b) that set out what can be debited and credited to accounts.

90. **Subsection 50(2)** requires CSC to have regard to the charges, costs and expenses incurred in the investment of amounts through the ADF Super Fund and the investment strategy chosen by a member or pensioner.

Part 3 – Division 4 – Member investment choice

91. **Subsection 51(1)** allows CSC to offer persons for whom it keeps a personal accumulation account or a pension account and reversionary beneficiaries whose pension is paid from a pension account to choose either one or a number of investment strategies in which their accounts will be invested.

92. **Subsection 51(2)** allows CSC to determine the manner in which and the frequency with which a person can choose or change an investment strategy.

Part 3 – Division 5 – Fees, costs and expenses determined by CSC

93. The SIS Act enables trustees to allocate costs on a fair and reasonable basis between different products within a fund to ensure members are only charged for the benefits and services they are receiving. Aligned with this is the charging of fees on a cost recovery basis.

94. This means that the fees aim to recover the expected costs of an action. It does not require precise cost recovery in each instance of the fee being charged to a member. Rather, a cost recovery basis would mean that the cumulative amount of fees must equal, as close as is practicable, the costs of undertaking an action for all members that are charged the fee.

95. **Subsection 52(1)** allows CSC to determine reasonable fees to be debited to members' accounts for the general administration of ADF Super (the ADF Super Act and the Trust Deed) and more specifically, for the administration of accounts.

96. **Subsection 52(2)** allows CSC to determine fees, costs and expenses in relation to investment strategies chosen by members (or that apply to members by default because they have not chosen an investment strategy) to be paid from personal accumulation accounts. It would not be unusual for these fees, costs and expenses to be indirectly met by members (that is, these types of fees etc are taken into account when unit prices are being set).

97. **Section 53** allows CSC to determine fees, costs and expenses to be paid by holders of pension accounts. It is likely that these fees etc will be reflected when unit prices are being set.

Part 4 – Reconsideration of decisions

98. **Subsection 54(1)** provides that section 54 applies to an original decision of CSC or a delegate of CSC. A note to the subsection reminds the reader that an original decision may be one made under this Part.

99. **Subsection 54(2)** enables CSC to reconsider an original decision on its own initiative but requires CSC to reconsider an original decision if requested to do so by a person affected by the original decision. The outcome of any reconsideration is that CSC will affirm, vary, substitute or set aside the original decision.

100. **Subsection 54(3)** requires that a person seeking to have CSC reconsider an original decision must set out the reasons for the request and provide all information and documentation needed to support the request.

101. **Subsection 54(4)** requires either CSC or a delegate other than a delegate that made the original decision to undertake any reconsideration of the original decision.

102. **Subsection 54(5)** requires CSC to keep the person who requested an original decision to be reviewed informed of the progress of the review (that is, to advise of any delays or any further information that is required to facilitate the reconsideration process).

103. **Subsection 54(6)** requires CSC to advise the person who has requested the reconsideration the outcome of the reconsideration process and provide written reasons for that outcome. A person dissatisfied with the outcome of the reconsideration process may complain to the Superannuation Complaints Tribunal.

Part 5 – Family Law superannuation splitting

Part 5 – Division 1 – Crediting value of non-member spouse interest to personal accumulation account

104. **Section 55** requires CSC to credit to the personal accumulation account kept for a non-member spouse the value of the benefits in the non-member spouse interest

that is created under Family Law arrangements. A note to the section refers readers to Part 7A of the SIS Regulations that deals with the circumstances in which CSC may create a non-member spouse interest and provides for the value of the benefits in that interest.

Part 5 – Division 2 – Guidance on exercise of powers relating to non-member spouse interest

105. **Section 56** enables CSC to publish guidance on matters it may take into account when exercising its powers under the SIS Act in relation to non-member spouse interests if it so wishes.

Part 6 – Miscellaneous

Part 6 – Division 1 – MySuper products

106. A MySuper product is a simple, cost-effective product intended to serve the interests of members of superannuation funds who want the trustees to be responsible for making decisions about the members' superannuation. There are specific requirements in Part 2C of the SIS Act surrounding MySuper products and there are also limitations on fees trustees can charge in relation to MySuper products.

107. **Subsection 57(1)** requires CSC to ensure that CSC complies with the SIS Act requirements in relation to MySuper products it is offering.

108. **Subsection 57(2)** makes it particularly clear that CSC must ensure that any fees it charges in relation to a MySuper product comply with the SIS Act requirements.

109. **Subsection 57(3)** ensures that subsection 57(1) is not limited by subsection 57(2).

110. **Section 58** requires CSC to ensure that:

a) holders of MySuper products in ADF Super are entitled to the same options, benefits and facilities in relation to those products;
b) losses or profits reflected in the personal accumulation accounts of MySuper product holders are equally distributed to those product holders and not distributed to some and not others; and
c) the process used to debit and credit amounts to personal accumulation accounts of the holders of MySuper products is the same for each personal accumulation account holder.

111. **Subsection 59(1)** requires CSC to ensure that each MySuper product that it offers is invested in a single diversified strategy.

112. **Subsection 59(2)** provides that for the purposes of subsection 59(1), CSC may adopt a single diversified investment strategy that allows gains and losses from different classes of assets within the strategy to be passed on to different classes of

MySuper product holders based on age or lifecycle exceptions within the meaning of the SIS Act.

Part 6 – Division 2 – Incorrectly paid amounts

113. **Section 60** requires CSC to take all necessary steps to correct a mistake (of law or fact) that results in a payment from the ADF Super Fund. Steps CSC may take include refunding any money that was incorrectly paid into the Fund or implementing all reasonable steps to recover any overpayments and making adjustments to records to reflect any refund or recovery.

114. **Subsection 61(1)** requires CSC, when it becomes aware that it has accepted contributions that the SIS Act precludes it from accepting, to take all reasonable steps to refund any contributions it should not have accepted and make all necessary adjustments to the affected personal accumulation account.

115. **Subsection 61(2)** enables CSC to adjust any refund of contributions under subsection 61(1) with earnings and/or losses for the period that the contributions were invested and for any fees reflected in a personal accumulation account for that period in relation to those refunded contributions.

116. **Section 62** requires CSC to take all reasonable steps to correct a personal accumulation account or pension account when it believes an amount was debited or credited to that account by mistake (either of law or fact). Steps it may take to correct an account include debiting or crediting an amount from an account and correcting the records of the ADF Super Fund.

Part 6 – Division 3 – Other matters

117. **Subsection 63(1)** enables CSC to determine the ways in which applications and nominations are to be made (for example, electronically or in paper form).

118. **Subsection 63(2)** enables CSC to determine different ways in which different nominations and/or applications may be made.

119. **Section 64** provides that provisions in other Chapters prevail over the provisions in Chapter 3 where there is inconsistency between the sections in the other Chapters and Chapter 3.

Chapter 4 – Accountability

Part 1 – Requests by Minister for information

120. **Section 65** requires CSC to provide the Minister with information about the general administration and operation of ADF Super and the ADF Super Fund if the Minister requests that information.

Part 2 - Delegation

121. **Section 66** sets out the persons to whom CSC can delegate its functions and powers under the Trust Deed. The delegation must be in writing.

122. **Section 67** sets out the persons to whom the Minister can delegate his or her powers under the Trust Deed. The delegation must be in writing.

The Trust Deed is a legislative instrument for the purpose of the *Legislative Instruments Act 2003*.

The Office of Parliamentary Counsel has drafted this Trust Deed and CSC and Defence Legal have been consulted in relation to this Trust Deed.

A regulation impact statement is not required.

Authority: Section 7 of the *Australian Defence Force Superannuation Scheme Act 2015*

Statement of Compatibility with Human Rights

Australian Defence Force Superannuation Trust Deed 2015

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

This 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 Instrument

The Australian Defence Force Superannuation Trust Deed 2015 is prepared under the Australian Defence Force Superannuation Act 2015. It gives effect to the Government's announcement to introduce new modern superannuation arrangements for people joining the Australian Defence Force (ADF) on or after 1 July 2016. The Instrument establishes a new superannuation scheme, to be known as the Australian Defence Force Superannuation Scheme or ADF Super, to come into effect from this date. ADF Super will be an accumulation (or defined contribution) scheme.

The membership of ADF Super will be comprised of persons who join the ADF on or after 1 July 2016, either as permanent members of the ADF or reservists on continuous full-time service.

The Department contribution rate for ADF super will be 16.4% of ordinary time earnings.

Unlike the current Military Superannuation and Benefits scheme (MSBS), members will not be required to make their own contributions to ADF Super, although they may still choose to do so.

ADF Super will allow ADF members to choose which superannuation fund they belong to and, for the first time, give those members the ability to transfer their accumulated ADF Super benefits to a fund of their choice when they leave the ADF.

Human Rights Implications

The Instrument promotes the following rights:

- Article 7, International Covenant on Economic, Social and Cultural Rights (ICESCR), the right to just and favourable conditions of work;
- Article 9, ICESCR, the right to social security;
- Article 11, ICESCR, the right to an adequate standard of living;

This Bill proposes to introduce new and modern superannuation arrangements which provide just and favourable conditions of work for ADF members. The employer contributions will exceed the minimum requirement under the *Superannuation Guarantee (Administration) Act 1992.* There is no compulsion for the ADF member to make additional contributions. However, they can elect to do so to improve their circumstances. This will provide an enhanced standard of living and social security environment.

Conclusion:
The Australian Defence Force Superannuation Trust Deed 2015 is compatible with human rights as it advances the protection of human rights.