

## **EXPLANATORY STATEMENT**

*Issued by authority of the Minister for Finance*

*Superannuation Act 2005*

*Superannuation (PSSAP Trust Deed) (Insurance and Other Matters) Amendment Instrument 2016 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.

### **2016 Amending Deed**

The Minister has amended the Trust Deed by signed instrument, that is the *Superannuation (PSSAP Trust Deed) (Insurance and Other Matters) Amendment Instrument 2016*. That instrument is called the Amending Deed in this Statement.

The main purpose of the Amending Deed is to amend the PSSAP Rules to further align the arrangements and products in PSSAP with those available in defined contribution superannuation funds more broadly.

The Amending Deed amends the Rules to:

- allow any income protection superannuation contribution amount paid by an insurance company in respect of an ordinary employer-sponsored PSSAP member to be paid to PSSAP;
- allow a PSSAP member entitled to invalidity benefits to leave an amount in their PSSAP account, for example, to cover the situation where they may wish to continue with their PSSAP death insurance cover; and
- put in place spouse contributions splitting arrangements.

In addition, the Amending Deed updates the Rules in relation to matters related to *MySuper*, makes a consequential change as a result of release of benefits on compassionate grounds now being administered by the Chief Executive of Medicare, and corrects a grammatical error.

Details of the Amending Deed are set out in [Attachment A](#).

### **CSC Approval**

Section 32 of the 2005 Act requires CSC to consent to the amendments proposed by the Minister in most circumstances. CSC has consented to the Amending Deed.

### ***Legislation Act 2003***

The Amending Deed is a legislative instrument. Although regulations made for the purpose of paragraph 44(2)(b) of the *Legislation Act 2003* exempt superannuation instruments from disallowance, the amendments to the Trust Deed are subject to disallowance in accordance with section 11 of the 2005 Act.

### **Consultation**

Section 17 of the *Legislation Act 2003* specifies that rule-makers should consult before making legislative instruments. CSC has been consulted on the amendments contained in the Amending Deed.

The Office of Best Practice Regulation was consulted (OBPR Reference Number 20839). A Regulation Impact Statement was not prepared, as the instrument will not have any regulatory impact on business, individuals or community organisations.

### **Commencement**

The amendments in the Amending Deed come into effect on the day after registration on the Federal Register of Legislation, except Parts 2, 3, and 4 of Schedule 1, which come into effect on 1 October 2016.

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

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

## DETAILS OF THE AMENDING DEED

### Name

1. **Section 1** provides that the name of the instrument is the *Superannuation (PSSAP Trust Deed) (Insurance and Other Matters) Amendment Instrument 2016*.

### Commencement

2. **Section 2** sets out the commencement provision for amendments set out in the Amending Deed:

- Item 1 of the table set out in subsection 2(1) provides that sections 1 to 4 of the Amending Deed, Parts 1, 5 and 6 of Schedule 1 and anything not elsewhere covered in the table, commence the day after the Amending Deed is registered on the Federal Register of Legislation.
- Item 2 of the table provides that Parts 2, 3 and 4 of Schedule 1 commence on 1 October 2016.

3. 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 section 11 of the *Superannuation Act 2005*.

### Schedule

5. **Section 4** provides that each instrument specified in the Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in the Schedule to the instrument has effect according to its terms.

### Schedule 1—Amendments to the Superannuation (PSSAP) Trust Deed

#### **Part 1 – Insurance Matters**

6. Under existing Rule 4.1.3, where an ordinary employer-sponsored member dies, or if an application is made for approval of their invalidity retirement, the Commonwealth Superannuation Corporation (CSC) must make a claim against the policy providing the basic death and invalidity cover, unless the life insurance company does not provide cover in respect of the member under that policy.

7. However, general industry practice is usually that the decision as to whether a claim is made against an insurance policy is a decision of the scheme member rather than the trustee. The current Rule requires CSC to make a claim regardless of whether or not the scheme member wishes to make a claim in relation to their insurance policy.

8. **Item 1** replaces existing Rule 4.1.3 with a new Rule 4.1.3. Under new Rule 4.1.3, CSC *may* make a claim against an insurance policy, and *must* make a claim where the member has requested CSC to make a claim or the member is unable to do so. This will align the arrangements with general industry practice and also the practical requirements around making insurance claims.

## **Part 2 – Other Insurance Matters**

9. **Item 2** replaces existing Rule 3.1.7 with a new Rule 3.1.7. Under existing Rule 3.1.7, an ordinary employer-sponsored member who CSC has approved for invalidity retirement must be paid their total PSSAP benefit as soon as possible, which closes their PSSAP account and ceases any life insurance cover they may have. This can result in a situation where, if the person subsequently dies, a claim may not be able to be made on their life insurance cover.

10. Under new Rule 3.1.7, CSC will only be required to pay that amount of a member's total PSSAP benefit as requested by the member. This enables a person to leave a nominated amount in the PSSAP to maintain insurance coverage. Where the person has not made such a request, then CSC, as currently required under existing Rule 3.1.7, will be required to pay them their total PSSAP benefit (that is, the default payment requirement will continue to apply unless the member elects otherwise).

## **Part 3 – Income Protection Superannuation Contribution Amounts**

11. Some income protection insurance policies, apart from paying a person income replacement amounts, also provide for the payment of superannuation contributions in the event of sickness or incapacity. This allows the person to continue to build their retirement savings while being unable to work. Currently, these amounts cannot be paid into PSSAP.

12. **Items 3 to 10** make changes to the Rules (including consequential changes to existing Rules) to allow an ordinary employer-sponsored member to be able to have these superannuation contributions paid into their PSSAP account.

13. **Item 3** inserts a new definition of “income protection superannuation contribution amount” into Rule 1.2.1. Under the definition an “income protection superannuation contribution amount” means a payment by an insurance company, under an income protection insurance policy, which is intended to represent a superannuation contribution during a period of sickness or incapacity of the policy holder.

14. **Item 4** inserts a new heading and Rule 2.3.4A. New Rule 2.3.4A allows an income protection superannuation contribution amount, paid by an insurance company in respect of an ordinary employer-sponsored member, to be paid to CSC, provided the *Superannuation Industry (Supervision) Act 1993* (SIS Act) and the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) permit the contribution to be made and the method of payment complies with any determination made by CSC under Rule 2.3.5.

15. **Item 5** replaces the existing heading and Rule 2.3.5 with a new heading and Rule as a consequence of new Rule 2.3.4A. Existing Rule 2.3.5 currently provides for CSC to determine the way in which employee contributions and eligible spouse contributions must be paid to CSC. The new rule will also allow CSC to determine the way in which income protection superannuation contribution amounts must be paid to CSC, consistently with the other types of contribution. The heading is also being updated to reflect the new category of payment.

16. Likewise, item 6 replaces existing Rule 2.3.6 with a new Rule 2.3.6 as a consequence of new Rule 2.3.4A. Rule 2.3.6 currently requires CSC to pay any employee contributions and eligible spouse contributions into the PSSAP Fund. The new rule will also require CSC to pay any income protection superannuation contribution amounts into the PSSAP Fund.

17. Item 7 replaces existing Rule 3.4.3 with a new Rule 3.4.3. This Rule previously required amounts paid by life insurance companies to be paid either to the PSSAP Fund and then to the PSSAP member or non-member spouse, or directly to the person as a non-commutable income stream. The new Rule 3.4.3 excludes income protection superannuation contribution amounts from this requirement, since they will be amounts which are paid from the insurance company to PSSAP and credited to the person's accumulation account.

18. New rule 3.4.3 also removes the option for amounts paid by a life insurance company to be paid to the PSSAP Fund and then paid from the PSSAP Fund to the PSSAP member or non-member spouse. It is no longer usual practice for payments to occur in this way. Item 8 makes a consequential change to Rule 3.4.4 in respect of this change to Rule 3.4.3.

19. Item 9 replaces the note under Rule 4.3.5 with a new note. The new note reflects the changes made by items 3 to 7.

20. Item 10 amends Rule 5.1.5 to add a new paragraph (da). New Rule 5.1.5(da) will provide for an income protection superannuation contribution amount paid under new Rule 2.3.4A in respect of a PSSAP member to be credited to their personal accumulation account.

#### **Part 4 – Spouse Contributions Splitting Amounts**

21. It is a common feature of industry defined contribution funds to allow a scheme member to split their superannuation contributions ('spouse contribution splitting') with their spouse in accordance with the SIS Act and SIS Regulations.

22. Under spouse contribution splitting arrangements, scheme members are generally able to make an application to their scheme to transfer up to 85 per cent of their employer and salary sacrifice contributions made in the previous financial year to an account held by their spouse (including de facto spouse). However, splitting contributions does not reduce the amount of employer or salary sacrifice contributions counted towards the member's concessional contribution cap.

23. Currently, PSSAP members cannot split their PSSAP contributions with their spouse and a PSSAP member cannot have contributions arising from a contribution split paid into their PSSAP account.

24. **Item 11** inserts a new definition of "contributions-splitting superannuation benefit" into Rule 1.2.1. Under the definition, a "contributions-splitting superannuation benefit" means a payment made in accordance with subregulation 6.45(2) of the SIS Regulations. That is, a payment from one person's superannuation fund to their spouse's superannuation fund. This covers both payments to CSC and payments made by CSC.

25. **Items 12, 16 and 17** amend the Rules to allow PSSAP to receive contributions-splitting superannuation benefits in respect of a PSSAP member.

26. **Items 13, 14, 15, 18 and 19** amend the Rules to allow a PSSAP member to make an application to CSC for spouse contribution splitting with any contributions-splitting superannuation benefit to be paid to another superannuation entity or Retirement Saving Account nominated by the person.
27. Item 12 inserts a new Division 4A into Part 2 of the Rules, providing for the receipt of contributions- splitting superannuation benefits by CSC.
28. New Rule 2.4A.1 provides that, subject to the SIS Act and SIS Regulations, a contributions-splitting superannuation benefit may be paid to CSC in respect of an ordinary employer-sponsored member. New Rule 2.4A.1 also allows a contributions-splitting superannuation benefit to be paid to CSC in respect of a PSSAP member if the amount of the benefit, in total or part, relates to contributions made to a regulated superannuation fund in a financial year in which the PSSAP member was at any time in that year an ordinary employer-sponsored member of PSSAP. The method of payment has to comply with Rule 2.4A.2.
29. In usual circumstances, spouse splitting of contributions occurs in the financial year immediately after the financial year in which contributions are made to a superannuation fund. This Rule ensures that a PSSAP member who at some time in a particular financial year was an ordinary employer-sponsored member of PSSAP (but is not such a member at the time the benefit is to be made to PSSAP) is able to have that benefit paid to their PSSAP account.
30. New Rule 2.4A.2 allows CSC to determine the way in which a contributions-splitting superannuation benefit is to be paid to CSC under Rule 2.4A.1.
31. New Rule 2.4A.3 requires CSC to pay any contributions-splitting superannuation benefits received by it into the PSSAP Fund.
32. Items 13 and 14 insert a new Rule 3.1.1(j) to allow a PSSAP member to make an application to CSC for a split of their PSSAP contributions, provided the split is permitted under Division 6.7 of the SIS Regulations.
33. Item 15 inserts a new heading and Rule 3.1.21. New Rule 3.1.21 allows CSC, subject to the SIS legislation, to pay such part of a PSSAP member's benefit to a superannuation entity or Retirement Savings Account nominated by the person, as requested in the application made by the PSSAP member under Rule 3.1.1(j).
34. Items 16 and 17 insert a new Rule 5.1.5(k), which provides that any contributions-splitting superannuation benefits paid to CSC under Rule 2.4A.1 are to be credited to a person's personal PSSAP accumulation account.
35. Items 18 and 19 insert a new Rule 5.1.6(h), which provides that any amount paid as a result of an application by a PSSAP member to CSC to apply for a split of their PSSAP contributions must be debited from their personal accumulation amount.

## **Part 5 - MySuper**

36. Changes were made to the PSSAP Trust Deed in 2012 to facilitate CSC applying to the Australian Prudential Regulation Authority for a *MySuper* authorisation. CSC was granted a *MySuper* authorisation in February 2013 by APRA, permitting it to offer a *MySuper* product. PSSAP offers a *MySuper* product as well as choice products.

37. Subsection 29TC (1) of the SIS Act sets out the characteristics of a *MySuper* product. The existing PSSAP Trust Deed explicitly sets out the characteristics contained in paragraphs 29TC(1)(a) to (c) of the SIS Act but not paragraphs 29TC(d) to (k), on the basis that at the time of introducing that Rule, the remaining characteristics did not appear to be necessary in relation to, or otherwise relevant to, PSSAP.

38. APRA has now expressed a preference that each characteristic set out in section 29TC of the SIS Act should be replicated in a scheme's governing rules.

39. Therefore, changes are being made to the Rules to replicate the characteristics set out in paragraph 29TC(f) to (k), excluding the characteristics in paragraphs 29TC(d) and (e) which relate to fee subsidisation and are therefore not relevant to PSSAP as the PSSAP Trust Deed does not allow for fee subsidisation from employers.

40. **Item 20** amends Rule 2.1A.1 to make reference to the characteristics set out in paragraphs 29TC(f) to (k) of the SIS Act.

41. New Rule 2.1A.1(e) provides that CSC must ensure that the only limitation imposed on the source of contributions are those permitted by the SIS Act (*paragraph 29TC(1)(f) of the SIS Act*). The SIS Act requires any limitations to be of a prescribed kind, or be imposed by or under a general law or another law of the Commonwealth. The PSSAP Trust Deed sets out the source of contributions that can be made to PSSAP. The PSSAP Trust Deed is a Commonwealth law. Accordingly, any limitations imposed on the source of contributions under the PSSAP Trust Deed will meet this requirement.

42. New Rule 2.1A.1(f) provides that CSC must ensure that a *MySuper* product held by a PSSAP member or non-member spouse cannot be replaced with another class of interest in PSSAP unless certain requirements are met (*paragraph 29TC(1)(g) of the SIS Act*). The requirements are that the person who holds the interest consents in writing, or the person who holds the interest has died and the interest is replaced with an interest of another class in the fund, and in circumstances prescribed by regulations. No class of interest or circumstances are currently prescribed in the SIS Regulations.

43. New Rule 2.1A.1(g) provides that CSC must ensure that a *MySuper* product held by a PSSAP member or non-member spouse cannot be replaced with a beneficial interest in another superannuation entity unless certain requirements are met (*paragraph 29TC(1)(h) of the SIS Act*). Under the requirements an interest can only be replaced where it is permitted or required under a law of the Commonwealth or the person holding the interest consents in writing to the replacement.

44. New Rule 2.1A.1(h) provides that CSC must ensure that a pension is not paid from *MySuper* assets unless it is permitted by the SIS Act (*paragraph 29TC(1)(i) of the SIS Act*). The current PSSAP Trust Deed and Rules do not allow a pension to be paid from *MySuper* assets. If at some stage, the SIS Act was changed to allow a pension to be paid from *MySuper* assets, then changes would also be required to the PSSAP Trust Deed and Rules to allow pensions to be paid.

45. New Rule 2.1A.1(i) provides that CSC must ensure that a PSSAP member or non-member spouse who holds a *MySuper* product is not precluded from holding an interest in another class in PSSAP only because they hold a *MySuper* product (*paragraph 29TC(1)(j) of the SIS Act*).

46. New Rule 2.1A.1(j) provides that CSC must ensure that a PSSAP member or non-member spouse is not precluded from holding a *MySuper* product because they hold another interest of another class in PSSAP (*paragraph 29TC(1)(k) of the SIS Act*).

#### **Part 6 - Other**

47. **Item 21** updates Rule 3.1.6 to reflect that administration of the arrangements under the SIS Act and SIS Regulations in relation to the release of superannuation benefits on compassionate grounds is the responsibility of the Chief Executive Medicare.

48. **Item 22** corrects a grammatical error in Rule 4.1.3B.



## Statement of Compatibility with Human Rights

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

### **Superannuation (PSSAP Trust Deed) (Insurance and Other Matters) Amendment Instrument 2016**

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 Superannuation (PSSAP Trust Deed) (Insurance and Other Matters) Amendment Instrument 2016 (Amending Deed) is to amend the Rules to:

- allow any income protection superannuation contribution amount paid by an insurance company in respect of an ordinary employer- sponsored PSSAP member to be paid to PSSAP;
- allow a PSSAP member entitled to invalidity benefits to leave an amount in their PSSAP account, for example, to cover the situation where they may wish to continue with their PSSAP death insurance cover;
- put in place spouse contributions splitting arrangements; and
- give CSC greater flexibility over investment of amounts held in a deceased PSSAP member's account prior to payment.

In addition, the Amending Deed updates the Rules in relation to matters related to *MySuper*, makes a consequential change as result of release of benefits on compassionate grounds now being administered by the Chief Executive Medicare and corrects a grammatical error.

#### **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.