EXPLANATORY STATEMENT

Issued by authority of the Minister for Finance

Superannuation Act 2005

Superannuation (PSSAP Trust Deed) (Superannuation Reforms and Other Matters) Amendment Instrument 2017 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.

2017 Amending Deed

The Minister has amended the Trust Deed by signed instrument, that is the *Superannuation (PSSAP Trust Deed) (Superannuation Reforms and Other Matters) Amendment Instrument 2017*. That instrument is called the Amending Deed in this Statement.

The purpose of the Amending Deed is to make consequential amendments to the PSSAP Trust Deed and Rules because of the Government's 2016-17 Superannuation Reform Package, and to repeal and update certain provisions.

The Amending Deed amends the Rules to:

- update provisions relating to the release of monies from a PSSAP member's account in relation to a release authority issued by the Commissioner of Taxation;

- provide additional flexibility for PSSAP pensioners in relation to setting up and commuting a PSSAP account-based retirement income stream; and

- allow for PSSAP account-based retirement income streams to be commuted where CSC receives a commutation authority issued by the Commissioner of Taxation because of a member exceeding their transfer balance cap.

In addition, the Amending Deed amends the Trust Deed to repeal and update certain references to ComSuper, the CEO of ComSuper and CSC because of the merger of ComSuper and CSC that occurred on 1 July 2015.

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 21905). 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 Part 3 of Schedule 1, which comes into effect on 1 July 2017.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is at Attachment B.

ATTACHMENT A

DETAILS OF THE AMENDING DEED

Name

1. **Section 1** provides that the name of the instrument is the *Superannuation (PSSAP Trust Deed) (Superannuation Reforms and Other Matters) Amendment Instrument 2017*.

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 and 2 of Schedule 1 and Schedule 2 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 Part 3 of Schedule 1 commences on 1 July 2017.

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 a 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—Rules under the Superannuation (PSSAP) Trust Deed

Part 1 – Payments in relation to a release authority

6. Under provisions of the *Taxation Administration Act 1953* (TAA 1953), the *Income Tax Assessment Act 1997* (ITAA 1997) or the *Income Tax (Transitional Provisions) Act 1997*, the Commissioner of Taxation can issue a release authority if an individual has:

a. excess concessional or non-concessional contributions;

b. a Division 293 tax liability or a debt account discharge liability; or

c. an excess non-concessional contributions tax liability.

7. A superannuation trustee may (and in many cases must) pay an amount and reduce the value of the member's superannuation account if they receive a release authority.

8. The *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016* makes amendments to taxation laws that from 1 July 2018 will simplify and consolidate the

existing processes for release authorities.

9. The Amending Deed amends the existing PSSAP Rules in relation to release authorities to simplify these provisions and ensure their consistency with the upcoming changes to taxation laws.

10. **Item 1** replaces the existing definition of "release authority" in Rule 1.2.1 with a new definition. Under the new definition a "release authority" means an authority issued under "taxation legislation" for the release of an amount held in a member's account.

11. **Item 2** inserts a new definition of "taxation legislation" into Rule 1.2.1. Under the definition, "taxation legislation" means the TAA 1953, the ITAA 1997 or the *Income Tax (Transitional Provisions) Act 1997*, which are the Acts containing provisions allowing for the issue of release authorities.

12. **Item 3** repeals Rule 3.1.1(f). This rule provides that a PSSAP member or the Commissioner of Taxation can make a benefit application to CSC to apply for the payment of a benefit pursuant to a release authority. However, Rule 3.1.11A already requires CSC to make a lump sum payment in respect of the member on receipt of a release authority, so it is not necessary to require the member or the Commissioner of Taxation to make a benefit application. In addition, it is not practical to require the Commissioner of Taxation to make a benefit application.

13. **Item 4** replaces existing Rule 3.1.11A with a new simplified Rule 3.1.11A. The existing Rule sets out the amount to be paid when CSC receives a "release authority". However, this is not necessary because the *Superannuation Industry (Supervision) Act 1993* and regulations under that Act (SIS legislation), and taxation laws set out the obligations a superannuation trustee has when they receive a "release authority", including the amount that is to be paid from a member's superannuation account.

14. **Item 5** replaces the note under Rule 3.1.11A with a new note. The new note reflects the changes made by item 4.

15. **Items 6** and **7** insert a new Rule 3.6.7(da), which provides that a PSSAP pensioner's pension account is to be debited for any amount paid by CSC out of their account under new Rule 3.1.11A in relation to a "release authority".

16. **Items 8** and **9** insert a new Rule 5.1.6(i), which provides that a member's personal accumulation account is to be debited for any amount paid by CSC out of the account under new Rule 3.1.11A in relation to a "release authority".

17. **Item 10** inserts a new Heading and Rule 7.2.1C, which provide that a non-member spouse interest account is to be debited for any amount paid by CSC out of the account under new Rule 3.1.11A in relation to a "release authority".

Part 2 – Account-based pensions

18. **Items 11, 12** and **14** insert a reference to "PSSAP pensioner" into Rule 2.4.1D, Rule 3.1.1(g) and Rule 3.6.1. These changes will allow a PSSAP pensioner, that is a person already in receipt of a PSSAP account-based retirement income stream (known as a CSCri), to transfer or roll-over a roll-over superannuation benefit to CSC and allow CSC to establish a separate account-based pension in relation to those monies. Currently, a PSSAP pensioner is only able to transfer or roll-over a roll-over superannuation benefit to combine it with their existing PSSAP account-based retirement income stream (CSCri).

19. **Item 13** inserts a reference to a "non-member spouse" into Rule 3.1.1(h). Currently, Rule 3.6.8 refers to CSC receiving a benefit application under Rule 3.1.1(h) from a "non-member spouse" but there is no corresponding reference to "non-member spouse" under Rule 3.1.1(h).

20. **Item 15** inserts a new Rule 3.6.8(f), which allows CSC to create a non-member spouse interest account where a PSSAP pensioner who was a former "non-member spouse" makes an application under Rule 3.1.1(h) to commute all or part of the balance of their pension (CSCri).

Part 3 - Payments in relation to a commutation authority

21. The *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016* amended the ITAA 1997 to put in place a general transfer balance cap from 1 July 2017. This cap limits the amount of capital an individual can transfer to the retirement phase to support their superannuation income stream.

22. The purpose of the cap is to limit the amount of superannuation earnings that are exempt from tax. Income earned on the ongoing investment of capital that supports an income stream is exempt from tax.

23. Under section 294-35 of the ITAA 1997, the cap for the 2017-18 financial year, is $1.6 million.

24. Where a person exceeds their transfer balance cap it can be rectified in two ways:

a. the person asking their superannuation fund to commute their superannuation income stream in part or full; or

b. the Commissioner of Taxation issuing a commutation authority to the relevant superannuation provider/s of the person's superannuation income stream/s.

25. A commutation authority will specify a "crystallised reduction amount". The crystallised reduction amount is the value by which the individual's superannuation income stream must be commuted to bring their transfer balance account back in line with their transfer balance cap.

26. The lump sum that arises from the commutation may be cashed out of the superannuation system or, subject to the SIS legislation, can be retained in the superannuation system (in an account where income earned on the ongoing investment of capital is not exempt from tax). A death benefit lump sum cannot be retained in the superannuation system.

27. PSSAP provides an account-based retirement income stream (CSCri) that will have to be commuted in part or full where CSC receives a commutation authority. Under the TAA 1953, the income stream is to be commuted in part or full within 60 days of when the commutation authority is issued.

28. Therefore, the Amending Deed amends the Rules to:

a. provide for the commutation of a member's PSSAP account-based retirement income stream, that is their CSCri, where CSC receives a commutation authority from the Commissioner of Taxation (**items 17, 18 and 19**);

b. provide for a member's pension account to be debited for the amount commuted (**item 20**); and

c. set out how CSC can deal with the lump sum arising from the commutation. This includes allowing the lump sum to be retained in PSSAP where this is permitted under the SIS legislation (**items 21 and 22**).

29. **Item 16** inserts a new definition of "commutation authority" in Rule 1.2.1. Under the definition a "commutation authority" means an authority issued by the Commissioner of Taxation for the commutation of a superannuation income stream. In the case of PSSAP, this would be in relation to the income stream known as the CSCri. The Commissioner of Taxation issues a commutation authority to reduce an individual's excess transfer balance.

30. **Items 17, 18** and **19** insert a new Rule 3.6.3(i), which provides that a member's PSSAP account-based retirement income stream (CSCri) must be commuted in whole or part to a lump sum where CSC receives a commutation authority, consistent with the requirements in relation to the commutation set out in the TAA 1953.

31. **Item 20** amends Rule 3.6.7 to provide for a member's pension account to be debited by any amounts commuted under new Rule 3.6.3(i).

32. **Item 21** inserts a new Rule 3.6.8A that sets out how CSC may deal with the lump sum arising from commutation. The options set out are subject to any restrictions under the SIS legislation.

33. **Item 22** inserts a new paragraph 2 in the existing Note now under Rule 3.6.8A, to insert a general reference to the transfer balance cap arrangements and commutation authority arrangements.

Schedule 2 – Superannuation (PSSAP) Trust Deed

34. Before 1 July 2015, administration of the main Commonwealth schemes was undertaken on behalf of CSC by an organisation known as ComSuper. However, on 1 July 2015 ComSuper was merged into CSC.

35. **Items 1 to 8** repeal and update certain references in the PSSAP Trust Deed relating to ComSuper, the CEO of ComSuper and CSC.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Superannuation (PSSAP Trust Deed) (Superannuation Reforms and Other Matters) Amendment Instrument 2017

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) (Superannuation Reforms and Other Matters) Amendment Instrument 2017* (Amending Deed) is to amend the Rules to:

- update provisions relating to the release of monies from a PSSAP member's account in relation to a release authority issued by the Commissioner of Taxation;
- provide additional flexibility for PSSAP pensioners in relation to setting up and commuting a PSSAP account-based retirement income stream; and
- allow for PSSAP account-based retirement income streams to be commuted where CSC receives a commutation authority issued by the Commissioner of Taxation because of a member exceeding their transfer balance cap.

In addition, the Amending Deed amends the Trust Deed repeal and update certain references to ComSuper, the CEO of ComSuper and CSC because of the merger of ComSuper and CSC that occurred on 1 July 2015.

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