

## **EXPLANATORY STATEMENT**

*Issued by authority of the Minister for Finance*

*Superannuation Act 2005*

*Superannuation Amendment (PSSAP Trust Deed–Membership) 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.

### **Superannuation Amendment (PSSAP Trust Deed – Membership) Instrument 2017**

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

The purpose of the Amending Deed is to make amendments to the PSSAP Trust Deed and Rules that are consequential to the reforms made by the *Superannuation Amendment (PSSAP Membership) Act 2017* to the 2005 Act. The 2005 Act as amended enables certain members of the PSSAP who move to non-Commonwealth employment to remain contributory members of the scheme. A person who has elected to remain a contributory member of PSSAP under subsection 18(7) of the 2005 Act as amended is a “former Commonwealth ordinary employer-sponsored member”. The Amending Deed includes consequential amendments that:

- ensure that designated employers are not required by the Trust Deed or Rules to make contributions to PSSAP in respect of a former Commonwealth ordinary employer-sponsored member;
- allow CSC to take out policies for death and invalidity insurance and income protection insurance to offer to former Commonwealth ordinary employer-sponsored members; and
- enable a former Commonwealth ordinary employer-sponsored member to apply to CSC for payment of their benefit on the ground of permanent incapacity.

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

### ***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 and Rules 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 on the PSSAP membership reforms. A Regulation Impact Statement was not prepared, as the instrument will not have a regulatory impact on business, individuals or community organisations (OBPR ID 20128).

### **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.

### **Commencement**

The amendments in the Amending Deed commence at the same time as Schedule 1 to the *Superannuation Amendment (PSSAP Membership) Act 2017*. Schedule 1 of that Act commences on the earlier of 6 months from Royal Assent or a day specified in a Proclamation.

### **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 Amendment (PSSAP Trust Deed–Membership) 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 the whole of the instrument commences at same time as Schedule 1 to the *Superannuation Amendment (PSSAP Membership) Act 2017*. Subsection 2(2) provides that the information in column 3 of the table is not part of the instrument.

### Authority

3. **Section 3** identifies the authority for the instrument as section 11 of the *Superannuation Act 2005* (the Act).

### Schedule

4. **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

5. **Item 1** amends the definition of “additional employer contributions” set out in Rule 1.2.1 to exclude contributions made by a designated employer in respect of a former Commonwealth ordinary employer-sponsored member from this term. This reflects the amendments made to Rule 2.2.4 by **item 13** that preclude a designated employer from making additional employer contributions to CSC in respect of a former Commonwealth ordinary employer-sponsored member.

6. A designated employer will still be able to make additional employer contributions, including salary sacrifice contributions, in respect of a former Commonwealth ordinary employer-sponsored member under new Rule 2.2.1A (see **item 10**).

7. **Item 2** amends the definition of “basic employer contributions” in Rule 1.2.1. This reflects new Rule 2.2.1A that is inserted by **item 10**, which provides that contributions paid to CSC by a designated employer in respect of a former Commonwealth ordinary employer-sponsored member are basic employer contributions.

8. **Item 3** inserts a definition of “former Commonwealth ordinary employer-sponsored member” into Rule 1.2.1. The definition provides that this term has the same meaning as in the Act.

9. **Item 4** amends the definition of “invalidity retirement” in Rule 1.2.1 to exclude persons who are former Commonwealth ordinary employer-sponsored members from this term. This reflects the amendments made by **item 22**, which provide that an application for invalidity retirement cannot be made in respect of a former Commonwealth ordinary

employer-sponsored member.

10. This ensures that CSC does not have to issue a certificate before a former Commonwealth ordinary employer-sponsored member is retired from employment on the ground of invalidity. However, under new Rule 3.1.1(a) inserted by **item 9**, a former Commonwealth ordinary employer-sponsored member can apply to CSC for the payment of their PSSAP benefit on the basis of permanent incapacity.

11. **Items 5 and 6** amend the definition of “pay day” in Rule 1.2.1 so that this term does not apply in respect of former Commonwealth ordinary employer-sponsored members.

12. “Pay day” is a term used in Rule 2.2.1 to prescribe the day at which a designated employer must pay “basic employer contributions” to CSC in respect of an ordinary employer-sponsored member. “Pay day” is not relevant to designated employers of former Commonwealth ordinary employer-sponsored members because **item 10** provides that Rule 2.2.1 does not apply in respect of such persons.

13. **Item 7** replaces the existing note at the beginning of Division 1 of Part 2 of the Schedule with a new note. The new note expands upon the existing note to explain that “former Commonwealth ordinary employer-sponsored member” is a sub-category of “ordinary employer-sponsored member”. As such, a reference to ordinary employer-sponsored member in the Rules will apply to a former Commonwealth ordinary employer-sponsored member except where expressly excluded. The note also explains that the Rules do not require designated employers of former Commonwealth ordinary employer-sponsored members to pay contributions to PSSAP in respect of such a member.

14. **Item 8** inserts a new note at the end of Rule 2.1.1. The note explains that subsection 18(7) of the Act provides that a person cannot be a former Commonwealth ordinary employer-sponsored member of PSSAP while the person is an ordinary employer-sponsored member under subsections 18(2), (3) or (5) of the Act. A person who is a former Commonwealth ordinary employer-sponsored member therefore cannot be a concurrent member of PSSAP if that person is also a member of PSSAP under subsections 18(2), (3) or (5) of the Act.

15. **Item 9** excludes designated employers of former Commonwealth ordinary employer-sponsored members from the provisions of Rule 2.2.1. A designated employer is therefore not required by Rule 2.2.1 to contribute to PSSAP in respect of a former Commonwealth ordinary employer-sponsored member.

16. **Item 10** inserts new Rule 2.2.1A after Rule 2.2.1 to provide that where a designated employer pays contributions to CSC in respect of a former Commonwealth ordinary employer-sponsored member, those contributions are basic employer contributions. Rule 2.2.1A also provides that CSC must reject any such contributions if the *Superannuation Industry (Supervision) Act 1993* and the regulations in force under that Act (SIS Act) would prevent the PSSAP Fund from accepting the contributions or if acceptance of the contributions by CSC may jeopardise the PSSAP Fund’s status as a complying superannuation fund under the SIS Act.

17. **Items 11 and 12** exclude former Commonwealth ordinary-employer-sponsored members from the provisions of Rule 2.2.2 and 2.2.3, which determine how the superannuation salary of an ordinary employer-sponsored member is to be calculated. “Superannuation salary” is a concept used to determine the amount of basic employer contributions payable by a designated employer under Rule 2.2.1. It is not necessary that superannuation salary apply in

respect of former Commonwealth ordinary employer-sponsored members because **item 9** provides that Rule 2.2.1 does not apply to such persons.

18. **Item 13** excludes “former Commonwealth ordinary employer-sponsored members” from the provisions of Rule 2.2.4. Consequently, designated employers cannot make additional employer contributions to PSSAP in respect of a former Commonwealth ordinary employer-sponsored member under Rule 2.2.4. Instead, they will be taken to have been made under new Rule 2.2.1A (**item 10**). As such, contributions made by designated employers, including additional employer contributions and salary sacrifice contributions, made in respect of former Commonwealth ordinary employer-sponsored members are basic employer contributions.

19. **Item 14** omits “allows employers” in the note to Rule 2.2.4 and replaces it with “allows most employers”. The amendment to the note reflects the amendments made by **item 13** that preclude designated employers from making additional employer contributions to CSC in respect of former Commonwealth ordinary employer-sponsored members.

20. **Item 15** amends Rule 2.2.5 to provide that this Rule does not apply in relation to basic employer contributions mentioned in Rule 2.2.1A. Consequently, Rule 2.2.5 does not make provision for CSC to regulate, by way of determination, the way in which basic employer contributions made in respect of a former Commonwealth ordinary employer-sponsored member must be paid to CSC.

21. **Item 16** amends Rule 2.2.6 to provide that this Rule does not apply in relation to a designated employer of a former Commonwealth ordinary employer-sponsored member. This reflects the amendments made by **item 15**, which preclude CSC from making a determination under Rule 2.2.5 in respect of former Commonwealth ordinary employer-sponsored members.

22. **Item 17** inserts a new note at the end of Rule 2.2.11 to explain that Rules 2.2.8, 2.2.9, 2.2.10 and 2.2.11 do not apply in respect of a former Commonwealth ordinary employer-sponsored member. This is because these rules apply in respect of a person to whom Rule 2.2.2(a) or Rule 2.2.2(b) applies, which does not include a former Commonwealth ordinary employer-sponsored member.

23. **Item 18** inserts the word “or” at the end of subparagraphs 3.1.1(a)(ii) and (iv) to clarify that a person may make a benefit application to CSC under any of these subparagraphs.

24. **Item 19** inserts new paragraph 3.1.1(aa) after paragraph 3.1.1(a). The new paragraph provides that a former Commonwealth ordinary employer-sponsored member may make a benefit application to CSC for the payment of their benefit on the basis that he or she has a permanent incapacity. The term ‘permanent incapacity’ is defined in Rule 1.2.1 as having the same meaning as in the SIS Act.

25. Only former Commonwealth ordinary employer-sponsored members can make a benefit application on the ground of permanent incapacity under paragraph 3.1.1(aa). A person who is an ordinary employer-sponsored member of PSSAP under subsections 18(2), (3) or (5) of the 2005 Act cannot make a benefit application on the ground of permanent incapacity but may make an application for invalidity retirement under Rule 3.1.1(a)(ii).

26. **Item 20** inserts the word “or” at the end of subparagraphs 3.1.1(b), (c), (d), (e) and (i) to clarify that a person may make a benefit application to CSC under each of these paragraphs.

27. **Item 21** inserts new Rule 3.1.9A after Rule 3.1.9. Rule 3.1.9A provides that if CSC receives a benefit application from a former Commonwealth ordinary employer-sponsored

member under new Rule 3.1.1(aa), CSC may pay the person the whole or a part of the person's total benefit as requested in the benefit application, subject to the SIS Act.

28. **Item 22** inserts a new sub-heading and Rule 3.3.1A underneath the Heading to Division 3 of Part 3 of the Schedule. The new sub-heading is "Scope of Division". New Rule 3.3.1A provides that Division 3 of Part 3 of the Schedule does not apply to former Commonwealth ordinary employer-sponsored members. As such, a former Commonwealth ordinary employer-sponsored member, or the designated employer of such a member, is not required to make an application for the person's invalidity retirement under Rule 3.3.1.

29. **Item 23** amends Rule 4.1.1 to exclude former Commonwealth ordinary employer-sponsored members from the provisions of this Rule. This means that it will not be mandatory for CSC to take out a policy or policies with an insurance company to provide death and invalidity cover for former Commonwealth ordinary employer-sponsored members. However, under new Rule 4.1.AA inserted by **item 24**, CSC may take out death and invalidity insurance policies in respect of these members, if it so chooses.

30. **Item 24** inserts new Rule 4.1.1AA and note before Rule 4.1.1A. New Rule 4.1.1AA provides that CSC may take out one or more policies with an insurance company or insurance companies in its name to provide death and invalidity cover for former Commonwealth ordinary employer-sponsored members. Death and invalidity cover is to be on the terms and conditions, including circumstances, agreed between CSC and the relevant insurance company or companies.

31. A former Commonwealth ordinary employer-sponsored member is not covered by the policy solely by virtue of Rule 4.1.1AA. Rather, Rule 4.1.1AA allows CSC to take out a policy or policies and new Rule 4.1.2AA (**item 26**) then allows CSC to offer death and invalidity cover to some or all former Commonwealth ordinary employer-sponsored members.

32. The note under new Rule 4.1.1A advises that under this Rule, CSC may take out death cover and invalidity cover in separate policies.

33. **Item 25** excludes former Commonwealth ordinary employer-sponsored members from the provisions of Rule 4.1.2. This reflects new Rule 4.1.1AA (**item 24**), which allows CSC to take out death and invalidity insurance policies in respect of former Commonwealth ordinary employer-sponsored members under new Rule 4.1.1AA.

34. **Item 26** inserts new Rule 4.1.2AA after Rule 4.1.2. New Rule 4.1.2AA provides that, subject to the SIS Act, CSC may offer death and invalidity cover to some or all former Commonwealth ordinary employer-sponsored members, subject to the terms and conditions of the policy taken out under Rule 4.1.1AA, unless the insurance company does not provide cover in respect of the member under that policy.

35. **Item 27** amends Rule 4.1.2B to provide that, subject to the SIS Act, CSC may determine the terms and conditions of any death and invalidity cover provided to persons under new Rule 4.1.2AA.

36. **Item 28** omits "or an application for approval of their invalidity retirement is made under Rule 3.3.1" from Rule 4.1.3 and substitutes "an application for the approval of the member's invalidity retirement is made under Rule 3.3.1 or the member makes a benefit application under Rule 3.1.1(aa)".

37. **Item 29** omits “PSSAP member or non-member spouse” from Rule 4.1.3A, and substitutes in the word “person”. This simplifies the language in the Rule.
38. **Item 30** amends Rule 4.1.3A by inserting “4.1.2AA or” after “under Rule”. The amended Rule requires CSC to make a claim against the relevant death and invalidity insurance policy where a former Commonwealth ordinary employer-sponsored member makes a claim against their cover under a policy offered by CSC under new Rule 4.1.2AA.
39. **Item 31** amends the note under Rule 4.1.3A by inserting “4.1.2AA or” after “under Rule”. This amends the note to reflect the changes made by **item 30** to Rule 4.1.3A.
40. **Item 32** omits “and Rule 4.1.1A” from Rule 4.1.5 and replaces it with “4.1.1AA or 4.1.1A”. This provides that all premiums for death and invalidity cover for former Commonwealth ordinary employer-sponsored members under Rule 4.1.1A are to be deducted from the PSSAP Fund.
41. **Item 33** amends Rule 4.1.6 by inserting “of” after the words “in respect”. This corrects a grammatical error with the sentence in which this word is contained.
42. **Item 34** amends Rule 4.3.1 to exclude former Commonwealth ordinary employer-sponsored members from the provisions of this Rule. As a result, it will not be compulsory for CSC to take out a policy or policies with an insurance company in its name to provide income protection cover in respect of former Commonwealth ordinary employer-sponsored members.
43. **Item 35** inserts new Rule 4.3.1AA after Rule 4.3.1. The new Rule provides that CSC may take out a policy or policies with an insurance company or companies in its name to provide income protection cover for some or all former Commonwealth ordinary employer-sponsored members. The Rule also provides that income protection cover is to be on the terms and conditions, including the circumstances, agreed between CSC and the relevant insurance company or companies.
44. A former Commonwealth ordinary employer-sponsored member is not covered by the policy solely by virtue of Rule 4.3.1AA. New Rule 4.3.2AA (**item 37**) provides for death and invalidity cover to be offered to former Commonwealth ordinary employer-sponsored members under any policy or policies that have been taken out by CSC under Rule 4.3.1AA.
45. **Item 36** excludes former Commonwealth ordinary employer-sponsored members from the provisions of Rule 4.3.2. This amendment reflects the changes made by **item 34**.
46. **Item 37** inserts new Rule 4.3.2AA after Rule 4.3.2. The new Rule provides that CSC may offer income protection cover to some or all former Commonwealth ordinary employer-sponsored members, subject to the terms and conditions of the policy taken out under Rule 4.3.1AA, unless the insurance company does not provide cover in respect of the member under that policy.
47. **Item 38** amends Rule 4.3.2B by inserting “4.3.2AA or” after the word “Rule”.

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

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

### **Superannuation Amendment (PSSAP Trust Deed–Membership) 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 Amendment (PSSAP Trust Deed–Membership) Instrument 2017 is to make amendments to the PSSAP Trust Deed and Rules that are consequential to the amendments made by the *Superannuation Amendment (PSSAP Membership) Act 2017* to the *Superannuation Act 2005* (the 2005 Act). The 2005 Act as amended enables certain members of the PSSAP who move to non-Commonwealth employment to remain contributory members of this scheme.

#### **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**