

## **EXPLANATORY STATEMENT**

*Issued by authority of the Minister for Finance*

*Superannuation Act 1990*

*Superannuation Amendment (PSS Trust Deed) Instrument 2018 to amend the Public Sector Superannuation Trust Deed and Rules pursuant to section 5 of the Superannuation Act 1990.*

On 21 June 1990 the Minister for Finance, for and on behalf of the Commonwealth, made a deed (the Trust Deed) under section 4 of the *Superannuation Act 1990* (the 1990 Act) to, among other things, establish a superannuation scheme, to be known as the Public Sector Superannuation Scheme (PSS), and the PSS Fund from 1 July 1990. The Schedule to the Trust Deed includes Rules for the administration of the PSS (the Rules).

The PSS was established to provide benefits for certain Commonwealth employees and certain other people. Commonwealth Superannuation Corporation (CSC) is the trustee of the PSS.

Section 5 of the 1990 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.

### **Amending Deed**

The Minister for Finance has amended the Trust Deed and Rules by signed instrument. That instrument is called the *Superannuation Amendment (PSS Trust Deed) Instrument 2018*. The instrument is referred to as the Amending Deed in this Explanatory Statement.

The purpose of the Amending Deed is to make consequential amendments to the Rules to take account of the:

- proposed renumbering of certain provisions in the *Family Law Act 1975* provided for by the Civil Law and Justice Legislation Amendment Bill 2017;
- creation of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*, which covers Australian Defence Force members and former members with service prior to 1 July 2004, provided for by the *Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2017*; and
- *Marriage Amendment (Definition and Religious Freedoms) Act 2017*.

In addition, the Amending Deed inserts a new rule prescribing a default benefit for PSS preserved benefit members with a preserved benefit that becomes payable under the Rules on reaching the age of 65. This will assist CSC to pay such benefits in a timely manner. The Amending Deed also makes related changes to certain arrangements for choosing benefit options, and to deal with a related transitional matter.

The Amending Deed addresses an anomaly that has enabled members to elect to preserve accumulated transfer amounts in the PSS despite no part of their final benefit accrual being preserved in the scheme, by preventing elections of this sort in future. This anomaly has resulted in a small number of people having benefits simultaneously in both the payment and growth phase. The Amending Deed also includes new rules to clarify arrangements for splitting superannuation benefits as part of family law settlements in such cases.

The Amending Deed also simplifies and updates a range of provisions in the Trust Deed and Rules.

Details of the instrument are at [Attachment A](#).

### **CSC Approval**

Section 5 of the 1990 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. The amendments to the Trust Deed are subject to disallowance in accordance with section 45 of the 1990 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 22846). 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, except for those in Part 1 of Schedule 2, come into effect on the day after registration of the Amending Deed on the Federal Register of Legislation (FRL).

Part 1 of Schedule 2 is dependent on the commencement of Part 3 of Schedule 6 of the Civil Law and Justice Legislation Amendment Bill 2017, if enacted. Part 1 of Schedule 2 therefore commences on the latter of immediately after commencement of the relevant legislative provisions and the day after the Amending Deed is registered on the FRL. However, it does not commence at all if the legislative provisions on which they depend do not come into effect.

### **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 (PSS Trust Deed) Instrument 2018*.

### Commencement

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

- Item 1 of the table in subsection 2(1) provides that Sections 1 to 4 and anything in the Amending Deed not covered elsewhere in the table commence on the day after registration of the Amending Deed on the Federal Register of Legislation (FRL).
- Item 2 of the table provides that Schedule 1 commences on the day after registration of the Amending Deed on FRL.
- Item 3 of the table provides that Part 1 of Schedule 2 commences on the later of immediately after the commencement of Part 3 of Schedule 6 to the Civil Law and Justice Legislation Amendment Bill 2017, if enacted, and the day after registration of the Amending Deed on the FRL. However, Part 1 of Schedule 2 does not commence at all if the former event does not occur.
- Item 4 of the table provides that Parts 2, 3 and 4 of Schedule 2 commence on the day after registration of the Amending Deed on FRL.
- Item 5 of the table provides that Schedule 3 commences on the day after registration of the Amending Deed on FRL.

3. The note at the end of the table clarifies that the table relates only to provisions of the instrument as originally made, and will not be amended to deal with any later amendments of the instrument. Subsection 2(2) provides 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 5 of the *Superannuation Act 1990* (1990 Act).

### Schedules

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 a Schedule to the instrument has effect according to its terms.

### Schedule 1—Amendment of the PSS Trust Deed

6. Schedule 1 makes some minor amendments to the main body of the PSS Trust Deed.

7. The *Public Governance, Performance and Accountability Act 2013* replaced the *Financial Management and Accountability Act 1997* and the *Commonwealth Authorities and Companies Act 1997* as the primary financial legislation for the Commonwealth in 2014. In light of this change, **Item 1** amends subclause 1.3AA of the Trust Deed so that Finance

Minister is defined as meaning the Minister administering the *Public Governance, Performance and Accountability Act 2013*, rather than the Minister administering the *Financial Management and Accountability Act 1997*.

8. Administration services for many of the schemes for which CSC is trustee were previously provided by a Commonwealth entity known as ComSuper. ComSuper was merged into CSC with effect from 1 July 2015. Accordingly, **Items 2 to 9** amend subclauses 12.1 and 12.3 of the Trust Deed, which deal with delegation by CSC, and subclause 13.1 of the Trust Deed, which deals with delegations by the Finance Minister, to remove or update references to the Chief Executive Officer of ComSuper and staff of ComSuper as appropriate.

### **Schedule 2—Amendment of the PSS Rules**

9. Schedule 2 makes amendments to the PSS Rules contained in the Schedule to the PSS Trust Deed.

### **Part 1 – Amendments consequent on commencement of Schedule 6, Part 3 of the Civil Law and Justice Legislation Amendment Bill 2017**

10. The Civil Law and Justice Legislation Amendment Bill 2017, currently before the Parliament, provides for the renumbering of Part VIII B of the *Family Law Act 1975*, which gives a court the power to deal with the superannuation interests of separating married or de facto couples. **Items 1 to 5** make consequential amendments to the Rules to take account of this renumbering in definitions of the terms ‘base amount’, ‘family law value’, ‘splitting percentage’ and a note following the definition of ‘family law value’. The amendments do not affect policy.

### **Part 2 – Amendments consequential to the *Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2017***

11. The *Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2017* created the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (the DRCA), which applies to members and former members of the Defence Force with service prior to the commencement of the *Military Rehabilitation and Compensation Act 2004* on 1 July 2004. Effectively, the DRCA creates a new scheme for compensation for affected Defence Force members that operates in parallel to the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act). Some members of the PSS who are former members of the Defence Force are covered by the DRCA. Accordingly, **Items 6 to 8** amend the Rules to take account of the DRCA by adding references to relevant compensation and other matters under the DRCA as well as the SRC Act.

12. **Item 6** amends the definition of ‘compensation leave’ in Rule 1.2.1 so that it includes any period during which a person is absent full-time from his/her employment due to an incapacity for work resulting from an injury in respect of which compensation is payable under certain provisions of the DRCA.

13. Under the Rules, a PSS member who is on leave of absence without pay for a continuous period exceeding 12 weeks is generally required to pay contributions only if that leave qualifies as an excluded period of leave of absence. **Item 7** amends paragraph 4.2.1(c) so that an excluded period of leave of absence includes a period of compensation leave granted under the DRCA.

14. Rule 10.7.5, among other things, details matters that CSC must consider when deciding whether or not to approve the invalidity retirement of certain members. **Item 8** replaces paragraphs 10.7.5(c), (d) and (e). The new rule reorders some of the existing paragraphs for ease of reading and inserts a new provision to recognise the effect of the DRCA.

Specifically, new subparagraph 10.7.5(e)(ii) applies where the member is on compensation leave (or suffering from a compensable condition) resulting from an injury or disease within the meaning of the DRCA, and requires CSC to consider any views that the Military Rehabilitation and Compensation Commission has provided regarding the member's medical condition.

### **Part 3 – Amendments consequential to the *Marriage Amendment (Definition and Religious Freedoms) Act 2017***

15. The *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (MA(DRF) Act) removed restrictions in the *Marriage Act 1961* to allow two people the freedom to marry in Australia regardless of their sex or gender. The MA(DRF) Act made consequential amendments to gendered terms and definitions in Commonwealth Acts to ensure equal treatment of all married couples, including the definition of the term 'marital or couple relationship' in Commonwealth Acts governing the superannuation schemes for public sector employees. Consistent with this change, **Item 9** replaces the definition of the term 'marital or couple relationship' in Rule 1.2.1 with a definition that inserts reference to the non-gender specific term 'spouses' in the definition. The replacement definition notes that, despite the definition of 'spouse' in Rule 1.2.1, the reference to spouse in the definition of 'marital or couple relationship' is a reference to spouse within the meaning of section 2CA of the *Acts Interpretation Act 1901*. This note is included to draw the distinction between the use of 'spouse' in the definition and elsewhere in the Rules where the term is not intended simply to refer to a person who was legally married to another person, but also involves, for example, a dependence test.

### **Part 4 – Amendments relating to release authorities and other matters**

16. **Item 10** makes a minor amendment to the definition of 'early release lump sum' in Rule 1.2.1 for clarity, recognising that Rule 12.4.1 provides for the payment of a lump sum but does not define the term 'early release lump sum'.

17. **Item 11** replaces the definition, in Rule 1.2.1, of 'release authority' for the purposes of the Rules except for Part 17 with a simplified and updated definition of the term. Rather than list release authorities under specific provisions of other legislation the new definition is general and inclusive, covering a release authority issued under *taxation legislation* (Item 12 defines this term for the purposes of the Rules) for the release of an amount from a member's superannuation interest.

18. **Item 12** inserts a new definition of 'taxation legislation' in Rule 1.2.1, a term referred to in the definition of 'release authority'. Under the definition, 'taxation legislation' means the *Taxation Administration Act 1953*, the *Income Tax Assessment Act 1997* and the *Income Tax (Transitional Provisions) Act 1997*.

19. **Item 13** corrects a minor grammatical error in the definition of 'totally and permanently incapacitated' in Rule 1.2.1 by replacing the word 'reasonable' with 'reasonably'.

20. **Items 14 and 15** replace the notes at the end of Rule 6.2.1 (which deals with normal benefit options after minimum retiring age) and Rule 6.3.3 (which deals with involuntary retirement benefit options after minimum retiring age) with new expanded notes. The new expanded notes introduce new Note 1 to Rule 6.2.1 and new Note 2 to Rule 6.3.3 to explain how Part 8 - Preserved Benefits interacts with the relevant rule where the member is aged 65 or over at the time of preservation. Following is a practical example of this effect:

*Maree, a contributor aged 67, retires from employment with the Australian Public Service, ceasing PSS membership. Under Rule 6.2.1 Maree is entitled to leave her final benefit accrual in the scheme as a preserved benefit (the default benefit option) or, as an alternative, may choose from several other benefit options set out in the rule. Maree chooses to have her final benefit accrual preserved in the PSS. As Maree is aged over 65, the preserved benefit is immediately payable to Maree under Rule 8.1.1. Under new Rule 8.2.1, Maree is entitled to a lump sum of her preserved benefit plus any superannuation guarantee additional amount applicable to her, unless she chooses, within three months of the benefit becoming payable upon her retirement (and preservation of her benefit), to take the preserved benefit in an alternative form specified in Rule 8.2.1A.*

21. **Item 16** inserts a note at the end of Rule 6.5.2, which deals with invalidity retirement benefit options after age 60. Similar to the notes inserted by **Items 14 and 15**, the note inserted by Item 16 makes it clear that Part 8 - Preserved Benefits applies to benefits preserved under Rule 6.5.2 and broadly explains the effect where the member is aged 65 or over at the time of preservation. The detailed practical effect in this case is similar to that in the example given in paragraph 20.

22. **Items 17, 18 and 19** insert notes at the end of Rules 6.6.2, 6.6.3 and 6.6.5 respectively, which deal with the benefit options of members who cease membership in certain circumstances on the sale or transfer of assets. These notes make it clear that Part 8 – Preserved Benefits applies to benefits preserved under Rules 6.6.2, 6.6.3 and 6.6.5 and explains the effect where the member is aged 65 or over at the time of preservation. The detailed practical effect in this case is similar to that in the example given in paragraph 20.

23. **Item 20** replaces Rule 8.2.1, which prescribes the benefit options for a preserved benefit member on reaching certain ages, with a new rule establishing a default benefit for a preserved benefit member whose preserved benefit has become payable under Rule 8.1.1(a) as a result of his/her having reached the age of 65. Currently, a person whose benefit has become payable in these circumstances may elect to take their benefit as a full pension, a combination of pension and lump sum, or lump sum only. However, the current rule does not specify how CSC is to pay a benefit in the event that a person does not make an election. The amended Rules retain the existing options but provide for the lump sum option to be the default if a person does not make an alternative benefit choice within the specified time period in accordance with Rule 8.2.1A (see Item 21). Establishing a default benefit of this nature will assist CSC to meet its responsibility to pay a preserved benefit member their preserved benefit when he/she reaches age 65.

24. **Item 21** inserts new Rules 8.2.1A and 8.2.1B. New Rule 8.2.1A enables a preserved benefit member with a preserved benefit that has or will become payable under Rule 8.1.1(a) as a result of his/her reaching the age of 65, to choose to take their preserved benefit in certain alternative forms to the default benefit prescribed by Rule 8.2.1. These benefit options are the same as the existing options under current Rule 8.2.1; namely, a person whose preserved benefit includes all of their accumulated member contributions (other than any refunded Excess Contribution Multiple), accumulated productivity contributions and unfunded preserved benefit may choose, as an alternative to a lump sum payment, to take their entire preserved benefit as a pension or to convert at least half of their preserved benefit to a pension and take the balance as a lump sum. However, consistently with the introduction of a default benefit, the new rule includes a time period during which the person must make the election (otherwise the default benefit will be paid by CSC). A preserved benefit member has a period of six months to choose an alternative benefit, commencing three months before and ending three months after the preserved benefit becomes payable. Where the preserved benefit member becomes a

preserved benefit member at age 65 or over his/her benefit will become immediately payable. In this case, the preserved benefit member is unable to choose an alternative benefit during the three months before their benefit becomes payable because they must be a preserved benefit member in order to make such a choice. This means that, in practice, a person in this situation would have a three month period from the date that their benefit becomes payable to choose an alternative benefit under Rule 8.2.1A.

25. New Rule 8.2.1B, inserted by **Item 21**, prescribes benefit options for a preserved benefit member whose preserved benefit has become payable on a date chosen by them under paragraph 8.1.1(b) of the Rules. These benefit options were previously included in Rule 8.2.1, and are unchanged. A default benefit does not apply to this category of person, as the preserved benefit becomes payable at a date of their choosing.

26. **Item 22** updates the note following the heading to Division 3 of Part 8 of the Rules, which deals with early access to part of a preserved benefit, to remove references to outdated issues and prior arrangements.

27. **Item 23** repeals Rule 8.3.3, including the heading, as it no longer has current application. This rule deals with applications made by preserved benefit members before 1 July 1997, for access to preserved accumulated productivity contributions on compassionate grounds or the grounds of severe financial hardship.

28. **Item 24** repeals Rule 8.3.4, including the heading, as it no longer has current application. The rule details transitional arrangements for certain preserved benefit members that retired on or after minimum retiring age before 1 July 1996, enabling them to access their preserved accumulated member contributions and preserved accumulated productivity contributions up to an amount permitted by the *Superannuation Industry (Supervision) Act 1993* and regulations made under that Act (SIS Act).

29. **Item 25** amends the heading to Rules 8.3.5 to 8.3.6B so that it no longer characterises these rules as relating to applications made after 30 June 1997. This distinction is redundant as all applications are now in this category.

30. **Items 26 to 29** make amendments relating to Rules 8.3.5 to 8.3.6, dealing with applications made after 30 June 1997 for access to all or part of a preserved benefit on the grounds of severe financial hardship or on compassionate grounds.

31. **Item 26** simplifies Rule 8.3.5, by removing the reference to applying to CSC (for early release of a preserved benefit on severe financial hardship grounds). Since the SIS Act governs arrangements for early release of superannuation on severe financial hardship grounds, removal of the reference will avoid the need for future amendments if the arrangements are changed. The item also updates the rule by removing a redundant reference to applications after 30 June 1997.

32. **Item 27** simplifies Rule 8.3.5 by removing reference to CSC approving an early release lump sum (on severe financial hardship grounds). Since the SIS Act governs arrangements for early release of superannuation on severe financial hardship grounds, the provision now directly refers to that legislation to avoid need for further amendments if the arrangements are changed.

33. **Item 28** makes amendments to Rule 8.3.6 similar to those made by Item 26 to Rule 8.3.5. However, the item removes a reference to applying to the Insurance and Superannuation Commissioner or the Australian Prudential Regulation Authority instead of CSC.

34. **Item 29** makes amendments to Rule 8.3.6 similar to those made by Item 27 to Rule 8.3.5. However, the item removes a reference to approval by the Australian Prudential Regulation Authority instead of CSC.

35. **Item 30** amends Rule 8.3.7, dealing with further payments of preserved benefits on the grounds of severe financial hardship or compassionate grounds, to omit references to Rules 8.3.3 and 8.3.4, which are repealed by the Amending Deed. Notwithstanding the removal of references to Rules 8.3.3 and 8.3.4, a preserved benefit member who was previously paid an amount under these rules can be paid further amounts under Rules 8.3.5 or 8.3.6.

36. **Item 31** makes amendments to Rule 8.3.7 similar to those made by Items 27 and 29 to Rules 8.3.5 and 8.3.6 respectively. However, the item removes references to approval by the Australian Prudential Regulation Authority, or CSC, as the case may be.

37. **Item 32** replaces the flowchart titled ‘Overview of the Invalidity Retirement Process’ following the heading to Division 7 of Part 10 with an updated flowchart. The updated flowchart replaces references to ‘Board’ with ‘CSC’ and reflects the role of the Military Rehabilitation and Compensation Commission in the invalidity retirement process.

38. Rules 11.2.1, 11.3.7 and 11.5.1 prescribe the benefit entitlements in relation to specific transfer amounts transferred into the PSS that apply when the member ceases membership in particular circumstances. All of these rules currently enable a member to preserve an accumulated transfer amount (and in some cases certain other related amounts), regardless of whether or not the member is preserving any other part of their final benefit accrual in the scheme. This can result in members preserving only their accumulated transfer amount in the scheme even when the rest of their benefit has been paid or has commenced being paid and, in the event that a superannuation split occurs, the former member can potentially have a benefit in both the growth and payment phases. The Amending Deed addresses this anomaly by making a number of amendments to ensure that members who cease membership in the future are precluded from preserving their accumulated transfer amount in the PSS in these circumstances.

39. Relevantly, **Items 33 and 34** insert a new Rule 11.2.1A, and make consequential amendments to Rule 11.2.1, and **Items 37 and 38** and **Items 40 and 41** insert equivalent new Rules 11.3.7A and 11.5.1A, and make consequential changes to Rules 11.3.7 and 11.5.1. In each case, the combined effect of the relevant two items is that a member will be precluded from preserving their accumulated transfer amount in the PSS in these circumstances in future.

40. **Items 35, 36 and 39** amend Rules 11.2.5 and 11.5.5, dealing with the payment of accumulated transfer amounts in relation to a release authority, and Rule 11.4.11, dealing with the payment of accumulated additional contributions in relation to a release authority, so that they are enduring over time. For example, **Items 36 and 39** remove detail that is prescribed elsewhere in Commonwealth legislation.

41. Part 6 of the Rules deals with Member’s Benefit Options on cessation of membership in certain circumstances. The Part commonly preserves a person’s final benefit accrual in the PSS if they do not choose another benefit option available in the particular circumstances. Rule 12.1.1 provides CSC with the flexibility to allow a person additional time to choose an



alternative benefit option in Part 6 beyond the prescribed period commencing three months before and ending three months after the person ceases membership. **Items 42 and 43** amend Rule 12.1.1 and insert new Rule 12.1.1A to preclude CSC from allowing a person additional time to choose an alternative benefit option under Part 6 if he/she became a preserved benefit member and then, as a result of having reached age 65, was paid, or commenced being paid, a benefit under new Rules 8.2.1 or 8.2.1A in Part 8. A person in this situation is instead able to request that CSC cancel his/her benefit option choice and replace it with another option available under the Rules in line with the arrangements in Rules 12.1.4 and 12.1.5. As new Rule 8.2.1 automatically entitles a preserved benefit member to a lump sum benefit on reaching age 65 (that is, they do not have to “choose” a lump sum benefit), **Item 44** makes changes necessary to enable Rules 12.1.4 and 12.1.5 to apply if a person has received a lump sum benefit under Rule 8.2.1. In particular, the item inserts new Rule 12.1.5A specifying that a person who receives a lump sum benefit under Rule 8.2.1 is treated as having chosen the benefit for the purposes of Rules 12.1.4 and 12.1.5.

42. Part 16 of the Rules deals with family law superannuation splitting when a marriage or de facto relationship breaks down. Rule 16.1.2 contained in that Part defines words and phrases that have a special meaning when used in the Part. **Item 45** amends the definition of ‘scheme value’ as Rule 16.2.2 does not provide for determination of a scheme value amount and is only one of several rules that may govern how scheme value is worked out. The amendment of the definition makes it clear that scheme value is the amount determined in accordance with Rules 16.2.2, 16.2.2A, 16.2.2B, 16.2.2C, 16.2.2D and 16.2.2E as relevant.

43. **Item 46** inserts new Rules 16.2.10 and 16.2.11, including a heading and note, providing for splitting of superannuation where the member spouse has an interest that is simultaneously in both the payment and growth phase. The new rules provide explicit guidance to CSC as to the appropriate means of splitting superannuation where the situation discussed in paragraph 38 above arises (that is, when a member spouse is in receipt of a standard pension and has a preserved accumulated transfer amount). New Rule 16.2.10 clarifies that, in this situation, the non-member spouse is entitled to an associate standard pension in accordance with Division 2 of Part 16 and an associate preserved benefit in accordance with Division 3 of Part 16. The anomaly that has enabled cases of this sort to arise is addressed by **Items 33, 34, 37, 38, 40 and 41** of this Schedule. These splitting arrangements will apply in the limited cases where, prior to commencement of Part 4 of Schedule 2 of the Amending Deed, the only amount preserved in the PSS by a person was an accumulated transfer amount.

44. New Rule 16.2.11, inserted by **Item 46**, requires the associate standard pension and associate preserved benefit to which the non-member spouse is entitled under Rule 16.2.10 to be determined by CSC by apportioning the separation amount to the member spouse’s standard pension and preserved accumulated transfer amount in accordance with factors and a method determined by an actuary.

45. The note following new Rule 16.2.11 makes it clear that the new Rules 16.2.10 and 16.2.11 are relevant to a small group of people who, prior to the commencement of changes to Rules 11.2.1, 11.3.7 and 11.5.1 and the commencement of new Rules 11.2.1A, 11.3.7A and 11.5.1A, elected to preserve their accumulated transfer amount in the PSS despite no part of their final benefit accrual being preserved in the PSS.

46. Rules 16.3.10 to 16.3.12 deal with access to all or part of an associate preserved benefit on the grounds of severe financial hardship and on compassionate grounds.

47. **Item 47** makes amendments to Rule 16.3.10 similar to those made by Item 26 to

Rule 8.3.5, which relates to early access to all or part of a preserved benefit on grounds of severe financial hardship.

48. **Item 48** makes amendments to Rule 16.3.10 similar to those made by Item 27 to Rule 8.3.5, which relates to early access to all or part of a preserved benefit on grounds of severe financial hardship.

49. **Item 49** makes amendments to Rule 16.3.11 similar to some of those made by Item 28 to Rule 8.3.6, which relates to early access to all or part of preserved benefit on compassionate grounds.

50. **Item 50** makes amendments to Rule 16.3.11 similar to those made by Item 29 to Rule 8.3.6, which relates to early access to all or part of a preserved benefit on compassionate grounds.

51. **Item 51** makes amendments to Rule 16.3.12 similar to those made by Item 31 to Rule 8.3.7, which relates to payment of further early release payments from preserved benefits.

52. **Item 52** inserts a new Division 6A Reduction of benefits for member spouse – operative time in payment and growth phase, consisting of a new Rule 16.6A.1, following Division 6 of Part 16. The new rule requires CSC, as the trustee of the PSS, to reduce the member spouse’s standard pension and preserved accumulated transfer amount in accordance with factors and a method determined by an actuary, if a non-member spouse is entitled to receive associate benefits in accordance with new Rules 16.2.10 and 16.2.11.

### **Schedule 3 – Amendment of the PSS Rules – Transitional Provisions**

53. **Item 1** inserts a new Part 18 – Transitional Provisions in the Rules, comprising Division 1 – Benefit options relating to preserved benefits. Division 1 contains new Rule 18.1.1 which sets out transitional arrangements for the purposes of new Rule 8.2.1A which is inserted by the Amending Deed.

54. Rule 8.2.1A enables preserved benefit members who become entitled to a lump sum under Rule 8.2.1 to take their preserved benefit in an alternative form provided certain requirements are met. Under Rule 8.2.1A, the preserved benefit member has a period commencing three months before the preserved benefit becomes payable and ending three months after the preserved benefit becomes payable to choose an alternative benefit.

55. The transitional arrangements in Rule 18.1.1 apply to preserved benefit members whose preserved benefit became payable under Rule 8.1.1(a) prior to commencement of Rule 8.2.1A. The rule ensures that people in this category have three months from commencement of Rule 8.2.1A to choose an alternative benefit to the default lump sum benefit provided by Rule 8.2.1. Without Rule 18.1.1, these people would have less or no opportunity to choose an alternative benefit under Rule 8.2.1A.

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

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

### **Superannuation Amendment (PSS Trust Deed) Instrument 2018**

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 Minister for Finance has amended the PSS Trust Deed and Rules by signed instrument called the *Superannuation Amendment (PSS Trust Deed) Instrument 2018* (the Amending Deed).

The purpose of the Amending Deed is to make consequential amendments to the Rules to take account of the Civil Law and Justice Legislation Amendment Bill 2017, the *Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2017*, and the *Marriage Amendment (Definition and Religious Freedoms) Act 2017*.

In addition, the Amending Deed inserts a new rule prescribing a default benefit for PSS preserved benefit members with a preserved benefit that becomes payable under the Rules on reaching the age of 65. The Amending Deed also makes related changes to certain arrangements for choosing benefit options, and to deal with a related transitional matter.

The Amending Deed addresses an anomaly that has resulted in a small number of people having benefits simultaneously in both the payment and growth phase, and includes new rules to clarify arrangements for splitting superannuation benefits as part of family law settlements in such cases.

The Amending Deed simplifies and updates a range of provisions in the PSS Trust Deed and Rules.

#### **Human rights implications**

This Legislative Instrument engages the rights to equality and non-discrimination contained in Articles 2 and 26 of the International Covenant on Civil and Political Rights, which provide that all people are equal before the law and entitled to the equal protection of the law without discrimination.

Amending the definition of ‘marital or couple relationship’ in the Rules to include the gender-neutral term ‘spouses’ will have a positive effect on these rights. This is because it will result in all marriages in Australia or recognised by Australian law being recognised as marriages for the purposes of the PSS definition, regardless of the sex of those involved in the union.

#### **Conclusion**

This Legislative Instrument is compatible with human rights, as it promotes the rights to equality and non-discrimination.

**Senator the Hon Mathias Hubert Paul Cormann, Minister for Finance**