

## **EXPLANATORY STATEMENT**

*Issued by authority of the Minister for Finance*

*Superannuation Act 2005*

*Superannuation Amendment (PSSAP Trust Deed – Superannuation Salary) Instrument 2020 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 PSSAP Trust Deed) under section 10 of the *Superannuation Act 2005* 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 PSSAP 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 *Superannuation Act 2005* provides that the Minister may amend the PSSAP 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 PSSAP Trust Deed by signed instrument. That instrument is called the *Superannuation Amendment (PSSAP Trust Deed – Superannuation Salary) Instrument 2020*. The instrument is referred to as the Amending Deed in this Explanatory Statement.

The purpose of the Amending Deed is to amend the PSSAP Trust Deed provisions detailing the circumstances in which a PSSAP member's superannuation salary is ordinary time earnings (OTE), to include additional circumstances. The amendments will essentially enable PSSAP members who were subject to an enterprise agreement (EA) that specified that their superannuation salary was OTE and who are subsequently moved to Australian Public Service (APS) employment at an agency on or after 1 February 2020, as a result of a machinery of government change, to have their superannuation salary maintained as such via certain determinations made under the *Public Service Act 1999* (PS Act).

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

### **CSC Approval**

Section 32 of the *Superannuation Act 2005* requires CSC to consent to amendments to the PSSAP Trust Deed except in certain circumstances. These circumstances include where the amendments relate to a payment by the Commonwealth as the employer-sponsor of PSSAP. The amendments contained in the Amending Deed relate solely to such a payment. Accordingly CSC consent to the amendments in the Amending Deed is not required.

### **Legislation Act 2003**

The Amending Deed is a legislative instrument. The amendments to the PSSAP Trust Deed are subject to disallowance in accordance with section 11 of the *Superannuation Act 2005*.

**Consultation**

Section 17 of the *Legislation Act 2003* specifies that rule-makers should consult before making legislative instruments. The Australian Public Service Commission and CSC have been consulted on the amendments contained in the Amending Deed.

The Office of Best Practice Regulation was consulted and advised that a Regulation Impact Statement is not required (OBPR ID number 26011).

**Commencement**

The amendments in the Amending Deed come into effect on the day after registration of the Amending Deed on the Federal Register of Legislation.

**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 – Superannuation Salary) Instrument 2020*.

### 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 the whole of the Amending Deed commences on the day after registration of the Amending Deed on the Federal Register of Legislation (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.

4. Subsection 2(2) provides that the information in column 3 of the table is not part of the instrument.

### Authority

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

### Schedules

6. **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—Amendments

7. Schedule 1 makes amendments to the PSSAP Trust Deed.

8. Division 2 of Part 2 of the Rules deals with contributions by employers to PSSAP. Rule 2.2.1 essentially requires Commonwealth agencies to pay contributions in respect of employees who are PSSAP members in respect of that employment, equal to 15.4 per cent of their superannuation salary. Rules 2.2.2 and 2.2.3 together operate so that the superannuation salary of such PSSAP members is the amount that would have been their fortnightly contribution salary if they were a member of the earlier, closed Public Sector Superannuation Scheme, unless an applicable agreement or determination of a type listed in Rule 2.2.3 specifies that the PSSAP member's superannuation salary is OTE.

9. **Item 1** amends Rule 2.2.3 by inserting, after existing paragraph 2.2.3(f), new paragraph 2.2.3(fa) setting out additional circumstances in which the superannuation salary of a PSSAP member will be OTE. In particular, new paragraph 2.2.3(fa) provides that the superannuation salary of a PSSAP member (known as an ordinary employer-sponsored member) is OTE if this is specified in a determination of terms and conditions of employment made under subsection 24(1) or subsection 24(3) of the PS Act, by an Agency Head and the

Public Service Minister respectively, provided:

- the determination applies to a PSSAP member who is moved to an APS Agency on or after 1 February 2020 pursuant to a determination made under paragraph 72(1)(a) of the PS Act; and
- the PSSAP member's superannuation salary was specified as OTE in an enterprise agreement that applied to them immediately before they were moved.

10. The inclusion of new paragraph 2.2.3(fa) will, among other things, obviate the need to take action beyond making a determination under subsection 24(1) or subsection 24(3) of the PS Act, to preserve OTE as the superannuation salary for relevant PSSAP members in the circumstances covered. This will simplify the transition of employees to an agency in the context of a machinery of government change while maintaining the status quo, in terms of superannuation salary, for relevant employees.

**ATTACHMENT B****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 – Superannuation Salary) Instrument 2020**

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 PSSAP Trust Deed by signed instrument. That instrument is called the *Superannuation Amendment (PSSAP Trust Deed – Superannuation Salary) Instrument 2020* (Amending Deed).

The purpose of the Amending Deed is to amend the PSSAP Trust Deed provisions detailing the circumstances in which a PSSAP member's superannuation salary is OTE, to include additional circumstances. The amendments will essentially enable PSSAP members who were subject to an EA that specified that their superannuation salary was OTE and who are subsequently moved to APS employment at an agency on or after 1 February 2020, as a result of a machinery of government change, to have their superannuation salary maintained as such via certain determinations made under the *Public Service Act 1999*.

**Human rights implications**

The Amending Deed does not engage any of the applicable rights or freedoms.

**Conclusion**

The Amending Deed is compatible with human rights, as it does not raise any human rights issues.

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