

EXPLANATORY STATEMENT

Issued by authority of the Minister for Finance

Superannuation Act 2005

*Superannuation Amendment (PSSAP Trust Deed – Membership) Instrument 2020
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 2020

The Minister has amended the Trust Deed and Rules by signed instrument that is the *Superannuation Amendment (PSSAP Trust Deed - Membership) Instrument 2020*. 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 2020* (the Amending Act) to the 2005 Act. The Amending Act enables certain current and former Commonwealth employees and statutory office holders who were not previously eligible to remain or become a contributory member of PSSAP, to remain or become a contributing member of PSSAP who were not previously eligible to do so. The Amending Act broadened the scope of persons eligible for PSSAP membership by replacing the category of member under former subsection 18(7) of the 2005 Act, “former Commonwealth ordinary employer-sponsored member”, with two new categories of members. The two categories are “eligible PSSAP member” as provided for under subsection 18(7) of the 2005 Act as amended and “eligible CSS/PSS member or former member” as provided for under new subsection 18(8A) of the 2005 Act. The Amending Deed includes consequential amendments that:

- update terminology by removing references to “former Commonwealth ordinary employer-sponsored member” and including references to the new terms “eligible PSSAP member” and “eligible CSS/PSS member or former member”;
- ensure that non-Commonwealth designated employers are not required by the Trust Deed or Rules to make contributions to PSSAP in respect of an eligible PSSAP member or an eligible CSS/PSS member or former member;
- ensure that certain benefits under the PSSAP Rules are available to the new categories of member, including by allowing CSC to take out policies for death and invalidity insurance and income protection insurance to offer to eligible PSSAP members and

eligible CSS/PSS members or former members; and

- enable an eligible PSSAP member or an eligible CSS/PSS member or former member to apply to CSC for payment of their benefit on the ground of permanent incapacity.

The Amending Deed also simplifies the Rules relating to the procurement and provision of death and invalidity and income protection insurance by CSC. In particular, the Amending Deed:

- removes references to CSC being able to provide insurance for non-member spouses with PSSAP accounts resulting from family law splits only, as CSC does not provide cover to non-member spouses in practice; and
- modifies CSC's obligations in relation to the general provision of death and invalidity cover, and income protection cover, in respect of ordinary employer-sponsored members so that it is permitted, but not required, to take out a policy or policies for this purpose.

These changes do not remove CSC's responsibility to meet any requirements under the *Superannuation Industry (Supervision) Act 1993* or subordinate legislation relating to insurance or its duty to act in the best interests of members in providing PSSAP members with death and invalidity and income protection insurance.

The Amending Deed also includes amendments to two Rules to better align them with the broader superannuation framework. Paragraph 3.1.6(a) is amended by removing the reference to the Chief Executive of Medicare. This provides greater consistency with the *Superannuation Industry (Supervision) Regulations 1994*, which specify that determinations made for the release of superannuation on compassionate grounds may be made by 'the Regulator'. Rule 3.1.20 has been amended to permit CSC to transfer inactive low balance accounts to the Commissioner for Taxation in accordance with *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

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.

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 2020*. 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.

ATTACHMENT A

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 2020*.

Commencement

2. **Section 2** sets out the commencement provision for the amendments set out in the Amending Deed. Item 1 of the table in subsection 2(1) provides that the whole of the instrument commences at the same time as Schedule 1 to the *Superannuation Amendment (PSSAP Membership) Act 2020*. 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 2005 Act).

Schedule

4. **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—Amendments

Amendments relating to former Commonwealth employer-sponsored members

5. Under the 2005 Act a person can be an “ordinary employer-sponsored member” under subsection 18(2), 18(3), 18(5) or 18(7) of the 2005 Act. A person who is an ordinary employer-sponsored member under subsection 18(7) before amended by the Amending Act is referred to as a “former Commonwealth ordinary employer-sponsored member”.

6. Under amendments made to the 2005 Act by the Amending Act, a person can be an ordinary employer-sponsored member under subsection 18(2), 18(3), 18(5), new 18(7) or new 18(8A) of the 2005 Act. A person can also be an ordinary employer-sponsored member under more than one subsection where the person is in concurrent Commonwealth and non-Commonwealth employment.

7. A person who is an ordinary employer-sponsored member under new subsection 18(7) of the 2005 Act is referred to as an “eligible PSSAP member” (rather than a former Commonwealth ordinary employer-sponsored member) and a person who is an ordinary employer-sponsored member under new subsection 18(8A) is referred to as an “eligible CSS/PSS member or former member”.

8. Under the existing Rules, where a Rule is not to apply to a former Commonwealth ordinary employer-sponsored member, this type of member is carved out from the Rule by listing them as exceptions. In effect this means that the Rule only applies to a person who is an ordinary employer-sponsored member under subsection 18(2), 18(3) or 18(5) of the 2005 Act.

9. Under the changes made by the Amending Deed, the Rules that apply only to a person who is ordinary employer-sponsored member under subsection 18(2), 18(3) or 18(5) of the 2005 Act make direct reference to these subsections – rather than carving out other sub-categories of ordinary employer-sponsored members whenever the Rule does not apply. The Rules concerned deal with contributions or other matters (such as superannuation salary and invalidity retirement) that relate to employment or an office (Commonwealth employment) that gives rise to the person being an ordinary employer-sponsored member under subsection 18(2), 18(3) or 18(5) of the 2005 Act.

10. Other references in the Rules relating to a former Commonwealth ordinary employer-sponsored member are replaced with references to “eligible PSSAP member” and “eligible CSS/PSS member or former member”.

11. **Item 1** amends the definition of “additional employer contributions” in Rule 1.2.1 to directly set out that the definition is only relevant to a person being an ordinary employer-sponsored member under subsection 18(2), 18(3) or 18(5) of the 2005 Act.

12. **Item 3** inserts a definition of “eligible CSS/PSS member or former member” in Rule 1.2.1. The definition provides that this term has the same meaning as in the 2005 Act.

13. **Item 4** inserts a definition of “eligible PSSAP member” in Rule 1.2.1. The definition provides that this term has the same meaning as in the 2005 Act.

14. **Item 5** repeals the definition “former Commonwealth ordinary employer-sponsored member” from Rule 1.2.1 as this category of member is repealed by the Amending Act.

15. **Item 8** amends the definition of “invalidity retirement” in Rule 1.2.1 to directly set out that the definition is only relevant to the termination of a person’s employment where it relates to employment or an office that gives rise to the person to be an ordinary employer-sponsored member under subsection 18(2), 18(3) or 18(5) of the 2005 Act. These provisions generally relate to Commonwealth employees or statutory officeholders.

16. **Item 9** repeals the existing note under the definition of “ordinary employer-sponsored member” and inserts two notes. Note 1 is the same as the previous note other than it has been labelled as Note 1. Note 2 is a new note that explains that, notwithstanding the terminology in the definition, a person who is an ordinary employer-sponsored member of PSSAP under subsection 18(7) or 18(8A) of the 2005 Act (that is, under one of the new categories created by the Amending Act) might not have a designated employer. This is because the new categories contemplate some persons contributing to PSSAP without an employer, for example, a retired PSS pensioner who is an ordinary employer-sponsored member of PSSAP under 18(8A) (as an eligible CSS/PSS member or former member) so that they can make personal superannuation contributions to PSSAP.

17. **Item 10** amends the definition of “pay day” in Rule 1.2.1 to directly set out that the definition is only relevant to a person who is an ordinary employer-sponsored member under subsection 18(2), 18(3) or 18(5) of the 2005 Act. **Item 11** inserts a new note under the definition of “pay day” in Rule 1.2.1. The note explains that the definition of “pay day” is only relevant to a person in relation to their employment or office which gives rise the person being an ordinary employer-sponsored member under subsection 18(2), 18(3) or 18(5) of the 2005 Act (Commonwealth employment or statutory officeholder).

18. **Item 12** replaces the existing note at the beginning of Division 1 of Part 2 of the Schedule to the Trust Deed with a new note to provide an updated introductory summary of the

PSSAP membership arrangements under the 2005 Act, reflecting the amendments made by the Amending Act.

19. **Item 13** replaces the existing note under Rule 2.1.1 which deals with basic contributions by designated employers. The new note explains that under the changes made to the PSSAP membership arrangements by the Amending Act, it is possible for a person to be an ordinary employer-sponsored member of PSSAP under one or more of the specified subsections of the 2005 Act. As an example, a person could be an ordinary employer-sponsored member under subsection 18(2) of the 2005 Act in respect of their Commonwealth employment and also be an ordinary employer-sponsored member under subsection 18(7) of the 2005 Act in respect of their concurrent non-Commonwealth employment.

20. **Item 14** replaces existing Rule 2.2.1 and Rule 2.2.1A with new Rules 2.2.1, 2.2.1AA, 2.2.1A, 2.2.1B and notes.

21. The new Rule 2.2.1 provides that, subject to new Rules 2.2.1AA and 2.2.1B, on each pay day the designated employer of a person who because of their employment (that is Commonwealth employment or statutory office) with their designated employer is an ordinary employer-sponsored member by way of subsection 18(2), (3) or (5) of the 2005 Act must pay as contributions to CSC an amount equal to 15.4% of the superannuation salary of the member.

22. Contributions made under Rule 2.2.1 are “basic employer contributions”. However, as provided for under new Rule 2.2.1B, CSC must reject any such contributions if the *Superannuation Industry (Supervision) Act 1993* (SIS Act) or the Superannuation Industry (Supervision) Regulations 1994 (SIS legislation) would prevent the PSSAP Fund from accepting the contributions or if acceptance of the contributions by CSC may jeopardise the status of the PSSAP Fund as a complying superannuation fund.

23. New Rule 2.2.1AA provides that Rule 2.2.1 does not apply to the designated employer of an “eligible PSSAP member” or “eligible CSS/PSS member or former member” who is their designated employer only because of the operation of item 5A of the table in subsection 19(2) of the 2005 Act. This is consistent with current arrangements whereby only relevant Commonwealth employers (and not private sector employers) are subject to the compulsory contribution requirements. Non-Commonwealth employers who make contributions in respect of their staff (because the person is an eligible PSSAP member or eligible CSS/PSS member or former member in respect of concurrent or prior employment) are not subject to compulsory contribution obligations under Rule 2.2.1.

24. The new note under Rule 2.2.1AA explains among other matters that where an ordinary employer-sponsored member has more than one designated employer, the obligation to make basic employer contributions under Rule 2.2.1 only applies in respect of each particular employment or office that results in a person being an ordinary employer-sponsored member under subsections 18(2), (3) or (5) of the Act. This is intended to clarify that the mere fact that a PSSAP member has an employment relationship that gives rise to compulsory contributions for their Commonwealth employer will not create compulsory contribution obligations for their non-Commonwealth employer under Rule 2.2.1.

25. New Rule 2.2.1A provides that subject to Rule 2.2.1B, the designated employer of an eligible PSSAP member or an eligible CSS/PSS member or former member may pay contributions to PSSAP in respect of the member. Contributions made under Rule 2.2.1A are “basic employer contributions”. However, as provided for under new Rule 2.2.1B, CSC must reject any such contributions if the SIS legislation would prevent the PSSAP Fund from

accepting the contributions or if acceptance of the contributions by CSC may jeopardise the status of the PSSAP Fund as a complying superannuation fund.

26. The new note under Rule 2.2.1A explains that Rule 2.2.1A allows the designated employer of a person who is an ordinary employer-sponsored member under subsection 18(7) or 18(8A) of the 2005 Act to make contributions to PSSAP including in relation to satisfying their obligations under the *Superannuation Guarantee (Administration) Act 1992* (SG Act). The note also explains that some PSSAP members may have contributions made under Rule 2.2.1 and Rule 2.2.1A where they have more than one designated employer, such as where the person is concurrently engaged in Commonwealth and non-Commonwealth employment.

27. New Rule 2.2.1B provides that CSC must not accept any contributions paid under Rule 2.2.1 or Rule 2.2.1A if the SIS legislation would prevent PSSAP from accepting the contributions or the acceptance of the contributions may jeopardise the status of the PSSAP Fund as a complying superannuation fund.

28. Existing Rule 2.2.2 and Rule 2.2.3 define the “superannuation salary” of ordinary employer-sponsored members other than a former Commonwealth ordinary employer-sponsored member. That is the Rules are only relevant to a person who is an ordinary employer-sponsored member because of their Commonwealth employment or office. The existing Rules achieve this by setting out that Rules apply to ordinary employer-sponsored members other than former Commonwealth ordinary employer-sponsored members.

29. **Items 15 and 16**, amend Rule 2.2.2, and Rule 2.2.3, to prescribe who the Rules apply to, that is a person who is an “ordinary employer-sponsored member” by referencing the particular provisions under which a person is an “ordinary employer-sponsored member”, that is subsection 18(2), 18(3) or 18(5) of the 2005 Act.

30. **Item 17** inserts a note under Rule 2.2.3 that explains that Rule 2.2.2 and Rule 2.2.3 are only relevant in relation a person’s employment or office (Commonwealth employment) which gives rise to the person being an ordinary employer-sponsored member under subsection 18(2), 18(3) or 18(5) of the 2005 Act.

31. Existing Rule 2.2.4 allows a designated employer of an ordinary employer-sponsored member other than a former Commonwealth ordinary employer-sponsored member to make additional contributions to PSSAP. Therefore, the Rule relates to a designated employer of a person in employment or an office (Commonwealth employment) that gives rise to the person being an ordinary employer-sponsored member under subsection 18(2), 18(3) or 18(5) of the 2005 Act. **Item 18** amends Rule 2.2.4 to prescribe those designated employers to whom the Rule applies in this way. **Item 19** omits the existing note under Rule 2.2.4 and substitutes a new note that provides examples of the types of additional employer contributions that a designated employer may make under Rule 2.2.4.

32. **Item 20** amends Rule 2.2.6 to prescribe those designated employers that must pay basic employer contributions and any additional employer contributions in accordance with a determination of CSC under Rule 2.2.5 as the designated employers of employer-sponsored members under subsection 18(2), 18(3) or 18(5) of the 2005 Act. This is to ensure that Rule 2.2.5 only applies to Commonwealth employers. A person who is employed in the private sector cannot in respect of that employment be an ordinary employer-sponsored member of PSSAP under subsection 18(2), 18(3) or 18(5) of the 2005 Act.

Examples - Contributions

Example 1 - Rule 2.1.1

Greg is an APS employee of Department A, and has chosen to have his employer contributions paid to PSSAP in accordance with the SG Act. He is therefore an ordinary employer-sponsored member under subsection 18(2) of the 2005 Act in respect of his APS employment. Under Rule 2.2.1, Department A, as Greg's designated employer, is required to pay contributions to PSSAP of 15.4% of superannuation salary on each pay day.

Example 2 – Rule 2.1.1

Marie is a part-time APS employee of Department Z and has chosen to have her employer contributions paid to PSSAP in accordance with the SG Act. She is therefore an ordinary employer-sponsored member under subsection 18(2) of the 2005 Act in respect of her APS employment.

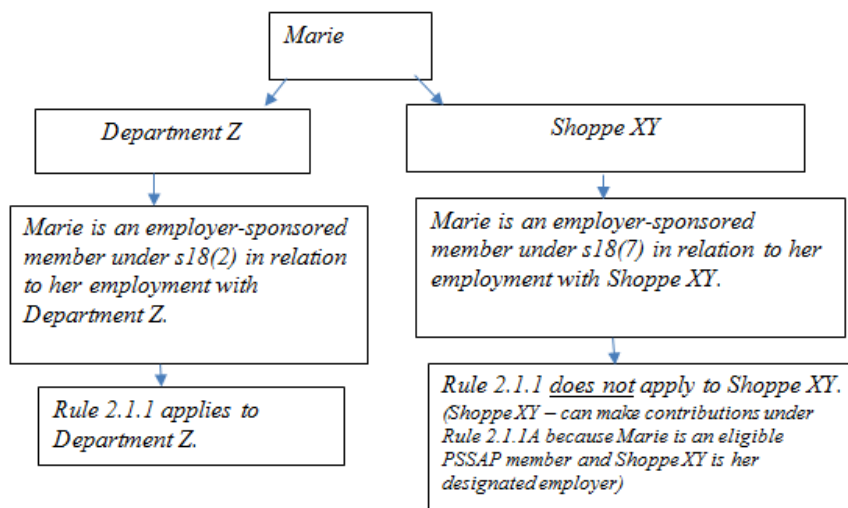
As Marie has been employed by Department Z for more than 12 months she is also an eligible PSSAP member and an ordinary employer-sponsored member under subsection 18(7) of the 2005 Act.

Marie also has part-time employment with Shoppe XY, a privately owned business, and chooses PSSAP as her chosen fund in accordance with the SG Act in respect of her employment with Shoppe XY.

Department Z - As Marie is an ordinary employer-sponsored member of PSSAP under subsection 18(2) in relation to her employment with Department Z, then under Rule 2.2.1 Department Z, as Marie's designated employer (in relation to that employment), is required to pay contributions to PSSAP of 15.4% of superannuation salary on each pay day.

Shoppe XY – Shoppe XY is not required to make contributions under Rule 2.1.1, as Marie is not an ordinary employer-sponsored member of PSSAP under subsection 18(2), 18(3) or 18(5) in relation to her employment with Shoppe XY. However, because Marie is an eligible PSSAP member under s18(7), Shoppe XY as Marie's designated employer in relation to her employment with them can make contributions, for example superannuation guarantee contributions, to PSSAP under Rule 2.2.1A (and may be required to do so under the employment arrangement between Marie and Shoppe XY).

Diagram



Example 3 – Rule 2.2.1A

Todd was previously employed by Department CDE for nine years and has a preserved benefit in the PSSAP as a result of that employment. Therefore, Todd is an eligible PSSAP member and an ordinary employer-sponsored member of PSSAP under subsection 18(7) of the 2005 Act.

Todd becomes employed by company TUY and has nominated PSSAP as his chosen fund in accordance with the SG Act.

Todd's contract with company TUY entitles him to contributions of 12% of his ordinary time earnings to his chosen fund. Company TUY therefore contributes at that rate to PSSAP (which also satisfies its superannuation guarantee obligations). These contributions are made under Rule 2.2.1A and are "basic employer contributions".

Example 4 – Rule 2.2.1A

Susan was previously employed by Department TRT for eight years and has a preserved benefit under the Public Sector Superannuation Scheme. Therefore, Susan is an eligible CSS/PSS member or former member and an ordinary employer-sponsored member of PSSAP under subsection 18(8A) of the 2005 Act.

Susan becomes employed by the private sector company KLM and has nominated PSSAP as her chosen fund in accordance with the SG Act. Company KLM can make employer contributions for Susan's benefit (in respect of her employment with KLM) under Rule 2.2.1A.

Example 5 – Rule 2.2.1A

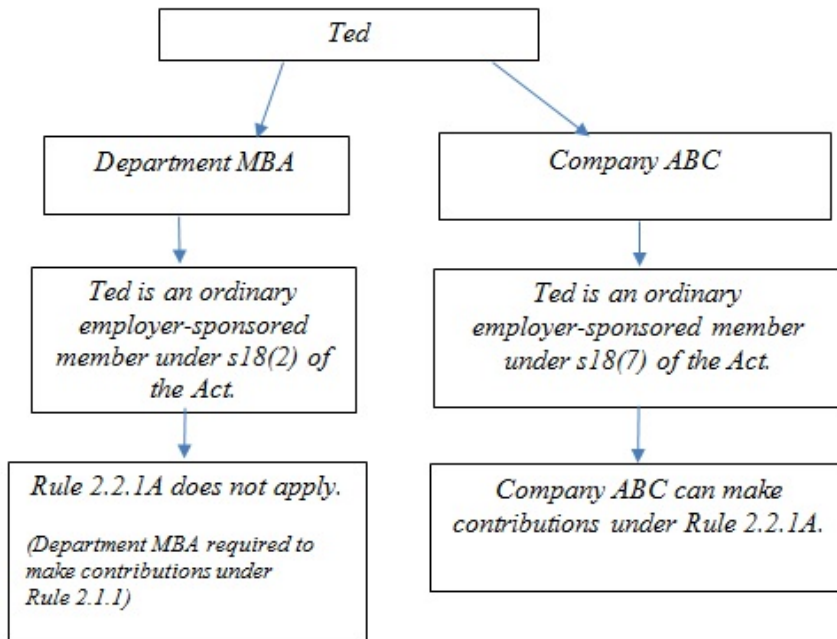
Ted is an APS employee has been employed on a part-time basis by Department MBA for three years and has chosen in accordance with the SG Act to have his employer contributions paid to PSSAP.

Ted is an ordinary employer-sponsored member under subsection 18(2) of the 2005 Act in relation to his employment with Department MBA. As Ted has been employed by Department MBA for more than 12 months he is also an eligible PSSAP member and an ordinary employer-sponsored member of PSSAP under subsection 18(7) of the 2005 Act.

Ted is also employed on a part-time basis by the private sector company ABC and has nominated PSSAP as his chosen fund in accordance with the SG Act.

Department MBA - *Rule 2.2.1A does not apply to Department MBA as Ted is an employer-sponsored member of PSSAP under subsection 18(2) of the 2005 Act with respect to his employment with Department MBA. Department MBA is required to pay contributions to PSSAP of 15.4% of superannuation salary on each pay day under Rule 2.1.1 in respect of Ted.*

Company ABC – *Company ABC can make contributions under Rule 2.2.1A in respect of Ted as he is an eligible PSSAP member and an ordinary employer-sponsored member under subsection 18(7) of the 2005 Act. This may include, for example, contributions that company ABC is required to pay in accordance with the SG Act, under Ted's terms and conditions of employment with ABC, or salary sacrifice contributions.*

Diagram**Example 6 – Rule 2.1.1, Rule 2.2.4 and Rule 2.3.1**

Stella is employed as an APS employee by Department TRS and PSSAP is her chosen fund under the SG Act. Stella also wants to make salary sacrifice contributions to PSSAP.

Department TRS is required to pay contributions to PSSAP of 15.4% of superannuation salary each pay day under Rule 2.1.1 in respect of Stella. Rule 2.1.1 does not apply to additional employer contributions such as salary sacrifice contributions (that is, amounts paid by the Department as part of a salary sacrifice agreement with Stella do not count towards its contributions under Rule 2.1.1).

However, Stella’s salary sacrifice contributions can be made by Department TRS under Rule 2.2.4 as additional employer contributions.

Stella later decides that she also wants to make non-concessional contributions to PSSAP. These can be made to PSSAP under Rule 2.3.1.

Example 7 – Rule 2.1.1, Rule 2.1.1A, Rule 2.2.4, Rule 2.3.1

Henry was previously employed by the Department of QRS for 10 years and has a preserved benefit in the PSSAP in relation to that employment. Therefore, Henry is an eligible PSSAP member under subsection 18(7) of the 2005 Act and also an ordinary employer-sponsored member of PSSAP under that subsection.

Henry becomes employed by the private sector company DTT and has nominated PSSAP as his chosen fund in accordance with the SG Act. In addition to his superannuation guarantee employer contributions, Henry wishes to also make salary sacrifice contributions to PSSAP.

Because Henry is not an employer-sponsored member of PSSAP under subsections 18(2), (3) or (5) in respect of his employment with company DTT, Rule 2.1.1 does not apply to company DTT. Likewise, Rule 2.2.4 does not apply to contributions made by company DTT for the same reason.

Company DTT's superannuation guarantee employer contributions, and the salary sacrifice contributions that Henry wants to make, can be made under Rule 2.1.1A.

Henry later decides that he also wants to make non-concessional contributions to PSSAP. These can be made to PSSAP under Rule 2.3.1, which allows employee contributions to be made by any ordinary employer-sponsored member.

Henry then decides to leave employment with company DTT and become self-employed. He remains an eligible PSSAP member and an ordinary employer-sponsored member under subsection 18(7) of the 2005 Act, though he no longer has a designated employer. He is able to make contributions to PSSAP under Rule 2.3.1 in respect of his self-employment.

33. **Items 21, 22, 24 and 26** amend the note under Rule 2.2.11, Rule 3.1.1(aa), Rule 3.1.9A and Rule 3.3.1A by replacing the references to a former Commonwealth ordinary employer-sponsored member with references to an “eligible PSSAP member” or “eligible CSS/PSS member or former member”.

Amendments relating to insurance

34. **Item 2** amends the definition of “death and invalidity cover” set out in Rule 1.2.1 by omitting “and non-member spouses” as CSC does not provide cover to non-member spouses in practice.

35. **Items 6 and 7** amend the definition of “income protection cover” and “insurance premium” by omitting “or non-members spouses” and “or a non-member spouse” respectively, as CSC does not provide cover to non-member spouses in practice.

36. **Item 27** omits “or non-member spouse” in Rule 3.4.1, 3.4.3, 3.4.4 and 3.4.5 where occurring. These rules relate to income protection benefits. CSC does not offer income protection arrangements to non-member spouses as their PSSAP benefits are a result of a family law split, and they cannot make contributions to PSSAP. The provision of death and invalidity cover would therefore have the effect of diminishing the benefit held by non-member spouses over time.

37. **Item 28** repeals Rule 4.1.1, including the note to this Rule, and the Heading. This item substitutes a new heading, Rule 4.1.1 and note. **Item 29** repeals Rule 4.1.1AA and 4.1.1A including notes. **Item 30** repeals the heading, Rule 4.1.2, 4.1.2AA, 4.1.2A and 4.1.2B and substitutes new Rules 4.1.2 and 4.1.2A.

38. These changes simplify and streamline the circumstances in which CSC may take out one or more insurance policies with an insurance company in respect of death and invalidity cover. In particular they:

- remove references to CSC being able to provide insurance for non-member spouses with PSSAP accounts resulting from family law splits only, as CSC does not provide cover to non-members spouses in practice; and
- modify CSC's obligations in relation to the general provision of death and invalidity cover, and income protection cover, in respect of ordinary employer-sponsored

members so that the organisation is permitted, but not required, to take out a policy or policies for this purpose.

39. Under the new arrangements:

- CSC can take out death and invalidity insurance policy or policies – new Rule 4.1.1;
- CSC can offer death and invalidity cover to PSSAP members – new Rule 4.1.2; and
- CSC can determine the terms and conditions of any death and invalidity cover provided under Rule 4.1.2 – new Rule 4.1.2A.

40. Replacement Rule 4.1.1 does not exempt CSC from any requirements under the SIS legislation that requires CSC to take out such a policy. The new note under Rule 4.1.1 inserts a reference to Rule 2.1A.4. Rule 2.1A.4 may require CSC to take out such a policy in relation to persons that hold a MySuper product, in respect of their MySuper product.

41. The new death and invalidity rules also omit references to non-member spouses (persons with an account in PSSAP resulting from a family law split). While the previous rules referred to the possibility of offering insurance to non-member spouses, as a matter of practice CSC does not offer non-member spouses death and invalidity cover. As noted above, these members cannot make contributions to PSSAP and providing them with death and invalidity cover would reduce the amount that they hold in PSSAP.

42. **Item 31** amends Rule 4.1.3A and the note under Rule 4.1.3A by omitting “Rule 4.1.2AA or 4.1.2A” where occurring and substituting “Rule 4.1.2” as a consequence of the changes made to the Rules by **item 30**.

43. **Item 32** omits “or non-member spouse interest account of the non-member spouse” from Rule 4.1.3B. **Item 34** omits “or non-member spouse” and “or non-member spouse interest account” from Rule 4.1.6 and 4.1.7, 4.1.8 and Rule 4.1.9 where occurring. These changes are consequential as the new death and invalidity cover provisions (see Rule 4.1.1 to 4.1.2) do not include references to non-member spouses. CSC does not offer these members death and invalidity cover.

44. As a consequence of rules relating to death and invalidity cover being simplified **item 33** amends Rule 4.1.5 to omit references to Rule 4.1.1, 4.1.1AA and 4.1.1A. Amended Rule 4.1.5 provides that all premiums for death and invalidity cover are to be paid by CSC from the PSSAP Fund.

45. **Item 35** repeals the heading immediately above Rule 4.3.1 and Rule 4.3.1, and substitutes a new heading and Rule 4.3.1. **Item 36** repeals Rule 4.3.1AA and Rule 4.3.1A. **Item 37** repeals the heading immediately above Rule 4.3.2, 4.3.2AA, 4.3.2A and 4.3.2B, and substitutes new Rule 4.3.2 and 4.3.2A.

46. These changes simplify and streamline the provisions that specify the circumstances in which CSC may take out one or more insurance policies with an insurance company in respect of income protection cover. Under the new arrangements:

- CSC can (but is not required to) take out an income protection policy or policies – new Rule 4.3.1;
- CSC can offer income protection cover to PSSAP members – new Rule 4.3.2; and
- CSC can determine the terms and conditions of any income protection cover provided

under Rule 4.3.2 – new Rule 4.3.2A.

47. **Item 38** omits “or non-member spouse” and “or non-member spouse interest account” in Rule 4.3.3, 4.3.5, the note under Rule 4.3.5 and Rule 4.3.6 where occurring. The new income protection cover provisions (see Rule 4.3.1 to Rule 4.3.2A) do not include references to non-member spouses. CSC does not offer these members income protection cover as they cannot make contributions to PSSAP.

Other amendments

48. **Item 23** replaces existing paragraph 3.1.6(a) with a new paragraph to better reflect the wording of the *Superannuation Industry (Supervision) Regulations 1994*, under which the assessment of applications for the release of superannuation on compassionate grounds may be assessed by a person or office other than the Commissioner of Taxation.

49. **Item 25** replaces existing Heading and Rule 3.1.20 with a new Heading and Rule. This aligns this Rule to recent amendments made to the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (SUMLM Act), that require inactive low balance superannuation accounts to be paid to the Commissioner of Taxation. The amendment will also permit lost or unclaimed superannuation monies to be paid to the Commissioner of Taxation, rather than to an eligible rollover fund, consistent with proposed changes to the SUMLM Act that will be made by the *Treasury Laws Amendment (Reuniting More Superannuation) Bill 2020*.

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 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 main purpose of the *Superannuation Amendment (PSSAP Trust Deed – Membership) Instrument 2020* (the Instrument) 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 2020* to the *Superannuation Act 2005* (the 2005 Act). The 2005 Act as amended extends membership of the Public Sector Superannuation Accumulation Plan (PSSAP) to certain current and former Commonwealth employees and statutory office holders to remain or become a contributing member of PSSAP who were previously not eligible to do so.

The Instrument also simplifies the Rules relating to death and invalidity and income protection that can be offered by the Commonwealth Superannuation Corporation who is the trustee of the PSSAP. In addition the Instrument also better aligns certain PSSAP Rules with the requirements of the broader superannuation framework. These Rules relate to the release of superannuation on compassionate grounds and the payment of inactive low balance accounts.

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 Simon Birmingham, Minister for Finance