

## **EXPLANATORY STATEMENT**

*Issued by authority of the Minister for Finance*

*Superannuation Act 1990*

*Superannuation Amendment (PSS Trust Deed) Instrument 2021 (No. 2) 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 by signed instrument. That instrument is called the *Superannuation Amendment (PSS Trust Deed) Instrument 2021 (No. 2)*. The instrument is referred to as the Amending Deed in this Explanatory Statement.

The purpose of the Amending Deed is to remove from the Trust Deed rules or parts thereof that have no ongoing application. This includes a rule setting out benefit options for a cohort of members who have already taken their benefits and a rule providing for payment of benefits, in certain circumstances, to eligible roll-over funds. The latter rule is no longer operative due to Commonwealth legislation closing eligible roll-over funds to new payments from 1 May 2021.

Additionally, the Amending Deed replaces several rules that serve as “signposts” to readers with notes, and makes minor clarifying amendments to certain rules.

The Amending Deed also establishes interest arrangements to apply in the event that amounts that are payable from the PSS Fund to the Commonwealth under the 1990 Act (because the Commonwealth pays the full PSS benefit, comprising funded and unfunded components, from the Consolidated Revenue Fund) are not due immediately.

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 ID 44532). A Regulation Impact Statement was not required as the instrument was assessed as unlikely to have more than a minor regulatory impact.

### **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 (FRL).

### **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 2021 (No. 2)*.

### Commencement

2. **Section 2** sets out the commencement provision for the Amending Deed. The items in the table in subsection 2(1) provide for the commencement of all provisions in the Amending Deed on the day after it is registered on the FRL. The note at the end of the table in subsection 2(1) 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

3. **Section 3** notes that the authority for the Amending Deed is section 5 of the 1990 Act.

### Schedules

4. **Section 4** provides that each instrument that is specified in a Schedule to the Amending Deed is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Amending Deed has affect according to its terms.

### **Schedule 1 – Amendment of the PSS Trust Deed**

5. Schedule 1 makes amendments to the Rules contained in the Schedule to the Trust Deed.

6. Rule 3.5.1 sets out a formula for calculating, on any day, a regular member's average salary, which is important in determining their superannuation entitlement. Rule 3.5.1 also includes a table defining the factors used in the formula according to whether the regular member ceased on involuntary retirement or in other circumstances. **Item 1 of Schedule 1** repeals the table in Rule 3.5.1 and substitutes a new table that updates references to factors representing a regular member's salary on the three birthdays immediately preceding their cessation so that those references more closely reflect the formula. That is, factors currently referred to as 1, 2 and 3 are replaced with B1, B2 and B3 respectively. Additionally, references to "average salary" in the new table are bolded to indicate that the term is defined in the Trust Deed.

7. While benefit accrual multiples that apply to regular members are mainly prescribed in Division 2 of Part 5 of the Rules, some are contained elsewhere in the Rules - for example, a reduction multiple, which may apply to a regular member involved in a family law split, is

set out in Part 16, which deals with family law superannuation splitting. Therefore, **Item 2 of Schedule 1** amends Rule 5.2.1, which deals with calculating benefit accrual multiples for regular members, so that the rule no longer suggests that all multiples applicable to regular members are set out under Division 2 of Part 5 of the Rules, by omitting the words “under this Division”.

8 **Item 3 of Schedule 1** further amends Rule 5.2.1 by replacing the *Quick Guide to the Components of a Benefit Accrual Multiple* with an updated quick guide, as several “signpost” rules referenced in the original version are repealed by the Amending Deed. The updated quick guide refers readers, instead, to the substantive provisions dealing with the multiples concerned. The updated quick guide also includes some minor formatting changes, including bolding of additional terms to indicate that they are defined terms in the Trust Deed.

9 **Item 4 of Schedule 1** repeals Rule 5.2.22, which acts as a “signpost” to inform readers that the applicability of, and method of calculating, a CSS Transfer Multiple is set out in Division 2 of Part 14 of the Rules. The updated quick guide inserted in Rule 5.2.1 by Item 3 of Schedule 1 and a note inserted by Item 5 of Schedule 1, described below, will, instead, refer readers to the substantive provisions dealing with a CSS Transfer Multiple.

10 **Item 5 of Schedule 1** inserts three new notes, concerning additional multiples that may be applicable to a regular member, after Rule 5.2.25. The three notes replace “signpost” rules dealing with the same subject matter that are being repealed by the Amending Deed. Note 1, which replaces repealed Rule 5.2.22, advises that the applicability of, and method for calculating, a CSS Transfer Multiple is set out in Division 2 of Part 14. Note 2, which replaces Rule 5.2.26, repealed by Item 6 of Schedule 1 described below, advises that a Reduction Multiple applies to a member to whom Part 16 applies and is calculated under Rule 16.4.3. Note 2 further advises that the multiple is to be used to reduce the Benefit Accrual Multiple. Note 3, which replaces Rule 5.2.27, repealed by Item 7 of Schedule 1 described below, advises that a Former MBL Multiple applies to a member who, immediately before 1 January 2008, was a maximum benefits member and is calculated under Rule 5.6.8.

11 **Items 6 and 7 of Schedule 1** repeal Rules 5.2.26 and 5.2.27, which merely act as “signposts” to the substantive provisions dealing with a Reduction Multiple and Former MBL Multiple in Part 16 and Rule 5.6.8 respectively. The rules are being replaced with notes inserted by Item 5 of Schedule 1. The quick guide inserted in Rule 5.2.1 by Item 3 of Schedule 1 also refers readers to the substantive provisions dealing with a Reduction Multiple and a Former MBL Multiple.

12 **Items 8 to 13 of Schedule 1** make amendments to Division 3 of Part 5 of the Rules, which deals with the benefit accrual multiples that apply to casual members, similar to those made by Items 2 to 7 to Division 2 of Part 5 of the Rules, which deals with the benefit accrual multiples that apply to regular members.

13 **Items 14, 15, 19, 20 and 21 of Schedule 1** repeal or amend rules concerning the benefits of persons who, before 1 July 1996, ceased PSS membership on certain grounds on or between minimum and maximum retiring age and before they had reached the qualifying age to take their PSS benefit as a full lump sum. The effect is to remove stipulations as to benefit options and other matters that have no continuing application because those in this cohort have either already received or are receiving their PSS benefits. Specifically, Item 14

repeals Rule 6.2.3, Item 15 repeals Rule 6.2.4, Item 19 repeals paragraph (g) and the note in Rule 8.1.1, Item 20 repeals Rule 8.2.5 and Item 21 omits text from Rule 9.2.2. **Item 18 of Schedule 1** makes grammatical amendments to paragraph 8.1.1(f) due to the repeal of paragraph 8.1.1(g) by Item 19.

14 The Trust Deed includes rules concerning eligible superannuation schemes that are able to receive transfers of final benefit accruals and preserved benefits in respect of former PSS members in certain circumstances. As there has been no capacity to agree new eligible superannuation schemes since 1 July 2003, the Amending Deed updates some of these rules. In particular, **Item 16 of Schedule 1** replaces Rule 6.8.3 with an updated rule that omits provision for an agreement to be expressed as having taken effect prior to the date of the agreement but no earlier than 1 July 1990. Additionally, **Item 17 of Schedule 1** replaces Rule 6.8.4, which requires notification of an agreement in relation to an eligible superannuation scheme or its variation or termination in CSC's annual report under section 30 of the entity's establishing legislation, the *Governance of Australian Government Superannuation Schemes Act 2011*, with an updated rule that limits notification requirements to the variation or termination of such an agreement.

15 **Item 22 of Schedule 1** repeals Rule 12.2.3, as the rule has no continuing application. The rule purports to enable CSC to pay PSS benefits to an eligible roll-over fund in certain circumstances when the person in relation to whom the benefit is payable has not informed CSC how they wish the benefit to be paid. However, under amendments made by the *Treasury Laws Amendment (Reuniting More Superannuation) Act 2021* to the *Superannuation Industry (Supervision) Act 1993*, superannuation trustees, such as CSC, have been unable to pay benefits to an eligible roll-over fund since 1 May 2021.

16 The 1990 Act broadly requires amounts held in the PSS Fund in respect of a person to be paid to the Commonwealth when they claim their benefit (refer to paragraphs 16(1)(a) and 16(4)(a) and subsection 16A(2)). This is because the 1990 Act makes the Commonwealth responsible for paying the person's full PSS benefit (comprising funded and unfunded components) from the Consolidated Revenue Fund. **Item 23 of Schedule 1** inserts a new Part 17A – Amounts Payable to the Commonwealth after Part 17 of the Rules. New Part 17A comprises Division 1, which sets out arrangements that apply when amounts payable to the Commonwealth from the PSS Fund are not due immediately. Division 1 comprises Rule 17A.1.1, which provides that, in this situation, and provided certain conditions are met, amounts that are payable to the Commonwealth accumulate interest in the PSS Fund in line with a determination/s made by CSC, which is to be paid to the Commonwealth when the amounts are due.

## 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 2021 (No. 2)

This Disallowable 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 Disallowable Legislative Instrument

The Minister for Finance has amended the PSS Trust Deed by signed instrument, called the *Superannuation Amendment (PSS Trust Deed) Instrument 2021 (No. 2)* (the Amending Deed).

The purpose of the Amending Deed is to remove from the PSS Trust Deed rules or parts thereof that have no ongoing application. This includes a rule setting out benefit options for a cohort of members who have already taken their benefits and a rule providing for payment of benefits, in certain circumstances, to eligible roll-over funds. The latter rule is no longer operative due to Commonwealth legislation closing eligible roll-over funds to new payments from 1 May 2021.

Additionally, the Amending Deed replaces several rules that serve as “signposts” to readers with notes, and makes minor clarifying amendments to certain rules.

The Amending Deed also establishes interest arrangements to apply in the event that amounts that are payable from the PSS Fund to the Commonwealth under the *Superannuation Act 1990* (because the Commonwealth pays the full PSS benefit, comprising funded and unfunded components, from the Consolidated Revenue Fund) are not due immediately.

#### 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 Simon Birmingham, Minister for Finance**