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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**SUPERANNUATION AMENDMENT (PSSAP MEMBERSHIP)  
BILL 2016**

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Finance,  
Senator the Hon Mathias Cormann)

# **SUPERANNUATION AMENDMENT (PSSAP MEMBERSHIP) BILL 2016**

## **Context**

The Bill gives effect to the 2016-17 Budget Measure '*Offering Choice in Public Sector Superannuation Accumulation Plan*'.

## **Summary**

The Superannuation Amendment (PSSAP Membership) Bill 2016 (the Bill) enables certain members of the Public Sector Superannuation Accumulation Plan (PSSAP) who move to non-Commonwealth employment to choose to remain a contributory member of the scheme.

The PSSAP, which was established on 1 July 2005, is the current default fund for new Commonwealth employees and employees of prescribed Commonwealth entities. At present PSSAP members are unable to remain as contributory members of the scheme when they move to non-Commonwealth employment. They must either maintain multiple superannuation accounts or consolidate their superannuation by moving the monies in their PSSAP account to another superannuation account.

The changes in the Bill address this issue by enabling PSSAP members who move to non-Commonwealth employment to maintain contributory membership of the scheme. These persons will form a new sub-category of ordinary employer-sponsored member of PSSAP, referred to in the Bill as 'former Commonwealth ordinary employer-sponsored members', and their new employers will become 'designated employers'.

The changes will better align PSSAP with superannuation schemes in the superannuation industry, which commonly enable members to remain contributory members when they change employment. They are also consistent with the government's broader superannuation reforms and initiatives to lower the costs that members incur for the administration and management of their superannuation accounts.

The Bill places some restrictions on maintaining contributory PSSAP membership. For example, a person must have been a Commonwealth employee or office holder for a continuous period of at least 12 months. They must also be engaged in non-Commonwealth employment in respect of which their employer has a Superannuation Guarantee obligation.

## **Financial Impact Statement**

The Bill does not present any financial impact on the Commonwealth.

## **Regulatory Impact Statement**

The Office of Best Practice Regulation has been consulted on the arrangements and agrees that there are no regulatory impacts.

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

The Bill does not engage any of the human rights or freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. Consequently, the Bill is compatible with those human rights and freedoms.

# SUPERANNUATION AMENDMENT (PSSAP MEMBERSHIP) BILL 2016

## NOTES ON CLAUSES

### Contents

#### Clause 1 – Short Title

**Clause 1** provides for the Act to be cited as the *Superannuation Amendment (PSSAP Membership) Act 2016*.

Note: The clauses in the Bill will become sections of the Act on Royal Assent.

#### Clause 2 – Commencement

2. **Clause 2** sets out the commencement provisions for the Bill. Commencement details for specific provisions are included in the table in subclause 2(1).

3. **Item 1 of the table** provides that sections 1 to 3 and anything in the Act not covered elsewhere in the table commence on Royal Assent.

4. **Item 2 of the table** provides that Schedule 1 is to commence on a day fixed by Proclamation. Should Proclamation not occur within 6 months of Royal Assent, this Schedule commences on the day after the end of that period.

5. The note at the end of the table in subclause 2(1) clarifies that the table relates only to provisions of the Act as originally enacted, and that it will not be amended to deal with any later amendments of the Act.

6. **Subclause 2(2)** clarifies that the information in column 3 of the table is not part of the Act.

#### Clause 3 – Schedules

7. **Clause 3** provides that legislation specified in a Schedule to the Act is amended or repealed as set out in the applicable items in the relevant Schedule. It also provides that any other item in a Schedule to the Act has effect according to its terms.

## Schedule 1 – Amendments

### OVERVIEW

8. **Schedule 1** contains amendments to the *Superannuation Act 2005* to extend membership of the Public Sector Superannuation Accumulation Plan (PSSAP) to former PSSAP contributing members where they move to State or Territory Government employment, private sector employment or hold a particular office.
9. In order to be eligible for contributory membership of the PSSAP, a person must:
- be an existing member of PSSAP; and
  - have been an ordinary employer-sponsored member of PSSAP (but are no longer an ordinary employer-sponsored member); and
  - have been a Commonwealth employee/office holder for a continuous period of at least 12 months; and
  - not eligible to be an ordinary employer-sponsored member of PSSAP under subsections 18(2), 18(3) and 18(5) of the Act in respect of any employment or office that the person holds; and
  - at the relevant time, the *Superannuation Guarantee (Administration) Act 1992* requires the employer in respect of the person's particular employment or office to make superannuation contributions for the benefit of the person; and
  - is not included in a class of persons determined in an instrument by the Minister; and
  - make an election to the trustee of PSSAP, the Commonwealth Superannuation Corporation (CSC), to be a contributory member of PSSAP.

### ***Superannuation Act 2005***

10. **Item 1** amends the simplified outline in section 3 of the *Superannuation Act 2005* (the Act) to reflect that the amendments made by the Bill will enable a person who was an ordinary employer-sponsored member of PSSAP to continue contributory membership of that scheme where they move to certain non-Commonwealth employment. This item also provides that where a PSSAP member chooses to do so, the Act or the PSSAP Trust Deed does not oblige employers to make contributions to the PSSAP.

11. **Item 2** inserts a new definition of '**former Commonwealth ordinary employer-sponsored member**' in section 4 of the Act. A former Commonwealth ordinary employer-sponsored member means a person who is an ordinary employer-sponsored member of PSSAP under new subsection 18(7) that is to be inserted into the Act under **Item 7**. This is the term used to describe a person who belongs to a sub-category of ordinary employer-sponsored member.

12. Section 17 of the Act currently provides that a designated employer of an ordinary employer-sponsored member of PSSAP or of an Australian Government superannuation scheme member who has chosen to be a member of PSSAP must pay to CSC any contributions required of the employer by the rules set out in the Schedule to the PSSAP Trust Deed (the Rules). **Item 3** amends paragraph 17(1)(a) of the Act to exclude employers of former Commonwealth ordinary employer-sponsored members from the requirements of this subsection 17(1). This is because there are no obligations imposed on designated employers of former Commonwealth ordinary

employer-sponsored members to make contributions to PSSAP.

13. **Item 4** substitutes the current title of the note in subsection 17(2) of the Act from ‘Note’ to ‘Note 1’.

14. **Item 5** inserts a new note under the existing note at the end of subsection 17(2) of the Act. The new note, ‘Note 2’, explains that the designated employer of a former Commonwealth ordinary employer-sponsored member is not required by this Act or the Trust Deed (Rules) to make contributions to PSSAP for the benefit of the member. This is in contrast to designated employers of PSSAP ordinary employer-sponsored members (other than former Commonwealth ordinary employer sponsored members) who are required by subsection 17(2) of the Act to pay any contributions due in accordance with the Rules.

15. **Item 6** omits numeral ‘3’ in subsection 18(1) of the Act and replaces it with ‘4’ to reflect that as a result of amendments made by **Item 7**, there will be an additional circumstance in which a person is taken to be an ordinary employer-sponsored member of PSSAP under the Act. A person who fits within this new circumstance is a ‘former Commonwealth ordinary employer-sponsored member’.

16. **Item 7** inserts new subsections (7) to (11) into section 18 of the Act. A person who is an ordinary employer-sponsored member under new subsection 18(7) of the Act is known as a former Commonwealth ordinary employer-sponsored member.

17. New paragraphs 18(7)(a) to (h) of the Act establish the eligibility requirements for a person to be an ordinary employer-sponsored member under new subsection 18(7) of the Act. A person must satisfy each of the eligibility requirements set out in new paragraphs 18(7)(a) to (h) of the Act and not be excluded from being such a person under new subsections 18(8) to (11) of the Act.

18. New paragraph 18(7)(a) of the Act provides that to be an ordinary employer-sponsored member under new subsection 18(7) of the Act a person must be a member of PSSAP at the relevant time.

19. New paragraph 18(7)(b) of the Act provides that, prior to the relevant time, the person must have been an ordinary employer-sponsored member of PSSAP in respect of a period of Commonwealth employment or the holding of a statutory office of the type specified under one or more of subsections 18(2), 18(3) or (5) of the Act.

20. New paragraph 18(7)(c) of the Act provides that, prior to the relevant time, the person must have been engaged in particular Commonwealth employment and/or the holder of one or more statutory offices for a continuous period of at least 12 months.

21. The period of 12 months ensures that the person has a demonstrable link to Commonwealth employment. The person’s continued contributory membership of PSSAP is therefore consistent with the scheme’s purpose of operating for the benefit of Commonwealth employees and officeholders.

22. Where a PSSAP member’s period of employment comprises multiple employment arrangements, each of which was for period of less than 12 months, those employment periods are counted as a continuous period of service if there was no break between those periods.

*Example: Robert was previously an ordinary employer sponsored member of PSSAP and is still a PSSAP member and was employed by Commonwealth Department A for 6 months. Upon ceasing his employment with Department A, Robert then commenced employment with Commonwealth Department B the next business day for a period of six months. Robert would meet the 12-month*

*requirement under new paragraph 18(7)(c) of the Act.*

23. New paragraph 18(7)(d) of the Act provides that a person cannot be an ordinary employer-sponsored member under new subsection 18(7) of the Act if, at the relevant time, they are eligible to become an ordinary employer-sponsored member under subsections 18(2), 18(3) or 18(5) of the Act.

24. New paragraphs 18(7)(e) and (f) of the Act together provide that at the relevant time, the person must be in particular employment or hold a particular office and that if the person's employer was to make basic employer contributions to PSSAP, the employer would rely on subsection 32C(1) of the *Superannuation Guarantee (Administration) Act 2005* to satisfy the choice of fund requirements in relation to those contributions.

25. New paragraphs 18(7)(e) and (f) of the Act do not limit the types contributions that can be made in respect of a person who is an ordinary employer sponsored member under new subsection 18(7) of the Act. For example, the person may make non-concessional contributions to PSSAP if permitted by the Rules.

26. New paragraph 18(7)(g) of the Act specifies that it is necessary that a person's salary or wages in respect of the employment or office mentioned in new paragraph 18(7)(e) of the Act would be taken into account for the purpose of making a calculation under section 19 of the *Superannuation Guarantee (Administration) Act 1992* for the person to be eligible to be an ordinary employer-sponsored member under subsection 18(7) of the Act. If the employer is not obliged by section 19 to make superannuation contributions for the person, then the person cannot be an ordinary employer-sponsored member of PSSAP under subsection 18(7) of the Act.

27. New paragraph 18(7)(h) of the Act requires that a person must elect to be an ordinary employer-sponsored member under new subsection 18(7) of the Act. The election must be given to the Commonwealth Superannuation Corporation (CSC), trustee of the PSSAP, in a form approved by the CSC. The person must make an election in respect of each relevant employment or office referred to in new paragraph 18(7)(e) of the Act.

*Example: Peter is a PSSAP member. Peter becomes an employee of XYZ company. He meets the requirements set out in new paragraphs 18(7)(a) to (g) of the Act and is not excluded from being an ordinary employer-sponsored member under subsection 18(8) to (11). Peter therefore makes an election under new paragraph 18(7)(h) of the Act in respect of his employment with XYZ company. Peter is therefore an ordinary employer-sponsored member of PSSAP under subsection 18(7) of the Act in respect of that employment.*

*If Peter commences new employment with NMP company and is eligible to be an ordinary employer-sponsored member in relation to that employment, then he would need to submit a new election form to CSC under new paragraph 18(7)(h) of the Act to become an ordinary employer-sponsored member under subsection 18(7) of the Act.*

28. New subsection 18(8) of the Act clarifies that for the purposes of new paragraph 18(7)(e) of the Act, a person who is a member of the Australian Defence Force only is not considered to be in 'particular employment' or the holder of a 'particular office' for purposes of that paragraph.

*Example: Jill is a PSSAP member and becomes a member of the Australian Defence Force after 1 July 2016. Jill's engagement as a member of the Australian Defence Force is not particular employment or holding an office for the purposes of new paragraph 18(7)(e) of the Act. Jill is not eligible to become an ordinary employer-*

*sponsored member of PSSAP under subsection 18(7) of the Act in respect of being a member of the Australian Defence Force. However, as a member of the Australian Defence Force, Jill is eligible to join ADF Super.*

29. New subsection 18(9) of the Act provides that a person cannot be an ordinary employer-sponsored member of PSSAP under new subsection 18(7) of the Act if the person is included in a class of persons determined in an instrument of the type prescribed by new subsection 18(10) of the Act.
30. New subsection 18(10) of the Act provides that the Minister may, by legislative instrument, determine a class of persons for the purposes of subsection 18(9) of the Act.
31. New subsection 18(11) of the Act provides that a determination made under subsection 18(10) of the Act is a disallowable instrument under section 42 of the *Legislation Act 2003*. This is despite anything in regulations made for the purposes of paragraph 44(2)(b) of the *Legislation Act 2003*.
32. **Item 8** inserts new table item '5A' after table item 5 in subsection 19(2) of the Act. This item establishes that for the purposes of the Act and the Trust Deed (Rules), a designated employer of a former Commonwealth ordinary employer-sponsored member is the person's employer mentioned in new paragraph 18(7)(f) of the Act as inserted by item 7 of Schedule 1 of the Bill.
33. **Item 9** amends paragraph 42(1)(a) of the Act to exclude designated employers of former Commonwealth ordinary employer-sponsored members from the requirements set out under section 42 of the Act. Paragraph 42(1)(a) of the Act permits CSC to send particular documents or written information to a designated employer of a PSSAP ordinary employer-sponsored member and request that designated employers give the information/documentation to that member.
34. **Item 10** amends paragraph 43(1)(b) of the Act to exclude former Commonwealth ordinary employer-sponsored members from the requirements set out under section 43 of the Act. Section 43 provides that a designated employer of an ordinary employer-sponsored member who is under the age of 60 cannot retire that member on the grounds of invalidity unless CSC has approved the invalidity retirement and certified that, if retired, the member would be entitled to PSSAP invalidity benefits.
35. **Item 11** and **Item 12** amend subsection 44(3) of the Act by replacing the word 'An' with 'A person' and, inserting the word 'person' after the words 'in relation to the'. Subsection 44(3) of the Act currently refers to a designated employer that is an authority or body. The amendments made by **Item 11** and **Item 12** reflect that an individual can also be a designated employer of a former Commonwealth ordinary employer-sponsored member.