<u>EXPLANATORY STATEMENT</u>

Issued by authority of the Minister for Finance and Administration

Superannuation Act 2005

Second Amending Deed made under section 11 of the Superannuation Act 2005 to amend the Superannuation (PSSAP) Trust Deed

On 29 June 2005, the Minister for Finance and Administration (the Minister), for and on behalf of the Commonwealth, made a deed (the Principal Deed) under section 10 of the *Superannuation Act 2005* (the 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 Principal Deed includes rules for the administration of PSSAP (the Rules).

PSSAP is established for the benefit of most new Australian Government employees and statutory office holders.

PSSAP is managed and administered by the Australian Reward Investment Alliance (ARIA).

Section 11 of the Act provides that the Minister may, by writing, amend the Principal Deed. On 21 June 2007, the Minister amended the Principal Deed. The deed providing for these amendments is called the Second Amending Deed in this explanatory statement.

Purpose of the Second Amending Deed

The main purpose of the Second Amending Deed is to amend the Principal Deed, including the Rules, to make a number of minor or technical amendments and amendments that are required as a consequence of other legislative changes. These amendments include:

- consequential changes to the PSSAP Rules as a result of the *Tax Laws Amendment (Simplified Superannuation) Act 2007*, the *Superannuation Legislation Amendment (Simplification) Act 2007* and related legislation (simplified superannuation reforms); and

- changes that update relevant PSSAP Rules as a consequence of the Public Sector Superannuation Scheme (PSS) Twenty-eighth Amending Deed.

ARIA approval

Although section 11 of the Act allows the Minister to amend the PSSAP Trust Deed, section 32 of the Act requires that ARIA consent to the amendments in most circumstances. ARIA has consented to the amendments included in the Second Amending Deed.

Legislative Instruments Act 2003

Section 17 of the *Legislative Instruments Act 2003* (LIA) specifies that rule-makers should consult before making legislative instruments. The Second Amending Deed is a legislative instrument for the purposes of the LIA.

Consultation was undertaken with ARIA in relation to the amendments to be made to the Trust Deed. As mentioned above, ARIA has consented to the amendments in the Second Amending Deed.

Commencement

The amendments made by the Second Amending Deed commence on the later of 1 July 2007 or the day after the Second Amending Deed is registered on the Federal Register of Legislative Instruments.

Details of the Second Amending Deed are set out in the Attachment.

ATTACHMENT

DETAILS OF THE SECOND AMENDING DEED

Background

Simplified Superannuation

The *Tax Laws Amendment (Simplified Superannuation) Act 2007*, the *Superannuation Legislation Amendment (Simplification) Act 2007* and related legislation (simplified superannuation reforms) received Royal Assent on 15 March 2007. These Acts generally apply from 1 July 2007. Simplified superannuation reforms Australia's superannuation, streamlines the complex tax arrangements, improves incentives to continue to work and save, and increases retirement incomes.

Among other things, under the legislation, from 1 July 2007:

- Superannuation benefits paid from a taxed fund will be tax free for people aged 60 and over;
- Age-based deduction limits will be replaced with new contribution rules and reasonable benefit limits (RBLs) will be abolished;
- Arrangements for lost and unclaimed superannuation will be enhanced; and
- Individuals will have greater flexibility as to how to draw down on their superannuation in retirement.

As a result of these reforms, consequential changes to the PSSAP Rules are made in the PSSAP Second Amending Deed.

PSS Twenty-eighth Amending Deed

On 23 March 2004, the Minister made the PSS Twentieth Amending Deed, which mainly amended the Trust Deed and Rules for the PSS to establish the Public Sector Superannuation Accumulation Plan (PSSAP) as a sub-plan of the PSS from 1 July 2005.

However, the *Superannuation Act 2005* (the Act) and the *Superannuation (Consequential Amendments) Act 2005* provided for the PSS to be closed to new members from 1 July 2005 and for the PSSAP to be a new and separate scheme established by Trust Deed made under the Act, rather than a sub-plan of the PSS. The PSSAP was established by Trust Deed in essentially the same form as the accumulation sub-plan.

The PSS Twenty-eighth Amending Deed removes the PSSAP sub-plan from the PSS Trust Deed. The PSSAP Second Amending Deed updates references to the PSS Trust Deed, as a consequence of the PSS Twenty-eighth Amending Deed.

Amendments to the PSSAP Trust Deed

Clause 1 provides for the Second Amending Deed to come into effect:

(i) for all clauses except 3.1, 4.4 and 4.8, on 1 July 2007, which ensures that PSSAP Members are not disadvantaged and have access to the features of the simplified superannuation reforms; and

(ii) for clauses 3.1, 4.4 and 4.8 on the day after the PSS Twenty-eighth Amending Deed is registered on the Federal Register of Legislative Instruments.

Clause 2 provides that, unless the contrary intention appears, a word or phrase in the Second Amending Deed has the same meaning as it has in the Principal Deed.

Subclause 3.1 is a technical amendment which replaces a reference to “the PSS Board” with a reference to “the Board”. This is a consequence of the *Superannuation Legislation Amendment (Trustee Board and Other Measures) Act 2006* and the Twenty-seventh Amending Deed for the PSS.

Amendments to the PSSAP Rules

Subclause 4.1 inserts a definition for “directed termination payments”. The simplified superannuation reforms replace the previous “eligible termination payment” concept with two new concepts: “superannuation lump sum” and “employment termination payment”. Generally, from 1 July 2007, employment termination payments cannot be rolled into superannuation, though certain transitional termination payments (specified in existing employment contacts as at 9 May 2006) can be paid into superannuation as a directed termination payment, provided the payment is made prior to 1 July 2012.

Subclause 4.2 updates the definition of “eligible spouse contributions”, as a result of the term being moved from the *Income Tax Assessment Act 1936* to the Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations) following the simplified superannuation reforms.

Subclause 4.3 deletes the definition of “eligible termination payment”, which has been replaced by “superannuation lump sum” and “employment termination payment” following the simplified superannuation reforms. Further details are outlined in the comments on subclauses 4.1 and 4.6.

Subclause 4.4 deletes the definition of “PSS defined benefits plan”, which is a reference to section B of the Rules of the PSS Trust Deed. Following the PSS Twenty-eighth Amending Deed, the redundant section A (accumulation plan) has been deleted and the defined benefits plan is now the only arrangement in the PSS.

Subclause 4.5 inserts a definition of “release authority”. This includes a release authority under section 292-410 of the *Income Tax Assessment Act 1997* (ITAA) and a transitional release authority under section 292-80B of the *Income Tax (Transitional Provisions) Act 1997* (ITTPA). Release authorities are used to release superannuation benefits to enable a person’s excess contributions tax liability to be discharged or to reduce their excess contributions tax liability.

Subclause 4.6 inserts a definition of “roll-over superannuation benefit”. The simplified superannuation reforms replace the previous “eligible termination payment” with two new concepts: “superannuation lump sum” and “employment termination payment”. A roll-over superannuation benefit is a superannuation lump sum that:

(i) is paid from a complying superannuation plan;

(ii) is an unclaimed money payment; or

(iii) arises from the commutation of a superannuation annuity

and it is paid to a complying superannuation plan or to an entity to purchase a superannuation annuity.

Subclause 4.7 inserts a definition of “transition to retirement income stream”. This is a new income stream from the simplified superannuation reforms, and it is used for transition to retirement purposes.

Subclause 4.8 replaces the reference to “a **PSS member** who is a member of the **PSS defined benefits plan**” with “a **PSS member**”, since the PSS Twenty-eighth Amending Deed has made the defined benefits plan the only arrangement in the PSS.

Subclause 4.9 amends paragraphs (a) and (b) of Rule 2.4.1 with references to “roll-over superannuation benefit” and “directed termination payment”. These are the new concepts following the simplified superannuation reforms. A directed termination payment is taken to be a contribution for the purposes of the SIS Regulations. Since the SIS Regulations states when a fund can accept contributions, Rule 2.4.1 has also been updated to include a reference to SIS. Further details are outlined to the comments on subclauses 4.1 (directed termination payment) and 4.6 (roll-over superannuation benefit).

Subclauses 4.10 and 4.11 makes three changes to when a benefit application may be made to the Board.

The first change is to remove redundant provisions (3.1.1(a)(i) and 3.1.3) that allows PSSAP members to make a benefit application within one month (up to 31 days) of ceasing employment. The Board was previously required to wait until the employee has ceased Australian Government employment before they can pay that benefit. This is inconsistent with the simplified superannuation reforms, which requires superannuation providers to transfer benefits within 30 days of an application.

The second change is to allow a transitional member (that is, a PSSAP member transitioning to retirement) to cash an amount of their benefit as a transition to retirement income stream. This type of income stream has been introduced as part of the simplified superannuation reforms and is used for transitioning to retirement.

The third change is to include release authorities as a type of benefit application, which can be made by a PSSAP member or the Commissioner of Taxation. This will allow the Board to pay a benefit after receiving a release authority in accordance with the ITAA or the ITTPA.

Subclause 4.12 deletes the compulsory payment of benefits rules. The simplified superannuation reforms provide individuals with greater flexibility as to how and when to draw down their superannuation. This includes the removal of the compulsory payment of benefits, except in cases of death. Since the PSSAP Rule 3.1.11 covers death benefits, Rule 3.1.5 is now no longer required.

Subclause 4.13 inserts a rule to allow the Board, on receiving a release authority, to pay a superannuation benefit. Further details are outlined in the comments on subclause 4.5.

Subclause 4.14 expands the income products that a PSSAP member can cash use to transition to retire. The rule now includes the “transition to retirement income stream” that has been introduced in the simplified superannuation reforms.

Subclauses 4.15 to 4.17 updates the Rules on rolling-over a benefit to another superannuation provider. The simplified superannuation reforms make it easier for people to transfer their superannuation between funds. This includes a standard transfer form, and superannuation providers have to transfer a benefit within 30 days of receiving all relevant information in relation to the transfer.

Rule 3.1.14 now includes a reference to the SIS Regulation's requirements for transfer forms.

Previously, a PSSAP member could apply for a roll-over of their benefit within one month of ceasing Australian Government employment. The Board was required, under the Rules, to pay these benefits as soon as possible after the PSSAP member ceases employment. Since the person could apply one month (up to 31 days) before ceasing employment, it is inconsistent with the timeframes required under the simplified superannuation reforms.

Subclause 4.18 revises Rule 3.1.20, since there are no longer any compulsory payment of benefit situations where the Board needs to pay a benefit to an eligible rollover fund.

Subclause 4.19 inserts a rule that allows the Board to apply the amount of a tax offset to a PSSAP member's account. This could occur following the simplified superannuation reforms, for example, when a PSSAP member or their employer has not provided a tax file number (TFN) and additional tax is payable on their concessional contributions. The additional tax can be refunded (as a tax offset) where a valid TFN is provided to the PSSAP within a four year period.

Subclause 4.20 inserts a rule that allows the Board to refund contributions pursuant to the SIS Regulations. For example, it covers situations where the Board later becomes aware that it has received an amount of non-concessional contributions in error and must return that amount, consistent with the simplified superannuation reforms.