

## **EXPLANATORY STATEMENT**

*Issued by authority of the Minister for Finance and Deregulation*

*Superannuation Act 1990*

*Thirty-third Amending Deed to the Trust Deed to establish an occupational superannuation scheme for Australian Government employees and certain other persons pursuant to section 5 of the Superannuation Act 1990 (1990 Act).*

An occupational superannuation scheme to provide benefits for certain of the Commonwealth's employees and for certain other people was established by Trust Deed dated 21 June 1990, under section 4 of the 1990 Act. The occupational superannuation scheme is called the Public Sector Superannuation Scheme (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 the Australian Reward Investment Alliance (ARIA) to the amendment, where necessary. ARIA is the trustee for the PSS.

### **Thirty-third Amending Deed**

On 22 June 2009 the Minister for Finance and Deregulation amended the Rules for the PSS set out in the Schedule to the Trust Deed by signed instrument. That instrument is called the Thirty-third Amending Deed in this statement.

The purpose of the Thirty-third Amending Deed is to amend the Rules to make a number of minor changes:

- A consequential amendment as a result of the *Fair Work Act 2009* and related legislation, relating to when contributions must still be paid during certain periods of leave without pay.
- Remaking a previously misdescribed amendment to a rule affecting the indexation of Maximum Benefit Limit tables for the Australian Federal Police.
- Re-introducing a 'public employment' test for transfers to eligible superannuation schemes, in order to maintain the pre-existing policy for transfers in the current superannuation industry environment.
- Consequential amendments as a result of changes to the *Superannuation Industry (Supervision) Regulations 1994*, relating to the payment of benefits to temporary residents who have departed Australia.
- Allowing the receipt of co-contributions into the PSS for preserved benefit members, where the co-contributions relate to a period where the person was a contributing member.

Background information on the changes and the details of the Thirty-third Amending Deed are set out in the [Attachment](#).

### **ARIA Approval**

Although subsection 5(1) of the Act allows the Minister to amend the PSS Trust Deed, subsection 5(1A) of the Act requires ARIA to consent to the amendments in most circumstances. ARIA has consented to the amendments included in the Thirty-Third Amending Deed.

***Legislative Instruments Act 2003***

The Thirty-third Amending Deed is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA). Although section 44 of the LIA exempts superannuation instruments from disallowance, the Thirty-third Amending Deed is subject to possible disallowance in accordance with section 45 of the 1990 Act.

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 Thirty-third Amending Deed.

**Commencement**

Unless otherwise provided, the amendments in the Thirty-Third Amending Deed come into effect on the day after the Deed is registered on the Federal Register of Legislative Instruments.

The amendments in relation to the payment of contributions on leave without pay come into effect immediately after the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* commences.

## ATTACHMENT

**BACKGROUND TO AND DETAILS OF THE THIRTY-THIRD AMENDING DEED****Commencement**

**Clause 1** specifies the commencement dates for the amendments to the PSS Rules (the Rules) made by the Thirty-third Amending Deed (the Amending Deed). The amendments in relation to the payment of contributions on leave without pay come into effect immediately after the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* commences. The other amendments commence on the day after registration of the Amending Deed.

**Context**

1. **Clause 2** indicates that, unless a contrary intention appears, a word or phrase in the Amending Deed has the same meaning that it has in the Trust Deed.

**Application of the Amendments – public employment requirement**

2. **Clause 3** provides that the amendments to the Rules made by clause 7 of the Amending Deed only apply in relation to choices to transfer benefits to an eligible superannuation scheme on or after the day on which the amendments commence.

**Application of the Amendments – transfer of Government Co-contributions**

3. **Clause 4** provides that the amendments to the Rules made by clause 9 of the Amending Deed only apply in relation to transfer amounts received on or after the day on which the amendments commence.

**Amendments to the Rules*****Payment of contributions on leave without pay***

4. The *Fair Work Act 2009* and related legislation provide for a new workplace relations system. The effect of the Fair Work legislation is to repeal the *Workplace Relations Act 1996* (WR Act) except Schedules 1 and 10. The WR Act is being renamed the *Fair Work (Registered Organisations) Act 2009* (FWRO Act).

5. Rule 4.2.1 specifies that a member, on certain periods of leave of absence without pay, is required to pay contributions. One of these circumstances is where a person is engaging in employment with an organisation registered under the WR Act, where membership of that organisation includes people who are members of the CSS scheme or the PSS scheme.

6. **Clause 5** replaces the reference to the WR Act in subparagraph 4.2.1(f)(i) with a reference to the FWRO Act, reflecting the renaming of the WR Act. Clause 5 also expands Rule 4.2.1 to cover the full range of organisations or associations registered or recognised under the FWRO Act, including State-registered associations and transitionally recognised associations.

7. Additionally, clause 5 expands the criteria to include organisations whose membership includes people who are members of the Public Sector Superannuation Accumulation Plan (PSSAP). This is to align the definition with that of ‘other approved employment’ under Rule 1.2.1 of the PSSAP Trust Deed.

### ***Misdescribed amendment***

8. The maximum benefit limit (MBL) in the PSS operates as a cap on the benefit that can be accrued in the scheme. PSS members cease to make member contributions when they reach their MBL, and employer (productivity) contributions also cease to be paid.

9. The Twenty-ninth Amending Deed introduced a higher MBL structure allowing members to work for a longer period before reaching their MBL, thus removing the incentive for some members who reach their MBL before their retirement age to leave employment early.

10. Subclause 3.20 of the Twenty-ninth Amending Deed was intended to replace Rule 5.7.7, which provides for the indexation of the average salary amounts by Average Weekly Ordinary Time Earnings (AWOTE) for the Australian Federal Police (AFP).

11. However, subclause 3.20 was misdescribed as replacing Rule 5.5.7, rather than 5.7.7. **Clause 6** remakes the intended amendment to Rule 5.7.7.

### ***Public employment test for transfers to eligible superannuation schemes***

12. **Clause 7** re-introduces a public employment test for transfers of accrued benefits to eligible superannuation schemes. Prior to the simplification of the PSS Rules achieved by the Ninth Amending Deed, the Rules allowed the Minister and the Board to agree what is public employment. This provision was identical to subsection 133(1) of the *Superannuation Act 1976*. At the time of the simplification of the PSS Rules the public employment provisions were deemed redundant by incorporating a public employment element to the criteria for eligible superannuation schemes.

13. However, the current superannuation industry framework has opened up the possibility for a person to join a scheme that has been declared an eligible superannuation scheme without the person being employed in public employment. Clause 7 is intended to ensure the original policy intention of only allowing accumulated superannuation benefits to be transferred where a person moves to public employment. The employment test introduced by Clause 7 substantially mirrors that used in the Commonwealth Superannuation Scheme, except for the now redundant references to the Government of the United Kingdom of Great Britain and Northern Ireland.

### ***Payment of benefits for departed temporary residents***

14. Regulation 6.20B of the *Superannuation Industry (Supervision) Regulations 1994* (the SIS Regulations) was recently amended as part of broader reforms relating to superannuation arrangements for temporary residents. The SIS Regulations specify the criteria that must be met in order for a trustee of an unfunded public sector superannuation scheme to elect to pay an amount held on behalf of a temporary resident who has departed from Australia.

15. **Subclause 8.1** amends paragraph 8.1.1(e), which specifies a date on which a **preserved benefit** applicable to a **preserved benefit member** may become payable, so that it refers to the Board's satisfaction that subregulation 6.20B(1A) of the *Superannuation Industry (Supervision) Regulations 1994* has been complied with, rather than the Board's satisfaction that he or she has departed Australia permanently. This promotes consistency between the Trust Deed and the criteria specified in the SIS Regulations for the payment of departed temporary residents' benefits.

16. **Subclause 8.2** amends the heading to Rule 8.2.4 to reflect its content as amended by subclause 8.3.

17. **Subclause 8.3** replaces Rule 8.2.4 which currently specifies the method by which a **preserved benefit** is paid to a **preserved benefit member** on leaving Australia permanently. Due to the changes made by subclause 8.1, Rule 8.2.4 has also been updated to refer to the Board's satisfaction that subregulation 6.20B(1A) of the *Superannuation Industry (Supervision) Regulations 1994* has been complied with, rather than the Board's satisfaction that his or her intention to leave Australia permanently is certain.

18. **Subclause 8.4** amends the heading to Rule 16.3.9 to reflect its content as amended by subclause 8.5.

19. **Subclause 8.5** replaces paragraph 16.3.9 so that a condition that must be met for an **associate** to be paid his or her **associate preserved benefit** as a lump sum is the Board's satisfaction that subregulation 6.20B(1A) of the SIS Regulations has been complied with, rather than the Board's satisfaction that he or she is departing from Australia permanently. This also promotes consistency between the Trust Deed and the criteria specified in the SIS Regulations for the cashing of departed temporary residents' benefits.

#### ***Co-contributions for non-contributing members***

20. Rule 11.1.1 provides the circumstances when a member may transfer amounts into the PSS scheme, including amounts payable in respect of a person under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*. As the Rule limits transfers to those made by members, co-contribution amounts are unable to be paid into the PSS scheme once contributory membership ceases.

21. **Subclause 9.1** inserts a new Rule 11.1.1A to allow preserved benefit members to transfer a co-contribution amount into the PSS scheme where the amount, in total or part, relates to a period where the person was a member.

22. **Subclause 9.2** amends the definition of 'transfer amount' under Rule 1.2.1 to include the new Rule 11.1.1A inserted by subclause 9.1.