

Instrument	Superannuation Amendment (PSS Trust Deed) Instrument 2018 [F2018L00707]
Purpose	Amends the Public Sector Superannuation Trust Deed and Rules to take account of proposed and recent enactments, and simplify and update other provisions
Authorising legislation	<i>Superannuation Act 1990</i>
Portfolio	Finance
Disallowance	15 sitting days after tabling (tabled Senate 18 June 2018) Notice of motion to disallow must be given by 23 August 2018 ⁶⁹

Subdelegation⁷⁰

Item 7 of Schedule 1 to the instrument amends paragraph 13.1(a) of the Public Sector Superannuation Scheme (PSS) Trust Deed to allow the Finance Minister to delegate all or any of his or her powers under the Deed, other than the power of delegation, to the Commonwealth Superannuation Corporation (CSC) or a member of the staff of the CSC.

The committee's expectations in relation to subdelegation accord with the approach of the Senate Standing Committee for the Scrutiny of Bills, which has consistently drawn attention to legislation that allows delegation to a relatively broad class of persons, with little or no specificity as to their qualifications or attributes. Generally, the committee considers that a limit should be set in legislation on either the sorts of powers that might be delegated or on the categories of people to whom powers might be delegated. The committee's preference is that delegates be confined to the holder of nominated offices, to those who possess appropriate qualifications or attributes, or to members of the Senior Executive Service (or equivalent). Where broad delegations are provided for, the committee considers that an explanation of why these are necessary and appropriate should be included in the explanatory statement (ES).

The ES to the instrument provides no explanation as to why it is considered necessary and appropriate to permit the minister to delegate any or all of his or her powers to any member of staff of the CSC, or as to how it is anticipated that this

69 In the event of any change to the Senate's sitting days, the last day for the notice would change accordingly.

70 Scrutiny principle: Senate Standing Order 23(3)(a).

power of delegation would be exercised. It merely restates (in brief) the operation and effect of the relevant provision.

Additionally, the committee is concerned that there is no legislative requirement that a person to whom powers are delegated under paragraph 13.1(a) of the PSS Trust Deed possess the qualifications or attributes necessary to ensure the appropriate exercise of those powers. The committee's expectation in this regard is not necessarily that details of the qualifications or attributes for delegates be specified in the instrument; rather, that there should be a requirement that the minister be satisfied that the delegate has the relevant qualifications and attributes to properly exercise the power delegated.

The committee seeks the minister's advice as to:

- **why it is considered necessary and appropriate to permit the Finance Minister to delegate any or all of his or her powers and functions under the PSS Trust Deed to any member of staff of the CSC; and**
- **the appropriateness of amending the instrument to require that the minister be satisfied that persons to whom powers are delegated under paragraph 13.1(a) of the Deed have the expertise appropriate to the power delegated.**