

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Finance and Administration

Superannuation Act 2005

Declaration under paragraph 5(2)(b)

The *Superannuation Act 2005* (the Act) provides for the Public Sector Superannuation Accumulation Plan (PSSAP) to be established by Trust Deed to commence on 1 July 2005. The PSSAP will generally apply in respect of Australian Government employees who commence employment on or after 1 July 2005 and certain other persons.

The PSSAP was originally established as a sub plan of the Public Sector Superannuation Scheme (PSS) to commence on 1 July 2005. The PSS was established by Trust Deed under the *Superannuation Act 1990* and the deed was amended by the 20th Amending Deed to establish the PSS Accumulation Plan as a sub plan for most new employees who became PSS members on or after 1 July 2005.

The Act, together with the *Superannuation (Consequential Amendments) Act 2005* (Consequential Amendments Act), provides for the PSSAP to be established as a separate superannuation scheme and for new employees to have choice of superannuation fund. The Consequential Amendments Act provides for the PSS to be closed to most new employees from 1 July 2005.

Section 5 of the Act describes a person who is a public sector employee for the purposes of the Act. In accordance with subsection 13(1) of the Act a public sector employee is eligible to become a member of the PSSAP unless excluded by subsection 13(2).

Subsection 5(1) describes a public sector employee to be a person who is either employed by the Commonwealth, or employed by an approved authority (described in section 8 of the Act) or is the holder of a statutory office but does not include a person who is an exempt overseas employee described in subsection 5(2).

Subsection 5(2) describes an exempt overseas employee to be a person who is engaged or appointed for employment outside Australia only who is not specified in a written declaration made by the Minister under paragraph 5(2)(b). In effect, a person who is described in such a declaration (and who is either employed by the Commonwealth or an approved authority or is a statutory office holder) would be a public sector employee within the meaning of subsection 5(1).

The **Superannuation (PSSAP) Public Sector Employees Declaration 2005** (the Declaration) identifies those persons who are not exempt overseas employees and therefore may meet the definition of public sector employee.

The Declaration has been made to ensure that, wherever practical, the same or similar membership arrangements would apply in respect of a person engaged or appointed for employment outside Australia as would have applied if the PSS had not been closed to new members.

The Declaration has been prepared in consultation with Minter Ellison Lawyers. The Office of Regulation Review has confirmed that a Regulation Impact Statement is not required as the Declaration is not likely to have a direct or significant indirect effect

on business or restrict competition. No further consultation is required as the instrument is machinery in nature and is not intended to alter the arrangements that would otherwise have applied if the PSS had not been closed to new members.

The Declaration is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Declaration commences on 1 July 2005.

The details of the Declaration are explained in the Attachment.

ATTACHMENT

SUPERANNUATION (PSSAP) PUBLIC SECTOR EMPLOYEES DECLARATION 2005

This section provides that the name of the Declaration is the Superannuation (PSSAP) Public Sector Employees Declaration 2005.

Section 2

This section provides for the Declaration to commence on 1 July 2005.

Section 3

This section defines terms commonly used in the Declaration. Most of these definitions are definitions or terms used in the 1990 Act and the 2005 Act, being the *Superannuation Act 1990* and the *Superannuation Act 2005* respectively.

Section 4

Section 4 provides that a person described in the Schedule is not an exempt overseas employee.

SCHEDULE 1

Items 1 and 2 ensure that relevant persons holding appointments or engagements described in declarations made under the definition of temporary employee in the 1990 Act will be public sector employees under the 2005 Act and consequently may be eligible to become PSSAP members. Subsection 3(1) of the 1990 Act defines a temporary employee for the purposes of that Act. Under the 1990 Act, a person's status as a temporary employee was used to ascertain eligibility for PSS membership.

Like the definition of public sector employee in the 2005 Act, the definition of temporary employee in the 1990 Act excludes persons engaged or appointed for overseas service only unless determined otherwise by the Minister.

The Temporary Employee Declaration No. 1 and the Superannuation (PSS) Temporary Employee Declaration No. 2 (Temporary Employee Declaration No. 2) were made under the 1990 Act to include certain persons engaged or appointed for overseas service only as temporary employees. These declarations describe certain persons who have been described also in items 1 and 2 as discussed below. The Temporary Employee Declaration No. 1 also describes certain persons who were in employment before 6 April 1978 and as a result, a similar provision is not required in the Declaration under the 2005 Act.

Item 1 describes a person engaged or appointed as the representative in another country of the Government of Australia or as the Australian representative in another country of Her Majesty who, immediately before the person's engagement or appointment was an ordinary employer-sponsored member (ie a member whose

employer contributes to the PSSAP on their behalf). This item makes similar provisions to those in paragraph 2(b) of the Temporary Employee Declaration No. 1 made under the 1990 Act, which describes a person in the same circumstances who was a PSS member immediately before the person's engagement or appointment.

Item 2 describes a person who was engaged as a temporary employee by the Australian Broadcasting Corporation for employment outside Australia only who immediately before his or her engagement was an ordinary employer sponsored member. This item makes similar provisions to those in paragraph 3 of the Temporary Employee Declaration No. 2 made under the 1990 Act which describes a person in the same circumstances who was a PSS member immediately before the person's engagement or appointment.

Item 3 describes a person who is the holder of a statutory office. The definition of statutory office holder under the 1990 Act did not exclude any person who was engaged or appointed for overseas only. As a result, any person who was appointed as a statutory office holder for overseas service only before the PSSAP commenced would have been eligible to be a PSS member. The Declaration will ensure that such a person will be deemed to be a public sector employee and consequently will be eligible to become a PSSAP member.