

Superannuation (PSS) Membership Exclusion Declaration (Amendment) 1998 No. 243

EXPLANATORY STATEMENT

STATUTORY RULES 1998 NO. 243

Issued by the authority of the Minister for Finance and Administration

Superannuation Act 1990

Declaration under paragraph 6(2)(c)

The *Superannuation Act 1990* (1990 Act) makes provision for, and in relation to, an occupational superannuation scheme known as the Public Sector Superannuation Scheme (PSS) for Commonwealth employees and certain other persons.

Section 6 of the 1990 Act specifies the persons who are, or who may be, members of the PSS. In accordance with paragraph 6(2)(c), a person declared by the Minister for Finance and Administration to be a person to whom section 6 does not apply is not a member of the scheme. Declarations made under paragraph 6(2)(c) are contained in the **Superannuation (PSS) Membership Exclusion Declaration** (the Principal Declaration).

Section 45 of the 1990 Act provides that a declaration under paragraph 6(2)(c) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901* and a Statutory Rule for the purposes of the *Statutory Rules Publication Act 1903*.

The purpose of the Declaration contained in the Statutory Rule and cited as "Superannuation (PSS) Membership Exclusion Declaration (Amendment)" is to amend the Principal Declaration to provide that persons who on or after 1 August 1998 move under the "mobility provisions" contained in Division 2 or 3 of Part IV of the *Public Service Act 1922* (the Public Service Act) will cease to be PSS members at that time except where continuing membership is expressly provided. The Declaration expressly provides for continuing membership for employees of the Australian Government Solicitor (AGS) who move to that body on or after 1 August 1998 under the mobility provision.

Australian Government Solicitor (subclause 3.2)

The Declaration amends the Principal Declaration to provide that persons transferred Division 2 or 3 of Part IV of the Public Service Act on or after 1 August 1998 to AGS will remain members of the PSS unless AGS becomes neither an "Agency" for the purposes of the FMA Act nor a "Commonwealth authority" or "Commonwealth company" within the meaning of the CAC Act.

Details of the amendments are explained in the Attachment.

ATTACHMENT

SUPERANNUATION (PSS) MEMBERSHIP EXCLUSION DECLARATION (AMENDMENT)

Clause 1

This clause provides that the Declaration commences on 1 August 1998.

Clause 2

This clause provides that the Declaration is amending the Superannuation (PSS) Membership Exclusion Declaration (the Principal Declaration).

Clause 3

This clause amends clause 4 of the Principal Declaration which specifies persons to whom section 6 of the 1990 Act does not apply and who are therefore not members of the PSS. Subclause 4(1) of the Declaration states that section 6 of the 1990 Act does not apply to a person mentioned in the Schedule.

Subclause 3.1 of the Declaration amends subclause 4(1) of the Principal Declaration to provide that subclause 4(1) is subject to the subclauses 4(2) and (3) of the Principal Declaration.

Subclauses 3.2 of the Declaration add new subclause 4(3) to the Principal Declaration to ensure that a person employed by the Australian Government Solicitor (AGS) who is a member because of paragraph (a) of the new item 38 of the schedule to the Principal Declaration will cease to be a member on the earliest of the following days:

- (a) the day on which the person ceases to be employed by the AGS; or
- (b) the day immediately before the day the person joins another superannuation scheme in relation to that employment, other than a scheme relating only to performance pay superannuation or for top-up purposes; or
- (c) the day immediately before the day on which the AGS becomes neither:
 - (i) an "Agency" within the meaning of the *Financial Management and Accountability Act 1997*; nor
 - (ii) a "Commonwealth authority" or "Commonwealth company" within the meaning of the *Commonwealth Authorities and Companies Act 1997*.

The term "top-up arrangement" is defined in subclause 3(1) of the Principal Declaration.

Clause 4

The schedule to the Principal Regulations specifies persons to whom section 6 of the 1990 Act does not apply and who are therefore not members of the PSS.

Subclause 4.1 of the Declaration inserts a new item 38 which excludes from PSS membership people who, on or after 1 August 1998, become persons covered by the "mobility provisions" contained in Division 2 or 3 of Part IV of the Public Service Act.

Paragraph (a) of item 38 provides for a class of persons who are exempted from the above exclusion. Continuing PSS membership is provided to PSS members who, on or after 1 August 1998, are transferred under the mobility provisions of the Public Service Act to the AGS. However, as outlined above, this continuing membership will cease if the new subclause 4(3) applies to the person.