

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Finance and Administration

Superannuation Act 1990

Declaration under paragraph 6(1)(j)

The *Superannuation Act 1990* (the Superannuation Act) makes provision for and in relation to the Public Sector Superannuation Scheme (PSS) for Australian Government employees and for certain other persons.

Section 6 of the Superannuation Act specifies the various persons who may be a member of the PSS (PSS member). Paragraph 6(1)(j) provides that the Minister may declare a person to be a PSS member.

The **Superannuation (PSS) Membership Inclusion Declaration 2006** (the Declaration) identifies the persons who are declared by the Minister to be PSS members under paragraph 6(1)(j) of the Superannuation Act.

The purpose of the Declaration is to remake the Superannuation (PSS) Membership Inclusion Declaration 1995 (as amended from time to time) (the 1995 Declaration). The 1995 Declaration applied to a relatively small number of people, and did not relate to most Commonwealth and ACT Government employees, including Public Service Act employees, who are PSS members because of other legislation.

The remaking is required due to the lodgement requirements under the provisions of the *Legislative Instruments Act 2003* (the LI Act) not being met. The effect of not meeting the lodgement requirements is that the 1995 Declaration was taken to be repealed under section 32 of the LI Act from and including 30 December 2005.

The Declaration has a retrospective commencement date. The Superannuation Act allows declarations to be made with a retrospective commencement. Subsection 45(4) of the Superannuation Act provides that a declaration made under paragraph 6(1)(j) may take effect on a day not earlier than 12 months before the making of the declaration.

Accordingly, the Declaration is specified to commence on 30 December 2005, the date on which the 1995 Declaration was taken to be repealed. This will ensure that the Declaration continues to apply to those members of the PSS included under the terms of the Schedule and not excluded under section 4.

The Declaration is identical in form to the 1995 Declaration. Due to the urgent need to ensure the continued effect of the PSS membership arrangements, there was insufficient time to modernise the new instrument, for example, by removing obsolete provisions and updating references to organisations that have changed their name. However, legal advice confirms that the Declaration will operate correctly.

Consultation under Part 3 of the LI Act was not undertaken as the Declaration is required as a matter of urgency, and the instrument is of a minor or machinery nature and does not alter existing arrangements.

The Declaration is a legislative instrument for the purposes of the LI Act.

The Declaration was drafted by the Office of Legislative Drafting and Publishing.

The details of the Declaration are explained in the Attachment.

SUPERANNUATION (PSS) MEMBERSHIP INCLUSION DECLARATION 2006

Section 1

This section provides that the name of the Declaration is the Superannuation (PSS) Membership Inclusion Declaration 2006.

Section 2

This section provides for the Declaration to commence on 30 December 2005. A Note is included which refers to the repeal of the Superannuation (PSS) Membership Inclusion Declaration 1995.

Section 3

This section provides for the interpretation for the purposes of the Declaration.

Section 4

This section describes those persons to whom section 6 of the *Superannuation Act 1990* applies who are not excluded by this section.

SCHEDULE 1 Persons to whom section 6 of the 1990 Act applies

The Schedule lists in each item the persons to whom section 6 of the *Superannuation Act 1990* applies for the purposes of section 4. The list of persons is the identical list of persons in the Superannuation (PSS) Membership Inclusion Declaration 1995 as amended from time to time, up to and including the day before 30 December 2005.

The following table compares the provisions of the Superannuation (PSS) Membership Inclusion Declaration 1995 and the Superannuation (PSS) Membership Inclusion Declaration 2006.

Provisions of Superannuation (PSS) Membership Inclusion Declaration 1995	Provisions of Superannuation (PSS) Membership Inclusion Declaration 2006	Comments
1 (Name of Declaration)	1 (Name of Declaration)	
	2 (Commencement)	The date of commencement of 30 December 2005 ensures that the <i>Superannuation (PSS) Membership Inclusion Declaration 2006</i> Declaration takes effect immediately after the <i>Superannuation (PSS) Membership Inclusion Declaration 1995</i> was repealed.
2 (Interpretation)	3 (Interpretation)	
3 (Persons to whom section 6 of the <i>Superannuation Act 1990</i> applies)	4 (Persons to whom section 6 of the <i>Superannuation Act 1990</i> Act applies)	
Schedule 1 (Persons to whom section 6 of the Act applies - items 1 to 25)	Schedule 1 (Persons to whom section 6 of the Act applies - items 1 to 25)	