

Superannuation (CSS) Productivity Employee Inclusion Declaration No. 1 1993 No. 223

EXPLANATORY STATEMENT

STATUTORY RULES 1993 No. 223

Issued by the authority of the Minister for Finance

Superannuation Act 1976

Declaration under section 110F

The *Superannuation Act 1976* (the 1976 Act) provides for a superannuation scheme for Commonwealth employees and certain other persons. That scheme is referred to as the Commonwealth Superannuation Scheme (the CSS).

The *Superannuation Guarantee (Administration) Act 1992* (the SG Act) provides for employers to provide a minimum level of employer superannuation support for employees, including certain Australian residents employed overseas, with effect from 1 July 1992. If satisfactory superannuation arrangements are not in place for all employees by 14 August 1993, employers will not comply with the SG Act and will have a superannuation guarantee shortfall.

To assist employers whose staff are members of the scheme under the 1976 Act to provide for the minimum level of superannuation provided for in the SG Act the 1976 Act was amended, with effect from 1 July 1992, to provide for a superannuation guarantee top-up benefit (the top-up benefit) for members of the CSS in certain circumstances.

Section 110SE of the 1976 Act provides for the top-up benefit. The top-up benefit is provided only for members who have productivity contributions paid in respect of them by their employer either to the CSS or to another superannuation scheme applying to them for the provision of productivity benefits.

Since 1 July 1990 employers of productivity employees have been required to pay productivity contributions in respect of those employees to the scheme under the 1976 Act. A "productivity employee" is defined in section 110A of the 1976 Act and does not include persons mentioned in subparagraphs (a)(i), (ii), (iii) and (iv) of the definition but does include persons in respect of whom a declaration is in force under section 110F of the 1976 Act.

Section 110F provides that the Minister for Finance may declare a member of the CSS who is described in subparagraph (a)(i), (ii) or (iii) of the definition of productivity employee to be a productivity employee for the purposes of Part VIA of the Act. Section 110F also provides that a declaration under the section takes effect from such day, not earlier than 1 July 1990, as is specified in the declaration.

Persons excluded by subparagraphs(a)(ii) or (a)(iii) of the definition of productivity employee in section 110A of the 1976 Act include members of the scheme under that Act who are;

- (a) employees of a State or a State authority, or
- (b) persons who are engaged or appointed for employment outside Australia only.

Despite these exclusions productivity contributions have been made to the CSS in respect of a number of persons included in the categories listed above, In other cases employers have requested that they be entitled to pay productivity contributions to the scheme so that employees may be covered for the SG top-up benefit. It is appropriate for CSS members to be covered for the SG top-up benefit to ensure that employers whose staff are members of the scheme do not have a superannuation guarantee shortfall in respect of those employees.

The purpose of the declaration is therefore twofold. Firstly, it will validate the payment of productivity contributions in respect of certain employees previously excluded from the productivity benefit arrangements in the 1976 Act. Secondly, it will ensure that coverage by the SG top-up arrangements in the 1976 Act is extended as widely as possible thus reducing the possibility of a shortfall occurring in respect of members of the CSS.

The Declaration takes effect from 1 July 1990 or on a later date as set out below. The date of effect in each case is either:

- (c) the date from which productivity contributions have been paid to the CSS in respect of a State or overseas employee; or
- (d) the date from which the person became a State or overseas employee; or
- (e) 1 July 1992, being the date of commencement of the superannuation guarantee arrangements and the top-up benefit arrangements in the 1976 Act.

The Declaration is made in respect of :

- Employees of the Legal Aid Commission of Western Australia with effect from 1/7/90
- Employees of the Legal Aid Commission of Queensland with effect from 1/7/90
- Persons engaged or appointed as the representatives of Australia in another country with effect from 1 July 1990 or the date of commencement of their engagement or appointment, whichever is later.
- Employees of the Legal Aid Commission of Tasmania with effect from 1/1/91
- Employees of the Legal Aid Commission of Victoria with effect from 1/7/92
- Employees of the Repatriation General Hospital, Hobart with effect from 1/7/92
- Person engaged for service by the Australian High Commission, London, with effect from 1 July 1992.
- Persons who are engaged by the Australian Broadcasting Corporation on a fixed term contract for employment outside Australia only with effect from 1 July 1992 or the date of commencement of the employment whichever is later.
- Employees of Concord Repatriation and General Hospital with effect from 1/7/93.

Where the declaration imposes a liability on an employer other than the Commonwealth or a Commonwealth authority the employers involved have indicated their acceptance of the liability imposed by the effect of the declaration including in respect of its retrospective application.

Section 110G provides that a declaration under section 110F is a statutory rule for the purposes of the *Statutory Rules Publication Act 1903* and a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.