

## **EXPLANATORY STATEMENT**

Issued by authority of the Minister for Finance and Deregulation

*Superannuation Act 2005*

Determination under subsection 34(1)

*Superannuation (PSSAP) (Australian Government Superannuation Scheme Member)  
Declaration 2013 (No. 1)*

On 29 June 2005, the Minister for Finance and Deregulation, for and on behalf of the Commonwealth, made a deed (the Trust Deed) under section 10 of the *Superannuation Act 2005* (the 2005 Act) to, among other things, establish a superannuation scheme, to be known as the Public Sector Superannuation Accumulation Plan (PSSAP) and the PSSAP Fund from 1 July 2005. The Schedule to the Trust Deed includes rules for the administration of PSSAP (the Rules).

The PSSAP is established for the benefit of most new Australian Government employees and statutory office holders. The Commonwealth Superannuation Corporation (CSC) is the trustee for the PSSAP.

Section 13 of the 2005 Act provides the eligibility criteria for membership of the PSSAP. Paragraphs 13(1)(b) and (c) of the 2005 Act provide eligibility for PSSAP membership for a person who is an 'Australian government superannuation scheme member' or 'former Australian government superannuation scheme member' respectively.

Subsection 4(1) of the 2005 Act defines an Australian government superannuation scheme member or former Australian government superannuation scheme member to be a person meeting specified criteria, so long as the Minister has declared that such a person is an Australian government superannuation scheme member or former Australian government superannuation scheme member.

**The Superannuation (PSSAP) (Australian Government Superannuation Scheme Member) Declaration 2013 (No. 1)** identifies the persons who are declared by the Minister to be PSSAP members under the definitions of Australian government superannuation scheme member and former Australian government superannuation scheme member under subsection 4(1) of the 2005 Act.

A person declared to be an Australian government superannuation scheme member is a person who is a contributory member of the Public Sector Superannuation Scheme (PSS) or Commonwealth Superannuation Scheme (CSS). A person declared to be an Australian government superannuation scheme member is a person who is a preserved benefit member of the PSS or CSS.

The PSSAP Ninth Amending Deed allows Australian government superannuation scheme members who join the PSSAP to make salary sacrifice contributions into the PSSAP. The PSSAP Ninth Amending Deed and PSS Thirty-seventh Amending Deed also allow for certain transfers to be made into the PSSAP in relation to Australian government superannuation scheme members and former Australian government superannuation scheme members.

Background information on the changes and the details of the Declaration are set out in [Attachment A](#).

**CSC Approval**

Section 32 of 2005 Act requires CSC to consent to the making of most legislative instruments under the 2005 Act. However, CSC consent was not required for the Declaration as the Declaration relates solely to the admission of new members to the fund, satisfying the exemption to consent under subparagraph 32(2)(b)(iii) of the 2005 Act.

***Legislative Instruments Act 2003***

The Declaration is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA). Although section 44 of the LIA exempts superannuation instruments from disallowance, the Declaration is subject to disallowance in accordance with subsection 4(3) of the 2005 Act.

**Consultation**

Section 17 of the LIA specifies that rule-makers should consult before making legislative instruments. Consultation was not undertaken as the Declaration is of a minor or machinery nature.

**Commencement**

The Declaration comes into effect immediately after the commencement of clause 4 of the PSSAP Ninth Amending Deed.

**Statement of Compatibility with Human Rights**

A Statement of Compatibility with Human Rights is at Attachment B.

## BACKGROUND TO AND DETAILS OF THE DECLARATION

### Background

The PSSAP Ninth Amending Deed (PSSAP Amending Deed) allows contributory Commonwealth Superannuation Scheme (CSS) and Public Sector Superannuation Scheme (PSS) members to salary sacrifice into the PSSAP. In conjunction with the PSS Thirty-seventh Amending Deed, the PSSAP Amending Deed also allows certain accumulated funded amounts to be transferred from the PSS to the PSSAP. Additionally, the PSSAP Amending Deed allows PSSAP members to transfer any CSS and PSS lump sum benefits into the PSSAP for the purpose of purchasing a PSSAP pension product.

CSS and PSS members are generally ineligible for PSSAP membership due to subsection 13(2) of the *Superannuation Act 2005* (the 2005 Act). However, subsection 4(1) of the 2005 Act allows the Minister to declare certain CSS and PSS members to be Australian government superannuation scheme members or former Australian government superannuation scheme members. If declared, these persons are eligible for PSSAP membership under paragraphs 13(1)(b) and (c) of the 2005 Act. The relevant declarations are made in the Declaration.

### Name of Declaration

**Section 1** provides that the name of the instrument is the *Superannuation (PSSAP) (Australian Government Superannuation Scheme Member) Declaration 2013 (No. 1)*.

### Commencement

2. **Section 2** specifies the commencement of the Declaration to be immediately after the commencement of clause 4 of the PSSAP Amending Deed.

### Definitions

3. **Section 3** defines 'PSS' to mean the Public Sector Superannuation Scheme.

### Declarations

4. **Section 4** declares a person who is either a member of the PSS, or a CSS eligible employee, to be an Australian government superannuation scheme member.

5. **Section 5** declares a person who is either a preserved benefit member of the PSS, or a deferred benefit member of the CSS, to be a former Australian government superannuation scheme member.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Superannuation (PSSAP) (Australian Government Superannuation Scheme Member) Declaration 2013 (No. 1)**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The Declaration identifies the persons who are declared by the Minister to be PSSAP members under the definitions of Australian government superannuation scheme member and former Australian government superannuation scheme member under subsection 4(1) of the 2005 Act.

#### **Human Rights Implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Penny Wong, Minister for Finance and Deregulation**