

EXPLANATORY STATEMENT

Issued by the Minister for Finance

Superannuation Act 1990

Declaration under paragraph 6(1)(j)

The *Superannuation Act 1990* (the 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 Act specifies the various persons who may be a member of the PSS. Paragraph 6(1)(j) provides that the Minister may declare a class of persons to be PSS members.

The *Superannuation (PSS) Membership Inclusion Declaration 2006* (the Principal Declaration) identifies the classes of persons who are declared PSS members under paragraph 6(1)(j) of the Act. Section 4 of the Principal Declaration also sets out circumstances where persons declared as PSS members cease to be contributory members.

The purpose of the ***Superannuation (PSS) Membership Inclusion Amendment Declaration 2015 (No. 1)*** (the Declaration) is to amend the Principal Declaration to provide PSS membership for certain persons who were employed by Australian Hearing Services (AHS) on or after 1 July 1997. Membership is provided to persons who were treated as eligible for PSS membership and had contributions paid into the PSS in respect of AHS employment during this period.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Before 1 July 1997, AHS employees were employed under the then *Public Service Act 1922* and therefore eligible for membership as Commonwealth employees. As part of a restructuring of AHS, the *Hearing Services and AGHS Reform Act 1997* included amendments to the *Hearing Services Act 1991*, including a change to provisions providing for the employment of staff. As a result, since 1 July 1997, AHS has employed staff in its own right, rather than on behalf of the Commonwealth. However, there was no policy intention that AHS employees' superannuation arrangements be affected by this change, and its relevant employees have continued to be treated as PSS members.

To give effect to the policy outcome which was always intended in relation to AHS staff, the Declaration regularises the PSS membership of AHS employees who were treated as PSS members from 1 July 1997 by declaring those employees in respect of whom contributions were received during the period to be PSS members. AHS will also be prescribed as an approved authority on commencement of the *Superannuation (PSS) Approved Authority Inclusion Amendment Declaration 2015 (No. 1)*, therefore

allowing future AHS employees to be eligible for PSS membership (subject to ordinary limitations under the Act).

AHS was consulted on the amendments contained in the Declaration.

The Declaration commences on 10 July 1997.

The Office of Best Practice Regulation (OBPR) assessed that the changes do not require a Regulation Impact Statement as they are machinery of government and do not substantially alter existing arrangements (OBPR ID: 18516).

The Declaration is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. Although section 44 of the Legislative Instruments Act exempts superannuation instruments from disallowance, the Declaration is subject to disallowance in accordance with subsection 45(2) of the Act.

The details of the Declaration are explained in Attachment A. A Statement of Compatibility with Human Rights is at Attachment B.

SUPERANNUATION (PSS) MEMBERSHIP INCLUSION AMENDMENT DECLARATION 2015 (NO. 1)

Section 1 – Name of Declaration

This section provides that the name of the Declaration is the *Superannuation (PSS) Membership Inclusion Amendment Declaration 2015 (No. 1)*.

Section 2 – Commencement

This section provides for the Declaration to commence on 10 July 1997. This date is the earliest day on which employer contributions were purportedly accepted for Australian Hearing Services (AHS) employees, being the first payday after 1 July 1997 (the commencement of amendments to the *Hearing Services Act 1991* which transferred relevant employees' employment from the Commonwealth to AHS).

Subsection 45(5) of the Act allows a declaration under paragraph 6(1)(j) to commence retrospectively in the limited circumstances where employer contributions have been accepted or purportedly accepted by the PSS in respect of the declared class of persons. Commencement from the first date at which contributions could have been made in respect of AHS employees ensures that the membership of these employees for the entire relevant period is regularised.

The retrospective commencement of this instrument will not have any negative effects on the rights and obligations of affected persons.

Section 3 – Application

This section provides that the amendments made by items 2 and 3 of Schedule 1 apply in relation to a person who became employed by AHS on or after 1 July 1997.

Section 4 – Amendment of *Superannuation (PSS) Membership Inclusion Declaration 2006*

This section provides that Schedule 1 of the Declaration amends the *Superannuation (PSS) Membership Inclusion Declaration 2006* (the Principal Declaration).

Schedule 1 – Amendments

Item 1 inserts a new definition of 'Australian Hearing Services' into subsection 3(1), meaning the body corporate established under Part 2 of the *Australian Hearing Services Act 1991*.

Item 2 inserts subsection 4(23), which describes the circumstances in which the AHS employees cease to be PSS members. Subsection 4(23) provides that PSS membership ceases for a person who has membership because of new item 30 of Schedule 1, which relates to employees of AHS, when any of the following circumstances arise:

- the person ceases employment with AHS;

- the person becomes a member of an alternative superannuation scheme in relation to their employment with AHS, as defined in the Principal Declaration; or
- AHS ceases to be a corporate Commonwealth entity within the meaning of the *Public Governance, Performance and Accountability Act 2013*.

These are the standard circumstances in which a person who becomes a PSS member because they are a member of a prescribed class ceases to be a PSS member (ie because they have ceased to be a member of that class).

Item 3 inserts item 30 in Schedule 1, which provides for employees of AHS, in certain circumstances, to be PSS members upon commencing employment with AHS. Under item 30, a person is a PSS member on becoming employed by AHS, provided that:

- they are an employee of AHS; and
- contributions were accepted purportedly under the Act, on or after 1 July 1997 in respect of the person's employment with AHS; and
- they are not, in relation to their employment with AHS, a member of an alternative superannuation scheme.

This provides PSS membership to persons who were employed by AHS prior to its prescription as an approved authority and who were treated as members during the affected period, and therefore regularises the treatment of those employees and their contributions. PSS membership is still subject to the other relevant limitations in the Act (including the closure of the scheme to new members in 2005).

ATTACHMENT B**Statement of Compatibility with Human Rights**

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

Superannuation (PSS) Membership Inclusion Amendment Declaration 2015 (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 purpose of the *Superannuation (PSS) Membership Inclusion Amendment Declaration 2015 (No. 1)* is to provide PSS membership for certain persons who were employed by Australian Hearing Services (AHS) on or after 1 July 1997. Membership is provided to persons who had contributions paid into the PSS in respect of AHS employment during this period. Before this date, AHS employees were employed under the then *Public Service Act 1922* and therefore eligible for membership as Commonwealth employees.

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.

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