

EXPLANATORY STATEMENT

Issued by the Minister for Finance

Superannuation Act 2005

Declaration under subparagraph 13(1)(a)(ii)

The *Superannuation Act 2005* (the Act) makes provision for and in relation to the Public Sector Superannuation Accumulation Plan (PSSAP) for public sector employees and certain other persons.

Section 13 of the Act specifies the various persons who are eligible to become members of the PSSAP. Subparagraph 13(1)(a)(ii) provides that the Minister may declare a person to be eligible to become a PSSAP member.

The *Superannuation (PSSAP) Membership Eligibility (Inclusion) Declaration 2005* (the Principal Declaration), made under the equivalent power in former paragraph 13(1)(b) of the Act, identifies the persons who are declared to be eligible to become PSSAP members. Section 4 of the Principal Declaration also sets out circumstances where persons declared eligible for PSSAP membership cease to be eligible for membership. Under section 23 of Schedule 2 to the *Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011*, the Principal Declaration is to be treated as if it were made under subparagraph 13(1)(a)(ii) of the Act.

The purpose of the *Superannuation (PSSAP) Membership Eligibility (Inclusion) Amendment Declaration 2015 (No. 1)* (the Declaration) is to amend Schedule 1 of the Principal Declaration to provide PSSAP membership eligibility for certain persons who were employed by Australian Hearing Services (AHS) on or after 1 July 2005. Membership is provided to persons who had contributions paid into the PSSAP 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 of the Commonwealth Superannuation Scheme (CSS) and Public Sector Superannuation Scheme (PSS) 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 employees have continued to be treated as eligible for membership of the CSS and PSS, and upon its commencement on 1 July 2005, the PSSAP.

To give effect to the policy outcome which was always intended in relation to AHS staff, the Declaration regularises the PSSAP membership of AHS employees who were treated as PSSAP members during the period between 1 July 2005 and the declaration of AHS as an approved authority (on commencement of the *Superannuation (PSSAP) Approved Authority Inclusion Amendment Declaration 2015 (No. 1)*, which prescribes AHS as an approved authority and therefore makes future employees of AHS eligible for PSSAP membership). The Declaration prescribes a limited category of persons—namely AHS employees in respect of whom contributions were made to PSSAP during the relevant period—as eligible for membership.

AHS was consulted on the amendments contained in the Declaration.

The Declaration commences on 14 July 2005.

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 13(5) 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 (PSSAP) MEMBERSHIP ELIGIBILITY (INCLUSION) AMENDMENT DECLARATION 2015 (NO. 1)

Section 1 – Name of Declaration

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

Section 2 – Commencement

This section provides for the Declaration to commence on 14 July 2005. This date is the earliest day on which employer contributions were purportedly accepted for Australian Hearing Services (AHS) employees, being the first payday after the commencement of the *Superannuation Act 2005* (the Act).

Subsection 13(7) of the Act permits a declaration under subparagraph 13(1)(a)(ii) to commence retrospectively in the limited circumstances where employer contributions have been accepted or purportedly accepted 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 eligibility 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 3 and 4 of Schedule 1 apply in relation to a person who became employed by AHS on or after 1 July 2005.

Section 4 – Amendment of *Superannuation (PSSAP) Membership Eligibility (Inclusion) Declaration 2005*

This section provides that Schedule 1 of the Declaration amends the *Superannuation (PSSAP) Membership Eligibility (Inclusion) Declaration 2005* (the Principal Declaration).

Schedule 1 – Amendments

Item 1 inserts a new definition of ‘Australian Hearing Services’ into section 3, meaning the body corporate established under Part 2 of the *Australian Hearing Services Act 1991*.

Item 2 changes the punctuation at the end of subparagraph 4(2)(h)(iii) to reflect the insertion of new paragraph (i) by item 3.

Item 3 inserts paragraph 4(2)(i), which describes the circumstances in which relevant AHS employees cease to be ordinary employer-sponsored members of the PSSAP. Paragraph 4(2)(i) provides that a person who is an ordinary employer-sponsored member because of new item 13 of Schedule 1, which relates to employees of AHS, ceases to be an ordinary employer-sponsored member 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 PSSAP member because they are a member of a prescribed class ceases to be a contributing PSSAP member (ie because they have ceased to be a member of that class).

Item 4 inserts item 13 in Schedule 1. Item 13 provides that a person can be an ordinary employer-sponsored member of the PSSAP at a particular time, provided that:

- they are an employee of AHS; and
- contributions were accepted purportedly under the Act, on or after 1 July 2005 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 PSSAP membership eligibility to employees of AHS prior to its prescription as an approved authority, and therefore regularises the treatment of those employees and their contributions during the affected period.

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

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

Superannuation (PSSAP) Membership Eligibility (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 (PSSAP) Membership Eligibility (Inclusion) Amendment Declaration 2015 (No. 1)* is to provide PSSAP membership for certain persons who were employed by Australian Hearing Services (AHS) on or after 1 July 2005. Membership is provided to persons who had contributions paid into the PSSAP in respect of AHS employment during this period. The PSSAP was established from 1 July 2005.

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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Minister for Finance