

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 person to be a PSS member.

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). 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. 2)*** (the Declaration) is to amend the Principal Declaration to provide PSS contributory membership for certain employees of the Private Health Insurance Administration Council (PHIAC) who become employees of the Australian Prudential Regulation Authority (APRA) as a result of item 31 of Part 3 of Schedule 2 to the *Private Health Insurance (Prudential Supervision)(Consequential Amendments and Transitional Provisions) Act 2015*.

The employees involved are persons who, immediately before becoming employees of APRA, were employees of PHIAC and were contributing members of the PSS. Although APRA employees are not generally entitled to be PSS members, the PSS membership of these former PHIAC employees will continue on becoming employees of APRA.

APRA is a Commonwealth entity established under the *Australian Prudential Regulation Authority Act 1998*. It is not an approved authority for the purposes of the Act. APRA were consulted on the amendments contained in the Declaration.

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.

The Declaration commences on the commencement of Schedule 2 to the *Private Health Insurance (Prudential Supervision)(Consequential Amendments and Transitional Provisions) Act 2015*.

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: 19164).

The Declaration is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. Although section 44 of the *Legislative Instruments Act 2003* 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. 2)

Section 1 – Name of Declaration

This section provides that the name of the Declaration is the *Superannuation (PSS) Membership Inclusion Amendment Declaration 2015 (No. 2)*.

Section 2 – Commencement

This section provides for the Declaration to commence on the commencement of Schedule 2 to the *Private Health Insurance (Prudential Supervision)(Consequential Amendments and Transitional Provisions) Act 2015*. This ensures that superannuation arrangements are in place once employees are transferred from PHIAC to APRA employment under item 31 of that Schedule.

Section 3 – 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 APRA in subsection 3(1). APRA is short for the Australian Prudential Regulation Authority as established by the *Australian Prudential Regulation Authority Act 1998*.

Item 2 inserts a definition of PHIAC in subsection 3(1). PHIAC is short for the Private Health Insurance Administration Council established by the *National Health Act 1953* and continued in existence under Part 6-3 of the *Private Health Insurance Act 2007*.

Item 3 inserts subsection 4(24), which describes the circumstances in which the PSS membership of transferred PSS members who become employed by APRA ceases. Subsection 4(24) provides that PSS membership ceases for a person who has such membership through item 31 of Schedule 1, which relates to employees of APRA, when any of the following circumstances arise:

- the person ceases employment with APRA;
- the person becomes a member of an alternative superannuation scheme, as defined in the Principal Declaration; or
- APRA ceases to be a 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 4 inserts item 31 in Schedule 1. Item 31 provides for employees of PHIAC who are transferred to APRA to continue to be PSS members. Under item 31, a person who becomes an employee of APRA will continue their PSS contributory membership on becoming an employee APRA, provided that he or she:

- became, or becomes, an employee of APRA as a result of item 31 of Part 3 of Schedule 2 to the *Private Health Insurance (Prudential Supervision) (Consequential Amendments and Transitional Provisions) Act 2015*; and
- immediately before becoming so employed, was a PSS contributory member in respect of employment with PHIAC; and
- is not a member of an alternative superannuation scheme, as defined in the Principal Declaration.

This enables persons who were contributing PSS members in respect of their employment with PHIAC to continue that contributing membership when they become employees of APRA.

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. 2)

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. 2)* is to amend *Superannuation (PSS) Membership Inclusion Declaration 2006* to provide Public Sector Superannuation Scheme membership for certain persons who are transferred from the Private Health Insurance Administration Council to the Australian Prudential Regulation Authority.

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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