# EXPLANATORY STATEMENT

# Issued by authority of the Minister for Finance and the Public Service

#### Superannuation Act 1990

Declaration under paragraph 6(2)(c)

*Superannuation (PSS) Membership Exclusion Amendment Declaration 2019 (No. 1)*

The Superannuation Act 1990 (the 1990 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 various persons who are a member of the PSS (PSS member). Paragraph 6(2)(c) enables the Minister to declare a person not to be a PSS member.

The *Superannuation (PSS) Membership Exclusion Declaration 1995* (the Principal Declaration) identifies the persons who are declared not to be PSS members under paragraph 6(2)(c) of the 1990 Act.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that 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.

**Amending Declaration**

The purpose of the *Superannuation (PSS) Membership Exclusion Amendment Declaration 2019 (No. 1)* (the Amending Declaration) is to repeal a historical provision in the Principal Declarationthat precludes certain staff of the Australian Securities Commission (now known as the Australian Securities and Investments Commission (ASIC)) who moved from State service to *Public Service Act 1922* employment, by determination under that Act, from being PSS members. The arrangements for these persons have been overtaken by new PSS membership arrangements for ASIC staff from 1 July 2019. This is the date that certain ASIC staff will transfer from Commonwealth employment to be directly employed by ASIC under amendments made to the *Australian Securities and Investments Commission Act 2001* by the *Treasury Laws Amendment (Enhancing ASIC’s Capabilities) Act 2018*.

The details of the Amending Declaration are at Attachment A.

***Legislation Act 2003***

The Amending Declaration is a legislative instrument for the purposes of the *Legislation Act 2003*, and is subject to disallowance in accordance with subsection 45(2) of the 1990 Act.

**Consultation**

Section 17 of the *Legislation Act 2003* specifies that rule-makers should consult before making legislative instruments. Commonwealth Superannuation Corporation, the corporate trustee of the PSS, and ASIC have been consulted on the amendments contained in the Amending Declaration.

The Office of Best Practice Regulation (OBPR) was consulted and assessed that the changes are machinery in nature and do not require a Regulation Impact Statement (OBPR Reference Number 24781).

**Commencement**

The Amending Declaration commences on 1 July 2019.

**Statement of Compatibility with Human Rights**

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

**ATTACHMENT A**

**DETAILS OF THE AMENDING DECLARATION**

**Name**

1. **Section 1** provides that the name of the instrument is the *Superannuation (PSS) Membership Exclusion Amendment Declaration 2019 (No. 1)* (the Amending Declaration).

**Commencement**

1. **Section 2** provides for commencement of the instrument on 1 July 2019. This is the same date that certain staff of the Australian Securities and Investments Commission (ASIC) will be taken to have ceased Commonwealth employment and become directly employed by ASIC as a result of amendments made to the *Australian Securities and Investments Commission Act 2001* (ASIC Act) by the *Treasury Laws Amendment (Enhancing ASIC’s Capabilities) Act 2018* (TLA(EAC) Act). Under the *Superannuation (PSS) Membership Inclusion Declaration 2006*, as amended by the *Superannuation (PSS) Membership Inclusion Amendment Declaration 2019 (No. 1)*, certain ASIC staff affected by the change will continue to be members of the Public Sector Superannuation Scheme (PSS) from 1 July 2019.

**Authority**

1. **Section 3** identifies the authority for the instrument as paragraph 6(2)(c) of the *Superannuation Act 1990* (the 1990 Act).

**Schedules**

1. **Section 4** provides that each instrument specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

**Schedule 1—Amendments**

**Superannuation (PSS) Membership Exclusion Declaration 1995**

1. Schedule 1 makes amendments to the Schedule to the *Superannuation (PSS) Membership Exclusion Declaration 1995* (the PrincipalDeclaration). The Schedule lists persons who are declared by the Minister, under paragraph 6(2)(c) of the 1990 Act, not to be a PSS member.
2. **Item 1** of Schedule 1 to the Amending Declaration repeals item 2 of the Schedule to the Principal Declaration. Item 2 is a historical provision that excludes certain staff members of the Australian Securities Commission (now known as ASIC) who moved from State service to *Public Service Act 1922* employment at the organisation, by direction under that Act, from being a PSS member unless they make a written request, in an approved form, to Commonwealth Superannuation Corporation. The item is being repealed, as ASIC staff who move from Commonwealth employment to direct employment by ASIC on 1 July 2019 under amendments made to the ASIC Act by the TLA(EAC) Act will be subject to new PSS membership arrangements. The new arrangements are provided for by the *Superannuation (PSS) Membership Inclusion Declaration 2006*, as amended by the *Superannuation (PSS) Membership Inclusion Amendment Declaration 2019 (No. 1)*.

**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 Exclusion Amendment Declaration 2019 (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 Exclusion Amendment Declaration 2019 (No. 1)* is to repeal a historical provision in the *Superannuation (PSS) Membership Exclusion Declaration 1995* that precludes certain staff of the Australian Securities Commission (now known as the Australian Securities and Investments Commission (ASIC)) from being members of the Public Sector Superannuation Scheme (PSS). The arrangements for these persons will be overtaken by new PSS membership arrangements for ASIC staff from 1 July 2019. This is the date that certain ASIC staff will transfer from Commonwealth employment to become directly employed by ASIC under amendments made to the *Australian Securities and Investments Commission Act 2001* by the *Treasury Laws Amendment (Enhancing ASIC’s Capabilities) Act 2018*.

**Human Rights Implications**

The 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 Mathias Hubert Paul Cormann, Minister for Finance and the Public Service**