

EXPLANATORY STATEMENT

Issued by authority of the Minister for Finance

Superannuation Act 2005

Superannuation (PSSAP—Ordinary Employer–Sponsored Member Exclusion) Determination 2020 made under subsection 18(10) of the Superannuation Act 2005

On 29 June 2005 the Minister for Finance, for and on behalf of the Commonwealth, made a determination (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 the PSSAP (the Rules).

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

Subsection 18(10) of the 2005 Act enables the Minister to, by legislative instrument, determine a class of persons that are excluded from being an ordinary employer-sponsored member of PSSAP under subsection 18(7) or 18(8A) of the 2005 Act.

The Minister for Finance has made a Determination under subsection 18(10) of the 2005 Act, being the *Superannuation (PSSAP—Ordinary Employer–Sponsored Member Exclusion) Determination 2020* (referred to as the Determination in this Statement).

Determination

On 7 September 2020, the *Superannuation Amendment (PSSAP Membership) Act 2020* (PSSAP Membership Act) received the Royal Assent. Schedule 1 to that Act commences on a day fixed by Proclamation or six months after the Act receives the Royal Assent. The PSSAP Membership Act amends the 2005 Act to extend the circumstances where a person can become an ordinary employer-sponsored member of PSSAP.

Relevantly, the PSSAP Membership Act replaced a previous category of ordinary employer-sponsored member (a “former Commonwealth ordinary employer-sponsored member”) with two new categories. Under the 2005 Act, as amended, an “eligible PSSAP member” can become an ordinary employer-sponsored member of the PSSAP under subsection 18(7) and an “eligible CSS/PSS member of former member” can become an ordinary employer-sponsored member of PSSAP under subsection 18(8A).

Subsections 18(9) as amended and 18(10) of the 2005 Act permit the Minister for Finance to make determinations, by legislative instrument, precluding certain persons or classes of persons from being an ordinary employer-sponsored member under subsections 18(7) or 18(8A). The Determination commences immediately after the commencement of Schedule 1 of the PSSAP Membership Act so that the exclusions apply in respect of the two new member categories.

The Determination provides that:

- members of the Australian Defence Force (ADF members) in respect of their military service;
- Judges of the Federal Circuit Court of Australia (Federal Circuit Court Judges); and

- members of parliament to whom Division 1 of Part 2 of the *Parliamentary Superannuation Act 2004* applies, that is who entered parliament on or after 9 October 2004 (post-2004 federal parliamentarians);

are three such classes of persons who, for the purposes of subsection 18(10) of the 2005 Act, cannot be an ordinary employer-sponsored member under subsection 18(7) or 18(8A) of that Act. These persons are excluded from PSSAP membership in respect of their particular office or service as they are provided with separate statutory superannuation arrangements that have been established by the Commonwealth.

Prior to the commencement of the PSSAP Membership Act, Federal Circuit Court Judges and post-2004 parliamentarians were ineligible to elect to be an FCOESM under the *Superannuation (PSSAP—Former Commonwealth Ordinary Employer- Sponsored Member) Determination 2017*, an earlier ministerial determination made by the Minister for Finance under subsection 18(10). That instrument is repealed by section 4 of the Determination.

Subsection 18(8) of the 2005 Act, prior to the commencement of the PSSAP Membership Act, precluded ADF members from electing to be an FCOESM in respect of employer-sponsored superannuation contributions payable by the Commonwealth. The exclusion provision under subsection 18(8) was repealed, with the intention that ADF members, in respect of their military service, would instead be excluded from eligibility under the two new member categories through a determination. The exclusion of ADF members in respect of their military service under the Determination applies for the duration of a person's period of military service.

Persons who entered parliament before 9 October 2004 and federal judges (other than Federal Circuit Court Judges) are provided with separate statutory superannuation arrangements and are therefore not required to be excluded by the Determination.

Details of the Determination are set out in [Attachment A](#).

Legislation Act 2003

The Determination is a legislative instrument. Although regulations made for the purpose of paragraph 44(2)(b) of the *Legislation Act 2003* exempt superannuation instruments from disallowance, the Determination is subject to disallowance in accordance with subsection 18(11) of the 2005 Act.

Consultation

Section 17 of the *Legislation Act 2003* specifies that rule-makers should consult before making legislative instruments. CSC has been consulted on the amendments contained in the Determination.

Commencement

The Determination commences immediately after Schedule 1 to the *Superannuation Amendment (PSSAP Membership) Act 2020*. Schedule 1 of this Act commences on the earlier of 6 months from Royal Assent or a day specified in a Proclamation.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is at [Attachment B](#).

DETAILS OF THE DETERMINATION

Name

1. **Section 1** provides that the name of the instrument is the *Superannuation (PSSAP—Ordinary Employer-Sponsored Member Exclusion) Determination 2020*.

Commencement

2. **Section 2** sets out the commencement provision for the amendments contained in the Determination. Item 1 of the table set out in subsection 2(1) provides that the whole of this instrument commences immediately after the commencement of Schedule 1 to the *Superannuation Amendment (PSSAP Membership) Act 2020*. Subsection 2(2) provides that any information in column 3 of the table is not part of that Act and that information may be inserted in this column, or information in it may be edited, in any published version of that Act.

Authority

3. **Section 3** identifies the authority for the instrument as subsection 18(10) of the *Superannuation Act 2005*.

4. **Section 4** repeats an earlier determination that had been made under subsection 18(10) of the *Superannuation Act 2005*

Classes of persons who cannot be ordinary employer-sponsored members under subsection 18(7) or 18(8A) of the *Superannuation Act 2005*

5. **Section 5** provides a person cannot be an ordinary employer-sponsored member of PSSAP under subsection 18(7) or 18(8A) of the *Superannuation Act 2005* if the person is, at the relevant time, a:

- member of the ADF in respect of their military service;
- Judge of the Federal Circuit Court of Australia; or
- member of parliament to whom Division 1 of Part 2 of the *Parliamentary Superannuation Act 2004* applies.

Statement of Compatibility with Human Rights

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

Superannuation (PSSAP—Ordinary Employer-Sponsored Member Exclusion) Determination 2020

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 Determination is to exclude members of the Australian Defence Force in respect of their military service, Federal Circuit Court Judges and post-2004 federal parliamentarians from being ordinary employer-sponsored members of PSSAP under subsection 18(7) or 18(8A) of the *Superannuation Act 2005* in order to provide consistency with the existing PSSAP membership rules for these offices.

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 Simon Birmingham, Minister for Finance