

EXPLANATORY STATEMENT

Issued by authority of the Minister for Finance

*Superannuation Act 1976, Superannuation Act 1990 and Superannuation Act 2005
Superannuation Legislation (CSS, PSS and PSSAP Membership) (ACT and NT Government
Bodies) Amendment Declaration 2025*

The *Superannuation Act 1976* (1976 Act), *Superannuation Act 1990* (1990 Act) and *Superannuation Act 2005* (2005 Act) make provision for and in relation to the Commonwealth Superannuation Scheme (CSS), Public Sector Superannuation Scheme (PSS) and Public Sector Superannuation Accumulation Plan (PSSAP) respectively, which are established to provide superannuation benefits for persons employed by the Commonwealth and certain other persons.

CSS

The definition of “eligible employee” in subsection 3(1) of the 1976 Act prescribes persons who accrue CSS superannuation benefits in respect of employment. They include, among others listed in the definition, permanent employees, comprising permanent employees of the Commonwealth and approved authorities, subject to certain limitations, and certain temporary employees of the Commonwealth and approved authorities.

The term “approved authority” is also defined in subsection 3(1) of the 1976 Act. Under paragraph (a) of that definition, an approved authority includes an authority or other body of a specified kind that is declared by the Minister by legislative instrument to be an approved authority for the purposes of the 1976 Act. The *Superannuation (CSS) Approved Authority Declaration 1995* sets out the authorities or bodies that are declared by the Minister to be approved authorities for the purposes of the 1976 Act.

Paragraphs (ec) and (j) of the definition of “eligible employee” enable the Minister to declare by legislative instrument a class of persons to be and not to be eligible employees for the purposes of the 1976 Act respectively. The *Superannuation (CSS) (Eligible Employees—Inclusion) Declaration 2003* and the *Superannuation (CSS) (Eligible Employees—Exclusion) Declaration 2003* have been made under paragraphs (ec) and (j) of the definition of “eligible employee” respectively for these purposes.

PSS

Section 6 of the 1990 Act prescribes persons who are PSS members and, therefore, accrue superannuation benefits in respect of their employment within the PSS. PSS members include, among other persons, permanent and temporary employees of approved authorities, subject to certain limitations. Paragraphs 6(1)(j) and 6(2)(c) of the 1990 Act enable the Minister to declare, in writing, persons to be and not to be PSS members respectively.

The term “approved authority” is defined in section 3 of the 1990 Act. Under paragraph (a) of the definition, “approved authority” includes the authorities or bodies that were approved authorities for the purposes of the 1976 Act immediately before commencement of the 1990 Act, except for Australian Airlines Limited and any such authority or body that the Minister has declared, in writing, not to be an approved authority for the purposes of the 1990 Act. Paragraph (b) of the definition enables the Minister to declare, in writing, an

authority or body of the kind specified in that paragraph to be an approved authority for the purposes of the 1990 Act.

The *Superannuation (PSS) Approved Authority Inclusion Declaration 1995* and the *Superannuation (PSS) Approved Authority Exclusion Declaration* set out the authorities or bodies that the Minister has declared, in writing, to be and not to be approved authorities for the purposes of paragraphs (b) and (a) of the definition of “approved authority” respectively.

The *Superannuation (PSS) Membership Inclusion Declaration 2006* and the *Superannuation (PSS) Membership Exclusion Declaration 1995* set out persons who the Minister has declared, in writing, to be and not to be PSS members under subsections 6(1)(j) and 6(2)(c) of the 1990 Act respectively.

PSSAP

Section 13 of the 2005 Act prescribes persons who are eligible for contributory membership of PSSAP to include, among other persons, Commonwealth employees and employees of approved authorities. Commonwealth employees and employees of approved authorities come within the definition of “public sector employee” in section 5 of the 2005 Act. Subparagraph 13(1)(a)(ii) and paragraph 13(2)(h) enable the Minister to declare in writing persons who are eligible, subject to certain limitations, and are not eligible to become members of PSSAP respectively.

Under subsection 8(2) of the 2005 Act, an authority or body is an approved authority if it was an approved authority for the purposes of the 1990 Act at the end of 30 June 2005, unless the Minister has declared in writing the authority or body not to be an approved authority.

The *Superannuation (PSSAP) Approved Authority Exclusion Declaration 2005* sets out authorities or bodies that are not approved authorities under paragraph 8(2)(b) of the 2005 Act.

The *Superannuation (PSSAP) Membership Eligibility (Inclusion) Declaration 2005* and *Superannuation (PSSAP) Membership Eligibility (Exclusion) Declaration 2005* set out those persons the Minister has declared in writing to be and not to be eligible to become members of PSSAP under subparagraph 13(1)(a)(ii) and paragraph 13(2)(h) of the 2005 Act.

Amendment Instrument

The *Superannuation Legislation (CSS, PSS and PSSAP Membership) (ACT and NT Government Bodies) Amendment Declaration 2025* (Amendment Instrument) amends 10 principal instruments that, together with the Acts under which they are made, govern the membership of the relevant Commonwealth superannuation schemes.

The purpose of the Amendment Instrument is to make amendments to the principal instruments as part of their ongoing maintenance.

The amendments made by the Amendment Instrument largely repeal provisions that are inoperative or otherwise redundant, for example, because the ACT or NT Government authorities or bodies to which they relate have been divested or ceased. The Amendment Instrument also amends some of the principal instruments to take account of changes to the names of certain ACT or NT Government authorities or bodies or their employment arrangements.

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

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 an such instrument.

Legislation Act 2003

The Amendment Instrument is a legislative instrument. It is subject to disallowance in accordance with subsection 3(1BD) and section 4A of the *Superannuation Act 1976*, subsection 45(2) of the *Superannuation Act 1990* and subsections 8(6) and 13(5) of the *Superannuation Act 2005*.

The Amendment Instrument and the principal instruments that it amends are not subject to sunseting because section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015* specifies, via item 6 of the table in that section, “an instrument (other than a regulation) relating to superannuation” to be a class of legislative instrument that is not subject to sunseting under Part 4 of Chapter 3 of the *Legislation Act 2003*. The exemption was put in place because it was considered that sunseting of instruments relating to superannuation could cause commercial uncertainty, as well as uncertainty for superannuation fund members and providers. These instruments are intended to have enduring operation and it would not be appropriate to subject them to sunseting.

Consultation

Section 17 of the *Legislation Act 2003* specifies that rule-makers should consult before making legislative instruments. The Commonwealth Superannuation Corporation, the trustee of the CSS, PSS and PSSAP, was consulted and advised that it has no concerns with the proposed amendments. The ACT and NT Governments were consulted to confirm the status of relevant authorities or bodies and determine required amendments.

Commencement

The whole of the Amendment Instrument commences on the day after it is registered on the Federal Register of Legislation.

Statement of Compatibility with Human Rights

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

DETAILS OF THE AMENDMENT INSTRUMENT

Name

1 Section 1 provides that the name of the instrument is the Superannuation Legislation (CSS, PSS and PSSAP Membership) (ACT and NT Government Bodies) Amendment Declaration 2025 (the Amendment Instrument).

Commencement

2. Section 2 sets out the commencement provision for the Amendment Instrument. Item 1 in the table in subsection 2(1) provides that the whole of the Amendment Instrument commences on the day after the Amendment Instrument is registered on the Federal Register of Legislation. Subsection 2(2) provides that any information in column 3 of the table is not part of the Amendment Instrument.

Authority

3. Section 3 identifies the authority for the Amendment Instrument as:
- paragraph (a) of the definition of approved authority in subsection 3(1) of the *Superannuation Act 1976*;
 - paragraph (ec) of the definition of eligible employee in subsection 3(1) of the *Superannuation Act 1976*;
 - paragraph (j) of the definition of eligible employee in subsection 3(1) of the *Superannuation Act 1976*;
 - paragraph (a) of the definition of approved authority in section 3 of the *Superannuation Act 1990*;
 - paragraph (b) of the definition of approved authority in section 3 of the *Superannuation Act 1990*;
 - paragraph 6(1)(j) of the *Superannuation Act 1990*;
 - paragraph 6(2)(c) of the *Superannuation Act 1990*;
 - paragraph 8(2)(b) of the *Superannuation Act 2005*;
 - subparagraph 13(1)(a)(ii) of the *Superannuation Act 2005*; and
 - paragraph 13(2)(h) of the *Superannuation Act 2005*.

Schedules

4. Section 4 provides that each instrument specified in a Schedule to the Amendment 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 Amendment Instrument has effect according to its terms.

Schedule 1—Amendments

Superannuation (CSS) Approved Authority Declaration 1995

5. Section 4 of the *Superannuation (CSS) Approved Authority Declaration 1995* (First Instrument) sets out the authorities or bodies that are declared, under paragraph (a) of the definition of approved authority in subsection 3(1) of the 1976 Act, to be approved authorities for the purposes of that Act.
6. **Item 1** omits from the list of authorities or bodies in section 4 of the First Instrument the names of 13 Australian Capital Territory (ACT) and Northern Territory (NT) Government authorities or bodies that have either ceased, been renamed or that no longer require approved authority status due to the nature of their current employment arrangements.
7. **Item 2** inserts in the list of authorities or bodies in section 4 of the Amendment Instrument the current names of six authorities or bodies, the previous names of which are omitted from the list via item 1.

Superannuation (CSS) (Eligible Employees—Inclusion) Declaration 2003

8. Subsection 4(2) of the *Superannuation (CSS) (Eligible Employees—Inclusion) Declaration 2003* (Second Instrument) prescribes, for the purposes of paragraph (ec) of the definition of eligible employee in subsection 3(1) of the 1976 Act, classes of persons who are CSS eligible employees. **Item 3** repeals paragraph 4(2)(d) of the Second Instrument, relating to a class of persons employed by ACTTAB Limited, as the provision is redundant. ACTTAB Limited was divested by the ACT Government in 2014 and the company was subsequently deregistered in 2015.

Superannuation (CSS) (Eligible Employees—Exclusion) Declaration 2003

9. Subsection 7(1) of the *Superannuation (CSS) (Eligible Employees—Exclusion) Declaration 2003* (Third Instrument) prescribes, for the purposes of paragraph (j) of the definition of eligible employee in subsection 3(1) of the 1976 Act, persons who are not CSS eligible employees. **Item 4** repeals paragraph 7(1)(k), relating to employees performing duties for the Australian Capital Territory Totalizator Administration Board. The paragraph is redundant because there are no remaining persons in this class. ACTTAB Limited was divested by the ACT Government in 2014 and the company was subsequently deregistered in 2015.
10. **Item 5** amends paragraph 7(1)(n) of the Third Instrument by replacing references to “ACTEW Corporation Limited” with “Icon Water Limited”, which is the company’s current name.
11. Section 6 of the Third Instrument provides that the persons mentioned in Schedule 1 to the Third Instrument cease to be eligible employees for the 1976 Act in certain circumstances, including if an event specified in Schedule 1 to the Third Instrument happens. Item 11 of Schedule 1 to the Third Instrument, which relates to certain ACTTAB Limited employees, is no longer operative as one of the cessation events specified in the item, that is, the ACT Government ceasing control of ACTTAB Limited, happened in 2014. Accordingly, **item 6** repeals item 11 to Schedule 1 of the Third Instrument.

Superannuation (PSS) Approved Authority Inclusion Declaration 1995

12. Section 4 of the *Superannuation (PSS) Approved Authority Inclusion Declaration 1995* (Fourth Instrument) sets out authorities and bodies that are declared, under paragraph (b) of the definition of approved authority in section 3 of the 1990 Act, to be approved authorities for the purposes of the 1990 Act. **Item 7** omits from the list of authorities and bodies in section 4 the names of three ACT Government authorities or bodies, being ACTEW Corporation Limited, Australian International Hotel School and Totalcare Industries Limited. The first named authority or body has been renamed, the second one has been divested by the ACT Government and the third one has ceased.

13. **Item 8** inserts into the list of PSS approved authorities and bodies in section 4 of the Fourth Instrument, the name Icon Water Limited, which is the current name of the company formerly known as ACTEW Corporation Limited.

Superannuation (PSS) Approved Authority Exclusion Declaration

14. Section 4 of the *Superannuation (PSS) Approved Authority Exclusion Declaration* (Fifth Instrument) sets out authorities and bodies that are declared, under paragraph (a) of the definition of approved authority in section 3 of the 1990 Act, not to be approved authorities for the purposes of the Act. **Item 9** omits from this list the names of 16 ACT and NT Government authorities and bodies that have ceased, been renamed or which now have employment arrangements that make the exclusion unnecessary or inappropriate.

15. **Item 10** inserts into section 4 of the Fifth Instrument the new names of six NT Government bodies that were omitted from the list of authorities and bodies that are excluded from PSS approved authority status by item 9.

Superannuation (PSS) Membership Inclusion Declaration 2006

16. Section 4 of the *Superannuation (PSS) Membership Inclusion Declaration 2006* (Sixth Instrument) prescribes persons to whom section 6 of the 1990 Act applies, that is, persons who are members of the PSS for the purposes of paragraph 6(1)(j) of the 1990 Act, as being the persons described in Schedule 1 to the Sixth Instrument. Under subsection 4(1), the PSS membership of these persons is subject to limitations set out in the section regarding the period and cessation of PSS membership.

17. **Item 11** repeals subsections 4(4) and 4(17) of the Sixth Instrument, as items 11 and 24 of Schedule 1 to the Sixth Instrument, to which the subsections relate, are being repealed by **item 12**. The repealed provisions are redundant as they relate to ACTTAB Limited and Rhodium Asset Solutions Limited, which have been divested by the ACT Government and/or ceased.

Superannuation (PSS) Membership Exclusion Declaration 1995

18. Subsection 4(1) of the *Superannuation (PSS) Membership Exclusion Declaration 1995* (Seventh Instrument) provides that section 6 of the 1990 Act does not apply to persons mentioned in the Schedule to the Seventh Instrument, with the result that these persons are not PSS members. **Item 13** repeals item 33 of the Schedule to the Seventh Instrument, which relates to certain officers of the ACT Government Service who perform duties for the Australian Capital Territory Totalizator Administrator Board, as the provision is redundant. There are no remaining persons in this cohort due to the ACT Government's divestment of ACTTAB Limited in 2014.

19. **Item 14** amends item 42 of the Schedule to the Seventh Instrument to replace a reference to "ACTEW Corporation Limited" with "Icon Water Limited", which is the company's current name.

Superannuation (PSSAP) Approved Authority Exclusion Declaration 2005

20. Section 4 of the *Superannuation (PSSAP) Approved Authority Exclusion Declaration 2005* (Eighth Instrument) provides that the authorities or bodies listed in Schedule 1 are not approved authorities for the purposes of the 2005 Act. **Item 15** omits "Australian International Hotel School" from the list of authorities and bodies in Schedule 1 to the Eighth Instrument, as the body ceased in 2005.

Superannuation (PSSAP) Membership Eligibility (Inclusion) Declaration 2005

21. Subsection 4(1) of the *Superannuation (PSSAP) Membership Eligibility (Inclusion) Declaration 2005* (Ninth Instrument) specifies that persons listed in Schedule 1 to the instrument are eligible to become a member of PSSAP. Item 3 of Schedule 1 includes certain employees of ACTTAB Limited. Subsection 4(2) of the Ninth Instrument specifies when persons listed in Schedule 1 to the instrument cease to be eligible to become a member of PSSAP under subsection 4(1). Paragraph 4(2)(a) specifies when certain employees of ACTTAB Limited, covered by item 3 of Schedule 1 to the Ninth Instrument, cease to be eligible to become members of PSSAP. **Item 16** repeals this paragraph as item 3 of Schedule 1 to the Ninth Instrument, which is now redundant, is being repealed by **item 17**. The ACT Government divested ACTTAB Limited in 2014 and the company was subsequently deregistered in 2015.

Superannuation (PSSAP) Membership Eligibility (Exclusion) Declaration 2005

22. Subsection 4(1) of the *Superannuation (PSSAP) Membership Eligibility (Exclusion) Declaration 2005* (Tenth Instrument) provides that a person listed in Schedule 1 to the Tenth Instrument is not eligible to become a PSSAP member. **Item 18** amends item 11 of Schedule 1 to the Tenth Instrument, which relates to certain persons who commence employment with ACTEW Corporation Limited, to replace a reference to "ACTEW Corporation Limited" with "Icon Water Limited", which is the company's current name.

Statement of Compatibility with Human Rights

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

Superannuation Legislation (CSS, PSS and PSSAP Membership) (ACT and NT Government Bodies) Amendment Declaration 2025

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 *Superannuation Legislation (CSS, PSS and PSSAP Membership) (ACT and NT Government Bodies) Amendment Declaration 2025* (Amendment Instrument), signed by the Minister for Finance, amends 10 principal instruments that, together with the Acts under which they are made, govern the membership of the relevant Commonwealth superannuation schemes.

The purpose of the Amendment Instrument is to make amendments to the principal instruments as part of their ongoing maintenance.

The amendments made by the Amendment Instrument largely repeal provisions that are inoperative or otherwise redundant, for example, because the ACT or NT Government authorities or bodies to which they relate have been divested or ceased. The Amendment Instrument also amends some of the principal instruments to take account of changes to the names of certain ACT or NT Government authorities or bodies or their employment arrangements.

Human Rights Implications

This Legislative Instrument does not engage any of the applicable rights or freedoms as it makes only minor and technical amendments that do not involve any policy change.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Senator the Hon Katy Gallagher, Minister for Finance