

Superannuation (PSS) Membership Exclusion Declaration (Amendment) 1997 No. 71

EXPLANATORY STATEMENT

STATUTORY RULES 1997 No. 71

Issued by the authority of the Minister for Finance

Superannuation Act 1990

Declaration under paragraph 6(2)(c)

The *Superannuation Act 1990* (the 1990 Act) makes provision for and in relation to an occupational superannuation scheme, known as the Public Sector Superannuation (PSS) Scheme, for Commonwealth employees and certain other persons.

Section 6 of the 1990 Act specifies the persons who may be members of the PSS. In accordance with paragraph 6(2)(c) of the 1990 Act, a person declared by the Minister for Finance to be a person to whom section 6 does not apply is not a member of the scheme.

The declaration cited as **Superannuation (PSS) Membership Exclusion Declaration** (the Principal Declaration) provides that section 6 of the Act does not apply to persons described in the Schedule to the Declaration. Such person may not therefore be members of the PSS. Some items in the Schedule have the effect of excluding from the PSS certain persons who are members of another superannuation scheme to which the person's employer makes contributions.

Membership arrangements applying to the PSS generally exclude a person from membership if the person is a member of another superannuation scheme to which the employer has agreed to make employer contributions.

Some PSS members, referred to in the Principal Declaration as members of superannuation schemes for "top-up purposes", are employed on flexible remuneration arrangements which enable them to receive part of their remuneration as non-cash benefits. Under such arrangements some members may sacrifice a portion of their cash salary in favour of employer superannuation contributions to another superannuation scheme in addition to their continuing PSS membership. Continuing PSS membership is described in the Principal Declaration in terms of the employer making payments under the 1990 Act in respect of the employee.

Usually employers make contributions on behalf of their PSS members at a prescribed rate simultaneously with contributions paid by the members. However, some employers pay their liability on an emerging cost basis i.e. when the employee's benefit become payable. Under these arrangements it is questionable whether technically the employer makes payments under the 1990 Act in respect of the employee. Therefore the legality of the top-up arrangements for employees of emerging cost agencies is in question. This was overlooked in the original provisions.

The Declaration restores the original intention of the provisions by amending the definition of top-up arrangement in the Principal Declaration to put the matter beyond doubt. The substituted definition ensures that where the employer liability is discharged on an emerging cost basis those employees who are members of another superannuation scheme for top-up purposes are not excluded from the PSS. The amendments contained in the amending Declarations are explained in the attachment.

Section 45 of the Act provides that such a declaration is a disallowable instrument for the purposes of section 46A of the Acts *Interpretation Act 1901* and a Statutory Rule for the purposes of the *Statutory Rules Publication Act 1903*.

The Declaration commenced on gazettal.

ATTACHMENT

SUPERANNUATION (PSS) MEMBERSHIP EXCLUSION DECLARATION (AMENDMENT)

The details of the Declaration are as follows:

Clause 1

This provides that the Principal Declaration is amended as set out in the amending Declaration.

Clause 2

This clause substitutes a new definition of "top-up arrangement" in clause 3 of the Principal Declaration (the interpretation provision).

Subclause 3.1 of the Principal Declaration defines a "top-up arrangement". Paragraph 3(1)(a) provides that a topup arrangement is an arrangement between the person and the person's employer whereby:

* superannuation contributions are paid in respect of the person to a superannuation scheme other than the PSS; and

* the contributions are part of, not additional to, the person's overall remuneration package.

Additionally, paragraph 3(1)(b) provides that the contributions are additional to payments made under the 1990 Act in relation to that same employment or office.

The wording of this latter provision may exclude certain persons from PS S membership if they are employed by bodies that discharge their PSS liabilities on an emerging cost basis. This effect was overlooked.

Subclause 2.1 substitutes a new definition of "top-up arrangement" which requires that the employee continues to be, or becomes, a member of the PS S in respect of the employment to which the arrangement relates and the employer must be the designated employer in respect of both the PSS membership and the top-up arrangement.

This restores the original intention that PSS members may be members of another superannuation scheme for topup purposes and remain members of the PSS irrespective of the arrangements made for the employer to reimburse the Commonwealth for the cost of that PSS membership.