

**Superannuation (PSS) Membership Exclusion Amendment Declaration 1999 (No. 4) 1999  
No. 320**

EXPLANATORY STATEMENT

STATUTORY RULES 1999 No. 320

Issued by the Authority of the Minister for Finance and Administration

*Superannuation Act 1990*

Declaration under paragraph 6(2)(c)

The *Superannuation Act 1990* (the 1990 Act) makes provision for and in relation to the Public Sector Superannuation Scheme (PSS) for Commonwealth employees and for certain other persons.

Section 6 of the 1990 Act specifies the persons who are, or who may be, members of the PSS. In accordance with paragraph 6(2)(c), a person declared by the Minister for Finance and Administration to be a person to whom section 6 does not apply is not a PSS member. Declarations made under paragraph 6(2)(c) are contained in the **Superannuation (PSS) Membership Exclusion Declaration** (the Principal Declaration).

Section 45 of the 1990 Act provides that a declaration made under paragraph 6(2)(c) 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 Principal Declaration is being amended to provide that, if a body known as the Federal Magistrates Court is established by statute, a person who consequently becomes a Federal Magistrate do not have access to the PSS. Federal Magistrates are justices for the purposes of the Constitution. Membership of the PSS by persons who are justices for the purposes of the Constitution may be in conflict with section 72(iii) of the Constitution. Section 72(iii) of the Constitution provides that a justice shall receive such remuneration as the Parliament may fix. The Australian Government Solicitor considers that there is a good argument that a justice's remuneration would not be fixed in the required sense if the amount of that remuneration was variable and dependent upon the exercise of an actuary's discretion. Certain benefits payable from the PSS have regard to amounts calculated on the basis of factors determined by an actuary.

The Principal Declaration already provides in items 4 and 8 of the Schedule that a statutory office holder who is a member of an employer-sponsored superannuation scheme in relation to that statutory office is not to be a PSS member. The superannuation arrangement proposed for Federal Magistrates would in most instances mean that these provisions would exclude them from PSS membership. This Declaration puts the matter beyond doubt, which is appropriate to avoid a potential constitutional conflict.

Details of the amendment are explained in the Attachment.

The Declaration commences on gazettal.

**SUPERANNUATION (PSS) MEMBERSHIP EXCLUSION AMENDMENT DECLARATION 1999  
(NO. 4)**

**Clause 1**

1. This clause provides that the name of the Declaration is the Superannuation (PSS) Membership Exclusion Amendment Declaration 1999 (No. 4).

**Clause 2**

2. This clause provides that the declaration commences on gazettal.

**Clause 3**

2. This clause provides that Schedule 1 amends the Superannuation (PSS) Membership Exclusion Declaration 1995 (the Principal Declaration).

**Schedule 1**

**Item 1** inserts item 41 into the Schedule to the Principal Declaration. The inserted item describes a class of persons who are not PSS members. The class of persons comprises persons who, if a body known as the Federal Magistrates Court is established by statute, become Federal Magistrates.