

EXPLANATORY STATEMENT

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 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 the various persons who may be a member of the PSS (PSS member). Paragraph 6(2)(c) provides that the Minister may 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). In most cases the persons declared not to be PSS members in respect of particular employment will include persons who are, or are required to become, a member of a 'superannuation scheme' in respect of that employment and persons who become a member of such a 'superannuation scheme' at a later date.

The purpose of the **Superannuation (PSS) Membership Exclusion Amendment Declaration 2005 (No. 1)** (the Amending Declaration) is to amend the Principal Declaration to ensure that the choice of superannuation fund requirements do not change the intention of the Principal Declaration.

Section 4 and Schedule 1 of the Principal Declaration identify the persons who do not qualify as PSS members under the Principal Declaration. Persons cannot be PSS members if they are or are required to be a member of a 'superannuation scheme' as defined in subsection 3(1) of the Principal Declaration. The definition of the term 'superannuation scheme' in the Principal Declaration relies on a scheme applying to a person because they are engaged in certain employment. The definition does not cover contributions to a superannuation fund where there is no common employment-related feature shared by the members or a Retirement Savings Account (RSA).

From 1 July 2005, most employers making superannuation guarantee contributions on behalf of an employee will be required to provide employees with a choice of superannuation fund to which those contributions will be paid. Employer contributions made to the PSS, the Commonwealth Superannuation Scheme or in accordance with the *Superannuation (Productivity Benefit) Act 1988* are exempt from the choice of superannuation fund requirements. Employers who have employees in alternative arrangements are likely to have to comply with the choice of superannuation fund requirements in respect of those employees.

Persons excluded from the PSS by membership of a 'superannuation scheme' related to their employment in accordance with the current definition of 'superannuation scheme' in the Principal Declaration may not continue to be excluded if they exercise choice to move to a superannuation fund that is not a scheme applying to that person because they are engaged in that employment. If the definition of 'superannuation scheme' is not changed to recognise that most employees are to be offered choice of superannuation fund from 1 July 2005 the result could be that these employees may unintentionally become PSS members.

From 1 July 2005, the Amending Declaration amends the definition of 'superannuation scheme' and introduces a new definition, 'alternative superannuation scheme', so as to cover any superannuation fund or RSA.

The Amending Declaration generally provides that a person excluded from being a PSS member will continue to be ineligible for PSS membership because of employer contributions made in relation to particular employment that is paid to a superannuation fund with or without a common employment-related feature shared by the members or to an RSA.

The Amending Declaration includes some technical amendments to clarify some provisions in the Principal Declaration.

The Amending Declaration has been prepared in consultation with the Office of Legislative Drafting and Publishing. No further consultation is required as the instrument is machinery in nature and does not substantially alter existing arrangements.

The Amending Declaration is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Amending Declaration commences on 1 July 2005.

The details of the Amending Declaration are explained in the Attachment.

ATTACHMENT

SUPERANNUATION (PSS) MEMBERSHIP EXCLUSION AMENDMENT DECLARATION 2005 (NO. 1)

Section 1

This section provides that the name of the Declaration is the Superannuation (PSS) Membership Exclusion Amendment Declaration 2005 (No. 1).

Section 2

This section provides for the Declaration to commence on 1 July 2005.

Section 3

This section provides that Schedule 1 of the Declaration amends the *Superannuation (PSS) Membership Exclusion Declaration 1995* (the Principal Declaration).

SCHEDULE 1 – AMENDMENTS

Item 1 inserts a definition of **alternative superannuation scheme** into subsection 3(1) of the Principal Declaration. The definition is used in some of the provisions in Schedule 1 of the Principal Determination to exclude certain persons from being members of the Public Sector Superannuation Scheme (PSS). The definition is limited to a superannuation scheme that is receiving contributions in relation to a person's employment or holding of an office.

There are some exceptions to the definition so that a person having contributions made to a superannuation scheme that would otherwise be an alternative superannuation scheme remains a PSS member. These exceptions were previously included in the definition of 'superannuation scheme' and various subparagraphs in the Schedule of the Principal Declaration which are amended by **items 8 to 15**. These exceptions are:

- contributions made to a superannuation scheme in relation to another employment or holding of another office;
- where membership of a superannuation scheme is only for the preservation or payment of productivity related benefits as defined in section 110A of the *Superannuation Act 1976*;
- participation in a superannuation scheme on behalf of a member solely for the employer satisfying their obligations under the *Superannuation Guarantee (Administration) Act 1992*;
- a superannuation scheme to which contributions are made in relation to a person only in relation to performance pay; or
- for a prescribed person (defined in the Principal Declaration), a superannuation scheme to which a person is taken to be a member for top-up purposes (salary sacrifice arrangements) under subsection 3(2).

Item 2 inserts a definition of **member** in relation to a Retirement Savings Account (RSA) into subsection 3(1) of the Principal Declaration. The definition includes as a member of a superannuation scheme a person who holds an RSA.

Item 3 amends the definition of **performance pay** in subsection 3(1) of the Principal Declaration to include a payment made under an agreement under Part VIB of the *Industrial Relations Act 1988* that was in force before 15 November 1996.

Item 4 substitutes a new definition of **superannuation scheme** in subsection 3(1) of the Principal Declaration to mean any scheme, fund or arrangement that pays superannuation or retirement benefits and expands the definition to include an RSA within the meaning of the *Retirement Savings Account Act 1997*.

Item 5 omits subsection 3(3) from the Principal Declaration as a consequence of the new definition of alternative superannuation scheme and its application.

Item 6 removes the reference to subsection 4(3) in subsection 4(1) of the Principal Declaration as this provision was omitted by the *Superannuation (PSS) Membership Exclusion Amendment Declaration 1999 (No. 1)*.

Item 6 also changes the reference to subclauses in subsection 4(1) of the Principal Declaration to subsection. Similarly, **item 7** changes the reference to clause 4 in the Schedule heading of the Principal Declaration to section 4. These changes are made to reflect current drafting style.

Section 4 and the Schedule of the Principal Declaration identify those persons who are excluded from being PSS members. A number of provisions exclude people from PSS membership under the Principal Declaration if they are members of a superannuation scheme, as currently defined in the Principal Declaration, except if:

- the superannuation scheme is the PSS or a scheme to which contributions are made in relation to the person only in relation to performance pay; or
- the person is a person who can choose whether to take part of their remuneration in a non-monetary form and the scheme membership is taken to be for top-up purposes.

These exceptions are now included in the definition of alternative superannuation scheme. **Items 8 to 15** amend various subparagraphs in the Schedule of the Principal Declaration to replace the existing provisions with a reference to membership of an alternative superannuation scheme.

Item 16 amends a reference to ‘*Superannuation Act 1976*’ in subparagraph 32(d)(ii) of the Schedule in the Principal Declaration by changing the reference to the defined term in the Principal Declaration ‘1976 Act’.

Item 17 makes a minor technical amendment to item 38 in the Schedule of the Principal Declaration.

Item 18 amends references to ‘*Superannuation Act 1990*’ in paragraphs 39(b) and 40(b) of the Schedule in the Principal Declaration by changing the references to the defined term in the Principal Declaration ‘1990 Act’.