



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

I, NICHOLAS HUGH MINCHIN, Minister for Finance and Administration, make this Declaration under paragraph (ec) of the definition of *eligible employee* in subsection 3 (1) of the *Superannuation Act 1976*.

Dated 30 June 2003

NICK MINCHIN
Minister for Finance and Administration

Contents

1	Name of Declaration	2
2	Commencement	2
3	Definitions	2
4	Persons who may become eligible employees	4
Schedule 1	Persons who may become eligible employees	11

1 Name of Declaration

This Declaration is the *Superannuation (CSS) (Eligible Employees — Inclusion) Declaration 2003*.

2 Commencement

This Declaration commences on the commencement of Part 1 of Schedule 1 to the *Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Act 2003*.

3 Definitions

(1) In this Declaration:

Act means the *Superannuation Act 1976*.

ASPI Ltd means Australian Strategic Policy Institute Limited (ACN 097369045), incorporated under the *Corporations Act 2001* on 22 August 2001.

ATP Ltd means Australian Training Products Limited (ACN 062758632), incorporated under the Corporations Law on 15 August 1994.

Australian Government Solicitor means the body corporate established under Division 2 of Part VIII B of the *Judiciary Act 1903*.

CSS/PSS Board means either or both of:

- (a) the CSS Board established under section 27A of the Act; and
- (b) the PSS Board established under section 20 of the *Superannuation Act 1990*.

Eligible Employees Regulations means the *Superannuation (CSS) Eligible Employees Regulations 1976*, as in force immediately before the commencement of this Declaration.

Medibank means the company (ACN 080890259) that was incorporated under the Corporations Law on 1 December 1997.

performance pay means a payment of that name made under an industrial agreement under Division 3A of Part VI of the *Industrial Relations Act 1988*, as in force immediately before 30 March 1994.

Public Service Act means the *Public Service Act 1922*.

reinstated means re-appointed or re-employed, or deemed to be, or to have been, re-appointed or re-employed as the case requires.

relevant Northern Territory employment means any of the following employment:

- (a) employment as a member of the Police Force of the Northern Territory;
- (b) employment by an approved authority, being the Northern Territory of Australia or an authority or body established by or under a law of that Territory;

- (c) employment as the holder of a statutory office established by a law of the Northern Territory of Australia.

superannuation scheme means a superannuation or retirement benefits scheme applying to persons because they are engaged in certain employment but, subject to subsection (4), does not include:

- (a) a scheme to the extent that membership of the scheme by the person is for the preservation or payment of productivity related benefits as defined in section 110A of the Act; or
- (b) the Public Sector Superannuation Scheme to the extent that membership of the scheme by the person relates to other employment; or
- (c) a scheme to the extent that participation in the scheme on the person's behalf by the person's employer is for purposes solely related to satisfying the employer's obligations under the *Superannuation Guarantee (Administration) Act 1992*.

top-up arrangement has the meaning given by subsection (3).

- (2) In this Declaration, a person is taken to be a member of a superannuation scheme for top-up purposes if, and only if, he or she is a member of the scheme:
 - (a) only because of a top-up arrangement; or
 - (b) because of:
 - (i) a top-up arrangement; and
 - (ii) any of the following circumstances:
 - (A) contributions are made to the scheme in relation to performance pay;
 - (B) the person is a member of the scheme for the purpose of the preservation or payment of productivity related benefits as defined in section 110A of the Act;
 - (C) participation in the scheme on the person's behalf by the person's employer is for purposes solely related to satisfying the employer's obligations under the *Superannuation Guarantee (Administration) Act 1992*.
- (3) A **top-up arrangement** is an arrangement:
 - (a) between the person (the **payee**) to whom, under the arrangement, remuneration is paid and the person (the **payer**) who pays the remuneration, by which the payer makes contributions in relation to the payee to a superannuation scheme (which may be a scheme applying only in relation to the payee); and
 - (b) in which the contributions mentioned in paragraph (a):
 - (i) constitute part of the payee's overall remuneration; and
 - (ii) are not paid as an addition to remuneration otherwise payable; and

- (c) in which the payer makes payments under the Act:
 - (i) in relation to the payee; and
 - (ii) in relation to the employment or office to which the arrangement relates.
- (4) Paragraphs (a) and (c) of the definition of *superannuation scheme* do not apply in relation to:
 - (a) subsection (2) or (3); or
 - (b) a reference in any other provision of this Declaration to a scheme of which a person is taken, under subsection (2), to be a member.

4 Persons who may become eligible employees

- (1) For paragraph (ec) of the definition of *eligible employee* in subsection 3 (1) of the Act, a person is an eligible employee if the person is in the class of persons, each of whom:
 - (a) is a person to whom, immediately before the commencement of this Declaration, a provision of the Eligible Employees Regulations mentioned in Schedule 1 applied; and
 - (b) requests in writing that he or she be treated as an eligible employee.
- (2) For paragraph (ec) of the definition of *eligible employee* in subsection 3 (1) of the Act, a person is an eligible employee if the person becomes a person included in any of the following classes of persons:
 - (a) a class of persons each of whom:
 - (i) is:
 - (A) the Executive Director (if he or she holds office on a full-time basis); or
 - (B) an employee (other than a person employed on a casual basis or part-time on a temporary basis);of the Dairy Research and Development Corporation; and
 - (ii) was an eligible employee immediately before becoming, or last becoming, a person mentioned in subparagraph (i); and
 - (iii) since becoming, or last becoming, a person mentioned in subparagraph (i), has not been a member of a superannuation scheme in relation to that person's employment with the Dairy Research and Development Corporation, other than:
 - (A) the scheme provided for by the Act; or
 - (B) a scheme to which contributions are made in relation to the person only in relation to performance pay; or
 - (C) for a person to whom subsection (3) applies — a scheme of which the person is taken, under subsection 3 (2), to be a member for top-up purposes;
 - (b) a class of persons each of whom:
 - (i) is employed by the Northern Land Council, except on a casual or temporary part-time basis; and

- (ii) immediately before last becoming so employed was an eligible employee; and
- (iii) is not a member of a superannuation scheme, other than:
 - (A) the scheme provided for by the Act; or
 - (B) a scheme to which contributions are made in relation to the person only in relation to performance pay; or
 - (C) for a person to whom subsection (3) applies — a scheme of which the person is taken, under subsection 3 (2), to be a member for top-up purposes;
 in relation to that person's employment by the Northern Land Council; and
- (c) a class of persons each of whom:
 - (i) is employed by Australian Meat Technology Pty Limited (*AMT*), other than as a casual or temporary part-time employee; and
 - (ii) who, immediately before becoming, or last becoming, an employee of AMT:
 - (A) was employed by the Commonwealth Scientific and Industrial Research Organisation; and
 - (B) was an eligible employee;
- (d) a class of persons each of whom:
 - (i) is an employee of ACTTAB Limited; and
 - (ii) is either:
 - (A) a person who, immediately before becoming so employed, was an eligible employee under the Act; or
 - (B) a person to whom invalidity pension under the Act was payable, or would have been payable if payment was not suspended, immediately before becoming so employed; or
 - (C) a person to whom deferred benefits under the Act were applicable immediately before becoming so employed; or
 - (D) a person who, because of the person's employment in ACTTAB Limited, would be a re-employed former contributor with preserved rights if ACTTAB Limited were an approved authority; and
 - (iii) is not, in relation to the person's employment in ACTTAB Limited, a member of a superannuation scheme, other than:
 - (A) the scheme provided for by the Act; or
 - (B) a scheme to which contributions are made in relation to the person only in relation to performance pay; or
 - (C) for a person to whom subsection (3) applies — a scheme of which the person is taken, under subsection 3 (2), to be a member for top-up purposes;
- (e) a class of persons each of whom:
 - (i) is an employee of Medibank, other than on a casual or temporary part-time basis; and

- (ii) is either:
 - (A) a person who, immediately before last becoming so employed, was an eligible employee; or
 - (B) a person to whom a pension of a kind mentioned in section 64A or 65 of the superseded Act as in force immediately before the repeal of that section was payable, or would have been payable if payment had not been suspended, immediately before becoming so employed; or
 - (C) a person to whom invalidity pension under the Act was payable, or would have been payable if payment had not been suspended, immediately before becoming so employed; or
 - (D) a person to whom deferred benefits under the Act or the superseded Act were applicable immediately before becoming so employed; or
 - (E) a person who, because of the person's employment in Medibank, would be a re-employed former contributor with preserved rights; and
- (iii) is not, in relation to the person's employment in Medibank, a member of a superannuation scheme, other than:
 - (A) the scheme provided for in the Act; or
 - (B) a scheme to which contributions are made in relation to the person only in relation to performance pay; or
 - (C) for a person to whom subsection (3) applies — a scheme of which the person is taken, under subsection 3 (2), to be a member for top-up purposes;
- (f) a class of persons each of whom meets one of the following requirements:
 - (i) on 31 December 1998, the person was an eligible employee employed by the Northern Territory Legal Aid Commission;
 - (ii) the person:
 - (A) is an employee of the Commission; and
 - (B) immediately before becoming an employee, was an eligible employee and was employed in relevant Northern Territory employment;
- (g) a class of persons each of whom:
 - (i) is an employee of the Australian Government Solicitor; and
 - (ii) immediately before becoming so employed was an eligible employee; and
 - (iii) is not, in relation to the person's employment with the Australian Government Solicitor, a member of a superannuation scheme, other than:
 - (A) the scheme provided for by the Act; or
 - (B) a scheme to which contributions are made in relation to the person only in relation to performance pay; or

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- (C) for a person to whom subsection (3) applies — a scheme of which the person is taken, under subsection 3 (2), to be a member for top-up purposes;
 - (h) a class of persons each of whom:
 - (i) is an employee (except a casual or temporary part-time employee) of Bankstown Airport Ltd; and
 - (ii) immediately before becoming so employed was an eligible employee employed by the Federal Airports Corporation; and
 - (iii) is not, in relation to the person's employment with Bankstown Airport Ltd, a member of a superannuation scheme, other than:
 - (A) the scheme provided for by the Act; or
 - (B) for a person to whom subsection (3) applies — a scheme of which the person is taken, under subsection 3 (2), to be a member for top-up purposes;
 - (i) a class of persons each of whom:
 - (i) is an employee of the Sydney Harbour Federation Trust (otherwise than on a casual or temporary part-time basis); and
 - (ii) either:
 - (A) immediately before becoming so employed, was an eligible employee; or
 - (B) immediately before becoming so employed, was a person to whom a pension of a kind mentioned in section 64A or 65 of the superseded Act as in force immediately before the repeal of that section was payable, or would have been payable if payment had not been suspended; or
 - (C) immediately before becoming so employed, was a person to whom invalidity pension under the Act or the superseded Act was payable, or would have been payable if payment had not been suspended; or
 - (D) immediately before becoming so employed, was a person to whom deferred benefits under the Act were applicable; or
 - (E) is a person who, because of the person's employment by the Sydney Harbour Federation Trust, is a re-employed former contributor with preserved rights; and
 - (iii) is not, in relation to the person's employment by the Sydney Harbour Federation Trust, a member of a superannuation scheme, other than:
 - (A) the scheme provided for by the Act; or
 - (B) for a person to whom subsection (3) applies — a scheme of which the person is taken, under subsection 3 (2), to be a member for top-up purposes;

- (j) a class of persons each of whom:
 - (i) is an employee of ATP Ltd (other than on a casual or temporary part-time basis); and
 - (ii) immediately before becoming so employed, was an eligible employee employed by the Australian National Training Authority; and
 - (iii) is not, in relation to the person's employment with ATP Ltd, a member of a superannuation scheme, other than:
 - (A) the scheme provided for by the Act; or
 - (B) for a person to whom subsection (3) applies — a scheme of which the person is taken, under subsection 3 (2), to be a member for top-up purposes;
- (k) a class of persons:
 - (i) each of whom is an employee of ASPI Ltd (otherwise than on a casual or temporary part-time basis); and
 - (ii) each of whom:
 - (A) immediately before becoming so employed, was an eligible employee; or
 - (B) immediately before becoming so employed, was a person to whom a pension of a kind mentioned in section 64A or 65 of the superseded Act as in force immediately before the repeal of that section was payable, or would have been payable if payment had not been suspended; or
 - (C) immediately before becoming so employed, was a person to whom invalidity pension under the Act was payable, or would have been payable if payment had not been suspended; or
 - (D) immediately before becoming so employed, was a person to whom deferred benefits under the Act or the superseded Act were applicable; or
 - (E) is a person who, because of the person's employment with ASPI Ltd, is a re-employed former contributor with preserved rights; and
 - (iii) each of whom is not, in relation to the person's employment by ASPI Ltd, a member of a superannuation scheme, other than:
 - (A) the scheme provided for by the Act; or
 - (B) for a person to whom subsection (3) applies — a scheme of which the person is taken, under subsection 3 (2), to be a member for top-up purposes;
- (l) a class of persons each of whom:
 - (i) is an employee of the CSS/PSS Board (otherwise than on a casual or temporary part-time basis); and
 - (ii) either:
 - (A) immediately before becoming so employed, was an eligible employee; or

- (B) immediately before becoming so employed, was a person to whom a pension of a kind mentioned in section 64A or 65 of the superseded Act as in force immediately before the repeal of that section was payable, or would have been payable if payment had not been suspended; or
- (C) immediately before becoming so employed, was a person to whom invalidity pension under the Act was payable, or would have been payable if payment had not been suspended; or
- (D) immediately before becoming so employed, was a person to whom deferred benefits under the Act or the superseded Act were applicable, and, for a person who becomes a full-time temporary employee, makes an election in writing to become an eligible employee; or
- (E) is a person who, because of the person's employment by the CSS/PSS Board, is a re-employed former contributor with preserved rights, and, for a person who becomes a full-time temporary employee, makes an election in writing to become an eligible employee; and
- (iii) is not, in relation to the person's employment by the CSS/PSS Board, a member of a superannuation scheme, other than:
 - (A) the scheme provided for by the Act; or
 - (B) for a person to whom subsection (3) applies — a scheme of which the person is taken, under subsection 3 (2), to be a member for top-up purposes;
- (m) a class of persons each of whom:
 - (i) is a permanent employee or a temporary employee by virtue of having been reinstated in circumstances similar to the circumstances in which a person could have been re-appointed to the Australian Public Service under section 63F, 63G or 66B of the Public Service Act, as in force immediately before its repeal; and
 - (ii) was an eligible employee immediately before the termination or cessation of the employment to which the reinstatement relates;
- (n) a class of persons each of whom:
 - (i) is a permanent employee or a temporary employee by virtue of having been reinstated in circumstances similar to the circumstances in which a person could have been deemed to have been re-appointed to the Australian Public Service in accordance with section 87M or 87Q of the Public Service Act, as in force immediately before its repeal; and
 - (ii) was an eligible employee immediately before the termination or cessation of the employment to which the reinstatement relates.

Section 4

- (3) This subsection applies to a person if he or she holds office or is employed under conditions that enable the person to choose whether to take part of his or her remuneration in a non-monetary form (which may be in the form of a top-up arrangement).

Note Under the *Superannuation (CSS) (Eligible Employees — Exclusion) Declaration 2003*, in certain circumstances, a person mentioned in paragraphs (2) (a) to (l) may cease to be an eligible employee. (See section 6 and Schedule 1 of the Declaration.)

Schedule 1 Persons who may become eligible employees

(section 4)

Item	Provision
1	Paragraph 4 (1) (b)
2	Paragraph 4 (1) (c)
3	Paragraph 4 (1) (q)
4	Paragraph 4 (1) (s)
5	Paragraph 4 (1) (v)
6	Paragraph 4 (1) (x)
7	Paragraph 4 (1) (za)
8	Paragraph 4 (1) (zd)
9	Paragraph 4 (1) (ze)
10	Paragraph 4 (1) (zg)
11	Paragraph 4 (1) (zl)
12	Subparagraph 4 (1) (zm) (v)
13	Paragraph 4 (1) (zp)
14	Paragraph 4 (1) (zq)
