

EXPLANATORY STATEMENT

Issued by the Minister for Finance

Superannuation Act 1976

Declaration under paragraph (ec) of the definition of “eligible employee” included in subsection 3(1)

The *Superannuation Act 1976* (the Act) makes provision for and in relation to the Commonwealth Superannuation Scheme (CSS) for Australian Government employees and for certain other persons.

Subsection 3(1) of the Act contains the definition of the term “eligible employee” that describes various classes of persons who may contribute to the CSS (that is, CSS members). Paragraph (ec) of the definition provides that the Minister may declare a class of persons to be CSS members.

The *Superannuation (CSS) (Eligible Employees — Inclusion) Declaration 2003* (the Principal Declaration) identifies the persons who are declared CSS members under paragraph (ec) of the definition of eligible employees.

The purpose of the ***Superannuation (CSS) (Eligible Employees — Inclusion) Amendment Declaration 2015 (No. 1)*** (the Declaration) is to amend the Principal Declaration to provide CSS membership for certain persons who were employed by Australian Hearing Services (AHS) on or after 1 July 1997. Membership is provided to persons who were treated as eligible for CSS membership and who had contributions paid into the CSS in respect of AHS employment during this period.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, 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 any such instrument.

Before 1 July 1997, AHS employees were employed under the then *Public Service Act 1922* and therefore eligible for membership as Commonwealth employees. As part of a restructuring of AHS, the *Hearing Services and AGHS Reform Act 1997* included amendments to the *Hearing Services Act 1991*, including a change to provisions providing for the employment of staff. As a result, since 1 July 1997, AHS has employed staff in its own right, rather than on behalf of the Commonwealth. However, there was no policy intention that AHS employees’ superannuation arrangements be affected by this change, and its relevant employees have continued to be treated as CSS members.

To give effect to the policy outcome which was always intended in relation to AHS staff, the Declaration regularises the CSS membership of AHS employees who were treated as CSS members from 1 July 1997 by declaring those employees in respect of whom contributions were received during the period to be “eligible employees”. AHS will also be prescribed as an approved authority on commencement of the *Superannuation (CSS) Approved Authority Amendment Declaration 2015 (No. 1)*,

therefore allowing future employees of AHS to be CSS members (subject to ordinary limitations under the Act).

AHS was consulted on the amendments contained in the Declaration.

The Declaration commences on 10 July 1997.

The Office of Best Practice Regulation (OBPR) assessed that the changes do not require a Regulation Impact Statement as they are machinery of government and do not substantially alter existing arrangements (OBPR ID: 18516).

The Declaration is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. Although section 44 of the Legislative Instruments Act exempts superannuation instruments from disallowance, the Declaration is subject to disallowance in accordance with subsection 3(1BD) of the Act.

The details of the Declaration are explained in Attachment A. A Statement of Compatibility with Human Rights is at Attachment B.

ATTACHMENT A

SUPERANNUATION (CSS) (ELIGIBLE EMPLOYEES — INCLUSION) AMENDMENT DECLARATION 2015 (NO. 1)

Section 1 – Name of Declaration

This section provides that the name of the Declaration is the *Superannuation (CSS) (Eligible Employees — Inclusion) Amendment Declaration 2015 (No. 1)*.

Section 2 – Commencement

This section provides for the Declaration to commence on 10 July 1997. This date is the earliest day on which employer contributions were purportedly accepted for Australian Hearing Services (AHS) employees, being the first payday after 1 July 1997 (the commencement of amendments to the *Hearing Services Act 1991* which transferred relevant employees' employment from the Commonwealth to AHS).

Subsection 3(1B) of the Act allows a declaration under paragraph (ec) of the definition of “eligible employee” to commence retrospectively in the limited circumstances where employer contributions have been accepted or purportedly accepted by the CSS in respect of the declared class of persons. Commencement from the first date at which contributions could have been made in respect of AHS employees ensures that the membership of these employees for the entire relevant period is regularised.

The retrospective commencement of this instrument will not have any negative effects on the rights and obligations of affected persons.

Section 3 – Application

This section provides that the amendments made by item 2 of Schedule 1 apply in relation to a person who became employed by AHS on or after 1 July 1997.

Section 4 – Amendment of *Superannuation (CSS) (Eligible Employees — Inclusion) Declaration 2003*

This section provides that Schedule 1 of the Declaration amends the *Superannuation (CSS) (Eligible Employees — Inclusion) Declaration 2003* (the Principal Declaration).

Schedule 1 – Amendments

Item 1 inserts a new definition of “Australian Hearing Services” into subsection 3(1), meaning the body corporate established under Part 2 of the *Australian Hearing Services Act 1991*.

Item 2 inserts a new section 5 immediately after section 4, which provides for employees of AHS, in certain circumstances, to be CSS members upon commencing employment with AHS. The new section 5 also describes the circumstances in which the CSS membership of this class of person ceases.

Under new subsection 5(1), a person is an “eligible employee” on becoming employed by AHS, provided that:

- they are an employee of AHS, other than on a casual or temporary part-time basis; and
- contributions were accepted purportedly under the Act, on or after 1 July 1997 in respect of the person’s employment with AHS; and
- they are not, in relation to their employment with AHS, a member of an alternative superannuation scheme.

This provides CSS membership to persons who were employed by AHS prior to its prescription as an approved authority and who were treated as members during the affected period, and therefore regularises the treatment of those employees and their contributions. CSS membership is still subject to the other relevant limitations in the Act (including the closure of the scheme to new members in 1990).

New subsection 5(2) provides that CSS membership ceases for this new declared class when any of the following circumstances arise:

- the person ceases employment with AHS;
- the person becomes a member of an alternative superannuation scheme in relation to their employment with AHS, as defined in the Principal Declaration;
- the person becomes a casual or temporary part-time employee of AHS; or
- AHS ceases to be a corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 1997*.

These are the standard circumstances in which a person who becomes a CSS member because they are a member of a prescribed class ceases to be a CSS member (ie because they have ceased to be a member of that class).

ATTACHMENT B**Statement of Compatibility with Human Rights**

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

**Superannuation (CSS) (Eligible Employees—Inclusion) Amendment Declaration 2015
(No. 1)**

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 purpose of the *Superannuation (CSS) (Eligible Employees — Inclusion) Amendment Declaration 2015 (No. 1)* is to provide CSS membership for certain persons who were employed by Australian Hearing Services (AHS) on or after 1 July 1997. Membership is provided to persons who had contributions paid into the CSS in respect of AHS employment during this period. Before this date, AHS employees were employed under the then *Public Service Act 1922* and therefore eligible for membership as Commonwealth employees.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

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

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Minister for Finance