

EXPLANATORY STATEMENT

Issued by the Minister for Finance

Superannuation Act 1990

Declaration under section 3

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

Persons who are members of the PSS under the Act include certain persons who are Commonwealth employees or who are employed by an "approved authority" (subject to certain other requirements). In accordance with paragraph (b) of the definition of "approved authority" in section 3 of the Act, an approved authority includes an authority or other body declared by the Minister to be an approved authority for the purposes of the Act, being an authority or body of a kind described in the definition.

A consolidated list of bodies that have been declared by the Minister to be approved authorities for the purposes of the 1990 Act is contained in the *Superannuation (PSS) Approved Authority Inclusion Declaration 1995* (the Principal Declaration).

The purpose of the ***Superannuation (PSS) Approved Authority Inclusion Amendment Declaration 2015 (No. 1)*** (the Declaration) is to amend the Principal Declaration by including Australian Hearing Services (AHS) in the list of bodies declared by the Minister to be approved authorities for the purposes of the Act.

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 PSS membership. 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 relevant employees have continued to be treated as PSS members.

To give effect to the policy outcome which was always intended in relation to AHS staff, the Declaration makes AHS an approved authority. Subject to any other limitations in the Act (noting that the PSS closed to new members in 2005), employees of AHS may be eligible for PSS membership from the date of the instrument's commencement. The AHS employees treated as PSS members for the period from 1 July 1997 up until the commencement of the Declaration are declared to be members under the *Superannuation (PSS) Membership Inclusion Amendment Declaration 2015 (No. 1)*.

AHS was consulted on the amendments contained in the Declaration.

The Declaration commences on the day after it is registered.

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* (LI Act). Although section 44 of the LI Act exempts superannuation instruments from disallowance, the Declaration is subject to disallowance in accordance with subsection 45(2) 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 (PSS) APPROVED AUTHORITY
INCLUSION AMENDMENT DECLARATION 2015 (NO. 1)****Section 1 – Name of Declaration**

This section provides that the name of the Declaration is the *Superannuation (PSS) Approved Authority Inclusion Amendment Declaration 2015 (No. 1)*.

Section 2 – Commencement

This section provides for the Declaration to commence on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Amendment of *Superannuation (PSS) Approved Authority Inclusion Declaration 1995*

This section provides that Schedule 1 of the Declaration amends the *Superannuation (PSS) Approved Authority Inclusion Declaration 1995* (the Principal Declaration).

Schedule 1 – Amendments

Item 1 amends the Principal Declaration by amending section 4 of that Declaration to include Australian Hearing Services in the list of bodies that are approved authorities for the purposes of the *Superannuation Act 1990*.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

**Superannuation (PSS) Approved Authority 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 (PSS) Approved Authority Inclusion Amendment Declaration 2015 (No. 1)* is to make Australian Hearing Services (AHS) an approved authority for the purposes of the *Superannuation Act 1990*. Employees of an approved authority are eligible for membership of the Public Sector Superannuation Scheme.

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