explanatory statement

Issued by the Minister for Finance

### Superannuation Act 2005

Declaration under paragraph 13(1)(a)(ii)

The *Superannuation Act 2005* (the Act) makes provision for and in relation to the Public Sector Superannuation Accumulation Plan (PSSAP) for Australian Government employees and for certain other persons.

Section 13 of the Act specifies the various persons who are eligible to be a member of the PSSAP. Subparagraph 13(1)(a)(ii) provides that the Minister may declare a class of persons to be eligible to become a PSSAP member.

The *Superannuation (PSSAP) Membership Eligibility (Inclusion) Declaration 2005* (the Principal Declaration), made under the equivalent power in former paragraph 13(1)(b) of the Act, identifies the classes of persons who are declared to be eligible to become PSSAP members. Section 4 of the Principal Declaration also sets out circumstances where persons declared eligible for PSSAP membership cease to be eligible for membership. Under section 23 of Schedule 2 to the *Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011,* the Principal Declaration is to be treated as if it were made under subparagraph 13(1)(a)(ii) of the Act.

The purpose of the ***Superannuation (PSSAP) Membership Eligibility (Inclusion) Amendment Declaration 2015 (No. 2)*** (the Declaration)is to amend the Principal Declaration to provide PSSAP membership eligibility for certain employees of the Private Health Insurance Administration Council (PHIAC) who become employees of the Australian Prudential Regulation Authority (APRA) as a result of item 31 of Part 3 of Schedule 2 to the *Private Health Insurance (Prudential Supervision)(Consequential Amendments and Transitional Provisions) Act 2015*.

The employees involved are persons who, immediately before becoming employees of APRA, were employees of PHIAC and were ordinary employer-sponsored members of the PSSAP (ie current contributing members). A person is only an ordinary employer-sponsored member in respect of particular employment if they are eligible for membership in respect of the relevant employment (see paragraphs 18(2)(b), 18(3)(b) and 18(5)(b) of the Act). Although APRA employees are not generally entitled to PSSAP membership, the PSSAP ordinary employer-sponsored membership of these former PHIAC employees will be able to continue on becoming employees of APRA.

APRA is a Commonwealth entity established under the *Australian Prudential Regulation Authority Act 1998*. It is not an approved authority for the purposes of the Act. PHIAC and APRA were consulted on the amendments contained in the Declaration.

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.

The Declaration commences on the commencement of Schedule 2 to the *Private Health Insurance (Prudential Supervision)(Consequential Amendments and Transitional Provisions) Act 2015*.

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: 19164).

The Declaration is a legislative instrument for the purposes of the *Legislative Instruments Act 2003.* Although section 44 of the *Legislative Instruments Act 2003* exempts superannuation instruments from disallowance, the Declaration is subject to disallowance in accordance with subsection 13(5) 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 (PSSAP) Membership eligibility (inclusion) Amendment Declaration 2015 (no. 2)

Section 1 – Name of Declaration

This section provides that the name of the Declaration is the *Superannuation (PSSAP) Membership Eligibility (Inclusion) Amendment Declaration 2015 (No. 2).*

Section 2 – Commencement

This section provides for the Declaration to commence on the commencement of Schedule 2 to the *Private Health Insurance (Prudential Supervision)(Consequential Amendments and Transitional Provisions) Act 2015.* This ensures that superannuation arrangements are in place once employees are transferred from PHIAC to APRA employment under item 31 of that Schedule.

Section 3 – Amendment of *Superannuation (PSSAP) Membership Eligibility (Inclusion) Declaration 2005*

This section provides that Schedule 1 of the Declaration amends the *Superannuation (PSSAP) Membership Eligibility (Inclusion) Declaration 2005* (the Principal Declaration).

**Schedule 1 – Amendments**

**Item 1** inserts a new definition of APRA in section 3. APRA is short for the Australian Prudential Regulation Authority as established by the *Australian Prudential Regulation Authority Act 1998*.

**Item 2** inserts a definition of PHIAC in section 3. PHIAC is short for the Private Health Insurance Administration Council established by the *National Health Act 1953* and continued in existence under Part 6-3 of the *Private Health Insurance Act 2007*.

**Item 3** changes the punctuation at the end of subparagraph 4(2)(i)(iii) to reflect the insertion of new paragraph (j) by item 4.

**Item 4** inserts subparagraph 4(2)(j), which describes the circumstances in which the transferred PSSAP members employed by APRA cease to be eligible for PSSAP membership (and therefore cease to be ordinary employer-sponsored members of the PSSAP). Subparagraph 4(2)(j) provides that a person who is eligible for membership through item 14 of Schedule 1, which relates to employees of APRA, ceases to be eligible to become a PSSAP member (and therefore ceases to be an ordinary employer-sponsored member) when any of the following circumstances arise:

* the person ceases to be an employee of APRA;
* the person becomes a member of an alternative superannuation scheme, as defined in the Principal Declaration; or
* APRA ceases to be a Commonwealth entity within the meaning of the *Public Governance, Performance and Accountability Act 2013*.

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

**Item 5** inserts item 14 in Schedule 1. Item 14 provides that a person is eligible for PSSAP membership (and therefore can be an ordinary employer-sponsored member), provided that he or she:

* became, or becomes, an employee of APRA as a result of item 31 of Part 3 of Schedule 2 to the *Private Health Insurance (Prudential Supervision) (Consequential Amendments and Transitional Provisions) Act 2015*; and
* immediately before becoming so employed, was an ordinary employer-sponsored member of PSSAP in respect of employment with PHIAC; and
* is not a member of an alternative superannuation scheme, as defined in the Principal Declaration.

This enables persons who were contributing PSSAP members in respect of their employment with PHIAC to continue that contributing membership when they become employees of APRA.

ATTACHMENT B

**Statement of Compatibility with Human Rights**

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

**Superannuation (PSSAP) Membership Eligibility (Inclusion) Amendment Declaration 2015 (No. 2)**

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 (PSSAP) Eligibility (Inclusion) Amendment Declaration 2015 (No. 2)* is to amend *Superannuation (PSSAP) Membership Eligibility (Inclusion) Declaration 2005* to provide PSSAP membership for certain persons who are transferred from the Private Health Insurance Administration Council to the Australian Prudential Regulation Authority.

**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.

**Mathias Hubert Paul Cormann**

**Minister for Finance**