explanatory statement

Issued by the Minister for Finance

### Superannuation Act 2005

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

*Superannuation (PSSAP) Membership Eligibility (Inclusion) Amendment Declaration 2015 (No. 3)*

The *Superannuation Act 2005* (the Act) establishes and makes provision for the Public Sector Superannuation Accumulation Plan (PSSAP), a superannuation scheme for public sector employees, and certain other persons, who commence employment on or after 1 July 2005.

Section 13 of the Act specifies the various persons who are eligible for PSSAP membership. Pursuant to paragraph 13(1)(a), a person is eligible to become a PSSAP member if they are a ‘public sector employee’ under subparagraph 13(1)(a)(i), or if they are declared eligible by the Minister in an instrument under subparagraph 13(1)(a)(ii). The meaning of ‘public sector employee’ is set out in section 5 of the Act.

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 those persons who are declared by the Minister as eligible to become PSSAP members. 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. Subsection 4(2) of the Principal Declaration sets out the circumstances in which persons declared eligible for PSSAP membership cease to be eligible for membership. Under the Principal Declaration, certain categories of Commonwealth Superannuation Corporation (CSC) employees are eligible for PSSAP membership.

The purpose of the ***Superannuation (PSSAP) Membership Eligibility (Inclusion) Amendment Declaration 2015 (No. 3)*** (the Declaration) is to amend the Principal Declaration to extend eligibility for PSSAP membership to all CSC employees.

The *Governance of Australian Government Superannuation Schemes Act 2011* (the Governance Act) established CSC as the consolidated trustee of the main Commonwealth civilian and military superannuation schemes. CSC was created by continuing in existence the body corporate formerly called the Australian Reward Investment Alliance (a merged body which replaced the former PSS Board under the *Superannuation Act 1990* and the former CSS Board under the *Superannuation Act 1976*). CSC is a corporate Commonwealth entity for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

Currently, not all CSC employees are eligible for PSSAP membership. Eligibility for PSSAP membership is limited to the following categories of CSC employees, employed at CSC on or after 1 July 2005:

* employees of CSC with pre-existing PSSAP membership, that is, those who have an accrued benefit in PSSAP; and
* non-permanent CSC employees (whether pre-existing PSSAP members or not).

The result is that all CSC employees are currently eligible for PSSAP membership, except permanent CSC employees who have no accrued benefit in PSSAP.

These membership arrangements were put in place in 2005 and replicated CSC’s membership arrangements for the Public Sector Superannuation Scheme at that time. However, these membership criteria no longer reflect CSC’s employment arrangements and result in fragmented eligibility to PSSAP membership for CSC employees. The Declaration addresses this by making any employee of CSC eligible for PSSAP membership, subject to some limitations.

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.

CSC was consulted on the amendments contained in this Declaration.

The Office of Best Practice Regulation (OBPR) assessed that the impact of the changes made by the Declaration are minor and do not require a Regulation Impact Statement (OBPR ID: 19140).

The Declaration is a legislative instrument for the purposes of the *Legislative Instruments Act 2003.* Despite section 44 of the *Legislative Instruments Act 2003*, which exempts superannuation instruments from disallowance, paragraph 13(5) of the Act provides that the Declaration is subject to disallowance in accordance with section 42 of the *Legislative Instruments Act 2003*.

The Declaration commences on the day after it is registered on the Federal Register of Legislative Instruments.

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. 3)

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. 3)* (the Declaration).

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 - Amendments to the *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** deletes paragraph 4(2)(g) and replaces it with a new paragraph 4(2)(g). The new paragraph 4(2)(g) provides that eligibility for membership for CSC employees, as conferred by new item 9 of the Schedule, will cease on the same conditions as generally apply in relation to other employees of Commonwealth entities who are given eligibility in the Schedule. Those conditions are that eligibility for membership ceases when the person ceases to be employed by CSC, or becomes a member of an alternative superannuation scheme in respect of that employment, or CSC ceases to be a Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013.*

**Item 2** corrects a typographical error.

**Item 3** deletes item 9 of Schedule 1 and replaces it with a new item 9. The deleted item 9 restricted eligibility for PSSAP membership to limited categories of CSC employees. The new item 9 allows all employees of CSC to be eligible for PSSAP membership, regardless of whether or not they have previously been members of PSSAP, provided that they are not a member of an alternative superannuation scheme in respect of their CSC employment.

Item 9 merely makes CSC employees eligible for membership. Section 14 of the *Superannuation Act 2005* sets out how eligible employees can actually become members of PSSAP.

**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. 3)**

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) Membership Eligibility (Inclusion) Amendment Declaration 2015 (No. 3)* is to amend the *Superannuation (PSSAP) Membership Eligibility (Inclusion) Declaration 2005* to extend eligibility for Public Sector Superannuation Accumulation Plan scheme membership to all Commonwealth Superannuation Corporation 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.

**Mathias Hubert Paul Cormann**

**Minister for Finance**