

EXPLANATORY STATEMENT

Issued by authority of the Minister for Finance

Superannuation Act 2005

Superannuation (PSSAP—Former Commonwealth Ordinary Employer-Sponsored Member) Determination 2017 made under subsection 18(10) of the Superannuation Act 2005

On 29 June 2005 the Minister for Finance, for and on behalf of the Commonwealth, made a determination (the Trust Deed) under section 10 of the *Superannuation Act 2005* (the 2005 Act) to, among other things, establish a superannuation scheme, to be known as the Public Sector Superannuation Accumulation Plan (PSSAP), and the PSSAP Fund from 1 July 2005. The Schedule to the Trust Deed includes Rules for the administration of the PSSAP (the Rules).

The PSSAP is established for the benefit of most new Australian Government employees and statutory office holders. Commonwealth Superannuation Corporation (CSC) is the trustee for the PSSAP.

Subsection 18(10) of the 2005 Act provides that the Minister may, by legislative instrument, determine a class of persons that cannot be a ‘former Commonwealth ordinary employer-sponsored member’ of PSSAP. Subsection 4(1) of the 2005 Act defines a former Commonwealth ordinary employer-sponsored member to be a person who is an ordinary employer-sponsored member under subsection 18(7) of that Act.

The Minister for Finance has made a Determination under subsection 18(10) of the 2005 Act, being the *Superannuation (PSSAP—Former Commonwealth Ordinary Employer-Sponsored Member) Determination 2017*.

Determination

On 23 June 2017, the *Superannuation Amendment (PSSAP Membership) Act 2017* (PSSAP Membership Act) received the Royal Assent. Schedule 1 to this Act commences on a day fixed by proclamation or six months after the Act receives the Royal Assent. The PSSAP Membership Act amends the 2005 Act to enable certain members of the PSSAP who move to non-Commonwealth employment to elect to remain a contributory member of the scheme in respect of the new employment. A person who elects to remain a contributory member of PSSAP under subsection 18(7) of the 2005 Act as amended is a “former Commonwealth ordinary employer-sponsored member”.

Subsection 18(10) of the 2005 Act as amended permits the Minister for Finance to make determinations, by legislative instrument, precluding certain persons or classes of persons from eligibility to elect to become a former Commonwealth ordinary employer-sponsored member. The *Superannuation (PSSAP—Former Commonwealth Ordinary Employer-Sponsored Member) Determination 2017* is such an instrument made under subsection 18(10) the 2005 Act and is referred to as the Determination in this Statement.

The Determination provides that:

- Judges of the Federal Circuit Court of Australia; and
- members of parliament to whom Division 1 of Part 2 of the *Parliamentary Superannuation Act 2004* applies (post-2004 federal parliamentarians)

are two such classes of persons who, for the purposes of subsection 18(9) of the 2005 Act as amended, cannot elect under subsection 18(7) of that Act to be a former Commonwealth ordinary employer-sponsored member in respect of these offices.

Under the 2005 Act, Federal Circuit Court Judges and members of the federal parliament of Australia appointed on or after 9 October 2004 (post-2004 federal parliamentarians) are not eligible for membership of the PSSAP as an ordinary employer-sponsored member in respect of these offices. Rather, they are provided with employer superannuation contributions to a complying superannuation fund of their choice other than PSSAP.

In excluding Federal Circuit Court Judges and post-2004 federal parliamentarians from PSSAP membership eligibility as a former Commonwealth ordinary employer-sponsored member, the Determination will provide consistency with the existing PSSAP membership rules for these offices.

Details of the Determination are set out in Attachment A.

Legislation Act 2003

The Determination is a legislative instrument. Although regulations made for the purpose of paragraph 44(2)(b) of the *Legislation Act 2003* exempt superannuation instruments from disallowance, the Determination is subject to disallowance in accordance with subsection 18(1) of the 2005 Act.

Consultation

Section 17 of the *Legislation Act 2003* specifies that rule-makers should consult before making legislative instruments. CSC has been consulted on the amendments contained in the Amending Deed. The Office of Best Practice Regulation was consulted on the PSSAP membership reforms. A Regulation Impact Statement was not prepared, as the instrument will not have a regulatory impact on business, individuals or community organisations (OBPR ID 20128).

Commencement

The Determination commences immediately after Schedule 1 to the *Superannuation Amendment (PSSAP Membership) Act 2017*. Schedule 1 of this Act commences on the earlier of 6 months from Royal Assent or a day specified in a Proclamation.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is at Attachment B.

ATTACHMENT A

DETAILS OF THE AMENDING DEED**Name**

1. **Section 1** provides that the name of the instrument is the *Superannuation (PSSAP—Former Commonwealth Ordinary Employer-Sponsored Member) Determination 2017*.

Commencement

2. **Section 2** sets out the commencement provision for the amendments contained in the Determination. Item 1 of the table set out in subsection 2(1) provides that the whole of this instrument commences immediately after the commencement of Schedule 1 to the *Superannuation Amendment (PSSAP Membership) Act 2017*. Subsection 2(2) provides that any information in column 3 of the table is not part of that Act and that information may be inserted in this column, or information in it may be edited, in any published version of that Act.

Authority

3. **Section 3** identifies the authority for the instrument as subsection 18(10) of the *Superannuation Act 2005* as amended by the *Superannuation Amendment (PSSAP Membership) Act 2017*.

Classes of persons who cannot be ordinary employer-sponsored members under subsection 18(7) of the *Superannuation Act 2005*

4. **Section 4** provides a person cannot be a former Commonwealth ordinary employer-sponsored member of PSSAP if the person is, at the relevant time, a:

- Judge of the Federal Circuit Court of Australia; or
- member of parliament to whom Division 1 of Part 2 of the *Parliamentary Superannuation Act 2004* applies.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Superannuation (PSSAP—Former Commonwealth Ordinary Employer-Sponsored Member) Determination 2017

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 Determination is to exclude Federal Circuit Court Judges and post-2004 federal parliamentarians from PSSAP membership eligibility as a former Commonwealth ordinary employer-sponsored member in order to provide consistency with the existing PSSAP membership rules for these offices.

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.

Senator the Hon Mathias Hubert Paul Cormann, Minister for Finance