

## **EXPLANATORY STATEMENT**

Issued by authority of the Minister for Finance and the Public Service

### *Superannuation Act 1976*

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

#### *Superannuation (CSS) (Eligible Employees – Inclusion) Amendment Declaration 2019 (No. 1)*

The *Superannuation Act 1976* (the 1976 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 1976 Act contains the definition of the term “eligible employee” that describes various classes of persons who are contributory members of the CSS (that is, CSS members). Paragraph (ec) of the definition enables the Minister, by legislative instrument, to 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 employee.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that 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.

### **Amending Declaration**

The purpose of the *Superannuation (CSS) (Eligible Employees – Inclusion) Amendment Declaration 2019 (No. 1)* (the Amending Declaration) is to amend the Principal Declaration to continue the CSS membership of certain employees of the Australian Securities and Investments Commission (ASIC) from 1 July 2019.

ASIC currently employs staff on behalf of the Commonwealth under the *Public Service Act 1999* (PS Act). The *Treasury Laws Amendment (Enhancing ASIC’s Capabilities) Act 2018* (TLA(EAC) Act) amends the *Australian Securities and Investments Commission Act 2001* (ASIC Act) to require ASIC to directly employ staff from 1 July 2019, and to transition existing staff employed under the PS Act to be employed under the ASIC Act on that date.

Some ASIC staff currently employed under the PS Act are currently CSS members in respect of their Commonwealth employment. The Amending Declaration will maintain CSS membership for those ASIC staff who are CSS members and, as a result of the legislative changes to ASIC’s employment framework, transfer from being Commonwealth employees under the PS Act to being directly employed by ASIC on 1 July 2019. Under the amendments made to the Principal Declaration by the Amending Declaration, these persons will remain CSS members in respect of their employment by ASIC.

The amendments made to the *Superannuation (CSS) (Eligible Employees – Exclusion) Declaration 2003* by the *Superannuation (CSS) (Eligible Employees – Exclusion) Amendment*

*Declaration 2019 (No. 1)* will expressly provide for when the CSS membership for ASIC staff covered by the Amending Declaration will cease.

The details of the Amending Declaration are at [Attachment A](#).

### ***Legislation Act 2003***

The Amending Declaration is a legislative instrument for the purposes of the *Legislation Act 2003*, and is subject to disallowance in accordance with subsection 3(1BD) of the 1976 Act.

### **Consultation**

Section 17 of the *Legislation Act 2003* specifies that rule-makers should consult before making legislative instruments. Commonwealth Superannuation Corporation, the corporate trustee of the CSS, and ASIC have been consulted on the amendments contained in the Amending Declaration.

The Office of Best Practice Regulation (OBPR) was consulted and assessed that the changes are machinery in nature and do not require a Regulation Impact Statement (OBPR Reference Number 24781).

### **Commencement**

The Amending Declaration commences on 1 July 2019.

### **Statement of Compatibility with Human Rights**

A Statement of Compatibility with Human Rights is at [Attachment B](#).

## ATTACHMENT A

## DETAILS OF THE AMENDING DECLARATION

**Name**

1. **Section 1** provides that the name of the instrument is the *Superannuation (CSS) (Eligible Employees – Inclusion) Amendment Declaration 2019 (No. 1)* (the Amending Declaration).

**Commencement**

2. **Section 2** provides for commencement of the instrument on 1 July 2019 when certain Australian Securities and Investments Commission (ASIC) staff cease to be engaged by the Commonwealth under the *Public Service Act 1999* (PS Act) and become directly employed by ASIC under amendments made to the *Australian Securities and Investments Commission Act 2001* (ASIC Act) by the *Treasury Laws Amendment (Enhancing ASIC’s Capabilities) Act 2018* (TLA(EAC) Act).

**Authority**

3. **Section 3** identifies the authority for the instrument as paragraph (ec) of the definition of “eligible employee” in subsection 3(1) of the *Superannuation Act 1976* (the 1976 Act).

**Schedules**

4. **Section 4** provides that each instrument specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

**Schedule 1—Amendments*****Superannuation (CSS) (Eligible Employees – Inclusion) Declaration 2003***

5. Schedule 1 makes amendments to the *Superannuation (CSS) (Eligible Employees – Inclusion) Declaration 2003* (the Principal Declaration).

6. Subsection 3(1) of the Principal Declaration defines terms used in that instrument. **Item 1** of Schedule 1 to the Amending Declaration inserts a new definition of “ASIC” after the definition of “ARPC” in subsection 3(1). Under the new definition, “ASIC” means the Australian Securities and Investments Commission established by the *Australian Securities and Investments Commission Act 1989* and continued in existence by the ASIC Act.

7. Section 4 of the Principal Declaration details persons who may become eligible employees for the purposes of the 1976 Act.

8. **Item 2** of Schedule 1 inserts a new paragraph 4(2)(s) in the Principal Declaration to maintain CSS membership for those ASIC staff who were CSS members immediately prior to being transferred from Commonwealth employment under the PS Act to being employed directly by ASIC on 1 July 2019 under the amendments to the ASIC Act.

9. The following scenarios illustrate the application of the new CSS membership arrangements to ASIC employees from 1 July 2019 under the Amending Declaration and the CSS membership exclusion arrangements that will be included in the *Superannuation (CSS) (Eligible Employees – Exclusion) Declaration 2003* by the *Superannuation (CSS) (Eligible*

*Employees – Exclusion) Amendment Declaration 2019 (No. 1).*

Scenario 1

*Steven commences full-time employment under the PS Act at ASIC in March 2019, having worked in the private sector for several years. Steven has a CSS deferred benefit in relation to a prior period of Commonwealth employment under the PS Act. On commencing employment at ASIC, Steven becomes an eligible employee for the purposes of the 1976 Act and he and ASIC commence contributions to the CSS in relation to that employment. Steven is taken to have transferred from employment under the PS Act to direct employment by ASIC, a Commonwealth entity for the purposes of the Public Governance, Performance and Accountability Act 2013 (PGPA Act), on a full time basis on 1 July 2019, under the amendments to the ASIC Act.*

*Under new paragraph 4(2)(s), included in the Principal Declaration by the Amending Declaration and the CSS membership exclusion arrangements, Steven will remain an eligible employee for the purposes of the 1976 Act upon his transfer to employment by ASIC on 1 July 2019, as he:*

- ceased Commonwealth employment under the PS Act at ASIC and became employed by ASIC on 1 July 2019 as a result of the amendments to the ASIC Act;*
- was an eligible employee for the purposes of the 1976 Act in respect of his employment at ASIC immediately before he was transferred from Commonwealth employment under the PS Act to be employed directly by ASIC on 1 July 2019;*
- in relation to his employment at ASIC on 1 July 2019, is not a member of an alternative superannuation scheme (as defined in the Superannuation (CSS) (Eligible Employees – Exclusion) Declaration 2003);*
- is a full-time employee in respect of his employment at ASIC on 1 July 2019; and*
- ASIC is a Commonwealth entity for the purposes of the PGPA Act on 1 July 2019.*

Scenario 2

*Julia is a contributing member of the CSS in relation to Commonwealth employment under the PS Act at the Department of the Prime Minister and Cabinet (PM&C). She resigns from that employment to take up full-time employment at ASIC, a Commonwealth entity under the PGPA Act, in August 2019.*

*Under new paragraph 4(2)(s), included in the Principal Declaration by the Amending Declaration, Julia will not be an eligible employee under the 1976 Act in respect of her employment by ASIC from August 2019, as she does not meet all of the conditions to maintain contributory membership of the CSS. Importantly, Julia did not become an ASIC employee on 1 July 2019 as a result of the amendments to the ASIC Act. Julia becomes a CSS deferred benefit member upon her resignation from PM&C.*

### Scenario 3

*Hamid, who is a contributing member of the CSS in relation to his employment at ASIC, is transferred from Commonwealth employment under the PS Act to direct employment by ASIC on 1 July 2019 as a result of the amendments to the ASIC Act. In late July 2019, Hamid ceases full-time employment at ASIC and becomes a temporary part-time employee of the organisation. Throughout the period ASIC remains a Commonwealth entity for the purposes of the PGPA Act.*

*Under new paragraph 4(2)(s), included in the Principal Declaration by the Amending Declaration, Hamid will be an eligible employee under the 1976 Act in respect of his employment by ASIC on 1 July 2019, as he meets all of the conditions to maintain contributory membership of the CSS at this date. Subsequently, on becoming a temporary part-time employee of ASIC in late July 2019, Hamid will cease to meet all of the conditions for him to maintain contributory membership of the CSS. At this point, he will become a CSS deferred benefit member.*

## 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 2019 (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 2019 (No. 1)* (the Amending Declaration) is to amend the *Superannuation (CSS) (Eligible Employees – Inclusion) Declaration 2003* (the Principal Declaration) to continue the CSS membership of certain employees of the Australian Securities and Investments Commission (ASIC) from 1 July 2019.

ASIC currently employs staff on behalf of the Commonwealth under the *Public Service Act 1999* (PS Act). The *Treasury Laws Amendment (Enhancing ASIC's Capabilities) Act 2018* (TLA(EAC) Act) amends the *Australian Securities and Investments Commission Act 2001* (ASIC Act) to require ASIC to directly employ staff from 1 July 2019, and to transition existing ASIC staff employed under the PS Act to employment by ASIC on that date.

Some ASIC staff currently employed under the PS Act are currently CSS members in respect of their Commonwealth employment. The Amending Declaration will maintain CSS membership for those ASIC staff who are CSS members and, as a result of the legislated changes to ASIC's employment framework, transfer from PS Act employment at ASIC to ASIC employment on 1 July 2019.

The amendments made to the *Superannuation (CSS) (Eligible Employees – Exclusion) Declaration 2003* by the *Superannuation (CSS) (Eligible Employees – Exclusion) Amendment Declaration 2019 (No. 1)* will expressly provide for when the CSS membership for ASIC staff covered by the Amending Declaration will cease.

#### Human Rights Implications

The 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 and the Public Service**