

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2008 No. 79**

*Issued by authority of the Minister for Superannuation and Corporate Law acting for  
and on behalf of the Minister for Finance and Deregulation*

*Superannuation Act 1976*

*Superannuation (CSS) Salary Amendment Regulations 2008 (No. 1)*

The *Superannuation Act 1976* (the Act) makes provision for the Commonwealth Superannuation Scheme (CSS), which is an occupational superannuation scheme for Australian Government employees and for certain other persons.

Subsection 168(1) of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 5 of the Act provides that the regulations may prescribe that the annual rate of salary on a particular day is an amount equal to such an amount as is worked out under the regulations. Regulations for the purposes of section 5 are contained in the *Superannuation (CSS) Salary Regulations 1978* (the Principal Regulations). The rate of contribution payable under the Act by a member of the CSS is based on the member's annual rate of salary and the rate of pension payable generally is based on that salary.

Part 2EA of the Principal Regulations provides for an annual rate of salary for the purposes of the Act for a CSS member who is covered by an agreement including a 'workplace agreement' within the meaning of the *Workplace Relations Act 1996* (the WR Act).

The purpose of the Regulations is to make consequential amendments to the Principal Regulations resulting from the passage of the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* (the Transition Act), which amends the WR Act. Relevantly, those amendments removed the reference to 'AWA' in the definition of 'workplace agreement' and inserted a new Schedule 7A to the WR Act that provides for transitional arrangements for existing AWAs.

Specifically, the Regulations would amend the definition of 'agreement' used in Part 2EA of the Principal Regulations so that the Principal Regulations operate appropriately in the context of the amended WR Act.

Details of the Regulations are set out in the Attachment.

Subsection 168(13) of the Act provides that regulations may not be made under the Act unless the Board (the Australian Reward Investment Alliance, or ARIA) has consented to those regulations. The Board has consented to the making of these regulations.

No consultation is required as the instrument is machinery in nature and does not substantially alter existing arrangements.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations are taken to have commenced on the commencement of Schedule 1 to the Transition Act. This provision for commencement ensures that a person's agreed salary for superannuation purposes that is set out in a AWA continues to apply to that person at all times during the transition period. By doing so, it ensures that the rights of a person in relation to their annual rate of salary for superannuation purposes are maintained in accordance with the agreed terms of the person's AWA.

## ATTACHMENT

### **Details of the *Superannuation (CSS) Salary Amendment Regulations 2008 (No. 1)***

#### **Regulation 1 – Name of Regulations**

This regulation sets out the name of the Regulations as the *Superannuation (CSS) Salary Amendment Regulations 2008 (No. 1)*.

#### **Regulation 2 – Commencement**

This regulation provides for the Regulations to be taken to have commenced at the same time as Schedule 1 to the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* (the Transition Act). That Schedule was proclaimed to commence on 28 March 2008.

#### **Regulation 3 – Amendment of *Superannuation (CSS) Salary Regulations 1978***

This regulation provides that Schedule 1 to the Regulations amends the *Superannuation (CSS) Salary Regulations 1978*.

#### **Schedule 1 – Amendments**

##### **Item [1] - regulation 8QC, Interpretation**

The Transition Act amends the definition of ‘workplace agreement’ in the *Workplace Relations Act 1996* (the WR Act) to exclude an ‘AWA’. It also inserts a new Schedule 7A to the WR Act that includes a new definition of ‘AWA’.

Regulation 8QC contained a definition of ‘agreement’ which includes a ‘workplace agreement’. As a consequence of the Transition Act, this did not include an ‘AWA’ because ‘workplace agreement’ under the WR Act is no longer defined to include ‘AWA’. However, this item ensures that an existing AWA continues to be a type of agreement covered by the Principal Regulations by including an AWA in the definition of agreement, for the purposes of the Principal Regulations. This ensures that a person whose superannuation salary for CSS purposes was set in an AWA before the commencement of the Transition Act will continue to be able to have his or her superannuation salary set in that way for the remainder of the duration of their AWA.

##### **Item [2] - regulation 8QC, Interpretation**

This item inserts a definition of ‘AWA’ in regulation 8QC. It provides that ‘AWA’ has the same meaning a given by Schedule 7A to the WR Act.