

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2008 No. 165**

*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) (Superannuation Guarantee) Regulations 2008*

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.

Subsection 155C of the Act provides, in part, that the regulations may make such provision as is necessary to ensure that the CSS complies with requirements under the *Superannuation Guarantee (Administration) Act 1992* (SG Act).

The Regulations provide for top-up benefits in the CSS to be based on Ordinary Time Earnings (OTE), rather than the scheme's superannuation salary, to comply with the requirements of the SG Act from 1 July 2008.

Since 1 July 2008, all employers have been required to use OTE as the basis for calculating whether the superannuation contributions they make into superannuation schemes on behalf of employees comply with the minimum contribution rate (9%) under the SG Act. This requirement applies to the CSS.

Before 1 July 2008, employer obligations in the CSS were calculated using the superannuation salary in the CSS, which is generally lower than OTE. This is because OTE includes components of earnings not recognised as superannuation salary, such as performance bonuses.

Before 1 July 2008, benefits payable from the CSS complied with the SG Act requirements. In very limited cases this has been achieved through the payment of a top-up benefit from the scheme, in addition to the scheme's standard benefits.

In most cases after 1 July 2008, the CSS will continue to pay benefits to members that are equal to or greater than the minimum required under the SG Act. However, some minor changes were required to provide a top-up benefit based on OTE, to ensure this occurs in all cases, going forward. The Regulations make these changes.

Details of the Regulations are set out in the Attachment.

Subsection 168(13) of the Act provides that the trustee for the CSS (the Australian Reward Investment Alliance, or ARIA) must consent to the making of regulations unless, among other things, the regulations relate to a payment by an employer-sponsor within the meaning of the *Superannuation Industry (Supervision) Act 1993* that will, after the making of the regulations, be required or permitted to be made under the Act.

The Regulations concern payments (the top-up benefit) by an employer-sponsor (the Commonwealth). For this reason, the Regulations meet the conditions specified in subsection 168(13) of the Act and do not require the consent of ARIA.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. Section 17 of that Act specifies that rule-makers should consult before making legislative instruments. The Executive Unit of ARIA and ComSuper (who administer the CSS) were consulted on the administrative application of the changes in the Regulations. An actuary was consulted on actuarial issues related to the changes.

The Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments. To ensure that the CSS complies with the requirements under the SG Act, the Regulations include a provision which backdates to 1 July 2008 the entitlement to a top-up benefit based on OTE.

**ATTACHMENT****Details of the *Superannuation (CSS) (Superannuation Guarantee) Regulations 2008*****Regulation 1 – Name of Regulations**

The name of the Regulations is the *Superannuation (CSS) (Superannuation Guarantee) Regulations 2008*.

**Regulation 2 – Commencement**

This regulation provides for the Regulations to commence on the day after they are registered on the Federal Register of Legislative Instruments.

**Regulation 3 – Definitions**

This regulation inserts relevant definitions for the purpose of the Regulations. ‘Act’ means the *Superannuation Act 1976*, and ‘ordinary time earnings’ and ‘quarter’ are linked to the definitions specified in the *Superannuation Guarantee (Administration) Act 1992* (SG Act).

**Regulation 4 – Backdating of entitlement**

This regulation provides for the entitlement to a top-up benefit based on Ordinary Time Earnings (OTE) be backdated to 1 July 2008. This ensures that the Commonwealth Superannuation Scheme (CSS) complies with the requirements under the SG Act from that date.

**Regulation 5 – Superannuation Guarantee – minimum contribution on or after 1 July 2008**

This regulation provides that any top-up benefits from 1 July 2008 are to be based on 9% of OTE, which is the current minimum level of benefits required under the SG Act. These top-up benefits are payable under section 110SC of the Act, and provisions of the Act which refer to section 110SC are taken to refer to the Regulations instead.

This regulation gives the Board the power to determine an alternative percentage to the current SG rate of 9%, having regard to the percentage specified in the SG Act. This approach ensures that top-up benefits will continue to be calculated correctly, in the event that the SG percentage is varied in the future.