

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 169

Issued by authority of the Minister for Finance and Deregulation

Superannuation Act 1976

Superannuation (CSS) Salary Amendment Regulations 2009 (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 certain workplace instruments.

The purpose of the Regulations is to make minor consequential amendments to the Principal Regulations to reflect the expected commencement of the *Fair Work Act 2009* and related legislation (the FW Legislation), which establishes a new workplace relations system.

Specifically, the Regulations would amend the definition of 'agreement' used in Part 2EA of the Principal Regulations to make it consistent with the FW Legislation.

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 commence on the commencement of Part 2-4 of the *Fair Work Act 2009*, to coincide with the commencement of the relevant provisions in that Act.

Details of the *Superannuation (CSS) Salary Amendment Regulations 2009 (No. 1)*

Regulation 1 – Name of Regulations

This regulation sets out the name of the Regulations as the *Superannuation (CSS) Salary Amendment Regulations 2009 (No. 1)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence when Part 2-4 of the *Fair Work Act 2009* (FW Act) commences, to coincide with the commencement of the relevant provisions of the FW Act.

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 *Fair Work Act 2009* (FW Act) and related legislation (the FW Legislation) provide for a new workplace relations system. The effect of the FW Legislation is to repeal the *Workplace Relations Act 1996* (WR Act), except for Schedules 1 and 10.

The FW Act introduces new collective industrial instruments – ‘enterprise agreements’ and new types of ‘workplace determinations’. However, ‘AWAs’, ‘workplace agreements’, ‘pre-reform AWAs’ and ‘pre-reform certified agreements’ made under the WR Act will continue to operate as ‘transitional instruments’ under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

Regulation 8QC sets out definitions for the purpose of Part 2EA of the Principal Regulations.

Item [1] substitutes a new regulation 8QC that incorporates the following changes:

- The definition of ‘agreement’ is amended to reflect the introduction of enterprise agreements and workplace determinations under the FW Legislation.
- The definitions for AWAs, workplace agreements, pre-reform AWAs and pre-reform certified agreements are removed and incorporated into the definition of agreement, amended to reflect their new status as transitional instruments.
- Definitions for enterprise agreements and workplace determinations are added, having the same meaning as in the FW Act.

The definition of ‘relevant agreement’ and ‘remuneration determination’ remain unchanged.