

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 11

Issued by the Authority of the Minister for Finance and Deregulation

Superannuation Act 1976

Superannuation (CSS) (Superannuation Guarantee) Amendment Regulation 2013 (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.

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 *Superannuation (CSS) (Superannuation Guarantee) Regulations 2008* (the Principal Regulations) provide for the calculation of CSS SG top-up benefits for periods after 1 July 2008. A CSS SG top-up benefit is a lump sum benefit payable in addition to the scheme's standard benefits to ensure the CSS pays benefits at least equal to the minimum required under the SG Act. Payment of this benefit to ensure the CSS complies with the SG Act is only necessary in limited cases. Calculation of this benefit is based on the current SG minimum contribution rate of nine per cent.

The SG minimum contribution rate of nine per cent will gradually increase from nine per cent to 12 per cent over the period from 1 July 2013 to 1 July 2019.

The *Superannuation (CSS) (Superannuation Guarantee) Amendment Regulation 2013 (No. 1)* (Amending Regulation) amends the Principal Regulations to provide for the CSS SG top-up benefit to be calculated on the basis of the increasing minimum SG contribution rate that will apply for periods after 1 July 2013.

Subsection 168(13) of the Act provides that the trustee for the CSS (the Commonwealth Superannuation Corporation, or CSC) 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 Amending Regulation concerns payments (the top-up benefit) by an employer-sponsor (the Commonwealth). It meets the conditions specified in subsection 168(13) of the Act and does not require the consent of CSC.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

ComSuper, who is the administrator for the CSS, were consulted in relation to the Amending Regulation. No other consultation was considered necessary as the Amending Regulation is of a minor or machinery nature.

The Amending Regulation comes into effect on the commencement of Schedule 1 of the *Superannuation Guarantee (Administration) Amendment Act 2012*, that is, 1 July 2013.

The details of the Regulation are explained in [Attachment A](#).

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

SUPERANNUATION (CSS) (SUPERANNUATION GUARANTEE) AMENDMENT REGULATION 2013 (NO. 1)

Section 1 – Name of Regulation

This section provides that the title of this Regulation is the *Superannuation (CSS) (Superannuation Guarantee) Amendment Regulation 2013 (No. 1)*.

Section 2 – Commencement

This section provides that the Regulation commences on the commencement of Schedule 1 of the *Superannuation Guarantee (Administration) Amendment Act 2013*.

Section 3–Amendment of *Superannuation (CSS) (Superannuation Guarantee) Regulations 2008*

This section provides that the *Superannuation (CSS) (Superannuation Guarantee) Regulations 2008* are amended as set out in Schedule 1.

Schedule 1- Amendments

Item [1] amends the Principal Regulations by inserting a new heading after subregulation 5(1) of the Principal Regulations. This is necessary as the Principal Regulations provide for the CSS SG top-up benefit to be calculated based on the increasing SG minimum contribution rate that will apply for periods commencing on 1 July 2013.

Items [2] and [3] repealed existing subregulations 5(2) to 5(6) of the Principal Regulations and replaced them with new subregulations 5(2) to 5(4).

New subregulation 5(2) provides for the calculation of the CSS SG top-up benefit for the period between 1 July 2008 and 30 June 2013 to be based on nine per cent of an eligible employee's (CSS member) ordinary time earnings for each quarter or part of a quarter occurring in the period.

New subregulation 5(3) provides for the CSS SG top-up benefit for each quarter or part of a quarter occurring in periods commencing on or after 1 July 2013 to be calculated using the SG minimum contribution rate (charge percentage) applying under subsection 19(2) of the *Superannuation Guarantee (Administration) Act 1992* for the relevant period. This ensures that the CSS SG top-up benefit can be calculated by taking into account that the minimum SG contribution rate gradually increasing from nine per cent to 12 per cent of ordinary time earnings, from 1 July 2013 to 1 July 2019.

New subregulation 5(4) provides for a new definition of SG minimum contribution for the purposes of subsection 110SB(1) of the Act. SG top-up benefits are payable under section 110SC of the Act.

Statement of Compatibility with Human Rights

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

Superannuation (CSS) (Superannuation Guarantee) Amendment Regulation 2013 (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 this Amendment Regulation is to amend the *Superannuation (CSS) (Superannuation Guarantee) Regulations 2008* to ensure CSS SG top-up benefits are calculated based on the increasing SG percentage charges that commence from 1 July 2013.

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.

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