

EXPLANATORY STATEMENT

Issued by authority of the Minister for Finance

Superannuation Act 1976

Superannuation Legislation Amendment (CSS) Regulations 2023

The *Superannuation Act 1976* (the Act) established the Commonwealth Superannuation Scheme (CSS) to provide retirement benefits for Commonwealth employees and office holders.

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

The *Superannuation Legislation Amendment (CSS) Regulations 2023* (the Regulations), made pursuant to subsection 168(1) of the Act amend the:

- *Superannuation (CSS) (Superannuation Guarantee) Regulations 2008* to ensure that the calculation of the additional top-up lump sum benefit payable under the CSS is consistent with the requirements of the *Superannuation Guarantee (Administration) Act 1992*; and
- *Superannuation (CSS) Salary Regulations 1978* to ensure that a CSS member who is a member of the staff of a person in respect of whom a determination by the Prime Minister under section 4 of the *Members of Parliament (Staff) Act 1984* is in force can elect that their ‘parliamentary employment allowance’ does not form part of their CSS superannuation salary.

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.

Superannuation (CSS) (Superannuation Guarantee) Regulations 2008

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

The CSS is a defined benefit scheme. Except in very limited circumstances, the amount of the defined benefit payable from the scheme meets or exceeds the requirements of the SG Act. An additional defined contribution top-up lump sum benefit is paid in the very limited circumstances where the defined benefit is insufficient to meet the requirements of the SG Act. The *Superannuation (CSS) (Superannuation Guarantee) Regulations 2008* provide for the calculation of the defined contribution top-up lump sum benefit.

The *Superannuation (CSS) (Superannuation Guarantee) Regulations 2008* provide for the calculation of employer contributions for the purpose of determining the top-up lump sum benefit to be based on a CSS member's 'ordinary time earnings', which is defined under the SG Act as being ordinary earnings excluding salary sacrifice amounts.

Under the SG arrangements, trustees or participating employers of defined benefit schemes are required to obtain a benefit certificate from an actuary. The actuary must specify the notional contribution rate in relation to the minimum benefits payable under the relevant scheme, which then count towards the employers' superannuation guarantee contribution obligations for the particular period. For the current CSS benefit certificate for the period 1 July 2023 to 30 June 2028, the actuary has certified that the notional employer contribution rates relating to minimum benefits payable under the scheme rules is equal to the superannuation guarantee contribution rates for this period.

The CSS scheme actuary has noted that, to be consistent with changes that were made to the SG Act since the last certificate was issued, the calculation of employer contributions for the purpose of determining the defined contribution top-up lump sum benefit for employment occurring on or after 1 July 2023 should be based on a new definition of 'ordinary time earnings base' which is ordinary earnings including salary sacrifice amounts.

Schedule 1 of the Regulations applies the actuary's advice by amending the *Superannuation (CSS) (Superannuation Guarantee) Regulations 2008* to provide that in respect of a CSS member's employment occurring on after 1 July 2023, the calculation of employer contributions for the purpose of determining the defined contribution top-up lump sum benefit is based on 'ordinary time earnings base' as defined under the SG Act.

Superannuation (CSS) Salary Regulations 1978

Subsection 5(1) of the Act prescribes a default salary, which applies unless an employee's salary is set by another means prescribed by the Act. The default salary includes salary or wages (within the ordinary meaning), excluding any part of salary or wages that the regulations specify is not to be treated as salary for the purposes of the Act, and any allowance, or the value of any allowance, or any fee, that is an allowance or fee of a kind that, under the regulations, is to be treated as salary for the purposes of the Act.

The *Superannuation (CSS) Salary Regulations 1978* made pursuant to subsection 168(1) of the Act, specify those parts of salary or wages that are not to be treated as salary and the kinds of allowances that are to be treated as salary for the purposes of the default definition of salary under the Act.

Part 2D of the of the *Superannuation (CSS) Salary Regulations 1978* allows an employee who is a member of the CSS to elect that their 'parliamentary employment allowance' not be treated as salary for the purposes of the Act. Regulation 8M defines various terms used in Part 2D including the term 'identified eligible employee'. The definition of 'identified eligible employee' includes an employee who is a member of the staff of a person in respect of whom a determination by the Prime Minister under section 12 of the *Members of Parliament (Staff) Act 1984* (MOPS) Act is in force.

Amendments made by item 12 of Schedule 1 of the *Members of Parliament (Staff) Amendment Act 2023* to the MOPS Act mean that future determinations will be made under

section 4 of the MOPS Act rather than under section 12 of the MOPS Act. Schedule 2 of the Regulations change the reference from section 12 to section 4 in the definition of ‘identified eligible employee’ in regulation 8M.

Further details of the Regulations are set out in the [Attachment A](#).

Commonwealth Superannuation Corporation

Subsection 168(13) of the Act requires the Commonwealth Superannuation Corporation (CSC) to consent to amendments to regulations except in certain circumstances. These circumstances include where amendments relate to a payment by the Commonwealth as the employer-sponsor of the CSS. The amendments contained in the Regulations relate to such a payment. Accordingly, CSC consent to the Regulations is not required.

Legislation Act 2003

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* and are subject to disallowance in accordance with section 42 of the *Legislation Act 2003*.

The Regulations and the instruments that it amends, being the *Superannuation (CSS) (Superannuation Guarantee) Regulations 2008* and the *Superannuation (CSS) Salary Regulations 1978* are not subject to sunseting.

Item 59 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, exempts regulations made under the *Superannuation Act 1976* from the sunseting regime set out under Part 4 of Chapter 3 of the *Legislation Act 2003*. Instruments pertaining to the calculation of CSS benefits are intended to have enduring operation and the existence of uncertainty in respect of an individual’s CSS benefit entitlements would not be appropriate.

Consultation

Section 17 of the *Legislation Act 2003* specifies that rule-makers should consult before making legislative instruments.

CSC was consulted on the Regulations. The CSS scheme actuary Mercer Consulting (Australia) Pty Ltd was consulted on actuarial issues related to the changes to the calculation of the top-up lump sum benefit. No other consultation was considered necessary as the Regulations are considered to be of a minor or machinery nature.

The Office of Impact Analysis (OIA) was consulted (OIA23-05658) and considered the proposal unlikely to have a more than minor regulatory impact. The preparation of an Impact Analysis (IA) was not required.

Financial Impacts

It is expected that the changes to the calculation of the top-up lump sum benefit will have minimal financial impacts because the benefit is possibly only payable in very limited circumstances and the change will only apply in respect of post 30 June 2023 employment.

Commencement

Schedule 1 of the Regulations commence on the day after instrument is registered.
Schedule 2 of the Regulations commence on the later of the day after the instrument is registered and the time that Schedule 1 to the *Members of Parliament (Staff) Amendment Act 2023* commences.

Statement of Compatibility with Human Rights

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

Details of the Superannuation Legislation Amendment (CSS) Regulations 2023

Name

Section 1 provides that the title of the Regulations is the *Superannuation Legislation Amendment (CSS) Regulations 2023*.

Commencement

Section 2 provides for commencement of the Regulations. Item 1 in the table in subsection 2(1) would provide for Schedule 1 of the Regulations to commence on the day after instrument is registered on the Federal Register of Legislation and Schedule 2 of the Regulations is to commence on the later of the day after instrument is registered on the Federal Register of Legislation and the time that Schedule 1 to the *Members of Parliament (Staff) Amendment Act 2023* commences. The note at the end of the table in subsection 2(1) clarifies that the table relates only to provisions of the instrument as originally made, and will not be amended to deal with any later amendments of the instrument. Subsection 2(2) would provide that the information in column 3 of the table is not part of the instrument.

Authority

Section 3 provides that the *Superannuation Legislation Amendment (CSS) Regulations 2023* is made under the *Superannuation Act 1976*.

Schedules

Section 4 provides that each instrument that is 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 – Minimum contribution amendments

Superannuation (CSS) (Superannuation Guarantee) Regulations 2008

Item 1 of Schedule 1 replaces the reference in the heading in subregulation 5(3) to ‘on or after 1 July 2013’ to ‘between 1 July 2013 and 30 June 2023’. This is a result of item 3 inserting a new subregulation 5(3A) that will apply to calculating minimum contributions for a period on or after 1 July 2023.

Item 2 of Schedule 1 replaces the reference in subregulation 5(3) to ‘on or after 1 July 2013’ to ‘between 1 July 2013 to 30 June 2023’ in subregulation 5(3). This is a result of item 3 inserting a new subregulation 5(3A) that applies to calculating minimum contributions for a period on or after 1 July 2023.

Item 3 of Schedule 1 inserts new subregulation 5(3A) concerning the calculation of minimum contributions for any period on or after 1 July 2023. Subregulation 5(3A) provides for the top-up lump sum benefit for each quarter or part of a quarter occurring in periods

commencing on or after 1 July 2023 to be calculated using ‘ordinary time earnings base’ as defined in subsection 23(2) of the *Superannuation Guarantee (Administration) Act 1992* (SG Act). This ensures that the calculation of a top-up lump sum benefit in respect of a CSS member’s employment on or after 1 July 2023 is consistent with the requirements under the SG Act and the CSS SG actuarial benefit certificate that is in place for the period 1 July 2023 to 30 June 2028.

Item 4 of Schedule 1 inserts new subregulation 5(4)(c) that provides for a new definition of SG minimum contribution for the purposes of subsection 110SB(1) of the *Superannuation Act 1976*. CSS top-up lump sum benefits are payable under section 110SC of the Act. This is a consequence of item 3 inserting new subregulation 5(3A).

Item 5 of Schedule 1 inserts new regulation 6 that provides that amendments to regulation 5 made by Schedule 1 to the *Superannuation Legislation Amendment (CSS) Regulations 2023* apply in relation to a person in respect of a period on and after 1 July 2023. This ensures that the entitlement to a top-up lump sum benefit based on ‘ordinary times earnings base’ commences from 1 July 2023 and therefore that the calculation of the benefit is consistent with the requirements under the SG Act from that date and the CSS SG actuarial benefit certificate that is in place for the period 1 July 2023 to 30 June 2028. The amendment does not disadvantage, or cause detriment to, any individual. Any additional payments to CSS members would be made by the Commonwealth.

Schedule 2 – Consequential amendments

Superannuation (CSS) Salary Regulations 1978

Item 1 of Schedule 2 replaces the reference to ‘section 12’ to ‘section 4’ in subparagraph (a)(ii) of the definition of ‘identified eligible employee’ in regulation 8M of the *Superannuation (CSS) Salary Regulations 1978*. This is a consequential amendment to reflect that amendments made by item 12 of Schedule 1 of the *Members of Parliament (Staff) Amendment Act 2023* to the *Members of Parliament (Staff) Act 1984* (the Act) will result in determinations currently made under section 12 of the Act in the future being made under section 4 of the Act.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Superannuation Legislation Amendment (CSS) Regulations 2023

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 Legislation Amendment (CSS) Regulations 2023* is to amend the:

- *Superannuation (CSS) (Superannuation Guarantee) Regulations 2008* to ensure that the calculation of the additional top-up lump sum benefit payable under the Commonwealth Superannuation Scheme (CSS) is consistent with the requirements of the *Superannuation Guarantee (Administration) Act 1992*; and
- *Superannuation (CSS) Salary Regulations 1978* to ensure that a CSS member who is a member of the staff of a person in respect of whom a determination by the Prime Minister under section 4 of the *Members of Parliament (Staff) Act 1984* is in force can elect that their 'parliamentary employment allowance' does not form part of their CSS superannuation salary.

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.

Senator the Hon Katy Gallagher, Minister for Finance