

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Finance and Administration

Select Legislative Instrument 2005 No. 7

Superannuation Act 1976

*Superannuation (CSS) Continuing Contributions for Benefits Amendment Regulations
2005 (No. 1)*

The *Superannuation Act 1976* (the Act) makes provision for, and in relation to, the Commonwealth Superannuation Scheme (CSS), which is an occupational superannuation scheme for Commonwealth 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.

The purpose of the Regulations is to amend the *Superannuation (CSS) Continuing Contributions for Benefits Regulations 1981* (the Principal Regulations) to give effect to recent agreements between the Commonwealth and both Telstra and Australia Post in relation to the finalisation of the payout of the Commonwealth's superannuation liabilities to the Telstra and Australia Post superannuation schemes.

Sections 159 and 160 of the Act allow the Minister to determine rates of employer payments to be made to the Commonwealth by approved authorities or declared authorities, and authorise those payments. Approved authorities are bodies that satisfy the definition included in subsection 3(1) of the Act and that have been declared by the Minister to be approved authorities. A declared authority is a body that employs persons under the *Public Service Act 1999* and has been declared to be a declared authority by the Minister.

Section 159 applies to the rates of employer payments necessary in respect of the payment of benefits to employees or former employees of the bodies. Section 160 applies to the costs of administration and medical examinations in respect of employees of those bodies.

Subsection 3(1) of the Act contains the definition of "eligible employee" which describes persons who may contribute to the CSS (ie CSS members). Paragraph (ea) of that definition includes those persons to whom section 14A of the Act applied immediately before the repeal of that section on 1 July 2003. Prior to that repeal, paragraph (ea) included as eligible employees (and therefore members of the CSS) persons to whom section 14A of the Act applied.

Section 14A of the Act described a number of classes of persons to whom the section applied and made provision for additional classes of persons to be specified in the regulations. The combination of the section and paragraph (ea) of the definition of eligible employee provided CSS membership for persons who would not otherwise be members. The section also provided that regulations might modify the application of the Act in relation to a person to whom the section applied. The Principal Regulations prescribed a number of classes of person to whom the section applied and modified certain provisions of the Act in relation to some or all of those classes. Although section 14A was repealed in

2003, a saving provision ensures that the Principal Regulations continue to apply, and may be further amended as if section 14A had not been repealed.

Telstra and Australia Post are two of the authorities or bodies that have employees that are CSS members as a result of the Principal Regulations. Although the Principal Regulations ensure that sections 159 and 160 of the Act apply to Telstra but not to Australia Post, Australia Post has made payments that would otherwise be required under those sections voluntarily.

As part of recent agreements between the Commonwealth and both Telstra and Australia Post to finalise the payout of the Commonwealth's superannuation liabilities to the Telstra and Australia Post superannuation schemes, it was agreed that the Commonwealth remains responsible for CSS benefits payable to remaining Telstra and Australia Post CSS members and that Telstra and Australia Post will not be subject to the requirement to make any payments to the Commonwealth under section 159 of the Act.

It was further agreed that Telstra and Australia Post are to continue to pay the administration costs referred to in section 160 relating to current and past Telstra and Australia Post employees who are currently receiving benefits from the CSS or are eligible to receive such benefits in the future.

The Regulations amend the Principal Regulations to remove the requirement for Telstra to make payments under section 159 and to formalise the requirements for Australia Post to make payments under section 160. The Regulations also make it clear that section 159 does not apply to either organisation.

Subsection 168(13) of the Act provides that regulations may not be made under the Act unless the CSS Board has consented to those regulations. However paragraph 168(13)(b) prescribes a number of exemptions where the Board's consent is not required.

Subparagraph 168(13)(b)(i) exempts a regulation that relates to a payment that after the making of the regulation, will be required, or permitted, to be made under the Act by an employer-sponsor within the meaning of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act). Telstra and Australia Post are employer-sponsors within the meaning of the SIS Act. As these regulations relate solely to employer payments by those bodies, the Board's consent to their making is not required.

Telstra and Australia Post were consulted about the Regulations.

The Act specifies no other conditions that need to be met before the power to make the Regulations may be exercised.

Details of the Regulations are set out in the [Attachment](#).

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

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

DETAILS OF THE SUPERANNUATION (CSS) CONTINUING CONTRIBUTIONS FOR BENEFITS AMENDMENT REGULATIONS 2005 (NO. 1)

Regulation 1

Regulation 1 provides that the Regulations are called the *Superannuation (CSS) Continuing Contributions for Benefits Amendment Regulations 2005 (No. 1)*.

Regulation 2

Regulation 2 provides for the commencement of the Regulations on the day after their registration.

Regulation 3

Regulation 3 provides that the *Superannuation (CSS) Continuing Contributions for Benefits Regulations 1981* (the Principal Regulations) are amended in accordance with Schedule 1.

Schedule 1

Item 1 amends subitem 2.1 of Schedule 1 to the Principal Regulations. That subitem modifies section 159 of the Act to ensure that the section applies to bodies in respect of employees or former employees who are CSS members by virtue of paragraph (ea) of the definition of eligible employee and the repealed section 14A of the Act. Section 159 of the Act provides that the Minister may determine the level of payments required to be made by employers to the Commonwealth in respect of benefit payments made to, or in respect of, their employees who are, or have been, CSS members.

Item 1 removes paragraph 159(1A)(f) which prescribes the Australian and Overseas Telecommunications Corporation (now known as Telstra) as a body to which section 159 applies.

Item 2 amends subitem 2.1 of Schedule 1 to the Principal Regulations by inserting a new subsection 159(1B) to make it clear that section 159 does not apply to either Telstra or the Australian Postal Corporation (Australia Post).

Item 3 substitutes item 3 of Schedule 1 to the Principal Regulations with a new item 3. Currently item 3 modifies section 160 of the Act to ensure that the section applies to bodies in respect of employees or former employees who are CSS members by virtue of paragraph (ea) of the definition of 'eligible employee' and the repealed section 14A of the Act.

Section 160 relates to the costs of administration of the CSS and of medical examinations required under the Act. Subsection 160(4) relates to the costs of medical examinations and subsection 160(6) applies to the costs of administration.

New subitem 3.1 modifies section 160 by substituting a new subsection 160(4) to ensure that Telstra and Australia Post are required to pay for the costs of any medical examination required under the Act for their employees or statutory office holders in the same way as other bodies that have CSS members.

New subitem 3.2 modifies subsection 160(6) to ensure that the subsection applies to Telstra and Australia Post in addition to other bodies that have CSS members to ensure that those bodies are required to pay that part of the costs of administration of the CSS determined by the Minister.