

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2008 No. 95**

*Issued by the Authority of the Minister for Superannuation and Corporate Law*

*Superannuation (Resolution of Complaints) Act 1993*

*Superannuation (Resolution of Complaints) Amendment Regulations 2008 (No. 1)*

Section 68 of the *Superannuation (Resolution of Complaints) Act 1993* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the Regulations is twofold: firstly to replace the list in Schedule 2 of the *Superannuation (Resolution of Complaints) Regulations 1994* (the Principal Regulations) with a reference to all external dispute resolution (EDR) schemes authorised by the Australian Securities and Investments Commission (ASIC) under the *Corporations Act 2001*; and secondly to add a superannuation scheme to the list of exempt public sector superannuation schemes (EPSSSs) that are taken to be regulated superannuation funds.

The former Schedule 2 to the Principal Regulations contained a list of EDR schemes the Superannuation Complaints Tribunal (the Tribunal) may refer complainants to in the event the Tribunal is of the opinion that it does not have the jurisdiction to hear the complaint. This list was previously out of date because since it was last updated in 2001, some schemes have changed their name or have ceased to exist.

The Regulations replace regulation 6 (and by consequence removes Schedule 2 to the Principal Regulations) with a reference allowing the Tribunal to refer to all EDR schemes approved at any given time by ASIC under paragraph 912A(2)(b) of the *Corporations Act 2001*. This allows the Tribunal to refer complainants to any ASIC approved EDR scheme that may exist at the time without the need to update the Principal Regulations whenever an EDR scheme changes its name or a new scheme is approved by ASIC.

The Regulations also add the Electricity Industry Superannuation Scheme (the EIS Scheme) to Schedule 1 to the Principal Regulations, which lists EPSSSs that have elected to be subject to the jurisdiction of the Tribunal.

Previously, the EIS Scheme's members have not been able to access the Tribunal. The EIS Scheme's Board applied to become a regulated scheme for the purposes of the Act, largely in order to provide comfort to its members that an independent appeals process (other than legal action) was available to them.

More immediately, the EIS Scheme has recently experienced a serious dispute between the trustees and members of the fund, which appears cannot be resolved by the processes available under the current arrangements. Allowing the EIS Scheme's members to access the Tribunal may assist in this dispute being resolved satisfactorily.

The Treasury consulted on amendments to the Regulations, consistent with the requirements in section 17 of the *Legislative Instruments Act 2003*. Specifically, the Treasury made exposure drafts of the Regulations available directly to key stakeholders on 11 April 2008 and invited comment by 28 April 2008.

The Regulations commenced on the day after registration on the Federal Register of Legislative Instruments.

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