

**EXPLANATORY STATEMENT**  
**Select Legislative Instrument 2008 No. 124**

Issued by the authority of the Assistant Treasurer

*Financial Sector (Collection of Data) Act 2001*

*Financial Sector (Collection of Data) Regulations 2008*

Section 30 of the *Financial Sector (Collection of Data) Act 2001* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all 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.

Subsection 5(5) of the Act provides that the regulations may declare funds, or classes of funds, to be discretionary mutual funds (DMFs).

The Regulations declare single contributor funds and funds to which two or more persons have contributed to be discretionary mutual funds. This would enable data to be collected by the Australian Prudential Regulation Authority (APRA) from these funds.

DMFs provide insurance-like products that offer ‘discretionary cover’, that is a risk management mechanism that is an alternative to insurance. Unlike traditional insurance the DMF does not have a contractual obligation to meet a claim if a risk eventuates. Instead, the DMF only has a contractual obligation to consider the claim and a discretion as to whether it meets the costs of the claim.

The Regulations relate to the collection of information on the nature and scope of DMF business and are consequential to the *Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007* (the DMF/DOFI Act). Data collected from DMFs under the DMF/DOFI Act will enable the Government, regulators and industry to better understand their use and operation

The Regulations have been the subject of consultation with a range of stakeholders. In 2003, the *Review of Discretionary Mutual Funds and Direct Offshore Foreign Insurers* (the Potts Review) was conducted. After further consultation, a Treasury discussion paper was released in 2005 seeking stakeholders views on how to implement the review’s recommendations. Treasury conducted ongoing consultation with industry in the development of the DMF/DOFI Act.

Details of the Regulations are set out in the Attachment.

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

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

The Regulations commence on 1 July 2008.

Authority: Section 30 of the *Financial Sector (Collection of Data) Act 2001*

Details of the *Financial Sector (Collection of Data) Regulations 2008*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Financial Sector (Collection of Data) Regulations 2008*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on 1 July 2008.

Regulation 3 – Definition

This regulation provides that **Act** is defined to be the *Financial Sector (Collection of Data) Act 2001*.

Regulation 4 – Discretionary Mutual Funds

This regulation declares the following funds be discretionary mutual funds (DMFs) for the purposes of paragraph 5(5)(b) of the Act:

- a fund to which 2 or more persons have contributed; and
- a single contributor fund.

This will mean that data collected under the Act will also be collected from funds to which contributions have been previously made and from single contributor funds.

A **fund to which 2 or more persons have contributed** is being declared to enable data to be collected by the Australian Prudential Regulation Authority (APRA) from DMFs that continue to exist but to which funds are not currently being contributed.

A **single contributor fund** is a fund where only one person makes a contribution and out of which payments may be made in respect of loss or liabilities of a contributor or another person which is governed by rules where payment is subject to the discretion of a person or body who is not the contributor or a person covered by the fund.

The requirement that the discretion is exercised by a person or body who is not the contributor or a person covered by the fund is to distinguish single contributor funds from forms of self-insurance. For example, it is not the intention that a person who establishes a bank account as a fund to cover contingencies would be required to report to APRA.