



ComSuper Bill 2010

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ComSuper Bill 2010

Date introduced: 4 February 2010

House: House of Representatives

Portfolio: Finance and Deregulation

Commencement: **Clauses 1 and 2** commence on Royal Assent. **Clauses 3–27** commence at the same time as the proposed *Governance of Australian Government Superannuation Schemes Act 2010* (which is, according to proposed section 2 of that Act, 1 July 2010)

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

This Bill will establish a statutory agency, to be known as ‘ComSuper’, for the purposes of the *Public Service Act 1999*.

Background

ComSuper will provide administrative services to the Commonwealth Superannuation Corporation (CSC). The Commonwealth superannuation schemes that will be administered by the proposed new body are:

- the scheme established under the *Superannuation Act 1922* (the 1922 scheme)
- the Commonwealth Superannuation Scheme (CSS)
- the Public Sector Superannuation Scheme (PSS)
- the scheme provided for under the *Papua New Guinea (Staffing Assistance) Act 1973* (PNG Scheme)
- the Defence Forces Retirement Benefits Scheme (DFRB)
- the Defence Forces Retirement and Death Benefits Scheme (DFRDB), and
- the Military Superannuation and Benefits Scheme (MSBS).

These are defined benefit schemes, where the final benefit payable to a member is generally determined by the member’s years of service and final salary on retirement. The schemes are more complex to administer than accumulation schemes, and the private sector may not find their administration profitable. Only the MSBS is open to new members.

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The administration of the Public Sector Superannuation Scheme—Accumulation Plan (PSSAP) will eventually be outsourced to the private sector, saving the Government about \$5 million annually.¹ Initially the PSSAP administration will also be undertaken by the new ComSuper entity.²

The PSSAP is an accumulation scheme, where the member's benefits are determined by his or her contributions and the scheme's investment returns. They are comparatively simple to administer, compared to the defined benefit schemes noted above.

These initiatives are being taken following a review of government superannuation administration arrangements by PriceWaterhouse Coopers and the Department of Finance and Deregulation.³

Currently, the administrative services for all these schemes are provided by 'ComSuper', a government business unit within the Finance and Deregulation portfolio. This organisation is headed by the Commissioner for Superannuation, a statutory office-holder under subsection 18(2) of the *Superannuation Act 1976*.⁴

The Commissioner for Superannuation administers these schemes under the direction of their trustees,⁵ who are:

- the Australian Reward Investment Alliance (ARIA) for the PSS, PSSAP and CSS
- the Military Superannuation and Benefits Board for the MSBS, and
- the Defence Force Retirement and Death Benefits Authority for the DFRB and DFRDB.

Basis of policy commitment

The proposed changes were announced by the Minister for Finance and Deregulation on 26 November 2009.⁶

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1. L Tanner MP (Minister for Finance and Deregulation), *Government Superannuation Reforms*, media release, 80/2009, Canberra, 26 November 2009.
 2. L Tanner MP (Minister for Finance and Deregulation), 'Second reading speech, ComSuper Bill 2010', House of Representatives, *Debates*, 4 February 2010, p. 2, viewed 16 February 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2010-02-04%2F0009%22>
 3. L Tanner MP (Minister for Finance and Deregulation), *Government Superannuation Reforms*, op. cit.
 4. ComSuper, 'Who we are', *webpage*, viewed 17 February 2010, <http://www.comsuper.gov.au/>
 5. The Commissioner undertakes the trustee function for the 1922 and PNG schemes.

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These changes complement the proposed merger of the various trustee bodies mentioned above into a single entity on 1 July 2010.⁷ The new trustee body will be known as the ‘Commonwealth Superannuation Corporation’ (CSC).

Committee consideration

At the time of writing, the Bill has not been referred to a committee for inquiry and report.

Position of significant interest groups/press commentary

Little interest has been shown in the proposed changes.

Pros and cons

The proposed changes are intended to bring about administrative efficiency and savings. The outsourcing of the PSSAP’s administration will leave the new entity free to concentrate on the administration of the more complex defined benefit schemes.

Currently, ComSuper is subject to direction from several different trustee boards, which may not have the same priorities. The proposed changes will allow the new ComSuper entity to be directed by a single trustee entity.

Financial implications

The Explanatory Memorandum notes that this Bill has no financial impact.⁸

Main provisions

Clause 3 contains definitions of terms used throughout the Bill, including ‘CEO’, ‘ComSuper’ and ‘governing deed’. It also contains definitions for the following terms:

- ‘CSC’ (which is short for ‘Commonwealth Superannuation Corporation’), which is defined by reference to the proposed *Governance of Australian Government*

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6. L Tanner MP (Minister for Finance and Deregulation), *Government Superannuation Reforms*, op. cit.
 7. L Tanner MP (Minister for Finance and Deregulation) and Senator N Sherry (then Minister for Superannuation and Corporate Law), *Streamlined administration arrangements for Australian Government superannuation schemes*, joint media release, Canberra, 31 October 2008, viewed 16 February 2010, <http://treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2008/072.htm&pageID=003&min=njs&Year=&DocType> See also the *Governance of Australian Government Superannuation Schemes Bill 2010*, introduced at the same time as the current Bill on 4 February 2010.
 8. Explanatory Memorandum, ComSuper Bill 2010, p. 4.

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Superannuation Schemes Act 2010. There, the term is defined in proposed section 3 to mean the board established under section 20 of the *Superannuation Act 1990* as the ‘Australian Reward Investment Alliance’. That board has been continued in existence by proposed section 4 of the *Governance of Australian Government Superannuation Schemes Act 2010* as a body corporate. The new body corporate will be called CSC, and

- ‘PSSAP’ (which is short for the Public Sector Superannuation Accumulation Plan), which is defined by reference to the *Superannuation Act 2005*. There, the term is defined in section 4 to mean ‘the superannuation scheme established by the Trust Deed’ (being the deed referred to in section 10 of that Act establishing a superannuation scheme to be known as the ‘Public Sector Superannuation Accumulation Plan’ (or PSSAP), including amendments to the deed).

Clause 4 establishes Comsuper. It consists of the CEO and the staff of ComSuper.⁹ Its function is ‘to assist the CEO in the performance of the CEO’s function’.¹⁰

Clause 8 sets out the function and powers of the CEO. The CEO’s function is to provide administrative services to CSC in the performance of its functions ‘in relation to a superannuation scheme administered by CSC’.¹¹ The CEO has wide-ranging power to do ‘all things necessary or convenient to be done for or in connection with the performance of his or her function’.¹²

As a general rule, the CEO is subject to directions of CSC and must try to act ‘in accordance with policies, guidelines and standards’ determined by CSC.¹³ However, the CEO does not need to comply with a CSC’s direction if it would be inconsistent with:

- the CEO’s function or powers under the *Financial Management and Accountability Act 1997* (FMA Act) or the *Public Service Act 1999* in relation to ComSuper,¹⁴ or
- another Commonwealth law or Commonwealth policies ‘in relation to the administration of an Australian government superannuation scheme’.¹⁵

The CEO is to be appointed by the Minister by written instrument on a full-time basis.¹⁶ The CEO holds office for the period specified in the instrument. The period must not

9. Clause 5.

10. Clause 6. The CEO’s function is set out in clause 8.

11. Subclause 8(1).

12. Subclause 8(2).

13. Subclause 8(3).

14. Proposed paragraphs 8(5)(a) and (b).

15. Proposed paragraph 8(5)(c).

16. Subclause 9(1).

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exceed five years.¹⁷ Where the office of CEO is vacant, or the CEO is absent from duty, the Minister may appoint a person to act as CEO.¹⁸

Subject to the *Remuneration Tribunal Act 1973*, the CEO's remuneration is to be determined by the Remuneration Tribunal. If there is no determination in operation, the CEO is to be paid the remuneration that is prescribed by the regulations.¹⁹ The CEO is also to be paid the allowances that are prescribed by the regulations.²⁰

While the CEO has the recreational leave entitlements determined by the Remuneration Tribunal, the Minister may also grant the CEO leave of absence (other than recreation leave) on the terms and conditions (as to remuneration or otherwise) determined by the Minister in writing.²¹

The CEO must not engage in paid work outside the duties of his or her office without the Minister's approval.²² The CEO must give written notice to the Minister of all interests, pecuniary or otherwise, that the CEO has (or acquires) and that conflict (or could conflict) with the proper performance of the CEO's function.²³

The CEO holds office on such terms and conditions (if any) in relation to matters not covered by the proposed Act that are determined by the Minister in writing.²⁴ The CEO may resign by giving the Minister a signed notice of resignation, which takes effect on the date it is received by the Minister or the date specified in the resignation, whichever occurs last.²⁵ The Minister may terminate the appointment of the CEO for a variety of reasons, including misbehaviour, mental incapacity, bankruptcy, or failing without reasonable excuse to disclose interests under proposed section 15.²⁶

17. Clause 10.

18. Clause 11.

19. Subclause 12(1).

20. Subclause 12(2).

21. Clause 13.

22. Clause 14.

23. Clause 15.

24. Clause 16.

25. Clause 17.

26. Clause 18.

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The staff of ComSuper are to be public servants.²⁷ The CEO and staff of ComSuper together constitute a statutory agency, with the CEO as the head of the agency.²⁸ The CEO may engage consultants to assist in the performance of the CEO's function.²⁹

Clause 21 establishes the 'ComSuper Special Account', which is a 'Special Account' for the purposes of the FMA Act.³⁰ Amounts equal to all money received from any purpose for the purposes of the Account must be credited to the Account.³¹ The purposes of the Account are set out in **clause 23**, including:

- to pay or discharge costs, expenses or other obligations incurred by ComSuper
- to pay remuneration or allowances to any person under the proposed Act, and
- to reduce the balance of the Special Account by making a notional payment.

Clause 24 requires the CEO to prepare and give to the Minister, as soon as practicable after 30 June in each financial year, an annual report relating to the performance of the CEO's function during the financial year. The report must include:

- particulars of any directions given to the CEO by CSC during the year and the impact of the directions on the performance of the CEO's function
- financial statements required by section 49 of the FMA Act,³² and

27. Subclause 19(1), which refers to the *Public Service Act 1999*.

28. Subclause 19(2).

29. Clause 20.

30. The term 'Special Account' is defined in section 5 of the FMA Act to mean either (a) a Special Account that is established by the Finance Minister under section 20 of that Act; or (b) a Special Account that is established by an Act other than the FMA Act. Section 20 of the FMA Act provides that the Finance Minister may establish a Special Account; vary or revoke the Special Account; allow or require amounts to be credited to the Special Account; and specify the purposes for which amounts are allowed or required to be debited from the Special Account. For further details, see http://www.austlii.edu.au/au/legis/cth/consol_act/fmaaa1997321/s20.html, viewed 16 February 2010. Subsection 21(1) states that if another Act establishes a Special Account and identifies the purposes of the Special Account, then the Consolidated Revenue Fund (CRF) is appropriated for expenditure for those purposes, up to the balance for the time being of the Special Account.

31. Clause 22.

32. Section 49 of the FMA Act provides that a Chief Executive must give to the Auditor-General the annual financial statements required by the Finance Minister's Orders. The statements must be prepared in accordance with the Finance Minister's Orders and must give a true and fair view of the matters that those Orders require to be included in the statements. If the statements would not otherwise give a true and fair view of the matters required by the Orders, the Chief Executive must add such information and explanations as

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- an audit report on those statements under section 57 of the FMA Act.³³

The CEO may delegate, in writing, the CEO's function and/or powers under the proposed Act to an SES employee or acting SES employee in ComSuper.³⁴ In performing the function or exercising the powers of the CEO, the delegate must comply with any written directions of the CEO.

In performing his or her function under the proposed Act, the CEO (or a member of the staff of ComSuper performing the function) is not liable for anything done, or omitted to be done, in good faith. However, CSC remains liable for any 'action, liability, claim or demand' that may arise.³⁵

will give a true and fair view of those matters. The Chief Executive must state whether (in his or her opinion) the financial statements give a true and fair view of the matters required by Finance Minister's Orders. See http://www.austlii.edu.au/au/legis/cth/consol_act/fmaaa1997321/s49.html, viewed 16 February 2010.

33. Section 57 of the FMA Act provides that as soon as practicable after receiving financial statements under subsection 49(1) for an Agency, the Auditor-General must examine the statements and report in accordance with section 57 to the Minister responsible for the Agency. Among many functions, the Auditor-General must state whether, in the Auditor-General's opinion, the financial statements (a) have been prepared in accordance with the Finance Minister's Orders; and (b) give a true and fair view of the matters required by those Orders. If the Auditor-General is not of that opinion, he or she must state the reasons. If the Auditor-General considers that failing to prepare the financial statements in accordance with the Finance Minister's Orders has a 'quantifiable financial effect', the Auditor-General must quantify that financial effect and state the amount. A copy of the financial statements and the Auditor-General's report or reports must be included in the Agency's annual report that is tabled in the Parliament.
34. Clause 25.
35. Clause 34 of the proposed *Governance of Australian Government Superannuation Schemes Bill 2010* deals with the indemnification of directors of the Board of the Commonwealth Superannuation Corporation (CSC). It draws a distinction between the directors of the Board of CSC and CSC itself. For example, subsection 34(1) provides that anything done, or omitted to be done, in good faith by a director or delegate of the Board of the CSC in the performance of his or her functions under that Act, an Act administered by CSC or a governing deed, 'does not subject him or her personally to any action, liability, claim or demand'. However, proposed subsection 34(2) of that Act states that subsection 34(1) does not preclude CSC itself from being subject to any action, liability, claim or demand.

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