



This Digest replaces an earlier version dated 22 February 2010 and makes some minor technical corrections.

Superannuation Legislation (Consequential Amendments and Transitional Provisions) Bill 2010

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Superannuation Legislation (Consequential Amendments and Transitional Provisions) Bill 2010

Date introduced: 4 February 2010

House: House of Representatives

Portfolio: Finance and Deregulation

Commencement: Schedules 1 and 2 immediately after the commencement of section 2 of the *Governance of Australian Government Superannuation Schemes Act 2010* which is proposed to commence on 1 July 2010. The remaining provisions commence on Royal Assent.

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 is part of a three Bill package intended to modernise Australian Government superannuation. The Bill makes consequential changes arising from the other two Bills:

- the Comsuper Bill 2010, and
- the Governance of Australian Government Superannuation Schemes Bill 2010.

All three Bills will be considered by Parliament together.

Background

Background to the legislative package is contained in the Bills Digests for the Comsuper Bill 2010 and the Governance of Australian Government Superannuation Schemes Bill 2010.¹

Basis of policy commitment

The amendments contained in this Bill arise from announcements made jointly by the Minister for Finance and Deregulation and the Minister for Superannuation and Corporate

1. M Donaldson and L Nielson, Comsuper Bill 2010, Bills digest, no. 106, 2009–10, Parliamentary Library, Canberra, 18 February 2010; and L Nielson, Governance of Australian Government Superannuation Schemes Bill 2010, Bills digest, no. 107, 2009–10, Parliamentary Library, Canberra, 22 February 2010.

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Law on both 31 October 2008² and the Minister for Finance and Deregulation separately on 26 November 2009.³

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.

Financial implications

The Explanatory Memorandum states that the amendments contained in this Bill will have no financial impact.⁴

Main provisions

Schedule 1—consequential amendments

Part 1 of Schedule 1 contains amendments to a number of statutes to provide for the transfer of various functions to the Commonwealth Superannuation Corporation (CSC).

In particular **Clauses 36–57** amend the *Defence force Retirement and Death Benefits Act 1973* to generally transfer the functions of the Defence Force Retirement and Death Benefits Authority (the responsible trustee for the Defence Force Retirement and Death Benefits (DFRDB) scheme) to the CSC. This includes the review functions.

Clause 58 provides for a Defence Force Case Assessment Committee to be established (the Committee). The Committee will consist of a person nominated by each of the Chief of the Air Force, the Chief of the Army and the Chief of the Navy and any other person as determined by the CSC: **proposed section 101**. The CSC may delegate some or all of its powers in relation to a decision to the Committee: **proposed section 102**. Where the Committee is empowered to make recommendations to the CSC, the CSC must take those

2. L Tanner (Minister for Finance and Deregulation) and N Sherry (then Minister for Superannuation and Corporate Law), *Streamlined administration arrangements for Australian Government superannuation schemes*, joint media release, Canberra, 31 October 2008.

3. L Tanner (Minister for Finance and Deregulation), *Government Superannuation Reforms*, media release, 80/2009 Canberra, 26 November 2009.

4. Explanatory Memorandum, Superannuation Legislation (Consequential Amendments and Transitional Provisions) Bill 2010, p. 4.

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recommendations into account when making its final decision. That decision must be in writing and include full reasons for the decision: **proposed section 106**.

There is a right of review of a decision by the CSC to the Administrative Appeals Tribunal: **proposed section 107**.

Clauses 59–80 amend the *Defence Force Retirement Benefits Act 1948* to generally transfer the functions of the DFRDB Authority, in respect of the Defence Force Retirement Benefits Scheme, to the CSC.

Clauses 104–114 amend the *Military Superannuation and Benefits Act 1991*. In particular **Clause 110** repeals the current Parts six and seven of that Act and inserts a **new Part 6**. This new part specifies that the functions and powers of the CSC are those set out in the Trust Deed for the Military Superannuation and Benefits Scheme. Effectively this means that the CSC becomes the Trustee of this scheme.

Clauses 125–147 amend the *Papua New Guinea (Staffing Assistance) Act 1973* so that the functions of the Commonwealth Commissioner for Superannuation under this particular Act will now be exercised by the CSC. In particular, **clause 131** inserts a new Division 1 which provides for review of decisions by the CSC. **Clause 138** inserts proposed Divisions 2, 3 and 4. **Proposed Division 2** provides for the establishment of Reconsideration Advisory Committees which are empowered to review decisions of the CSC or make certain recommendations to the CSC: **proposed section 55B**. **Proposed Division 3** provides for the review of CSC decisions by the Administrative Appeals Tribunal.

Clauses 160–173 transfer the functions now exercised by the Commonwealth Commissioner for Superannuation under the *Superannuation Act 1922* to the new CSC. In particular **clause 169** inserts **proposed Divisions 1, 2 and 3** which provide for review of decisions by the CSC, the establishment of Reconsideration Advisory Committees and the right of review by the Administrative Appeals Tribunal respectively.

Clauses 174, 176–178, 182 and 183 amend the *Superannuation Act 1976* in such a way that the office of the Commissioner for Superannuation is abolished. In particular, **clause 183** repeals the current Part II of this Act which authorised the establishment of that office.

Clauses 175, 179, 184–196 and 198–205 transfer the functions of the Australian Reward Investment Alliance (ARIA), who are the responsible trustee for the Commonwealth Superannuation Scheme under the *Superannuation Act 1976*, to the CSC.

Clauses 207–214 and 216–221 generally transfer the functions exercised by ARIA, in relation to the Public Sector Superannuation Scheme and the Public Sector Superannuation Accumulation Plan (PSSAP), to the CSC.

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In particular, **clause 216** repeals parts six and seven of this Act and substitutes a **new Part 6**. This new part specifies that the functions and powers of the CSC in relation to the Public Sector Superannuation Scheme, and the associated investment fund are those set out in the Public Sector Superannuation Scheme Trust Deed. Effectively, this makes the CSC the trustee of this scheme.

Clauses 222, 223, 225 and 228 to 231 amend the *Superannuation Act 2005* to provide a mechanism (a Ministerial Declaration) that would allow current members of the Commonwealth Superannuation Scheme (CSS) or the Public Sector Superannuation Scheme (PSS) to also become members of the (PSSAP).

Why would current members of the first two schemes conceivably want to do this? The PSS and CSS are defined benefit schemes, where some, or all, of the benefits are determined in relation to the members years of service and salary at retirement. The maximum possible member contributions to either scheme are limited to ten per cent of salary. All contributions are on an ‘after tax’ basis.

It may be the case that CSS or PSS members wish to make additional superannuation contributions on a ‘before tax’ basis—that is, via salary sacrifice arrangements. Currently CSS and PSS members may do so by making before tax contributions into any superannuation scheme of their choice, other than the PSSAP. These amendments allow this type of contribution to be made to the PSSAP.

Other superannuation funds into which such contributions could be made have fees and charges. While the PSSAP has such charges, they are generally far lower than its private sector counterparts.

Clauses 224, 226 and 232–239 amend the *Superannuation Act 2005* so that the functions effectively exercised by ARIA in relation to the PSSAP are transferred to the CSC.

In particular, **clause 233** repeals section 20 of this particular Act and substitutes a **new section 20**. This new section specifies that the functions and power of the CSC in relation to the PSSAP and the PSSAP fund are those set out in the PSSAP Trust Deed. Effectively, the CSC becomes the trustee of the PSSAP.

Schedule 2—transitional provisions

Part 1 of Schedule 2 contains relevant definitions

Clauses 2–5, in Part 2 of Schedule 2 contain provisions for the vesting of the assets and liabilities of the Military Superannuation and Benefits Board (the responsible entity for the Military Superannuation and Benefits Scheme) in the CSC without any conveyance,

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transfer or assignment. These assets include the assets under management in the MSBS investment fund. As at 30 June 2009 these assets were valued at \$2.81 billion.⁵

5. Military Superannuation Board, *Annual Report 2008–09*, Canberra, 2009, p. 10.

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