



Community and Public Sector Union

14 April 2015

Committee Secretary
Senate Finance and Public Administration Committee
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Canberra ACT 2600
Australia

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Dear Committee Secretary

Re: Governance of Australian Government Superannuation Schemes Legislation Amendment Bill 2015

The Community and Public Sector Union (CPSU) welcomes the opportunity to make a submission to the inquiry into the *Governance of Australian Government Superannuation Schemes Legislation Amendment Bill 2015* on behalf of CPSU members. As the key union representing Australian Public Servants in ComSuper, our submission draws directly from the knowledge, experience and concerns of CPSU members.

This submission principally relates to the retention of APS mobility arrangements and maternity leave entitlements for ComSuper employees after ComSuper has become part of the Commonwealth Superannuation Corporation (CSC). These concerns are outlined below.

However, as a preliminary matter, the CPSU would like to make mention of Schedule 3 of the Bill which amends sections 34 to 36 of the *Superannuation Act 2005*. This amendment would transfer the cost the administration of the PSSap fund from the Commonwealth to members of the funds. The CPSU would like to note that we object to this change, as it will have a detrimental affect on the retirement income of members of the PSSap scheme. It also breaches the current governments undertaking not to make adverse changes to superannuation in this term.

Background

The *Governance of Australian Government Superannuation Schemes Legislation Amendment Bill 2015* (the Bill) merges two Commonwealth superannuation agencies: ComSuper and Commonwealth Superannuation Corporation (CSC).

ComSuper has approximately 420 employees who are Australian Public Service (APS) employees employed under the *Public Service Act 1999*. ComSuper employees, like all other APS employees, are covered by an enterprise agreement and have their conditions of employment underpinned by rights contained in several pieces of legislation including:

- *Public Service Act 1999*;
- *Public Service Regulations 1999*;
- *Australian Public Service Commissioner's Directions 2013*;
- *Public Service Classification Rules 2000*;
- *Maternity Leave (Commonwealth Employees) Act 1973*; and
- *Australian Public Service Award 1998*

CSC is a government owned corporation whose workplace relations arrangements operate in a similar manner to private sector employers in the finance industry, rather than the public sector. It is not part of the Australian Public Service. Its employees are not covered by an enterprise agreement and their employment is not underpinned by the abovementioned legislation.

Schedule 2 of the Bill means that ComSuper will cease to exist and its staff will be compulsorily transferred out of the APS to CSC. This is the single largest forced transfer of employees out of the Public Service since the Australian Protective Service was integrated into the Australian Federal Police in 2004.

ComSuper staff are extremely concerned about the impact of a forced move out of the APS on their careers and their conditions of employment. The APS recruitment freeze means that most ComSuper employees who wish to remain APS employees are denied the opportunity to do so by moving to other APS agencies before the merger.

Given that CSC is a very different organisation from ComSuper, ComSuper employees who do move to CSC are keen to ensure that their conditions of employment are maintained and their public sector careers not disadvantaged. The CPSU is pleased that there a number of protections in place to maintain the conditions of employment of ComSuper staff. Transfer of staff from ComSuper to CSC will be enacted by a determination of the Australian Public Service Commissioner under section 72 of the *Public Service Act 1999*. Subsection 72(3) of that Act provides that under such circumstances, an employee is entitled to remuneration and conditions no less favourable than the terms and conditions the employee was entitled to as an APS employee. (It is noted that ComSuper is currently in enterprise agreement negotiations with the CPSU.)

Part 4 of the Bill ensures this in practical terms by preserving accrued leave entitlements, recognising prior service and providing clarification that the current ComSuper enterprise agreement will transfer across to CSC under the *Fair Work Act 2009*.

However, other entitlements deriving from the legislation that underpins APS employment will no longer apply to ComSuper employees after the merger. There are two significant entitlements that ComSuper employees will lose after the merger with CSC unless amendments are made to the draft Bill. These include:

- APS employment mobility arrangements; and
- Paid maternity leave entitlements under the *Maternity Leave (Commonwealth Employees) Act 1973*.

Further detail about each of these and suggestions about amendments to the draft Bill that could protect these entitlements are outlined below.

Employment Mobility

As APS employees, ComSuper staff currently have the advantage of employment mobility between ComSuper and other APS agencies. This includes:

- The ability to apply for jobs in, and to transfer at level to, another APS Agency (including for some positions that are only available for current APS employees to apply for).
- If the employee wins a promotion to an APS agency they may transfer to that agency (rather than resign and be reengaged).
- The entitlement (an obligation on the employer) to seek redeployment in another APS agency if they are declared excess/ potentially excess before they can be made redundant. This includes access to the APS redeployment register.

The APS is comprised of more than 100 agencies and is considered a career based employer. As such, employees are encouraged to, and do, move through several different agencies in the course of their career. For this reason, mobility rights are very important for employees who work in the APS both in terms of job security and career advancement.

ComSuper employees, all of whom are based in Canberra, are very concerned about losing these mobility rights. There is a concern that this could affect their careers as it will make it more difficult to apply for and get jobs within the APS, the major employer in Canberra. They are also concerned that if downsizing of the workforce were to occur after the merger they would not have rights to be redeployed within the APS. This would greatly increase the likelihood of involuntary redundancies occurring.

The current *Public Service Act 1999* does not contain APS mobility rights for employees after they leave the Public Service. However, there is precedence for this right to exist. Division 3 of Part IV of the precursor to the current Act, the *Public Service Act 1922*, provided for re-engagement of employees who had been moved out of the public service in similar circumstances.

The CPSU seeks an amendment to the Bill that would allow ComSuper staff the right to return to the APS after the move into CSC. Such an amendment would not affect CSC's capacity to operate or impose onerous obligations on

CSC. It simply gives these employees rights to move back into the APS without having to resign and then be re-engaged.

The CPSU seeks amendments that would retain the following mobility rights for ComSuper employees:

- To apply for and to transfer at level to an APS agency and not be disadvantaged compared to APS employees.
- If they win a promotion to an APS agency, to transfer to that agency (rather than resign and be reengaged).
- To be able to access the mechanisms provided by the APS Redeployment Policy if they are declared excess or potentially excess.

Paid Maternity Leave

The *Maternity Leave (Commonwealth Employees) Act 1973* (the Maternity Leave Act) provides a number of entitlements to women in the APS. The most significant of these is 12 weeks paid parental leave at full pay. This is in addition to the paid leave available under the Paid Parental Leave scheme that applies more broadly.

Section 5 of the Maternity Leave Act states that the Act applies to persons employed under the *Public Service Act 1999* and other persons employed by the Commonwealth authorities as prescribed by the regulations.

Schedule 1 of the *Maternity Leave (Commonwealth Employees) Regulations 1982* (the Regulations) sets out the bodies corporate that are prescribed authorities for the purposes of the Act.

CSC is not listed as one of the prescribed authorities in the Regulations. Given that ComSuper employees will no longer be employed under the Public Service Act after the merger, they will lose their entitlement to 12 weeks paid maternity leave under the Maternity Leave Act unless this entitlement is preserved.

CPSU suggests that the easiest way to preserve this entitlement is by a consequential amendment to the Regulations that would include CSC as a prescribed authority for section 5 of the Maternity Leave Act. It may also be possible to amend this draft legislation to preserve the entitlement for ComSuper employees.

Yours sincerely,

Alistair Waters,
CPSU National President