

**Inquiry into the Governance of Australian
Government Superannuation Schemes
Legislation Amendment Bill 2015**

Senate Finance and Public Administration Legislation
Committee

Submission by the Department of Finance

April 2015

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Introduction

1. The Governance of Australian Government Superannuation Schemes Legislation Amendment Bill 2015 (the Bill) merges ComSuper, the administrator of the Australian Government's main civilian and military defined benefit superannuation schemes, with Commonwealth Superannuation Corporation (CSC), the trustee of the Australian Government schemes.
2. The merger of ComSuper with CSC was announced in the 2014-15 Budget as part of the Smaller Government agenda, which aims to reduce the number of government entities by eliminating duplication and overlap and by simplifying inefficient and complex structures.
3. CSC, in its role as trustee, has regulatory responsibility for the Australian Government superannuation schemes under the *Superannuation Industry (Supervision) Act 1993* (SIS Act), including responsibility for the administration services provided to the schemes. The merger will involve CSC assuming the administration services functions of ComSuper. The staff and assets of ComSuper will transfer to CSC, and ComSuper will cease to exist.
4. A key issue for the merger has been employment arrangements for ComSuper staff that transfer to CSC as a result of the merger. These arrangements, many of which are reflected in provisions of the Bill, are the outcome of deliberations of a working group comprising group comprising senior level representation from the Department of Finance, CSC and ComSuper. Additionally, the Australian Public Service Commission and policy departments, including the Department of the Prime Minister and Cabinet and the Department of Employment, were consulted on the arrangements. The arrangements provide continuity of remuneration and conditions of employment for these staff when they transfer to CSC at commencement of the merger.

About the entities

CSC

5. CSC is established by the *Governance of Australian Government Superannuation Schemes Act 2011* as the corporate trustee of the Australian Government's main civilian and military superannuation schemes. CSC is governed by an 11 member board.
6. Under its enabling legislation, the staff of CSC are employed on terms and conditions that are determined by the CSC Board (and are not engaged under the PS Act 1999). Currently, CSC has approximately 80 employees (excluding directors on the CSC Board).
7. CSC's functions are set down in its enabling Act and in the legislation governing the Australian Government's main civilian and military superannuation schemes. Its main functions are:
 - the management and investment of scheme superannuation funds;

- the delivery of administration services for the Australian Government's sole accumulation superannuation fund, namely the Public Sector Superannuation Accumulation Plan; and
 - overseeing administration services provided by ComSuper in relation to the civilian and military defined benefit schemes.
8. CSC is a corporate Commonwealth entity for the purposes of the *Public Governance, Performance and Accountability Act 2013*. As such, it is a separate legal entity to the Commonwealth.

ComSuper

9. ComSuper is established by the *ComSuper Act 2011*, comprising the statutory office of the Chief Executive Officer of ComSuper and the staff of ComSuper. The staff of ComSuper are engaged under the *Public Service Act 1999* (PS Act 1999). Currently ComSuper has a staff of approximately 400.
10. Under its enabling legislation, ComSuper's function is essentially to provide administration services to CSC in the performance of its functions in relation to the Australian Government's main civilian and military superannuation schemes. In practice it provides administration services for the defined benefit superannuation schemes only. The administration services provided by ComSuper for these schemes include:
- collection of member contributions;
 - maintenance of member accounts;
 - payment of lump sum and fortnightly benefit payments;
 - communications with members and employers; and
 - dispute resolution.
11. ComSuper is a non-corporate Commonwealth entity for the purposes of the *Public Governance, Performance and Accountability Act 2013*. As such, it forms part of the legal entity known as the Commonwealth.

Employment arrangements and conditions for transferred ComSuper staff

12. CSC staff are employed on terms and conditions set by the CSC Board. ComSuper staff who transfer to CSC as a result of the merger will therefore cease to be Australian Public Service (APS) employees engaged under the PS Act 1999 and become CSC employees.

13. ComSuper staff will have continuity of their terms and conditions on transfer to CSC employment. This is provided for by the Bill and under the PS Act 1999.
14. A high level comparison of employment arrangements for ComSuper staff before and at commencement of the merger with CSC is provided at **Attachment A**. These conditions are discussed below.

Transfer mechanism

15. ComSuper staff will transfer from APS employment to CSC employment by way of a determination of the Australian Public Service Commissioner (APS Commissioner) under section 72 of the PS Act 1999. Under the provision, transferred ComSuper staff are required to have remuneration and conditions of employment at CSC that are no less favourable than they were entitled to at ComSuper immediately before the merger.

Transfer of business under the *Fair Work Act 2009*

16. The Bill provides that the transfer of ComSuper staff to CSC employment is a transfer of business for the purposes of the *Fair Work Act 2009* (refer to Item 14 of Schedule 2). The effect is that the ComSuper Enterprise Agreement (EA), which sets out most of the terms and conditions of employment for ComSuper's staff, will continue to apply to transferred ComSuper staff at CSC at commencement of the merger.
17. The *Fair Work Act 2009* enables employers and employees who are covered by an enterprise agreement to enter into individual flexibility arrangements (IFAs) that vary the effect of the enterprise agreement in relation to the employee and employer. An IFA is taken to be a term of the enterprise agreement. IFAs entered into under the ComSuper EA will continue to apply to relevant ComSuper staff at CSC at commencement of the merger.
18. A very small number of ComSuper staff are members of the Senior Executive Service (SES) and, as such, are not subject to the ComSuper EA. Terms and conditions of employment for these ComSuper staff are covered by determinations made by the Chief Executive Officer of ComSuper under section 24 of the PS Act 1999. CSC will enter into individual employment contracts with ComSuper staff in this category. As with other ComSuper staff who are transferred to CSC employment by a determination of the APS Commissioner under section 72 of the PS Act 1999, transferred SES staff are required to receive remuneration and conditions of employment that are no less favourable than those they were entitled to at ComSuper immediately before the merger.

Continuity of employment status

19. The merger will not affect the status of ComSuper staff as ongoing or non-ongoing staff. That is, ongoing ComSuper staff will be ongoing CSC employees while non-ongoing ComSuper staff will be non-ongoing CSC employees.

Maintenance of accrued entitlements to benefits

20. Many ComSuper staff have accrued entitlements to a range of benefits including, for example, annual leave, personal leave and long service leave. The Bill includes a provision that preserves these entitlements so that they are available for transferred ComSuper staff to use at CSC following the merger (refer to Sub-item 11(2) of Schedule 2). In this way, ComSuper staff will have continuity of their accrued entitlements.
21. Funding for the accrued entitlements of ComSuper staff forms part of the balance of the ComSuper Special Account. This funding will be credited to a new CSC Special Account at commencement of the merger, enabling it to pay for these entitlements (refer to Item 21 of Schedule 2).

Continued application of the *Long Service Leave (Commonwealth Employees) Act 1976*

22. ComSuper staff are currently covered by the *Long Service Leave (Commonwealth Employees) Act 1976* (Cth LSL Act) while CSC applies State-based long service leave arrangements. The Bill makes CSC subject to the Cth LSL Act from commencement of the merger (refer to Item 13 of Schedule 1), which will provide continuity of the application of the Cth LSL Act to transferred ComSuper staff at CSC. The Bill also translates the service and accrued entitlements to long service leave of existing CSC staff into the Cth LSL Act arrangements at commencement of the merger (refer to Item 13 of Schedule 2).

Maternity Leave

23. Unlike ComSuper, CSC is not covered by the *Maternity Leave (Commonwealth Employees) Act 1973*. Nonetheless, as ComSuper staff that transfer to CSC employment are legally required to have conditions that are no less favourable than those that they were entitled to at ComSuper immediately prior to the merger, these staff will receive equivalent maternity leave entitlements at CSC at commencement of the merger. This will be achieved by a determination of the CSC Board made under section 26 of the *Governance of Australian Government Superannuation Schemes Act 2011*.

Continuity of membership of civilian superannuation schemes

24. Superannuation arrangements for staff of ComSuper will not change as a result of the merger. CSC employees are able to have membership of the Australian Government's civilian superannuation schemes. ComSuper staff with membership of these schemes will therefore retain this membership on transfer to CSC employment.

Continuity of coverage of the *Safety, Rehabilitation and Compensation Act 1988*

25. ComSuper and CSC are both covered by the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act). There will be no change in workers' compensation coverage for transferred ComSuper staff.

26. The Bill addresses potential uncertainty regarding the rehabilitation authority for ComSuper staff injured prior to the merger. The Bill does this by providing for all ComSuper staff (including former ComSuper staff) who suffered an injury prior to the merger to be treated as CSC employees for the purposes of the SRC Act for the period that they were member of staff of ComSuper (refer to Item 12 of Schedule 2).

Future APS employment for transferred ComSuper staff

27. Temporary arrangements have applied to recruitment in the APS since 2013. These arrangements limit advertising of APS jobs externally in order to support a reduction in the size of the APS. Once these temporary arrangements are lifted, transferred ComSuper staff and other members of the broader community, will again be able to apply for all advertised APS vacancies.
28. There are no arrangements for ComSuper staff that transfer to non-APS employment at CSC at commencement of the merger to transfer back into the APS.

Attachment A: Comparison table – Key features of employment arrangements for ComSuper staff before and at commencement of merger with CSC

Issue	Before Merger	Merger Commencement
Industrial Instrument	ComSuper Enterprise Agreement (EA)	ComSuper EA
Employment Status of ComSuper Staff	Ongoing and non-ongoing employees	Status as ongoing or non-ongoing employee retained
Entitlements to benefits	Entitlements to benefits (e.g. personal and annual leave under ComSuper EA) accrue and are able to be used	Accrued entitlements at merger are maintained and available for use at CSC
Long Service Leave	<i>Long Service Leave (Commonwealth Employees) Act 1976</i>	<i>Long Service Leave (Commonwealth Employees) Act 1976</i>
Maternity Leave	<i>Maternity Leave (Commonwealth Employees) Act 1973</i>	A CSC Board determination to provide maternity leave entitlements equivalent to those under the <i>Maternity Leave (Commonwealth Employees) Act 1973</i>
Superannuation	Membership of Australian Government civilian superannuation schemes	Membership of Australian Government civilian superannuation schemes maintained
Workers' Compensation and Rehabilitation Arrangements	<i>Safety, Rehabilitation and Compensation Act 1988</i>	<i>Safety, Rehabilitation and Compensation Act 1988</i>
Senior Executive Service (SES) Staff	Conditions set by a determination of the Chief Executive Officer of ComSuper under section 24 of the <i>Public Service Act 1999</i>	The Bill clarifies the rehabilitation authority for ComSuper staff injured prior to the merger SES staff to be engaged by CSC under contract on no less favourable terms