

The Senate

Finance and Public Administration
Legislation Committee

Governance of Australian Government
Superannuation Schemes Legislation
Amendment Bill 2015 [Provisions]

May 2015

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Membership of the Committee

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Senator the Hon Joseph Ludwig	ALP, QLD
Senator Bridget McKenzie	NAT, VIC
Senator Dean Smith	LP, WA
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List of recommendations

Recommendation 1

1.46 The committee recommends that the Senate pass the bill.

Chapter 1

Introduction

1.1 On 19 March 2015, the Parliamentary Secretary to the Minister for Finance, the Hon Michael McCormack MP, introduced the Governance of Australian Government Superannuation Schemes Legislation Amendment Bill 2015 (bill) into the House of Representatives.¹

1.2 On 26 March 2015, pursuant to the Selection of Bills Committee report, the Senate referred the provisions of the bill to the Senate Finance and Public Administration Legislation Committee for inquiry and report by 7 May 2015.²

Objectives of the bill

1.3 The bill gives effect to the Australian Government's decision, announced as part of a 2014-15 Budget measure, to merge ComSuper with the Commonwealth Superannuation Corporation (CSC) so that the management of the Australian Government superannuation schemes is undertaken by a single entity.³

1.4 According to the Parliamentary Secretary's second reading speech:

The merger forms part of the Smaller Government agenda which aims to reduce the total number of government entities by eliminating duplication and overlap and by simplifying inefficient and complex agency structures. Ultimately this agenda is about ensuring that the Australian government is structured and operates in a way that delivers efficient services, robust advice and value for money for taxpayers.⁴

1.5 In addition:

The merger is the next step in streamlining the governance of the Australian government's civilian and military superannuation schemes, a process commenced in 2011 when the then three trustees of the schemes were merged to form CSC.⁵

1.6 The bill also gives effect to the government decision, announced as part of the 2014-15 Mid-Year Economic and Fiscal Outlook, that Public Sector Superannuation Accumulation Plan (PSSAP) members are to pay administration fees.⁶ In his second reading speech the Parliamentary Secretary explained:

1 House of Representatives, *Votes and Proceedings*, No. 107 – 19 March 2015, p. 1211.

2 *Journals of the Senate*, No. 90 – 26 March 2015, pp 2458-2460.

3 Explanatory Memorandum (EM), p. 4.

4 Mr Michael McCormack MP, Parliamentary Secretary to the Minister for Finance, *House of Representatives Hansard*, 19 March 2015, p. 2914.

5 Mr Michael McCormack MP, Parliamentary Secretary to the Minister for Finance, *House of Representatives Hansard*, 19 March 2015, p. 2914.

6 EM, p. 4.

These new arrangements will bring the PSSAP into line with private sector accumulation superannuation funds where members pay for the administration of their accounts.⁷

Conduct of the inquiry

1.7 Details of the inquiry, including links to the bill and associated documents, were placed on the committee's website at: www.aph.gov.au/senate_fpa.

1.8 The committee also directly contacted a number of relevant organisations to notify them of the inquiry and invite submissions by 17 April 2015. The committee received 5 submissions and these are listed at Appendix 1.

1.9 The committee decided to prepare its report on the basis of submissions received and available information. The committee thanks those who assisted by providing submissions to the inquiry.

Background to CSC and ComSuper

1.10 CSC is established by the *Governance of Australian Government Superannuation Schemes Act 2011* (Governance Act) as the corporate trustee of the Australian Government's main civilian and military superannuation schemes.⁸

1.11 CSC has an 11 member board and its staff are employed on terms and conditions determined by the CSC Board and not engaged under the *Public Service Act 1999* (Public Service Act).⁹

1.12 CSC's 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, the PSSAP; and
- overseeing administration services provided by ComSuper in relation to the civilian and military defined benefits schemes.¹⁰

7 Mr Michael McCormack MP, Parliamentary Secretary to the Minister for Finance, *House of Representatives Hansard*, 19 March 2015, p. 2915.

8 Department of Finance (Finance), *Submission 5*, p. 1. Those schemes are: Commonwealth Superannuation Scheme (CSS); Military Superannuation and Benefits Scheme (MilitarySuper); Public Sector Superannuation Scheme (PSS); Public Sector Superannuation Scheme Accumulation Plan (PSSAP); 1922 Scheme; Defence Force Retirement Benefits Scheme (DFRB Scheme); Defence Force Retirement and Death Benefits Scheme (DFRDB Scheme); Papua New Guinea Scheme (PNG Scheme); and Defence Force (Superannuation) (Productivity Benefit) (DFSPB), see Commonwealth Superannuation Corporation (CSC) website: csc.gov.au/about-us/who-we-are/ (accessed 20 April 2015).

9 See Finance, *Submission 5*, p. 1; Commonwealth Superannuation Corporation, *Submission 2*, p. 1.

10 Finance, *Submission 5*, pp 1-2.

1.13 CSC is a corporate Commonwealth entity for the purposes of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and as such is a separate legal entity to the Commonwealth.¹¹

1.14 ComSuper is established by the *ComSuper Act 2011* (ComSuper Act) and comprises the Chief Executive Officer of ComSuper and the staff at ComSuper. There are currently approximately 400 staff of ComSuper and they are engaged under the Public Service Act.¹²

1.15 Under the ComSuper Act, 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. However, in practice, ComSuper only provides administration services for the defined benefit superannuation schemes. Those administrative functions include:

- collection of member contributions;
- maintenance of member accounts;
- payment of lump sum and fortnightly benefit payments;
- communication with members and employers; and
- dispute resolution.¹³

1.16 ComSuper is a non-corporate Commonwealth entity for the purposes of the PGPA Act and as such is not a separate legal entity to the Commonwealth.¹⁴

Summary of the bill

Schedule 1 – Amendments and repeals relating to the merger

1.17 Schedule 1 provides for the repeal of the ComSuper Act to reflect the merger of Comsuper with CSC and particularly to provide for:

- CSC to be the continuing entity, assuming responsibility for the provision of administration services in relation to the defined benefit superannuation schemes under its management; and
- the abolition of ComSuper and the statutory office of the Chief Executive Officer of ComSuper.¹⁵

1.18 In addition, Schedule 1 proposes amendments to the Governance Act, including:

- provision for CSC to perform financial functions on behalf of the Commonwealth;¹⁶ and

11 Finance, *Submission 5*, p. 2.

12 Finance, *Submission 5*, p. 2.

13 Finance, *Submission 5*, p. 2.

14 Finance, *Submission 5*, p. 2.

15 EM, p. 8.

- the establishment of a CSC Special Account.¹⁷

1.19 Schedule 1 also includes consequential amendments to a range of Commonwealth legislation governing the superannuation schemes to take account of the merger.¹⁸

Schedule 2 – Transitional arrangements relating to the merger

1.20 Schedule 2 of the bill contains transitional and savings provisions to facilitate the merger of ComSuper with CSC and to ensure that the functions performed by ComSuper are transitioned to CSC for commencement as provided for in the bill.¹⁹ The provisions in Schedule 2 include:

- the vesting of ComSuper's assets and liabilities in CSC;
- the transfer arrangements for ComSuper employees to CSC;
- the transfer of business from ComSuper to CSC; and
- a rule making power to provide detailed rules with respect to transitional and other matters.

Schedule 3 – Amendments relating to the payment of administration fees

1.21 Schedule 3 proposes amendments to the *Superannuation Act 2005*, and consequential amendments to the Governance Act, to implement the government decision that PSSAP members are to pay administration fees:

The fees are to be determined by the CSC and deducted from PSSAP members' superannuation accounts. Currently the Commonwealth pays administration costs in relation to the PSSAP.²⁰

Discussion of the bill

Transfer of employment arrangements

1.22 Discussion in submissions focussed on the transfer of employment conditions for ComSuper employees being transferred to CSC. Both Finance and CSC noted that the mechanism for transfer will be a declaration by the Australian Public Service Commissioner under section 72 of the Public Service Act.²¹ Accordingly, CSC continued:

16 EM, pp 8-9. These amendments will enable CSC, which is a corporate Commonwealth entity separate from the Commonwealth, to perform a range of financial roles on behalf of the Commonwealth in its new role as administrator. These roles are currently performed by ComSuper, which is legally part of the Commonwealth.

17 EM, pp 9-10. The CSC Special Account forms part of the Consolidated Revenue Fund (CRF) and satisfies the requirement that the administration fees which CSC receives from employer agencies on the Commonwealth's behalf, form part of the CRF.

18 EM, p. 5.

19 EM, p. 23.

20 EM, p. 34.

21 See CSC, *Submission 2*, p. 2; Finance, *Submission 5*, p. 3.

ComSuper staff who transfer to CSC will have remuneration and conditions of employment that are no less favourable than those that applied immediately prior to the merger. All accrued benefits of the transferring employee will be transferred and ComSuper staff will have continuity of service. The ComSuper Enterprise Agreement [EA] will transfer to CSC and transferring ComSuper employees will continue to be subject to the EA until such time as a new EA is negotiated by CSC.²²

1.23 In its submission Finance noted the consultation which had occurred in relation to the transfer:

These arrangements, many of which are reflected in provisions of the Bill, are the outcome of deliberations of a working 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 [the] commencement of the merger.²³

Mobility in the Australian Public Service

1.24 The Community and Public Sector Union (CPSU) noted that as Australian Public Service (APS) employees, ComSuper staff currently have the advantage of employment mobility between ComSuper and other APS agencies, including:

- 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.²⁴

1.25 The CPSU referred to concern among ComSuper employees – who are all based in Canberra – about losing these mobility rights:

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...

22 *Submission 2*, p. 2.

23 *Submission 5*, p. 1.

24 *Submission 4*, p. 3.

There is a concern that [losing these mobility rights] 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.²⁵

1.26 The CPSU supported an amendment to the bill that would allow ComSuper staff the right to return to the APS after the move into the CSC:

Such an amendment would not affect CSC's capacity to operate or impose onerous obligations on the CSC. It simply gives these employees rights to move back into the APS without having to resign and then be reengaged.²⁶

1.27 In its submission, ComSuper noted that there are 'some ComSuper staff for whom opportunities to re-enter the APS are important'.²⁷ ComSuper explained that, for this reason, amendments to the bill to enable staff to re-enter the APS 'would be likely to be viewed beneficially by these staff'.²⁸

1.28 CSC stated that it understood that some current ComSuper employees may wish to remain part of the APS or re-enter the APS in the future:

CSC respects that view and would support flexibility for those people. This is a matter of government policy, however, and not something that CSC is able to determine.²⁹

1.29 However, CSC also noted that it was able to offer ComSuper employees good opportunities for career development:

The merged organisation will provide greater opportunity for many staff to work and develop their careers in a large diversified superannuation [organisation] engaged in the wider superannuation industry.³⁰

1.30 The Australian Public Service Commissioner (Commissioner), Mr John Lloyd, did not support an amendment to the bill for special mobility arrangements for former APS employees who become employed by the CSC. The Commissioner outlined the reason for his objection:

Mobility rights between APS and non-APS Commonwealth authorities were removed in 1999 when the Public Service Act came into effect. The provisions were found to impose obligations on employers that involved legacy rights of return for employees that could be held for several years.

25 *Submission 4*, p. 3.

26 *Submission 4*, pp 3-4.

27 *Submission 1*, p. 1.

28 *Submission 1*, p. 1.

29 *Submission 2*, p. 2.

30 *Submission 2*, p. 2.

This adversely affected the capacity of employers to manage their workforces in a flexible manner.³¹

1.31 The Commissioner stated that, in normal circumstances, employees of non-APS Commonwealth authorities are able to compete on merit for all advertised employment opportunities in the APS. While the Commissioner did acknowledge that there are currently arrangements in place which restrict the eligibility of non-APS employees applying for most APS jobs, he continued:

These restrictions are temporary and are under review by the Government, following the achievement of a significant reduction to the size of the APS workforce.

Given the temporary nature of the recruitment restrictions, I see no compelling reason to introduce special mobility arrangements for former ComSuper employees to return to the APS.³²

1.32 Finance also referred to the temporary nature of the current restrictions on APS recruitment:

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.³³

Maternity Leave entitlements

1.33 CPSU referred to the current paid maternity leave entitlements of ComSuper employees to 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.³⁴

1.34 CPSU noted that the CSC is not listed as a prescribed authority in Schedule 1 of the *Maternity Leave (Commonwealth Employees) Regulations 1982* (the Regulations), which sets out the bodies corporate that are prescribed authorities for the purposes of the Maternity Leave Act. CPSU expressed concern at the potential loss of this entitlement for ComSuper employees:

31 *Submission 3*, p. 1.

32 *Submission 3*, p. 1.

33 *Submission 5*, p. 5.

34 *Submission 4*, p. 4.

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.³⁵

1.35 CSC confirmed that, unlike ComSuper, it was not covered by the Maternity Leave Act. CSC informed the committee that plans were already in place to address this issue:

[T]ransferring ComSuper staff are legally required to have terms and conditions following the merger that are no less favourable than those that applied immediately prior to the merger. The CSC Board will make a determination under [section] 26 of the *Governance of Australian Government Superannuation Schemes Act 2011* to implement this.³⁶

Administration fee for the PSSAP

1.36 CPSU objected to the introduction of the administration fee for PSSAP members:

[It] will have a detrimental [e]ffect on the retirement income of members of the [PSSAP] scheme. It also breaches the current [government's] undertaking not to make adverse changes to superannuation in this term.³⁷

1.37 The EM explains that these amendments will bring the PSSAP into line with arrangements in superannuation accumulation funds in the general community:

In accumulation superannuation funds it is very common for members of the fund to meet the administration costs. Members of accumulation funds in the general community pay fees; Commonwealth employees who have chosen an accumulation superannuation fund other than PSSAP pay fees; and Federal Parliamentarians elected since 2004 pay fees.³⁸

1.38 The EM also notes:

The changes that relate to the PSSAP administration fees have estimated savings of \$26.8 million over four years from 2015-16.³⁹

35 *Submission 4*, p. 4.

36 *Submission 2*, p. 2. See also Department of Finance, *Submission 5*, p. 4.

37 *Submission 4*, p. 1.

38 EM, p. 34.

39 EM, p. 6.

Comments by the Senate Standing Committee for the Scrutiny of Bills

1.39 In its Alert Digest, the Senate Standing Committee for the Scrutiny of Bills referred to the rule making power in Schedule 2 of the bill.⁴⁰ This rule making power gives the Minister for Finance a broad power to make rules dealing with transitional and other matters necessary to give effect to the merger of ComSuper into CSC. The bill makes express provision for the rules to modify the operation of a number of Commonwealth Acts, including the Public Service Act and the Governance Act.⁴¹

1.40 The EM states:

This [provision] may be considered a 'Henry VIII clause' in that it may potentially allow the Minister to modify the operation of [Commonwealth] Acts by making rules. That is, it may result in the operation of primary legislation being expressly or impliedly amended by subordinate legislation. This provision is included to allow the Minister to deal with any unintended or unforeseen consequences for CSC employees or transferring ComSuper staff arising out of the transfer of employment arrangements. The intention is that, to the extent possible and practical, there is no enhancement or reduction in the accrued entitlements of CSC employees and transferring ComSuper staff. Where a rule [could] potentially modify the application of an Act, which another Minister is responsible for, it is intended for such rules to be made only after that other Minister has been consulted.⁴²

1.41 The committee did not receive any submissions commenting on this aspect of the bill.

Committee view

1.42 The two main issues raised with the committee in this inquiry related to the transfer of employees from ComSuper to CSC. On this point, the committee notes Finance's advice on the consultation which has occurred on this aspect of the bill.

1.43 With respect to the concerns that ComSuper employees would lose employment mobility to other APS agencies following the merger with CSC, the committee does understand that this may be viewed as a problem by some ComSuper employees who wish to pursue their career through other APS agencies. However, as the Australian Public Service Commissioner has pointed out, ordinarily non-APS employees are free to compete on merit for APS positions and the existing recruitment restrictions are only temporary and currently under review. The committee also notes that CSC is able to offer ComSuper employees opportunities for career development within that organisation. Given these circumstances the committee does not support any amendment to the bill to provide ComSuper employees with mobility rights to return to the APS following the merger.

40 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 4 of 2015*, 25 March 2015, pp 32-33.

41 EM, p. 33.

42 EM, p. 33.

1.44 On the matter of maternity leave entitlements of ComSuper employees following the merger, the committee supports the course of action outlined in the submission by CSC and Finance to address this issue.

1.45 In relation to the non-merger issue which was raised with the committee, namely, the introduction of administrative fees for PSSAP members, the committee notes that this will bring the PSSAP into line with private sector accumulation superannuation funds and result in significant savings to government over the next four years.

Recommendation 1

1.46 The committee recommends that the Senate pass the bill.

Senator Cory Bernardi

Chair

Labor Senators' Additional Comments

1.1 Labor senators see value in an amendment to ensure mobility rights for ComSuper staff, who have been affected by a government decision to merge ComSuper and CSC, to ensure they can move back into the APS without having to resign and be re-engaged. These staff should not be disadvantaged particularly with the current restrictions on non-APS employees applying for most APS jobs. These restrictions may be under review by the government but currently there is no timeframe for them to be lifted. Labor Senators will engage with the government on this issue.

Senator Katy Gallagher

Deputy Chair

APPENDIX 1

Submissions received by the Committee

Submissions

- 1 ComSuper
- 2 Commonwealth Superannuation Corporation
- 3 Australian Public Service Commissioner
- 4 Community and Public Sector Union
- 5 Department of Finance