



**This Digest replaces an earlier version dated 19 February 2010 to remove some references to the role of the proposed Commonwealth Superannuation Corporation (CSC) in respect of the Parliamentary Contributory Superannuation Scheme (PCSS), and make some minor technical corrections.**

## **Governance of Australian Government Superannuation Schemes Bill 2010**

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## Governance of Australian Government Superannuation Schemes Bill 2010

**Date introduced:** 4 February 2010

**House:** House of Representatives

**Portfolio:** Finance and Deregulation

**Commencement:** 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 establishes a single trustee entity responsible for the operations of most Commonwealth government superannuation schemes.<sup>1</sup> This new entity will be known as the Commonwealth Superannuation Corporation (CSC).

The Commonwealth superannuation schemes for which the proposed CSC will be responsible will be:

- the scheme established under the *Superannuation Act 1922* (the 1922 scheme)
- the Commonwealth Superannuation Scheme (CSS)
- the Public Sector Superannuation Scheme (PSS)
- the Public Sector Superannuation Accumulation Plan (PSSAP)
- 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)
- the Military Superannuation and Benefits Scheme (MSBS).

This Bill is one of three related Bills introduced at the same time that will be debated together. The other Bills are:

- the Comsuper Bill 2010, and

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1. The exceptions are the Governor General's Superannuation Scheme and the Federal Judges' Pension Scheme.

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- Superannuation Legislation (Consequential Amendments and Transitional Provisions) Bill 2010.

## Background

Except for the PSSAP, the above schemes are wholly or chiefly defined benefit schemes,<sup>2</sup> under which the final benefit is generally determined by a member's years of service and final salary on retirement.

Again, except for the PSSAP, these schemes will be administered by Comsuper, a new administrative entity set up under the provisions of the Comsuper Bill 2010, also before Parliament.<sup>3</sup>

The PSSAP is an accumulation scheme, under which a member's benefits are determined by their contributions and the scheme's investment returns. They are comparatively simple to administer, compared to the defined benefit schemes.

Only the MSBS and the PSSAP are open to new members. The other schemes have been closed to new members for some time and now have either very low, or declining, numbers of active members. However, there are a significant number of members receiving benefits (mainly pensions), and those payment will continue to be made for some time to come.

Currently the trustee functions for the above Commonwealth superannuation schemes are undertaken by:

- the Australian Reward Investment Alliance (ARIA) for the PSS, PSSAP and CSS
- the Military Superannuation and Benefits Board (MSBS Board) for the MSBS
- the Defence Force Retirement and Death Benefits Authority (the Authority) for the DFRB and DFRDB
- the Commissioner for Superannuation for the 1922 and PNG schemes.

Generally, these trustee entities will be combined to form the new CSC. The position of Commissioner for Superannuation will be abolished under the provisions of the Superannuation Legislation (Consequential Amendments and Transitional Provisions) Bill 2010 and its responsibilities for the PNG and 1922 scheme transferred to the CSC.

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2. Technically, the CSS and MSBS are 'hybrid' schemes, having both 'defined benefit' and 'accumulated' components.
  3. See M Donaldson & L Nielson, Comsuper Bill 2010, Bills digest, no. 106, 2009–10, Parliamentary Library, Canberra, 18 February 2010.

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The creation of the new CSC is complementary to the streamlining of the administration of Commonwealth superannuation schemes announced by the Minister for Finance and Deregulation in November 2009.<sup>4</sup>

### **Basis of policy commitment**

The proposed changes were announced by the Minister for Finance and Deregulation and the then Minister for Superannuation and Corporate Law on 31 October 2008.<sup>5</sup>

### **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**

There are several points in favour of the proposed changes:

- there will be a single trustee to deal with a single scheme administrator for the majority of the above superannuation schemes,<sup>6</sup> and
- there are a number of economies of scale to be gained from the merging of the current separate trustee entities. The most important is the reduction in fees for external services, such as asset consulting, investment brokage and securities custody arrangements that a large investment fund can achieve.<sup>7</sup>

However, these superannuation schemes have different memberships. For example the membership of the DFRDB and DFRB are largely retired military personal. They may

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4. L Tanner (Minister for Finance and Deregulation), *Government Superannuation Reforms*, media release, 80/2009, Canberra, 26 November 2009.
  5. 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.
  6. The administration of the PSSAP is to be put to tender for administration by the private sector. L Tanner (Minister for Finance and Deregulation), 'Second reading speech: Comsuper Bill 2010', House of Representatives, *Debates*, 4 February 2010, p. 2.
  7. The new fund will have \$19bn of assets under management and have 650 000 members. L Tanner (Minister for Finance and Deregulation), 'Second reading speech: Governance of Australian Government Superannuation Schemes Bill 2010', House of Representatives, *Debates*, 4 February, 2010, p.1. The current size of the CSS, PSS and MSBS funds (which are the schemes that have funds under management) are separately much smaller.

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consider that their needs are not being adequately represented by the new CSC. The Government has emphasised that there will be several military representatives on the CSC's Board (the Board).<sup>8</sup> Further, the CSC Board will be able to delegate decision concerning the military superannuation schemes to a committee made up of military representatives (**Clause 58 of Schedule 1** of the Consequential Bill).

## Financial implications

The Explanatory Memorandum notes that ARIA, MSB Board and the Authority will jointly incur a cost of \$1.1 million related to their merger.<sup>9</sup>

## Main provisions

**Clause 4** continues the existence of the board established by the *Superannuation Act 1990*, currently known as ARIA and gives it a new name, the Commonwealth Superannuation Corporation (CSC). All other trustee entities noted above will be merged into this entity.

**Clause 7** sets out the functions of the proposed CSC which will include all functions conferred on CSC by the Governance of Australian Government superannuation Schemes Act (when enacted) and each and every Act administered by CSC.

**Clause 8** provides that CSC will have a Board, while **clause 10** specifies that it will have a Chair and ten other members (called 'directors' in this Bill). **Subclause 10(2)** provides that:

- three Board members may be nominated by the President of the Australian Council of Trade Unions, and
- two Board members may be nominated by the Chief of the Defence Force.

All directors must meet the fitness and propriety standard specified in Part 3 of the *Superannuation Industry (Supervision) Act 1993*: **clause 11**. The term of appointment may be for not more than three years: **clause 12**.

**Clause 13** specifies that a director's payments will be determined by the Remuneration Tribunal.

**Clause 16** allows the responsible Minister<sup>10</sup> to terminate a director's appointment for a variety of reasons, including but not limited to, the director's:

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8. Ibid.

9. Explanatory Memorandum, Governance of Australian Government Superannuation Scheme Bill 2010, p. 6.

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- misbehaviour
- physical or mental incapacity
- bankruptcy or insolvency, and
- unexplained absences from three consecutive board meetings.

However, the Minister must not terminate the appointment of a director nominated by the President of the Australian Council of Trade Unions under any of the prescribed grounds unless the President consents to the termination: **subclause 16(5)**. **Subclause 16(6)** applies in similar terms to a director nominated by the Chief of Defence Force. This consent requirement does not apply to termination under **subclauses 16(3)-(4)**.

**Clause 21** requires directors to disclose any conflict of interest in relation to matters considered by the CSC Board.

**Clauses 27 and 28** set out the accounting requirements for CSC.

**Clause 29** requires CSC to submit annual reports to the responsible Minister in relation to the superannuation schemes and funds administered by it. This will be a single report covering all these schemes. The financial statements of CSC will be subject to an Auditor-General's examination: **subclause 29(3)**.

Under **clause 30**, the *Trustee Act 1925 (ACT)* applies to the directors acting in the performance of their duties, for those matters not otherwise covered in relevant Commonwealth legislation.

According to **items 31 and 32** CSC, and the superannuation schemes administered by it, are not subject to taxation under a law of the Commonwealth except for the provisions of:

- *A New Tax System (Goods and Services Tax) Act 1999*
- the *Fringe Benefits Tax Assessment Act 1986*<sup>11</sup>
- the *Income Tax Assessment Act 1936*
- the *Income Tax Assessment Act 1997*
- the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.<sup>12</sup>

In addition CSC is not subject to a tax law of a State or Territory.

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10. In accordance with section 19A of the *Acts Interpretation Act 1901* a reference to 'the Minister' is a reference to the Minister for Finance and Deregulation.

11. Note however this Act only applies to the CSC acting in its own capacity.

12. Note however this Act only applies to the relevant schemes, and the CSC when performing functions in relation to the funds.

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This appears to be consistent with the normal taxation arrangements applying to all other superannuation funds.

**Clause 33** specifies the source of funds for paying remuneration and allowances for the Chair and directors. Briefly, this source of funds is:

- where a function is performed in relation to the 1922 and PNG schemes or the DFRB and DFRDB, out of consolidated revenue
- where a function is performed in relation to other superannuation funds administered by CSC, payments are to come from either that fund, the consolidated revenue fund or partly out of the specific superannuation fund and partly out of the consolidated revenue fund.

The 1922, PNG, DFRB and DFRDB superannuation schemes do not have separate invested assets under management. Rather, their member entitlements are now paid directly from consolidated revenue. In these circumstances it is appropriate that all Board member's remuneration in respect of these schemes comes from that source.

The CSS, MSBS, PSS and the PSSAP all have assets under management. Thus it is appropriate that a portion of the Board member's remuneration comes from these assets.

**Clause 34** 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.

**Subclause 35(1)** provides that CSC may delegate all or any of its powers to various, named positions, including a member of the staff of CSC; the CEO or a member of the staff of ComSuper; a member of the Australian Defence Force; or an officer or employee of a person who is responsible for investing money forming part of a superannuation fund administered by CSC.<sup>13</sup> **Subclause 35(2)** states that despite proposed subsection 35(1), CSC may only delegate its power to reconsider certain decisions to specified bodies. For example, if the original decision was made by CSC or its delegate under the *Defence Force Retirement and Death Benefits Act 1973*, then CSC may only delegate its power to

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13. Some of these powers may be sub-delegated under **proposed subsections 35(3)–(5)**. **Proposed subsection 35(6)** states that section 34AA and paragraphs 34AB(a), (b) and (d) of the *Acts Interpretation Act 1901* apply in relation to a sub-delegation in a corresponding way to the way in which they apply to a delegation. (Section 34AA of that Act deals with delegations, and section 34AB deals with the effect of delegations.)

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reconsider the decision to the Defence Force Case Assessment Committee established under section 100 of that Act.

**Clause 36** provides for the Governor-General to make regulations on matters arising from this particular Act, once it passes through Parliament.

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