



Superannuation Legislation (Consequential Amendments and Transitional Provisions) Bill 2011

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Superannuation Legislation (Consequential Amendments and Transitional Provisions) Bill 2011

Date introduced: 24 March 2011

House: House of Representatives

Portfolio: Finance and Deregulation

Commencement: **Schedules 1 and 2** commence immediately after the commencement of section 2 of the proposed *Governance of Australian Government Superannuation Schemes Act 2011*. The formal provisions of the Bill commence on Royal Assent

Links: The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bill's home page, or through <http://www.aph.gov.au/Bills/>. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at <http://www.comlaw.gov.au/>.

Purpose

This Bill makes consequential amendments to a large number of Acts as a result of the passage of the ComSuper Bill 2011 and the Governance of Australian Government Superannuation Schemes Bill 2011 (see separate Bills Digest). In support of the proposed changes made by these Bills this particular Bill amends the following Acts:

- *Administrative Appeals Tribunal Act 1975*
- *Auditor-General Act 1997*
- *Australian Crime Commission Act 2002*
- *Australian Federal Police Act 1979*
- *Australian Prudential Regulation Authority Act 1998*
- *Australian Radiation Protection and Nuclear Safety Act 1998*
- *Australian Securities and Investments Commission Act 2001*
- *Building and Construction Industry Improvement Act 2005*
- *Classification (Publications, Films and Computer Games) Act 1995*
- *Coordinator-General for Remote Indigenous Services Act 2009*
- *Crimes (Superannuation Benefits) Act 1989*
- *Defence Act 1903*
- *Defence Force Retirement and Death Benefits Act 1973*
- *Defence Forces Retirement Benefits Act 1948*
- *Director of Public Prosecutions Act 1983*
- *Family Law Act 1975*
- *Federal Court of Australia Act 1976*
- *Gene Technology Act 2000*
- *Governor-General Act 1974*

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- *Inspector-General of Taxation Act 2003*
- *Military Superannuation and Benefits Act 1991*
- *National Blood Authority Act 2003*
- *Native Title Act 1993*
- *Ombudsman Act 1976*
- *Papua New Guinea (Staffing Assistance) Act 1973*
- *Parliamentary Contributory Superannuation Act 1948*
- *Productivity Commission Act 1998*
- *Renewable Energy (Electricity) Act 2000*
- *Social Security (Administration) Act 1999*
- *Superannuation Act 1922*
- *Superannuation Act 1976*
- *Superannuation Act 1990*
- *Superannuation Act 2005*
- *Superannuation (Productivity Benefit) Act 1988*, and
- *Veterans' Entitlements Act 1986*.

It also amends the Financial Management and Accountability Regulations 1997.

Background

The background to the proposed changes is in the Parliamentary Library's recent Bills Digest for the the ComSuper Bill 2011 and the Governance of Australian Government Superannuation Schemes Bill 2011.

Basis of policy commitment

The proposed changes to the administration of Commonwealth Government superannuation schemes noted above were first announced on 31 October 2008.¹ Further decisions were announced in November 2009.²

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1. N Sherry (then Minister for Superannuation and Corporate Law) and L Tanner (the Minister for Finance and Deregulation), *Streamlined administration arrangements for Australian Government superannuation schemes*, joint media release, Canberra, 1 October 2008, viewed 30 March 2011, <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2008/072.htm&pageID=003&min=njs&Year=2008&DocType=0>
 2. L Tanner (then Minister for Finance and Deregulation), *Government superannuation reforms*, media release, Canberra, 26 November 2009, viewed 30 March 2011, http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/31EV6/upload_binary/31ev60.pdf;fileType=application/pdf#search=%22Tanner%22

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Committee consideration

This Bill and the related Bills have not, as at the date of writing, been referred to a parliamentary committee.³ However, the Senate Standing Committee on Finance and Public Administration considered Governance of Australian Government Superannuation Scheme Bill 2010, ComSuper Bill 2010 and Superannuation Legislation (Consequential Amendments and Transitional Provisions) Bill 2010 (that is, the 2010 Bills) during early 2010. Its report concluded that these Bills should be passed. That said, dissenting reports by Coalition and Family First members of this Committee recommended that the 2010 Bills not be supported in the Senate.⁴

Policy position of non-government parties/independents and position of major interest groups

These positions are outlined in the Library's recent Bills Digest for the ComSuper Bill 2011 and the Governance of Australian Government Superannuation Schemes Bill 2011.

Financial implications

The relevant Explanatory Memorandum notes that this Bill has no financial impact.⁵

Key provisions

Schedule 1—Consequential Amendments

The bulk of the amendments in **Schedule 1** replace references to the current bodies either managing or acting as trustee for various Australian government superannuation schemes with a reference to the proposed Commonwealth Superannuation Corporation (CSC) and the legislation establishing this body and governing its operation (the Governance of Australian Government Superannuation Schemes Bill 2011). These amendments do not require further elaboration here.⁶

3. The related Bills are the ComSuper Bill 2011 and the Governance of Australian Government Superannuation Schemes Bill 2011.

4. Senate Finance and Public Administration Legislation Committee, *Governance of Australian Superannuation Schemes Bill 2010, ComSuper Bill 2010 and the Superannuation Legislation (Consequential Amendments and Transitional Provisions) Bill 2010*, Committee Report, March 2010, p. 15, p. 21 and p. 23, viewed 30 March 2011, http://www.apf.gov.au/senate/committee/fapa_ctte/super_schemes/report/report.pdf

5. Explanatory Memorandum to the Superannuation Legislation (Consequential Amendments and Transitional Provisions) Bill 2011, 24 March 2011, p. 5.

6. The Parliamentary Library's recent Bills Digest for the ComSuper Bill 2011 and the Governance of Australian Government Superannuation Schemes Bill 2011 contains further commentary on these changes, L. Nielson, *Comsuper Bill 2011 and Governance of Australian Government Superannuation Schemes Bill 2011*, Bills Digest,

Another set of changes allows any decision made in relation to the government superannuation schemes administered by the proposed CSC to be reviewed by the CSC. If the scheme member is unhappy with the outcome of that review these changes allow that decision to be further appealed to the Administrative Appeals Tribunal. The capacity for a CSC decision to be reviewed is especially sensitive for members of the military schemes (particularly for members of the Defence Force Retirement and Death Benefits Scheme (DFRDB) and the Defence Forces Retirement Benefits Scheme (DFRB), where it is understood that the preference is for current military personnel to undertake these reviews in the first instance.

Part 1—General amendments

The following comments concentrate on the amendments to arrangements affecting members, and former members, of the military superannuation schemes, as these amendments were of great interest to Parliament when the 2010 Bills were last debated.⁷

Item 55 of Schedule 1 to the Bill repeals current subsection 99(4) of the *Defence Force Retirement and Death Benefits Act 1973* (DFRDB Act) and inserts a new subsection that requires that after receiving a request for reconsideration of a CSC decision that latter body must either:

- refer this request to the new Defence Force Case Assessment Panel for recommendation
- refer this request to this new panel for reconsideration (in the event that this panel has been delegated the necessary powers to do so – see below) or
- reconsider this decision itself.

If the CSC reconsiders this decision itself, **new subsection 99(4A)** of the DFRDB Act gives it the power to confirm, vary or set aside its previous decision and make a new one.

Item 57 repeals subsection 99(6) of the DFRDB Act, which allows an appeal to the Administrative Appeals Tribunal (AAT) in relation to decision made by the current Defence Force Retirement and Death Benefits Authority in respect of the decisions made by that Authority. However, **proposed section 107** allows appeals to the AAT in respect of the CSC's decisions in relation to military superannuation matters.

Item 58 inserts **Division 2** into **Part XI** of the DFRDB Act. This new division requires the CSC to establish the Defence Force Case Assessment Panel that will be able to reconsider the CSC's decision in relation to military and ex military personal.

no. 93-94, 2010-11, Parliamentary Library, Canberra, 2011, viewed 5 May 2011,
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2F742555%22>

7. These schemes are the Defence Force Retirement Benefits Scheme (DFRB), the Defence Force Retirement and Death Benefits Scheme (DFRDB) and the Military Superannuation and Benefits Scheme (MSB).

Proposed **new section 101** of the DFRDB Act specifies the membership of this new panel, which must be made up of:

- a CSC director nominated by the Chief of the Defence Force⁸
- a person nominated by the Chief of the Air Force
- a person nominated by the Chief of the Army
- a person nominated by the Chief of the Navy and
- up to two other persons determined by the CSC.

Proposed subsection 101(2) of the DFRDB Act requires that the CSC director is to be the chair of this panel. The functions of this panel are set out in **new section 102** of the DFRDB Act. These functions are to reconsider any of the CSC's decisions referred to it under this Part of the DFRDB Act.

If the CSC delegates the necessary powers to this panel it may confirm, vary or set aside a previous CSC decision and substitute its own. If the CSC has not delegated the necessary powers to the panel it may only make recommendations back to the CSC in relation to the decision under consideration.

Proposed new section 106 of the DFRDB Act specifies that where the panel makes recommendations to the CSC board, the panel has the power to either:

- confirm the panel's decision
- vary the panel's decision or
- set the panel's decision aside and substitute a new decision.

This section only applies where the new panel has not had the necessary powers delegated to it by the CSC. In these circumstances only it is important to note that under **subclause 21(3)** of the Governance Bill where the CSC board considers a matter only relating to the military superannuation schemes a director nominated by the Chief of the Defence Force must be present. That said, there are circumstances where the CSC board could come to a decision on a military superannuation scheme matter without the agreement of the CSC directors nominated by the Chief of the Defence Force. The commentary on **clause 23** of the Governance Bill in the Parliamentary Library's recent Bills Digest for the ComSuper Bill 2011 and the Governance of Australian Government Superannuation Schemes Bill 2011 provides further details on these circumstances.

Proposed new section 107 of the DFRDB Act allows an appeal to the AAT in respect of a CSC decision that:

- has been made under **new paragraphs 99(4A)(a) or (b)** of the DFRDB Act (see discussion of **item 55** above)
- has been reviewed and changed by the new Defence Force Case Assessment Panel or

8. **Clause 11** of the Governance of Australian Government Superannuation Schemes Bill 2011 (Governance Bill) provides that the Chief of the Defence Force may nominate 2 directors of the proposed CSC's board.

- has been confirmed or varied after receiving a relevant recommendation from this panel.

The above provisions dealing with a review of the CSC decision in respect of the DFRDB Act also apply to decisions made in respect of the *Defence Forces Retirement Benefits Act 1948* (see **item 41** which inserts a definition for the term 'decision of the CSC').

The effect of **items 222, 223, 225, 228, 229** and **231** is to allow current and former members of the Public Sector Superannuation Scheme (PSS) and Commonwealth Superannuation Scheme (CSS) to have any voluntary amounts they contribute to superannuation (say via salary sacrifice) to be placed in the Public Sector Superannuation Scheme – Accumulation Plan (PSSAP).

Currently, the members of such schemes cannot direct their additional voluntary contributions to a government superannuation scheme.⁹ These changes allow such contributions to be made. The PSSAP is also to be administered by the proposed CSC.

Parts 2 to 7

Parts 2 to 7 of this Bill generally contain transitional provisions allowing the transfer of all the functions and property previously exercised or held by the various bodies now managing Commonwealth government superannuation schemes to the proposed CSC.

9. Commonwealth employees may, however, direct their voluntary contributions to the Australian Government Employees Superannuation Trust (AGEST). However, this particular trust will not be managed by the proposed CSC.

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