



Governance of Australian Government Superannuation Schemes Act 2011

No. 59, 2011

**An Act to provide for the administration of certain
Australian Government superannuation schemes
by a single body, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Australian Government superannuation schemes
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[Assented to 28 June 2011]

The Parliament of Australia enacts:

Governance of Australian Government Superannuation Schemes Act 2011 *No. 59, 2011* *1*

Part 1—Preliminary

1 Short title

This Act may be cited as the *Governance of Australian Government Superannuation Schemes Act 2011*.

2 Commencement

This Act commences on 1 July 2011.

3 Objects

The objects of this Act are:

- (a) to provide for the administration of certain Australian government superannuation schemes, including military schemes, by a single body; and
- (b) to ensure that when performing a function under:
 - (i) a determination made under Part IIIAA of the *Defence Act 1903*; or
 - (ii) the *Defence Force Retirement and Death Benefits Act 1973*; or
 - (iii) the *Defence Forces Retirement Benefits Act 1948*; or
 - (iv) the *Military Superannuation and Benefits Act 1991*;CSC has regard to the unique nature of military service, as recognised by the schemes established by or under those Acts.

4 Definitions

In this Act:

1922 scheme means the scheme established under the *Superannuation Act 1922*.

Act administered by CSC means:

- (a) the *Defence Act 1903*, to the extent that the Act deals with superannuation benefit in Part IIIAA; or

- (b) the *Defence Force Retirement and Death Benefits Act 1973*;
or
- (c) the *Defence Forces Retirement Benefits Act 1948*; or
- (d) the *Military Superannuation and Benefits Act 1991*; or
- (e) the *Papua New Guinea (Staffing Assistance) Act 1973*, to the extent that the Act deals with superannuation; or
- (f) the *Superannuation Act 1922*; or
- (g) the *Superannuation Act 1976*; or
- (h) the *Superannuation Act 1990*; or
- (i) the *Superannuation Act 2005*.

bank has the same meaning as in the *Commonwealth Authorities and Companies Act 1997*.

Board means the Board of CSC, established by section 9.

Chair means the Chair of the Board.

CSC (short for Commonwealth Superannuation Corporation) means the body corporate continued in existence by section 5.

CSS (short for Commonwealth Superannuation Scheme) has the same meaning as in the *Superannuation Act 1976*.

CSS Fund has the same meaning as Fund has in the *Superannuation Act 1976*.

Defence Minister means the Minister who administers the *Defence Act 1903*.

DFRB (short for Defence Forces Retirement Benefits Scheme) means the scheme provided for by the *Defence Forces Retirement Benefits Act 1948*.

DFRDB (short for Defence Force Retirement and Death Benefits Scheme) means the scheme provided for by the *Defence Force Retirement and Death Benefits Act 1973*.

DFSPB (short for Defence Force (Superannuation) (Productivity Benefit) Scheme) means the scheme established by determinations made under Part IIIAA of the *Defence Act 1903*.

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director means a director of the Board, and includes the Chair.

disqualified person has the same meaning as in Part 15 of the *Superannuation Industry (Supervision) Act 1993*.

governing deed means:

- (a) in relation to the MSB—the Trust Deed (within the meaning of the *Military Superannuation and Benefits Act 1991*); or
- (b) in relation to the PSS—the Trust Deed (within the meaning of the *Superannuation Act 1990*); or
- (c) in relation to the PSSAP—the Trust Deed (within the meaning of the *Superannuation Act 2005*).

military schemes means:

- (a) the DFRB, DFRDB, DFSPB or MSB; or
- (b) the DFRB, DFRDB, DFSPB and MSB.

modifications includes additions, omissions and substitutions.

MSB (short for Military Superannuation and Benefits Scheme) has the same meaning as Scheme has in the *Military Superannuation and Benefits Act 1991*.

MSB Fund has the same meaning as Fund has in the *Military Superannuation and Benefits Act 1991*.

PNG (short for Papua New Guinea Scheme) means the scheme provided for by regulations made under the *Papua New Guinea (Staffing Assistance) Act 1973*.

PSS (short for Public Sector Superannuation Scheme) has the same meaning as Public Sector Superannuation Scheme has in the *Superannuation Act 1990*.

PSSAP (short for Public Sector Superannuation Accumulation Plan) has the same meaning as in the *Superannuation Act 2005*.

PSSAP Fund has the same meaning as in the *Superannuation Act 2005*.

PSS Fund has the same meaning as in the *Superannuation Act 1990*.

relevant organisation means:

- (a) an organisation:
 - (i) a substantial number of whose members are members of a superannuation scheme administered by CSC or eligible employees within the meaning of the *Superannuation Act 1976*; and
 - (ii) whose principal purpose is to protect and promote the interest of its members in matters concerning their employment; or
- (b) an organisation that has as one of its principal purposes the protection and promotion of beneficiaries under a superannuation scheme administered by CSC in matters concerning their entitlements as beneficiaries.

SIS fitness and propriety standard means a standard prescribed under Part 3 of the *Superannuation Industry (Supervision) Act 1993* relating to fitness and propriety for trustees of funds (within the meaning of that Act) and RSE licensees (within the meaning of that Act).

superannuation fund administered by CSC means:

- (a) the CSS Fund; or
- (b) the MSB Fund; or
- (c) the PSS Fund; or
- (d) the PSSAP Fund.

superannuation scheme administered by CSC means:

- (a) the 1922 scheme; or
- (b) the CSS; or
- (c) the DFRB; or
- (d) the DFRDB; or
- (e) the DFSPB; or
- (f) the MSB; or
- (g) the PNG; or
- (h) the PSS; or
- (i) the PSSAP.

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superannuation scheme and superannuation fund administered by CSC means:

- (a) each superannuation scheme administered by CSC; and
- (b) each superannuation fund administered by CSC.

Part 2—Commonwealth Superannuation Corporation

Division 1—Establishment and constitution of CSC

5 Establishment

The board established by section 20 of the *Superannuation Act 1990* as the Australian Reward Investment Alliance continues in existence by force of this section as a body corporate, under and subject to the provisions of this Act, under the name Commonwealth Superannuation Corporation (*CSC*).

Note 1: See also section 25B of the *Acts Interpretation Act 1901*.

Note 2: Subject to section 6 of this Act, the *Commonwealth Authorities and Companies Act 1997* applies to CSC. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and the conduct of officers.

6 Modification of the *Commonwealth Authorities and Companies Act 1997*

- (1) Despite section 5 of this Act:
 - (a) section 15 of the *Commonwealth Authorities and Companies Act 1997*; and
 - (b) any other provision of that Act prescribed by the regulations; do not apply in relation to CSC's management and investment of money that forms part of a superannuation fund administered by CSC.
- (2) If, at any time, CSC does not hold money on its own account, then, despite section 7 of the *Commonwealth Authorities and Companies Act 1997*, CSC is treated as if it were a Commonwealth authority for the purposes of that Act.

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7 CSC's constitution

- (1) CSC:
 - (a) must have a seal; and
 - (b) may acquire, hold and dispose of real and personal property; and
 - (c) may sue and be sued in its corporate name.
- (2) The seal of CSC is to be kept in such custody as the Board directs and must not be used except as authorised by the Board.
- (3) All courts, judges and persons acting judicially must:
 - (a) take judicial notice of the imprint of the seal of CSC appearing on a document; and
 - (b) presume that the document was duly sealed.

8 CSC's functions

- (1) CSC has the following functions:
 - (a) such functions as are conferred on CSC by this Act and each Act administered by CSC;
 - (b) to be responsible for the general administration of this Act and each Act administered by CSC;
 - (c) to do anything incidental to, or conducive to, the performance of the above functions.
- (2) To avoid doubt, when performing a function under an Act administered by CSC, CSC is performing the function under the relevant Act and not this Act.
- (3) When performing a function under:
 - (a) a determination made under Part IIIAA of the *Defence Act 1903*; or
 - (b) the *Defence Force Retirement and Death Benefits Act 1973*; or
 - (c) the *Defence Forces Retirement Benefits Act 1948*; or
 - (d) the *Military Superannuation and Benefits Act 1991*;CSC must have regard to the unique nature of military service, as recognised by the schemes established by or under those Acts.

- (4) CSC has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Division 2—Board of CSC

Subdivision A—Establishment and function

9 Establishment

There is to be a Board of CSC.

10 Function

- (1) The function of the Board is to ensure that CSC performs its functions in a proper, efficient and effective manner.
- (2) The Board has the power to do all things necessary or convenient to be done for or in connection with the performance of its function.
- (3) All acts and things done in the name of, or on behalf of, CSC by the Board are taken to have been done by CSC.

11 Membership

- (1) The Board consists of:
 - (a) a Chair; and
 - (b) 10 other directors.

Note: See also subsection 38(2).
- (2) Subject to subsection (4), of the 10 other directors:
 - (a) the President of the Australian Council of Trade Unions may nominate, in writing, 3 persons; and
 - (b) the Chief of the Defence Force may nominate, in writing, 2 persons.

Note: The Minister chooses the remaining 5 other directors.

- (3) However, a person is not eligible for nomination if the person's appointment would result in a contravention of a SIS fitness and propriety standard.

- (4) Before nominating a person, the President of the Australian Council of Trade Unions must consult with one or more relevant organisations.
- (5) Before nominating a person, the Chief of the Defence Force must consult with one or more relevant organisations.
- (6) A nomination must specify the period for which the nominee is to be appointed. The period may not be more than 3 years.
- (7) The performance of a function or the exercise of a power of the Board is not affected by a vacancy in the membership of the Board.

Subdivision B—Appointment etc. of directors

12 Appointment of directors

- (1) A director is to be appointed by the Minister by written instrument, on a part-time basis.

Note: A director is eligible for reappointment: see the *Acts Interpretation Act 1901*.

- (2) A person is not eligible for appointment as a director if the person's appointment would result in a contravention of a SIS fitness and propriety standard.
- (3) In the case of a director who has been nominated by the President of the Australian Council of Trade Unions or the Chief of the Defence Force, the Minister must:
 - (a) appoint a person who has been nominated; and
 - (b) appoint the person for the period specified in the nomination.
- (4) In the case of any other director, the Minister must consult the Defence Minister before making an appointment.
- (5) The Minister must obtain the Board's agreement to a person whom the Minister proposes to appoint as the Chair (other than for the appointment of a person as the first Chair).

Note: For obtaining the Board's agreement, see section 23.

Section 13

- (6) A person's appointment as a director is not invalid because of a defect or irregularity in connection with the person's appointment.

13 Term of appointment

- (1) A director holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.
- (2) A director must not hold office continuously for more than 9 years.

14 Remuneration and allowances

- (1) A director is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, a director is to be paid the remuneration that is prescribed by the regulations.
- (2) A director is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

15 Leave of absence

- (1) The Minister may grant leave of absence to the Chair on the terms and conditions that the Minister determines.
- (2) The Chair may grant leave of absence to another director on the terms and conditions that the Chair determines.

16 Resignation

- (1) A director may resign his or her appointment by giving the Minister a written resignation.
 - (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.
 - (3) If a director nominated by the President of the Australian Council of Trade Unions or the Chief of the Defence Force resigns, the
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director must also give a copy of the resignation to the President or Chief, as appropriate.

17 Termination of appointment

Grounds for termination relating to financial circumstances etc.

- (1) The appointment of a director terminates if he or she becomes a disqualified person.
- (2) The Minister may terminate the appointment of a director if the director is not a disqualified person, but the director:
 - (a) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (b) compounds with his or her creditors; or
 - (c) makes an assignment of his or her remuneration for the benefit of his or her creditors.
- (3) The Minister may terminate the appointment of a director if:
 - (a) the director's continuation in office would contravene a SIS fitness and propriety standard; or
 - (b) the director fails, without reasonable excuse, to comply with an obligation imposed on him or her by section 27F or 27J of the *Commonwealth Authorities and Companies Act 1997*.

Other grounds for termination

- (4) Subject to subsections (7), (8) and (9), the Minister may terminate the appointment of a director:
 - (a) for misbehaviour or physical or mental incapacity; or
 - (b) if the director is absent, except on leave of absence, from 3 consecutive meetings of the Board; or
 - (c) if the director fails, without reasonable excuse, to comply with section 22.
- (5) Subject to subsections (7), (8) and (9), if the Minister is of the opinion that the directors have failed to comply with paragraph 16(1)(a) or (b) of the *Commonwealth Authorities and Companies Act 1997*, the Minister may terminate the appointment of all directors or particular directors.

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Consultation with the Defence Minister

- (6) If the circumstances mentioned in subsection (2), (3), (4) or (5) exist in relation to a director (other than one covered by subsections (7) to (9)), the Minister must consult the Defence Minister before terminating the appointment of the director.

Consent to termination

- (7) The Minister must not terminate the appointment of a director nominated by the President of the Australian Council of Trade Unions on a ground mentioned in subsection (4) or (5) unless the President consents to the termination.
- (8) The Minister must not terminate the appointment of a director nominated by the Chief of the Defence Force on a ground mentioned in subsection (4) or (5) unless the Chief consents to the termination.
- (9) However, if the President of the Australian Council of Trade Unions or the Chief of the Defence Force consents to the termination of a director, the Minister must terminate the director's appointment.

18 Acting appointments

- (1) The Minister may, by written instrument, appoint a person to act as a director:
- (a) during a vacancy in the office of the director (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the director:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
- (2) A person is not eligible for appointment to act as a director if the person's appointment would result in a contravention of a SIS fitness and propriety standard.

- (3) In the case of an appointment under subsection (1), the Minister must consult the Defence Minister before appointing a person to act as a director.
- (4) The Minister must consult the Board about the person whom the Minister proposes to appoint to act as the Chair.
- (5) If:
- (a) a director is appointed following a nomination made by the President of the Australian Council of Trade Unions; and
 - (b) a nomination is made by the President for a person to act in place of that director;
- the Minister must:
- (c) appoint the person who has been nominated to act as a director; and
 - (d) appoint the person for the period specified in the nomination.
- (6) If:
- (a) a director is appointed following a nomination made by the Chief of the Defence Force; and
 - (b) a nomination is made by the Chief for a person to act in place of that director;
- the Minister must:
- (c) appoint the person who has been nominated to act as a director; and
 - (d) appoint the person for the period specified in the nomination.
- (7) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Note: See the *Acts Interpretation Act 1901*.

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Subdivision C—Meetings of the Board

19 Holding of meetings

- (1) The Board is to hold such meetings as are necessary for the performance of its function.
- (2) The Chair:
 - (a) may convene a meeting at any time; and
 - (b) must convene a meeting within 30 days after receiving a written request from another director.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

20 Presiding at meetings

- (1) The Chair presides at all meetings of the Board at which he or she is present.
- (2) If the Chair is not present at a meeting:
 - (a) a director nominated by the Chair presides; or
 - (b) if a director is not nominated—the directors present must elect one of themselves to preside.

21 Quorum

- (1) At a meeting of the Board, 9 directors constitute a quorum.
- (2) Despite subsection (1), if:
 - (a) either:
 - (i) section 22 of this Act; or
 - (ii) section 27J of the *Commonwealth Authorities and Companies Act 1997*;prevents a director from being present during the deliberations, or taking part in any decision, of the Board with respect to a particular matter; and
 - (b) as a result, there is no longer a quorum present; and
 - (c) there are present at least 8 other directors who would be counted in determining whether a quorum is present;

the remaining directors constitute a quorum for the purpose of any deliberation or decision at the meeting with respect to that matter.

- (3) For the purposes of subsections (1) and (2), if a matter being considered, or about to be considered, at a meeting of the Board concerns only the military schemes, the quorum must include a director nominated by the Chief of the Defence Force.
- (4) If an issue arises about whether a matter being considered, or about to be considered, at a meeting of the Board concerns only the military schemes, the Chair must determine the issue.
- (5) A determination made under subsection (4) is not a legislative instrument.

22 Disclosure of interests to the Board

- (1) This section only applies to the extent that the Board does a thing relating to CSC's management and investment of money that forms part of a superannuation fund administered by CSC.
- (2) A director who has any interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Board must disclose the nature of the interest to a meeting of the Board.
- (3) The disclosure must be made as soon as possible after the relevant facts have come to the director's knowledge.
- (4) The disclosure must be recorded in the minutes of the meeting.
- (5) Unless the Minister or the Board otherwise determines, the director:
 - (a) must not be present during any deliberation by the Board on the matter; and
 - (b) must not take part in any decision of the Board with respect to the matter.
- (6) For the purposes of making a determination of the Board under subsection (5), the director:
 - (a) must not be present during any deliberation of the Board for the purpose of making the determination; and

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- (b) must not take part in making the determination.
- (7) A determination under subsection (5) must be recorded in the minutes of the meeting.

23 Voting at meetings

At a meeting of the Board:

- (a) if subsection 21(2) applies—a question is decided by the agreement of 8 directors; and
- (b) in any other case—a question is decided by the agreement of 9 directors.

24 Decisions without meetings

- (1) The Board is taken to have made a decision at a meeting if:
 - (a) without meeting, 9 directors indicate agreement with the proposed decision in accordance with the method determined by the Board under subsection (2); and
 - (b) either:
 - (i) if the proposed decision concerns only the military schemes—all directors were informed of the proposed decision; or
 - (ii) in any other case—all directors were informed of the proposed decision, or reasonable efforts were made to inform all directors of the proposed decision.
- (2) Subsection (1) applies only if the Board has determined, in writing:
 - (a) that it may make decisions without meeting; and
 - (b) the method by which directors are to indicate agreement with proposed decisions.
- (3) Paragraph (1)(a) does not apply to:
 - (a) a director who is prevented by subsection 22(5) from deliberating on the proposed decision; or
 - (b) to the extent that the *Commonwealth Authorities and Companies Act 1997* applies—a director who is prevented by section 27J of that Act from deliberating on the proposed decision.

25 Minutes of meetings

The Board must keep minutes of its meetings.

Division 3—Staff of CSC

26 Staff of CSC

- (1) CSC may employ such persons as it considers necessary for the performance of its functions.
- (2) An employee is to be employed on the terms and conditions that the Board determines in writing.

27 Consultants

CSC may engage consultants to assist in the performance of its functions.

Part 3—Finance and reporting requirements

Division 1—Provisions relating to finance

28 Banking

CSC must pay all money received by it in respect of each superannuation fund administered by CSC into an account maintained by it with a bank.

29 Accounting records

- (1) CSC must keep proper accounts and records of the transactions and affairs of each superannuation fund administered by CSC, in accordance with the accounting principles generally applied in commercial practice.
- (2) CSC must take reasonable steps to ensure that:
 - (a) all payments out of each superannuation fund administered by CSC are correctly made and properly authorised; and
 - (b) adequate control is maintained over:
 - (i) the assets of each superannuation fund administered by CSC; and
 - (ii) the incurring of liabilities by CSC in respect of each superannuation fund administered by CSC.
- (3) A director commits an offence if:
 - (a) the director causes a requirement of this section to be breached; or
 - (b) the director fails to take reasonable steps to comply with the requirement, or secure compliance with the requirement.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

Division 2—Reporting requirements

30 Annual report and financial statements

- (1) CSC must, by a date prescribed by the regulations, or, if no date is prescribed, as soon as practicable after the end of:
 - (a) the financial year starting on 1 July 2011; and
 - (b) each later financial year;prepare and give to the Minister:
 - (c) a report dealing with:
 - (i) the performance of its functions in relation to each superannuation scheme and superannuation fund administered by CSC (other than the 1922 scheme, DFRB, DFRDB, DFSPB and PNG) during the year; and
 - (ii) the general administration of the Acts and provisions mentioned in subsection (2) during the year; and
 - (iii) the performance of its functions in relation to the DFSPB during the year; and
 - (d) financial statements in respect of the management of each superannuation fund administered by CSC in a form agreed between the Minister and the Board.
- (2) For the purpose of subparagraph (1)(c)(ii), the Acts and provisions are:
 - (a) the *Defence Force Retirement and Death Benefits Act 1973*; and
 - (b) the *Defence Forces Retirement Benefits Act 1948* (other than Part III of that Act); and
 - (c) provisions of the *Papua New Guinea (Staffing Assistance) Act 1973* that deal with superannuation; and
 - (d) the *Superannuation Act 1922*.
- (3) Before giving the financial statements to the Minister, CSC must submit them to the Auditor-General, who must audit and report to the Minister:

- (a) whether the statements are based on proper accounts and records; and
 - (b) whether the statements are in agreement with the accounts and records and show fairly the financial transactions and the state of each superannuation fund administered by CSC; and
 - (c) whether the receipt of money into, the payment of money out of, and the investment of money standing to the credit of, each superannuation fund administered by CSC during the year have been in accordance with:
 - (i) this Act and the relevant Acts administered by CSC; and
 - (ii) the relevant governing deeds; and
 - (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported.
- (4) The Minister must cause a copy of:
- (a) the report prepared by CSC; and
 - (b) the financial statements prepared by CSC; and
 - (c) the report of the Auditor-General in respect of the financial statements;
- to be tabled in each House of the Parliament within 15 sitting days of that House after the receipt of whichever of those documents was last received by the Minister.
- (5) If the Board has not complied with subsection (1) within a period of 6 months after the end of a financial year, CSC must, within 14 days after the end of that period, give to the Minister:
- (a) an interim report on the performance of its functions in relation to each superannuation scheme and superannuation fund administered by CSC during that year; and
 - (b) interim financial statements in respect of the management of each superannuation fund administered by CSC during that year.
- Note: See also subsection 38(4).
- (6) The financial statements given to the Minister under subsection (5) must be in the form agreed between the Minister and the Board for the purposes of subsection (1), but need not be accompanied by a report of the Auditor-General.

Part 3 Finance and reporting requirements

Division 2 Reporting requirements

Section 30

- (7) If CSC gives a report and financial statements to the Minister under subsection (5), the Minister must:
- (a) cause a copy of the report and a copy of the financial statements to be tabled in each House of the Parliament within 15 sitting days of that House after their receipt by the Minister; and
 - (b) make the report and financial statements available to the public.
- (8) A report given under paragraph (5)(a) is not a legislative instrument.

Part 4—Miscellaneous

Division 1—Application of other laws

31 Trustee Act of ACT to apply

Except in so far as it is inconsistent with a law of the Commonwealth, the *Trustee Act 1925* of the Australian Capital Territory applies to, and in relation to, the directors acting in the performance of their functions, or the exercise of their powers, under a governing deed.

32 Exemption from taxation—CSC

- (1) CSC is not subject to:
 - (a) taxation under a law of the Commonwealth other than:
 - (i) the *A New Tax System (Goods and Services Tax) Act 1999*; or
 - (ii) the *Fringe Benefits Tax Assessment Act 1986*; or
 - (iii) the *Income Tax Assessment Act 1936*; or
 - (iv) the *Income Tax Assessment Act 1997*; or
 - (b) taxation under a law of a State or Territory.
- (2) The regulations may provide that subsection (1) does not apply in relation to taxation under a specified law.

33 Exemption from taxation—superannuation schemes and superannuation funds administered by CSC

- (1) Subject to this section:
 - (a) CSC, when performing functions, or exercising powers, in relation to a superannuation scheme and superannuation fund administered by CSC; and
 - (b) a superannuation fund administered by CSC;are not subject to:
 - (c) taxation under a law of the Commonwealth other than:

Part 4 Miscellaneous

Division 1 Application of other laws

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- (i) the *A New Tax System (Goods and Services Tax) Act 1999*; or
 - (ii) the *Income Tax Assessment Act 1936*; or
 - (iii) the *Income Tax Assessment Act 1997*; or
 - (iv) the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*; or
 - (d) taxation under a law of a State or Territory, if the Commonwealth is not subject to the taxation.
- (2) The regulations may provide that subsection (1) does not apply in relation to taxation under a specified law.
- (3) The regulations may specify different laws for different superannuation funds administered by CSC.
- (4) In relation to the PSSAP and the PSSAP Fund:
- (a) this section has effect subject to such modifications (if any) as are prescribed by the regulations; and
 - (b) the regulations may provide that this section ceases to have effect at a specified time.

Division 2—Provisions relating to the Board

34 Source of funds for paying remuneration and allowances

- (1) The Chair is to be paid remuneration and allowances as follows:
 - (a) when performing functions relating to a particular Fund—out of that Fund;
 - (b) when performing functions relating to the 1922 scheme, DFRB, DFRDB, DFSPB or PNG—out of the Consolidated Revenue Fund, which is appropriated accordingly.
- (2) A director (other than the Chair) is to be paid remuneration and allowances as follows:
 - (a) when performing functions relating to a particular Fund—
from one of the following (according to the relevant Act administered by CSC):
 - (i) that Fund;
 - (ii) the Consolidated Revenue Fund;
 - (iii) partly out of that Fund and partly out of the Consolidated Revenue Fund;
 - (b) when performing functions relating to the 1922 scheme, DFRB, DFRDB, DFSPB or PNG—out of the Consolidated Revenue Fund, which is appropriated accordingly.
- (3) In relation to the PSSAP and the PSSAP Fund:
 - (a) this section has effect subject to such modifications (if any) as are prescribed by the regulations; and
 - (b) the regulations may provide that this section ceases to have effect at a specified time.

35 Indemnification of directors etc.

- (1) Anything done, or omitted to be done, in good faith by a director or a delegate of the Board, in the performance of his or her functions under this Act, an Act administered by CSC or a governing deed, does not subject him or her personally to any action, liability, claim or demand.

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- (2) Subsection (1) does not preclude CSC from being subject to any action, liability, claim or demand.
- (3) Except in cases where the *Superannuation Industry (Supervision) Act 1993* or regulations under that Act do not so permit, any money becoming payable by CSC in respect of an action, liability, claim or demand that relates to an Act administered by CSC, regulations made under such an Act, or a governing deed, is to be paid out of:
 - (a) in the case of the 1922 scheme, DFRB, DFRDB, DFSPB or PNG—the Consolidated Revenue Fund, which is appropriated accordingly; and
 - (b) in any other case—the superannuation fund administered by CSC to which the action, liability, claim or demand relates.
- (4) If an amount is paid out of a superannuation fund administered by CSC under paragraph (3)(b), an equivalent amount is to be paid to the relevant superannuation fund administered by CSC out of the Consolidated Revenue Fund, which is appropriated accordingly.
- (5) In relation to the *Superannuation Act 2005* and the Trust Deed (within the meaning of that Act):
 - (a) this section has effect subject to such modifications (if any) as are prescribed by the regulations; and
 - (b) the regulations may provide that this section ceases to have effect at a specified time.

Division 3—Miscellaneous

36 Delegation by CSC

Delegations by CSC

- (1) CSC may, by writing, delegate to:
 - (a) a director; or
 - (b) a member of the staff of CSC; or
 - (c) the CEO of ComSuper; or
 - (d) a member of the staff of ComSuper; or
 - (e) an APS employee in the Department or in the Department responsible for the administration of the *Defence Act 1903*; or
 - (f) a member of the Australian Defence Force; or
 - (g) an officer or employee of a person who is responsible for investing money forming part of a superannuation fund administered by CSC; or
 - (h) any other person who performs duties in connection with the operation of a governing deed, an Act administered by CSC or regulations made under such an Act; or
 - (i) a committee consisting of 2 or more persons each of whom is a person referred to in any of the above paragraphs;all or any of its powers under an Act administered by CSC or regulations made under such an Act.
- (2) Despite subsection (1), CSC may only delegate its power to reconsider its own decisions or decisions made by its delegates under an Act mentioned in column 1 of the following table to a Committee mentioned in column 2 of the table in relation to the item:

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Delegation of power to reconsider decisions		
Item	If the decision was made by CSC or its delegate under ...	then, CSC may delegate its power to reconsider the decision to ...
1	the <i>Defence Force Retirement and Death Benefits Act 1973</i> , the <i>Defence Forces Retirement Benefits Act 1948</i> or regulations made under either of those Acts	the Defence Force Case Assessment Panel established under section 100 of the <i>Defence Force Retirement and Death Benefits Act 1973</i> .
2	the <i>Papua New Guinea (Staffing Assistance) Act 1973</i> or regulations made under that Act	a Reconsideration Advisory Committee established under section 55 of that Act.
3	the <i>Superannuation Act 1922</i> or regulations made under that Act	a Reconsideration Advisory Committee established under section 127 of that Act.
4	the <i>Superannuation Act 1976</i> or regulations made under that Act	a Reconsideration Advisory Committee established under section 153AB of that Act.

Sub-delegations

- (3) If CSC delegates a power under subsection (1) to a director, the director may, by writing, sub-delegate the power to:
- (a) another director; or
 - (b) a person referred to in paragraph (1)(b), (c), (d), (e), (f), (g) or (h).
- (4) If CSC delegates a power under subsection (1) to the CEO of ComSuper, the CEO may, by writing, sub-delegate the power to a person referred to in paragraph (1)(d), (e), (f), (g) or (h).
- (5) If CSC delegates a power under subsection (1) to a person referred to in paragraph (1)(b), (d), (e), (f), (g) or (h), the delegate may, by writing, sub-delegate the power to:
- (a) another person referred to in the same paragraph; or
 - (b) a person referred to in another of those paragraphs.

- (6) 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.
- (7) Section 34A and paragraphs 34AB(c) and (d) of the *Acts Interpretation Act 1901* apply to a sub-delegation as if it were a delegation.

37 Review of operation of Act

- (1) The Minister must cause a review to be undertaken of the first 5 years of the operation of this Act.
- (2) Before the review is undertaken, the Minister must consult the Defence Minister about the terms of the review.
- (3) The persons undertaking the review must give the Minister a written report of the review within 6 months after the end of the 5 year period.
- (4) The Minister must cause a copy of the report of the review to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

38 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may prescribe a different number of other directors for the purpose of paragraph 11(1)(b).
- (3) If regulations allowed by subsection (2) are made, regulations must also be made that prescribe different numbers, consistent with the proportions set out in this Act, for the purposes of:
 - (a) how many persons may be nominated by the President of the Australian Council of Trade Unions and the Chief of the Defence Force; and

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- (b) quorum and voting requirements.
- (4) Without limiting subsection (1), the regulations may prescribe different time periods for the purpose of subsection 30(5). However, the regulations may not extend the 6 month period referred to in that subsection.

*[Minister's second reading speech made in—
House of Representatives on 24 March 2011
Senate on 16 June 2011]*