



ComSuper Act 2011

No. 57, 2011 as amended

Compilation start date: 1 July 2014

Includes amendments up to: Act No. 62, 2014

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About this compilation

This compilation

This is a compilation of the *ComSuper Act 2011* as in force on 1 July 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 31 July 2014.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

Uncommenced amendments

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

Provisions ceasing to have effect

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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An Act to establish ComSuper, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *ComSuper Act 2011*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 June 2011
2. Sections 3 to 27	At the same time as section 2 of the <i>Governance of Australian Government Superannuation Schemes Act 2011</i> commences.	1 July 2011

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Definitions

In this Act:

CEO: see Chief Executive Officer.

Chief Executive Officer or **CEO** means the Chief Executive Officer of ComSuper.

ComSuper means the body established by section 4.

CSC has the same meaning as in the *Governance of Australian Government Superannuation Schemes Act 2011*.

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

governing deed has the same meaning as in the *Governance of Australian Government Superannuation Schemes Act 2011*.

modifications includes additions, omissions and substitutions.

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

superannuation scheme administered by CSC has the same meaning as in the *Governance of Australian Government Superannuation Schemes Act 2011*.

Part 2—ComSuper

4 Establishment

ComSuper is established by this section.

5 Constitution

ComSuper consists of:

- (a) the CEO; and
- (b) the staff of ComSuper.

Note: ComSuper does not have a legal identity separate from the Commonwealth.

5A Application of the finance law

For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):

- (a) ComSuper is a listed entity; and
- (b) the CEO is the accountable authority of ComSuper; and
- (c) the following persons are officials of ComSuper:
 - (i) the CEO;
 - (ii) the staff of ComSuper;
 - (iii) consultants engaged under section 20; and
- (d) the purposes of ComSuper include:
 - (i) the function of ComSuper referred to in section 6; and
 - (ii) the function of the CEO referred to in section 8; and
 - (iii) the functions conferred on the CEO by any other law of the Commonwealth.

6 Function

ComSuper's function is to assist the CEO in the performance of the CEO's function.

Part 3—Chief Executive Officer, staff and consultants

Division 1—Function and powers of the CEO

7 Chief Executive Officer

There is to be a Chief Executive Officer of ComSuper.

Note: The CEO is not on the Board of the CSC, and is not a member of the accountable authority of the CSC. (See section 12 of the *Public Governance, Performance and Accountability Act 2013*.)

8 Function and powers of the CEO

- (1) The CEO's main function is to provide administrative services to CSC in the performance of CSC's functions in relation to a superannuation scheme administered by CSC.

Note: The CEO has other functions allowed by Commonwealth law.

- (2) The CEO has the power to do all things necessary or convenient to be done for or in connection with the performance of his or her function.
- (3) Subject to subsections (5) and (6), when providing administrative services to CSC, the CEO:
 - (a) is subject to the directions of CSC; and
 - (b) must endeavour to act in accordance with policies, guidelines and standards determined by CSC.
- (4) If a direction is given in writing, the direction is not a legislative instrument.
- (5) Subsection (3) does not apply to the extent that:
 - (a) compliance with the direction would be inconsistent with the CEO's performance of functions or exercise of powers under the *Public Governance, Performance and Accountability Act 2013* in relation to ComSuper; or

- (b) the direction relates to the CEO's performance of functions or exercise of powers under the *Public Service Act 1999* in relation to ComSuper; or
 - (c) compliance with the direction would be inconsistent with:
 - (i) another law of the Commonwealth; or
 - (ii) policies of the Commonwealth in relation to the administration of an Australian government superannuation scheme.
- (6) In relation to the PSSAP:
- (a) subsections (1) and (3) have effect subject to such modifications (if any) as are prescribed by the regulations; and
 - (b) the regulations may provide that subsections (1) and (3) cease to have effect at a specified time.

Division 2—Appointment of the CEO

9 Appointment

- (1) The CEO is to be appointed by the Minister by written instrument, on a full-time basis.
- (2) Before making an appointment, the Minister must consult the Defence Minister.
- (3) The appointment of a person as CEO is not invalid merely because of a defect or irregularity in connection with the person's appointment.

10 Term of appointment

The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: The CEO is eligible for reappointment: see the *Acts Interpretation Act 1901*.

11 Acting CEO

The Minister may appoint a person to act as CEO:

- (a) during a vacancy in the office of CEO, whether or not an appointment has previously been made to that office; or
- (b) during any period, or during all periods, when the CEO is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office of CEO.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

Division 3—Terms and conditions of the CEO's appointment

12 Remuneration and allowances

- (1) The CEO 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, the CEO is to be paid the remuneration that is prescribed by the regulations.
- (2) The CEO is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

13 Leave of absence

- (1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant to the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines in writing.

14 Outside employment

The CEO must not engage in paid employment outside the duties of his or her office without the Minister's approval.

16 Other terms and conditions

The CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined, in writing, by the Minister.

17 Resignation

- (1) The CEO may resign his or her appointment by giving the Minister a signed notice of 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.

18 Termination of appointment

- (1) The Minister may terminate the appointment of the CEO:
 - (a) for misbehaviour or physical or mental incapacity; or
 - (b) if the CEO:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (c) if the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (d) if the CEO engages, without the Minister's approval, in paid employment outside the duties of his or her office (see section 14); or
 - (e) if the CEO fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.
- (2) Before terminating the appointment of the CEO, the Minister must consult the Defence Minister.

Division 4—Staff and consultants

19 Staff

- (1) The staff of ComSuper are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the CEO and the staff of ComSuper together constitute a Statutory Agency; and
 - (b) the CEO is the Head of that Statutory Agency.

20 Consultants

The CEO may, on behalf of the Commonwealth, engage consultants to assist in the performance of the CEO's function.

Part 4—Finance and reporting requirements

Division 1—ComSuper Special Account

21 ComSuper Special Account

- (1) The ComSuper Special Account is established by this section.
- (2) The Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

22 Credits to the Account

There must be credited to the Account amounts equal to all money received from any person for the purposes of the Account.

Note: An Appropriation Act provides for amounts to be credited to a special account if any of the purposes of the special account is a purpose that is covered by an item in the Appropriation Act.

23 Purposes of the Account

- (1) This section sets out the purposes of the Account.
- (2) Amounts standing to the credit of the Account may be debited for the following purposes:
 - (a) to pay or discharge the costs, expenses or other obligations incurred by ComSuper in the performance of its function under this Act or another law of the Commonwealth;
 - (b) to pay any remuneration and allowances payable to any person under this Act;
 - (c) to pay CSC a share of revenue received by ComSuper in relation to a superannuation scheme administered by CSC, as agreed between ComSuper and CSC;
 - (d) to meet the expenses of administering the Account;
 - (e) to repay amounts required by law;
 - (f) to reduce the balance of the Account (and, therefore, the available appropriation for the Account) without making a real or notional payment.

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

Division 2—Reporting requirements

24 Annual report

The annual report prepared by the CEO and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must include:

- (a) particulars of any directions given to the CEO by CSC during the period; and
- (b) the impact of the directions on the performance of the CEO's function.

Part 5—Miscellaneous

25 Delegation by the CEO

- (1) The CEO may delegate, in writing, the CEO's function and/or all or any of the CEO's powers under this Act or any other law of the Commonwealth to an SES employee or acting SES employee in ComSuper.
- (2) In performing the function or exercising powers under a delegation, the delegate must comply with any written directions of the CEO.

26 Indemnification

- (1) Anything done, or omitted to be done, in good faith by:
 - (a) the CEO in the performance of his or her function under this Act; or
 - (b) a member of the staff of ComSuper in the performance of that function;does not subject him or her personally to any action, liability, claim or demand.
- (2) Subsection (1) does not prevent CSC from being subject to an action, liability, claim or demand.

Note: See section 35 of the *Governance of Australian Government Superannuation Schemes Act 2011*.

27 Regulations

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.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

- Endnote 1—About the endnotes
- Endnote 2—Abbreviation key
- Endnote 3—Legislation history
- Endnote 4—Amendment history
- Endnote 5—Uncommenced amendments
- Endnote 6—Modifications
- Endnote 7—Misdescribed amendments
- Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

Abbreviation key—Endnote 2

The abbreviation key in this endnote sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended the compiled law. The information includes commencement information for amending laws and details of application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

Uncommenced amendments—Endnote 5

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in endnote 5.

Modifications—Endnote 6

If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

Misdescribed amendments—Endnote 7

An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

Miscellaneous—Endnote 8

Endnote 8 includes any additional information that may be helpful for a reader of the compilation.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	pres = present
am = amended	prev = previous
c = clause(s)	(prev) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	Reg = Regulation/Regulations
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
exp = expired or ceased to have effect	rep = repealed
hdg = heading(s)	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
mod = modified/modification	Sdiv = Subdivision(s)
No = Number(s)	SLI = Select Legislative Instrument
o = order(s)	SR = Statutory Rules
Ord = Ordinance	Sub-Ch = Sub-Chapter(s)
orig = original	SubPt = Subpart(s)
par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)	

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
ComSuper Act 2011	57, 2011	28 June 2011	s 3–27: 1 July 2011 Remainder: 28 June 2011	
Financial Framework Legislation Amendment Act (No. 2) 2012	82, 2012	28 June 2012	Sch 1 (item 32): 29 June 2012	—
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 4 (items 12–14, 50): 22 Sept 2012	Sch. 4 (item 50)
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 6 (item 36) and Sch 8 (items 70–80): 1 July 2014 (s 2(1) item 6)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Pt 2	
s 5A	ad No 62, 2014
Pt 3	
Div 1	
s 7	am No 62, 2014
Note to s 7(1).....	ad No 62, 2014
s 8	am No 62, 2014
Div 2	
s 11	am No 136, 2012
Note to s 11.....	ad No 136, 2012
Div 3	
s 15	rep No 62, 2014
s 18	am No 62, 2014
Pt 4	
Div 1	
s 21	am No 62, 2014
Note to s 22.....	am No 62, 2014
s 23	am No 62, 2014
Note to s 23(2).....	rs No 62, 2014
Div 2	
s 24	rs No 62, 2014
Pt 5	
s 25	am No 82, 2012

Endnote 5—Uncommenced amendments [none]

Endnote 5—Uncommenced amendments [none]

Endnote 6—Modifications [none]

Endnote 7—Misdescribed amendments [none]

Endnote 8—Miscellaneous [none]