



# **ComSuper Act 2011**

**No. 57, 2011**

**An Act to establish ComSuper, and for related purposes**

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



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# ComSuper Act 2011

No. 57, 2011

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## **An Act to establish ComSuper, and for related purposes**

[Assented to 28 June 2011]

The Parliament of Australia enacts:

### **Part 1—Preliminary**

#### **1 Short title**

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

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**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.

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| <b>Commencement information</b>  |  |                     |
|--|--|---------------------|
| <b>Column 1</b>  | <b>Column 2</b>  | <b>Column 3</b>     |
| <b>Provision(s)</b>  | <b>Commencement</b>  | <b>Date/Details</b> |
| 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         |

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Note: This table relates only to the provisions of this Act as originally enacted.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.

### **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**

- (1) There is to be a Chief Executive Officer of ComSuper.
- (2) To avoid doubt, the CEO is not an officer (within the meaning of the *Commonwealth Authorities and Companies Act 1997*).

#### **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 *Financial Management and Accountability Act 1997* in relation to ComSuper; or

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- (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**

- (1) 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.
- (2) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid merely because:
  - (a) the occasion for the person's appointment had not arisen; or
  - (b) there is a defect or irregularity in connection with the person's appointment; or
  - (c) the person's appointment had ceased to have effect; or
  - (d) the occasion for the person to act had not arisen or had ceased.

**Part 3** Chief Executive Officer, staff and consultants

**Division 2** Appointment of the CEO

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Note: See 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.

### **15 Disclosure of interests**

The CEO must give written notice to the Minister of all interests, pecuniary or otherwise, that the CEO has or acquires and that conflict or could conflict with the proper performance of the CEO's functions.

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**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 15.
- (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 *Financial Management and Accountability Act 1997*.

#### **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 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 Special Account (and, therefore, the available appropriation for the Account) without making a real or notional payment.

Note: See section 21 of the *Financial Management and Accountability Act 1997*.

## Division 2—Reporting requirements

### 24 Annual report

#### *Annual report to be given to Minister*

- (1) The CEO must, as soon as practicable after 30 June in each financial year, prepare and give to the Minister a report for presentation to the Parliament (an **annual report**) relating to the performance of the CEO's function during the year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains provisions about annual reports.

#### *Contents of annual report*

- (2) The CEO must include in the annual report the following:
  - (a) particulars of any directions given to the CEO by CSC during the year and the impact of the directions on the performance of the CEO's function;
  - (b) the financial statements required by section 49 of the *Financial Management and Accountability Act 1997*;
  - (c) an audit report on those statements under section 57 of the *Financial Management and Accountability Act 1997*.

## **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 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.

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

(55/11)

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