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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**GOVERNANCE OF AUSTRALIAN GOVERNMENT  
SUPERANNUATION SCHEMES LEGISLATION AMENDMENT  
BILL 2015**

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Finance,  
Senator the Hon Mathias Cormann)

## Table of abbreviations and common terms

Abbreviation or common term	Description
1922 Act	<i>Superannuation Act 1922</i>
1922 Scheme	the scheme established under the <i>Superannuation Act 1922</i>
1976 Act	<i>Superannuation Act 1976</i>
1990 Act	<i>Superannuation Act 1990</i>
2005 Act	<i>Superannuation Act 2005</i>
APS employee	has the same meaning as in the <i>Public Service Act 1999</i>
Bill	Governance of Australian Government Superannuation Schemes Legislation Amendment Bill 2015
Board	Board of the Commonwealth Superannuation Corporation established by section 9 of the <i>Governance of Australian Government Superannuation Schemes Act 2011</i>
CEO of ComSuper or ComSuper CEO	Chief Executive Officer of ComSuper
Chair	Chair of the Board
ComSuper	body established by section 4 of the <i>ComSuper Act 2011</i> consisting of the CEO and staff of ComSuper
The Constitution	<i>Commonwealth of Australia Constitution Act</i>
corporate Commonwealth entity	has the meaning set out in paragraph 11(a) of the <i>Public Governance, Performance and Accountability Act 2013</i>
CRF	Consolidated Revenue Fund
CSC	Commonwealth Superannuation Corporation established by section 5 of <i>Governance of Australian Government Superannuation Schemes Act 2011</i>
CSS	Commonwealth Superannuation Scheme established under the <i>Superannuation Act 1976</i>
DFRB Scheme	Defence Forces Retirement Benefits Scheme established under the <i>Defence Forces Retirement Benefits Act 1948</i>
DFRDB Act	<i>Defence Force Retirement and Death Benefits Act 1973</i>
DFRDB Scheme	Defence Force Retirement and Death Benefits Scheme established under the <i>Defence Force Retirement and Death Benefits Act 1973</i>
DFSPB Scheme	Defence Force (Superannuation) (Productivity Benefit) Scheme established by determinations made under Part IIIAA of the <i>Defence Act 1903</i>
Fair Work Act	<i>Fair Work Act 2009</i>
FFLA Bill (No.2) 2012	<i>Financial Framework Legislation Amendment Bill (No. 2) 2012</i>
FFLA Bill (No.4) 2012	<i>Financial Framework Legislation Amendment Bill (No. 4) 2012</i>
Finance Minister	has the meaning set out in section 8 of the <i>Public Governance, Performance and Accountability Act 2013</i>
GST	has the same meaning as in the <i>A New Tax System (Goods and Services Tax) Act 1999</i>
Governance Act	<i>Governance of Australian Government Superannuation Schemes 2011</i>

<b>Abbreviation or common term</b>	<b>Description</b>
Government Service	has the meaning set out in the <i>Long Service Leave (Commonwealth Employees) Act 1976</i>
MSB Act	<i>Military Superannuation and Benefits Act 1991</i>
MSB Scheme	Military Superannuation and Benefits Scheme established under the <i>Military Superannuation and Benefits Act 1991</i>
Legislation Act	means the <i>Legislative Instruments Act 2003</i> which will be renamed the <i>Legislation Act 2003</i> upon commencement of Schedule 1 to the <i>Acts and Instruments (Framework Reform) Act 2015</i> <u>Note:</u> The <i>Acts and Instruments (Framework Reform) Bill 2014</i> passed both Houses of Parliament on 23 February 2015. Once it commences, Schedule 1 of the <i>Acts and Instruments (Framework Reform) Act 2015</i> will amend the <i>Legislative Instruments Act 2003</i> which will be renamed the <i>Legislation Act 2003</i>
Legislative Instruments Act	means the <i>Legislative Instruments Act 2003</i> or upon commencement of Schedule 1 to the <i>Acts and Instruments (Framework Reform) Act 2015</i> , the <i>Legislation Act 2003</i> <u>Note:</u> The <i>Acts and Instruments (Framework Reform) Bill 2014</i> passed both Houses of Parliament on 23 February 2015. Once it commences, Schedule 1 of the <i>Acts and Instruments (Framework Reform) Act 2015</i> will amend the <i>Legislative Instruments Act 2003</i> which will be renamed the <i>Legislation Act 2003</i>
LSL Act	<i>Long Service Leave (Commonwealth Employees) Act 1976</i>
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PNG Act	<i>Papua New Guinea (Staffing Assistance) Act 1973</i>
PNG Regulations	<i>Papua New Guinea (Staffing Assistance) (Superannuation) Regulations 1973</i>
PNG Scheme	scheme which provides retirement benefits for former employees of the administration of the Territory of Papua and New Guinea under the <i>Papua New Guinea (Staffing Assistance) Act 1973</i> and <i>Papua New Guinea (Staffing Assistance) (Superannuation) Regulations 1973</i>
PSSAP	Public Sector Superannuation Accumulation Plan established under the <i>Superannuation Act 2005</i>
PSSAP Fund or the Fund	has the same meaning as “PSSAP Fund” set out section 4 of the <i>Superannuation Act 2005</i>
PSSAP Trust Deed or Trust Deed	has the same meaning as ‘Trust Deed’ set out section 4 of the <i>Superannuation Act 2005</i>
PSS	Public Sector Superannuation Scheme established under the <i>Superannuation Act 1990</i>
SIS legislation	<i>Superannuation Industry (Supervision) Act 1993</i> and regulations under that Act
SRC Act	<i>Safety, Rehabilitation and Compensation Act 1988</i>
SSR Act	<i>Same-Sex Relationships (Equal Treatment in Commonwealth Laws –Superannuation) Act 2008</i>

# **Governance of Australian Government Superannuation Schemes Legislation Amendment Bill 2015**

## **Context**

The Bill gives effect to the Australian Government's decision (announced as part of a 2014-15 Budget measure) to merge ComSuper with CSC so that the management of the Australian Government superannuation schemes is undertaken by a single entity.

The Bill also gives effect to the Government's decision that PSSAP members are to pay administration fees (announced as part of the 2014-15 Mid-Year Economic and Fiscal Outlook).

## **Summary**

The Bill merges ComSuper, the provider of administration services in relation to the Australian Government civilian and military defined benefit superannuation schemes, with CSC, the trustee of the Australian Government schemes.

CSC, a corporate Commonwealth entity for the purposes of the PGPA Act, will be the continuing government entity and will have responsibility for the overall management of Australian Government superannuation schemes, including both trustee and administration services roles. The relevant schemes are the:

- CSS;
- PSS;
- PSSAP;
- MSB Scheme;
- DFRDB Scheme;
- DFRB Scheme;
- DFSPB Scheme;
- 1922 Scheme; and
- PNG Scheme.

CSC will have similar responsibilities in relation to the proposed new military superannuation arrangements which will commence from 1 July 2016, subject to the passage of legislation.

The merger will improve the efficiency of the management of the Australian Government superannuation schemes by removing duplication and overlap that exists as a result of two government bodies being involved in the delivery of administration services. The merger will provide CSC with control over the delivery of administration services in relation to the Australian Government defined benefit superannuation schemes, consistent with its regulatory responsibility as trustee of the schemes.

Importantly, the Bill does not change the benefit design of the civilian and military superannuation schemes.

## **CSC to Perform Financial Functions on Behalf of the Commonwealth**

Administering the defined benefit superannuation schemes will require CSC to draw on Commonwealth appropriations to pay superannuation benefits to members of the schemes, collect administration fees that are payable by the Commonwealth under legislation governing the schemes, and recover debts owing to the Commonwealth (for example, arising from overpayments of benefits). As CSC is a separate legal entity to the Commonwealth, the Bill includes provisions to legally enable CSC to perform these functions on behalf of the Commonwealth.

As the Commonwealth remains legally responsible for the functions, the Bill enables the Minister to make instruments in relation to these functions.

## **CSC Special Account**

A CSC Special Account will be established. Administration funding, including administration fees collected by CSC on the Commonwealth's behalf from agencies with employees in the Australian Government schemes, will be credited to the Account. The Account will form part of the CRF and CSC will be able to debit the Account to, among other things, pay costs incurred in the performance of its role as administrator.

## **Employment Arrangements**

As a result of the merger, the statutory office of CEO of ComSuper will cease and the statutory agency of ComSuper will be abolished. ComSuper staff whose employment is transferred to CSC will become non-APS employees of CSC engaged under section 26 of the Governance Act. This will be achieved by a determination of the Australian Public Service Commissioner under section 72 of the *Public Service Act 1999*. The transitional provisions in the Bill will assist in maintaining the terms and conditions of employment of ComSuper staff on transfer to CSC and meeting legislative requirements governing the transfer.

## **Consequential Amendments and Transitional Provisions**

The Bill includes consequential amendments to a range of Commonwealth legislation governing the superannuation schemes to take account of the merger.

In addition to dealing with matters arising from the transfer of ComSuper staff to CSC employment, the Bill contains provisions that deal with a number of other transitional matters arising from the merger. This includes provisions to transfer the assets and most of the liabilities of ComSuper to CSC.

## **Taxation of Administration Payments**

To maintain consistency with the treatment of administration funding currently received by ComSuper for provision of administration services, the Bill makes CSC exempt from income tax in relation to funding received from the Commonwealth for this purpose.

## **PSSAP Administration Fees**

The Governance Act and the 2005 Act, which governs the PSSAP, will be amended by the Bill so that the cost of administering the PSSAP will be deducted from member accounts, consistent with arrangements that apply in private sector accumulation superannuation funds.

## **Financial Impact Statement**

The merger is expected to deliver savings of \$0.5 million per annum.

The changes that relate to PSSAP administration fees have estimated savings of \$26.8 million over four years from 2015-16. Savings for this measure were included in the 2014-15 Budget and were announced in the Mid-Year Economic and Fiscal Outlook 2014-15.

## **Statement of Compatibility with Human Rights**

The Bill does not engage any of the human rights or freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. Consequently, the Bill is compatible with those human rights and freedoms.

# GOVERNANCE OF AUSTRALIAN GOVERNMENT SUPERANNUATION SCHEMES LEGISLATION AMENDMENT BILL 2015

## NOTES ON CLAUSES

### Contents

#### Clause 1 – Short Title

**Clause 1** provides for the Act to be cited as the *Governance of Australian Government Superannuation Schemes Legislation Amendment Act 2015*.

Note: The clauses in the Bill will become sections of the Act on Royal Assent.

#### Clause 2 – Commencement

2. **Clause 2** sets out the commencement provisions for the Bill. Commencement details for specific provisions are included in the table in subclause 2(1).
3. **Item 1 of the table** provides that sections 1 to 3 and anything in the Act not covered elsewhere in the table commence on Royal Assent.
4. **Item 2 of the table** provides that Schedules 1, 2 and 3 commence on a day or days fixed by Proclamation. Should Proclamation not occur within 6 months of Royal Assent, these Schedules commence on the day after the end of that period.
5. The note at the end of the table in subclause 2(1) clarifies that the table only relates to provisions of the Act as originally enacted, and that it will not be amended to deal with any later amendments of the Act.
6. **Subclause 2(2)** clarifies that the information in column 3 of the table are not part of the Act.

#### Clause 3 – Schedules

7. **Clause 3** provides that legislation specified in a Schedule to the Act is amended or repealed as set out in the applicable items in the relevant Schedule. It also provides that any other item in a Schedule to the Act has effect according to its terms.

# Schedule 1 – Amendments and repeals relating to the merger of CSC and ComSuper

## Overview

8. **Schedule 1** contains amendments to the Governance Act and consequential amendments to Acts administered by CSC. **Schedule 1** also repeals the *ComSuper Act 2011* to reflect the merger of ComSuper with CSC and particularly to provide for:

- CSC to be the continuing entity, assuming responsibility for the provision of administration services in relation to the defined benefit superannuation schemes under its management from ComSuper; and
- the abolition of the statutory agency of ComSuper and the statutory office of CEO of ComSuper.

## Part 1 – Amendment of the Governance of Australian Government Superannuation Schemes Act 2011

### *Governance of Australian Government Superannuation Schemes Act 2011*

9. **Item 1 of Schedule 1** inserts a new definition of “Account” in section 4 of the Governance Act, which refers to the CSC Special Account established under the section 29E of the Governance Act. Section 29E is a new section inserted by **item 2 of Schedule 1**.

10. **Item 2 of Schedule 1** inserts new sections 29A to 29D at the end of Division 1 of Part 3 of the Governance Act. This Division comprises provisions relating to financial roles undertaken by CSC. These new sections of the Governance Act will enable CSC, as a corporate Commonwealth entity that is legally separate from the Commonwealth, to perform a range of financial roles on behalf of the Commonwealth in its new role as administrator. The relevant financial roles are currently performed by ComSuper, which is legally part of the Commonwealth.

11. New section 29A will enable CSC, as the administrator, to make benefit payments under the Acts that it administers, and under section 4 of the SSR Act. CSC will perform this role on behalf of the Commonwealth, as the Commonwealth is responsible for paying benefits from Commonwealth appropriations under the relevant Acts.

12. The governing Acts of the defined benefit schemes provide that the Commonwealth is generally responsible for the costs of administration of those Acts. These costs are recovered from employer agencies. New paragraph 29B(a) will enable CSC to receive, on behalf of the Commonwealth, amounts payable to the Commonwealth under each Act administered by CSC. The intent of new paragraph 29B(a) is to enable CSC to collect, on behalf of the Commonwealth, the administration fees paid by employer agencies to the Commonwealth in respect of employees and former employees who are members of Australian Government superannuation schemes. Similar to the arrangements that currently apply to ComSuper, these amounts are to be credited to the CSC Special Account, which is part of the CRF.



13. New paragraph 29B(b) enables CSC to receive, on behalf of the Commonwealth, other amounts related to each Act administered by CSC. These amounts are paid in line with government policy and returned to the CRF. They include:

- notional employer contributions, which are broadly the employer contributions required to fund benefits accruing in relation to employees that are contributing members of the schemes; and
- emerging cost payments made by a small number of employer agencies (i.e. employer agencies that do not pay notional employer contributions) to reimburse the Commonwealth for the superannuation costs arising from pension and lump sum benefit payments to their former employees.

14. As CSC will pay, on behalf of the Commonwealth, benefits to members of the Australian Government defined benefit superannuation schemes in its administrator role, it will also recover debts owing to the Commonwealth in connection with its role as administrator on behalf of the Commonwealth, for example, in the event that benefits are overpaid. New section 29C of the Governance Act makes CSC subject to rules made under the PGPA Act in relation to recovery of debts owing to the Commonwealth in the same way that non-corporate Commonwealth entities, which are legally part of the Commonwealth, are subject to these rules.

15. As CSC is performing the functions in sections 29A to 29C on behalf of the Commonwealth, rather than in its own right, new section 29D of the Governance Act sets out arrangements for the Minister to make instruments regarding CSC's performance of these functions.

16. New subsection 29D(1) enables the Minister, by legislative instrument, to provide (for example, to make stipulations or set out requirements) in relation to CSC's functions of making payments, receiving payments and other amounts and recovery of debts in sections 29A to 29C.

17. Under new subsection 29D(2) the Minister must consult the CSC Board before making an instrument under subsection 29D(1). As a matter of administrative practice, the Department of Defence and Department of Foreign Affairs and Trade will also be consulted, as appropriate, in the development of any instrument relating to CSC's payment of benefits from appropriations held by these departments or the recovery of debts in connection with these appropriations.

18. Subsection 29D(3) prescribes exceptions to the Minister's instrument making power in subsection 29D(1). In particular, the Minister is unable to make an instrument under subsection 29D(1) that relates to CSC's obligations as a trustee under Commonwealth law unless permitted by the law, or that is inconsistent with the Board's performance of functions or exercise of powers under the PGPA Act, including rules made under that Act in relation to the recovery of debts owing to the Commonwealth.

19. **Item 2 of Schedule 1** also includes a new Division 1A – CSC Special Account in Part 3 of the Governance Act, consisting of new sections 29E to 29G dealing with arrangements for the CSC Special Account.

20. New subsection 29E(1) establishes the CSC Special Account. The CSC Special Account, like all special accounts, forms part of CRF. The establishment of the CSC Special Account, for which the Board as accountable authority has responsibility, satisfies a requirement for the administration fees that CSC receives from employer agencies, on the Commonwealth's behalf, to form part of the CRF. New subsection 29E(2) specifies that the CSC Special Account is a special account for the purposes of the PGPA Act.

21. New section 29F requires the CSC Special Account to be credited with amounts equal to all of the money received for the purposes of the Account. The note at the end of section 29F advises the reader that an Appropriation Act provides for amounts to be credited to a special account if any of the purposes of the special account is covered by an item in the Appropriation Act.

22. New subsection 29G(1) makes it clear that the purposes of the CSC Special Account are set out in section 29G. New subsection 29G(2) establishes the purposes of the Account. These are, among other things, to:

- pay expenses incurred by CSC in the performance of its functions that the Commonwealth agrees to meet or is required to meet under an Act administered by CSC or any instrument made under such an Act;
- pay remuneration and allowances payable to a CSC director in line with section 34 of the Governance Act, and to a member of a panel or committee established, under superannuation legislation administered by CSC, to review a decision of CSC;
- meet expenses of administering the Account and to repay amounts credited to the Account where repayment is required by law; and
- reduce the balance of the Account (and, therefore, the available appropriation for the Account) without making a real or notional payment. This would, for example, facilitate the return of savings to the Budget.

23. The note at the end of new section 29G of the Governance Act refers the reader to section 80 of the PGPA Act, which deals with special accounts.

24. **Item 3 of Schedule 1** repeals section 32 of the Governance Act, which makes CSC exempt from certain Commonwealth and all State and Territory taxes, and replaces it with a new section 32 dealing with the same subject matter.

25. New subsection 32(1) provides for CSC to be exempt from Commonwealth taxes except as provided by the section or under a law prescribed by regulations made under the Governance Act.

26. New subsection 32(2) prescribes that CSC is not subject to State and Territory taxes, except as provided under a law prescribed by regulations made under the Governance Act.

27. Under new subsection 32(3), CSC is subject to tax under the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* with two exceptions – any payment to CSC reflected in a debit from the CSC Special Account and any payment to CSC of money appropriated by the Parliament for the entity’s purposes. These exempt payments are funding that the Commonwealth provides to CSC for administration services. Under the current governance arrangements, whereby ComSuper receives such funding, equivalent payments are not subject to income tax. New subsection 32(3) will maintain the taxation status of these payments from commencement of the merger.

28. New subsections 32(4) and 32(5) specify that CSC is subject to taxation under the *A New Tax System (Goods and Services Tax) Act 1999*, and taxation under the *Fringe Benefits Tax Assessment Act 1986* respectively.

29. **Items 4 to 7 of Schedule 1** amend section 34 of the Governance Act, which deals with the source of funds for paying remuneration and allowances to directors of the Board. The intent is to simplify the arrangements. **Items 4 to 7 of Schedule 1** do not affect the allowances and remuneration of directors.

30. **Item 4 of Schedule 1** amends paragraph 34(1)(b) to remove a special appropriation for paying the Chair remuneration and allowances in relation to functions performed in connection with schemes that do not have superannuation funds (for example, the 1922 Scheme). Under the paragraph, payments for this purpose are made from the CRF.

31. **Item 5 of Schedule 1** inserts a note at the end of subsection 34(1) to make it clear to the reader that the CSC Special Account is debited when the remuneration and allowances are paid to the Chair out of the CRF and refers the reader to paragraph 29G(2)(b), which enables the CSC Special Account to be debited for this purpose.

32. **Item 6 of Schedule 1** makes amendments to paragraph 34(2)(b), which sets out arrangements for paying remuneration and allowances to CSC directors (other than the Chair). Similar to the amendments made to paragraph 34(1)(b) by **item 4 of Schedule 1**, the item removes the special appropriation for paying CSC directors’ remuneration and allowances in relation to functions performed in connection with schemes that do not have superannuation funds. Under the paragraph, payments for this purpose are made from the CRF.

33. **Item 7 of Schedule 1** inserts a note at the end of subsection 34(2) which is the same as that inserted under subsection 34(1) by **item 5 of Schedule 1**. That is, to make it clear to the reader that the CSC Special Account is debited when the remuneration and allowances are paid to the CSC directors out of the CRF and refers the reader to paragraph 29G(2)(b), which enables the CSC Special Account to be debited for this purpose.

34. **Items 8 to 12 of Schedule 1** amend section 36 of the Governance Act which deals with delegation by CSC.

35. **Item 8 of Schedule 1** repeals paragraphs 36(1)(c) and (d) of the Governance Act, which enable CSC to delegate, by writing, to the CEO of ComSuper or a member of the staff of ComSuper respectively. These provisions are no longer required as the statutory office of CEO of ComSuper and the statutory agency of ComSuper will cease to exist on commencement of the merger.

36. Under subsection 36(2) of the Governance Act, CSC may only delegate its power to reconsider its own decisions or decisions of its delegates in relation to the DFRB Scheme, DFRDB Scheme, PNG Scheme, 1922 Scheme and CSS to specific committees. **Item 9 of Schedule 1** amends subsection 36(2) so that this limitation does not apply to decisions relating to the recovery of debts owing to the Commonwealth. This recognises that CSC is performing this role on behalf of the Commonwealth. As such, CSC should for example be able to delegate its power to reconsider its decisions and decisions of its delegates in this regard to APS employees in the department of state responsible for the appropriation from which an overpayment of benefits is made.

37. Subsection 36(3) of the Governance Act deals with sub-delegation of CSC's powers by a CSC director. As ComSuper and the statutory office of CEO of ComSuper will cease to exist on commencement of the merger, **item 10 of Schedule 1** amends paragraph 36(3)(b) to remove provision for sub-delegation to the CEO of ComSuper or a member of staff of ComSuper.

38. **Item 11 of Schedule 1** repeals subsection 36(4) of the Governance Act, which provides for sub-delegation of CSC's powers by the CEO of ComSuper, as the office will cease to exist on commencement of the merger.

39. **Item 12 of Schedule 1** amends subsection 36(5) of the Governance Act, which deals with sub-delegation of CSC's powers by a person other than a director or the CEO of ComSuper, to remove provision for sub-delegation to a member of the staff of ComSuper in light of the merger.

40. **Item 13 of Schedule 1** repeals section 37 of the Governance Act, which provides for a review of the first five years of operation of that Act, as the review has been overtaken by the decision to merge ComSuper with CSC. A new section 37 is substituted that makes it clear that the LSL Act applies to CSC from commencement of the merger. This means ComSuper staff that transfer to CSC employment as a result of the merger will continue to be covered by the LSL Act.

## Part 2 – Consequential Amendments

### *Defence Force Retirement and Death Benefits Act 1973*

41. The Explanatory Memorandum to the FFLA Bill (No. 2) 2012 provides that the rationale behind sections 124B and 124C of the DFRDB Act is to establish a framework for dealing with overpayments, and to address risks of payments breaching section 83 of the Constitution.

42. The Explanatory Memorandum to the FFLA Bill (No. 2) 2012 provides that sections 124B and 124C of the DFRDB Act address overpayments to persons, purportedly as benefits, under the DFRDB Scheme. Sections 124B and 124C ensure there is authority to make such payments at the time payments are made, but provides for the recovery of these payments as a debt to the Commonwealth (as recoverable payments and recoverable death payments).

43. **Item 14 of Schedule 1** replaces references to the “Chief Executive of ComSuper” with “CSC” in paragraph 124B(2)(b) of the Act. This reflects that administration of the DFRDB Scheme will be performed by CSC, not ComSuper, as ComSuper will cease. The relevant legal entity which will have standing in a court of competent jurisdiction will be CSC.

44. **Item 15 of Schedule 1** replaces references to the “Chief Executive of ComSuper” with “the Board of CSC” in subsection 124B(3) of the Act. Decisions regarding whether to deduct overpayments from existing entitlements and the amount of such deductions under subsection 124B(3) of the DFRDB Act relate to the governance of the organisation and overseeing its policies and practices, so the CEO of ComSuper is replaced by “the Board of CSC” (**item 15 of Schedule 1**). This is consistent with the Board’s function of ensuring CSC performs its functions in a proper, efficient and effective manner (subsection 10(1) of the Governance Act).

45. **Item 16 of Schedule 1** ensures the recovery of benefit overpayment debts (recoverable payments) can be pursued by CSC on behalf of the Commonwealth, regardless of when the relevant payment was made, before or after the merger.

46. Section 124C of the DFRDB Act addresses overpayments to a deceased person, purportedly as a benefit, under the DFRDB Scheme. These amounts may currently be recovered by the CEO of ComSuper on behalf of the Commonwealth (recoverable death payments) in a court of competent jurisdiction under subsection 124C(3). The consequential amendments in **items 17 and 18 of Schedule 1** reflect that CSC, not ComSuper, will be performing the administration of the DFRDB Scheme, as ComSuper will cease.

47. **Item 17 of Schedule 1** replaces references to the “Chief Executive Officer of ComSuper” with the “the chief executive officer (however described) of CSC” in paragraph 124C(1)(d) of the DFRDB Act. Paragraph 124C(1)(d) deals with a person’s knowledge. Whether changes to a payment could reasonably be made after becoming aware of a benefit recipient’s death relates to matters of practical administration and is more appropriately a matter for the chief executive officer (however described) of CSC, rather than the Board.

48. **Item 18 of Schedule 1** replaces references to the “Chief Executive Officer of ComSuper” with “CSC” in paragraph 124C(3)(b) of the DFRDB Act. This reflects that administration of the DFRDB Scheme will be performed by CSC, not ComSuper. Therefore the relevant legal entity which will have standing in a court of competent jurisdiction will be CSC.

49. **Item 19 of Schedule 1** ensures CSC can pursue recoverable death payment debts on behalf of the Commonwealth, regardless of when the relevant payment was made, before or after the merger.

50. Section 124D deals with the reporting of recoverable payments (under subsection 124B(1) of the DFRDB Act) and recoverable death payments (under subsection 124C(1) of the DFRDB Act). **Item 20 of Schedule 1** replaces section 124D with a new, simplified section 124D. The new section 124D replaces “Secretary of the Department” with “Board of CSC” and replaces “Departmental official” with “employee of CSC”. This reflects that administration of the DFRDB Scheme will be performed by CSC, not ComSuper, as ComSuper will cease.

51. Decisions regarding the manner in which information is published relate to governance and so it is appropriate that such decisions rest with the Board of CSC. This is consistent with the Board’s function of ensuring CSC performs its functions in a proper, efficient and effective manner (subsection 10(1) of the Governance Act). “Employee of CSC” replaces “Departmental official” as paragraphs 124D(1)(a) and 124D(1)(c) and subsection 124D(3) relate to a person’s knowledge of everyday administrative matters.

### ***Military Superannuation and Benefits Act 1991***

52. The Explanatory Memorandum to the FFLA Bill (No. 2) 2012 provides that the rationale behind sections 16B and 16C of the MSB Act is to establish a framework for dealing with overpayments, and to address risks of payments breaching section 83 of the Constitution.

53. The Explanatory Memorandum to the FFLA Bill (No. 2) 2012 provides that sections 16B and 16C of the MSB Act address overpayments to persons, purportedly as a benefit, under the MSB Scheme. Sections 16B and 16C ensure there is authority to make payments at the time payments are made but allow for the recovery of these payments as debts to the Commonwealth (as recoverable payments and recoverable death payments).

54. **Item 21 of Schedule 1** replaces references to the “Chief Executive Officer of ComSuper” with “CSC” in paragraph 16B(2)(b) of the MSB Act. This reflects that administration of the MSB Scheme will be performed by CSC, not ComSuper, as ComSuper will cease. Therefore the relevant legal entity which will have standing in a court of competent jurisdiction will be CSC.

55. **Item 22 of Schedule 1** replaces references to the “Chief Executive Officer of ComSuper” with “the Board of CSC” in subsection 16B(3) of the MSB Act. Decisions regarding whether to deduct overpayments from existing entitlements and the amount of such deductions under subsection 16B(3) of the MSB Act relate to the governance of the organisation and overseeing its policies and practices, so the CEO of ComSuper is replaced by “the Board of CSC” (**item 22 of Schedule 1**). This is consistent with the Board’s function of ensuring CSC performs its functions in a proper, efficient and effective manner (subsection 10(1) of the Governance Act).

56. **Item 23 of Schedule 1** ensures the recovery of benefit overpayment debts (recoverable payments) can be pursued by CSC on behalf of the Commonwealth, regardless of when the relevant payment was made, before or after the merger.

57. Section 16C of the MSB Act addresses overpayments to a deceased person, purportedly as a benefit, under the MSB Scheme. The consequential amendments in **items 24 and 25 of Schedule 1** reflect that administration of the MSB Scheme will be performed by CSC, not ComSuper, as ComSuper will cease.

58. **Item 24 of Schedule 1** replaces references to the “Chief Executive Officer of ComSuper” with the “the chief executive officer (however described) of CSC” in paragraph 16C(1)(d) of the MSB Act. Paragraph 16C(1)(d) of the MSB Act deals with a person’s knowledge. Whether changes to a payment could reasonably be made after becoming aware of a benefit recipient’s death relates to matters of practical administration and is more appropriately a matter for the chief executive officer (however described) of CSC, rather than the Board.

59. **Item 25 of Schedule 1** replaces references to “the Chief Executive Officer of ComSuper” with “CSC” in paragraph 16C(3)(b) of the MSB Act. This reflects that CSC, not ComSuper, will be performing administration of the MSB Scheme, as ComSuper will cease. Therefore the relevant legal entity which will have standing in a court of competent jurisdiction will be CSC.

60. **Item 26 of Schedule 1** ensures CSC can pursue recoverable death payment debts on behalf of the Commonwealth, regardless of when the relevant payment was made, before or after the merger.

61. Section 16D of the MSB Act deals with the reporting of recoverable payments (under subsection 16B(1) of the MSB Act) and recoverable death payments (under subsection 16C(1) of the MSB Act). **Item 27 of Schedule 1** replaces section 16D with a new, simplified section 16D. The new section 16D replaces “Secretary of the Department” with “Board of CSC” and replaces “Departmental official” with “employee of CSC”. This reflects that administration of the MSB Scheme will be performed by CSC, not ComSuper, as ComSuper will cease.

62. Decisions regarding the manner in which information is published relate to governance and so it is appropriate that such decisions rest with the Board of CSC. This is consistent with the Board’s function of ensuring CSC performs its functions in a proper, efficient and effective manner (subsection 10(1) of the Governance Act). “Employee of CSC” replaces “Departmental official” as paragraphs 16D(1)(a) and 16D(1)(c) and subsection 16D(3) relate to a person’s knowledge of everyday administrative matters.

63. **Item 28 of Schedule 1** reflects that ComSuper and the statutory office of ComSuper CEO will cease and the continuing government entity will be CSC.

### ***Papua New Guinea (Staffing Assistance) Act 1973***

64. The PNG Scheme provides retirement benefits for former employees of the administration of the Territory of Papua and New Guinea. The PNG Scheme is closed and there are no contributing members. However, pensions continue to be payable to retired PNG Scheme members and their eligible dependants under the PNG Act and the PNG Regulations.

65. According to the Explanatory Memorandum to the FFLA Bill (No. 4) 2012, the rationale behind section 62B of the PNG Act is to establish a framework for dealing with overpayments, and to address risks of payments breaching section 83 of the Constitution.

66. The Explanatory Memorandum to the FFLA Bill (No. 4) 2012 provides that section 62B of the PNG Act addresses inadvertent overpayments to a deceased person, purportedly as a benefit, under the PNG Scheme. These amounts may be recovered by the CEO of ComSuper on behalf of the Commonwealth (recoverable death payments) in a court of competent jurisdiction. The consequential amendments in **items 29 and 30 of Schedule 1** reflect that administration of the PNG Scheme will be performed by CSC, not ComSuper, as ComSuper will cease.

67. **Item 29 of Schedule 1** replaces references to the “Chief Executive Officer of ComSuper” with the “the chief executive officer (however described) of CSC” in paragraph 62B(1)(d) of the PNG Act. Paragraph 62B(1)(d) deals with a person’s knowledge. Whether changes to a payment could reasonably be made after becoming aware of a benefit recipient’s death relates to matters of practical administration and is more appropriately a matter for the chief executive officer (however described) of CSC, rather than the Board.

68. **Item 30 of Schedule 1** replaces references to “the Chief Executive Officer of ComSuper” with “CSC” in paragraph 62B(3)(b) of the PNG Act. This reflects that administration of the PNG Scheme will be performed by CSC, not ComSuper, as ComSuper will cease. Therefore the relevant legal entity which will have standing in a court of competent jurisdiction will be CSC.

69. **Item 31 of Schedule 1** ensures CSC can pursue recoverable death payment debts on behalf of the Commonwealth, regardless of when the relevant payment was made, before or after the merger.

70. Section 62C of the PNG Act deals with the reporting of recoverable death payments made under subsection 62B(1) of the PNG Act. **Item 32 of Schedule 1** replaces section 62C of the PNG Act with a new, simplified section 62C. The new section 62C replaces “Chief Executive Officer of ComSuper” with “the Board of CSC” and replaces “ComSuper official” with “employee of CSC”. This reflects that administration of the PNG Scheme will be performed by CSC, not ComSuper, as ComSuper will cease.



71. Decisions regarding the manner in which information is published relate to governance and so it is appropriate that such decisions rest with the Board of CSC. This is consistent with the Board's function of ensuring CSC performs its functions in a proper, efficient and effective manner (subsection 10(1) of the Governance Act). "Employee of CSC" replaces "ComSuper official" as paragraphs 62C(1)(a) and 62C(1)(c) and subsection 62C(3) relate to a person's knowledge of everyday administrative matters.

### ***Same-Sex Relationships (Equal Treatment in Commonwealth Laws – Superannuation) Act 2008***

72. The SSR Act amended a number of Commonwealth civilian and military superannuation schemes to make death benefits available to same-sex partners and children of same-sex relationships. The amendments commenced from 1 January 2009.

73. **Item 33 of Schedule 1** updates terminology in subsection 4(9) of the SSR Act to replace a reference to the "*Financial Management and Accountability Act 1997*" with a reference to the "PGPA Act" in relation to the meaning of "Finance Minister".

74. According to the Explanatory Memorandum to the FFLA Bill (No. 2) 2012, the rationale behind sections 5 and 6 of the SSR is to establish a framework for dealing with overpayments, and to address risks of payments breaching section 83 of the Constitution.

75. The Explanatory Memorandum to the FFLA Bill (No. 2) 2012 provides that sections 5 and 6 of the SSR Act address overpayments, purportedly as a benefit, under the SSR Act. Sections 5 and 6 ensure there is authority to make payments at the time payments are made but allow for the recovery of these payments as debts to the Commonwealth (as recoverable payments and recoverable death payments).

76. The consequential amendments in **items 34 and 36 of Schedule 1** reflect that the administration of the relevant superannuation schemes will be performed by CSC, not ComSuper, as ComSuper will cease.

77. **Item 34 of Schedule 1** replaces references to the "Chief Executive Officer of ComSuper" with "CSC" in paragraph 5(2)(b) of the SSR Act as the relevant legal entity which will have standing in a court of competent jurisdiction will be CSC.

78. **Item 36 of Schedule 1** replaces references to the "Chief Executive Officer of ComSuper" with "the Board of CSC" in subsection 5(3) of the SSR Act. Decisions regarding whether to deduct overpayments from existing entitlements and the amount of such deductions under subsection 5(3) of the SSR Act relate to the governance of the organisation and overseeing its policies and practices, so the CEO of ComSuper is replaced by "the Board of CSC" (**item 36 of Schedule 1**). This is consistent with the Board's function of ensuring CSC performs its functions in a proper, efficient and effective manner (subsection 10(1) of the Governance Act).

79. **Items 35 and 37 of Schedule 1** reflect that the PGPA Act replaced the *Financial Management and Accountability Act 1997* and the *Commonwealth Authorities and Companies Act 1997* as the primary financial framework legislation of the Commonwealth from 1 July 2014.

80. **Item 38 of Schedule 1** ensures the recovery of benefit overpayment debts (recoverable payments) can be pursued by CSC on behalf of the Commonwealth, regardless of when the relevant payment was made, before or after the merger.
81. Section 6 of the SSR Act addresses overpayments to a deceased person, purportedly as a benefit, under section 4 of the SSR Act. The consequential amendments in **items 39 and 40 of Schedule 1** reflect that administration of the relevant superannuation schemes will be performed by CSC, not ComSuper, as ComSuper will cease. **Item 39 of Schedule 1** replaces references to “the Chief Executive Officer of ComSuper” with “the chief executive officer (however described) of CSC” in paragraph 6(1)(d) of the SSR Act. Paragraph 6(1)(d) of the SSR Act deals with a person’s knowledge. Whether changes to a payment could reasonably be made after becoming aware of a benefit recipient’s death relates to matters of practical administration and is more appropriately a matter for the chief executive officer (however described) of CSC, rather than the Board.
82. **Item 40 of Schedule 1** replaces references to “the Chief Executive Officer of ComSuper” with “CSC” in paragraph 6(3)(b) of the SSR Act. As administration of the relevant superannuation schemes will be performed by CSC, not ComSuper, CSC is the relevant legal entity which will have standing in a court of competent jurisdiction.
83. **Item 41 of Schedule 1** reflects that the PGPA Act replaced the *Financial Management and Accountability Act 1997* and the *Commonwealth Authorities and Companies Act 1997* as the primary financial framework legislation of the Commonwealth from 1 July 2014.
84. **Item 42 of Schedule 1** ensures CSC can pursue recovery of outstanding recoverable death payment debts on behalf of the Commonwealth, regardless of when the relevant payment was made, before or after the merger.
85. Section 7 of the SSR Act deals with the reporting of recoverable payments (under subsection 5(1) of the SSR Act) and recoverable death payments (under subsection 6(1) of the SSR Act). **Item 43 of Schedule 1** replaces section 7 of the SSR Act with a new, simplified section 7. The new section 7 also replaces “the Chief Executive Officer of ComSuper” with “the Board of CSC” and replaces “ComSuper official” with “employee of CSC”. This reflects that administration of the relevant superannuation schemes will be performed by CSC, not ComSuper, as ComSuper will cease.
86. Decisions regarding the manner in which information is published relate to governance and so it is appropriate that such decisions rest with the Board of CSC. This is consistent with the Board’s function of ensuring CSC performs its functions in a proper, efficient and effective manner (subsection 10(1) of the Governance Act). “Employee of CSC” replaces “ComSuper official” as paragraphs 7(1)(a) and 7(1)(c) and subsection 7(3) relate to a person’s knowledge of everyday administrative matters (**item 43 of Schedule 1**).

## ***Superannuation Act 1976***

87. According to the Explanatory Memorandum to the FFLA Bill (No. 2) 2012, the rationale behind sections 156B and 156C of the 1976 Act is to establish a framework for dealing with overpayments, and to address risks of payments breaching section 83 of the Constitution.

88. The Explanatory Memorandum to the FFLA Bill (No. 2) 2012 provides that sections 156B and 156C of the 1976 Act address overpayments, purportedly as a benefit, under the CSS. Sections 156B and 156C ensure there is authority to make payments at the time payments are made but allow for the recovery of these payments as debts to the Commonwealth (as recoverable payments and recoverable death payments).

89. The consequential amendments in **items 44 and 45 of Schedule 1** reflect that administration of the CSS will be performed by CSC, not ComSuper, as ComSuper will cease.

90. **Item 44 of Schedule 1** replaces references to the “Chief Executive Officer of ComSuper” with “CSC” in paragraph 156B(2)(b) of the 1976 Act as the relevant legal entity which will have standing in a court of competent jurisdiction will be CSC.

91. **Item 45 of Schedule 1** replaces references to the to the “Chief Executive Officer of ComSuper” with “the Board of CSC” in subsection 156B(3) of the 1976 Act. Decisions regarding whether to deduct overpayments from existing entitlements and the amount of such deductions under subsection 156B(3) of the 1976 Act relate to the governance of the organisation and overseeing its policies and practices, so the CEO of ComSuper is replaced by “the Board of CSC”. This is consistent with the Board’s function of ensuring CSC performs its functions in a proper, efficient and effective manner (subsection 10(1) of the Governance Act).

92. **Item 46 of Schedule 1** ensures the recovery of benefit overpayment debts (recoverable payments) can be pursued by CSC on behalf of the Commonwealth, regardless of when the relevant payment was made, before or after the merger.

93. **Item 47 of Schedule 1** replaces references to “the Chief Executive Officer of ComSuper” with “the chief executive officer (however described) of CSC” in paragraph 156C(1)(d) of the 1976 Act. Paragraph 156C(1)(d) deals with a person’s knowledge. Whether changes to a payment could reasonably be made after becoming aware of a benefit recipient’s death relates to matters of practical administration and is more appropriately a matter for the chief executive officer (however described) of CSC, rather than the Board.

94. **Item 48 of Schedule 1** replaces references to “the Chief Executive Officer of ComSuper” with “CSC” in paragraph 156C(3)(b) of the 1976 Act. As administration of the CSS will be performed by CSC, not ComSuper, CSC is the relevant legal entity which will have standing in a court of competent jurisdiction.

95. **Item 49 of Schedule 1** ensures CSC can pursue recovery of outstanding recoverable death payment debts on behalf of the Commonwealth, regardless of when the relevant payment was made, before or after the merger.

96. Section 156D of the 1976 Act deals with the reporting of recoverable payments (under subsection 156B(1) of the 1976 Act) and recoverable death payments (under subsection 156C(1) of the 1976 Act). **Item 50 of Schedule 1** replaces section 156D of the 1976 Act with a new, simplified section 156D. The new section 156D also replaces “the Chief Executive Officer of ComSuper” with “the Board of CSC” and replaces “ComSuper official” with “employee of CSC”. This reflects that administration of the CSS will be performed by CSC, not ComSuper, as ComSuper will cease.

97. Decisions regarding the manner in which information is published relate to governance and so it is appropriate that such decisions rest with the Board of CSC. This is consistent with the Board’s function of ensuring CSC performs its functions in a proper, efficient and effective manner (subsection 10(1) of the Governance Act). “Employee of CSC” replaces “ComSuper official” as paragraphs 156D(1)(a) and 156C(1)(c) and subsection 156D(3) relate to a person’s knowledge of everyday administrative matters (**item 50 of Schedule 1**).

98. **Item 51 of Schedule 1** amends paragraph 165(a) of the 1976 Act to enable the Minister to delegate a power under the 1976 Act or regulations to either CSC or directly to an employee of CSC.

99. **Item 52 of Schedule 1** repeals paragraphs 165(c) and 165(d) of the 1976 Act, which relate to the Minister’s power of delegation under the legislation, to take into account the cessation of ComSuper and the statutory office of CEO of ComSuper.

### ***Superannuation Act 1990***

100. According to the Explanatory Memorandum to the FFLA Bill (No. 2) 2012, the rationale behind sections 39A and 39B of the 1990 Act is to establish a framework for dealing with overpayments, and to address risks of payments breaching section 83 of the Constitution.

101. The Explanatory Memorandum to the FFLA Bill (No. 2) 2012 provides that sections 39A and 39B of the 1990 Act address overpayments, purportedly as a benefit, under the PSS. Sections 39A and 39B ensure there is authority to make payments at the time payments are made but allow for the recovery of these payments as debts to the Commonwealth (as recoverable payments and recoverable death payments).

102. The consequential amendments in **items 53 and 54 of Schedule 1** reflect that administration of the PSS will be performed by CSC, not ComSuper, as ComSuper will cease.

103. **Item 53 of Schedule 1** replaces references to the “Chief Executive Officer of ComSuper” with “CSC” in paragraph 39A(2)(b) of the 1990 Act as the relevant legal entity which will have standing in a court of competent jurisdiction will be CSC.

104. **Item 54 of Schedule 1** replaces references to the to the “Chief Executive Officer of ComSuper” with “the Board of CSC” in subsection 39A(3) of the 1990 Act. Decisions regarding whether to deduct overpayments from existing entitlements and the amount of such deductions under subsection 39A(3) relate to the governance of the organisation and overseeing its policies and practices, so the CEO of ComSuper is replaced by “the Board of CSC”. This is consistent with the Board’s function of ensuring CSC performs its functions in a proper, efficient and effective manner (subsection 10(1) of the Governance Act).

105. **Item 55 of Schedule 1** ensures the recovery of benefit overpayment debts (recoverable payments) can be pursued by CSC on behalf of the Commonwealth, regardless of when the relevant payment was made, before or after the merger.

106. Section 39B of the 1990 Act addresses overpayments to a deceased person, purportedly as a benefit, under the PSS. **Item 56 of Schedule 1** replaces references to “the Chief Executive Officer of ComSuper” with “the chief executive officer (however described) of CSC” in paragraph 39B(1)(d) of the 1990 Act. Paragraph 39B(1)(d) deals with a person’s knowledge. Whether changes to a payment could reasonably be made after becoming aware of a benefit recipient’s death relates to matters of practical administration and is more appropriately a matter for the chief executive officer (however described) of CSC, rather than the Board.

107. **Item 57 of Schedule 1** replaces references to “the Chief Executive Officer of ComSuper” with “CSC” in paragraph 39B(3)(b) of the 1990 Act. As administration of the PSS will be performed by CSC, not ComSuper, CSC is the relevant legal entity which will have standing in a court of competent jurisdiction.

108. **Item 58 of Schedule 1** ensures CSC can pursue recovery of outstanding recoverable death payment debts on behalf of the Commonwealth, regardless of when the relevant payment was made, before or after the merger.

109. Section 39C of the 1990 Act deals with the reporting of recoverable payments (under subsection 39A(1) of the 1990 Act) and recoverable death payments (under subsection 39B(1) of the 1990 Act). **Item 59 of Schedule 1** replaces section 39C of the 1990 Act with a new, simplified section 39C. The new section 39C also replaces “the Chief Executive Officer of ComSuper” with “the Board of CSC” and replaces “ComSuper official” with “employee of CSC”. This reflects that administration of the PSS will be performed by CSC, not ComSuper, as ComSuper will cease.

110. Decisions regarding the manner in which information is published relate to governance and so it is appropriate that such decisions rest with the Board of CSC. This is consistent with the Board’s function of ensuring CSC performs its functions in a proper, efficient and effective manner (subsection 10(1) of the Governance Act). “Employee of CSC” replaces “ComSuper official” as new paragraphs 39C(1)(a) and 39C(1)(c) and subsection 39C(3) relate to a person’s knowledge of everyday administrative matters (**item 59 of Schedule 1**).

111. **Item 60 of Schedule 1** amends paragraph 47(a) of the 1990 Act to enable the Minister to delegate a power under the 1990 Act or regulations to either CSC or directly to an employee of CSC.

112. **Items 61 and 62 of Schedule 1** amend section 47 of the 1990 Act, which deals with delegations by the Minister, to take into account the cessation of ComSuper and the statutory office of CEO of ComSuper.

### ***Superannuation Act 2005***

113. **Item 63 of Schedule 1** amends paragraph 33(a) of the 2005 Act to enable the Minister to delegate a power under the 2005 Act or regulations to either CSC or directly to an employee of CSC.

114. Section 33 of the 2005 Act deals with delegations by the Minister. **Item 64 of Schedule 1** repeals paragraphs 33(b) and 33(c) of the 2005 Act to take into account the cessation of ComSuper and the statutory office of CEO of ComSuper.

### **Part 3 – Repeal of the ComSuper Act 2011**

#### ***ComSuper Act 2011***

115. **Item 65 of Schedule 1** repeals the *ComSuper Act 2011*. This reflects the cessation of the statutory office of the CEO of ComSuper and the abolition of the statutory agency of ComSuper.

## Schedule 2 – Transitional provisions relating to the merger of CSC and ComSuper

### Overview

116. **Schedule 2** to the Bill contains transitional and savings provisions to facilitate the merger of ComSuper into CSC and ensure the functions performed by ComSuper are transitioned to CSC for commencement as provided for in the Bill.

### **Part 1 – Preliminary**

117. **Item 1 of Schedule 2** sets out definitions of certain terms that are used for the purposes of Schedule 2 to the Bill.

### **Part 2 – Assets, liabilities and legal proceedings**

#### **Item 2 Vesting of assets**

118. **Item 2 of Schedule 2** provides that the assets of ComSuper immediately before commencement are to be vested in CSC upon commencement of this Schedule without any conveyance, transfer or assignment. CSC becomes the successor in law in relation to these assets. The reference to whether the assets are in Australia or elsewhere is intended to assist in demonstrating ownership of the assets for the purposes of relevant foreign laws.

#### **Item 3 Vesting of liabilities**

119. **Item 3 of Schedule 2** provides that, subject to the exception in **subitem 3(3)**, the liabilities of ComSuper immediately before commencement are to be vested in CSC upon commencement of this Schedule without any conveyance, transfer or assignment. CSC becomes the successor in law in relation to these liabilities.

120. **Subitem 3(3) of Schedule 2** contains an exception to the transfer of liabilities from ComSuper to CSC. The ComSuper liability which will not transfer to CSC on commencement is any GST liability which satisfies the following three conditions:

- the liability is GST that was payable on a taxable supply (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*); and
- the consideration for the taxable supply was in relation to the administration costs of an Act administered by CSC; and
- the amount of the consideration was credited to the ComSuper Special Account (established by section 21 of the *ComSuper Act 2011*).

Any GST liability that satisfies the above three conditions will remain a liability of the Commonwealth. All other GST liabilities of ComSuper will transfer to CSC in line with **subitem 3(2) of Schedule 2**.

121. The reference to whether the liabilities are in Australia or elsewhere is intended to assist in demonstrating ownership of the liabilities for the purposes of relevant foreign laws (**subitem 3(1) of Schedule 2**).

#### **Item 4 Certificates relating to vesting of land**

122. The purpose of **item 4 of Schedule 2** is to enable transfers of land that is vested in CSC pursuant to **Part 2 of Schedule 2** to be registered and otherwise dealt with in the way that those matters would ordinarily be dealt with to give effect to the transfer.

123. **Subitem 4(1) of Schedule 2** provides that **item 4** will apply where land vests in CSC pursuant to **Part 2 of Schedule 2** and a certificate, signed by the Chair, has been lodged with a land registration official. The certificate is to identify the land and state that the land has become vested in CSC.

124. **Subitem 4(2) of Schedule 2** allows a land registration official to deal with, and give effect to, the certificate and register the matter in a way that transfers are normally registered.

#### **Item 5 Certificates relating to vesting of assets other than land**

125. The purpose of **item 5 of Schedule 2** is to enable transfers of assets (other than land) vested in CSC pursuant to **Part 2 of Schedule 2** to be registered and otherwise dealt with in the way those matters would ordinarily be dealt with to give effect to the transfer.

126. **Subitem 5(1) of Schedule 2** provides that **item 5** will apply where an asset (other than land) vests in CSC pursuant to **Part 2 of Schedule 2** and a certificate, signed by the Chair, has been lodged with an official with responsibility for keeping an assets register (an assets official). The certificate is to identify the asset and state that the asset has become vested in CSC.

127. **Subitem 5(2) of Schedule 2** allows an assets official to deal with, and give effect to, the certificate and make such entries as are necessary in the assets register relating to assets of that kind to effect the transfer.

#### **Item 6 Substitution of CSC as a party to pending proceedings**

128. **Item 6 of Schedule 2** applies to any proceedings to which the CEO of ComSuper was a party that were pending in any court or tribunal immediately before commencement of this Schedule. CSC is taken to be substituted as a party in the place of the CEO of ComSuper from commencement of this Schedule (**subitem 6(1) of Schedule 2**). **Item 6 of Schedule 2** is intended to ensure that all pending proceedings to which the CEO of ComSuper is a party continue, under the name CSC, after the merger.

129. **Subitem 6(2) of Schedule 2** enables the Minister, by written determination, to substitute another person, other than CSC, in place of the CEO of ComSuper in relation to proceedings under **subitem 6(1) of Schedule 2**. **Subitem 6(1) of Schedule 2** will apply as if the reference to CSC in that subitem is a reference to the person determined by the Minister. In this event, the person specified by the Minister, instead of CSC, would replace the CEO of ComSuper as a party to the legal proceedings.



130. **Subitem 6(3) of Schedule 2** clarifies that a determination made by the Minister under **subitem 6(2)** is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act because it is administrative in character, not legislative. It does not determine or alter the content of the law. This provision is merely declaratory of the law and is included to assist readers.

### **Item 7 Exemption from stamp duty and other Commonwealth, State and Territory taxes**

131. **Item 7 of Schedule 2** is required to ensure that no duty or tax is payable under Commonwealth, State or Territory law in connection with the operation of **Schedule 2** of the Bill. The item provides that no stamp duty or other tax is payable under any Commonwealth, State or Territory law in respect of an exempt matter or anything connected with an exempt matter (**subitem 7(1) of Schedule 2**). **Subitem 7(2)** defines an “exempt matter” as the vesting of any assets or liabilities under **Part 2 of Schedule 2** of the Bill, or the operation of **Schedule 2** in any other respect.

132. **Subitem 7(3) of Schedule 2** enables the Minister to vary the application of **subitem 7** by certifying, in writing, that a specified matter is an exempt matter or that a specified thing was connected with a specified exempt matter. If the Minister does so, the certificate is prima facie evidence in all courts and for all purposes (except for the purposes of criminal proceedings) of the matters stated in the certificate (**subitem 7(4) of Schedule 2**).

133. **Subitem 7(5) of Schedule 2** clarifies that a certificate made by the Minister under **subitem 7(3)** is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act because it is administrative in character, not legislative. It does not determine or alter the content of the law. This provision is merely declaratory of the law and is included to assist readers.

### **Part 3 – References to, and things done by or in relation to, ComSuper**

#### **Item 8 References in Acts and instruments to ComSuper**

134. **Subitem 8(1) of Schedule 2** provides that references to ComSuper or the CEO of ComSuper in Acts and instruments that are in force immediately prior to commencement of this Schedule are to have effect from commencement as if the references were to CSC. This item is intended to ensure that all relevant legislation and instruments continue to operate appropriately upon the transfer of responsibilities and functions of ComSuper and the CEO of ComSuper to CSC provided for in the Bill.

135. **Subitem 8(2) of Schedule 2** enables the Minister to vary the application of **subitem 8(1)** so that:

- it does not apply to a specified reference to ComSuper or the CEO of ComSuper, that is, so a reference to ComSuper or the CEO of ComSuper in an Act or instrument specified in the determination, does not change (with effect from commencement of this Schedule);
- a specified reference to CSC is treated as if it were a reference to the Commonwealth (with effect from commencement of this Schedule); or
- a specified reference to CSC is treated as if it were a reference to the Board (with effect from commencement of this Schedule).

This subitem is intended to allow for changes to be made to references in Acts and instruments after the commencement of this Schedule where the bulk amendments under **subitem 8(1)** are not appropriate or require change for the continued operation of relevant Acts and instruments.

136. **Subitem 8(3) of Schedule 2** is intended to allow references in an instrument to be amended to another body or person, other than CSC, the Commonwealth or the Board, where the Minister has made a determination under **paragraph 8(2)(a)** in relation to a reference in an instrument. Amendments to references in an instrument under **subitem 8(3)** are to be effected through rules made under **Part 7 of Schedule 2** to this Bill.

137. **Subitem 8(4) of Schedule 2** clarifies that a determination made by the Minister under **subitem 8(2)** is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act because it is administrative in character, not legislative. It does not determine or alter the content of the law. This provision is merely declaratory of the law and is included to assist readers.

## **Item 9 Operation of laws**

138. **Subitem 9(1) of Schedule 2** provides that, for the purposes of the operation of any Commonwealth law after commencement of this Schedule, anything done by, or in relation to ComSuper or the CEO of ComSuper before commencement is taken to have been done by, or in relation to, CSC. This item is intended to ensure that anything done by, or in relation to, ComSuper or the CEO of ComSuper does not lapse upon the transfer of the responsibilities and functions of ComSuper and the CEO of ComSuper to CSC under the Bill.

139. **Subitem 9(2) of Schedule 2** provides that where a thing done before commencement under a provision amended by this Bill is taken to have been done by or in relation to CSC under **subitem 9(1)**, then it is taken to have been done by or in relation to CSC under the provision as amended. However, this does not change the time at which the thing was actually done.

140. **Subitem 9(3) of Schedule 2** enables the Minister to vary the application of **subitem 9(1)** so that:

- it does not apply to a specified thing done by, or in relation to, ComSuper or the CEO of Comsuper; or
- it applies as if a thing which is taken to be done by CSC due to **subitem 9(1)** is treated as if it were instead done by the Commonwealth; or
- it applies as if a thing which is taken to be done by CSC due to **subitem 9(1)** is treated as if it were instead done by the Board.

This subitem is intended to allow for changes to be made to the application of **subitem 9(1)** after the commencement of this Schedule where the bulk amendments under **subitem 9(1)** are not appropriate for the continued operation of a law of the Commonwealth.

141. **Subitem 9(4) of Schedule 2** is intended to allow for a thing to be treated as if it were done by or in relation to another body or person, other than CSC, the Commonwealth or the Board, where the Minister has made a determination under to **paragraph 9(3)(a)** in relation to the thing specified. Amendments under **subitem 9(4)** are to be effected through rules made under **Part 7 of Schedule 2** to this Bill.

142. **Subitem 9(5) of Schedule 2** clarifies that a determination made by the Minister under **subitem 9(3)** is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act because it is administrative in character, not legislative. It does not determine or alter the content of the law. This provision is merely declaratory of the law and is included to assist readers.

## **Part 4 – The CEO of ComSuper and the staff of ComSuper and CSC**

### **Division 1 – The CEO of ComSuper**

#### **Item 10 The CEO of ComSuper**

143. **Item 10 of Schedule 2** ceases the CEO of ComSuper's position, so the person ceases to hold the statutory office of CEO of ComSuper, with effect from commencement. This reflects that CSC will be the continuing government entity and the statutory office of CEO of ComSuper will cease.

### **Division 2 – The staff of ComSuper and CSC**

#### **Item 11 APS employees in ComSuper transferred to CSC as employees of CSC**

144. ComSuper employees are APS employees under the *Public Service Act 1999*. CSC employees are non-APS employees engaged under section 26 of the Governance Act. ComSuper staff whose employment is transferred to CSC pursuant to a determination by the Australian Public Service Commissioner under section 72 of the *Public Service Act 1999* will become non-APS employees of CSC engaged under section 26 of the Governance Act.

145. **Subitem 11(1) of Schedule 2** sets out the class of persons that **item 11 of Schedule 2** applies to. **Item 11 of Schedule 2** applies to those APS employees employed at ComSuper immediately before the commencement of this Schedule, whose employment is transferred to CSC upon commencement pursuant to a section 72 determination under the *Public Service Act 1999*, causing them to become non-APS employees of CSC engaged under section 26 of the Governance Act.

146. **Subitem 11(2) of Schedule 2** provides that those ComSuper employees captured by **subitem 11(1)** will transfer their accrued benefits to CSC. Consequently, rather than paying out accrued employment benefits (such as annual leave) or losing accrued benefits (for example personal leave or carer's leave), this subitem means that transferring ComSuper staff can simply take their accrued entitlements to CSC and use them when required.

147. The 'benefits' referred to in **subitem 11(2) of Schedule 2** is intended to capture all and any benefits that a transferring employee derives from their employment, including but not limited to benefits under their contract of employment, their enterprise agreement, the Fair Work Act, the *Public Service Act 1999* and any subordinate instruments or determinations.

148. **Subitem 11(3) of Schedule 2** provides that transferring ComSuper staff will have continuity of service. This means the period of service accrued by a ComSuper employee immediately prior to the merger (including prior service recognised by ComSuper before their employment at ComSuper) will count as service with CSC upon commencement. The transfer of employment to CSC for those captured by **subitem 11(1)** will not constitute a break in service. This subitem overrides the effect of subsections 91(1) and 122(1) of the Fair Work Act to remove CSC's discretion to as to whether or not to recognise transferring employees' service with ComSuper.

149. **Subitem 11(4) of Schedule 2** confirms that transferring ComSuper employees to whom **subitem 11(1) of Schedule 2** applies, will not be entitled to any payments or other benefits due merely to the cessation of their employment with ComSuper (for example accrued annual leave, redundancy and termination payments). This is because their accrued entitlements to benefits will transfer with them to CSC.

## **Item 12 Safety, Rehabilitation and Compensation Act 1988**

150. **Item 12 of Schedule 2** only applies to those staff of ComSuper (including former ComSuper staff), who are employees of ComSuper for the purposes of the SRC Act, and who, prior the commencement of this Schedule, suffer an injury within the meaning of the SRC Act (**subitem 12(1) of Schedule 2**).

151. **Subitem 12(2) of Schedule 2** provides that from commencement of this Schedule, those persons captured by **subitem 12(1) of Schedule 2** will be treated as employees of CSC for the purposes of the SRC Act, for the period they were a member of staff of ComSuper.

152. **Subitem 12(3) of Schedule 2** clarifies the interaction between this item and **Part 3 of Schedule 2**. This subitem does not limit the operation of **Part 3 of Schedule 2**.

## **Item 13 Long service leave for employees of CSC**

153. **Item 13 of Schedule 2** is a transitional item which deals with the application of the LSL Act to CSC as an employer and existing CSC employees. Prior to commencement, CSC employees were subject to different long service leave arrangements. **Clause 37 in Schedule 1** confirms that CSC is a ‘public authority of the Commonwealth’ for the purposes of the LSL Act, and accordingly is subject to the LSL Act. The intent of **item 13** is to provide a mechanism for converting service and long service benefits accrued by CSC employees under the previous employment conditions, to the new arrangements under the LSL Act.

154. **Item 13 of Schedule 2** only applies, for the purposes of the LSL Act, to those existing CSC employees who were employed at CSC immediately before the commencement of this Schedule (**subitem 13(1) of Schedule 2**).

### *Persons who have accrued long service leave entitlements before commencement*

155. **Subitems 13(2), 13(3) and 13(4) of Schedule 2** deal with those CSC employees who already have an accrued entitlement to a long service benefit at commencement (for example, an employee who has accrued long service leave). **Subitem 13(3)** deals with existing long service entitlements. **Subitem 13(4)** deals with future accruals of long service benefits.

156. **Paragraph 13(3)(a) of Schedule 2** preserves the accrued long service leave entitlements of relevant CSC employees on commencement. So where a person has an accrued entitlement to a long service leave benefit immediately before commencement of this Schedule, they will have the same long service leave benefit upon commencement (**paragraph 13(3)(a) of Schedule 2**). For example, if a CSC employee had accrued 75 days of long service leave immediately before commencement, then they would retain 75 days of long service leave after commencement.

157. **Paragraph 13(3)(b) of Schedule 2** makes it clear that from commencement, those CSC employees with an accrued long service leave entitlement are only entitled to long service leave benefits under the LSL Act. Without such a provision there would be potential for a person to have double entitlements.

158. For calculating accruals of future long service benefits, the person’s long service leave benefit (under **subitem 13(3) of Schedule 2**) will be treated as if it were accrued under the LSL Act (not under the long service leave arrangements that applied prior to commencement) (**paragraph 13(4)(b) of Schedule 2**). The LSL Act will apply to the person’s employment at CSC as if it were ‘Government Service’ under the LSL Act. This item may result in retrospective application of the LSL Act to a limited extent for the purpose of accruing future long service leave benefits (**paragraph 13(4)(a) of Schedule 2**). The intention of **subitems 13(2), 13(3) and 13(4)** is to provide continuity for employees.

Persons who have not accrued long service leave entitlements before commencement

159. **Subitem 13(5) of Schedule 2** deals with those CSC employees who have not yet accrued an entitlement to a long service benefit at commencement. **Paragraph 13(5)(a) of Schedule 2** has the effect that a person's service at CSC immediately prior to commencement of this Schedule is to be treated as 'Government Service' within the meaning of the LSL Act from commencement. The length of service captured by **paragraph 13(5)(a)** begins from the date when the person began employment with CSC (if the person has been employed at CSC on more than one occasion, then beginning from the day they most recently commenced employment with CSC).

160. **Paragraph 13(5)(b) of Schedule 2** makes it clear that if a CSC employee had any period of qualifying service (within the meaning of the LSL Act) prior to commencing employment at CSC, this period of qualifying service is not treated as continuous with the person's current period of service at CSC – that is, there is a break in service.

### **Division 3 – Transfer of business**

#### **Item 14 Transfer of business**

161. For the avoidance of doubt, **subitem 14(1) of Schedule 2** makes it clear that the transfer of ComSuper staff to CSC is a transfer of business for the purposes of the Fair Work Act.

162. However, **subitem 14(2) of Schedule 2** alters the operation of section 312 of the Fair Work Act so that the only transferable instrument that will transition with ComSuper staff as part of the transfer of business is the enterprise agreement that:

- covers the CEO of ComSuper on behalf of the Commonwealth and staff of ComSuper; and
- has been approved by the Fair Work Commission; and
- is in force immediately before commencement of this Schedule.

This excludes the transmission of any other transferable instruments for the purposes of section 312 of the Fair Work Act, such as the *Australian Public Service Award 1998* (or its replacement).

163. ComSuper staff whose employment is transferred to CSC pursuant to a determination by the Australian Public Service Commissioner under section 72 of the *Public Service Act 1999* will become non-APS employees of CSC under section 26 of the Governance Act. Subsection 72(3) of the *Public Service Act 1999* provides that under such circumstances, an employee is entitled to remuneration and conditions no less favourable than the terms and conditions the employee was entitled to as an APS employee. **Item 14 of Schedule 2** will assist in meeting this requirement by transferring the ComSuper enterprise agreement referred to in **subitem 14(2)**.

## Part 5 – Reporting

### Item 15 Financial statements and other reporting requirements for ComSuper

164. The purpose of **Item 15 of Schedule 2** is to ensure continuity, so reports that were required of the CEO of ComSuper prior to the merger will be required to be provided by CSC. CSC must provide the report in relation to the period both before and after commencement and may meet the requirements by providing a single report. CSC must also provide reports, required by law (financial or otherwise) for periods ending before commencement, that the CEO of ComSuper was required to provide but had not yet provided at commencement.

## Part 6 – Miscellaneous

### Item 16 Amending instruments may be retrospective

165. **Subitem 16(1) of Schedule 2** allows for an instrument which amends a reference to ComSuper or the CEO of ComSuper (the amending instrument) in any other instrument to have effect from commencement, or a time within the 12 month period following commencement, provided the amending instrument is made within 12 months of commencement of this Schedule. The retrospective operation of an instrument (or a provision in an instrument) pursuant to this item is limited to a period of up to 12 months from commencement of this Schedule.

166. ComSuper and the office of ComSuper CEO will be abolished pursuant to this Bill. So the intention of **item 16 of Schedule 2** is to allow for changes to be made to instruments that refer to ComSuper and the ComSuper CEO where the bulk amendments provided for under **Schedule 2** to this Bill are not appropriate or require change for the continued operation of the relevant instrument.

167. **Subitem 16(2) of Schedule 2** expresses a clear intention that, contrary to subsection 12(2) of the Legislative Instruments Act, an instrument made in accordance with **subitem 16(1)** would take effect retrospectively even if it would impact on the rights of any person or impose liabilities on any person. However, given this item is an amending provision which corrects references in already existing instruments, it is unlikely to impose liabilities or disadvantage the rights of a person.

168. Once it commences, Schedule 1 of the *Acts and Instruments (Framework Reform) Act 2015* will amend the Legislative Instruments Act which will be renamed the Legislation Act. **Subitem 16(3) of Schedule 2** provides for this contingency by clarifying that subsection 12(2) of the Legislation Act 2003 (as amended by Schedule 1 to the *Acts and Instruments (Framework Reform) Act 2015*) will not apply to instruments made in accordance with **subitem 16(1)**.

### Item 17 Constitutional safety net – acquisition of property

169. The purpose of **item 17 of Schedule 2** is to ensure that there is no acquisition of property by the Commonwealth other than on just terms, as required by section 51(xxxi) of the Constitution.

170. **Subitem 17(1) of Schedule 2** provides for reasonable compensation to be paid to a person if the operation of **Schedule 2** to the Bill were to result in an acquisition of property from a person otherwise than on just terms.

171. **Subitem 17(2) of Schedule 2** clarifies that a person may institute proceedings in a court of competent jurisdiction where that person and the Commonwealth cannot agree on the amount of compensation for the purposes of **subitem 17(1)**.

### **Item 18 Saving of existing delegations**

172. **Item 18 of Schedule 2** is intended to ensure that the abolition of ComSuper and the position of CEO of ComSuper do not affect the operation of the existing delegations under section 36 of the Governance Act.

173. **Item 18(1) of Schedule 2** limits the application of **item 18 of Schedule 2** to those delegations under section 36 of the Governance Act to individuals who perform the delegated function or exercise the delegated power, where the delegation is in force immediately before commencement, and has not been remade immediately after commencement.

174. **Item 18(2) of Schedule 2** provides for those delegations captured by **subitem 18(1)** to continue in force after commencement as if the delegation were to the person who performs the function or exercises the power after commencement. In the case of delegations to the CEO of ComSuper captured by **subitem 18(1)**, the delegation continues after commencement as if it were a delegation to the chief executive officer (however described) of CSC.

### **Item 19 Transfer of custody of records**

175. **Item 19 of Schedule 2** provides for records and documents in the custody of the ComSuper CEO immediately before commencement, to be transferred to the custody of CSC at or after commencement. The note to **item 19** is included to remove any doubt about the status of the records as Commonwealth records.

### **Item 20 Certificates taken to be authentic**

176. **Item 20 of Schedule 2** provides that a document which appears to be made or issued under **Schedule 2** to this Bill is taken to be such a properly given certificate, unless the contrary is established.

### **Item 21 Special Accounts**

177. **Item 21 of Schedule 2** provides for the credit balance of the ComSuper Special Account immediately before commencement to be credited to the CSC Special Account (established by the new **section 29E** inserted by **item 2 of Schedule 1** to the Bill), after commencement.



## Part 7 – Rules

### 22 Rules

178. **Item 22 of Schedule 2** provides a rule making power to provide detailed rules with respect to transitional and other matters. Rules made under this item are legislative instruments under the Legislative Instruments Act.

179. **Subitem 22(1) of Schedule 2** gives the Minister a broad power to make rules dealing with transitional and other matters necessary to give effect to the merger of ComSuper into CSC. The rules that may be made for the purposes of **item 22** are subject to the limitations in **subitem 22(4)**. Apart from these limitations, nothing in **Schedule 2** to this Bill (including **subitems 22(2) and 22(3)**) limits the rules that may be made for the purposes of this item (**subitem 22(5) of Schedule 2**).

180. **Subitem 22(3) of Schedule 2** makes express provision for rules made for the purpose of **subitem 22(2)** to modify the operation of:

- the Fair Work Act;
- the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*;
- the *Public Service Act 1999*;
- the Governance Act;
- the LSL Act.

This may be considered a ‘Henry VIII clause’ in that it may potentially allow the Minister to modify the operation of the above Acts by making rules. That is, it may result in the operation of primary legislation being expressly or impliedly amended by subordinate legislation. This provision is included to allow the Minister to deal with any unintended or unforeseen consequences for CSC employees or transferring ComSuper staff arising out of the transfer of employment arrangements. The intention is that, to the extent possible and practical, there is no enhancement or reduction in the accrued entitlements of CSC employees and transferring ComSuper staff. Where a rule under **subitem 22(3)** could potentially modify the application of an Act, which another Minister is responsible for, it is intended for such rules to be made only after that other Minister has been consulted.

## Schedule 3 – Amendments relating to payment of administration fees

### Overview

181. The Government announced in the 2014-15 Mid-Year Economic and Fiscal Outlook that PSSAP members are to pay administration fees. The fees are to be determined by CSC and deducted from PSSAP members' superannuation accounts. Currently the Commonwealth pays administration costs in relation to the PSSAP.

182. Implementation of this measure requires amendments to the 2005 Act to provide for administration costs to be paid out of the PSSAP Fund by CSC. Amendments are also required to the PSSAP Trust Deed, made under the Act, to allow CSC to determine the fees to be paid by PSSAP members to meet these costs and deduct those fees from PSSAP members' accounts. These changes make no change to the 15.4 percent PSSAP employer contribution rate.

183. The changes will bring PSSAP into line with arrangements in superannuation accumulation funds in the general community. In accumulation superannuation funds it is very common for members of the fund to meet the administration costs. Members of accumulation funds in the general community pay fees; Commonwealth employees who have chosen an accumulation superannuation fund other than PSSAP pay fees; and Federal Parliamentarians elected since 2004 pay fees.

184. **Schedule 3** contains amendments to the 2005 Act and consequential amendments to the Governance Act. Amendments to the PSSAP Trust Deed are to be made by a legislative instrument by the Finance Minister under section 11 of the 2005 Act.

### ***Governance of Australian Government Superannuation Schemes Act 2011***

185. **Item 1 of Schedule 3** repeals subsection 34(3) of the Governance Act. Section 34 sets out the source from which the Chair and other directors of CSC are paid remuneration and allowances. Subsection 34(3) enables regulations to modify or cease the operation of section 34 as it applies to PSSAP and the PSSAP Fund.

186. Currently, when a CSC director (other than the Chair) is performing functions in relation to the PSSAP some of the director's remuneration is paid by the Commonwealth, reflecting that the Commonwealth is currently responsible for meeting costs of administration of the 2005 Act and the PSSAP Trust Deed. As a result of amendments to be made by Schedule 3 costs of administration which includes directors' remuneration will be paid from the PSSAP Fund. Therefore, it is no longer necessary to retain the regulation making power set out in subsection 34(3) of the 2005 Act.

### ***Superannuation Act 2005***

187. **Item 2 of Schedule 3** adds a note to the end of subsection 32(2) of the 2005 Act to make a reference to new subsection 34 to be inserted by **item 3 of Schedule 3**. This is to alert the reader that the provisions in subsection 32(2) that set out the conditions that have to be met before the Finance Minister can make a declaration, determination or instrument are subject to new section 34.

188. **Item 3 of Schedule 3** repeals sections 34 to 36 of the 2005 Act and inserts a new section 34. As PSSAP administration costs are to be paid from the PSSAP Fund, the existing section 34 (allowing the Finance Minister to determine those costs to be paid out of the PSSAP Fund and those to be paid by the Commonwealth), section 35 (allowing CSC to prepare an estimate of costs referred to in section 34), and section 36 (allowing the Minister to direct an authority or body to make payments in relation to PSSAP administration costs) are no longer necessary.

189. New subsection 34(1) provides that the costs of the administration of the 2005 Act and the PSSAP Trust Deed, including the costs of and incidental to CSC management and investment of the PSSAP Fund, are to be paid by CSC out of the PSSAP Fund in accordance with the Trust Deed. Management and investment costs are already paid from the PSSAP Fund. This new subsection will mean that administration costs will also be paid from the PSSAP Fund rather than by the Commonwealth.

190. Subsection 32(2) of the 2005 Act provides that the Finance Minister must not make a legislative instrument under the 2005 Act (including an instrument to amend the Trust Deed under section 11 of the 2005 Act), unless the CSC Board has consented to the making of the instrument or the changes fall within certain prescribed circumstances. Although the changes to the Trust Deed will relate to payments (administration costs) currently being paid by the Commonwealth as an employer sponsor, these amounts are not paid into the PSSAP Fund. As such the changes would not fall within the prescribed circumstances set out in subsection 32(2) and therefore would require the consent of the CSC Board. Therefore, new subsection 34(2) provides that the requirements of subsection 32(2) will not apply to a legislative instrument made by the Finance Minister to amend the Trust Deed where the amendments relate to the costs of administration of the 2005 Act and Trust Deed.

191. The purpose of new subsection 34(3) is to ensure that there is no acquisition of property by the Commonwealth other than on just terms, as required by section 51(xxxi) of the Constitution. Subsection 34(3) provides for reasonable compensation to be paid to a person if the operation of section 34 of the 2005 Act, or the operation of amendments made to the Trust Deed where they relate to the costs of administration of the 2005 Act and Trust Deed, would result in an acquisition of property from a person otherwise than on just terms.

192. New subsection 34(4) enables a person to institute proceedings in a court of competent jurisdiction where that person and the Commonwealth disagree on the amount of compensation for the purposes of subsection 34(3).

193. New subsection 34(5) provides definitions for the terms ‘acquisition of property’ and ‘just terms’ for the purposes of this section. The terms have the same meaning as in paragraph 51(xxxi) of the Constitution.

194. **Subitem 4(1) of Schedule 3** sets out certain conditions that have to be met in relation to an instrument that amends the PSSAP Trust Deed for the instrument to be covered by **subitems 4(2), 4(3), 4(4) and 4(5) of Schedule 3**. These are that the instrument:

- is the first instrument to amend the Trust Deed on or after the day that **item 4** commences;
- relates solely to the costs of administration of the 2005 Act and Trust Deed; and
- commences on or after the day that **item 4** commences.

195. **Subitems 4(2) and (3) of Schedule 3** provide that the first instrument amending the Trust Deed will not be subject to disallowance. If the instrument to amend the Trust Deed was disallowed this would mean that whilst CSC would be required to pay administration costs from the PSSAP Fund, they would have no way of attributing those costs to PSSAP members through fees. The note under **subitem 4(2)** alerts the reader that the Legislative Instruments Act is to be renamed the Legislation Act by the *Acts and Instruments (Framework Reform) Act 2015*.

196. **Subitem 4(4) of Schedule 3** provides that the first instrument amending the Trust Deed may take effect before the date the instrument is registered.

197. For implementation reasons it is necessary that changes to the Trust Deed that relate to costs of administration of the 2005 Act and Trust Deed are able to operate from the same time that the new section 34 of 2005 Act commences. This is necessary to ensure that from the time administration costs are to be paid out of the PSSAP Fund (as required by new section 34) CSC, under the Trust Deed will be able to determine the applicable fees to be paid by PSSAP members and also be able to deduct these fees from PSSAP members' accounts.

198. If this was not the case then an impossible situation would arise where subsection 34(1) of the 2005 Act would require administration costs to be paid from the PSSAP Fund but CSC would not be able to attribute these costs to PSSAP members and make deductions from members' accounts.

199. **Subitem 4(5) of Schedule 3** allows for the renaming of the Legislative Instruments Act, and amendments to subsection 12(2) of that Act, by the *Acts and Instruments (Framework Reform) Act 2015*.