Superannuation Act 2005

No. 80, 2005

Compilation No. 10

Compilation date:	1 July 2015
Includes amendments up to:	Act No. 65, 2015
Registered:	15 July 2015

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Superannuation Act 2005* that shows the text of the law as amended and in force on 1 July 2015 (the ***compilation date***).

This compilation was prepared on 6 July 2015.

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on ComLaw (www.comlaw.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on ComLaw for the compiled law.

Application, saving and transitional provisions for provisions and amendments

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

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on ComLaw for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Introduction 1

1 Short title ... 1
2 Commencement ... 1
3 Simplified outline ... 2
4 Definitions ... 2
5 Public sector employees ... 5
6 Extended meaning of *employed* ... 6
7 Statutory offices ... 7
8 Approved authorities ... 8
9 Application of Act ... 10

Part 2—The Trust Deed 11

10 Deed to establish PSSAP etc. ... 11
11 Amendment of Trust Deed ... 11
12 Family law interest splitting ... 12

Part 3—Members of Public Sector Superannuation Accumulation Plan (PSSAP) 13

13 Eligibility for membership of PSSAP ... 13
14 Becoming a member of PSSAP ... 14
15 Duration of membership of PSSAP ... 16
16 PSSAP is the sole eligible choice fund in relation to APS employees etc. for certain purposes ... 17

Part 4—Contributions 19

17 Contributions to PSSAP by designated employers ... 19
18 Ordinary employer-sponsored member of PSSAP ... 19
19 Designated employers ... 21

Part 5—Administration 24

Division 1—CSC 24

20 Functions and powers ... 24
29 Indemnification ... 24

Division 3—Ministerial powers 25

32 Making of certain legislative instruments ... 25
33 Delegation by Minister ... 26

ComLaw Authoritative Act C2015C00331

Division 4—Costs of administration 27
34 Costs of administration of Act etc. 27
37 Payment of fees 28
38 CSC liable to pay surcharge under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* 28
Division 5—Other administrative matters 29
39 Amounts payable to the CSC 29
40 Recovery of overpayments 29
41 CSC may rely on information supplied by employers or former employers 30
42 CSC may require employers to distribute information etc. to members of PSSAP 30
Part 6—Miscellaneous 31
43 Ordinary employer-sponsored member not to be retired on grounds of invalidity without CSC certificate 31
44 Persons subject to Rules 31
45 Regulations 32
46 Regulations relating to the operation of the *Superannuation Industry (Supervision) Act 1993* and certain other laws 32
Endnotes 34
Endnote 1—About the endnotes **Error! Bookmark not defined.**
Endnote 2—Abbreviation key **Error! Bookmark not defined.**
Endnote 3—Legislation history 36
Endnote 4—Amendment history 38

ComLaw Authoritative Act C2015C00331

An Act about the Public Sector Superannuation Accumulation Plan (PSSAP), and for related purposes

Part 1—Introduction

1 Short title

This Act may be cited as the *Superannuation Act 2005*.

2 Commencement

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

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	29 June 2005
2. Sections 3 to 46	The later of: (a) the day on which this Act receives the Royal Assent; and (b) the day on which the *Superannuation (Consequential Amendments) Act 2005* receives the Royal Assent. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	29 June 2005 (paragraph (a) applies)

ComLaw Authoritative Act C2015C00331

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Simplified outline

The following is a simplified outline of this Act:

- This Act provides for a superannuation scheme, to be known as the Public Sector Superannuation Accumulation Plan (PSSAP).
- Generally, a person is eligible to become a member of PSSAP if he or she is a public sector employee who starts work on or after 1 July 2005.
- Generally, if a person is eligible to become a member of PSSAP, he or she becomes a member if:
  - (a) he or she chooses to become a member; or
  - (b) PSSAP is his or her mandated fund.
- A person's membership of PSSAP continues until the occasion, or the last of the occasions, on which a benefit is paid to or in respect of the member.
- Employers must pay contributions to PSSAP for the benefit of ordinary employer-sponsored members of PSSAP.
- CSC is responsible for PSSAP.

4 Definitions

(1) In this Act:

ComLaw Authoritative Act C2015C00331

approved authority has the meaning given by section 8.

Australian government superannuation scheme member means a person who is:

(a) a member of the PSS; or

(b) an eligible employee (within the meaning of the *Superannuation Act 1976*);

so long as the Minister has made a declaration that such a person is an Australian government superannuation scheme member.

Note: See also subsections (2) and (3).

basic employer contribution has the same meaning as in the Rules.

Board has the same meaning as in the *Superannuation Act 1990*.

CSC (short for Commonwealth Superannuation Corporation) has the same meaning as in the *Governance of Australian Government Superannuation Schemes Act 2011*.

designated employer has the meaning given by section 19.

employed has a meaning affected by section 6.

exempt overseas employee has the meaning given by subsection 5(2).

former Australian government superannuation scheme member means:

(a) a person who is a former member of the PSS in respect of whom a preserved benefit under PSS has not yet been paid; or

(b) a person in respect of whom deferred benefits are applicable under the *Superannuation Act 1976*;

so long as the Minister has made a declaration that such a person is a former Australian government superannuation scheme member.

Note: See also subsections (2) and (3).

ComLaw Authoritative Act C2015C00331

invalidity, in relation to a person, means the person's inability, because of any mental or physical condition, to perform the duties of his or her employment or office.

ordinary employer-sponsored member of PSSAP has the meaning given by section 18.

Parliamentary Department means a Department of the Parliament established under the *Parliamentary Service Act 1999*.

PSS means the Public Sector Superannuation Scheme within the meaning of the *Superannuation Act 1990*.

PSSAP: see ***Public Sector Superannuation Accumulation Plan***.

PSSAP Fund means the fund established, and vested in the Board, by the Trust Deed.

Note: From 1 July 2011, the fund is vested in CSC.

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

public sector employee has the meaning given by section 5.

Public Sector Superannuation Accumulation Plan or ***PSSAP*** means the superannuation scheme established by the Trust Deed.

Rules means the Rules for the administration of PSSAP set out in the Schedule to the Trust Deed.

statutory office has the meaning given by section 7.

Trust Deed means:

(a) the deed referred to in section 10; or

(b) if the deed is amended—the deed as so amended.

(2) A declaration under:

(a) the definition of ***Australian government superannuation scheme member***; or

(b) the definition of ***former Australian government superannuation scheme member***;

ComLaw Authoritative Act C2015C00331

is a legislative instrument.

(3) Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act applies to a declaration under:
  (a) the definition of ***Australian government superannuation scheme member***; or
  (b) the definition of ***former Australian government superannuation scheme member***.

5 Public sector employees

(1) For the purposes of this Act, a person is a ***public sector employee*** if, and only if, the person is:
  (a) either:
    (i) employed by the Commonwealth or an approved authority; or
    (ii) the holder of a statutory office; and
  (b) not an exempt overseas employee.

(2) For the purposes of this Act, a person is an ***exempt overseas employee*** if the person is:
  (a) engaged or appointed for employment outside Australia only; and
  (b) not specified in a written declaration made by the Minister under this paragraph.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

Declarations

(3) A declaration under paragraph (2)(b) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

(4) Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act applies to a declaration under paragraph (2)(b) of this section.

ComLaw Authoritative Act C2015C00331

(5) A declaration under paragraph (2)(b) may be expressed to have taken effect on a day not earlier than 12 months before the making of the declaration.

(6) If:

(a) a declaration is made under paragraph (2)(b); and

(b) before the start of the 12-month period ending immediately before the making of the declaration, basic employer contributions were accepted or purportedly accepted in respect of a person to whom the declaration relates;

the declaration may be expressed to have taken effect on a day not earlier than the earliest day on which those contributions were accepted or purportedly accepted.

6 Extended meaning of *employed*

Directors of companies and other bodies corporate

(1) For the purposes of this Act, if:

(a) a person is a full-time director of a company or other body corporate; and

(b) the company or other body is an approved authority; and

(c) the company or other body is incorporated under a law of the Commonwealth or of a State or Territory; and

(d) the person is not specified in a written declaration made by the Minister under this paragraph;

the person is employed by the company or other body.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

(2) The Minister may, by writing, declare that, for the purposes of this Act, a specified person is employed by a company or other body corporate, so long as:

(a) the person is a director of the company or other body; and

(b) the person is not a full-time director of the company or other body; and

(c) the company or other body is an approved authority; and

ComLaw Authoritative Act C2015C00331

(d) the company or other body is incorporated under a law of the Commonwealth or of a State or Territory.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

Declarations

(3) A declaration under paragraph (1)(d) or subsection (2) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

(4) Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act applies to a declaration under paragraph (1)(d) or subsection (2) of this section.

7 Statutory offices

(1) For the purposes of this Act, a ***statutory office*** is:

(a) an office established by or under:

(i) an Act; or

(ii) regulations made under an Act; or

(iii) a law of a Territory; or

(b) an office specified in a written declaration made by the Minister under this paragraph.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

Declarations

(2) A declaration under paragraph (1)(b) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

(3) Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act applies to a declaration under paragraph (1)(b) of this section.

(4) A declaration under paragraph (1)(b) may be expressed to have taken effect on a day not earlier than 12 months before the making of the declaration.

ComLaw Authoritative Act C2015C00331

(5) If:

(a) a declaration is made under paragraph (1)(b); and

(b) before the start of the 12-month period ending immediately before the making of the declaration, basic employer contributions were accepted or purportedly accepted in respect of a holder of the office to whom the declaration relates;

the declaration may be expressed to have taken effect on a day not earlier than the earliest day on which those contributions were accepted or purportedly accepted.

8 Approved authorities

(1) This section sets out the 2 situations in which an authority or body is an ***approved authority*** for the purposes of this Act.

Approved authorities under the Superannuation Act 1990

(2) An authority or body is an ***approved authority*** if:

(a) the authority or body was, at the end of 30 June 2005, an approved authority for the purposes of the *Superannuation Act 1990*; and

(b) the authority or body is not specified in a written declaration made by the Minister under this paragraph.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

Ministerial declarations

(3) The Minister may, by writing, declare that an authority or body is an ***approved authority*** for the purposes of this Act, so long as the authority or body is:

(a) a body corporate incorporated for a public purpose by:

(i) an Act; or

(ii) regulations made under an Act; or

(iii) a law of a Territory; or

ComLaw Authoritative Act C2015C00331

(b) an authority or body (other than a body corporate) established for a public purpose by or under:
  (i) an Act; or
  (ii) regulations made under an Act; or
  (iii) a law of a Territory; or
(c) a company or other body corporate:
  (i) that is incorporated under an Act or a law of a State or Territory; and
  (ii) in which the Commonwealth has a controlling interest; or
(d) an authority or body that is wholly or substantially financed (whether directly or indirectly) by money provided by the Commonwealth; or
(e) a company or other body corporate incorporated under an Act or a law of a State or Territory, where:
  (i) an authority or body covered by paragraph (a), (b), (c) or (d), or that is an approved authority because of subsection (2), has a controlling interest in the company or body; or
  (ii) the Commonwealth and one, or more than one, such authority or body together have a controlling interest in the company or body; or
  (iii) 2 or more such authorities or bodies together have a controlling interest in the company or body.

(4) The Minister must not declare an authority or body to be an approved authority under subsection (3) if the authority or body is an approved authority because of subsection (2).

Declarations

(5) A declaration under paragraph (2)(b) or subsection (3) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

ComLaw Authoritative Act C2015C00331

(6) Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act applies to a declaration under paragraph (2)(b) or subsection (3) of this section.

(7) A declaration under subsection (3) may be expressed to have taken effect on a day not earlier than 12 months before the making of the declaration.

9 Application of Act

This Act applies both within and outside Australia.

ComLaw Authoritative Act C2015C00331

Part 2—The Trust Deed

10 Deed to establish PSSAP etc.

(1) Before 1 July 2005, the Minister must, for and on behalf of the Commonwealth, by deed:

(a) establish a superannuation scheme that:

(i) is to be known as the Public Sector Superannuation Accumulation Plan; and

(ii) may also be known as PSSAP; and

(iii) is for the benefit of persons who will be members of PSSAP; and

(b) establish, and vest in the Board, a fund for the purposes of PSSAP; and

(c) set out the functions and powers of the Board in relation to PSSAP and the PSSAP Fund.

(2) The deed under subsection (1) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but section 42 of that Act does not apply to the deed.

11 Amendment of Trust Deed

(1) The Minister may, by writing, amend the Trust Deed.

(2) If compliance with a provision of the Trust Deed as amended under subsection (1) would have the effect that PSSAP:

(a) would not be a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993*; or

(b) would not comply with that Act;

that provision is invalid.

(3) An instrument under subsection (1) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

ComLaw Authoritative Act C2015C00331

(4) Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act applies to an instrument under subsection (1) of this section.

12 Family law interest splitting

(1) Without limiting section 10 or 11, the Rules:

(a) may provide that, when a splitting agreement or splitting order is received by CSC in respect of a superannuation interest under this Act:

(i) the non-member spouse is entitled to benefits determined in accordance with the Rules; and

(ii) the benefits of the member spouse are reduced in accordance with the Rules; and

(b) may include any other provision that is related to, or consequential on, provisions referred to in paragraph (a).

(2) In this section:

member spouse has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

non-member spouse has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

splitting agreement means:

(a) a superannuation agreement (within the meaning of Part VIIIB of the *Family Law Act 1975*); or

(b) a flag lifting agreement (within the meaning of Part VIIIB of the *Family Law Act 1975*) that provides for a payment split (within the meaning of Part VIIIB of the *Family Law Act 1975*).

splitting order has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

superannuation interest has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

Part 3—Members of Public Sector Superannuation Accumulation Plan (PSSAP)

13 Eligibility for membership of PSSAP

(1) A person is eligible to become a member of PSSAP if:

(a) subject to subsections (2) and (3), the person is:

(i) a public sector employee; or

(ii) specified in a written declaration made by the Minister under this subparagraph; or

(b) subject to subsection (3), the person is an Australian government superannuation scheme member; or

(c) subject to subsection (3), the person is a former Australian government superannuation scheme member.

Note: Subparagraph (1)(a)(ii)—for specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

(2) A person is not eligible to become a member of PSSAP if:

(a) the person is a member of PSS (other than a member of the PSS who has made an election under section 6B of the *Superannuation Act 1990*); or

(b) the person is a former member of PSS in respect of whom a preserved benefit under PSS has not yet been paid; or

(c) the person is a PSS invalidity pensioner (within the meaning of the *Superannuation Act 1990*); or

(d) the person is entitled to make an election under section 7 or 8 of the *Superannuation Act 1990* that would result in the person becoming a member of PSS; or

(e) the person is an eligible employee for the purposes of the *Superannuation Act 1976*; or

(f) the person is a person to whom the *Judges' Pensions Act 1968* applies; or

(g) the person is covered by paragraph 6(2)(ba) of the *Superannuation Act 1990*; or

ComLaw Authoritative Act C2015C00331

(h) the person is specified in a written declaration made by the Minister under this paragraph.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

(3) A person is not eligible to become a member of PSSAP before 1 July 2005.

Declarations

(4) A declaration under subparagraph (1)(a)(ii) or paragraph (2)(h) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

(5) Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act applies to a declaration under subparagraph (1)(a)(ii) or paragraph (2)(h) of this section.

(6) A declaration under subparagraph (1)(a)(ii) may be expressed to have taken effect on a day not earlier than 12 months before the making of the declaration.

(7) If:

(a) a declaration is made under subparagraph (1)(a)(ii); and

(b) before the start of the 12-month period ending immediately before the making of the declaration, basic employer contributions were accepted or purportedly accepted in respect of a person to whom the declaration relates;

the declaration may be expressed to have taken effect on a day not earlier than the earliest day on which those contributions were accepted or purportedly accepted.

14 Becoming a member of PSSAP

(1) This section sets out the 2 situations in which a person can become a member of PSSAP.

ComLaw Authoritative Act C2015C00331

Choice to become a member

(2) If a person is eligible to become a member of PSSAP, the person may, in a manner approved by CSC in writing under this subsection, choose to become a member of PSSAP.

(3) The effect of making a choice under subsection (2) is that the person becomes a member of PSSAP when the choice is made.

PSSAP is the person's mandated fund

(4) Subject to subsections (5) and (6), if:

(a) at a particular time:

(i) a person is in particular employment or holds a particular statutory office; and

(ii) the person is eligible to be a member of PSSAP because of that employment or holding that office; and

(iii) there is no chosen fund for the person (within the meaning of Part 3A of the *Superannuation Guarantee (Administration) Act 1992*); and

(iv) assuming that the person were to become a member of PSSAP and the person's employer (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) were to make a basic employer contribution to PSSAP for the benefit of the person, the employer would rely on subsection 32C(2) or (6) of that Act to satisfy the choice of fund requirements in relation to the contribution; and

(v) the person's salary or wages (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) would be taken into account for the purpose of making a calculation under section 19 of that Act; and

(b) immediately before that time, the person was not a member of PSSAP;

the person is taken to have become a member of PSSAP at that time.

Note 1: See also section 16 (PSSAP is the sole eligible choice fund in relation to APS employees etc. for certain purposes).

ComLaw Authoritative Act C2015C00331

Note 2: If a person makes an election under section 6B of the *Superannuation Act 1990* to cease to be a member of the PSS, and the PSSAP is the person's mandated fund, the person is taken to become a member of the PSSAP in accordance with this subsection at the time that the election is given to CSC.

(5) Subsection (4) does not apply to a person if the person's employer (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*):

(a) gives; or

(b) has given; or

(c) proposes to give;

the person a standard choice form (within the meaning of Part 3A of the *Superannuation Guarantee (Administration) Act 1992*) that sets out the name of a fund (within the meaning of that Part) other than PSSAP that the employer will contribute to if the person does not make a choice.

(6) Subsection (4) does not apply to a person at a particular time if:

(a) the following conditions are satisfied:

(i) at that time, the person is the holder of a statutory office (within the meaning of the *Superannuation Act 1990*);

(ii) the person's current term of appointment included a day in the financial year beginning on 1 July 2005; or

(b) the following conditions are satisfied:

(i) at that time, the person is a temporary employee (within the meaning of the *Superannuation Act 1990*);

(ii) if the person's employment is for a fixed term—the term included a day in the financial year beginning on 1 July 2005;

(iii) if the person's employment is not for a fixed term—the period of employment included a day in the financial year beginning on 1 July 2005.

15 Duration of membership of PSSAP

(1) If a person becomes a member of PSSAP, the person's membership continues until:

ComLaw Authoritative Act C2015C00331

(a) if there is only one occasion on which a benefit is payable to or in respect of the member in accordance with the Rules:
  (i) that benefit is paid; or
  (ii) if the person dies before that benefit is paid—the death of the person; or
(b) if there are 2 or more occasions on which a benefit is paid to or in respect of the member in accordance with the Rules:
  (i) the last of those benefits is paid; or
  (ii) if the person dies before the last of those benefits is paid—the death of the person; or
(c) in any other case—the death of the person.

(2) A person does not cease to be a member of PSSAP merely because the person ceases to be eligible to become a member of PSSAP.

(3) If a person ceases to be a member of PSSAP, this section does not prevent the person from subsequently becoming a member of PSSAP.

16 PSSAP is the sole eligible choice fund in relation to APS employees etc. for certain purposes

(1) If:
(a) either:
  (i) a person is eligible to become a member of PSSAP because of particular employment; or
  (ii) a person is a member of PSSAP, and if the person were not a member of PSSAP, the person would be eligible to become a member because of particular employment; and
(b) that employment is:
  (i) employment as an APS employee; or
  (ii) specified in a written determination made by the Minister under this subparagraph; and
(c) PSSAP is covered by a paragraph of section 32D of the *Superannuation Guarantee (Administration) Act 1992*;

ComLaw Authoritative Act C2015C00331

then, for the purposes of the application of subsection 32C(2) of the *Superannuation Guarantee (Administration) Act 1992* to the person, PSSAP is the sole eligible choice fund for the person's employer.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

(2) A determination under subparagraph (1)(b)(ii) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

(3) Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act applies to a determination under subparagraph (1)(b)(ii) of this section.

(4) In this section:

employment has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992*.

Note: See also section 18A of the *Acts Interpretation Act 1901* (parts of speech and grammatical forms).

ComLaw Authoritative Act C2015C00331

Part 4—Contributions

17 Contributions to PSSAP by designated employers

(1) This section applies to a person who is:

(a) an ordinary employer-sponsored member of PSSAP in respect of particular employment or the holding of a particular office; or

(b) an Australian government superannuation scheme member who has chosen to be a member of PSSAP.

(2) The designated employer of the member must pay to CSC, in accordance with the Rules, any contributions that, under the Rules, are payable by the employer in respect of the member.

Note: See also section 39 (amounts payable to CSC).

18 Ordinary employer-sponsored member of PSSAP

(1) This section sets out the 3 situations in which a person is an ***ordinary employer-sponsored member*** of PSSAP.

PSSAP is the person's chosen fund

(2) If, at a particular time:

(a) a person is a member of PSSAP; and

(b) if the person had not been a member of PSSAP, the person would have been eligible to become a member because of particular employment or holding a particular office; and

(c) assuming that the person's employer (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) were to make a basic employer contribution to PSSAP for the benefit of the person, the employer would rely on subsection 32C(1) of that Act to satisfy the choice of fund requirements in relation to the contribution; and

ComLaw Authoritative Act C2015C00331

(d) the person's salary or wages (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) would be taken into account for the purpose of making a calculation under section 19 of that Act;

the person is an ***ordinary employer-sponsored member*** of PSSAP in respect of that employment or the holding of that office.

PSSAP is the person's mandated fund

(3) Subject to subsection (4), if, at a particular time:

(a) a person is a member of PSSAP; and

(b) if the person had not been a member of PSSAP, the person would have been eligible to become a member because of particular employment or holding a particular office; and

(c) there is no chosen fund for the person (within the meaning of Part 3A of the *Superannuation Guarantee (Administration) Act 1992*); and

(d) assuming that the person's employer (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) were to make a basic employer contribution to PSSAP for the benefit of the person, the employer would rely on subsection 32C(2) or (6) of that Act to satisfy the choice of fund requirements in relation to the contribution; and

(e) the person's salary or wages (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) would be taken into account for the purpose of making a calculation under section 19 of that Act;

the person is an ***ordinary employer-sponsored member*** of PSSAP in respect of that employment or the holding of that office.

(4) Subsection (3) does not apply to a person if the person's employer (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*):

(a) gives; or

(b) has given; or

(c) proposes to give;

ComLaw Authoritative Act C2015C00331

the person a standard choice form (within the meaning of Part 3A of the *Superannuation Guarantee (Administration) Act 1992*) that sets out the name of a fund (within the meaning of that Part) other than PSSAP that the employer will contribute to if the person does not make a choice.

Superannuation Guarantee (Administration) Act 1992 does not apply to the person

(5) Subject to subsection (6), if:

(a) a person is a member of PSSAP; and

(b) if the person had not been a member of PSSAP, the person would have been eligible to become a member because of particular employment or holding a particular office; and

(c) the person's salary or wages (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) would not be taken into account for the purpose of making a calculation under section 19 of that Act;

the person is an ***ordinary employer-sponsored member*** of PSSAP in respect of that employment or the holding of that office.

(6) Subsection (5) does not apply to a person in relation to particular employment or holding a particular office if:

(a) the person has, in a manner approved by CSC in writing under this paragraph, chosen not to be an ordinary employer-sponsored member of PSSAP in respect of that employment or the holding of that office; and

(b) that choice has not been withdrawn.

19 Designated employers

(1) This section applies to a person who is:

(a) an ordinary employer-sponsored member of PSSAP in respect of particular employment or the holding of a particular office; or

(b) an Australian government superannuation scheme member who has chosen to be a member of PSSAP.

ComLaw Authoritative Act C2015C00331

(2) For the purposes of this Act, the following table defines the ***designated employer*** of the member.

Designated employers

Item	In this case...	the *designated employer* of the member is...
1	(a) the member is employed by the Commonwealth; and (b) the remuneration in respect of the member's employment is paid wholly or mainly out of money appropriated by an annual Appropriation Act in respect of an Agency (within the meaning of the *Public Service Act 1999*)	the Agency.
2	(a) the member is employed by the Commonwealth; and (b) the remuneration in respect of the member's employment is paid wholly or mainly out of money appropriated by an annual Appropriation Act in respect of a Parliamentary Department	the Parliamentary Department.
3	(a) the member is employed by the Commonwealth; and (b) the remuneration in respect of the member's employment is paid wholly or mainly out of money appropriated by an Act other than an annual Appropriation Act	(a) an Agency (within the meaning of the *Public Service Act 1999*) determined by the Minister in writing under this item; or (b) a Parliamentary Department determined by the Minister in writing under this item.
4	(a) the member is the holder of a statutory office; and (b) the remuneration in respect of the office is paid by an approved authority	the approved authority.
5	(a) the member is the holder of a statutory office; and	(a) an Agency (within the meaning of the *Public Service Act 1999*)

ComLaw Authoritative Act C2015C00331

Designated employers		
Item	**In this case...**	**the *designated employer* of the member is...**
	(b) the remuneration in respect of the office is not paid by an approved authority	determined by the Minister in writing under this item; or (b) a Parliamentary Department determined by the Minister in writing under this item; or (c) a person determined by the Minister in writing under this item.
6	none of the above items apply to the member	the authority or body by which the member is employed.

(3) A determination under item 3 or 5 of the table in subsection (2) may be expressed to relate to a class of members.

(4) A determination under item 3 or 5 of the table in subsection (2) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

(5) Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act applies to a determination under item 3 or 5 of the table in subsection (2) of this section.

ComLaw Authoritative Act C2015C00331

Part 5—Administration

Division 1—CSC

20 Functions and powers

(1) The functions and powers of CSC in relation to PSSAP and the PSSAP Fund are those set out in the Trust Deed.

(2) CSC is also responsible for the general administration of this Act.

Note: For other functions of CSC, see section 8 of the *Governance of Australian Government Superannuation Schemes Act 2011*.

29 Indemnification

(1) Anything done, or omitted to be done, in good faith by a person who is a member of a Reconsideration Advisory Committee established under the Trust Deed in the performance of his or her functions under the Trust Deed does not subject him or her personally to any action, liability, claim or demand.

(2) Subsection (1) does not prevent CSC from being subject to an action, liability, claim or demand.

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

(5) This section has effect subject to such modifications (if any) as are prescribed by the regulations.

(6) The regulations may provide that this section ceases to have effect at a specified time.

ComLaw Authoritative Act C2015C00331

Division 3—Ministerial powers

32 Making of certain legislative instruments

(1) This section applies to a declaration, determination or instrument that is:

(a) made by the Minister under this Act (other than section 10 or 16); and

(b) a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

(2) The Minister may not make the declaration, determination or instrument unless:

(a) CSC has consented to the making of the declaration, determination or instrument; or

(b) the declaration, determination or instrument:

(i) relates to a payment by an employer-sponsor within the meaning of the *Superannuation Industry (Supervision) Act 1993* that will, after the making of the declaration, determination or instrument, be required or permitted to be made under this Act; or

(ii) relates solely to the termination of the PSSAP Fund; or

(iii) is made in circumstances covered by regulations made for the purposes of subparagraph 60(1)(b)(iii) of the *Superannuation Industry (Supervision) Act 1993*.

Note: This subsection is subject to section 34 (costs of administration of Act etc.).

(3) For the purposes of subparagraph (2)(b)(i), a payment by a designated employer under the Trust Deed or the Rules is taken to be a payment by an employer-sponsor referred to in that subparagraph.

ComLaw Authoritative Act C2015C00331

33 Delegation by Minister

The Minister may, by writing, delegate all or any of his or her powers under this Act or the regulations to:

(a) CSC or an employee of CSC; or

(aa) a director (within the meaning of the *Governance of Australian Government Superannuation Schemes Act 2011*); or

(d) an APS employee in the Department.

ComLaw Authoritative Act C2015C00331

Division 4—Costs of administration

34 Costs of administration of Act etc.

(1) The costs of the administration of this Act and the Trust Deed, including the costs of and incidental to:

(a) the management of the PSSAP Fund by CSC; and

(b) the investment of money from the PSSAP Fund;

are to be paid by CSC out of the PSSAP Fund in accordance with the Trust Deed.

(2) Subsection 32(2) does not apply in relation to an amendment made to the Trust Deed that relates to the costs of the administration of this Act and the Trust Deed.

Constitutional safety net—acquisition of property

(3) If the operation of this section (or the operation of amendments made to the Trust Deed that relate to the costs of the administration of this Act and the Trust Deed) would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(4) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(5) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

ComLaw Authoritative Act C2015C00331

37 Payment of fees

(1) The regulations may provide that, if a person requests CSC to reconsider one of its decisions under this Act, the regulations or the Trust Deed, the person is liable to pay a fee to CSC.

(2) Subsection (1) does not authorise the imposition of taxation within the meaning of section 55 of the Constitution.

(3) The regulations may make provision for and in relation to the refund of any fees paid under subsection (1).

38 CSC liable to pay surcharge under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*

To avoid doubt:

(a) for the purposes of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, CSC in its capacity as a superannuation provider is an entity distinct from the Commonwealth; and

(b) consequently, section 33 of that Act does not affect the liability of CSC under that Act to pay surcharge on the surchargeable contributions of members of PSSAP.

ComLaw Authoritative Act C2015C00331

Division 5—Other administrative matters

39 Amounts payable to the CSC

(1) Any amount (including an amount of contributions) that is payable to CSC under this Act or the Rules may be recovered by CSC in a court of competent jurisdiction as a debt.

(2) If:

(a) an amount (including an amount of contributions) is payable by a person to CSC under this Act or the Rules; and

(b) the amount remains unpaid after the day on which payment was due;

the person is liable to pay to CSC interest on any such amount that remains unpaid at such rate as CSC determines in writing under this subsection.

(3) A determination under subsection (2) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but section 42 of that Act does not apply to the instrument.

40 Recovery of overpayments

If, for any reason (including the making of, or cancellation of, an election under the Rules), CSC has paid an amount of benefit that was, or has become, not payable:

(a) the amount so paid may be recovered by CSC in a court of competent jurisdiction as a debt; or

(b) if the person to whom that amount was paid is receiving, or is entitled to receive, a benefit under the Rules—the amount so paid, or such part of that amount as CSC determines, may, if CSC so directs, be recovered by deduction from that benefit.

ComLaw Authoritative Act C2015C00331

41 CSC may rely on information supplied by employers or former employers

(1) For the purposes of the Trust Deed in its application to or in respect of a person who is or has been a member of PSSAP, CSC may presume that any information provided to CSC by a designated employer or former designated employer of the person is correct.

(2) If a tribunal, authority or person is empowered:

(a) to review a decision of CSC under this Act, the regulations or the Trust Deed; and

(b) to vary, or make a decision in substitution for, CSC's decision under this Act, the regulations or the Trust Deed;

the tribunal, authority or person is not bound by any presumption made by CSC under subsection (1).

42 CSC may require employers to distribute information etc. to members of PSSAP

(1) CSC may:

(a) send to the designated employer of an ordinary employer-sponsored member of PSSAP any document or written information that under:

(i) this Act; or

(ii) any other Act;

CSC is required to send to the member; and

(b) request the designated employer to give the document or information to the member.

(2) The designated employer must comply with the request unless doing so would breach Chapter 7 of the *Corporations Act 2001*.

(3) CSC must ensure that the confidentiality of any document or information sent to the designated employer for transmission to the member is preserved.

ComLaw Authoritative Act C2015C00331

Part 6—Miscellaneous

43 Ordinary employer-sponsored member not to be retired on grounds of invalidity without CSC certificate

(1) This section applies to a person who is:

(a) under the age of 60; and

(b) an ordinary employer-sponsored member of PSSAP in respect of particular employment or the holding of a particular office.

(2) The member is not capable of being retired from the employment or office on the ground of invalidity unless:

(a) CSC has approved, under the Rules, the invalidity retirement of the member; and

(b) CSC has certified in writing under this paragraph that, if the member is so retired, the member will be entitled to receive invalidity benefits under PSSAP.

(3) A reference in subsection (2) to a member being retired from employment or office includes a reference to the services of the member being otherwise terminated.

(4) Subsection (2) has effect despite anything contained in any Act, award, determination, agreement or contract of employment.

44 Persons subject to Rules

(1) A person who is, or has ceased to be, a member of PSSAP is subject to the Rules to the extent that they are applicable in relation to the person.

(2) A person who is, or has ceased to be, a person to whom a benefit is payable under provisions of the Rules authorised by section 12 is subject to the Rules to the extent that they are applicable in relation to the person.

ComLaw Authoritative Act C2015C00331

(3) An authority or body who is, or has been, the designated employer of an ordinary employer-sponsored member of PSSAP is subject to the Rules to the extent that they are applicable in relation to the authority or body.

(4) The Commonwealth is subject to the Rules to the extent that they are applicable in relation to the Commonwealth because it is, or has been, the designated employer of an ordinary employer-sponsored member of PSSAP.

45 Regulations

(1) The Governor-General may make regulations prescribing matters:
  (a) required or permitted to be prescribed by this Act; or
  (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations may not be made unless:
  (a) CSC has consented to the making of the regulations; or
  (b) the regulations:
    (i) relate to a payment by an employer-sponsor within the meaning of the *Superannuation Industry (Supervision) Act 1993* that will, after the making of the regulations, be required or permitted to be made under this Act; or
    (ii) relate solely to the termination of the PSSAP Fund; or
    (iii) are made in circumstances covered by regulations made for the purposes of subparagraph 60(1)(b)(iii) of the *Superannuation Industry (Supervision) Act 1993*.

(3) For the purposes of subparagraph (2)(b)(i), a payment under the Trust Deed or the Rules is taken to be a payment by an employer-sponsor referred to in that subparagraph.

46 Regulations relating to the operation of the *Superannuation Industry (Supervision) Act 1993* and certain other laws

(1) The regulations may make any provision that is necessary for the purpose of enabling PSSAP to satisfy any condition or requirement

ComLaw Authoritative Act C2015C00331

of, or made under, any of the following laws if that law is capable of applying in relation to PSSAP:

(a) the *Corporations Act 2001*;

(b) the *Family Law Act 1975*;

(c) the *Financial Institutions Supervisory Levies Collection Act 1998*;

(d) the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*;

(e) the *Superannuation Industry (Supervision) Act 1993*;

(f) the *Superannuation (Resolution of Complaints) Act 1993*;

(g) the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

(2) If regulations made for the purposes of subsection (1) are inconsistent with a provision of this Act, the regulations prevail and the provision, to the extent of the inconsistency, is of no effect.

ComLaw Authoritative Act C2015C00331

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Endnotes about misdescribed amendments and other matters are included in a compilation only as necessary.

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

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

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

ComLaw Authoritative Act C2015C00331

Endnote 2—Abbreviation key

A = Act
ad = added or inserted
am = amended
amdt = amendment
c = clause(s)
C[x] = Compilation No. x
Ch = Chapter(s)
def = definition(s)
Dict = Dictionary
disallowed = disallowed by Parliament
Div = Division(s)
exp = expires/expired or ceases/ceased to have effect
F = Federal Register of Legislative Instruments
gaz = gazette
LI = Legislative Instrument
LIA = *Legislative Instruments Act 2003*
(md) = misdescribed amendment can be given effect
(md not incorp) = misdescribed amendment cannot be given effect
mod = modified/modification
No. = Number(s)
o = order(s)
Ord = Ordinance
orig = original
par = paragraph(s)/subparagraph(s)/sub-subparagraph(s)
pres = present
prev = previous
(prev…) = previously
Pt = Part(s)
r = regulation(s)/rule(s)
Reg = Regulation/Regulations
reloc = relocated
renum = renumbered
rep = repealed
rs = repealed and substituted
s = section(s)/subsection(s)
Sch = Schedule(s)
Sdiv = Subdivision(s)
SLI = Select Legislative Instrument
SR = Statutory Rules
Sub-Ch = Sub-Chapter(s)
SubPt = Subpart(s)
underlining = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Act 2005	80, 2005	29 June 2005	29 June 2005 (s 2(1)	
Superannuation Legislation Amendment (Trustee Board and Other Measures) Act 2006	51, 2006	9 June 2006	Sch 1 (items 60–63, 66–84): 1 July 2006 (s 2(1) item 2)	Sch 1 (items 66–84)
Superannuation Legislation Amendment (Superannuation Safety and Other Measures) Act 2006	112, 2006	23 Oct 2006	Sch 1 (items 26–28): 23 Oct 2006 (s 2(1) item 2)	—
Superannuation Legislation Amendment Act 2007	165, 2007	25 Sept 2007	Sch 2 (items 4–6): 1 July 2008 (s 2(1) item 2)	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 6 (item 134): 19 Apr 2011 (s 2(1) item 17)	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 1084–1086) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 2, 9, 10)	Sch 3 (items 10, 11)
Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011	58, 2011	28 June 2011	Sch 1 (items 222–239, 247(4)): 1 July 2011 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 1 (items 67–69): 24 June 2014 (s 2(1) item 2)	—

ComLaw Authoritative Act C2015C00331

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Tax and Superannuation Laws Amendment (2014 Measures No. 7) Act 2015	21, 2015	19 Mar 2015	Sch 7 (items 26, 27): 20 Mar 2015 (s 2(1) item 15)	—
Superannuation Act 2005	65, 2015	17 June 2015	Sch 1 (items 63, 64), Sch 2 and Sch 3 (items 2–4): 1 July 2015 (s 2(1) item 2)	Sch 2 and Sch 3 (item 4)

ComLaw Authoritative Act C2015C00331

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 3	am No 51, 2006; No 58, 2011
s 4	am No 5, 2011; No 46, 2011; No 58, 2011
Part 2	
s 12	am No 58, 2011
Part 3	
s 13	am No 165, 2007; No 58, 2011; No 31, 2014
s 14	am No 165, 2007; No 58, 2011; No 21, 2015
Part 4	
s 17	am No 58, 2011
s 18	am No 58, 2011; No 21, 2015
s 19	am No 58, 2011
Part 5	
Division 1 heading	rs No 58, 2011
s 20	am No 51, 2006
	rs No 58, 2011
s 21	rep No 58, 2011
s 22	rep No 58, 2011
s 23	rep No 58, 2011
s 24	rep No 58, 2011
s 25	rep No 58, 2011
s 26	rep No 58, 2011
s 27	rep No 58, 2011
s 28	am No 112, 2006
	rep No 58, 2011
s 29	am No 58, 2011
Division 2	rep No 58, 2011
s 30	rep No 58, 2011

ComLaw Authoritative Act C2015C00331

Provision affected	How affected
s 31	rep No 58, 2011
Division 3	
s 32	am No 58, 2011; No 65, 2015
s 33	am No 58, 2011; No 65, 2015
Division 4	
s 34	am No 58, 2011
	rs No 65, 2015
s 35	am No 58, 2011
	rep No 65, 2015
s 36	am No 58, 2011
	rep No 65, 2015
s 37	am No 51, 2006; No 58, 2011
s 38	am No 58, 2011
Division 5	
s 39	am No 58, 2011
s 40	am No 58, 2011
s 41	am No 51, 2006; No 58, 2011
s 42	am No 58, 2011
Part 6	
s 43	am No 58, 2011
s 45	am No 58, 2011