

2010-2011

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**SUPERANNUATION LEGISLATION (CONSEQUENTIAL AMENDMENTS
AND TRANSITIONAL PROVISIONS) BILL 2011**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Finance and Deregulation,
Senator The Honourable Penny Wong)

Glossary

The following abbreviations and acronyms are used in this Explanatory Memorandum.

Abbreviation/acronym	Definition
1922 Act	<i>Superannuation Act 1922</i>
1922 scheme	The superannuation 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>
Act	<i>Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011</i>
ARIA	Australian Reward Investment Alliance
Bill	Superannuation Legislation (Consequential Amendments and Transitional Provisions) Bill 2011
Board	Board of the Commonwealth Superannuation Corporation
CEO	Chief Executive Officer
CGT	Capital Gains Tax
CRF	Consolidated Revenue Fund
ComSuper Act	ComSuper Bill 2011 as passed by the Parliament
ComSuper Bill	ComSuper Bill 2011
CSC	Commonwealth Superannuation Corporation
CSS	Commonwealth Superannuation Scheme
DFRB Act	<i>Defence Forces Retirement Benefits Act 1948</i>
DFRB	Defence Forces Retirement Benefits Scheme
DFRDB Act	<i>Defence Force Retirement and Death Benefits Act 1973</i>
DFRDB Authority	Defence Force Retirement and Death Benefits Authority
DFRDB	Defence Force Retirement and Death Benefits Scheme
DFSPB	Defence Force (Superannuation) (Productivity Benefit) Scheme
Finance Secretary	Secretary of the Department of Finance and Deregulation
FMA Act	<i>Financial Management and Accountability Act 1997</i>
Governance Act	<i>Governance of Australian Government Superannuation Schemes Act 2011</i> as passed by

	the Parliament
Governance Bill	Governance of Australian Government Superannuation Schemes Bill 2011
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
Legislative Instruments Act	<i>Legislative Instruments Act 2003</i>
Minister	Minister for Finance and Deregulation
MSB Act	<i>Military Superannuation and Benefits Act 1991</i>
MSB Board	Military Superannuation and Benefits Board
MSB Fund	Military Superannuation and Benefits Fund
MSB	Military Superannuation and Benefits Scheme
Panel	Defence Force Case Assessment Panel
PNG Act	<i>Papua New Guinea (Staffing Assistance) Act 1973</i>
PNG	the scheme provided for under the regulations made by the <i>Papua New Guinea (Staffing Assistance) Act 1973</i>
PSS	Public Sector Superannuation Scheme
PSS Fund	Public Sector Superannuation Fund
PSSAP	Public Sector Superannuation Accumulation Plan
PSSAP Fund	Public Sector Superannuation Accumulation Plan Fund
SES	Senior Executive Service

Outline

The Superannuation Legislation (Consequential Amendments and Transitional Provisions) Bill 2011 (the Bill) is part of a package of three Bills giving effect to Government decisions in 2008 and 2009 to modernise Australian Government superannuation and establish governance arrangements for the Commonwealth superannuation schemes that are effective and consistent with the broader superannuation industry. The other two Bills in the package are:

- the Governance of Australian Government Superannuation Schemes Bill 2011 (Governance Bill), which merges the Australian Reward Investment Alliance (ARIA), the Military Superannuation and Benefits Board (MSB Board) and the Defence Force Retirement and Death Benefits Authority (DFRDB Authority) to form a single trustee body from 1 July 2011
- the ComSuper Bill 2011 (ComSuper Bill), which makes changes to the governance framework for superannuation administration arrangements for the main civilian and military superannuation schemes.

Single Superannuation Trustee

The Governance Bill merges three trustee boards to form a consolidated body to be the trustee of the main civilian and military superannuation schemes. The Governance Bill establishes “Commonwealth Superannuation Corporation” (CSC) as a body corporate with a separate legal identity from the Commonwealth, by continuing in existence the body corporate that was formerly called ARIA.

The Bill includes consequential amendments to a range of legislation to reflect the establishment of CSC as the trustee for the main civilian and military superannuation schemes.

ComSuper

The ComSuper Bill establishes ComSuper as a prescribed agency under the *Financial Management and Accountability Act 1997* (FMA Act), and as a statutory agency for the purposes of the *Public Service Act 1999*, consisting of a Chief Executive Officer (CEO) as the head of the agency and staff. The functions of the CEO will be to provide administrative services to CSC and manage ComSuper.

The CEO of ComSuper will be responsible for providing administrative services to CSC in respect of nine superannuation schemes. These are:

- the scheme established under the *Superannuation Act 1922* (1922 scheme)
- the Commonwealth Superannuation Scheme (CSS)
- the Public Sector Superannuation Scheme (PSS)
- the Public Sector Superannuation Accumulation Plan (PSSAP)
- the Military Superannuation and Benefits Scheme (MSB)
- the Defence Force Retirement and Death Benefits Scheme (DFRDB)
- the Defence Forces Retirement Benefits Scheme (DFRB)
- the Defence Force (Superannuation) (Productivity Benefit) Scheme (DFSPB)

- the scheme provided for under the *Papua New Guinea (Staffing Assistance) Act 1973* (PNG).

Currently, the Commissioner for Superannuation provides administrative services in relation to all of these schemes. In those cases where a scheme has a separate trustee (that is, all schemes except for the 1922 scheme and the PNG, which are under the trusteeship of the Commissioner for Superannuation), the Commissioner for Superannuation provides the administrative services to the relevant trustee.

From 1 July 2011, the CEO of ComSuper will be responsible for providing administrative services in relation to all of the nine schemes to CSC, which will be the trustee.

The Bill includes consequential amendments to a range of legislation to reflect the abolition of the position of Commissioner for Superannuation and the establishment of ComSuper as a statutory agency with a CEO.

The Commissioner for Superannuation is also currently responsible for making decisions under the *Governor-General Act 1974* in relation to the payment of death benefits in certain circumstances. The Bill transfers responsibility for these decisions to the Finance Secretary from 1 July 2011.

Transitional Provisions

The Bill also contains a number of transitional provisions to deal with matters arising from the amendments in the Bill, the Governance Bill and the ComSuper Bill.

Other

As part of modernising civilian and military superannuation arrangements the Bill also makes amendments to:

- facilitate public sector employees being able to consolidate their superannuation savings under the management of CSC, should a decision be made to allow this in the future. Any decision in this regard would be subject to Parliamentary scrutiny
- allow for Parliamentary scrutiny of Deeds made under the *Military Superannuation and Benefits Act 1991* (MSB Act), which is consistent with the requirement applying to Deeds made under the *Superannuation Act 1990* (1990 Act)
- validate the past payment of fees made by the trustee boards to the Auditor-General for the audit of financial statements related to the respective superannuation funds.

Financial Impact Statement

The Bill has no financial impact.

SUPERANNUATION LEGISLATION (CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS) BILL 2011

NOTES ON CLAUSES

Clause 1 – Short title

Clause 1 is a formal provision that the Bill, once enacted, may be referred to as the *Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011*.

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. The commencement dates 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 commence on the day the Act receives Royal Assent.

4. **Item 2 of the table** provides that Schedules 1 and 2 commence immediately after the commencement of section 2 of the *Governance of Australian Government Superannuation Schemes Act 2011* (Governance Act). Section 2 provides for the Commencement of the Governance Act on 1 July 2011.

Clause 3 – Schedule(s)

5. **Subclause 3(1)** provides that each Act and each set of regulations specified in a Schedule to the Act is amended or repealed as set out in the applicable items in the Schedule concerned. It also provides that any other item in a Schedule to the Act has affect according to its terms.

6. **Subclause 3(2)** provides that regulations amended by the Act do not prevent those regulations from being subsequently amended or repealed by the Governor-General.

SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS

7. Schedule 1 contains consequential amendments to a range of legislation to reflect:

- the establishment of CSC as the trustee for the main civilian and military superannuation schemes
- the abolition of the position of Commissioner for Superannuation and replacement with the position of CEO of ComSuper
- the establishment of ComSuper as a statutory agency
- the transfer of responsibility for certain decisions under the *Governor-General Act 1974* to the Finance Secretary.

8. Schedule 1 also contains amendments to facilitate modernisation of the current civilian superannuation arrangements and to allow for Parliamentary scrutiny of superannuation Deeds made under the MSB Act, consistent with the approach for Deeds made under the 1990 Act and the *Superannuation Act 2005* (2005 Act).

Part 1—General amendments

Administrative Appeals Tribunal Act 1975 (AAT Act)

Items 1 to 3 – Transfer of functions to CSC

9. **Item 1 of Schedule 1** inserts a definition of “CSC” in subsection 3(1) of the AAT Act by reference to the definition in the Governance Bill.

10. **Items 2 and 3 of Schedule 1** update references to the board of the Commonwealth Superannuation Corporation (Board) in sections 13 and 24K of the AAT Act to reflect the establishment of CSC as the responsible trustee.

Auditor-General Act 1997 (AG Act)

Items 4 to 11 – Transfer of functions to CSC

11. **Item 4 of Schedule 1** inserts a definition of “CSC” in subsection 5(1) of the AG Act by reference to the definition in the Governance Act.

12. **Item 5 of Schedule 1** amends subsection 14(1) of the AG Act to ensure fees are payable, as prescribed by the Auditor-General in respect of the Auditor-General’s role of auditing the financial statements of the superannuation funds for which CSC is responsible.

13. **Items 6 to 11 of Schedule 1** update references to the Board in paragraph 6 of Schedule 1 and paragraph 5 of Schedule 2 to the AG Act to reflect the establishment of CSC as the responsible trustee.

Australian Crime Commission Act 2002 (ACC Act)

Items 12 to 14 – Transfer of functions to CSC

14. **Item 12 of Schedule 1** inserts a definition of “CSC” in subsection 4(1) of the ACC Act by reference to the definition in the Governance Bill.

15. **Items 13 and 14 of Schedule 1** update references to the Board in sections 44 and 46H of the ACC Act to reflect the establishment of CSC as the responsible trustee.

Australian Federal Police Act 1979 (AFP Act)

Items 15 to 17 – Transfer of functions to CSC

16. **Item 15 of Schedule 1** inserts a definition of “CSC” in subsection 4(1) of the AFP Act by reference to the definition in the Governance Bill.

17. **Items 16 and 17 of Schedule 1** update references to the Board in section 32 of the AFP Act, and removes reference to the Commissioner, in amending the definition of “superannuation authority” in section 41 of the AFP Act, to reflect the

establishment of CSC as the responsible trustee for the civilian superannuation schemes, including the 1922 scheme and the PNG.

Australian Prudential Regulation Authority Act 1998 (APRA Act)

Items 18 and 19 – Transfer of functions to CSC

18. **Item 18 of Schedule 1** inserts a definition of “CSC” in subsection 3(1) of the APRA Act by reference to the definition in the Governance Bill.
19. **Item 19 of Schedule 1** updates references to the Board in section 25 of the APRA Act to reflect the establishment of CSC as the responsible trustee.

Australian Radiation Protection and Nuclear Safety Act 1998 (ARPANS Act)

Items 20 to 23 – Transfer of functions to CSC

20. **Item 20 of Schedule 1** inserts a definition of “CSC” in section 13 of the ARPANS Act by reference to the definition in the Governance Bill.
21. **Items 21 to 23 of Schedule 1** update references to the Board in section 51 of the ARPANS Act to reflect the establishment of CSC as the responsible trustee.

Australian Securities and Investments Commission Act 2001 (ASIC Act)

Items 24 and 25 – Transfer of functions to CSC

22. **Item 24 of Schedule 1** inserts a definition of “CSC” in subsection 5(1) of the ASIC Act by reference to the definition in the Governance Bill.
23. **Item 25 of Schedule 1** updates references to the Board in section 111 of the ASIC Act to reflect the establishment of CSC as the responsible trustee.

Building and Construction Industry Improvement Act 2005 (BCII Act)

Items 26 and 27 – Transfer of functions to CSC

24. **Item 26 of Schedule 1** inserts a definition of “CSC” in subsection 4(1) of the BCII Act by reference to the definition in the Governance Bill.
25. **Item 27 of Schedule 1** updates references to the Board in section 24 of the BCII Act to reflect the establishment of CSC as the responsible trustee.

***Classification (Publications, Films and Computer Games) Act 1995
(Classification Act)***

Items 28 to 30 – Transfer of functions to CSC

26. **Item 28 of Schedule 1** inserts a definition of “CSC” in section 5 of the Classification Act by reference to the definition in the Governance Bill.
27. **Items 29 and 30 of Schedule 1** update references to the Board in sections 65 and 83 of the Classification Act to reflect the establishment of CSC as the responsible trustee.

Coordinator-General for Remote Indigenous Services Act 2009 (CGRIS Act)

Items 31 and 32 – Transfer of functions to CSC

28. **Item 31 of Schedule 1** inserts a definition of “CSC” in section 4 of the CGRIS Act by reference to the definition in the Governance Bill.
29. **Item 32 of Schedule 1** updates references to the Board in section 26 of the CGRIS Act to reflect the establishment of CSC as the responsible trustee.

Crimes (Superannuation Benefits) Act 1989 (CSB Act)

Items 33 and 34 – Transfer of functions to CSC

30. **Item 33 of Schedule 1** inserts a definition of “CSC” in subsection 2(1) of the CSB Act by reference to the definition in the Governance Bill.
31. **Item 34 of Schedule 1** updates references to the Board, and removes a reference to the Commissioner for Superannuation, in amending the definition of “superannuation authority” in subsection 2(1) of the CSB Act, to reflect the establishment of CSC as the responsible trustee for the civilian superannuation schemes, including the 1922 scheme and the PNG.

Defence Act 1903

Item 35 – Transfer of functions to CSC

32. **Item 35 of Schedule 1** makes a consequential amendment to section 53 of the *Defence Act 1903* as a result of CSC becoming responsible for matters that are currently the responsibility of the DFRDB Authority.

Defence Force Retirement and Death Benefits Act 1973 (DFRDB Act)

Items 36 to 58 – Transfer of functions to CSC

33. **Item 36 of Schedule 1** amends the definition of “Authority” in subsection 3(1) of the DFRDB Act as a consequence of the abolition of the DFRDB Authority, effected by item 44 of Schedule 1. The definition is updated to refer to the Authority that existed prior to its abolition.
34. **Item 37 of Schedule 1** repeals the definition of “Board” in subsection 3(1) of the DFRDB Act as a consequence of CSC replacing the Board as the responsible trustee.
35. **Item 38 of Schedule 1** amends the definition of “Commissioner for Superannuation” in subsection 3(1) of the DFRDB Act by reference to the definition in the *Superannuation Act 1976* (1976 Act), which refers to the position of Commissioner that existed prior to its abolition.
36. **Item 39 of Schedule 1** inserts a definition of “CSC” in subsection 3(1) of the DFRDB Act by reference to the definition in the Governance Bill.

37. **Item 40 of Schedule 1** inserts a definition of “decision” in subsection 3(1) of the DFRDB Act, having the same meaning as in the AAT Act. This definition was formerly contained in subsection 99(1) of the DFRDB Act and is repealed by item 53 of Schedule 1.
38. **Item 41 of Schedule 1** inserts a definition of “decision of CSC” in subsection 3(1) of the DFRDB Act to provide that such references mean decisions made under the DFRDB Act, the DFRB Act or in any other Act that modifies or affects the provisions of the DFRB Act. This definition distinguishes between decisions of CSC in relation to its responsibilities under the DFRDB Act and the DFRB Act, and decisions in relation to its responsibilities under other Acts. This definition replaces a definition of “decision of the Authority” that was formerly contained in subsection 99(1) of the DFRDB Act and is repealed by item 53 of Schedule 1.
39. **Item 42 of Schedule 1** inserts a definition of “Defence Force Case Assessment Panel” in subsection 3(1) of the DFRDB Act to refer to the Panel established under the new section 100 of the DFRDB Act, as inserted by item 58 of Schedule 1.
40. **Item 43 of Schedule 1** inserts a definition of “Defence Forces Retirement Benefits Board” or “Board” in subsection 3(1) of the DFRDB Act to refer to that Board before its abolition.
41. **Item 44 of Schedule 1** repeals Part II of the DFRDB Act, which establishes the Authority. The Authority is abolished and its role taken over by CSC.
42. **Items 45, 47 and 48 of Schedule 1** replace references to the Commissioner for Superannuation with references to CSC in sections 36 and 61 of the DFRDB Act. This reflects the abolition of the position of Commissioner and CSC taking on the relevant responsibilities of the Commissioner.
43. **Item 46 of Schedule 1** updates a reference to the Chairman in subsection 49C(2) of the DFRDB Act to reflect the establishment of CSC as the responsible trustee.
44. **Item 49 of Schedule 1** updates references to the Board in section 61A of the DFRDB Act to reflect the establishment of CSC as the responsible trustee.
45. **Item 50 of Schedule 1** repeals the definition of “Board” in subsection 85(1) of the DFRDB Act as a consequence of item 43 of Schedule 1.
46. **Item 51 of Schedule 1** updates the heading to Part XI of the DFRDB Act to reflect the establishment of CSC as the responsible trustee and set up a review structure for decisions of CSC.
47. **Item 52 of Schedule 1** inserts a new heading in Part XI of the DFRDB Act to reflect the creation of three Divisions in Part XI of the DFRDB Act to set up the new review structure for decisions of CSC.
48. **Item 53 of Schedule 1** repeals subsection 99(1) of the DFRDB Act, as the definitions contained in this subsection have been inserted in subsection 3(1) of the DFRDB Act by items 40 and 41 of Schedule 1.
49. **Items 54 and 56 of Schedule 1** update references to “the Authority” in section 99 of the DFRDB Act to reflect the establishment of CSC as the responsible trustee.

50. Subsection 99(4) of the DFRDB Act currently requires the Authority to reconsider a decision when a request is received. As a consequence of CSC becoming the responsible trustee under the DFRDB Act, **item 55 of Schedule 1** replaces subsection 99(4) to provide for a review structure for decisions of CSC.

51. New subsection 99(4A) allows CSC to confirm, vary or replace a decision that it reconsiders.

52. Subsection 99(6) of the DFRDB Act currently provides for reviews of reconsidered decisions by the Administrative Appeals Tribunal. **Item 57 of Schedule 1** repeals subsection 99(6) of the DFRDB Act as a consequence of the new Division 3 of Part XI inserted by item 58 of Schedule 1.

53. **Item 58 of Schedule 1** inserts new provisions into the DFRDB Act to require CSC to establish the Defence Force Case Assessment Panel (the Panel), and sets out certain requirements in relation to the membership, functions and operation of the Panel. As a result of CSC becoming responsible for administering the DFRDB and the DFRB, it is appropriate for decisions of CSC to be subject to reconsideration to provide further consistency with the other superannuation schemes for which CSC will be responsible for administering.

54. New section 100 provides that CSC must establish the Panel.

55. New section 101 provides that the Panel must comprise a director of CSC nominated by the Chief of the Defence Force (as determined by CSC), a person nominated by the Chief of the Air Force, a person nominated by the Chief of the Army, and a person nominated by the Chief of the Navy, and up to a maximum of 2 other such persons as CSC determines. Providing for Defence Force representation will allow the Panel to draw on people who have expertise in relation to the unique requirements of military service.

56. The Chair of the Panel must be one of the directors of the governing Board of CSC who was originally nominated by the Chief of the Defence Force. As the Governance Bill provides for the Chief of the Defence Force to nominate two directors, CSC will determine which of these directors will be the Chair of the Panel.

57. New section 102 sets out the functions of the Panel. These functions are to review any decision referred to it under Part XI of the DFRDB Act, as amended by the Bill, and:

- exercise powers delegated to it by CSC in relation to the decision
- if no powers have been delegated to the Panel by CSC in relation to the decision, to make recommendations to CSC in relation to the decision.

58. The Panel must take into account any evidence relevant to the decision that is submitted to it and may take steps to obtain other evidence that it considers necessary for a proper review of the decision.

59. New subsection 103(1) provides that the Panel may regulate its proceedings as it thinks fit, subject to any directions given by CSC. New subsection 103(2) clarifies that if a direction by CSC is given in writing, it is not a legislative instrument for the purposes of the Legislative Instruments Act because it is administrative in character. It does not determine or alter the content of the law. The provision is included to assist readers and is merely declaratory.

60. New section 104 provides that any matter or thing done, or omitted to be done, in good faith by a member of a Panel in the performance of functions under Division 2 of Part XI of the DFRDB Act does not subject him or her to any action, liability, claim or demand. The purpose of this provision is to direct any action, liability, claim or demand related to CSC rather than a member of a Panel in the performance of functions under the DFRDB Act. Clause 35 of the Governance Bill provides that any money payable by CSC in respect of an action, liability, claim or demand that relates to an Act that it administers, regulations made under such an Act, or a governing deed, is to be paid out of the Consolidated Revenue Fund (CRF).

61. New section 105 establishes the remuneration and allowances for members of the Panel. Members are to be paid such remuneration as determined by the Remuneration Tribunal. Where there is no operative determination by the Remuneration Tribunal, Panel members are to be paid such remuneration as is prescribed by regulation. Members are also to be paid such allowances as are prescribed by regulation. The provision has effect subject to the *Remuneration Tribunal Act 1973*.

62. New section 106 refers to cases where the Panel makes recommendations to CSC in relation to decisions referred to the Panel. CSC is to take into account the recommendations of the Panel and any other matter that it considers relevant as part of its considerations. CSC's decision is to be recorded in writing. The written decision must include reasons for the decision and a copy is to be made available to the applicant.

63. New section 107 provides for review of decisions that have been reconsidered by CSC or the Panel, by the Administrative Appeals Tribunal. This was previously provided for under subsection 99(6) of the DFRDB Act.

Defence Forces Retirement Benefits Act 1948 (DFRB Act)

Items 59 to 80 – Transfer of functions to CSC

64. **Item 59 of Schedule 1** inserts a definition of “CSC” in subsection 4(1) of the DFRB Act by reference to the definition in the Governance Bill.

65. **Item 60 of Schedule 1** amends the definition of “the Authority” in subsection 4(1) of the DFRB Act as a consequence of the abolition of the DFRDB Authority, effected by item 44 of Schedule 1. The definition is updated to refer to the Authority that existed prior to its abolition.

66. Section 12A of the DFRB Act allows the Authority to delegate its powers under the Act. **Item 61 of Schedule 1** repeals section 12A of the DFRB Act as a consequence of the abolition of the Authority and the establishment of CSC as the responsible trustee for the DFRB. Clause 36 of the Governance Bill allows CSC to delegate its powers under an Act administered by it, which includes the DFRB Act.

67. **Items 62 to 71, and 75 to 80 of Schedule 1** update references to “the Authority” in various provisions of the DFRB Act to reflect the establishment of CSC as the responsible trustee.

68. **Item 72 of Schedule 1** repeals the definition of “Chairman” in section 80A of the DFRB Act to reflect the abolition of the Authority.

69. **Items 73 and 74 of Schedule 1** update references to the Chairman in sections 80B and 80C of the DFRB Act to reflect the establishment of CSC as the responsible trustee.

Director of Public Prosecutions Act 1983 (DPP Act)

Items 81 and 82 – Transfer of functions to CSC

70. **Item 81 of Schedule 1** inserts a definition of “CSC” in subsection 3(1) of the DPP Act by reference to the definition in the Governance Bill.

71. **Item 82 of Schedule 1** updates references to the Board in section 23 of the DPP Act to reflect the establishment of CSC as the responsible trustee.

Family Law Act 1975 (FL Act)

Items 83 and 84 – Transfer of functions to CSC

72. **Item 83 of Schedule 1** inserts a definition of “CSC” in subsection 4(1) of the FL Act by reference to the definition in the Governance Bill.

73. **Item 84 of Schedule 1** updates references to the Board in section 38K of the FL Act to reflect the establishment of CSC as the responsible trustee.

Federal Court of Australia Act 1976 (FCA Act)

Items 85 to 87 – Transfer of functions to CSC

74. **Item 85 of Schedule 1** inserts a definition of “CSC” in section 4 of the FCA Act by reference to the definition in the Governance Bill.

75. **Items 86 and 87 of Schedule 1** update references to the Board in sections 18K and 37I of the FCA Act to reflect the establishment of CSC as the responsible trustee.

Financial Management and Accountability Regulations 1997

Items 88 and 89 – Abolition of Commissioner and establishment of CSC

76. **Item 88 of Schedule 1** repeals the current details of ComSuper as a prescribed agency for the purposes of the FMA Act and substitutes new details. This is as a consequence of the abolition of the position of Commissioner for Superannuation, replacing that position with a new position of CEO of ComSuper and moving ComSuper’s governance framework from the 1976 Act to the ComSuper Bill.

77. **Item 89 of Schedule 1** repeals Part 2 of Schedule 1 to the *Financial Management and Accountability Regulations 1997*. This Part currently provides that ARIA is a prescribed agency for the purposes of the FMA Act. This will no longer be necessary, as CSC will be subject to the *Commonwealth Authorities and Companies Act 1997*.

Gene Technology Act 2000 (GT Act)

Items 90 to 93 – Transfer of functions to CSC

78. **Item 90 of Schedule 1** inserts a definition of “CSC” in subsection 10(1) of the GT Act by reference to the definition in the Governance Bill.

79. **Items 91 to 93 of Schedule 1** update references to the Board in section 119 of the GT Act to reflect the establishment of CSC as the responsible trustee.

Governor-General Act 1974 (GG Act)

Item 94 to 101 – Transfer of functions to the Secretary

80. **Item 94 of Schedule 1** inserts a definition of “Finance Secretary” in subsection 2A(2) of the GG Act. On the abolition of the position of the Commissioner, those functions previously performed and powers previously exercised by the Commissioner will transfer to the Finance Secretary.

81. **Item 95 of Schedule 1** repeals the definition of “the Commissioner” in subsection 2A(2) of the GG Act. As the position of the Commissioner will be abolished, this provision will no longer be required.

82. **Items 96 to 100 of Schedule 1** replace references to the Commissioner in sections 2B, 2C, 4A and 4B of the GG Act with references to the Finance Secretary. On the abolition of the position of the Commissioner, those functions previously performed and powers previously exercised by the Commissioner will transfer to the Finance Secretary.

83. **Item 101 of Schedule 1** inserts a new section 16 in the GG Act to allow the Finance Secretary to delegate, in writing, all or any of the Finance Secretary’s powers under this Act to an SES employee in his or her Department. The provision makes it clear that, in exercising powers under a delegation, the delegate must comply with any written directions of the Finance Secretary.

Inspector-General of Taxation Act 2003 (IGT Act)

Items 102 and 103 – Transfer of functions to CSC

84. **Item 102 of Schedule 1** inserts a definition of “CSC” in section 4 of the IGT Act by reference to the definition in the Governance Bill.

85. **Item 103 of Schedule 1** updates references to the Board in section 35 of the IGT Act to reflect the establishment of CSC as the responsible trustee.

Military Superannuation and Benefits Act 1991

Items 104 to 114 – Transfer of functions to CSC

86. **Item 104 of Schedule 1** amends the definition of “Board” in subsection 3(1) of the MSB Act as a consequence of the abolition of the MSB Board, effected by item 110 of Schedule 1. The definition is updated to refer to the Board that existed prior to its abolition.

87. **Item 105 of Schedule 1** repeals the definition of “Chairperson” in subsection 3(1) of the MSB Act to reflect the abolition of the MSB Board.
88. **Item 106 of Schedule 1** repeals the definition of “Commissioner” in subsection 3(1) of the MSB Act to reflect the abolition of the position of Commissioner for Superannuation.
89. **Item 107 of Schedule 1** inserts a definition of “CSC” in subsection 3(1) of the MSB Act by reference to the definition in the Governance Bill.
90. **Item 108 of Schedule 1** adds a note to the definition of “Fund” in subsection 3(1) of the MSB Act to reflect the establishment of CSC as the responsible trustee, and consequently the fund is vested in CSC. Item 2 of Part 2 of Schedule 2 provides for the Fund to be vested in CSC.
91. **Item 109 of Schedule 1** repeals the definition of “trustee” in subsection 3(1) of the MSB Act to reflect the abolition of the MSB Board.
92. **Item 110 of Schedule 1** repeals Parts 6 and 7 of the MSB Act. Part 6 establishes the MSB Board, and Part 7 defines the Commissioner for Superannuation’s functions under MSB Act. These amendments are consequential on abolishing the MSB Board, abolishing the position of Commissioner for Superannuation, replacing the position with a new CEO position, and moving ComSuper’s governance framework from the 1976 Act to the ComSuper Bill. The CEO of ComSuper will have the same responsibilities in relation to administration of the MSB as the Commissioner for Superannuation currently does.
93. Item 110 also provides that CSC functions and powers are those set out in the Trust Deed and that it is also responsible for the general administration of the MSB Act.
94. **Item 111 of Schedule 1** repeals paragraphs 47(1)(a),(b) and (c) of the MSB Act, which indemnifies trustees of the MSB Board, the Commissioner for Superannuation and the staff assisting the Commissioner. It also reflects the abolition of the Commissioner for Superannuation and replacement with a CEO position and moving ComSuper’s governance framework from the 1976 Act to the ComSuper Bill. Clause 35 of the Governance Bill provides for the indemnification of directors of the Board whilst clause 26 of the ComSuper Bill provides for indemnification of the CEO of ComSuper and staff.
95. **Item 112 of Schedule 1** inserts a new section 49 in the MSB Act, which overrides the exemption to disallowance provided for under section 44 of the Legislative Instruments Act for instruments that amend the Trust Deed. This is to align the MSB with the PSS. CSC will be responsible for both schemes.
96. **Item 113 of Schedule 1** inserts a new paragraph 51(aa) in the MSB Act to allow the Minister to delegate his or her powers to a director of the Board. This amendment is consequential on the abolition of the MSB Board and the establishment of CSC as the responsible trustee for the MSB.
97. Paragraph 51(c) of the MSB Act allows the Minister to delegate his or her powers to the Commissioner and the staff assisting him or her. **Item 114 of Schedule 1** repeals and substitutes a new paragraph 51(c) as a consequence of the abolition of the position of Commissioner for Superannuation and replacement with the position of CEO of ComSuper.

National Blood Authority Act 2003 (NBA Act)

Items 115 to 118 – Transfer of functions to CSC

98. **Item 115 of Schedule 1** inserts a definition of “CSC” in section 3 of the NBA Act by reference to the definition in the Governance Bill.
99. **Items 116 to 118 of Schedule 1** update references to the Board in section 35 of the NBA Act to reflect the establishment of CSC as the responsible trustee.

Native Title Act 1993 (NT Act)

Items 119 to 122 – Transfer of functions to CSC

100. **Items 119 and 120 of Schedule 1** update references to the Board in sections 104 and 119 of the NT Act to reflect the establishment of CSC as the responsible trustee.
101. Section 222 of the NT Act is a list of the definitions, and their location, contained in Part 15 of that Act. **Item 121 of Schedule 1** inserts an entry into the list for the definition of “CSC” that is inserted by item 122 of Schedule 1.
102. **Item 122 of Schedule 1** inserts a definition of “CSC” in section 253 of the NT Act by reference to the definition in the Governance Bill.

Ombudsman Act 1976 (Ombudsman Act)

Items 123 and 124 – Transfer of functions to CSC

103. **Item 123 of Schedule 1** inserts a definition of “CSC” in subsection 3(1) of the Ombudsman Act by reference to the definition in the Governance Bill.
104. **Item 124 of Schedule 1** updates references to the Board in section 28B of the Ombudsman Act to reflect the establishment of CSC as the responsible trustee.

Papua New Guinea (Staffing Assistance) Act 1973 (PNG Act)

Items 125 to 147 – Transfer of functions to CSC

105. **Item 125 of Schedule 1** repeals the definition of Commissioner in subsection 3(1) of the PNG Act. As the position of the Commissioner will be abolished, and CSC will be responsible for the PNG, this provision is no longer required.
106. **Item 126 of Schedule 1** inserts a definition of CSC in subsection 3(1) of the PNG Act by reference to the definition in the Governance Bill.
107. **Item 127 of Schedule 1** inserts a definition of “decision” in subsection 3(1) of the PNG Act. This has the same meaning as in the AAT Act. This definition was formerly contained in subsection 54(1) of the PNG Act and is repealed by item 132 of Schedule 1.
108. **Item 128 of Schedule 1** inserts a definition of “decision of CSC” in subsection 3(1) of the PNG Act to mean decisions both of CSC or a delegate of CSC made under the PNG Act. This definition replaces a definition of “decision of the

Commissioner” that was formerly contained in subsection 54(1) of the PNG Act and is repealed by item 132 of Schedule 1. This amendment is a consequence of transferring responsibility for the PNG from the Commissioner to CSC. The term “decision of CSC” also includes decisions under the regulations. This will remove the need for a similar review framework as in the PNG Act to be set up in the regulations.

109. **Item 129 of Schedule 1** inserts a definition of “Reconsideration Advisory Committee” in subsection 3(1) of the PNG Act to refer to a Committee established under the new section 55 of the PNG Act, as inserted by item 138 of Schedule 1.

110. **Item 130 of Schedule 1** repeals Part IV of the PNG Act. This Part vested responsibility for the general administration of Part V in the Commissioner for Superannuation, and required the Commissioner to provide an annual report to the Minister for Finance. The Governance Bill provides that CSC is responsible for administering the PNG and will be required to report to the Minister. Therefore, this Part is no longer required.

111. **Item 131 of Schedule 1** inserts a heading for a new Division 1 in Part IX of the PNG Act to reflect the establishment of CSC as the responsible trustee and the review structure for decisions of CSC in relation to the PNG.

112. **Item 132 of Schedule 1** repeals subsection 54(1) of the PNG Act, as the definitions contained in this subsection have been inserted into subsection 3(1) of the PNG Act by items 127 and 128 of Schedule 1.

113. **Items 133 and 135 of Schedule 1** replace references to the Commissioner with references to CSC in section 54 of the PNG Act. This reflects the abolition of the position of Commissioner and CSC taking on the relevant responsibilities of the Commissioner.

114. Subsection 54(4) of the PNG Act currently requires the Commissioner to reconsider any request received by him or her. As a consequence of CSC becoming the responsible trustee, **item 134 of Schedule 1** replaces subsection 54(4) to provide for a review structure for decisions of CSC.

115. New subsection 54(4) requires CSC, upon receiving a request for reconsideration of a decision, to refer the decision to a Reconsideration Advisory Committee for a recommendation or reconsideration of the decision, or to review the decision itself.

116. New subsection 54(4A) allows CSC to confirm, vary, or replace a decision that it reconsiders.

117. **Item 136 of Schedule 1** amends subsection 54(5) of the PNG Act to remove the gender specific reference – “his reconsideration” – and replaces it with a reference appropriate to CSC.

118. Subsection 54(6) of the PNG Act currently provides for reviews of reconsidered decisions by the Administrative Appeals Tribunal. Subsection 54(6) of the PNG Act is repealed by **item 137 of Schedule 1** and replaced by the new Division 3 of Part IX inserted by item 138 of Schedule 1.

119. **Item 138 of Schedule 1** inserts new provisions into the PNG Act in relation to Reconsideration Advisory Committees, and sets out certain requirements in relation to the functions and operation of those Committees. As a result of CSC becoming responsible for administering the PNG, it may be appropriate for decisions of CSC to

be subject to reconsideration to provide further consistency with the other superannuation schemes for which CSC will be responsible for administering.

120. New section 55 provides that CSC may establish such Reconsideration Advisory Committees as CSC considers necessary. This provides flexibility to CSC to establish Committees that it considers appropriate.

121. New section 55A provides that a Committee comprises such persons as CSC determines. This provides CSC with the flexibility to form Committees that comprise persons with appropriate skills and experience.

122. New section 55B sets out the functions of a Committee. These functions are to review any decision referred to it under the PNG Act and:

- exercise powers delegated to it by CSC in relation to the decision
- if no powers have been delegated to the Committee by CSC in relation to the decision, to make recommendations to CSC in relation to the decision.

123. The Committee must take into account any evidence relevant to the decision that is submitted to it and may take steps to obtain other evidence that it considers necessary for a proper review of the decision.

124. New subsection 55C(1) provides that the Committee may regulate its proceedings as it thinks fit, subject to any directions given by CSC. New subsection 55C(2) clarifies that if a direction by CSC is given in writing, it is not a legislative instrument for the purposes of the Legislative Instruments Act because it is administrative in character. It does not determine or alter the content of the law. The provision is included to assist readers and is merely declaratory.

125. New section 55D provides that any matter or thing done, or omitted to be done, in good faith by a member of a Committee in the performance of functions under this Act does not subject him or her to any action, liability, claim or demand. The purpose of this provision is to direct any action, liability, claim or demand related to CSC to CSC rather than a member of a Committee in the performance of functions under the PNG Act. Clause 35 of the Governance Bill provides that any money payable by CSC in respect of an action, liability, claim or demand that relates to the PNG Act or regulations made under the PNG Act is to be paid out of the CRF.

126. New section 55E establishes the remuneration and allowances for members of a Committee. Members are to be paid remuneration determined by the Remuneration Tribunal. Where there is no operative determination by the Remuneration Tribunal, Committee members are to be paid such remuneration as is prescribed by regulation. Members are also to be paid such allowances as are prescribed by regulation. The provision has effect subject to the *Remuneration Tribunal Act 1973*.

127. New section 55F relates to cases where a Committee makes recommendations to CSC in relation to decisions referred to that Committee. CSC is to take into account the recommendations of the Committee and any other matter that it considers relevant as part of its considerations. CSC's decision is to be recorded in writing. The written decision must include reasons for the decision and a copy is to be made available to the applicant.

128. New section 55G provides for review of decisions that have been reconsidered by CSC or a Committee by the Administrative Appeals Tribunal. This was previously provided for under subsection 54(6) of the PNG Act.

129. New section 55H requires CSC to provide the Minister such information relating to the general administration and operation of the PNG Act that he or she requires, to the extent that it deals with superannuation, upon request.

130. **Items 139 and 140, and items 142 to 145 of Schedule 1** update references to the Commissioner in sections 56 and 61 of the PNG Act to reflect the establishment of CSC as the responsible trustee.

131. **Item 141 of Schedule 1** repeals section 57 of the PNG Act, which provided for the Commissioner to recover any arrears of contributions. As the provision is inoperative and the position of the Commissioner is abolished, this provision is no longer required.

132. **Items 146 and 147 of Schedule 1** amend section 64 of the PNG Act to remove the ability for the Commissioner to delegate powers and functions under the PNG Act and associated conditions regarding such delegations, as a consequence of the Commissioner no longer being responsible for administration of the PNG Act. The Governance Bill provides CSC with the ability to delegate its powers in relation to the PNG Act.

Parliamentary Contributory Superannuation Act 1948 (PCS Act)

Items 148 to 151 – Transfer of functions to CSC

133. **Item 148 of Schedule 1** inserts a definition of “CSC” in subsection 4(1) of the PCS Act by reference to the definition in the Governance Bill.

134. **Items 149 to 151 of Schedule 1** update references to the Board in sections 16A and 22Q of the PCS Act to reflect the establishment of CSC as the responsible trustee.

Productivity Commission Act 1998 (PC Act)

Items 152 and 153 – Transfer of functions to CSC

135. **Item 152 of Schedule 1** inserts a definition of “CSC” in subsection 3(1) of the PC Act by reference to the definition in the Governance Bill.

136. **Item 153 of Schedule 1** updates references to the Board in section 37 of the PC Act to reflect the establishment of CSC as the responsible trustee.

Renewable Energy (Electricity) Act 2000 (REE Act)

Items 154 to 157 – Transfer of functions to CSC

137. **Item 154 of Schedule 1** inserts a definition of “CSC” in subsection 5(1) of the REE Act by reference to the definition in the Governance Bill.

138. **Items 155 to 157 of Schedule 1** update references to the Board in section 147 of the REE Act to reflect the establishment of CSC as the responsible trustee.

Social Security (Administration) Act 1999 (SSA Act)

Items 158 and 159 – Transfer of functions to CSC

139. **Item 158 of Schedule 1** inserts a definition of “CSC” in subclause 1(1) of Schedule 1 to the SSA Act by reference to the definition in the Governance Bill.

140. **Item 159 of Schedule 1** updates references to the Board in clause 17 of Schedule 3 to the SSA Act to reflect the establishment of CSC as the responsible trustee.

Superannuation Act 1922 (1922 Act)

Items 160 to 173 – Transfer of functions to CSC

141. **Item 160 of Schedule 1** inserts a new section 3 in the 1922 Act which provides that for the purposes of applying this Act on or after 1 July 2011, any reference to the Board, the Commissioner or the Commissioner for Superannuation is, unless the context requires otherwise, taken to be a reference to CSC. The Governance Bill provides that CSC is responsible for administering the scheme established by the 1922 Act. As the position of the Commissioner will be abolished, he or she will no longer carry out this role. However, certain references, for example, those which refer to things done by the Commissioner in the past, may need to continue to be read as a reference to the Commissioner, which is permitted by this provision.

142. An example of the application of the new section 3 is its application to section 48AB of the 1922 Act, which provides for the payment of reversionary superannuation pensions in certain circumstances, dependent on the decision of the Commissioner. As these payments may still be applicable to certain persons, the new section 3 allows the references to the Commissioner in section 48AB of the 1922 Act to be read as references to CSC. This allows CSC to grant payments under section 48AB of the 1922 Act in the same manner as was previously at the decision of the Commissioner.

143. **Item 161 of Schedule 1** inserts a definition of “Commissioner” in subsection 4(1) of the 1922 Act by reference to the definition in the 1976 Act, which refers to the position of Commissioner that existed prior to its abolition.

144. **Item 162 of Schedule 1** inserts a definition of “Commissioner for Superannuation” in subsection 4(1) of the 1922 Act to have the same meaning as “Commissioner” in the 1922 Act. This definition is inserted to maintain the instances where the term “Commissioner for Superannuation” is used in the 1922 Act.

145. **Item 163 of Schedule 1** inserts a definition of “CSC” in subsection 4(1) of the 1922 Act by reference to the definition in the Governance Bill.
146. **Item 164 of Schedule 1** inserts a definition of “decision” in subsection 4(1) of the 1922 Act. This has the same meaning as in the AAT Act. A definition of “decision” encompassing decisions under the 1922 Act was formerly contained in section 154 of the 1976 Act which is being repealed by item 193 of Schedule 1.
147. **Item 165 of Schedule 1** inserts a definition of “decision of CSC” in subsection 4(1) of the 1922 Act to mean a decision of CSC or a delegate of CSC. This definition replaces a definition of “decision of the Commissioner” that was formerly contained in subsection 154(1) of the 1976 Act which is being repealed by item 193 of Schedule 1. This is consequential on CSC taking over responsibility for the 1922 Act.
148. **Item 166 of Schedule 1** inserts a definition of “Reconsideration Advisory Committee” in subsection 4(1) of the 1922 Act to refer to a Committee established under the new section 128 of the 1922 Act, as inserted by item 169 of Schedule 1.
149. **Item 167 of Schedule 1** repeals the definition of “The Commissioner” or “The Commissioner for Superannuation” in subsection 4(1) of the 1922 Act as a consequence of items 161 and 162 of Schedule 1.
150. **Item 168 of Schedule 1** repeals subsection 119WA(19) of the 1922 Act. This provision is no longer required as its purpose was to clarify the interaction of section 119WA with section 154 of the 1976 Act. As section 154 is being repealed by item 193 of Schedule 1, this subsection is no longer required.
151. **Item 169 of Schedule 1** inserts new provisions into the 1922 Act in relation to Reconsideration Advisory Committees, and sets out certain requirements in relation to the functions and operation of those Committees. As a result of CSC becoming responsible for administering the 1922 scheme, it is appropriate for decisions of CSC to be subject to reconsideration to provide further consistency with the other superannuation schemes for which CSC will be responsible.
152. New subsections 127(1), (2) and (3) allow for a person affected by a reviewable decision who is dissatisfied with the decision to request CSC to reconsider it. The person must make the request to CSC in writing, and within 30 days of being notified of the decision, or within such further period as CSC allows. The request must set out the reasons for making the request.
153. New subsection 127(4) requires CSC, upon receiving a request for reconsideration of a decision, to refer the decision to a Reconsideration Advisory Committee for a recommendation or reconsideration of the decision, or to review the decision itself.
154. New subsection 127(5) allows CSC to confirm, vary, or replace a decision that it reconsiders.
155. New subsection 127(6) requires CSC to inform a person, in writing, of the result, and reasons for the result, of any reconsideration of a decision.
156. New section 128 provides that CSC may establish such Reconsideration Advisory Committees as CSC considers necessary. This provides flexibility to CSC to establish Committees that it considers appropriate.

157. New section 129 provides that a Committee comprises such persons as CSC determines. This provides CSC with the flexibility to form Committees that comprise persons with appropriate skills and experience.

158. New section 130 sets out the functions of a Committee. These functions are to review any decision referred to it under the new Part XIA of the 1922 Act, as inserted by item 169 of Schedule 1 and:

- exercise powers delegated to it by CSC in relation the decision
- if no powers have been delegated to the Committee by CSC in relation to the decision, to make recommendations to CSC in relation to the decision.

159. The Committee must take into account any evidence relevant to the decision that is submitted to it and may take steps to obtain other evidence that it considers necessary for a proper review of the decision.

160. New subsection 131(1) provides that the Committee may regulate its proceedings as it thinks fit, subject to any directions given by CSC. New subsection 131(2) clarifies that if a direction by CSC is given in writing, it is not a legislative instrument for the purposes of the Legislative Instruments Act because it is administrative in character. It does not determine or alter the content of the law. The provision is included to assist readers and is merely declaratory.

161. New section 132 provides that any matter or thing done, or omitted to be done, in good faith by a member of a Committee in the performance of functions under this Act does not subject him or her to any action, liability, claim or demand. The purpose of this provision is to direct any action, liability, claim or demand related to CSC, to CSC rather than a member of a Committee in the performance of functions under the 1922 Act. Clause 35 of the Governance Bill provides that any money payable by CSC in respect of an action, liability, claim or demand that relates to an Act that it administers, regulations made under such an Act, or a governing deed, is to be paid out of the CRF.

162. New section 133 establishes the remuneration and allowances for members of a Committee. Members are to be paid remuneration determined by the Remuneration Tribunal. Where there is no operative determination by the Remuneration Tribunal, Committee members are to be paid such remuneration as is prescribed by regulation. Members are also to be paid such allowances as are prescribed by regulation. The provision has effect subject to the *Remuneration Tribunal Act 1973*.

163. New section 133A relates to cases where a Committee makes recommendations to CSC in relation to decisions referred to the Committee. CSC is to take into account the recommendations of the Committee and any other matter that it considers relevant as part of its considerations. CSC's decision is to be recorded in writing. The written decision must include reasons for the decision and a copy is to be made available to the applicant.

164. New section 133B provides for review of decisions that have been reconsidered by CSC or a Committee by the Administrative Appeals Tribunal. This will ensure that decisions can continue to be reviewed by the Administrative Appeals Tribunal. This was previously provided for under section 154 of the 1976 Act which is being repealed by item 193 of Schedule 1.

165. **Item 170 of Schedule 1** inserts a new section 133C in the 1922 Act which requires CSC to maintain proper records in respect of benefits paid under the 1922 Act.

166. **Item 171 of Schedule 1** inserts new sections 149AA and 149AB in the 1922 Act. New sections 149AA and 149AB provide for CSC to give the Minister such information relating to the general administration of the 1922 Act as the Minister may require from time to time, and provide for certain amounts to be paid to CSC where a false statement has been made. These provisions are currently in sections 163 and 167 of the 1976 Act, but are being repealed and inserted into the 1922 Act, with references to be to CSC rather than the Board or Commissioner. This will allow the provisions relating to the 1922 Act to be more easily identified from within that Act.

167. **Items 172 and 173 of Schedule 1** make consequential changes to section 149B of the 1922 Act as a result of CSC taking over responsibility for that Act. These amendments will ensure that Part XII of the 1922 Act will continue to operate as intended.

Superannuation Act 1976

Items 174, 176 to 178, 180, 182 and 183 – Abolition of position of Commissioner for Superannuation

168. **Item 174 of Schedule 1** amends the definition of “Commissioner” in subsection 3(1) of the 1976 Act to reflect the abolition of the position. The amendment refers to the position of Commissioner as it existed prior to abolition.

169. **Item 176 of Schedule 1** amends the definition of “eligible employee” in subsection 3(1) of the 1976 Act by adding the conjunction “and” to the end of paragraphs (a) to (ec). This amendment clarifies the structure of the definition and does not change the effect of the definition.

170. **Item 177 of Schedule 1** amends the definition of “eligible employee” in subsection 3(1) of the 1976 Act as a consequence of item 178 of Schedule 1.

171. **Item 178 of Schedule 1** repeals paragraph (g) of the definition of “eligible employee” in subsection 3(1) of the 1976 Act. It is not necessary to specifically refer to the position of Commissioner for Superannuation, or in the future, the CEO of ComSuper, as these positions are a statutory office and come within the provisions of the definition relating to the holder of a statutory office.

172. **Item 180 of Schedule 1** removes a reference to the Commissioner in subparagraph 4B(c)(iii) of the 1976 Act. It is not necessary to specifically refer to the position of Commissioner for Superannuation, or in the future, the CEO of ComSuper, as these positions are a statutory office and already come within the subparagraph.

173. **Item 182 of Schedule 1** amends subsection 15A(2) of the 1976 Act to remove a reference to the Commissioner and restructures the provision.

174. Part II of the 1976 Act establishes the position of Commissioner for Superannuation and sets out certain entitlements, responsibilities, powers and

functions of the position. It also provides for the staff required to assist the Commissioner to perform his or her functions.

175. **Item 183 of Schedule 1** repeals Part II of the 1976 Act consequential on the abolition of the position of Commissioner, replacement of that position with a position of CEO of ComSuper and moving the governance framework for ComSuper (including staff) to the Comsuper Bill. Staff employed to assist the CEO of ComSuper will still be employed under the *Public Service Act 1999* – see clause 19 of the ComSuper Bill.

Items 175, 179, 184 to 196, and 198 to 205 – Transfer of functions to CSC

176. **Item 175 of Schedule 1** inserts a definition of “CSC” in subsection 3(1) of the 1976 Act by reference to the definition in the Governance Bill.

177. **Item 179 of Schedule 1** adds a note to the end of the definition of “Fund or Superannuation Fund” in subsection 3(1) of the 1976 Act to reflect the vesting the CSS Fund in CSC from 1 July 2011. This is consequential on the establishment of CSC as the responsible trustee under the 1976 Act.

178. **Item 184 of Schedule 1** removes a reference to section 154 of the 1976 Act consequential on that section being repealed by item 193 of Schedule 1.

179. Subsection 27C(1) of the 1976 Act sets out the functions of the Board. **Item 185 of Schedule 1** adds a note to the end of this subsection to reflect the establishment of CSC as the responsible trustee. The note refers to other functions of CSC in section 8 of the Governance Bill. Subitem 247(2) will change the reference to the Board to CSC.

180. **Item 186 of Schedule 1** repeals sections 27Q and 27R of the 1976 Act consequential on the establishment of CSC as the responsible trustee. The repealed sections provide for Board delegations and the indemnification of trustees. Indemnification of directors of the CSC Board and delegation by CSC are provided for by clauses 35 and 36 respectively of the Governance Bill. Saving provisions in relation to the current delegations are provided for by item 22 of Schedule 2.

181. **Item 187 of Schedule 1** amends subsection 42(5) of the 1976 Act. **Item 188 of Schedule 1** repeals subsection 42(5A) and (5B) of the 1976 Act. Taxation matters are provided for by clauses 32 and 33 of the Governance Bill.

182. **Item 189 of Schedule 1** repeals sections 44 and 44A of the 1976 Act consequential on the establishment of CSC as the responsible trustee under the 1976 Act. The repealed sections provided for the keeping of accounting records and annual audits by the Auditor-General. The requirement for CSC to keep accounting records and provision for the audit of the financial statements by the Auditor-General are provided for by clauses 29 and 30 respectively of the Governance Bill.

183. Subsection 74(11) of the 1976 Act clarifies the interaction between sections 74 and 154 of that Act. Section 154 of the 1976 Act currently provides for the reconsideration of certain decisions of the Commissioner made under the 1922 Act, 1976 Act and regulations under those Acts. Consequential on the establishment of CSC as the responsible trustee for the 1922 scheme, reconsideration of these decisions is provided for under the new Part XIA of the 1922 Act inserted by item 169 of Schedule 1. **Item 190 of Schedule 1** replaces subsection 74(11) of the 1976 Act to refer to the new Part XIA of the 1922 Act instead of section 154 of the 1976 Act, which is repealed by item 193 of Schedule 1.

184. **Item 191 of Schedule 1** amends paragraph 135(1A)(d) of the 1976 Act. **Item 192 of Schedule 1** amends paragraphs 136(2A)(d) and (2F)(d) of the 1976 Act. These amendments delete references to the Commissioner as transfer values are payable to CSC. Subitem 247(2) of Schedule 1 will change the references to the Board to CSC to allow any future transfer values to be paid to CSC.
185. Section 154 of the 1976 Act currently provides for the reconsideration of certain decisions of the Commissioner made under the 1922 Act, 1976 Act and regulations under those Acts. **Item 193 of Schedule 1** repeals section 154 of the 1976 Act consequential on the abolition of the position of Commissioner and the establishment of CSC as the responsible trustee for the 1922 scheme. Reconsideration of decisions made under the 1922 Act will now be provided for under the new Part XIA of the 1922 Act inserted by item 169 of Schedule 1.
186. **Item 194 of Schedule 1** deletes the references to the Commissioner in subsection 56A(1) of the 1976 Act as contributions are paid to the Board rather than the Commissioner. Subitem 247(2) of Schedule 1 will change the references to the Board to CSC.
187. **Item 195 of Schedule 1** repeals sections 161, 161A and 162 of the 1976 Act. These relate to the provision of annual reports in respect of the CSS and the 1922 scheme. Clause 30 of the Governance Bill provides for annual reporting for CSC, including in relation to the CSS and the 1922 scheme.
188. **Item 196 of Schedule 1** repeals subsection 163(1) of the 1976 Act. This relates to provision of information to the Minister in relation to the general administration and operation of the 1922 Act. New section 149AA of the 1922 Act, as inserted by item 171 of Schedule 1, provides for the provision of information to the Minister in relation to the 1922 Act.
189. **Item 198 of Schedule 1** amends subsection 163A(7) of the 1976 Act as a consequence of the abolition of the position of Commissioner.
190. **Item 199 of Schedule 1** repeals section 163B of the 1976 Act as it is considered that the power to correct clerical errors would come within the functions of CSC.
191. **Item 200 of Schedule 1** amends section 164 of the 1976 Act to replace the reference to “the Commissioner or the Board” with a reference to CSC as a result of the abolition of the position of Commissioner for Superannuation. Section 164 provides for a direction, determination or declaration to be in writing. Any directions, determinations or declarations made under the 1976 Act would be made by either the Minister, as currently provided for, or CSC.
192. **Item 201 of Schedule 1** repeals paragraphs 165(b), (c) and (d) of the 1976 Act and replaces them with new paragraphs. New paragraphs 165(b), (c) and (d) will allow the Minister to delegate his or her powers to a director of CSC, the CEO of ComSuper or a staff member of ComSuper. The amendment is consequential on the establishment of CSC as the responsible trustee and the abolition of the position of Commissioner for Superannuation and replacement with the position of CEO of ComSuper.
193. **Item 202 of Schedule 1** repeals and substitutes subsection 167(3) of the 1976 Act. **Item 203 of Schedule 1** amends subsection 167(4) of the 1976 Act to omit the reference to the Commissioner. **Item 204 of Schedule 1** repeals

subsection 167(5) of the 1976 Act. Section 167 of the 1976 Act relates to making false statements in relation to both the CSS and the 1922 scheme. These amendments are consequential on moving the current provisions of the subsection relating to the 1922 scheme to the 1922 Act and the transfer of responsibility for the 1922 scheme from the Commissioner to CSC. New section 149AB of the 1922 Act, as being inserted by item 171 of Schedule 1, deals with false statements in respect of the 1922 scheme.

194. **Item 205 of Schedule 1** amends paragraph 168(14)(b) as a consequence of the repeal of section 154 of the 1976 Act by item 193 of Schedule 1.

Items 181, 197 and 206 – Technical amendments

195. **Item 181 of Schedule 1** is a technical amendment to omit “(1)” from section 15 of the 1976 Act, as there are no subsections.

196. **Item 197 of Schedule 1** is a technical amendment to omit “(3)” from section 163 of the 1976 Act, as, because of item 196, there will be no subsections.

197. **Item 206 of Schedule 1** is a technical amendment to omit “(1)” from section 240 of the 1976 Act, as there are no subsections.

Superannuation Act 1990

Items 207 to 214 and 216 to 221 – Transfer of functions to CSC and abolition of the position of Commissioner for Superannuation

198. **Item 207 of Schedule 1** amends the definition of “Board” in section 3 of the 1990 Act as a consequence of the abolition of the Board, as it previously existed, by item 216 of Schedule 1. The definition is updated to refer to the Board that existed prior to its abolition.

199. **Item 208 of Schedule 1** repeals the definition of “Chairperson” in section 3 of the 1990 Act to reflect the abolition of the Board as it previously existed.

200. **Item 209 of Schedule 1** repeals the definition of “Commissioner” in section 3 of the 1990 Act to reflect the abolition of the position of Commissioner for Superannuation.

201. **Item 210 of Schedule 1** inserts a definition of “CSC” in section 3 of the 1990 Act by reference to the definition in the Governance Bill.

202. **Item 211 of Schedule 1** adds a note at the end of the definition of “PSS Fund” in section 3 of the 1990 Act to reflect the establishment of CSC as the responsible trustee.

203. **Item 212 of Schedule 1** repeals the definition of “trustee” in section 3 of the 1990 Act to reflect the abolition of the Board as it previously existed.

204. **Item 213 of Schedule 1** repeals subsection 5(1AA) to reflect the governance arrangements of the Board being set out in the Governance Bill.

205. **Item 214 of Schedule 1** repeals paragraph 6(1)(b) of the 1990 Act. It is not necessary to specifically refer to the Commissioner or the CEO of ComSuper as these positions are statutory offices which would be covered by other provisions of section 6 of the 1990 Act.

206. **Item 216 of Schedule 1** repeals Parts 6 and 7 of the 1990 Act. Part 6 establishes the Board, and Part 7 defines the Commissioner for Superannuation's functions under the 1990 Act. These amendments are consequential on abolishing the Board, as it previously existed, and abolishing the position of Commissioner for Superannuation, replacing the position with a new CEO position and moving ComSuper's governance from the 1976 Act to the ComSuper Bill. The CEO of ComSuper will have the same responsibilities in relation to administration of the PSS as the Commissioner for Superannuation currently does.

207. Item 216 also provides that CSC's functions and powers are those set out in the Trust Deed and that CSC is also responsible for the general administration of the 1990 Act.

208. **Item 217 of Schedule 1** repeals and substitutes subsection 43(1) of the 1990 Act. Indemnification of a member of a Reconsideration Advisory Committee will continue to be provided for under the 1990 Act. However, indemnification of other persons currently listed in subsection 43(1) of the 1990 Act is to be provided for either in the Governance Bill or the ComSuper Bill.

209. **Item 218 of Schedule 1** adds a note to the end of subsection 43(2) of the 1990 Act to refer the reader to clause 35 of the Governance Bill. **Item 219 of Schedule 1** repeals subsections 43(3) and (4) of the 1990 Act. Clause 35 of the Governance Bill provides that any money payable by CSC in respect of an action, liability, claim or demand that relates to the 1990 Act, regulations made under the 1990 Act, or PSS governing deed, is to be paid out of the PSS Fund. The amount will be reimbursed to the PSS Fund from the CRF.

210. **Item 220 of Schedule 1** inserts a new paragraph 47(aa) in the 1990 Act to allow the Minister to delegate his or her powers to a director of CSC. This amendment is consequential on the establishment of CSC.

211. Paragraph 47(c) of the 1990 Act allows the Minister to delegate his or her powers to the Commissioner and the staff assisting him or her. **Item 221 of Schedule 1** repeals and substitutes a new paragraph 47(c) as a consequence of the abolition of position of Commissioner for Superannuation and replacement with the position of CEO of ComSuper.

Item 215 – Membership of the PSS

212. **Item 215 of Schedule 1** amends paragraph 6B(1)(a) of the 1990 Act. This amendment is consequential on the amendments being made to the 2005 Act by items 223 and 229 of Schedule 1. Section 6B of the 1990 Act allows a PSS member who is making member contributions to make an election to leave the PSS in certain circumstances.

213. A member can elect to leave the PSS under paragraph 6B(1)(a) of the 1990 Act and join the PSSAP. Currently, on leaving the PSS, the person's employer would no longer be required to make mandatory employer contributions to the PSS in respect of the person but instead would make future employer contributions to the PSSAP. On joining the PSSAP, the person becomes an ordinary employer-sponsored member of the PSSAP which is currently the only class of contributory member in the PSSAP.

214. Items 223 and 229 of Schedule 1 make provision for a PSS member to become a member of the PSSAP and continue to receive their mandatory employer

contributions under the PSS (rather than the PSSAP). Such PSS members would only become a member of the PSSAP for the purpose of certain contributions, for example, for the purpose of voluntary salary sacrifice contributions. This is achieved by creating a new class of contributory member in the PSSAP, called an “Australian government superannuation scheme member of the PSSAP”.

215. As such it is necessary to restrict those members of the PSS who can elect to leave the PSS and receive mandatory employer contributions in the PSSAP to a person who is able to become an ordinary employer-sponsored member of the PSSAP. Persons prescribed by item 223 of Schedule 1 (that is, an Australian government superannuation scheme member) are precluded from being an ordinary employer-sponsored member of the PSSAP.

Superannuation Act 2005

Items 222, 223, 225, and 228 to 231 – Providing flexibility to allow CSS and PSS members to consolidate their superannuation savings under the management of CSC

216. PSS and CSS members cannot make contributions nor have superannuation amounts paid to the PSSAP in respect of them. For example, currently PSS and CSS members who wish to have voluntary employer contributions (for example, salary sacrifice contributions) paid in respect of them are unable to have these contributions made to the PSS, the CSS or PSSAP. Also, former PSS and CSS members who receive lump sum benefits from either the PSS or the CSS respectively are unable to move those funds to the PSSAP. This is because these persons are not eligible to become a member of the PSSAP under section 13 of the 2005 Act. A consequence of this restriction is that these persons would be unable to consolidate their superannuation savings under the management of one trustee, being CSC, if they chose to do so.

217. Items 222, 223, 225, 228, 229, 230 and 231 of Schedule 1 provide flexibility within the 2005 Act to facilitate any decision, if made in the future, to allow such consolidation within the Australian Government civilian superannuation schemes.

218. **Item 222 of Schedule 1** is a technical amendment to insert “(1)” into section 4 of the 2005 Act as a consequence of item 228 of Schedule 1, which adds new subsections 4(2) and (3) to section 4 of the 2005 Act.

219. **Item 223 of Schedule 1** inserts a definition of “Australian government superannuation scheme member” in section 4 of the 2005 Act. There are two requirements for a person to be an “Australian government superannuation scheme member”. The first requirement is that a person has to be either a member of the PSS or an eligible employee (within the meaning of the 1976 Act). The second requirement is that the Minister has made a declaration that such a person is an “Australian government superannuation scheme member”.

220. Where a person is an “Australian government superannuation scheme member” they will be eligible to become a member of the PSSAP as a result of the changes being made to subsection 13(1) of the 2005 Act by item 229 of Schedule 1.

221. **Item 225 of Schedule 1** inserts a definition of “former Australian government superannuation scheme member” in section 4 of the 2005 Act. There are two requirements for a person to be a “former Australian government superannuation

scheme member”. The first requirement is that a person has to be either a former member of the PSS who has preserved benefits in the PSS or a person who has preserved benefits in the CSS. The second requirement is that the Minister has made a declaration that such a person is a “former Australian government superannuation scheme member”.

222. Where a person is a “former Australian government superannuation scheme member” they will be eligible to become a member of the PSSAP as a result of the changes being made to subsection 13(1) of the 2005 Act by item 229 of Schedule 1.

223. **Item 228 of Schedule 1** amends section 4 of the 2005 Act to provide that a declaration made for the purposes of the definition of “Australian government superannuation scheme member” or “former Australian government superannuation scheme member” is a legislative instrument for the purposes of the Legislative Instruments Act. Item 228 of Schedule 1 specifically provides that such a declaration is subject to disallowance by the Parliament under section 42 of the Legislative Instruments Act. As a consequence, item 39 of the table under section 44 of the Legislative Instruments Act, which exempts superannuation legislative instruments (other than regulations) from the disallowance process, does not apply.

224. **Item 229 of Schedule 1** repeals and substitutes a new subsection 13(1) of the 2005 Act. Subsection 13(1) of the 2005 Act sets out the circumstances where a person is eligible to become a member of the PSSAP subject to subsections 13(2) and (3) of the 2005 Act. They are where a person is:

- a public sector employee as defined in section 5 of the 2005 Act
- any person declared by the Minister is writing.

225. Subsections 13(2) and (3) of the 2005 Act provide that certain persons are not eligible to be members of the PSSAP even though they would come within subsection 13(1) of the 2005 Act.

226. New paragraph 13(1)(a) replicates the current subsection 13(1) of the 2005 Act and is still subject to subsections 13(2) and (3) of the 2005 Act. New paragraphs 13(1)(b) and (c) set out two additional circumstances where a person is eligible to become a PSSAP member subject to subsection 13(3) of the 2005 Act. These are where the person comes within the definition of either “Australian government superannuation scheme member” or “former Australian government superannuation scheme member”. Subsection 13(3) provides that a person is not eligible to become a member of the PSSAP before 1 July 2005.

227. **Item 230 of Schedule 1** repeals and substitutes a new subsection 17(1) of the 2005 Act. **Item 231 of Schedule 1** repeals and substitutes a new subsection 19(1) of the 2005 Act. Both subsection 17(1) and subsection 19(1) are contained in Part 4 of the 2005 Act. Part 4 of the 2005 Act describes when contributions payable under the Rules are payable in respect of a PSSAP member and who is the responsible employer for making those contributions.

228. New paragraph 17(1)(a) replicates current subsection 17(1) of the 2005 Act. New paragraph 17(1)(b) provides that section 17 also applies to an “Australian government superannuation scheme member” who has chosen to become a member of the PSSAP. An “Australian government superannuation scheme member” will be

able to choose to become a member of the PSSAP in accordance with subsection 14(2) of the 2005 Act.

229. New paragraph 19(1)(a) replicates current subsection 19(1) of the 2005 Act. New paragraph 19(1)(b) of the 2005 Act provides that section 19 also applies to an “Australian government superannuation scheme member”.

230. New paragraphs 17(1)(b) and 19(1)(b) are necessary because an “Australian government superannuation scheme member” is not able to become an ordinary employer-sponsored member. This is because they are not eligible to become a member of the PSSAP because of their employment or office. They therefore cannot come within the provisions of subsections 18(2), (3) and (5) of the 2005 Act that relate to the three situations in which a person is an ordinary employer-sponsored member of the PSSAP. They are eligible to become a member of the PSSAP only because they are an “Australian government superannuation scheme member”.

Items 224, 226, 227, and 232 to 239 – Transfer of functions to CSC and abolition of the position of Commissioner for Superannuation

231. **Item 224 of Schedule 1** inserts a definition of “CSC” in section 4 of the 2005 Act by reference to the definition in the Governance Bill.

232. **Item 226 of Schedule 1** adds a note at the end of the definition of the “PSSAP Fund” in section 4 of the 2005 Act to reflect the establishment of CSC as the responsible trustee.

233. **Item 227 of Schedule 1** repeals the definition of “trustee” in section 4 of the 2005 Act to reflect the abolition of the Board as it previously existed.

234. **Item 232 of Schedule 1** repeals the heading to Division 1 of Part 5 of the 2005 Act to reflect CSC as the responsible trustee.

235. **Item 233 of Schedule 1** repeals section 20 of the 2005 Act. Section 20 of the 2005 Act relates to the functions and responsibilities of the Board. This amendment is consequential on the abolition of the Board, as it previously existed, and CSC becoming the responsible trustee.

236. Item 233 also provides that CSC’s functions and powers are those set out in the Trust Deed and that it is also responsible for the general administration of the 2005 Act.

237. **Item 234 of Schedule 1** repeals sections 21, 22, 23, 24, 25, 26, 27 and 28 of the 2005 Act. The Governance Bill deals with these matters in relation to CSC.

238. **Item 235 of Schedule 1** repeals subsection 29(1) of the 2005 Act and replaces it with a new subsection 29(1). Indemnification of a member of a Reconsideration Advisory Committee will continue to be provided for under the 2005 Act. However, indemnification of other persons currently listed in subsection 43(1) of the 1990 Act is to be provided for either in the Governance Bill or the ComSuper Bill.

239. **Item 236 of Schedule 1** adds a note to the end of subsection 29(2) of the 2005 Act to refer the reader to clause 35 of the Governance Bill. **Item 237 of Schedule 1** repeals subsections 29(3) and (4) of the 2005 Act. Clause 35 of the Governance Bill provides that any money payable by CSC in respect of an action, liability, claim or demand that relates to the 2005 Act, regulations made under the 2005 Act, or the PSSAP governing deed, is to be paid out of the PSSAP Fund. The amount will be reimbursed to the PSSAP Fund from the CRF.

240. **Item 238 of Schedule 1** repeals Division 2 of Part 5 of the 2005 Act. Division 2 of Part 5 of the 2005 Act defined the Commissioner for Superannuation's functions under the 2005 Act. This amendment is consequential on the abolition of the position of Commissioner for Superannuation, replacing that position with a new CEO position and moving ComSuper's governance framework from the 1976 Act to the Comsuper Bill. The CEO of ComSuper will have the same responsibilities in relation to administration of the PSSAP as the existing office of Commissioner for Superannuation.

241. **Item 239 of Schedule 1** repeals paragraphs 33(b) and (c) of the 2005 Act and replaces them with new paragraphs. New paragraphs 33(aa), (b) and (c) will allow the Minister to delegate his or her powers to a director of CSC, the CEO of ComSuper or a staff member of ComSuper. The amendment is consequential on the establishment of CSC as the responsible trustee and the abolition of the position of Commissioner for Superannuation and replacement with the position of CEO of ComSuper.

Superannuation (Productivity Benefit) Act 1988 (PB Act)

Items 240 to 242 – Transfer of functions to CSC

242. **Item 240 of Schedule 1** repeals the definition of "Board" in subsection 3(1) of the PB Act as a consequence of CSC replacing the Board as the responsible trustee.

243. **Item 241 of Schedule 1** inserts a definition of "CSC" in subsection 3(1) of the PB Act by reference to the definition in the Governance Bill.

244. **Item 242 of Schedule 1** updates a reference to the Board in section 4EA of the PB Act to reflect the establishment of CSC as the responsible trustee.

Veterans' Entitlements Act 1986 (VE Act)

Items 243 to 245 – Transfer of functions to CSC

245. **Item 243 of Schedule 1** inserts a definition of "CSC" in subsection 5Q(1) of the VE Act by reference to the definition in the Governance Bill.

246. **Items 244 and 245 of Schedule 1** update references to the Board in sections 164 and 188 of the VE Act to reflect the establishment of CSC as the responsible trustee.

Part 2—Amendments to change references to the Authority and the Board

Item 246 – Bulk amendments to references to the Authority

247. **Item 246 of Schedule 1** replaces certain references to the Authority in the DFRDB Act with references to CSC. These amendments reflect the abolition of the DFRDB Authority and CSC taking over the Authority’s role as the trustee responsible for the scheme established by the DFRDB Act.

Item 247 – Bulk amendments to references to the Board

248. **Subitem 247(1) of Schedule 1** replaces certain references to the Board in the MSB Act with references to CSC. These amendments reflect the abolition of the MSB Board and CSC taking over the Board’s role as the trustee responsible for the scheme established by the MSB Act.

249. **Subitems 247(2), (3) and (4) of Schedule 1** replace certain references to the Board in the 1976 Act, the 1990 Act and the 2005 Act with references to CSC. These amendments reflect the establishment of CSC as the trustee responsible for the schemes under these Acts.

SCHEDULE 2 – TRANSITIONAL PROVISIONS

Part 1—Preliminary

Item 1 – Definitions

250. **Item 1 of Schedule 2** provides definitions of certain terms that are used for the purposes of Schedule 2 to the Bill.

Part 2—Assets, liabilities and legal proceedings

Items 2 to 5 – Vesting of assets and liabilities

251. **Item 2 of Schedule 2** provides that the assets of the MSB Board and the Authority immediately before 1 July 2011 are to be vested in CSC from 1 July 2011, 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.

252. **Item 3 of Schedule 2** provides that the liabilities of the MSB Board and the Authority immediately before 1 July 2011 are to be vested in CSC from 1 July 2011, without any conveyance, transfer or assignment. CSC becomes the successor in law in relation to these liabilities. 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.

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

254. **Subitem 4(1) of Schedule 2** provides for item 4 to apply where land vests in CSC under 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.

255. **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.

256. The purpose of **item 5 of Schedule 2** is to enable transfers of assets (other than land) vested in CSC under Part 2 of Schedule 2 to be registered and otherwise dealt with in the way that transfers of assets of that sort would ordinarily be dealt with.

257. **Subitem 5(1) of Schedule 2** provides for item 5 to apply where an asset (other than land) vests in CSC under Part 2 of Schedule 2 and a certificate, signed by the Chair, has been lodged with an official responsible 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.

258. **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.

Item 6 – Legal proceedings

259. **Subitems 6(1), (2) and (3) of Schedule 2** provide that if the MSB Board, the Authority or the Commissioner for Superannuation (in proceedings related to the 1922 scheme, the DFSPB or the PNG) respectively were a party to proceedings pending in any court or tribunal immediately before 1 July 2011, CSC is substituted as a party in their place from 1 July 2011. These subitems are intended to ensure that all pending proceedings to which the MSB Board, the Authority or the Commissioner for Superannuation (in relation to the 1922 scheme or the PNG) are a party continue, under the name CSC, on their abolition.

260. **Subitem 6(4) of Schedule 2** provides that if the Commissioner for Superannuation were a party to proceedings pending in any court or tribunal immediately before 1 July 2011, other than in relation to the 1922 scheme or the PNG, the CEO of ComSuper is substituted as a party in his or her place from 1 July 2011. This subitem is intended to ensure that all pending proceedings to which the Commissioner for Superannuation is a party, other than in relation to the 1922 scheme or the PNG, continue, under the name of the CEO of ComSuper.

261. **Paragraph 6(5)(a) of Schedule 2** enables the Minister to determine, in writing, that subitem 6(3) applies as if the reference to CSC in that subitem is a reference to the CEO of ComSuper. In this event, the CEO of ComSuper, rather than CSC, would replace the Commissioner for Superannuation as a party to the legal proceedings.

262. **Paragraph 6(5)(b) of Schedule 2** enables the Minister to determine, in writing, that subitem 6(4) applies as if the reference to the CEO of ComSuper in that subitem is a reference to CSC. In this event, CSC, rather than the CEO of ComSuper, would replace the Commissioner for Superannuation as a party to the legal proceedings.

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

Part 3—References to, and things done by or in relation to, certain persons

Division 1—Provisions relating to the MSB Board

Item 7 – References in Acts and instruments to the MSB Board

264. **Subitem 7(1) of Schedule 2** provides for references to the MSB Board in Acts or instruments that are in force immediately before 1 July 2011 to have effect 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 the MSB Board to CSC on 1 July 2011.

265. **Subitem 7(2) of Schedule 2** enables the Minister to vary the application of subitem 7(1) so that:

- it does not apply to a specified reference to the MSB Board or
- a specified reference to the MSB Board is treated as if it were a reference to ComSuper or
- a specified reference to the MSB Board is treated as if it were a reference to the CEO of ComSuper.

266. **Subitem 7(3) of Schedule 2** enables the regulations to provide that an instrument containing a reference specified in a determination made under paragraph 7(2)(a) applies from 1 July 2011 as though the reference were to a person or body other than CSC, ComSuper or the CEO of ComSuper.

267. **Subitem 7(4) of Schedule 2** clarifies that a determination under subitem 7(2) is not a legislative instrument for the purposes of the Legislative Instruments Act because it is administrative in character. It does not determine or alter the content of the law. This provision is included to assist readers and is merely declaratory.

Item 8 – Operation of laws in relation to the MSB Board

268. **Subitem 8(1) of Schedule 2** provides that, for the purposes of the operation of any law of the Commonwealth after 1 July 2011, anything done by, or in relation to, the MSB Board before that date 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, the MSB Board does not lapse after the transfer of its responsibilities and functions to CSC on 1 July 2011.

269. **Subitem 8(2) of Schedule 2** provides that things taken to be done by CSC under subitem 8(1), under a provision amended by the Bill, continue in effect from 1 July 2011 without changing the time when the thing was done.

270. **Subitem 8(3) of Schedule 2** enables the Minister to make a determination, in writing, which varies the application of subitem 8(1) so that it:

- does not apply in relation to a thing done by, or in relation to, the MSB Board or
- applies as if the reference to CSC were a reference to ComSuper or
- applies as if the reference to CSC were a reference to the CEO of ComSuper.

271. **Subitem 8(4) of Schedule 2** enables the regulations to provide for a thing specified in a determination under paragraph 8(3)(a) to be taken as having been done by, or in relation to, a person other than CSC, ComSuper or the CEO of ComSuper.

272. **Subitem 8(5) of Schedule 2** clarifies that a determination under subitem 8(3) is not a legislative instrument for the purposes of the Legislative Instruments Act because it is administrative in character. It does not determine or alter the content of the law. This provision is included to assist readers and is merely declaratory.

Division 2—Provisions relating to the Authority

Item 9 – References in Acts and instruments to the Authority

273. **Item 9 of Schedule 2** sets out arrangements for the treatment of references to the Authority in Acts and instruments which are the same as those that apply to references to the MSB Board under item 7 of Schedule 2.

Item 10 – Operation of laws in relation to the Authority

274. **Item 10 of Schedule 2** sets out arrangements for the operation of laws of the Commonwealth in relation to things done by the Authority prior to 1 July 2011, which are the same as those that apply to things done by the MSB Board prior to 1 July 2011 under item 8 of Schedule 2.

Division 3—Provisions relating to the Commissioner for Superannuation

Item 11 – References in Acts and instruments to the Commissioner for Superannuation

275. **Subitem 11(1) of Schedule 2** provides for references to the Commissioner for Superannuation in Acts (other than the *Governor-General Act 1974* or the 1922 Act) or regulations that are in force immediately before 1 July 2011 to have effect 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 certain responsibilities and functions of the Commissioner for Superannuation to CSC on 1 July 2011.

276. **Subitem 11(2) of Schedule 2** provides for references to the Commissioner for Superannuation in instruments (other than regulations or instruments of delegation) that are in force immediately before 1 July 2011 to have effect as if the references were to the CEO of ComSuper. This item is intended to ensure that all relevant instruments continue to operate appropriately upon the transfer of certain responsibilities and functions of the Commissioner for Superannuation to the CEO of ComSuper on 1 July 2011.

277. **Subitem 11(3) of Schedule 2** provides for the *Defence Force (Superannuation) (Productivity Benefit) Determination 1988*, as in force immediately before commencement, to have effect from commencement as if the reference to the Commissioner for Superannuation were a reference to CSC.

278. **Subitem 11(4) of Schedule 2** enables the Minister to vary the application of subitem 11(1) so that:

- it does not apply to a specified reference to the Commissioner for Superannuation or
- a specified reference to CSC is treated as if it were a reference to ComSuper or
- a specified reference to CSC is treated as if it were a reference to the CEO of ComSuper.

279. **Subitem 11(5) of Schedule 2** enables the Minister to vary the application of subitem 11(2) so that:

- it does not apply to a specified reference to the Commissioner for Superannuation or
- a specified reference to the CEO of ComSuper is treated as if it were a reference to ComSuper or
- a specified reference to the CEO of ComSuper is treated as if it were a reference to CSC.

280. **Subitem 11(6) of Schedule 2** enables the regulations to provide that an Act or instrument containing a reference specified in a determination made under paragraph 11(4)(a) or (5)(a) applies from 1 July 2011 as though the reference were to a person or body other than CSC, ComSuper or the CEO of ComSuper.

281. **Subitem 11(7) of Schedule 2** clarifies that a determination under subitem 11(4) or 11(5) is not a legislative instrument for the purposes of the Legislative Instruments Act because it is administrative in character. It does not determine or alter the content of the law. This provision is included to assist readers and is merely declaratory.

Item 12 – Operation of laws in relation to the Commissioner for Superannuation

282. **Subitem 12(1) of Schedule 2** provides that, for the purposes of the operation of any law of the Commonwealth after 1 July 2011, anything done by, or in relation to, the Commissioner for Superannuation in relation to the 1922 scheme, the DFSPB or the PNG before that date is taken to have been done by, or in relation to, CSC. This subitem is intended to ensure that anything done by, or in relation to, the Commissioner for Superannuation does not lapse after the transfer of certain responsibilities and functions to CSC on 1 July 2011.

283. **Subitem 12(2) of Schedule 2** provides that, for the purposes of the operation of any law of the Commonwealth after 1 July 2011, anything done by, or in relation to, the Commissioner for Superannuation in relation to the *Governor-General Act 1974* before that date is taken to have been done by, or in relation to, the Finance Secretary. This subitem is intended to ensure that anything done by, or in relation to, the Commissioner for Superannuation does not lapse after the transfer of certain responsibilities and functions to the Finance Secretary on 1 July 2011.

284. **Subitem 12(3) of Schedule 2** provides that, for the purposes of the operation of any law of the Commonwealth after 1 July 2011, anything done by, or in relation to, the Commissioner for Superannuation (other than in relation to the 1922 scheme, the PNG, the DFSPB or the *Governor-General Act 1974*) before that date is taken to have been done by, or in relation to, the CEO of ComSuper. This subitem is intended to ensure that anything done by, or in relation to, the Commissioner for Superannuation does not lapse after the transfer of certain responsibilities and functions to the CEO of ComSuper on 1 July 2011.

285. **Subitem 12(4) of Schedule 2** provides that things taken to be done by CSC, the Finance Secretary, or the CEO of ComSuper under subitems 12(1) to (3), under a provision amended by the Bill, continue in effect from 1 July 2011 without changing the time when the thing was done.

286. **Subitem 12(5) of Schedule 2** enables the Minister to make a determination, in writing, which varies the application of subitem 12(1) so that it:

- does not apply in relation to a thing done by, or in relation to, the Commissioner for Superannuation or
- applies as if the reference to CSC in the subitem were a reference to ComSuper or
- applies as if the reference to CSC in the subitem were a reference to the CEO of ComSuper.

287. **Subitem 12(6) of Schedule 2** enables the Minister to make a determination, in writing, which varies the application of subitem 12(2) so that it:

- does not apply in relation to a thing done by, or in relation to, the Commissioner for Superannuation or
- applies as if the reference to the Finance Secretary in the subitem were a reference to ComSuper or
- applies as if the reference to the Finance Secretary in the subitem were a reference to the CEO of ComSuper or
- applies as if the reference to the Finance Secretary in the subitem were a reference to CSC.

288. **Subitem 12(7) of Schedule 2** enables the Minister to make a determination, in writing, which varies the application of subitem 12(3) so that it:

- does not apply in relation to a thing done by, or in relation to, the Commissioner for Superannuation or
- applies as if the reference to the CEO of ComSuper in the subitem were a reference to ComSuper or
- applies as if the reference to the CEO of ComSuper in the subitem were a reference to CSC.

289. **Subitem 12(8) of Schedule 2** enables the regulations to provide for a thing specified in a determination under paragraph 12(5)(a), (6)(a) or (7)(a) to be taken as having been done by, or in relation to, a person other than CSC, ComSuper, the CEO of ComSuper or the Finance Secretary.

290. **Subitem 12(9) of Schedule 2** clarifies that a determination under subitem 12(5), 12(6) or 12(7) is not a legislative instrument for the purposes of the Legislative Instruments Act because it is administrative in character. It does not determine or alter the content of the law. This provision is included to assist readers and is merely declaratory.

Part 4—Office holders

Item 13— Trustees of ARIA

291. **Item 13 of Schedule 2** provides that a person who is a trustee of ARIA immediately prior to 1 July 2011 ceases holding that office from that date.

292. **Item 14 of Schedule 2** provides for the transfer of the current occupant of the role of Commissioner of Superannuation to the new office of CEO of ComSuper on

1 July 2011. It also recognises that the responsibilities of the two positions are fundamentally the same.

Part 5—Review of decisions

Item 15 – Saving rights of review of decisions

293. The purpose of **item 15 of Schedule 2** is to ensure that persons affected by decisions made prior to 1 July 2011 do not lose their right to a review of those decisions as a result of amendments to the relevant enabling legislation to reflect the governance arrangements that apply to their superannuation scheme from that date.

294. **Subitem 15(1) of Schedule 2** enables a person affected by a decision made by the Authority or its delegate under certain Acts prior to 1 July 2011, to apply to CSC for a review of the decision. The relevant Acts are the DFRDB Act, the DFRB Act and any Act that relates to retirement benefits for members of the Defence Force and modifies or affects the provisions of the DFRB Act.

295. **Subitem 15(2) of Schedule 2** provides for applications to the Administrative Appeals Tribunal for the review of decisions made by the Authority or its delegates under the Acts listed in subitem 15(1) before 1 July 2011. This is subject to the limitation that the period for making such an application must not have expired before 1 July 2011.

296. **Subitems 15(3), (5) and (7) of Schedule 2** are similar to subitem 15(2) and apply, in turn, to decisions made under:

- the *Governor-General Act 1974*
- the PNG Act
- the 1976 Act, the 1922 Act or regulations made under either of these Acts.

297. **Subitems 15(4) and (6) of Schedule 2** are similar to subitem 15(1) and apply, in turn, to decisions made under:

- the PNG Act
- the 1976 Act, the 1922 Act or regulations made under either of those Acts.

Part 6—Reporting

Items 16 to 18 – Financial statements and other reporting requirements

298. The purpose of **items 16 to 18 of Schedule 2** is to ensure that reports (financial or otherwise) which were required, by law, of the MSB Board, the Authority or the Commissioner for Superannuation prior to their abolition will be provided by CSC or the CEO of ComSuper.

299. **Subitem 16(1) of Schedule 2** provides that if, immediately before 1 July 2011, a law required the MSB Board to provide a report for a period ending after that date, CSC must provide the report for so much of the period occurring before 1 July 2011.

300. **Subitem 16(2) of Schedule 2** provides that if CSC is required to provide a report for part of a period under subitem 15(1), and is also required to provide a

similar report for the remainder of the period, CSC may meet the requirements by providing a single report that covers the whole period.

301. **Subitem 16(3) of Schedule 2** provides that if the MSB Board was required by law to provide a report for a period that ended before 1 July 2011, and the report has not been provided by that date, CSC must provide the report.

302. **Item 17 of Schedule 2** sets out reporting arrangements in relation to the Authority that are similar to those set out in relation to the MSB Board under item 16.

303. **Subitem 18(1) of Schedule 2** provides that if, immediately before 1 July 2011, a law required the Commissioner for Superannuation to provide a report related to the 1922 scheme or the PNG for a period ending after that date, CSC must provide the report for so much of the period occurring before 1 July 2011.

304. **Subitem 18(2) of Schedule 2** provides that if CSC is required to provide a report for part of a period under subitem 17(1), and is also required to provide a similar report for the remainder of the period, CSC may meet the requirements by providing a single report that covers the whole period.

305. **Subitem 18(3) of Schedule 2** provides that if, immediately before 1 July 2011, a law required the Commissioner for Superannuation to provide a report that is not covered by subitem 18(1) for a period ending after that date, the CEO of ComSuper must provide the report for so much of the period occurring before 1 July 2011.

306. **Subitem 17(4) of Schedule 2** provides that if the CEO of ComSuper is required to provide a report for a part of a period under subitem 18(3), and is also required to provide a similar report for the remainder of the period, the CEO of ComSuper may meet the requirements by providing a single report that covers the whole period.

307. **Subitem 18(5) of Schedule 2** provides that if the Commissioner for Superannuation was required by law to provide a report that relates to the 1922 scheme or the PNG for a period that ended before 1 July 2011, and the report has not been provided by that date, CSC must provide the report.

308. **Subitem 18(6) of Schedule 2** provides that if the Commissioner for Superannuation was required by law to provide a report that is not covered by subitem 18(5) for a period that ended before 1 July 2011, and the report has not been provided by that date, the CEO of ComSuper must provide the report.

309. **Subitem 18(7) of Schedule 2** enables the Minister to determine, in writing, that subitems 18(1), (2) and (5) apply as if references to CSC were references to the CEO of ComSuper.

310. **Subitem 18(8) of Schedule 2** enables the Minister to determine, in writing, that subitems 18(3), (4) and (6) apply as if references to the CEO of ComSuper were references to CSC.

311. **Subitem 18(9) of Schedule 2** clarifies that a determination under subitem 18(7) or (8) is not a legislative instrument for the purposes of the Legislative Instruments Act because it is administrative in character. It does not determine or alter the content of the law. This provision is included to assist readers and is merely declaratory.

Part 7—Miscellaneous

Item 19 – Capital Gains Tax roll-over

312. **Item 19 of Schedule 2** provides a capital gains tax (CGT) roll-over (i.e. effective deferral of any CGT liability) for the transfer of MSB Fund assets by CSC to the trustee of a pooled superannuation trust known as the ARIA Investments Trust. The roll-over applies automatically rather than by election.

313. The provision of CGT roll-over reflects the essentially involuntary nature of the transaction.

314. Item 19 modifies the application of the *Income Tax Assessment Act 1997* (ITAA 1997) without changing the text of that Act.

315. Section 18 of the MSB Act together with the MSB Trust Deed provide for the functions and powers of CSC in relation to the MSB and includes the power to operate a pooled superannuation trust for the purposes of managing the assets of the MSB Fund.

316. **Subitem 19(1) of Schedule 2** provides that the object of this item is that the CGT roll-over facilitates CSC operating a pooled superannuation trust, known as the ARIA Investments Trust, that is used for investing the assets of the MSB Fund.

317. **Subitem 19(2) of Schedule 2** provides that the roll-over applies if all of the following conditions are met.

- After 30 June 2011 and on or before 1 July 2012 (or a later date specified by the regulations), one or more CGT events happens because CSC ceases to hold CGT assets of the MSB Fund
- Because of the cessation, the identical assets start to be held by the trustee of the ARIA Investments Trust during the same period
- The cessation is part of a scheme under which CGT assets of the MSB Fund are replaced with units in the ARIA Investments Trust.

318. The bracketed words in paragraph 19(2)(b)(i) ensure that identical assets need not have been assets of the MSB Fund just before the CGT event. An example of where the bracketed words would be relevant is where the transferor entity owns units in a unit trust as investments and has them cancelled at its request followed by the issue of identical units to the transferee entity.

319. A statutory note at the end of subitem 19(2) explains that the transferee trustee may be CSC and refers to subsection 960-100(3) of the ITAA 1997.

Subsection 960-100(3) provides that a legal person can have a number of different capacities in which the person does things and that, in each of those capacities, the person is taken to be a different entity for the purposes of the ITAA 1997.

320. **Subitem 19(3) of Schedule 2** provides that the effect of the CGT roll-over is that the capital gain or capital loss that would otherwise be recognised when the transfer of assets by CSC as trustee of the MSB Fund occurs is disregarded. The effect of this provision is that the recognition of the accrued capital gain or capital loss is deferred until later disposal (or other CGT event) of the assets by the trustee of the ARIA Investments Trust.

321. **Subitem 19(4) of Schedule 2** provides that, for the transferee trustee, the first element (that is, the acquisition cost) of the CGT cost base of each of the identical assets the transferee trustee holds is the cost base of the corresponding asset for CSC as trustee of the MSB Fund at the time of the relevant CGT event. Cost base is relevant for calculating a capital gain.

322. **Subitem 19(5) of Schedule 2** provides that, for the transferee trustee, the first element (that is, acquisition cost) of the CGT reduced cost base of each of the identical assets the transferee trustee holds is the reduced cost base of the corresponding asset for CSC as trustee of the MSB Fund at the time of the relevant CGT event. Reduced cost base is relevant for calculating a CGT loss.

323. **Subitem 19(6) of Schedule 2** provides that, for the purposes of the ITAA 1997, a roll-over that is covered by item 19 is treated as a same-asset roll-over. The significance of this is that subsection 115-30(1), table item 1 of the ITAA 1997 ensures that, for the purpose of determining whether the transferee pooled superannuation trust has owned the CGT assets for at least 12 months to be eligible for the one-third CGT discount available to complying superannuation entities (including pooled superannuation trusts), the period the former MSB Board as trustee of the MSB Fund owned the assets counts towards the 12 months. Put more simply the CGT discount 12 months clock is not reset.

324. For other purposes, the transferee pooled superannuation trust is still treated as acquiring the assets on the date of transfer. This is consistent with the approach taken in other CGT roll-overs. For example, the transferee pooled superannuation trust is not eligible to claim CGT indexation to 30 September 1999 instead of the one-third CGT discount. This is because the transferee pooled superannuation trust did not acquire the assets at or before 11.45am, 21 September 1999.

325. **Subitem 19(7) of Schedule 2** provides that an expression used both in item 19 and in the ITAA 1997 has the same meaning as in that Act. Examples of these expressions are CGT event, CGT asset, pooled superannuation trust, and same-asset roll-over.

326. The amendments do not provide a roll-over for exchange of members' interests because it is already provided for in existing CGT provisions. Section 118-305 of the ITAA 1997 provides an exemption for certain capital gains or capital losses in relation to members' interests in a superannuation fund.

Item 20 – Retrospective amendments

327. **Item 20 of Schedule 2** allows provisions in instruments that amend a reference to the MSB Board, the Authority or the Commissioner for Superannuation in any other instrument to have effect from 1 July 2011, or a later date that is prior to the making of the instrument, if the amending instrument is made within 12 months from 1 July 2011. This item is intended to provide for the updating of provisions in instruments that refer to the abolished MSB Board, the Authority and the Commissioner for Superannuation. The retrospective application of instruments made in accordance with the authority included in this item will not disadvantage the rights of any person or impose any liabilities on any person. Rather it is intended to allow time for references in instruments to be updated.

Item 21 – Constitutional safety net in relation to acquisition of property

328. The purpose of **item 21 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.

329. **Subitem 21(1) of Schedule 2** provides for reasonable compensation to be paid to a person if the operation of the Schedule would result in an acquisition of property from a person otherwise than on just terms.

330. **Subitem 21(2) of Schedule 2** 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 subitem 21(1).

Item 22 – Saving existing delegations

331. **Item 22 of Schedule 2** is intended to ensure that the changes to governance arrangements for Commonwealth superannuation from 1 July 2011 do not affect the operation of existing delegations in relation to the civilian and military superannuation schemes. It also provides for the delegations to continue as if they reflect the governance arrangements that apply from that date. This means, for example, that delegations to the Commissioner for Superannuation are treated as if they are delegations to the new position of CEO of ComSuper.

332. **Subitem 22(1) of Schedule 2** continues in force delegations made by ARIA, the Authority, the MSB Board and the Commissioner for Superannuation under superannuation law that applies immediately before 1 July 2011. It also preserves sub-delegations in relation to superannuation law. This includes sub-delegations to, and by, the Commissioner for Superannuation and staff assisting the Commissioner.

333. **Subitem 22(2) of Schedule 2** makes it clear that subitem 22(1) does not apply to delegations made by the Minister or under a governing deed.

334. **Subitem 22(3) of Schedule 2** continues in force delegations made by the Minister under section 51 of the MSB Act that apply immediately before 1 July 2011. These delegations are to the MSB Board, the Commissioner for Superannuation, staff assisting the Commissioner, APS employees in the Department and officers of the Defence Force.

335. **Subitem 22(4) of Schedule 2** continues in force delegations made by the Minister under section 165 of the 1976 Act, section 47 of the 1990 Act, and section 33 of the 2005 Act that apply immediately before 1 July 2011.

336. **Subitem 22(5) of Schedule 2** continues in force delegations made under the MSB Trust Deed, the PSS Trust Deed, and the PSSAP Trust Deed.

Item 23 – Saving of existing declarations

Item 23 of Schedule 2 provides for the saving of declarations made under subsection 13(1) of the 2005 Act before commencement. The declarations will continue in force as if they were a declaration made under the new subparagraph 13(1)(a)(ii) of the 2005 Act, as inserted by item 229 of Schedule 1.

Item 23 – Transfer of records

337. **Subitems 24(1) and (2) of Schedule 2** provide that the records and documents in the custody of the Commissioner for Superannuation prior to 1 July 2011 are to be transferred to the custody of the CEO of ComSuper on or after that date. This item is intended to ensure that the CEO of ComSuper has the records and documents necessary for the CEO of ComSuper to perform their functions in relation to ComSuper.

Item 25 – Authenticity of certificates

338. **Item 25 of Schedule 2** provides for a document that appears to be made or issued under Schedule 2 to be taken to be such a certificate and to have been properly given, unless the contrary is established.

Item 26 – Special Accounts

339. **Subitem 26(1) of Schedule 2** provides for the balance in the ARIA Special Account immediately before commencement to be paid to CSC and for the CRF to be appropriated accordingly. ARIA is a prescribed agency for the purposes of the FMA Act, however CSC will be subject to the *Commonwealth Authorities and Companies Act 1997*. Therefore it is necessary to transfer any balance in the Special Account on commencement to CSC.

340. **Subitems 26(2) and (3) of Schedule 2** will transfer the balance in the Commonwealth Superannuation Administration Special Account, immediately before commencement, in two ways: the majority to a new ComSuper Special Account being established in the ComSuper Bill; and the remaining amount, which relates to the MSB Board, will be paid to CSC, and for the CRF to be appropriated accordingly for this latter amount. The Commonwealth Superannuation Administration Special Account currently holds monies both in respect of ComSuper and the MSB Board.

Item 27 – Validation of audit fees paid

341. **Item 27 of Schedule 2** validates the previous payment of audit fees to the Auditor-General in relation to the audit of Australian Government superannuation fund financial statements. This aims to address an anomaly in the AG Act, resulting from the repeal of the *Audit Act 1901*, whereby even though the Auditor-General was still required to audit the financial statements of the Australian Government superannuation funds, there was no express provision included in the AG Act enabling the Auditor-General to charge fees for the audits undertaken. This is because the unique nature of the funds means they do not satisfy the requirements in section 12 and section 13 of the AG Act.

342. Item 5 of Schedule 1 addresses the issue from 1 July 2011.

Item 28 – Regulations

343. **Item 28 of Schedule 2** allows the Governor-General to make regulations for the purposes of this Schedule where required, permitted, necessary or convenient to be prescribed for carrying out or giving effect to this Schedule. In particular, the purpose of this item is to allow regulations to deal with matters of a transitional nature resulting from the effects of this Bill.