



Western Australia

## **State Superannuation Act 2000**

Compare between:

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Western Australia

## **State Superannuation Act 2000**

**An Act to provide superannuation schemes for persons working for —**

- **the Crown;**
- **the Government of Western Australia;**
- **Ministers of the Crown; or**
- **certain authorities, bodies and persons,**

**and certain other persons, to repeal the *Government Employees Superannuation Act 1987* and the *Superannuation and Family Benefits Act 1938*, and for related purposes.**

## **Part 1 — Preliminary**

**1. Short title**

This Act may be cited as the *State Superannuation Act 2000*<sup>1</sup>.

**2. Commencement**

This Act comes into operation on a day fixed by proclamation<sup>1</sup>.

**3. Interpretation**

(1) In this Act —

“**actuary**” means a fellow or accredited member of the Institute of Actuaries of Australia, or any other person with actuarial knowledge and experience who is approved by the Minister;

“**benefit**” means a benefit paid or payable under a scheme, whether paid or payable as a lump sum, pension, allowance or annuity or in any other form;

“**Board**” means the Government Employees Superannuation Board under section 5;

“**Employer**” means —

- (a) the Crown;
- (b) the Government of Western Australia;
- (c) a Minister of the Crown; or
- (d) an authority, body or person prescribed for the purposes of this definition;

“**Fund**” means the Government Employees Superannuation Fund under section 14;

“**GES Act**” means the *Government Employees Superannuation Act 1987* as in force immediately before this Act came into operation;

“**Member**” means a member of a scheme;

“**S&FB Act**” means the *Superannuation and Family Benefits Act 1938* as in force immediately before this Act came into operation;

“**scheme**”, except in section 30, means a superannuation scheme established or continued under this Act;

“**subsidiary**” means a body determined under subsection (3) to be a subsidiary of the Board;

“**Treasurer’s guidelines**” means guidelines issued by the Treasurer under section 33(2).

- (2) For the purposes of this Act, a person who —
- (a) holds an office or position established or continued under a written law; or
  - (b) is appointed to an office or position by the Governor, a Minister, an Employer or a person who works for an Employer,

is taken to work for an Employer.

- (3) Part 1.2 Division 6 of the *Corporations Act 2001* of the Commonwealth applies for the purpose of determining whether a body is a subsidiary of the Board.

*[Section 3 amended by No. 18 of 2006 s. 6.]*

#### 4. **Act binds the Crown**

This Act binds the Crown.

## **Part 2 — Government Employees Superannuation Board**

### **5. Government Employees Superannuation Board**

- (1) There is a board called the Government Employees Superannuation Board.
- (2) The Board is —
  - (a) a body corporate with perpetual succession; and
  - (b) a Crown agency.
- (3) The Board is a continuation of, and the same legal entity as, the Government Employees Superannuation Board established under the GES Act.
- (4) Proceedings may be taken by or against the Board in its corporate name.

### **6. Functions of the Board**

- (1) The functions of the Board are to —
    - (a) administer this Act; and
    - (b) manage the Fund; and
    - (c) administer the schemes; and
    - (d) provide information, advice and assistance to the Minister and the Treasurer on matters relating to superannuation; and
    - (e) provide, or facilitate the provision of, products and services to —
      - (i) members of superannuation schemes administered by the Board under this Act or any other written law; and
      - (ii) Employers;
- and

- (f) perform any other functions conferred under any other written law.
- (2) In carrying out its functions the Board is to, as far as practicable —
  - (a) act in the best interests of Members;
  - (b) ensure that Members and Employers are fully informed of their rights and obligations under the Act; and
  - (c) ensure equity —
    - (i) between the Members of each scheme; and
    - (ii) between the Members of a scheme and the Members of each other scheme.
- (3) In carrying out its functions the Board may use and operate under one or more prescribed trading names.

*[Section 6 amended by No. 18 of 2006 s. 7.]*

#### **7. Powers of the Board**

- (1) The Board has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.
- (2) Without limiting subsection (1), the Board may —
  - (a) acquire, hold, deal with and dispose of property of any sort; and
  - (b) enter into a contract or arrangement with any person under which that person is to —
    - (i) provide professional, technical or other assistance to the Board; or
    - (ii) do for the Board anything that the Board could do,and pay out of the Fund fees charged by the person in accordance with the contract or arrangement; and

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- (c) enter into a contract or arrangement with any person under which the Board is to provide products and services to that person and charge fees for providing those products and services; and
  - (ca) subject to section 7A, form or acquire a subsidiary for the purpose of performing the function referred to in section 6(1)(e); and
  - (d) promote and market the Board, its activities, products and services; and
  - (e) conduct research; and
  - (f) produce and publish information; and
  - (g) do anything else that a body corporate may do.
- (3) Without limiting subsection (1) if the Board has power to do something, it may do that thing on its own or in conjunction with any person.

*[Section 7 amended by No. 18 of 2006 s. 8.]*

**7A. Formation or acquisition of subsidiary**

- (1) The Board must obtain the approval of the Minister before it forms or acquires a subsidiary.
- (2) The Minister must not give approval under subsection (1) except with the Treasurer's concurrence.
- (3) When seeking approval under subsection (1) the Board must give to the Minister a copy of the subsidiary's constitution or proposed constitution, as the case requires.

*[Section 7A inserted by No. 18 of 2006 s. 9.]*

**7B. Control of subsidiary**

- (1) In this section —  
“**Corporations Act**” means the *Corporations Act 2001* of the Commonwealth.



- (2) The Board must ensure that the constitution of every subsidiary of the Board that under a written law or the Corporations Act is required to have a constitution —
  - (a) contains provisions to the effect of those required by Schedule 3; and
  - (b) is consistent with this Act; and
  - (c) is not amended in a way that makes it inconsistent with this Act.
- (3) A director or a member of the staff of the Board may with the approval of the Board become a director of a company that is or is to be a subsidiary of the Board.
- (4) The provisions of this Act prevail to the extent of any inconsistency with the constitution of any subsidiary of the Board.
- (5) Neither —
  - (a) subsection (2); nor
  - (b) provisions referred to in subsection (2)(a) included in the constitution of a subsidiary,make the Board or the Minister a director of a subsidiary for the purposes of the Corporations Act.
- (6) Subsections (2) to (5) and Schedule 3 are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the Corporations legislation as defined in section 9 of the Corporations Act.

*[Section 7B inserted by No. 18 of 2006 s. 9.]*

## **8. Composition of the Board**

- (1) The Board comprises 7 directors of whom —
  - (a) one is to be appointed by the Governor as chairman on the nomination of the Minister;

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- (b) 3 are to be appointed by the Governor as Employer directors; and
- (c) 3 are to be elected in accordance with the regulations as Member directors.

(2) Schedule 1 has effect.

**9. Protection from liability**

- (1) Subject to the *Statutory Corporations (Liability of Directors) Act 1996*, an action does not lie against a person, other than the Board, for anything done by the person in good faith in the performance, or purported performance, of a function under this Act.
- (2) The protection given by this section applies even if the person would have been capable of doing the act if this Act had not been enacted.
- (3) Subsection (1) does not relieve the Board or the Crown of any liability that they might have for anything done by a person against whom that subsection provides that an action does not lie.
- (4) In an action against the Crown or the Board for loss or damage suffered by a person as a result of the making of an investment by the Board, it is a defence for the defendant to prove that the investment was made in accordance with the investment strategy formulated under section 19(1).

**10. Meetings, procedures and common seal**

- (1) Schedule 2 has effect.
- (2) The common seal of the Board is to be —
  - (a) in a form determined by the Board;
  - (b) kept in safe custody as the Board directs; and
  - (c) used only as authorised by the Board.

**11. Staff**

- (1) Public service officers may be appointed or employed under the *Public Sector Management Act 1994* to enable the Board to perform its functions.
- (2) The Board may appoint or employ other persons on terms and conditions determined by the Board.

**12. Delegation**

- (1) Subject to section 23 the Board may, in writing, delegate the performance of any of its functions, except this power of delegation, to —
  - (a) any person; or
  - (b) a committee appointed under clause 8 of Schedule 2.
- (2) A function performed by a delegate is taken to have been performed by the Board.
- (3) A person purporting to act under this section as a delegate is taken to have acted in accordance with the terms of the delegation unless the contrary is shown.

**13. Review of Board decisions**

- (1) A person aggrieved by a decision of the Board may apply to the Board to have the decision reviewed and the Board is to review the decision.
- (2) A person cannot apply to the Board under subsection (1) more than once in relation to the same decision.
- (3) A person aggrieved by a decision of the Board on a review under subsection (1) may —
  - (a) if the decision relates to a superannuation scheme continued by section 29(c) or (d), apply to the State Administrative Tribunal for a review of the decision; or

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- (b) in any case, refer the matter for independent review by a prescribed person or body.
- (4) A referral under subsection (3)(b) is to be made and dealt with in accordance with the regulations.
- (5) The decision on review is to be given effect according to its tenor.

*[Section 13 amended by No. 55 of 2004 s. 1104.]*

### **Part 3 — Government Employees Superannuation Fund**

**14. The Fund**

- (1) There is a fund called the Government Employees Superannuation Fund.
- (2) The Fund is a continuation of, and the same fund as, the Government Employees Superannuation Fund established by section 9 of the GES Act.

**15. Contents of the Fund**

- (1) The Board is to credit to the Fund —
  - (a) contributions made under this Act;
  - (b) amounts transferred to the Fund from other superannuation funds;
  - (c) earnings derived from the investment of the Fund;
  - (d) money borrowed by the Board; and
  - (e) other amounts lawfully received by the Board or credited to the Fund.
- (2) The Board is to charge to the Fund —
  - (a) benefits paid under the schemes; and
  - (b) costs incurred by the Board in carrying out its functions; and
  - (ba) expenditure relating to the establishment of a subsidiary under section 7(2)(ca); and
  - (c) other amounts lawfully paid by the Board or charged to the Fund.

*[Section 15 amended by No. 18 of 2006 s. 10.]*

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**16. Accounting records**

- (1) The Board is to keep the accounting and other records that the Board considers appropriate in order to perform its functions.
- (2) The Board may keep its records in or on any medium, or combination of mediums, capable of recording information and may vary the manner or form in which they are kept.

**17. Actuarial investigation**

- (1) The Board is to cause an actuary to carry out an investigation of the state and sufficiency of the Fund at least once every 3 years and at any other times the Treasurer directs.
- (2) The actuary is to report the results of the investigation to the Board within 12 months of the date as at which the investigation is carried out or within any longer period the Treasurer approves.
- (3) The Board and actuary must ensure that the actuarial investigation and report are carried out in accordance with the Treasurer's guidelines.

**18. Power to invest**

- (1) The Board may invest the assets of the Fund in any form of investment that is, or is of a kind that is, approved by the Treasurer.
- (2) The Board may only enter into an investment in accordance with the Treasurer's guidelines.
- (3) The Board may —
  - (a) deal with its investments; and
  - (b) deal with or exercise, or choose not to exercise, any rights or obligations that are attendant on ownership of an investment,as it considers appropriate.

**19. Investment strategy**

- (1) The Board is to formulate and give effect to a broad investment strategy for the investment of the Fund.
- (2) In formulating its investment strategy and in making investment decisions the Board is to endeavour to optimize returns having regard to all of the circumstances of the Fund including —
  - (a) the need to exercise care and prudence to maintain the integrity of the Fund;
  - (b) the —
    - (i) nature of;
    - (ii) potential for capital appreciation and income return from;
    - (iii) costs associated with making; and
    - (iv) risks associated with,different investments and different kinds of investments;
  - (c) the desirability of diversifying its investments;
  - (d) the liquidity of the Fund;
  - (e) its expected cash flow requirements; and
  - (f) the level of existing and prospective liabilities.
- (3) The Board is to review —
  - (a) its broad investment strategy; and
  - (b) the management and performance of its investments,from time to time in accordance with the Treasurer's guidelines.

**20. Limitation on in-house assets**

- (1) The Board may only invest in debt paper or securities of an Employer if doing so will not result in a breach of subsection (3).
- (2) If at any time it appears to the Board that subsection (3) is being breached, the Board must remedy the breach.

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- (3) This subsection is breached if the cost of the Board's investments in debt paper or securities of an Employer (other than debt paper of the Western Australian Treasury Corporation) exceeds the prescribed percentage of the cost of all of the Board's investments.

**21. Loans to Members prohibited**

The Board must not use the assets of the Fund to make a loan or give financial assistance to a Member.

**22. Earnings derived from investment**

The Board is to allocate earnings derived from the investment of the Fund between the schemes in accordance with the Treasurer's guidelines and otherwise as it considers appropriate.

**23. Investment manager**

- (1) The Board may appoint —
- (a) an employee of the Board; or
  - (b) a person approved by the Treasurer,
- as an investment manager on terms determined by the Board.
- (2) Subject to the Treasurer's guidelines the Board may delegate to an investment manager all or any of its functions under section 18 with respect to all or part of the Fund.
- (3) A person is not appointed as an investment manager within the meaning of this section unless the person is appointed for the purpose of enabling the Board to delegate a function to that person under subsection (2).

**24. Borrowing**

- (1) The Board cannot borrow money unless —
- (a) the borrowing is —



- (i) for the purpose of overcoming a cash flow problem in the payment of benefits; or
    - (ii) for a purpose approved by the Treasurer;
  - (b) the terms of the borrowing have been approved by the Treasurer; and
  - (c) the borrowing complies with the Treasurer's guidelines.
- (2) When borrowing money the Board may give any security it considers appropriate.
- (3) In this section —  
**“borrow money”** means borrow or raise money, obtain credit or arrange for other financial accommodation, and includes to re-borrow or obtain advances.

**25. Interest accrues on money owing to Fund**

- (1) If money is owing to the Fund interest accrues on it at a rate, in the manner and for the period, determined by the Board.
- (2) Interest accruing under subsection (1) may be recovered by the Board in the same way as other money owing to the Fund.

**26. Recovery of money owing to Fund**

- (1) The Board may recover any money owing to the Fund —
  - (a) as a debt in a court of competent jurisdiction;
  - (b) by deducting the amount owing from any amount that is, or becomes, payable from the Fund to the debtor;
  - (c) if the money is owed by an Employer, by entering into an arrangement for the satisfaction of the debt in such manner as the Board considers appropriate; or
  - (d) if the money is owed by a Member, by deduction of the amount owing from the Member's pay under subsection (2).

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- (2) If a Member owes money to the Fund the Board may direct the Employer of the Member to —
- (a) deduct the amount owing from the Member's pay in the instalments and at the times set out in the direction; and
  - (b) pay the amount deducted to the Fund,
- and the Employer must comply with the direction.

**27. *Unclaimed Money Act 1990* does not apply to unclaimed benefits**

The *Unclaimed Money Act 1990* does not apply in relation to unclaimed benefits in the Fund.

## Part 4 — Superannuation schemes

### 28. Superannuation schemes

- (1) The Governor may, by regulations under section 38, establish superannuation schemes for persons who are working, or have worked, for Employers.
- (2) A scheme, other than a scheme continued by section 29(b), (c) or (d), may provide for the spouses or former spouses of —
  - (a) persons who are working, or have worked, for Employers; or
  - (b) persons who are, or will become, entitled to benefits under the *Parliamentary Superannuation Act 1970*,

to participate in the scheme.

- (3) In subsection (2) —

“**benefits**” has the meaning given to that term in section 28(1) of the *Parliamentary Superannuation Act 1970*;

“**spouse**”, in relation to a person, includes a de facto partner of that person.

*[Section 28 amended by No. 3 of 2002 s. 102; No. 18 of 2006 s. 11.]*

### 29. Continuation of superannuation schemes

On the day on which this Act comes into operation the following superannuation schemes become superannuation schemes under this Act —

- (a) the superannuation scheme that was provided for in Part VIIA of the GES Act immediately before its repeal by section 39 (referred to in that Act as the 1993 scheme);
- (b) the superannuation scheme that was provided for in Parts IV, V, VI and VII of the GES Act immediately

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before its repeal by section 39 (referred to in that Act as the 1987 scheme);

- (c) the superannuation scheme that was provided for in Parts IV, V and VB of the S&FB Act immediately before its repeal by section 39; and
- (d) the superannuation scheme that was provided for in Parts VA and VB of the S&FB Act immediately before its repeal by section 39.

**30. Other public sector superannuation schemes**

- (1) An Employer may establish a superannuation scheme or fund for the benefit of persons who work for the Employer, if and only if the Minister and the Treasurer have approved the establishment of that scheme or fund.
- (2) An Employer may make superannuation contributions for persons who work for the Employer to a superannuation fund or scheme other than —
  - (a) a scheme under this Act;
  - (b) a superannuation scheme or fund established in accordance with subsection (1); or
  - (c) a superannuation scheme or fund established before 28 December 1989,if and only if the Minister and the Treasurer have approved the making of those contributions.
- (3) An approval given by the Minister and the Treasurer under this section must be in writing and may relate to —
  - (a) a particular Employer or class of Employers;
  - (b) a particular person who works for an Employer, or class of such persons; or
  - (c) a particular scheme or fund or class of schemes or funds.
- (4) This section applies despite any other written law.

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**Part 5 — Government guarantees and appropriation of the Consolidated FundAccount**

*[Heading amended by No. 77 of 2006 s. 4.]*

**31. Guarantee of benefits and Board's obligations**

- (1) The Crown —
  - (a) guarantees payment of every benefit payable under a scheme; and
  - (b) may guarantee the performance by the Board of any of its obligations under this Act on terms determined by the Treasurer.
- (2) The payment of money under a guarantee under subsection (1) is to be charged to the Consolidated FundAccount, and the Consolidated FundAccount is appropriated accordingly.
- (3) Any amount received or recovered in respect of any payment made under a guarantee is to be credited to the Consolidated FundAccount.

*[Section 31 amended by No. 77 of 2006 s. 4.]*

**32. Appropriation to meet contribution and funding obligations**

The Consolidated FundAccount is appropriated to the extent necessary to meet the payment of contributions and other amounts required by regulations under this Act to be paid by the Crown to the Fund on or after the commencement of this Act.

*[Section 32 amended by No. 77 of 2006 s. 4.]*

## **Part 6 — Miscellaneous**

### **33. Treasurer's approvals and guidelines**

- (1) An approval given by the Treasurer —
  - (a) must be in writing;
  - (b) may be given when and how the Treasurer determines; and
  - (c) may be given in relation to a particular matter or matters of a particular kind.
  
- (2) The Treasurer may issue written guidelines to be followed by the Board in relation to —
  - (a) the information, advice and assistance to be provided by the Board under section 6(1)(d); and
  - (b) the provision by the Board of, or the facilitation by the Board of the provision of, products and services under section 6(1)(e); and
  - (c) the carrying out of actuarial investigations under section 17; and
  - (d) the making of investments under section 18; and
  - (e) the submission of matters to the Treasurer for approval under sections 18, 23, 24 and 38(5); and
  - (f) the review by the Board of its investment strategy and the management and performance of its investments under section 19(3); and
  - (g) the allocation of investment earnings under section 22; and
  - (h) the appointment of investment managers under section 23(1); and
  - (i) the delegation of functions to investment managers under section 23(2); and
  - (j) borrowing under section 24.

- (3) Guidelines issued under subsection (2) are not subsidiary legislation for the purposes of the *Interpretation Act 1984*.
- (4) If there is any inconsistency between guidelines issued under subsection (2) and a direction given under section 35, the guidelines prevail.

*[Section 33 amended by No. 18 of 2006 s. 12.]*

**33A. Duty to observe policy instruments**

The Board is to perform its functions in accordance with its strategic development plan and its statement of corporate intent as existing from time to time.

*[Section 33A inserted by No. 28 of 2006 s. 434.]*

**33B. Strategic development plan and statement of corporate intent**

- (1) The Board must, at the prescribed times, prepare and submit to the Minister —
  - (a) a strategic development plan for the Board; and
  - (b) a statement of corporate intent for the Board.
- (2) The regulations may make provision for the following —
  - (a) the manner and form in which the Board is to prepare, submit, revise or modify a strategic development plan or statement of corporate intent;
  - (b) the period a strategic development plan or statement of corporate intent is to cover;
  - (c) the matters to be set out in a strategic development plan or statement of corporate intent;
  - (d) the functions of the Board, the Minister and the Treasurer in relation to the development, approval or modification of a strategic development plan or statement of corporate intent;

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- (e) the operation of a strategic development plan or statement of corporate intent.
- (3) If a regulation referred to in subsection (2) enables the Minister to give directions to the Board, the Minister must cause a copy of a direction given under the regulation to be laid before each House of Parliament or be dealt with in accordance with section 33C —
  - (a) within 14 days after the direction is given; or
  - (b) if the direction is the subject of a notice under section 17 of the *Statutory Corporations (Liability of Directors) Act 1996*, within 14 days after it is confirmed under that section.
- (4) Regulations referred to in subsection (2) are not to be made except with the Treasurer's concurrence.

*[Section 33B inserted by No. 28 of 2006 s. 434.]*

**33C. Laying directions about strategic development plan or statement of corporate intent before Parliament**

- (1) If —
  - (a) a House of Parliament is not sitting at the commencement of the applicable period referred to in section 33B(3) in respect of a direction; and
  - (b) the Minister is of the opinion that that House will not sit during that period,

the Minister is to transmit a copy of the direction to the Clerk of that House.

- (2) A copy of a direction transmitted to the Clerk of a House is to be taken to have been laid before that House.
- (3) The laying of a copy of a direction that is regarded as having occurred under subsection (2) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.



- (4) The text of a direction referred to in section 33B(3) is to be included in the annual report submitted by the accountable authority of the Board under ~~section 66~~Part 5 of the *Financial Administration and Audit Management Act 1985* 2006.

*[Section 33C inserted by No. 28 of 2006 s. 434434; amended by No. 77 of 2006 s. 17.]*

**34. Directions to Employers as to practice and procedure**

- (1) The Board or the Minister may give written directions to Employers about the practices and procedures to be observed by Employers for the efficient operation of this Act and may amend those directions.
- (2) An Employer must comply with directions given under subsection (1).
- (3) The Board may recover from an Employer any costs or expenses incurred by the Board as a result of the Employer's failure to comply with a direction given under subsection (1).
- (4) Directions given under subsection (1) may —
- (a) apply at all times, at a particular time, or for a particular period;
  - (b) apply to all Employers, to a particular Employer, or to Employers in a particular class;
  - (c) direct something to be done in a particular manner;
  - (d) require something to be approved by, or done to the satisfaction of, a particular person or body, or a member of a class of persons or bodies; or
  - (e) confer a discretion on a person or body, or a class of persons or bodies.

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**35. Minister may give directions to the Board**

- (1) Subject to the *Statutory Corporations (Liability of Directors) Act 1996* the Minister may give written directions to the Board with respect to its functions and powers, either generally or with respect to a particular matter.
- (2) The Board is to give effect to directions given by the Minister.
- (3) The text of any direction received by the Board is to be included in the annual report submitted by the accountable authority of the Board under ~~section 66~~[Part 5](#) of the *Financial Administration and Audit Management Act ~~1985-~~2006*.  
  
[\[Section 35 amended by No. 77 of 2006 s. 17.\]](#)

**36. Minister to have access to information**

- (1) For parliamentary purposes or for the proper conduct of the Minister's public business, the Minister is entitled —
  - (a) to have information in the possession, or under the control, of the Board or a subsidiary; and
  - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may, in writing, request the Board to —
  - (a) give the Minister information or access to information; and
  - (b) make its staff and facilities available to enable the Minister to access information,and the Board is to comply with that request.
- (3) This section does not entitle the Minister to information in the possession of the Board or a subsidiary in a form that —
  - (a) discloses confidential information about a beneficiary; or

- (b) might enable confidential information about a beneficiary to be ascertained,  
unless disclosure of the information is —
- (c) authorised by the beneficiary; or
- (d) authorised or required by a written law.
- (4) In this section —
- “beneficiary”** means —
- (a) a Member;
- (b) a former Member; or
- (c) any other person to whom —
- (i) a benefit has been or is being paid, or is or may become payable; or
- (ii) a product or service has been provided by the Board;
- “document”** includes any tape, disc or other device or medium on which data is recorded or stored mechanically, photographically, electronically or otherwise;
- “information”** means information specified, or of a description specified, by the Minister that relates to the functions or powers of the Board;
- “parliamentary purposes”** means the purpose of —
- (a) answering a question asked in a House of Parliament;  
or
- (b) complying with a written law, or an order or resolution of a House of Parliament, that requires information to be furnished to a House of Parliament.

*[Section 36 amended by No. 18 of 2006 s. 13.]*

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**37. Minister to consult with Treasurer**

The Minister is to consult with the Treasurer before performing a function under this Act if the performance of the function will or may affect the financial rights or obligations of the Crown under this Act and the value of that effect will or may exceed the prescribed amount.

**38. Regulations**

- (1) Subject to subsections (3) to (7), the Governor may make regulations prescribing all matters that are required or permitted by this Act or section 26 of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* to be prescribed, or are necessary or convenient to be prescribed, for giving effect to this Act.
- (2) Without limiting the generality of subsection (1) regulations may be made under subsection (1) in relation to —
  - (a) establishing schemes; and
  - (b) membership and Employer participation in the schemes; and
  - (c) contributions and transfers of money to the Fund and other funding of the Fund; and
  - (d) benefits and how they are paid or dealt with; and
  - (e) insurance to be provided through the schemes; and
  - (f) management of the Fund; and
  - (g) administration of the schemes; and
  - (h) accounts and records to be kept by the Board; and
  - (i) information and documents to be given to and by the Board; and
  - (j) provision by the Board of, or facilitation by the Board of the provision of, products and services; and
  - (k) appointment and election of directors; and

- (l) reviews, other than by the State Administrative Tribunal, of decisions of the Board.
- (3) Regulations cannot be made under subsection (1) if they reduce the amount of a benefit that —
  - (a) accrued or became payable before the regulations came into operation; or
  - (b) is, or may become, payable in relation to a period before the regulations came into operation.
- (4) Regulations cannot be made under subsection (1) in relation to the superannuation schemes continued by section 29(a), (b) or (c) unless —
  - (a) the Board has certified that it is satisfied that the proposed regulations will not affect contributions or benefits; or
  - (b) an actuary appointed by the Board has certified that the proposed regulations will not reduce, or have the same effect as reducing —
    - (i) in the case of a scheme continued by section 29(a) or (b), the multiplying factor for any relevant benefit; or
    - (ii) in the case of the scheme continued by section 29(c), the pension value factor for any Member of that scheme,  
to less than it was immediately before the commencement day; or
  - (c) any reduction of the kind referred to in paragraph (b) will apply only in respect of Members who have agreed with the Board that the reduction is to apply in the calculation of their benefit.
- (4a) Subsections (3) and (4) do not apply in respect of regulations that reduce or provide for the reduction of a Member's benefit if —

**s. 38**

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- (a) a superannuation agreement, flag lifting agreement or splitting order is in force in respect of the Member; and
  - (b) the reduction does not reduce the Member's benefit to less than the Member's entitlement under the agreement or order.
- (4b) In subsection (4a), “**flag lifting agreement**”, “**splitting order**” and “**superannuation agreement**” each have the meaning given to them in section 90MD of the *Family Law Act 1975* of the Commonwealth.
- (5) Regulations that —
  - (a) will or may affect the financial rights or obligations of the Crown under this Act and the value of that effect will or may exceed the prescribed amount; or
  - (b) relate to a matter referred to in subsection (2)(j),cannot be made under subsection (1) unless they have been approved by the Treasurer.
- (6) Regulations that prescribe an authority, body or person for the purposes of the definition of “Employer” may specify as the day on which they come into operation a day that is earlier than the day on which they are published in the *Gazette*.
- (7) Regulations of the kind referred to in subsection (6) cannot be made if they will or may affect a person, except the Crown or an Employer, by —
  - (a) prejudicing rights that existed before the regulation was published; or
  - (b) imposing liabilities in respect of anything that occurred before the regulation was published.
- (8) Regulations prescribing an amount for the purposes of section 37 or subsection (5)(a) may prescribe an amount or a method of determining an amount.
- (9) In subsection (4) and this subsection —

**“commencement day”** means the day on which this Act comes into operation;

**“multiplying factor”**, in relation to a relevant benefit, means the components of the benefit formula by which the Member’s salary is to be multiplied in order to calculate the benefit;

**“pension value factor”** means —

- (a) the number of units that a Member may, or may become entitled to, acquire per dollar of the Member’s salary; or
- (b) the amount of the pension that will or may become payable in respect of each unit held by a Member;

**“relevant benefit”** means a benefit, or part of a benefit, the amount of which was, immediately before the commencement day, calculated as a multiple of a Member’s salary.

*[Section 38 amended by No. 55 of 2004 s. 1105; No. 18 of 2006 s. 14.]*

**39. Repeals**

The *Government Employees Superannuation Act 1987*<sup>2</sup> and the *Superannuation and Family Benefits Act 1938*<sup>2</sup> are repealed.

**40. Inconsistent written laws**

The provisions of this Act and the regulations made or applying under it that deal with the payment of benefits under a scheme prevail over section 10 of the *Administration Act 1903* to the extent of any inconsistency.

*[Section 40 inserted by No. 18 of 2006 s. 15.]*

**Schedule 1 — Government Employees  
Superannuation Board**

[s. 8(2)]

**1. Chairman**

- (1) Before making a nomination under section 8(1)(a) the Minister is to consult with unions or associations of unions that appear to the Minister to be broadly representative of persons who work for Employers.
- (2) The Minister must not nominate as chairman a person who is an officer or employee of the Board.

**2. Deputy chairman**

- (1) The Governor may from time to time appoint a director, nominated by the Minister, to be deputy chairman.
- (2) The Minister must not nominate as deputy chairman a person who is an officer or employee of the Board.
- (3) In the absence of the chairman, the deputy chairman —
  - (a) is to act in the place of the chairman; and
  - (b) while so acting, has all the functions of, and is taken to be, the chairman.
- (4) No act or omission of a deputy chairman is to be questioned on the ground that the occasion for the acting had not arisen or had ceased.

**3. Election of member directors**

Elections for the purposes of section 8(1)(c) are to be held —

- (a) during the 6 months preceding the expiry of the term of office of the current directors elected under section 8(1)(c); or
- (b) in the case of an election to fill a casual vacancy, not later than 60 days after the vacancy occurs.



**4. Term of office**

- (1) The term for which a person is appointed to be the chairman or is appointed under section 8(1)(b) to be a director is to be fixed in the instrument of appointment and is not to be longer than 5 years.
- (2) The term for which a director is elected under section 8(1)(c) is 3 years.
- (3) A person's eligibility for appointment or election as a director is not affected by the person having been a director before.

**5. Directors are part-time**

All directors hold their offices on a part-time basis.

**6. Casual vacancies**

- (1) A casual vacancy in the office of a director occurs if the director —
  - (a) dies;
  - (b) resigns by notice to the Minister;
  - (c) is an insolvent under administration as defined in the *Corporations Act 2001* of the Commonwealth; or
  - (d) is removed from office by the Minister under subclause (2).
- (2) The Minister may remove a director from office if the Minister is satisfied that the director —
  - (a) has neglected his or her duty;
  - (b) has misbehaved;
  - (c) is incompetent;
  - (d) has contravened clause 10 or 11 of Schedule 2;
  - (e) is suffering from mental or physical incapacity impairing the performance of his or her functions under this Act;
  - (f) is absent from 4 consecutive meetings of the Board of which he or she has been given reasonable notice, unless he or she is absent on leave granted by the Board; or
  - (g) has been convicted of an offence involving dishonest conduct.

**cl. 7**

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- (3) If a casual vacancy occurs in the office of a director elected under section 8(1)(c), the Minister may appoint a Member to fill the vacancy until a new director is elected.
- (4) Before appointing a person under subclause (3) the Minister is to consult with unions or associations of unions that appear to the Minister to be broadly representative of persons who work for Employers.

*[Clause 6 amended by No. 10 of 2001 s. 220.]*

**7. Remuneration and allowances**

A director is entitled to the remuneration and allowances determined by the Minister on the recommendation of the Minister for Public Sector Management.

## **Schedule 2 — Meetings and procedures**

[s. 10(1)]

**1. Board to determine own procedure**

The Board may determine its own procedure for calling and conducting Board meetings except to the extent that it is prescribed under this Act.

**2. Quorum**

The quorum at a Board meeting is 5 directors.

**3. Presiding director**

A Board meeting is to be presided over by —

- (a) the chairman;
- (b) in the absence of the chairman, the deputy chairman (if one has been appointed); or
- (c) in the absence of the chairman and deputy chairman, a director chosen by the directors present at the meeting.

**4. Voting**

At a Board meeting —

- (a) each director has one vote;
- (b) the person presiding does not have a casting vote; and
- (c) a resolution is passed if 5 or more directors vote in favour of it.

**5. Minutes**

The Board is to cause accurate minutes to be kept and preserved of the proceedings at each Board meeting and of each resolution passed by the Board.

**cl. 6**

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**6. Resolution without meeting**

A written resolution signed by each director who would have been entitled to vote on the resolution at a meeting is as effectual as if it had been passed at a Board meeting.

**7. Telephone or video attendance at meetings**

A director may attend a Board meeting by telephone, audio-visual link-up or any other form of instantaneous communication if all directors attending the meeting are simultaneously in contact with each other.

**8. Committees**

- (1) The Board may appoint committees to assist it in the performance of its functions, and may discharge or alter any committee so appointed.
- (2) The Board may appoint a person to a committee whether or not the person is a director.
- (3) The Board may act on the advice of a committee.
- (4) Subject to any directions given by the Board, a committee may determine its own procedure.

**9. Material interest**

- (1) For the purposes of this Schedule a person has a material interest in a matter if the person —
  - (a) subject to subclauses (2) and (3) has a direct or indirect pecuniary interest in the matter;
  - (b) has given advice for remuneration in relation to the matter to the Board or to the former Superannuation Board constituted under the S&FB Act; or
  - (c) subject to subclauses (2) and (3) has a non-pecuniary interest in the matter.
- (2) An interest in a matter is not a material interest if it arises by reason only that the person is —
  - (a) a Member;
  - (b) a person who works for an Employer;

- (c) an Employer or a member of the board or other body responsible for the control or direction of an Employer;
  - (d) an employee of a union or association of unions; or
  - (e) a member of a corporation listed on a prescribed financial market (within the meaning given by section 9 of the *Corporations Act 2001* of the Commonwealth) in Australia, unless that interest is material in relation to that corporation.
- (3) The interest of a person in an existing or proposed contract of insurance is not a material interest if it arises by reason only that the contract insures, or is proposed to insure, the person against a liability incurred by the person in his or her capacity as a director or committee member.
- (4) Subclause (3) does not apply if the Board is the insurer.
- [Clause 9 amended by No. 21 of 2003 s. 34.]*

**10. Disclosure of interests**

- (1) A director or committee member who has a material interest in a matter involving the Board or the Fund must, as soon as possible after the relevant facts have come to the person's knowledge, disclose the nature of the interest at a meeting of the Board or committee.
- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.
- (3) A disclosure under subclause (1) by a person that he or she —
- (a) is a member or employee of a particular company or body;
  - (b) is a partner or employee of a particular person; or
  - (c) has some other specified interest relating to a particular company, body or person,
- is a sufficient disclosure of the person's interest in relation to any matter or thing involving that company, body or person which arises after the disclosure is made.
- (4) A contravention of this clause by a person does not invalidate a decision of the Board or committee.

**cl. 11**

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**11. Voting by interested persons**

- (1) A director or committee member who has a material interest in a matter being considered by the Board or committee —
  - (a) must not be present while the matter is being considered at a meeting of the Board or committee; and
  - (b) must not vote on the matter, whether at a meeting or otherwise.
- (2) If as a result of one or more directors being disqualified under subclause (1) the Board is unable to form a quorum in relation to a matter, the Minister may deal with the matter.

**12. Interested person may be permitted to vote**

- (1) Clause 11 does not apply if the Board has at any time passed a resolution that —
  - (a) specifies the director or committee member, the interest and the matter; and
  - (b) states that the directors voting for the resolution are satisfied that the interest should not disqualify the director or committee member from considering or voting on the matter.
- (2) A director who has a material interest in a matter —
  - (a) must not be present at a meeting of the Board while a proposed resolution under subclause (1) in relation to that matter is being considered; and
  - (b) must not vote, whether at a meeting or otherwise, on a proposed resolution under subclause (1) in relation to the matter, whether in relation to that or a different director.
- (3) The Minister may by notice to the Board declare that clause 11 does not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (4) The text of any declaration received by the Board is to be included in the annual report submitted by the accountable authority of the Board under ~~section 66~~ [Part 5](#) of the *Financial Administration and Audit Management Act* ~~1985~~ [2006](#).

[\[Clause 12 amended by No. 77 of 2006 s. 17.\]](#)

**Schedule 3 — Provisions to be included in constitution of subsidiary**

[s. 7B]

*[Heading inserted by No. 18 of 2006 s. 16.]*

**1. Definition**

In this Schedule —

“**prior approval**” means the prior written approval of the Minister given with the Treasurer’s concurrence.

*[Clause 1 inserted by No. 18 of 2006 s. 16.]*

**2. Disposal of shares**

- (1) The Board must not sell or otherwise dispose of shares in the subsidiary without prior approval.
- (2) The Minister is empowered to execute a transfer of any shares in the subsidiary held by the Board.

*[Clause 2 inserted by No. 18 of 2006 s. 16.]*

**3. Directors**

- (1) The directors of the subsidiary are to be appointed by the Board, but no such director may be appointed without prior approval.
- (2) All decisions relating to the operation of the subsidiary are to be made by or under the authority of the board of the subsidiary in accordance with the statement of corporate intent of the Board and the subsidiary.
- (3) The board of the subsidiary is accountable to the Minister in the manner set out in section 36 and in the constitution of the subsidiary.

*[Clause 3 inserted by No. 18 of 2006 s. 16.]*

**4. Further shares**

Shares in the subsidiary must not be issued or transferred without prior approval.

*[Clause 4 inserted by No. 18 of 2006 s. 16.]*



**5. Alteration of constitution**

The constitution of the subsidiary must not be modified or replaced without prior approval.

*[Clause 5 inserted by No. 18 of 2006 s. 16.]*

**6. Subsidiaries of subsidiary**

- (1) The subsidiary must not form or acquire any subsidiary without prior approval.
- (2) The subsidiary must ensure that the constitution of each of its subsidiaries at all times complies with this Act.
- (3) The subsidiary must, to the maximum extent practicable, ensure that each of its subsidiaries complies with its constitution and with the requirements of this Act.

*[Clause 6 inserted by No. 18 of 2006 s. 16.]*

## Notes

- <sup>1</sup> This reprint is a compilation as at 18 August 2006 of the *State Superannuation Act 2000* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>State Superannuation Act 2000</i>	42 of 2000	2 Nov 2000	17 Feb 2001 (see s. 2 and <i>Gazette</i> 16 Feb 2001 p. 903)
<i>Corporations (Consequential Amendments) Act 2001</i> s. 220	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Acts Amendment (Lesbian and Gay Law Reform) Act 2002</i> Pt. 19	3 of 2002	17 Apr 2002	21 Sep 2002 (see s. 2 and <i>Gazette</i> 20 Sep 2002 p. 4693)
<i>Corporations (Consequential Amendments) Act (No. 3) 2003</i> Pt. 15 <sup>3</sup>	21 of 2003	23 Apr 2003	11 Mar 2002 (see s. 2 and <i>Cwlth Gazette</i> 24 Oct 2001 No. GN42)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 120 <sup>4</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Superannuation Legislation Amendment and Validation Act 2006</i> Pt. 3 <sup>5</sup>	18 of 2006	31 May 2006	31 May 2006 (see s. 2)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 17 Div. 9	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<b>Reprint 1: The State Superannuation Act 2000 as at 18 Aug 2006</b> (includes amendments listed above)			
<a href="#"><i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4 and 17</a>	<a href="#">77 of 2006</a>	<a href="#">21 Dec 2006</a>	<a href="#">1 Feb 2007 (see s. 2 and <i>Gazette</i> 19 Jan 2007 p. 137)</a>

- <sup>2</sup> The *Superannuation and Family Benefits Act 1938* and the *Government Employees Superannuation Act 1987* were repealed by s. 39 of this Act. Certain

provisions of those Acts continue to apply to and in relation to certain schemes because of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 26.

<sup>3</sup> The *Corporations (Consequential Amendments) Act (No. 3) 2003* s. 2-4 read as follows:

“

**2. Commencement**

- (1) If this Act receives the Royal Assent before the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act comes into operation at the same time as that Schedule comes into operation.
- (2) If this Act receives the Royal Assent on or after the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act is deemed to have come into operation at the same time as that Schedule comes into operation.

**3. Interpretation**

In this Part —

“**Financial Services Reform Act**” means the *Financial Services Reform Act 2001* of the Commonwealth;

“**FSR commencement time**” means the time when Schedule 1 to the Financial Services Reform Act comes into operation;

“**statutory rule**” means a regulation, rule or by-law.

**4. Validation**

- (1) This section applies if this Act comes into operation under section 2(2).
- (2) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent that could have been done if this Act had received the Royal Assent before the FSR commencement time is taken to be as valid and lawful, and to always have been as valid and lawful, as it would have been if this Act had received the Royal Assent before the FSR commencement time.
- (3) Anything done or omitted to have been done by a person after the FSR commencement time and before this Act received the Royal Assent that would have been valid and lawful if the Financial Services Reform Act had not commenced, is taken to be valid and lawful.

- (4) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent —
- (a) that could only have been validly and lawfully done or omitted because this Act received the Royal Assent after the FSR commencement time; and
  - (b) that could not have been validly and lawfully done or omitted if this Act had received the Royal Assent before the FSR commencement time,

is taken not to be valid, and to never have been valid.

”.

<sup>4</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

<sup>5</sup> The *Superannuation Legislation Amendment and Validation Act 2006* s. 17 and 18 read as follows:

“

**17. Validation of certain payments**

- (1) In this section —

“**Superannuation Act**” means the *State Superannuation Act 2000*, the *Government Employees Superannuation Act 1987* or the *Superannuation and Family Benefits Act 1938*.

- (2) A payment or purported payment of a benefit under the *State Superannuation Act 2000*, the *Government Employees Superannuation Act 1987* or the *Superannuation and Family Benefits Act 1938* that was —

- (a) made before this section came into operation; and
- (b) invalid or ineffective because of the *Administration Act 1903* section 10,

is, and is to be taken always to have been, as valid and effective as it would have been if the *State Superannuation Act 2000* section 40, as inserted by section 15 of this Act, had been in operation in respect of each Superannuation Act at the time of the payment.

- (3) If —

- (a) a benefit under the *State Superannuation Act 2000*, the *Government Employees Superannuation Act 1987* or the

*Superannuation and Family Benefits Act 1938* was paid to an executor or administrator of the estate of a deceased person before this section came into operation; and

- (b) the executor or administrator paid, or purportedly paid, some or all of the benefit to another person before this section came into operation; and
- (c) the payment was invalid or ineffective because of the *Administration Act 1903* section 10,

the executor or administrator is, and is to be taken always to have been, as liable for the payment referred to in paragraph (b) as the executor or administrator would have been if the *State Superannuation Act 2000* section 40, as inserted by section 15 of this Act, had been in operation in respect of each Superannuation Act at the time of the payment referred to in paragraph (a).

**18. Validation of contributions made for visiting medical practitioners**

- (1) In this section —

“**Board**” means the Government Employees Superannuation Board referred to in the *State Superannuation Act 2000* section 5;

“**visiting medical practitioner**” means a medical practitioner engaged, other than as an employee, to provide services in a hospital.

- (2) This section applies in relation to superannuation contributions made, or purportedly made, under the *Government Employees Superannuation Act 1987* or the *State Superannuation Act 2000* in respect of a visiting medical practitioner between 1 July 1992 and 30 June 2001.
- (3) A thing done, or purportedly done, by the Board in consequence of a superannuation contribution having been made, or purportedly made, in respect of a visiting medical practitioner is, and is to be taken always to have been, as valid and effective as if the contribution had been made in respect of a person who was a member of the relevant scheme.

”.