

Western Australia

## **State Superannuation Act 2000**

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## State Superannuation Act 2000

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Western Australia

## **State Superannuation Act 2000**

**An Act to provide for —**

- **employer-funded superannuation for people working in the public sector; and**
  - **the continuation under this Act of certain superannuation schemes; and**
  - **the establishment of a superannuation fund to be regulated under Commonwealth legislation to replace certain other superannuation schemes,**
- and for related purposes.**

*[Long title amended by No. 25 of 2007 s. 4.]*

## 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;

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

**Corporations Act** means the *Corporations Act 2001* (Commonwealth);

**Employer** means —

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

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

**regulated superannuation fund** has the meaning given in the SIS Act section 19;

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993* (Commonwealth);

**transfer time** means the time fixed under section 56;

**West State scheme** means the superannuation scheme referred to in section 29(1)(a);

**working day** means a day other than a Saturday, Sunday or public holiday.

- (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) deleted]*

*[Section 3 amended by No. 18 of 2006 s. 6; No. 25 of 2007 s. 5 and 19(2).]*

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

This Act binds the Crown.

*[Part 2 has not come into operation<sup>6</sup>.]*

## **Part 3 — Schemes administered by the Board**

*[Heading inserted by No. 25 of 2007 s. 6(1).]*

### **Division 1 — Preliminary**

*[Heading inserted by No. 25 of 2007 s. 6(1).]*

#### **4E. Terms used in this Part and Schedules**

- (1) In this Part and the Schedules —

***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;

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

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

***scheme*** means a superannuation scheme continued by section 29 or established under this Part;

***subsidiary*** means a body determined under subsection (2) to be a subsidiary of the Board;

***Treasurer's guidelines*** means guidelines issued by the Treasurer under section 33(2).

- (2) The Corporations Act Part 1.2 Division 6 applies for the purpose of determining whether a body is a subsidiary of the Board.

*[Section 4E inserted by No. 25 of 2007 s. 6(1).]*

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

*[Heading amended by No. 25 of 2007 s. 6(2).]*

#### **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 Part; 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 Part 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; and
  - (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; No. 25 of 2007 s. 6(5) and 19(1).]*

**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
  - (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) deleted]*

- (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 Part; and
  - (c) is not amended in a way that makes it inconsistent with this Part.
- (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.

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- (4) The provisions of this Part 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; amended by No. 25 of 2007 s. 6(5) and 7.]*

**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; and
  - (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.

*[Section 8 amended by No. 25 of 2007 s. 19(1).]*

**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 Part.

- (2) The protection given by this section applies even if the person would have been capable of doing the act if this Part 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).

*[Section 9 amended by No. 25 of 2007 s. 6(5).]*

#### **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; and
  - (b) kept in safe custody as the Board directs; and
  - (c) used only as authorised by the Board.

*[Section 10 amended by No. 25 of 2007 s. 19(1).]*

#### **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(1)(c) or (d), apply to the State Administrative Tribunal for a review of the decision; or
  - (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; No. 25 of 2007 s. 8.]*

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

*[Heading amended by No. 25 of 2007 s. 6(2).]*

#### **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.
- (3) After the time fixed under section 75K the State Superannuation Fund consists of 2 sub-funds called —
  - (a) the Defined Benefit Fund; and
  - (b) the West State Fund.
- (4) If the West State scheme is discontinued, subsection (3) expires.

*[Section 14 amended by No. 25 of 2007 s. 68.]*

#### **15. Contents of the Fund**

- (1) The Board is to credit to the Fund —
  - (a) contributions made under this Part; and
  - (b) amounts transferred to the Fund from other superannuation funds; and
  - (c) earnings derived from the investment of the Fund; and
  - (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; No. 25 of 2007 s. 6(5) and 19(1).]*

**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; and
  - (b) the —
    - (i) nature of; and
    - (ii) potential for capital appreciation and income return from; and
    - (iii) costs associated with making; and
    - (iv) risks associated with,different investments and different kinds of investments; and
  - (c) the desirability of diversifying its investments; and
  - (d) the liquidity of the Fund; and
  - (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.

*[Section 19 amended by No. 25 of 2007 s. 19(1).]*

**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.
- (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;
  - and
  - (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.

*[Section 24 amended by No. 25 of 2007 s. 19(1).]*

**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; or
  - (b) by deducting the amount owing from any amount that is, or becomes, payable from the Fund to the debtor; or
  - (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).
- (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.

*[Section 26 amended by No. 25 of 2007 s. 19(2).]*

**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.

**Division 4 — Superannuation schemes**

*[Heading amended by No. 25 of 2007 s. 6(2).]*

**28. Superannuation schemes**

- (1) The Governor may, by regulations, establish superannuation schemes for persons who are working, or have worked, for Employers.



- (2) A scheme, other than a scheme continued by section 29(1)(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; No. 25 of 2007 s. 9.]*

## **29. Continuation of superannuation schemes**

- (1) On 17 February 2001 the following superannuation schemes become superannuation schemes under this Part —
- (a) the superannuation scheme that was provided for in the *Government Employees Superannuation Act 1987* Part VIIA 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 the *Government Employees Superannuation Act 1987* Parts IV, V, VI and VII immediately before its repeal by section 39 (referred to in that Act as the 1987 scheme);
  - (c) the superannuation scheme that was provided for in the *Superannuation and Family Benefits Act 1938* Parts IV, V and VB immediately before its repeal by section 39;
  - (d) the superannuation scheme that was provided for in the *Superannuation and Family Benefits Act 1938* Parts VA and VB immediately before its repeal by section 39.

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- (2) After the time fixed under section 75K —
- (a) the details of the West State scheme are to be set out in governing rules under section 75E; and
  - (b) the West State scheme may, if the governing rules permit, be discontinued in accordance with those rules.

*[Section 29 amended by No. 25 of 2007 s. 6(3), 10 and 69.]*

**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 Part;
  - (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.

*[Section 30 amended by No. 25 of 2007 s. 6(5).]*

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**Division 5 — Government guarantees and appropriation of the Consolidated Account**

*[Heading amended by No. 77 of 2006 s. 4; No. 25 of 2007 s. 6(2).]*

**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 Part on terms determined by the Treasurer.
- (2) The payment of money under a guarantee under subsection (1) is to be charged to the Consolidated Account, and the Consolidated Account 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 Account.

*[Section 31 amended by No. 77 of 2006 s. 4; No. 25 of 2007 s. 6(5).]*

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

The Consolidated Account 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 17 February 2001.

*[Section 32 amended by No. 77 of 2006 s. 4; No. 25 of 2007 s. 6(4).]*

**Division 6 — Miscellaneous**

*[Heading amended by No. 25 of 2007 s. 6(2).]*

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

- (1) An approval given by the Treasurer —
  - (a) must be in writing; and
  - (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; No. 25 of 2007 s. 19(1).]*

**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;
  - (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 78 —
- (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; amended by No. 25 of 2007 s. 11.]*

*[33C. Deleted by No. 25 of 2007 s. 12.]*

**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 Part 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; or
  - (b) apply to all Employers, to a particular Employer, or to Employers in a particular class; or
  - (c) direct something to be done in a particular manner; or

- (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.

*[Section 34 amended by No. 25 of 2007 s. 6(5) and 19(2).]*

**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) Section 77 applies to any direction given under this section.

*[Section 35 amended by No. 77 of 2006 s. 17; No. 25 of 2007 s. 13.]*

**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; or
  - (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; No. 25 of 2007 s. 19(2).]*



**37. Minister to consult with Treasurer**

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

*[Section 37 amended by No. 25 of 2007 s. 6(5).]*

**38. Regulations**

*[(1) deleted]*

- (2) Without limiting the generality of section 79 but subject to this section, regulations may be made under section 79 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 if they —

- (a) reduce the amount of a benefit that —
  - (i) accrued or became payable before the regulations came into operation; or
  - (ii) is, or may become, payable in relation to a period before the regulations came into operation;or
- (b) reduce, or have the same effect as reducing —
  - (i) in the case of the West State scheme or the scheme continued by section 29(1)(b), the multiplying factor for any relevant benefit; or
  - (ii) in the case of the scheme continued by section 29(1)(c), the pension value factor for any Member of that scheme,to less than it was immediately before 17 February 2001.
- (4) Subsection (3) does not apply if —
  - (a) the Treasurer has certified that the Treasurer is satisfied that the change to be made by the regulations is a change that, if each scheme affected by the regulations were a regulated superannuation fund, would be permitted under the SIS Act to be made to the governing rules of that fund; or
  - (b) the reduction would apply only in respect of Members who agree with the Board that the reduction is to apply in relation to them; or
  - (c) the regulations would reduce or provide for the reduction of a Member's benefit only if —
    - (i) a superannuation agreement, flag lifting agreement or splitting order is in force in respect of the Member; and
    - (ii) the reduction does not reduce the Member's benefit to less than the Member's entitlement under the agreement or order.

*[(4a)-(4b) deleted]*

- (5) Regulations that —
- (a) will or may affect the financial rights or obligations of the Crown under this Part to the extent that 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 unless they have been approved by the Treasurer.
- (6) Regulations may permit the Board to pay a pension or other benefit from the scheme continued by section 29(1)(c) for the purpose of —
- (a) giving effect to a payment split; or
  - (b) satisfying the requirements of the *Family Law (Superannuation) Regulations 2001* (Commonwealth) Division 2.2 in relation to an entitlement in respect of a superannuation interest in the scheme.

*[(7) deleted]*

- (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 (3) and this subsection —
- “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 17 February 2001, calculated as a multiple of a Member’s salary.

- (10) In this section each of the following terms has the meaning given in the *Family Law Act 1975* (Commonwealth) section 90MD —
- (a) *flag lifting agreement*;
  - (b) *payment split*;
  - (c) *splitting order*;
  - (d) *superannuation agreement*;
  - (e) *superannuation interest*.

*[Section 38 amended by No. 55 of 2004 s. 1105; No. 18 of 2006 s. 14; No. 25 of 2007 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 Part and the regulations referred to in section 38 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; amended by No. 25 of 2007 s. 15.]*

## **Part 4 — GESB Superannuation**

*[Heading inserted by No. 25 of 2007 s. 16.]*

### **Division 1 — Preliminary**

*[Heading inserted by No. 25 of 2007 s. 16.]*

#### **41. Purpose of this Part**

The purpose of this Part is to —

- (a) provide for the establishment of a regulated superannuation fund to replace the superannuation schemes established under Part 3; and
- (b) provide for the transfer of assets and liabilities of the State or the Board relating to those superannuation schemes to TrustCo, MutualCo or subsidiaries of either of them; and
- (c) enable and facilitate a convenient transition from those superannuation schemes to that fund.

*[Section 41 inserted by No. 25 of 2007 s. 16.]*

#### **42. Terms used in this Part**

- (1) In this Part —

***GESB Superannuation*** means the superannuation fund established in accordance with section 45;

***MutualCo*** means the company registered in accordance with section 43;

***special member*** means the person who is the member of MutualCo in the special class of membership referred to in section 43(3)(a);

***statutory fund*** has the meaning “Fund” is given in section 4E;

***statutory scheme*** means a superannuation scheme established by the *State Superannuation Regulations 2001* and in existence immediately before the transfer time, but does not include a superannuation scheme continued by section 29;

*TrustCo* means the company registered in accordance with section 44.

- (2) In this Part each of the following terms has the meaning given in the Corporations Act section 9 —
- (a) *director*;
  - (b) *registered office*;
  - (c) *special resolution*;
  - (d) *subsidiary*.

*[Section 42 inserted by No. 25 of 2007 s. 16.]*

**Division 2 — Formation of companies and superannuation fund**

*[Heading inserted by No. 25 of 2007 s. 16.]*

**43. Formation of MutualCo**

- (1) The Board is to take the necessary steps to form a company limited by guarantee and cause it to be registered under the Corporations Act.
- (2) The company is to be formed and registered with —
- (a) one member, being the Treasurer as the special member; and
  - (b) not less than 3 directors nominated by the Treasurer; and
  - (c) a constitution that has been approved by the Treasurer.
- (3) The Treasurer must not approve a constitution unless satisfied that it contains provisions to the effect that —
- (a) the company, when formed, will have a special class of membership of the company to which class only the person who is for the time being the Treasurer can belong; and
  - (b) if the special member resigns, the special class of membership referred to in paragraph (a) will terminate; and

- (c) while there is a special member, the special member will have a power to veto the exercise by the company or the directors of its or their power —
  - (i) to alter the constitution of the company; or
  - (ii) to appoint a person as a director of the company; or
  - (iii) to remove all of the directors of the company within any 12 month period; or
  - (iv) to form, acquire or dispose of a subsidiary after the transfer time; or
  - (v) as a holding company of TrustCo, to vote in favour of a resolution to alter the constitution of TrustCo; or
  - (vi) to raise capital or borrow money; or
  - (vii) to alter or terminate an agreement entered into in accordance with section 47(3); or
  - (viii) to appoint, under the trust deed for GESB Superannuation, a new trustee of that fund;and
- (d) every person who becomes a member of GESB Superannuation will be eligible to become a member of the company unless ineligible because of a provision of the kind described in subsection (6); and
- (e) the company must not dispose of any of its shares in TrustCo unless the disposal is approved by special resolution; and
- (f) a person is not eligible to be a director of the company unless the person meets criteria for fitness and propriety that are, in the Treasurer's opinion, no less stringent than the criteria set out in the prudential standards made for the purposes of the *Banking Act 1959* (Commonwealth) section 23(2)(b) for fitness and propriety of directors of authorised deposit taking institutions; and

- (g) the chairman of directors must be an independent director; and
  - (h) more than half of the directors of the company must be independent directors.
- (4) In subsection (3)(g) and (h) —
- independent director*** means a director who is not —
- (a) an employee of the company or any subsidiary of the company; or
  - (b) a director of the Board; or
  - (c) a director of a subsidiary of the company; or
  - (d) an employee as defined in the *Public Sector Management Act 1994* section 3(1).
- (5) A constitution does not fail to satisfy the requirements of subsection (3)(a) only because it allows for a person who was the Treasurer to remain as the special member until the person who succeeded him or her as Treasurer becomes the special member.
- (6) The constitution of the company may provide that the eligibility for company membership of a person who becomes a member of GESB Superannuation, other than a person who becomes a member by operation of this Part, will or may be subject to —
- (a) the person having been a member of GESB Superannuation for a minimum period; or
  - (b) the value of the person's entitlements under GESB Superannuation being not less than a minimum amount,
- being a period or amount set out in the constitution or to be determined by the directors of the company in accordance with the constitution.

*[Section 43 inserted by No. 25 of 2007 s. 16.]*



**44. Formation of TrustCo**

- (1) The Board and MutualCo are to take the necessary steps to form a subsidiary of MutualCo that is a proprietary company limited by shares and cause it to be registered under the Corporations Act.
- (2) The company is to be formed and registered with —
  - (a) MutualCo as the only shareholder; and
  - (b) not less than 3 directors nominated by the Treasurer; and
  - (c) a constitution that has been approved by the Treasurer.
- (3) The Treasurer must not approve a constitution unless satisfied that it contains provisions to the effect that —
  - (a) after the transfer time, the membership of the board of the company will satisfy the equal representation requirements set out in the SIS Act Part 9; and
  - (b) more than half of the directors of the company must be independent directors.
- (4) In subsection (3)(b) —

***independent director*** means a director who is not —

  - (a) a director or employee of MutualCo; or
  - (b) an employee of TrustCo; or
  - (c) a director or employee of any subsidiary of MutualCo other than TrustCo.

*[Section 44 inserted by No. 25 of 2007 s. 16.]*

**45. Formation of GESB Superannuation**

- (1) The Board, MutualCo and TrustCo are to as soon as practicable take the necessary steps to establish a fund that is a superannuation fund for the purposes of the SIS Act.
- (2) The fund is to be established —

- (a) by a trust deed that has been approved by the Treasurer;  
and
  - (b) with TrustCo as the first trustee of the fund.
- (3) The Treasurer must not approve a trust deed unless satisfied that compliance with the terms of the trust deed would not cause the trustee to contravene a regulatory provision, as defined in the SIS Act section 38A, in relation to the fund.
- (4) The Treasurer must not approve a trust deed unless satisfied that the trust deed contains provisions to the effect that, if the transfer time were the time when the approval is given —
  - (a) each existing member would be eligible to become a member of GESB Superannuation; and
  - (b) existing members of each statutory scheme would become members in the class of membership in GESB Superannuation specified in the deed in respect of that statutory scheme; and
  - (c) an existing member's benefit entitlements as a member of GESB Superannuation, considered as a whole and disregarding any compliance changes, would be no less favourable than the member's existing benefit entitlements; and
  - (d) an existing member's obligations as a member of GESB Superannuation would be no greater than the member's existing obligations; and
  - (e) if it is necessary to appoint a new trustee the appointment is to be made by MutualCo.
- (5) In subsection (4) —  
**compliance change**, in relation to a member's benefit entitlements, means an unfavourable change in those entitlements to the extent that it would —
  - (a) be necessary for compliance with, or occur as a consequence of the application of, the SIS Act, the

*Income Tax Assessment Act 1936* (Commonwealth) or any other law of the Commonwealth; or

- (b) occur as a result of the member's benefits ceasing to be benefits payable under a scheme for the purposes of section 31;

**existing** means existing under a statutory scheme at the time the Treasurer approves the trust deed.

*[Section 45 inserted by No. 25 of 2007 s. 16.]*

**46. Licences, approvals etc. to be obtained**

- (1) The Board, MutualCo and TrustCo are to take the necessary steps to ensure that, as soon as is practicable —
  - (a) all necessary licences, approvals, registrations, exemptions and other kinds of authorisations have been issued, granted or obtained; and
  - (b) all other requirements with which it is necessary to comply, have been complied with.

- (2) In subsection (1) —

**necessary** means necessary, under a written law or a law of the Commonwealth, to be done before the transfer time, in order to enable GESB Superannuation —

- (a) to function as a regulated superannuation fund from the transfer time; or
- (b) to become a complying superannuation fund in relation to the year of income in which the transfer time occurs.

*[Section 46 inserted by No. 25 of 2007 s. 16.]*

**47. Service agreements**

- (1) The Board must, as soon as is practicable, prepare and submit to the Treasurer —
  - (a) a draft of an agreement to be entered into by MutualCo and TrustCo for the provision by MutualCo to TrustCo

- of services relating to the performance by TrustCo of its functions as trustee of GESB Superannuation; and
- (b) a draft of an agreement to be entered into by MutualCo and the Board for the provision by MutualCo to the Board of services relating to the performance by the Board of its functions.
- (2) The Treasurer may —
- (a) approve a draft agreement submitted under subsection (1); or
- (b) direct that it be amended and approve it in an amended form.
- (3) As soon as is practicable after the Treasurer has approved a draft agreement MutualCo and TrustCo or the Board, as the case requires, are to enter into an agreement on the terms of the draft agreement approved by the Treasurer.

*[Section 47 inserted by No. 25 of 2007 s. 16.]*

**Division 3 — Continuing provisions relating to MutualCo and TrustCo**

*[Heading inserted by No. 25 of 2007 s. 16.]*

**48. Constitutions of MutualCo and TrustCo to include certain provisions**

- (1) If the constitution of MutualCo or TrustCo does not contain express provisions compliance with which would necessarily involve compliance with a provision set out in the Table to this subsection, the constitution is to be taken to include the provision set out in the Table.

**Table**

1. The registered office and principal place of business of the company must be located in Western Australia.
2. More than half of the directors of the

company must be ordinarily resident in  
Western Australia.

- (2) To the extent that they are governed by this section, the constitutions of MutualCo and TrustCo are declared to be excluded matters for the purposes of the Corporations Act section 5F in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies.

*[Section 48 inserted by No. 25 of 2007 s. 16.]*

**49. MutualCo and TrustCo not agents of the State**

MutualCo and TrustCo, and any subsidiary of either of them, are not agents of the State and do not have the status, immunities or privileges of the State.

*[Section 49 inserted by No. 25 of 2007 s. 16.]*

**50. Use of names**

- (1) MutualCo and TrustCo, and each subsidiary of either of them, are prohibited from using any name in connection with its business that suggests that it or GESB Superannuation is associated with the State.
- (2) The use in a name of the term “GESB” does not contravene subsection (1).
- (3) The use of the terms “West State” or “Gold State” in relation to the superannuation schemes referred to in section 29(1)(a) and (b), or divisions of GESB Superannuation that replace those schemes, does not contravene subsection (1).

*[Section 50 inserted by No. 25 of 2007 s. 16.]*

**51. Non-compliance with veto provisions**

- (1) In this section —

***veto provision*** means a provision of the constitution of MutualCo that confers, or has the effect of conferring, on the special member a power of veto referred to in section 43(3)(c).

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- (2) If MutualCo purports to exercise a power referred to in section 43(3)(c) and the veto provisions relating to the exercise of that power have not been complied with, each director of MutualCo commits an offence.

Penalty: a fine of \$100 000.

- (3) If a person is charged with an offence under subsection (2) it is a defence to prove that —
- (a) the purported exercise of the power occurred without the person's consent or connivance; and
  - (b) the person took all measures that he or she could reasonably be expected to have taken to prevent the purported exercise of the power.

*[Section 51 inserted by No. 25 of 2007 s. 16.]*

**51A. Notice of exercise of veto to be tabled**

If the Treasurer exercises a power under a veto provision, as defined in section 51, the Treasurer must, within 14 days after the power is exercised —

- (a) give written notice to MutualCo confirming the exercise of the power; and
- (b) cause a copy of the notice to be laid before each House of Parliament or dealt with under section 78.

*[Section 51A inserted by No. 25 of 2007 s. 16.]*

**52. Review of special membership**

- (1) The Treasurer is to carry out a review of the Treasurer's special membership of MutualCo as soon as is practicable after —
- (a) the third anniversary of the transfer time; and
  - (b) the expiry of each 3 yearly interval after that anniversary.
- (2) In the course of a review the Treasurer is to consider and have regard to —

- (a) the need for —
    - (i) the Treasurer to continue to be the special member; and
    - (ii) the continuation of section 51;and
  - (b) the effectiveness of the operations and performance of MutualCo, TrustCo, GESB Superannuation and the West State scheme; and
  - (c) the interests of members of GESB Superannuation and the West State scheme; and
  - (d) any other matters that appear to the Treasurer to be relevant.
- (3) The Treasurer is to prepare a report based on the review and, as soon as is practicable after the report is prepared (and in any event not more than 12 months after the relevant anniversary), cause it to be laid before each House of Parliament or dealt with under section 78.
- (4) Before a copy of the report is laid before Parliament the Treasurer —
- (a) must provide MutualCo and TrustCo with a reasonable opportunity to identify any information contained in the report that the company considers is of a confidential or commercially sensitive nature; and
  - (b) may exclude from the copy of the report to be laid before Parliament any such information identified by MutualCo or TrustCo.
- (5) If information is excluded from a copy of the report under subsection (4)(b), the copy of the report must contain a statement to that effect at the place in the report where the excluded information would have otherwise appeared.
- (6) If, after carrying out a review, the Treasurer determines that there is no need for the Treasurer to continue to be the special

member, the Treasurer is to resign as the special member in the manner provided in the constitution of MutualCo not later than 30 working days after the report is laid before Parliament.

*[Section 52 inserted by No. 25 of 2007 s. 16; amended by No. 25 of 2007 s. 70.]*

**53. Information to be provided in relation to review**

(1) In this section —

**company** means MutualCo, TrustCo or a subsidiary of either of them;

**fund members** means the members referred to in section 52(2)(c);

**regulator** means —

- (a) the Australian Securities and Investments Commission under the *Australian Securities and Investments Commission Act 2001* (Commonwealth); or
- (b) the Australian Prudential Regulation Authority under the *Australian Prudential Regulation Authority Act 1998* (Commonwealth); or
- (c) the Commissioner of Taxation under the *Taxation Administration Act 1953* (Commonwealth);

**relevant information** means information of any of the following kinds that is specified, or of a description specified, by the Treasurer —

- (a) information provided by a company to a regulator;
- (b) information given by a regulator to a company;
- (c) information that a company —
  - (i) has given to fund members or members of the company; or
  - (ii) would be required by written law or a law of the Commonwealth to give to a fund member or a member of the company at the member's request;



- (d) if a complaint has been made to the Superannuation Complaints Tribunal under the *Superannuation (Resolution of Complaints) Act 1993* (Commonwealth) in relation to a decision or conduct of a company, information relating to the complaint —
- (i) given by the company to the Tribunal; or
  - (ii) given by the Tribunal to the company,
- but not including any information relating to any fund member or member of the company individually.
- (2) For the purpose of carrying out a review under section 52 the Treasurer is entitled —
- (a) to have any relevant information in the possession of a company; and
  - (b) to make and retain copies of that information.
- (3) For the purposes of subsection (2) the Treasurer may request a company to —
- (a) give relevant information to the Treasurer; or
  - (b) give the Treasurer access to relevant information.
- (4) A company must comply with a request given to it under subsection (3) except to the extent that to do so would cause the company to contravene another written law or a law of the Commonwealth.
- (5) If a company is given a request under subsection (3) and —
- (a) after the company has complied with the request; but
  - (b) before the Treasurer's report on the review is tabled in accordance with section 52(3),

further relevant information of the kind requested comes into the possession of the company, the company must comply with the request in respect of that further information.

*[Section 53 inserted by No. 25 of 2007 s. 16.]*

**54.       Expiry of certain sections when special membership ceases**

- (1) Before, or as soon as is practicable after, the Treasurer resigns as the special member, the Treasurer is to cause a notice of that fact to be published in the *Gazette*.
- (2) Sections 51 to 54 expire at the end of the day that is the later of —
  - (a) the day on which that notice is published; and
  - (b) the day on which the Treasurer resigns as the special member.

*[Section 54 inserted by No. 25 of 2007 s. 16.]*

**Division 4 — Transfer**

*[Heading inserted by No. 25 of 2007 s. 16.]*

**Subdivision 1 — Preliminary**

*[Heading inserted by No. 25 of 2007 s. 16.]*

**55.       Terms used in this Division**

In this Division —

**asset** means any property of any kind, whether tangible or intangible, real or personal and, without limiting that meaning, includes —

- (a) a chose in action; or
- (b) goodwill; or
- (c) a right, interest or claim of any kind,

whether arising from, accruing under, created or evidenced by or the subject of, a document or otherwise and whether liquidated or unliquidated, actual, contingent or prospective;

**assignee** means —

- (a) in relation to an asset or liability specified in a transfer order under section 57(1)(a) or (b), the person specified

- in the order as the person to whom the asset or liability is to be assigned; or
- (b) in relation to a liability assigned by operation of section 58(b), TrustCo; or
  - (c) in relation to proceedings specified in a transfer order under section 57(1)(c), the person specified in the order as the person who is to be substituted for the Board as a party to the proceedings; or
  - (d) in relation to an agreement or document specified in a transfer order under section 57(1)(d), the person specified in the order as the person a reference to whom is to be treated as being substituted for a reference in the agreement or document to the Board;

**liability** means any liability, duty or obligation whether liquidated or unliquidated, actual, contingent or prospective, and whether owed alone or jointly or jointly and severally with any other person;

**right** means any right, power, privilege or immunity whether actual, contingent or prospective but does not include any privilege or immunity enjoyed as an agent of the State except to the extent that it relates to anything done or omitted to be done before the transfer time;

**transfer order** means an order made under section 57;

**transferring member** means a person who becomes a member of GESB Superannuation by operation of section 59(1)(a).

*[Section 55 inserted by No. 25 of 2007 s. 16.]*

## **Subdivision 2 — Transfer of statutory schemes**

*[Heading inserted by No. 25 of 2007 s. 16.]*

### **56. Treasurer to fix transfer time**

- (1) The Treasurer may, by order published in the *Gazette*, fix the transfer time.

- (2) The Treasurer must not make an order under subsection (1) unless the Treasurer has received from an actuary a certificate —
- (a) given not more than 30 working days before the time to be fixed as the transfer time; and
  - (b) certifying that the actuary considers that if the transfer time were the time when the certificate is given, the assets assigned by operation of section 58 to TrustCo as trustee of GESB Superannuation would be sufficient and appropriate to enable TrustCo to meet its obligations as trustee of GESB Superannuation.
- (3) In giving a certificate for the purposes of subsection (2) an actuary is to have regard to —
- (a) the type and value of the assets and liabilities to be assigned by operation of section 58 to TrustCo as trustee of GESB Superannuation; and
  - (b) the investment options selected by members of the statutory schemes; and
  - (c) the level of reserves the actuary reasonably considers a prudent trustee of GESB Superannuation would, in the ordinary course of the prudent management of the fund, maintain.
- (4) The Treasurer is to cause a copy of —
- (a) the transfer order; and
  - (b) the actuarial certificate referred to in subsection (2); and
  - (c) any other actuarial advice received by the Treasurer in relation to the assets and liabilities to be assigned by operation of section 58; and
  - (d) the order made under subsection (1),
- to be laid before each House of Parliament or dealt with under section 78 within 3 working days after the order made under subsection (1) is published in the *Gazette*.

*[Section 56 inserted by No. 25 of 2007 s. 16.]*

**57. Treasurer to make transfer order**

- (1) For the purpose of this Part the Treasurer may, by one or more orders published in the *Gazette*, specify —
  - (a) the assets —
    - (i) in the statutory fund; or
    - (ii) of the Board that are not in the statutory fund, that are to be assigned by operation of section 58(a) to the person specified in the order; and
  - (b) any liability of the Board —
    - (i) not arising under a statutory scheme; or
    - (ii) arising under a statutory scheme but that will not be assigned by operation of section 58(b), that is to be assigned by operation of section 58(c) to the person specified in the order; and
  - (c) any proceedings in which the person specified in the order is to be substituted by operation of section 58(d) for the Board as a party to the proceedings; and
  - (d) any agreement or document relating to an asset or liability that is to be assigned by operation of section 58 that, unless otherwise expressly specified in the order, is to be taken to be amended by operation of section 58(e) by substituting for a reference in it to the Board a reference to the person specified in the order.
- (2) The person specified in a transfer order may be MutualCo or TrustCo or a subsidiary of either of them.
- (3) A transfer order may specify a thing by describing it as a member of a class of things.
- (4) A transfer order may specify a thing by reference to a schedule that need not be published in the *Gazette* but must be —
  - (a) signed by the Treasurer; and

- (b) available for public inspection.
- (5) Anything specified in a schedule referred to in a transfer order is taken to be specified in the order.
- (6) The Treasurer may, by order published in the *Gazette*, amend a transfer order, or a schedule referred to in a transfer order, to correct —
  - (a) a clerical mistake; or
  - (b) an accidental slip or omission; or
  - (c) the misdescription of a person or thing.
- (7) A transfer order, or an order under subsection (6), can only be made before the transfer time.

*[Section 57 inserted by No. 25 of 2007 s. 16.]*

**58.     Transfer of assets, liabilities etc.**

At the transfer time, by operation of this section —

- (a) an asset specified in a transfer order under section 57(1)(a) is assigned to the assignee; and
- (b) every liability of the Board or of the State to pay a benefit arising under a statutory scheme to or in relation to a transferring member is assigned to, and becomes a liability of, TrustCo as trustee of GESB Superannuation; and
- (c) a liability specified in a transfer order under section 57(1)(b) is assigned to, and becomes a liability of, the assignee; and
- (d) in proceedings specified in a transfer order under section 57(1)(c) the assignee is substituted for the Board as a party to the proceedings; and
- (e) an agreement or document specified in a transfer order under section 57(1)(d) is, unless otherwise expressly specified in the order, taken to be amended by

substituting for any reference in it to the Board a  
reference to the assignee.

*[Section 58 inserted by No. 25 of 2007 s. 16.]*

**59. Transfer of members**

- (1) At the transfer time, by operation of this section, a person who was, immediately before the transfer time, a member of a statutory scheme —
  - (a) becomes a member of GESB Superannuation; and
  - (b) ceases to be a member of the statutory scheme.
- (2) The Board and MutualCo are to take the necessary steps to ensure that at the transfer time every transferring member becomes a member of MutualCo.
- (3) For the purposes of subsection (2), the Board is appointed as attorney for each person who is a member of a statutory scheme for the purpose of executing any documents the Board considers necessary or desirable —
  - (a) to enable that person, if he or she becomes a transferring member, to become a member of MutualCo; and
  - (b) to nominate for the person how MutualCo may send or make available to the person notices, reports and other communications that MutualCo is required under the Corporations Act to send to members of the company.

*[Section 59 inserted by No. 25 of 2007 s. 16.]*

**60. Effect on rights, remedies etc.**

After the transfer time —

- (a) any proceedings that might have been commenced by or against the Board or the State in relation to an asset or liability assigned by operation of section 58 —
  - (i) may be commenced by or against the assignee;  
and

(ii) cannot be commenced by or against the Board or the State;

and

(b) any remedy that would have been available to or against the Board or the State in relation to an asset or liability assigned by operation of section 58 —

(i) is available to or against the assignee; and

(ii) is not available to or against the Board or the State;

and

(c) anything relating to an asset or liability assigned by operation of section 58 that was done or omitted to be done by, to, or in respect of, the Board or the State before the transfer time and is of any ongoing effect is to be taken to have been done or omitted to be done by, to, or in respect of, the assignee.

*[Section 60 inserted by No. 25 of 2007 s. 16.]*

**Subdivision 3 — General provisions relating to transfer**

*[Heading inserted by No. 25 of 2007 s. 16.]*

**61. Notification and registration of assignment**

(1) In this section —

***assigned property*** means an asset or liability assigned by operation of this Division;

***registrar*** means —

(a) a WA registrar; or

(b) a person authorised or required by a law of a place outside the State to record and give effect to the registration of documents relating to transactions affecting assigned property;

***WA registrar*** means —

(a) the Registrar of Titles; or



- (b) the Registrar of Deeds and Transfers; or
  - (c) the Minister administering the *Mining Act 1978*; or
  - (d) any other person authorised by a written law to record and give effect to the registration of documents relating to transactions affecting assigned property.
- (2) A WA registrar is to take notice of this Division and record and register in the appropriate manner the documents necessary to show the effect of this Division.
- (3) A person to whom assigned property is assigned by operation of this Division is to cause to be delivered to each registrar, in a form acceptable to the registrar, all the information the registrar needs in order to record and register the documents necessary to show the effect of this Division in relation to that property.

*[Section 61 inserted by No. 25 of 2007 s. 16.]*

**62. Completion of necessary transactions**

If there is any impediment to any provision of this Division having effect (whether because a matter is governed otherwise than by the law of the State, or for any other reason), the Treasurer, the Board, MutualCo, TrustCo and each other person to whom anything is assigned by operation of this Division are to take all practicable steps to ensure that the effect sought to be achieved by that provision is achieved as close as possible to the transfer time.

*[Section 62 inserted by No. 25 of 2007 s. 16.]*

**63. Arrangements for custody and use of records**

The Board, MutualCo, TrustCo and each other person to whom anything is assigned by operation of this Division are to make arrangements for the delivery or sharing of, and access to, documents and other records (however compiled, recorded or stored) that relate to any of the following —

- (a) anything assigned by operation of this Division or otherwise affected by this Division;
- (b) a scheme affected by this Division;
- (c) a person who becomes a member of GESB Superannuation by operation of this Division.

*[Section 63 inserted by No. 25 of 2007 s. 16.]*

**64.     Duty and other taxes**

- (1) In this section —

**foreign tax** means a tax, duty, fee, levy or charge under a law of a place outside the State;

**relevant act** means anything —

- (a) that occurs by operation of this Division; or
- (b) done —
  - (i) under this Division; or
  - (ii) to give effect to this Division; or
  - (iii) for a purpose connected with, or arising out of, giving effect to this Division,

including a transaction entered into or an instrument or document of any kind made, executed, lodged or given.

- (2) Duty under the *Duties Act 2008* is not chargeable in relation to a relevant act.
- (3) Any foreign tax payable in relation to a relevant act is to be paid by the Board and charged to the statutory fund under section 15(2)(c).
- (4) The Treasurer or a person authorised by the Treasurer may, at the request of the Board or a person who would, but for subsection (2) or (3), be liable to pay duty or foreign tax in relation to a relevant act, certify in writing that a specified thing was a relevant act.

- (5) For all purposes and in all proceedings, a certificate under subsection (4) is conclusive evidence of the matters it certifies, except so far as the contrary is shown.

*[Section 64 inserted by No. 25 of 2007 s. 16; amended by No. 47 of 2011 s. 27.]*

### **Division 5 — Transfer of staff**

*[Heading inserted by No. 25 of 2007 s. 16.]*

#### **65. Terms used in this Division**

- (1) In this Division —

***department*** means the department of the Public Service principally assisting in the administration of this Act;

***election*** means an election made in accordance with section 67;

***industrial instrument*** means an award, order, agreement or other instrument relating to terms and conditions of employment that applies under the *Industrial Relations Act 1979* or the *Workplace Relations Act 1996* (Commonwealth);

***protected matter*** means any of the following —

- (a) remuneration;
- (b) leave;
- (c) workload management;
- (d) working hours;
- (e) flexible working arrangements;
- (f) professional development;

***transferred employee*** means a person who becomes an employee of MutualCo by operation of section 66(1).

- (2) In this Division each of the following terms has the meaning given in the *Public Sector Management Act 1994* section 3(1) —
- (a) ***employing authority***;
  - (b) ***permanent officer***;

(c) *public service officer*;

(d) *term officer*.

[Section 65 inserted by No. 25 of 2007 s. 16.]

**66. Transfer of staff to MutualCo**

(1) At the transfer time —

(a) each person employed as a public service officer in accordance with section 11(1) or as the chief executive officer of the Board becomes an employee of MutualCo employed under a contract of employment between the person and MutualCo; and

(b) each person employed by the Board under section 11(2) other than on a casual basis becomes an employee of MutualCo which is substituted for the Board as a party to the person's contract of employment,

unless, at that time, the person's employment terminates other than by operation of this Division.

(2) A transferred employee's contract of employment is to be taken to include each term or condition that —

(a) applied to the person immediately before the transfer time under a contract of employment or industrial instrument; and

(b) relates to a protected matter.

(3) A transferred employee's rights against MutualCo include each accruing or accrued right that —

(a) the person had immediately before the transfer time under a contract of employment or industrial instrument; and

(b) relates to a protected matter.

(4) For the purpose of working out when an accruing right referred to in subsection (3) accrues the person's employment in the

public sector is to be taken to have been employment with MutualCo.

- (5) Despite subsections (2) and (3) —
- (a) a person's contract of employment with MutualCo does not include a term or condition; and
  - (b) a person's rights against MutualCo do not include a right,

to the extent that it requires or permits contributions to be made by or for the person to a particular superannuation scheme or to a particular type of superannuation scheme.

- (6) Nothing in this section prevents the subsequent variation or replacement of a term, condition or right referred to in subsection (2) or (3).
- (7) The regulations referred to in the *Public Sector Management Act 1994* section 94 do not apply in relation to a change of employment effected by operation of subsection (1).

*[Section 66 inserted by No. 25 of 2007 s. 16.]*

**67. Election as to employment**

- (1) A transferred employee may elect, by giving written notice to MutualCo, to —
- (a) remain an employee of MutualCo; or
  - (b) return to the public sector.
- (2) An election cannot be made after the person has become entitled to a transition payment under section 68.
- (3) An election cannot be withdrawn or revoked.

*[Section 67 inserted by No. 25 of 2007 s. 16.]*

**68. Transition payment for staff not electing to return**

- (1) A transferred employee becomes entitled to a transition payment if —

- (a) the person elects to remain an employee of MutualCo; or
  - (b) the person enters into a contract of employment with MutualCo that replaces the contract referred to in section 66(1); or
  - (c) a period of 12 months has expired after the end of the day on which the transfer time occurs and the person has neither —
    - (i) elected to return to the public sector; nor
    - (ii) become entitled to a transition payment under paragraph (a) or (b).
- (2) When a person becomes entitled to a transition payment the Board is to pay the person the amount determined by the Treasurer on the recommendation of the Public Sector Commissioner.

*[Section 68 inserted by No. 25 of 2007 s. 16; amended by No. 39 of 2010 s. 89.]*

**69. Arrangements for return to public sector**

- (1) As soon as is practicable after a person elects to return to the public sector MutualCo is to notify the employing authority of the department of that election.
- (2) MutualCo and the employing authority are to make the necessary arrangements to facilitate the operation of section 70.
- (3) MutualCo is to comply with any requirements of the Treasurer's instructions issued under the *Financial Management Act 2006* section 78 relating to the making of payments by an employing authority for liabilities relating to employees whose employing authority changes as if —
  - (a) MutualCo were an employing authority to which those instructions applied; and
  - (b) each person who elects to return to the public sector were an employee to whom those instructions applied.

- (4) If the employing authority incurs costs as a result of the operation of section 70 the Treasurer may direct the Board, under section 71, to pay an amount from the statutory fund to the employing authority to reimburse the employing authority for any or all of those costs.

*[Section 69 inserted by No. 25 of 2007 s. 16.]*

**70. Employment in public sector**

- (1) When a person elects to return to the public sector the person —
- (a) ceases to be an employee of MutualCo; and
  - (b) becomes —
    - (i) if the person was, immediately before the transfer time, a permanent officer — a permanent officer in the department; or
    - (ii) if the person was, immediately before the transfer time, employed for a fixed term (the ***pre-transfer term***) — a term officer in the department for a term that expires on the day on which the person's pre-transfer term would have expired.
- (2) For the purposes of the *Public Sector Management Act 1994* a person who becomes a public service officer under subsection (1)(b) is to be taken to have held an office, post or position in the department that —
- (a) was at the same level of classification as the substantive office, post or position held by the person immediately before the transfer time; and
  - (b) has been abolished.
- (3) When a person becomes a public service officer under subsection (1)(b) the person's entitlement to leave includes any accrued leave to which the person was entitled as an employee of MutualCo immediately before becoming a public service officer.

- (4) Nothing in this section prevents the subsequent variation or replacement of a term, condition or right relating to the person's employment in the department.

*[Section 70 inserted by No. 25 of 2007 s. 16.]*

### **Division 6 — General**

*[Heading inserted by No. 25 of 2007 s. 16.]*

#### **71. Treasurer may give directions**

- (1) The Treasurer may give directions in writing to the Board requiring it to take any step that the Treasurer considers necessary or convenient for the purpose of giving effect to this Part.
- (2) The Board must comply with a direction given to it under subsection (1).
- (3) This section applies despite the *Statutory Corporations (Liability of Directors) Act 1996* section 6(a) and a direction given under this section is not unlawful for the purposes of Part 3 Division 4 of that Act.
- (4) Section 77 applies to a direction given under this section.

*[Section 71 inserted by No. 25 of 2007 s. 16.]*

#### **72. Power to remedy insufficiency**

- (1) If the Treasurer is satisfied that the assets assigned by operation of this Part to TrustCo as trustee of GESB Superannuation were not, at the time they were assigned, sufficient or appropriate to enable TrustCo to meet its obligations as trustee of GESB Superannuation, the Treasurer may take any action the Treasurer considers appropriate to remedy the insufficiency or inappropriateness.
- (2) Without limiting the action that may be taken under subsection (1), the Treasurer may direct the Board, under section 71, to —



- (a) transfer assets in the statutory fund to TrustCo; or
  - (b) pay an amount from the statutory fund to a person.
- (3) This section expires when section 54 expires.  
*[Section 72 inserted by No. 25 of 2007 s. 16.]*

**73. General powers of Treasurer and Board**

- (1) The Treasurer and the Board may do, in the State or elsewhere, anything necessary or convenient to be done for the purpose of giving effect to this Part.
- (2) If there is a conflict or inconsistency between —
  - (a) a function of the Board under this Part; and
  - (b) a function of the Board under any other provision of this Act,

the function under this Part prevails.

*[Section 73 inserted by No. 25 of 2007 s. 16.]*

**74. Use of Board's staff and facilities**

Until the transfer time the Board may make available to MutualCo or TrustCo —

- (a) any member of staff of the Board; and
- (b) any facilities or services of the Board,

on terms, including as to payment, agreed between the Board and the company.

*[Section 74 inserted by No. 25 of 2007 s. 16.]*

**75. No fees payable by members transferred to GESB Superannuation**

No fee or charge is payable by a person who becomes a member of GESB Superannuation by operation of this Part in relation to anything —

- (a) that occurs by operation of this Part; or

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- (b) done —
  - (i) under this Part; or
  - (ii) to give effect to this Part; or
  - (iii) for a purpose connected with, or arising out of, giving effect to this Part.

*[Section 75 inserted by No. 25 of 2007 s. 16.]*

## **Part 4A — West State scheme**

*[Heading inserted by No. 25 of 2007 s. 71.]*

### **Division 1 — Preliminary**

*[Heading inserted by No. 25 of 2007 s. 71.]*

#### **75A. Purpose of this Part**

The purpose of this Part is to —

- (a) provide for the assets in the statutory fund to be divided into 2 sub-funds, one relating to the West State scheme and one relating to the other schemes continued by section 29; and
- (b) provide for the details of the West State scheme to be set out in governing rules; and
- (c) provide for the Board's powers and duties in relation to the West State scheme to be transferred to TrustCo; and
- (d) enable and facilitate a convenient transition of the West State scheme to the new structure.

*[Section 75A inserted by No. 25 of 2007 s. 71.]*

#### **75B. Terms used in this Part**

- (1) In this Part —

***governing rules*** means the governing rules made under section 75E;

***responsible entity*** means the responsible entity of the West State scheme under section 75C;

***separation time*** means the time fixed under section 75K;

***West State Fund*** means the sub-fund of the State Superannuation Fund referred to in section 14(3)(b) and called the West State Fund;

***West State member*** means a member of the West State scheme.

(2) In this Part each of the following terms has the meaning given in section 42 —

- (a) *MutualCo*;
- (b) *statutory fund*;
- (c) *subsidiary*;
- (d) *TrustCo*.

*[Section 75B inserted by No. 25 of 2007 s. 71.]*

**Division 2 — Responsible entity and governing rules**

*[Heading inserted by No. 25 of 2007 s. 71.]*

**75C. Responsible entity**

- (1) At the separation time, TrustCo becomes the responsible entity for the West State scheme.
- (2) If TrustCo ceases to be the responsible entity, a replacement responsible entity is to be appointed in accordance with the governing rules.

*[Section 75C inserted by No. 25 of 2007 s. 71.]*

**75D. Responsible entity and directors to be indemnified**

- (1) The responsible entity and the directors of that entity are each entitled to be indemnified out of the assets in the West State Fund against a liability —
  - (a) assigned by operation of section 75N; or
  - (b) properly incurred while acting as the responsible entity or a director of the responsible entity (as the case requires).
- (2) Subsection (1) does not entitle a person to be indemnified out of the assets in the West State Fund against a liability —
  - (a) that arises because the person —
    - (i) fails to act honestly in a matter concerning the West State scheme; or

(ii) intentionally or recklessly fails to exercise due care and diligence in the exercise of the person's functions in relation to the West State scheme;

or

(b) for a monetary penalty under a civil penalty order as defined in the SIS Act section 10.

*[Section 75D inserted by No. 25 of 2007 s. 71.]*

**75E. Governing rules**

- (1) The Treasurer may make governing rules for the West State scheme.
- (2) Governing rules are not subsidiary legislation for the purposes of the *Interpretation Act 1984*.
- (3) The *Interpretation Act 1984* section 43 (other than subsections (4) and (6)) applies in relation to the making of the governing rules by the Treasurer under subsection (1) as if they were subsidiary legislation.
- (4) Governing rules made under subsection (1) —
  - (a) may be amended or repealed by the responsible entity in the manner, and subject to any conditions, specified in the governing rules; and
  - (b) cannot be amended or repealed by the Treasurer.

*[Section 75E inserted by No. 25 of 2007 s. 71.]*

**75F. Content of governing rules**

- (1) The governing rules may make provision for the following —
  - (a) the functions, rights and liabilities of the responsible entity;
  - (b) the rights and liabilities of West State members;
  - (c) the rights and liabilities of Employers in relation to the West State scheme;

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- (d) the appointment of a replacement responsible entity;
  - (e) the discontinuance of the West State scheme;
  - (f) amendment of the governing rules;
  - (g) any other matters that are required, necessary or convenient to be provided for, or in relation to, the West State scheme.
- (2) The governing rules may provide that certain provisions of the rules cannot be amended without the approval of the Treasurer.

*[Section 75F inserted by No. 25 of 2007 s. 71.]*

**75G. Governing rules to contain certain provisions when made**

- (1) In this section —

***constitutionally protected fund*** has the meaning given in the *Income Tax Assessment Act 1936* (Commonwealth) section 267;

***compliance change***, in relation to a West State member's benefit entitlements, means an unfavourable change in those entitlements to the extent that it would —

- (a) be necessary for compliance with, or occur as a consequence of the application of, the SIS Act, the *Income Tax Assessment Act 1936* (Commonwealth) or any other law of the Commonwealth; or
- (b) occur as a result of the member's benefits ceasing to be benefits payable under a scheme for the purposes of section 31;

***existing*** means existing under the West State scheme at the time the Treasurer makes the governing rules;

***regulatory provision*** has the meaning given in the SIS Act section 38A;

***successor fund*** has the meaning given in the *Superannuation Industry (Supervision) Regulations 1994* (Commonwealth) regulation 1.03(1).

- (2) The Treasurer must not make governing rules under section 75E(1) unless satisfied that compliance with the terms of the governing rules would not cause the responsible entity to contravene a regulatory provision in relation to the West State scheme.
- (3) The Treasurer must not make governing rules under section 75E(1) unless satisfied that the rules contain provisions to the effect that, if the separation time were the time when the rules are made —
- (a) the coming into operation of the governing rules would not cause any existing member to cease to be a West State member; and
  - (b) an existing member's benefit entitlements under the governing rules, considered as a whole and disregarding any compliance changes, would be no less favourable than the member's existing benefit entitlements; and
  - (c) an existing member's obligations under the governing rules would be no greater than the member's existing obligations.
- (4) The Treasurer must not make governing rules under section 75E(1) unless satisfied that the rules contain provisions to the effect that —
- (a) a West State member's benefits under the West State scheme must not be transferred to a successor fund unless —
    - (i) the member has consented to the transfer; or
    - (ii) the transfer has been approved by the Treasurer;and
  - (b) the responsible entity —
    - (i) must not, without the Treasurer's approval, cause, or attempt to cause, the West State scheme to cease to be a constitutionally protected fund; and

- (ii) must, unless the Treasurer otherwise approves, make all reasonable efforts to ensure that the West State scheme does not cease to be a constitutionally protected fund;

and

- (c) the West State scheme cannot be discontinued without the Treasurer's approval; and
- (d) if it is necessary to appoint a new responsible entity the appointment is to be made by MutualCo; and
- (e) after the separation time no person can become a West State member without the Treasurer's approval; and
- (f) the provisions of the governing rules that have an effect described in this subsection (including this paragraph) cannot be amended without the Treasurer's approval.

*[Section 75G inserted by No. 25 of 2007 s. 71.]*

**75GA. Notice of refusal of approval to be tabled**

If the Treasurer refuses to approve the doing of something which, under the governing rules, cannot be done without the Treasurer's approval, the Treasurer must —

- (a) give written notice of the refusal to TrustCo; and
- (b) cause a copy of the notice to be laid before each House of Parliament or dealt with under section 78 within 14 days after it is given to TrustCo.

*[Section 75GA inserted by No. 25 of 2007 s. 71.]*

**Division 3 — Creation of sub-funds**

*[Heading inserted by No. 25 of 2007 s. 71.]*

**75H. Terms used in this Division**

- (1) In this Division —  
*assignee* means —



- (a) in relation to an asset specified in a separation order under section 75L(1)(a), TrustCo; or
- (b) in relation to an asset or liability specified in a separation order under section 75L(1)(b) or (c), the person specified in the order as the person to whom the asset or liability is to be assigned; or
- (c) in relation to a liability assigned by operation of section 75N(b), TrustCo; or
- (d) in relation to proceedings specified in a separation order under section 75L(1)(d), the person specified in the order as the person who is to be substituted for the Board as a party to the proceedings; or
- (e) in relation to an agreement or document specified in a separation order under section 75L(1)(e), the person specified in the order as the person a reference to whom is to be treated as being substituted for a reference in the agreement or document to the Board;

***separation order*** means an order made under section 75L;

***transferred property*** means —

- (a) an asset allocated by operation of section 75M(a) to the West State Fund; or
  - (b) an asset or liability assigned by operation of section 75N.
- (2) In this Division each of the following terms has the meaning given in section 55 —
- (a) ***asset***;
  - (b) ***liability***;
  - (c) ***right***.

*[Section 75H inserted by No. 25 of 2007 s. 71.]*

**75I. Licences, approvals etc. to be obtained**

- (1) The Board, MutualCo and TrustCo are to take the necessary steps to ensure that, as soon as is practicable —

- (a) all necessary licences, approvals, registrations, exemptions and other kinds of authorisations have been issued, granted or obtained; and
  - (b) all other requirements with which it is necessary to comply, have been complied with.
- (2) In subsection (1) —
- necessary* means necessary, under a written law or a law of the Commonwealth, to be done before the separation time, in order to enable the West State scheme to function as a regulated superannuation fund from the separation time.

*[Section 75I inserted by No. 25 of 2007 s. 71.]*

**75J. Service agreement**

- (1) The Board must, as soon as is practicable, prepare and submit to the Treasurer a draft of an agreement to be entered into by MutualCo and TrustCo for the provision by MutualCo to TrustCo of services relating to the performance by TrustCo of its functions as responsible entity.
- (2) The Treasurer may —
  - (a) approve a draft agreement submitted under subsection (1); or
  - (b) direct that it be amended and approve it in an amended form.
- (3) As soon as is practicable after the Treasurer has approved a draft agreement MutualCo and TrustCo are to enter into an agreement on the terms of the draft agreement approved by the Treasurer.

*[Section 75J inserted by No. 25 of 2007 s. 71.]*

**75K. Treasurer to fix separation time**

- (1) The Treasurer may, by order published in the *Gazette*, fix the separation time.

- (2) The time fixed under subsection (1) must not be before the transfer time.
- (3) The Treasurer must not make an order under subsection (1) unless the Treasurer has received from an actuary a certificate —
  - (a) given not more than 30 working days before the time to be fixed as the separation time; and
  - (b) certifying that the actuary considers that if the separation time were the time when the certificate is given, the assets allocated by operation of section 75M(a) to the West State Fund would be sufficient and appropriate to enable the responsible entity to meet its obligations under the governing rules.
- (4) In giving a certificate for the purposes of subsection (3) an actuary is to have regard to —
  - (a) the type and value of the assets to be allocated by operation of section 75M(a) to the West State Fund; and
  - (b) the type and value of the assets and liabilities to be assigned by operation of section 75N to TrustCo as the responsible entity; and
  - (c) the investment options selected by West State members; and
  - (d) the level of reserves the actuary reasonably considers a prudent trustee would, in the ordinary course of the prudent management of the West State scheme, maintain; and
  - (e) any indemnity or guarantee given under section 75Q.
- (5) The Treasurer must not make an order under subsection (1) unless the constitution of MutualCo contains provisions to the effect that while there is a special member, as defined in section 42, the special member will have a power to veto the exercise by the company or the directors of its or their power —

- (a) to alter or terminate the agreement entered into in accordance with section 75J(3); or
  - (b) to appoint, under the governing rules, a new responsible entity.
- (6) The Treasurer is to cause a copy of —
- (a) the separation order; and
  - (b) the actuarial certificate referred to in subsection (3); and
  - (c) any other actuarial advice received by the Treasurer in relation to —
    - (i) the assets to be allocated by operation of section 75M(a); or
    - (ii) the assets and liabilities to be assigned by operation of section 75N;
- and
- (d) the order made under subsection (1),

to be laid before each House of Parliament or dealt with under section 78 within 3 working days after the order made under subsection (1) is published in the *Gazette*.

*[Section 75K inserted by No. 25 of 2007 s. 71.]*

**75L. Treasurer to make separation order**

- (1) For the purpose of this Part the Treasurer may, by one or more orders published in the *Gazette*, specify —
- (a) the assets in the statutory fund that are to be allocated by operation of section 75M(a) to the West State Fund; and
  - (b) any assets —
    - (i) in the statutory fund; or
    - (ii) of the Board that are not in the statutory fund, that are to be assigned by operation of section 75N(a) to the person specified in the order; and
  - (c) any liability of the Board —

- (i) not arising under the West State scheme; or
  - (ii) arising under the West State scheme but that will not be assigned by operation of section 75N(b), that is to be assigned by operation of section 75N(c) to the person specified in the order; and
  - (d) any proceedings in which the person specified in the order is to be substituted by operation of section 75N(d) for the Board as a party to the proceedings; and
  - (e) any agreement or document relating to transferred property that, unless otherwise expressly specified in the order, is to be taken to be amended by operation of section 75N(e) by substituting for a reference in it to the Board a reference to the person specified in the order.
- (2) The person specified in a separation order may be MutualCo or TrustCo or a subsidiary of either of them.
- (3) A separation order may specify a thing by describing it as a member of a class of things.
- (4) A separation order may specify a thing by reference to a schedule that need not be published in the *Gazette* but must be —
- (a) signed by the Treasurer; and
  - (b) available for public inspection.
- (5) Anything specified in a schedule referred to in a separation order is taken to be specified in the order.
- (6) The Treasurer may, by order published in the *Gazette*, amend a separation order, or a schedule referred to in a separation order, to correct —
- (a) a clerical mistake; or
  - (b) an accidental slip or omission; or
  - (c) the misdescription of a person or thing.

- (7) A separation order, or an order under subsection (6), can only be made before the separation time.

*[Section 75L inserted by No. 25 of 2007 s. 71.]*

**75M. Allocation of assets to sub-funds**

At the separation time —

- (a) the assets specified in a separation order under section 75L(1)(a) are allocated to and constitute the West State Fund referred to in section 14(3)(b); and
- (b) the other assets in the statutory fund are allocated to and constitute the Defined Benefit Fund referred to in section 14(3)(a).

*[Section 75M inserted by No. 25 of 2007 s. 71.]*

**75N. Transfer of other assets, liabilities etc.**

At the separation time, by operation of this section —

- (a) an asset specified in a separation order under section 75L(1)(b) is assigned to the assignee; and
- (b) every liability of the Board or of the State to pay a benefit arising under the West State scheme to or in relation to a West State member is assigned to, and becomes a liability of, TrustCo as the responsible entity; and
- (c) a liability specified in a separation order under section 75L(1)(c) is assigned to, and becomes a liability of, the assignee; and
- (d) in proceedings specified in a separation order under section 75L(1)(d) the assignee is substituted for the Board as a party to the proceedings; and
- (e) an agreement or document specified in a separation order under section 75L(1)(e) is, unless otherwise expressly specified in the order, taken to be amended by

substituting for any reference in it to the Board a  
reference to the assignee.

*[Section 75N inserted by No. 25 of 2007 s. 71.]*

**75O. West State members to become members of MutualCo**

- (1) The Board and MutualCo are to take the necessary steps to ensure that —
  - (a) the constitution of MutualCo contains provisions to the effect that every person who is a West State member at the separation time will be eligible to become a member of the company; and
  - (b) at the separation time every West State member becomes a member of MutualCo.
- (2) For the purposes of subsection (1)(b), the Board is appointed as attorney for each person who is a West State member for the purpose of executing any documents the Board considers necessary or desirable —
  - (a) to enable that person, if he or she is a West State member at the separation time, to become a member of MutualCo; and
  - (b) to nominate for the person how MutualCo may send or make available to the person notices, reports and other communications that MutualCo is required under the Corporations Act to send to members of the company.

*[Section 75O inserted by No. 25 of 2007 s. 71.]*

**75P. Effect on rights, remedies etc.**

After the separation time —

- (a) any proceedings that might have been commenced by or against the Board or the State in relation to transferred property —
  - (i) may be commenced by or against the assignee; and

(ii) cannot be commenced by or against the Board or the State;

and

(b) any remedy that would have been available to or against the Board or the State in relation to transferred property —

(i) is available to or against the assignee; and

(ii) is not available to or against the Board or the State;

and

(c) anything relating to transferred property that was done or omitted to be done by, to, or in respect of, the Board or the State before the separation time and is of any ongoing effect is to be taken to have been done or omitted to be done by, to, or in respect of, the assignee.

*[Section 75P inserted by No. 25 of 2007 s. 71.]*

**75Q. Treasurer may give indemnity or guarantee**

(1) The Treasurer may, in the name and on behalf of the State, give to the responsible entity —

(a) an indemnity against liability for; or

(b) a guarantee of payment in respect of,

any financial obligations of the responsible entity relating to the payment of benefits to or in respect of West State members.

(2) An indemnity or guarantee is to be in the form, and on the terms and conditions, determined by the Treasurer.

(3) The due payment of money payable by the Treasurer under an indemnity or guarantee is to be charged to the Consolidated Account, which this subsection appropriates accordingly.

(4) The Treasurer is to cause any amounts received or recovered, from the responsible entity or otherwise, in respect of any



payment made by the Treasurer under an indemnity or guarantee to be credited to the Consolidated Account.

*[Section 75Q inserted by No. 25 of 2007 s. 71.]*

**75R. Notification and registration of assignment**

(1) In this section —

**registrar** means —

- (a) a WA registrar; or
- (b) a person authorised or required by a law of a place outside the State to record and give effect to the registration of documents relating to transactions affecting transferred property;

**WA registrar** means —

- (a) the Registrar of Titles; or
- (b) the Registrar of Deeds and Transfers; or
- (c) the Minister administering the *Mining Act 1978*; or
- (d) any other person authorised by a written law to record and give effect to the registration of documents relating to transactions affecting transferred property.

(2) A WA registrar is to take notice of this Division and record and register in the appropriate manner the documents necessary to show the effect of this Division.

(3) The assignee of any transferred property is to cause to be delivered to each registrar, in a form acceptable to the registrar, all the information the registrar needs in order to record and register the documents necessary to show the effect of this Division in relation to that property.

*[Section 75R inserted by No. 25 of 2007 s. 71.]*

**75S. Completion of necessary transactions**

If there is any impediment to any provision of this Division having effect (whether because a matter is governed otherwise

than by the law of the State, or for any other reason), the Treasurer, the Board, MutualCo, TrustCo and each other assignee are to take all practicable steps to ensure that the effect sought to be achieved by that provision is achieved as close as possible to the separation time.

*[Section 75S inserted by No. 25 of 2007 s. 71.]*

**75T. Arrangements for custody and use of records**

The Board, MutualCo, TrustCo and each other assignee are to make arrangements for the delivery or sharing of, and access to, documents and other records (however compiled, recorded or stored) that relate to any of the following —

- (a) transferred property or anything otherwise affected by this Division;
- (b) the West State scheme;
- (c) a West State member.

*[Section 75T inserted by No. 25 of 2007 s. 71.]*

**75U. Duty and other taxes**

- (1) In this section —

***foreign tax*** means a tax, duty, fee, levy or charge under a law of a place outside the State;

***relevant act*** means anything —

- (a) that occurs by operation of this Division; or
- (b) done —
  - (i) under this Division; or
  - (ii) to give effect to this Division; or
  - (iii) for a purpose connected with, or arising out of, giving effect to this Division,

including a transaction entered into or an instrument or document of any kind made, executed, lodged or given.

- (2) Duty under the *Duties Act 2008* is not chargeable in relation to a relevant act.
- (3) Any foreign tax payable in relation to a relevant act is to be paid by the Board and charged to the statutory fund under section 15(2)(c).
- (4) The Treasurer or a person authorised by the Treasurer may, at the request of the Board or a person who would, but for subsection (2) or (3), be liable to pay duty or foreign tax in relation to a relevant act, certify in writing that a specified thing was a relevant act.
- (5) For all purposes and in all proceedings, a certificate under subsection (4) is conclusive evidence of the matters it certifies, except so far as the contrary is shown.

*[Section 75U inserted by No. 25 of 2007 s. 71; amended by No. 47 of 2011 s. 27.]*

#### **Division 4 — General**

*[Heading inserted by No. 25 of 2007 s. 71.]*

#### **75V. Treasurer may give directions**

- (1) The Treasurer may give directions in writing to the Board requiring it to take any step that the Treasurer considers necessary or convenient for the purpose of giving effect to this Part.
- (2) The Board must comply with a direction given to it under subsection (1).
- (3) This section applies despite the *Statutory Corporations (Liability of Directors) Act 1996* section 6(a) and a direction given under this section is not unlawful for the purposes of Part 3 Division 4 of that Act.
- (4) Section 77 applies to a direction given under this section.

*[Section 75V inserted by No. 25 of 2007 s. 71.]*

**75W. Power to remedy insufficiency**

- (1) If the Treasurer is satisfied that the assets allocated to the West State Fund by operation of this Part were not, at the separation time, sufficient or appropriate to enable TrustCo to meet its obligations as the responsible entity, the Treasurer may take any action the Treasurer considers appropriate to remedy the insufficiency or inappropriateness.
- (2) Without limiting the action that may be taken under subsection (1), the Treasurer may direct the Board, under section 75V, to —
  - (a) allocate assets in the statutory fund to the West State Fund referred to in section 14(3)(b); or
  - (b) pay an amount from the statutory fund to a person.
- (3) This section expires when section 54 expires.

*[Section 75W inserted by No. 25 of 2007 s. 71.]*

**75X. General powers of Treasurer and Board**

- (1) The Treasurer and the Board may do, in the State or elsewhere, anything necessary or convenient to be done for the purpose of giving effect to this Part.
- (2) If there is a conflict or inconsistency between —
  - (a) a function of the Board under this Part; and
  - (b) a function of the Board under any other provision of this Act other than a provision in Part 4,

the function under this Part prevails.

*[Section 75X inserted by No. 25 of 2007 s. 71.]*

**75Y. No fees payable by West State members**

No fee or charge is payable by a West State member in relation to anything —

- (a) that occurs by operation of this Part; or

- (b) done —
- (i) under this Part; or
  - (ii) to give effect to this Part; or
  - (iii) for a purpose connected with, or arising out of, giving effect to this Part.

*[Section 75Y inserted by No. 25 of 2007 s. 71.]*

[76. *Has not come into operation*<sup>6</sup>.]

## **Part 5 — General**

*[Heading inserted by No. 25 of 2007 s. 16.]*

### **77. Supplementary provision about Ministerial directions**

(1) In this section —

***direction*** means a direction given to the Board under a provision of this Act that provides for this section to apply to a direction given under that provision;

***Minister***, in relation to a direction, means the Minister who gave the direction.

(2) Subject to this section, a direction becomes effective on the expiry of 7 days after the Board receives it or of such longer period as the Minister may, at the Board's request, determine.

(3) If the Board asks the Minister to extend the 7 day period under subsection (2), the Minister must decide whether or not to agree to the request and notify the Board of that decision before the 7 day period has expired.

(4) If a direction is the subject of a notice under the *Statutory Corporations (Liability of Directors) Act 1996* section 17, it does not become effective before it is confirmed under that section or the expiry of any extension of time notified under subsection (2).

(5) Despite the *Statutory Corporations (Liability of Directors) Act 1996* section 17(4), the Minister may, when confirming a direction under that section, extend the time for the direction to become effective and is to notify the Board of the extension.

(6) The Minister must cause a copy of a direction to be laid before each House of Parliament or dealt with under section 78 —

(a) within 14 days after the direction is given; or

(b) if the direction is the subject of a notice under the *Statutory Corporations (Liability of Directors) Act 1996*

section 17, within 14 days after it is confirmed under that section.

- (7) The text of a direction is to be included in the annual report submitted by the accountable authority of the Board under the *Financial Management Act 2006* Part 5.

*[Section 77 inserted by No. 25 of 2007 s. 16.]*

**78. Supplementary provision about laying documents before Parliament**

- (1) If a provision of this Act requires a person to cause a document to be laid before each House of Parliament or dealt with under this section within a period and —
- (a) at the commencement of the period, a House of Parliament is not sitting; and
  - (b) the person is of the opinion that the House will not sit during that period,

the person must transmit a copy of the document to the Clerk of that House.

- (2) A copy of a document transmitted to the Clerk of a House is to be regarded as having been laid before that House.
- (3) The laying of a copy of a document that is to be 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.

*[Section 78 inserted by No. 25 of 2007 s. 16.]*

**79. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act or the *State Superannuation (Transitional and Consequential Provisions) Act 2000* section 26 to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

- (2) 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*.
- (3) Regulations of the kind referred to in subsection (2) 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.

*[Section 79 inserted by No. 25 of 2007 s. 16.]*



## **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.

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**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; or
  - (b) resigns by notice to the Minister; or
  - (c) is an insolvent under administration as defined in the Corporations Act; 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; or
  - (b) has misbehaved; or
  - (c) is incompetent; or
  - (d) has contravened clause 10 or 11 of Schedule 2; or
  - (e) is suffering from mental or physical incapacity impairing the performance of his or her functions under Part 3; or
  - (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.

- (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; No. 25 of 2007 s. 6(6), 17 and 19(2).]*

**7. Remuneration and allowances**

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

*[Clause 7 amended by No. 39 of 2010 s. 89.]*

## **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 Part 3.

*[Clause 1 amended by No. No. 25 of 2007 s. 6(7).]*

**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; or
- (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.

*[Clause 3 amended by No. 25 of 2007 s. 19(2).]*

**4. Voting**

At a Board meeting —

- (a) each director has one vote; and
- (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.

*[Clause 4 amended by No. 25 of 2007 s. 19(1).]*

**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.

**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; or
  - (b) has given advice for remuneration in relation to the matter to the Board; 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; or
  - (b) a person who works for an Employer; or

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- (c) an Employer or a member of the board or other body responsible for the control or direction of an Employer; or
  - (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) 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; No. 25 of 2007 s. 18 and 19(2).]*

**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; or
  - (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.

*[Clause 10 amended by No. 25 of 2007 s. 19(2).]*

**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 Part 5 of the *Financial Management Act 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.]*

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## Notes

- <sup>1</sup> This is a compilation of the *State Superannuation Act 2000* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. 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)			
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4 and 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>State Superannuation Amendment Act 2007</i> Pt. 1, 2 and 5 (other than Div. 3)	25 of 2007	16 Oct 2007	Pt. 1: 16 Oct 2007 (see s. 2(1)(a)); Pt. 2: 6 Dec 2007 (see s. 2(1)(b))

Short title	Number and year	Assent	Commencement
Subdiv. 2)			and <i>Gazette</i> 5 Dec 2007 p. 5973); Pt. 5 Div. 1 and 2 repealed by No. 25 of 2007 s. 2(8)(a); Pt. 5 Div. 3 Subdiv. 1: 6 Dec 2007 (see s. 2(1)(e) and <i>Gazette</i> 5 Dec 2007 p. 5973)
<i>Public Sector Reform Act 2010</i> s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
<i>Statutes (Repeals and Minor Amendments) Act 2011</i> s. 27	47 of 2011	25 Oct 2011	26 Oct 2011 (see s. 2(b))

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>State Superannuation Amendment Act 2007</i> Pt. 3, 4 and 5 Div. 3 Subdiv. 2 <sup>6</sup>	25 of 2007 (as amended by No. 35 of 2011 s. 4)	16 Oct 2007	Pt. 3: operative on publication of an order under the <i>State Superannuation Act 2000</i> s. 56 (“transfer time”) (see s. 2(1)(c)); Pt. 4: to be proclaimed (see s. 2(1)(d)); Pt. 5 Div. 3 Subdiv. 2: operative on publication of an order under the <i>State Superannuation Act 2000</i> s. 75K (“separation time”) (see s. 2(8)(b))
<i>State Superannuation Amendment Act 2011</i> s. 3, Pt. 2-5 <sup>7</sup>	35 of 2011	12 Sep 2011	30 Mar 2012 (see s. 2(b) and <i>Gazette</i> 16 Mar 2012 p. 1245)

<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.

<sup>6</sup> On the date as at which this compilation was prepared, the *State Superannuation Amendment Act 2007* Pt. 3, 4 and 5 Div. 3 Subdiv. 2 had not come into operation. They read as follows:

“

**Part 3 — Amendments at transfer time**

**20. Section 3 amended**

Section 3(1) is amended as follows:

- (a) in the definition of “Board” by deleting “Government Employees” and inserting instead —

“ State ”;

(b) by deleting the definition of “GES Act”.

**21. Part 2 inserted**

After section 4 the following Part is inserted —

“

**Part 2 — Employer contribution obligation**

**4A. Terms used in this Part**

(1) In this Part —

*chosen fund* means a fund chosen by an employee in accordance with the SGA Act Part 3A Division 4;

*employee* has the meaning given in the SGA Act section 12;

*fund* has the meaning given in the SGA Act section 32E;

*individual superannuation guarantee shortfall* has the meaning given in the SGA Act section 19;

*prescribed fund*, in relation to an employee, means the fund prescribed by the regulations for that employee;

*SGA Act* means the *Superannuation Guarantee (Administration) Act 1992* (Commonwealth);

*superannuation guarantee charge* means the charge imposed by the *Superannuation Guarantee Charge Act 1992* (Commonwealth).

(2) For the purposes of this Part an employee is to be regarded as an employee of the person or body prescribed by the regulations for that employee.

**4B. Employers to make contributions**

(1) An Employer must make contributions to the prescribed fund for each of its employees such that the Employer will avoid incurring an individual superannuation guarantee shortfall for the employee.

(2) If an Employer becomes liable to pay the superannuation guarantee charge as a result of incurring an individual superannuation guarantee shortfall for an employee for a period, the Employer’s obligation under subsection (1) to contribute for that employee for that period ceases.

(3) This section does not apply in relation to an employee who is in a class of employees prescribed by the regulations.

**4C. Regulations may require extra contributions**

Regulations made under section 79 may require an Employer to make contributions to a fund in addition to any contributions the

Employer is required to make under section 4B or any other written law.

**4D. No contributions to other funds**

An Employer must not make contributions for an employee to a fund other than the prescribed fund unless the Treasurer has approved the making of those contributions.

”.

**22. Section 4E amended**

(1) Section 4E(1) is amended as follows:

- (a) by deleting “the Schedules —” and inserting instead —  
“ Schedules 1 and 2 — ”;
- (b) in the definition of “Fund” by deleting “Government Employees” and inserting instead —  
“ State ”;
- (c) in the definition of “scheme” by deleting “or established under this Part”;
- (d) by deleting the definition of “subsidiary”.

(2) Section 4E(2) is repealed.

**23. Division heading amended**

The heading to Part 3 Division 2 is amended by deleting “Government Employees” and inserting instead —

“ **State** ”.

**24. Section 5 amended**

(1) Section 5(1) is repealed and the following subsection is inserted instead —

“

(1) There is a body called the State Superannuation Board.

”.

(2) Section 5(3) is repealed and the following subsection is inserted instead —

“

(3) The Board is a continuation of, and the same legal entity as, the body that was, before the transfer time, called the Government Employees Superannuation Board.

”.

Note: The heading to section 5 will be altered by deleting “Government Employees” and inserting instead “**State**”.



**25. Section 6 amended**

(1) Section 6(1) is amended as follows:

(a) after paragraph (c) by inserting —

“

(ca) with the approval of the Treasurer, administer any other superannuation scheme established by or under a written law; and

”.

(b) by deleting paragraph (e) and “and” after it and inserting instead —

“

(e) facilitate the provision of services to members of superannuation schemes administered by the Board and to Employers; and

”.

(2) Section 6(3) is amended by inserting after “trading names” —

“

, being names that are not, and do not include, the term “GESB”

”.

**26. Section 7 amended**

(1) Section 7(2)(c), (ca), (d), (e) and (f) and “and” after each of them are deleted.

(2) After section 7(3) the following subsection is inserted —

“

(4) Without limiting subsection (1) the Board may charge a fee for administering a superannuation scheme of a kind referred to in section 6(1)(ca).

”.

**27. Sections 7A and 7B repealed**

Sections 7A and 7B are repealed.

**28. Section 8 amended**

Section 8(1) is repealed and the following subsections are inserted instead —

“

(1) The Board comprises the prescribed number of directors —

- (a) of whom one is to be appointed by the Governor as chairman on the nomination of the Treasurer; and
  - (b) of the others of whom —
    - (i) half are to be appointed by the Governor as Employer directors; and
    - (ii) half are to be elected or appointed in accordance with the regulations as Member directors.
- (1a) The number prescribed for the purposes of subsection (1) must be an odd number not exceeding 7.

”.

**29. Section 11 replaced**

Section 11 is repealed and the following section is inserted instead —

“

**11. Use of government staff and facilities**

- (1) The Board may by arrangement with the relevant employer make use, either full-time or part-time, of the services of any officer or employee —
  - (a) in the Public Service; or
  - (b) in a State agency; or
  - (c) otherwise in the service of the State.
- (2) The Board may by arrangement with —
  - (a) a department of the Public Service; or
  - (b) a State agency,make use of any facilities of the department or agency.
- (3) An arrangement under subsection (1) or (2) is to be made on terms, including as to payment, agreed to by the parties.

”.

**30. Section 12 amended**

Section 12(1) is amended by deleting “section 23” and inserting instead —

“ section 18(4) ”.

**31. Division heading amended**

The heading to Part 3 Division 3 is amended by deleting “Government Employees” and inserting instead —

“ **State** ”.

**32. Section 14 amended**

- (1) Section 14(1) is amended by deleting “Government Employees” and inserting instead —  
“ State ”.
- (2) Section 14(2) is repealed and the following subsection is inserted instead —

“

- (2) The State Superannuation Fund is a continuation of, and the same fund as, the fund that was, before the transfer time, called the Government Employees Superannuation Fund.

”.

Note: The heading to section 14 will be deleted and the following heading will be inserted instead “**State Superannuation Fund**”.

**33. Section 15 amended**

Section 15(2)(ba) and “and” after it are deleted.

**34. Section 18 amended**

- (1) Section 18(3) is amended by deleting from “an investment,” to the end of the subsection and inserting instead —

“

an investment; and  
(c) mix investments with investments of any other person, as if it were dealing with its own property as it considers appropriate.

”.

- (2) After section 18(3) the following subsection is inserted —

“

- (4) Subject to the Treasurer’s guidelines the Board may delegate any or all of its functions under this section to a person approved by the Treasurer.

”.

**35. Section 23 repealed**

Section 23 is repealed.

**36. Section 28 replaced**

Section 28 is repealed and the following section is inserted in Part 3 Division 3 —

“

**28. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of agencies apply to and in respect of the Board and its operations.

”.

**37. Section 30 repealed**

Section 30 is repealed.

**38. Section 33 amended**

Section 33(2) is amended as follows:

- (a) in paragraph (b) by deleting “the provision by the Board of, or” and “, products and”;
- (b) in paragraph (d) by inserting after “investments” —  
“ , and the delegation of functions, ”;
- (c) in paragraph (e) by deleting “sections 18, 23, 24 and 38(5);” and inserting instead —  
“ sections 18 and 24; ”;
- (d) by deleting paragraphs (h) and (i) and “and” after each of them.

**39. Sections 33A and 33B repealed**

Sections 33A and 33B are repealed.

**40. Section 36 amended**

- (1) Section 36(1)(a) and (3) are amended by deleting “or a subsidiary”.
- (2) Section 36(2)(b) is amended by inserting after “facilities” —  
“ (including any being used in accordance with section 11) ”.
- (3) Section 36(4) is amended in the definition of “beneficiary” by deleting paragraph (c) and inserting instead —

“

- (c) any other person to whom a benefit has been or is being paid, or is or may become payable;

”.

**41. Section 37 repealed**

Section 37 is repealed.

**42. Section 38 amended**

(1) Section 38(2) is amended as follows:

- (a) by deleting paragraph (a) and “and” after it;
- (b) by deleting paragraph (j) and “and” after it and inserting instead —

“

- (j) facilitation by the Board of the provision of services under section 6(1)(e); and

”;

- (c) after paragraph (l) by deleting the full stop and inserting instead —

“

; and

- (m) the discontinuance of a scheme.

”.

(2) Section 38(5) is repealed.

(3) Section 38(8) is repealed and the following subsections are inserted instead —

“

(7) Regulations cannot be made after the transfer time if they would permit a person to become —

- (a) a member of the West State scheme or the scheme continued by section 29(1)(b); or
- (b) a contributor or subscriber to a scheme continued by section 29(1)(c) or (d).

(7a) Subsection (7) does not affect any regulation, or provision of the *Superannuation and Family Benefits Act 1938* continued under the *State Superannuation (Transitional and Consequential Provisions) Act 2000* section 26(1)(c), that is in force immediately before the transfer time.

(8) Regulations providing for the discontinuance of a scheme cannot be made unless —

- (a) there are no members, contributors or subscribers left in the scheme; or
- (b) the regulations provide for the transfer of members’, contributors’ or subscribers’ benefits in the scheme to another superannuation fund or scheme in a manner that, if each scheme affected by the regulations were a

regulated superannuation fund, would be permitted under the SIS Act.

”

**43. Section 76 inserted**

Before section 77 the following section is inserted in Part 5 —

“

**76. Restriction on 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 Treasurer has approved the establishment of that scheme or fund.
- (2) An approval given by the Treasurer under this section must be in writing and may relate to —
  - (a) a particular Employer or class of Employers; or
  - (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.
- (3) This section applies despite any other written law.

”

**44. Section 79 amended**

After section 79(3) the following subsection is inserted —

“

- (4) If the Minister responsible for the administration of this Act is not the Treasurer, regulations cannot be made for the purposes of this Act unless they have been approved by the Treasurer.

”

**45. Section 80 inserted**

After section 79 the following section is inserted —

“

**80. Transitional and saving provisions**

Schedule 3 sets out transitional and savings provisions.

”

**46. Schedule 1 amended**

- (1) The amendments in this section are to Schedule 1.

- (2) The Schedule heading is amended by deleting “Government Employees” and inserting instead —  
“ **State** ”.
- (3) Clauses 1(2), 2(2) and 3 are repealed.
- (4) Clause 4(1) is amended by deleting “section 8(1)(b)” and inserting instead —  
“ section 8(1)(b)(i) ”.
- (5) Clause 4(2) is amended by deleting “under section 8(1)(c)” and inserting instead —  
“ or appointed under section 8(1)(b)(ii) ”.
- (6) Clause 6(1) is amended by deleting “A casual vacancy in the office of a director occurs if the director —” and inserting instead —  
“ A person ceases to be a director if the person — ”.
- (7) Clause 6(2)(c) and “or” after it are deleted and the following is inserted instead —  
“  
(c) is incompetent or is otherwise not a fit and proper person to be a director; or  
”.

- (8) Clause 6(3) and (4) are repealed.  
Note: The heading to clause 6 will be deleted and the following heading will be inserted instead “**Vacation of office by director**”.

**47. Schedule 2 amended**

- (1) The amendments in this section are to Schedule 2.
- (2) Clause 2 is amended by deleting “5 directors.” and inserting instead —  
“ two-thirds of the total number of directors. ”.
- (3) Clause 4(c) is amended by deleting “5 or more directors” and inserting instead —  
“ at least the number of directors required to form a quorum ”.

**48. Schedule 3 replaced**

Schedule 3 is repealed and the following Schedule is inserted instead —

“

### Schedule 3 — Transitional and saving provisions

[s. 80]

#### Division 1 — Provisions for *State Superannuation Amendment Act 2007*

##### 1. References to Board and Fund

- (1) A reference in a written law or other document to the Government Employees Superannuation Board may be read as if it had been amended to be a reference to the State Superannuation Board.
- (2) A reference in a written law or other document to the Government Employees Superannuation Fund may be read as if it had been amended to be a reference to the Fund as defined in the *State Superannuation Act 2000* section 4E.
- (3) This clause applies to the extent that a contrary intention does not appear.

##### 2. Transitional provision in relation to Minister

After the transfer time anything that was done or omitted to be done by, to, or in relation to, the Minister before the transfer time and is of any ongoing effect, has the same effect after that time as if it had been done or was omitted to be done by, to, or in relation to, the Treasurer.

”.

##### 49. Various references to Minister amended

- (1) The provisions listed in the Table to this subsection are amended by deleting “Minister” in each place where it occurs and inserting instead —  
“ Treasurer ”.

##### Table

s. 3(1) (defn. of “actuary”)	Sch. 1 cl. 2(1)
s. 34(1)	Sch. 1 cl. 6(1), (2)
s. 35(1) and (2)	Sch. 1 cl. 7 (first place only)
s. 36(1), (2), (3) and (4)	Sch. 2 cl. 11(2)
(defn. of “information”)	Sch. 2 cl. 12(3)
s. 77(2), (3), (5) and (6)	
Sch. 1 cl. 1(1)	

- (2) Section 6(1)(d) is amended by deleting “Minister and the”.
- (3) Section 36(1) is amended by deleting “Minister’s” and inserting instead —



“ Treasurer’s ”.

- (4) Section 77(1) is amended as follows:
- (a) after the definition of “direction” by deleting the semicolon and inserting instead a full stop;
  - (b) by deleting the definition of “Minister”.

Note: The heading to sections 35 and 36 will be altered by deleting “Minister” and inserting instead “Treasurer”.

#### **Part 4 — Amendments to introduce choice**

##### **50. Section 4B amended**

- (1) Section 4B(1) is amended by deleting “the prescribed fund” and inserting instead —

“ a fund ”.

- (2) After section 4B(1) the following subsections are inserted —

“

- (1a) The contributions required by subsection (1) to be made for an employee must be made to —
  - (a) a chosen fund for the employee; or
  - (b) if at the time the contribution is made there is no chosen fund for the employee, the prescribed fund.
- (1b) Except as prescribed in the regulations, an Employer must comply with the requirements of the SGA Act Part 3A Division 6, even if it is not required by that Act to do so, and in doing so must specify the prescribed fund as the fund to which the Employer will contribute if the employee does not choose a different fund.

”.

##### **51. Section 4D repealed**

Section 4D is repealed.

#### **Part 5 — Amendments relating to West State scheme**

##### **Division 3 — West State separated into sub-fund**

###### **Subdivision 2 — Amendments at separation time**

##### **72. Section 4E amended**

Section 4E(1) is amended as follows:

- (a) by deleting the definition of “Fund” and inserting instead —

“

**Fund** means —

- (a) unless paragraph (b) applies — the sub-fund of the State Superannuation Fund referred to in section 14(3)(a) and called the Defined Benefit Fund; or
- (b) if the West State scheme has been discontinued — the State Superannuation Fund under section 14;

”;

- (b) in the definition of “scheme” by deleting “section 29;” and inserting instead —

“ section 29(1)(b), (c) or (d); ”.

**73. Section 22 repealed**

Section 22 is repealed.

**74. Section 33 amended**

Section 33(2)(g) and “and” after it are deleted.

**75. Section 38 amended**

- (1) Section 38(3)(b)(i) is amended by deleting “the West State scheme or”.
- (2) Section 38(7)(a) is amended by deleting “the West State scheme or”.

**76. Section 51 amended**

Section 51(1) and (2) are amended by inserting after “section 43(3)(c)” —

“ or 75K(5) ”.

”.

<sup>7</sup> On the date as at which this compilation was prepared, the *State Superannuation Amendment Act 2011* s. 3, Pt. 2-5 had not come into operation. They read as follows:

**3. Act amended**

This Act, other than Part 2 Division 1, amends the *State Superannuation Act 2000*.

**Part 2 — State Superannuation Amendment Act 2007 repealed and related amendments**

**Division 1 — State Superannuation Amendment Act 2007 repealed**

**4. Act repealed**

The *State Superannuation Amendment Act 2007* is repealed.

**Division 2 — Provisions related to the repeal of the State Superannuation Amendment Act 2007**

**5. Long title replaced**

Delete the long title and insert:

**An Act to provide for superannuation contributions and superannuation schemes for and in respect of people working or formerly working in the public sector and for related purposes.**

**6. Section 3 amended**

(1) In section 3(1) delete the definitions of:

*regulated superannuation fund*

*SIS Act*

*transfer time*

*West State Scheme*

*working day*

(2) In section 3(1) insert in alphabetical order:

*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;

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

*Member* means a member of a scheme;

*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).

- (3) After section 3(2) insert:
- (3) Part 1.2 Division 6 of the Corporations Act applies for the purpose of determining whether a body is a subsidiary of the Board.

**7. Part 3 heading deleted**

Delete the heading to Part 3.

**8. Part 3 Division 1 deleted**

Delete Part 3 Division 1.

**9. Part 3 Division 2 heading deleted and Part 2 heading inserted**

Delete the heading to Part 3 Division 2 and insert:

**Part 2 — Government Employees Superannuation Board**

**10. Section 6 amended**

- (1) Delete section 6(1)(a).
- (2) In section 6(1)(e)(i) delete “superannuation schemes administered by the Board under this Part or any other written law; and” and insert:

the schemes; and

**11. Section 7B amended**

- (1) In section 7B(2)(b) delete “Part; and” and insert:

Act; and

- (2) In section 7B(2)(c) delete “Part.” and insert:

Act.

- (3) In section 7B(4) delete “Part” and insert:

Act

**12. Section 9 amended**

- (1) In section 9(1) delete “Part.” and insert:

Act.

- (2) In section 9(2) delete “Part” and insert:

Act

**13. Part 3 Division 3 heading deleted and Part 3 heading inserted**

Delete the heading to Part 3 Division 3 and insert:

**Part 3 — Government Employees Superannuation  
Fund**

**14. Section 14 amended**

Delete section 14(3) and (4).

**15. Section 15 amended**

In section 15(1)(a) delete “Part; and” and insert:

Act; and

**16. Part 3 Division 4 heading deleted and Part 4 heading inserted**

Delete the heading to Part 3 Division 4 and insert:

**Part 4 — Superannuation Schemes**

**17. Section 29 amended**

- (1) In section 29(1) delete “Part —” and insert:

Act —

- (2) Delete section 29(2).

**18. Section 30 amended**

In section 30(2)(a) delete “Part;” and insert:

Act; or

**19. Part 3 Division 5 heading deleted and Part 5 heading inserted**

Delete the heading to Part 3 Division 5 and insert:

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

**20. Section 31 amended**

In section 31(1)(b) delete “Part” and insert:

Act

**21. Part 3 Division 6 heading deleted and Part 6 heading inserted**

Delete the heading to Part 3 Division 6 and insert:

**Part 6 — Miscellaneous**

**22. Section 33B amended**

- (1) In section 33B(3) delete “section 78 —” and insert:

section 36A —

- (2) At the end of section 33B insert:

- (5) The text of a direction referred to in subsection (3) is to be included in the annual report submitted by the accountable

authority of the Board under the *Financial Management Act 2006* Part 5.

**23. Section 34 amended**

In section 34(1) delete “Part” and insert:

Act

**24. Section 35 amended**

Delete section 35(3) and insert:

- (3) Subject to subsections (5) and (6), a direction becomes effective on the expiry of 7 days after the Board receives it or of such longer period as the Treasurer may, at the Board’s request, determine.
- (4) If the Board asks the Treasurer to extend the 7 day period under subsection (3), the Treasurer must decide whether or not to agree to the request and notify the Board of that decision before the 7 day period has expired.
- (5) If a direction is the subject of a notice under the *Statutory Corporations (Liability of Directors) Act 1996* section 17, it does not become effective before it is confirmed under that section or the expiry of any extension of time notified under subsection (2).
- (6) Despite the *Statutory Corporations (Liability of Directors) Act 1996* section 17(4), the Treasurer may, when confirming a direction under that section, extend the time for the direction to become effective and is to notify the Board of the extension.
- (7) The Treasurer must cause a copy of a direction to be laid before each House of Parliament or dealt with under section 36A —
  - (a) within 14 days after the direction is given; or
  - (b) if the direction is the subject of a notice under the *Statutory Corporations (Liability of Directors) Act 1996* section 17, within 14 days after it is confirmed under that section.
- (8) The text of a direction is to be included in the annual report submitted by the accountable authority of the Board under the *Financial Management Act 2006* Part 5.

**25. Section 36A inserted**

After section 35 insert:

**36A. Supplementary provision about laying documents before Parliament**

- (1) If a provision of this Act requires a person to cause a document to be laid before each House of Parliament or dealt with under this section within a period and —
  - (a) at the commencement of the period, a House of Parliament is not sitting; and
  - (b) the person is of the opinion that the House will not sit during that period,the person must transmit a copy of the document 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.

**26. Section 38 amended**

- (1) Before section 38(2) insert:
  - (1) Subject to subsections (3) to (8), the Governor may make regulations prescribing all matters that are required or permitted by this Act or the *State Superannuation (Transitional and Consequential Provisions) Act 2000* section 26 to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) In section 38(2):
  - (a) delete “section 79 but subject to this section,” and insert:  
  
subsection (1),
  - (b) delete “under section 79” and insert:  
  
under subsection (1)



- (3) Delete section 38(3) and insert:
- (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) After section 38(4) insert:
- (5A) Regulations cannot be made under subsection (1) in relation to the superannuation schemes continued by section 29(1)(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(1)(a) or (b), the multiplying factor for any relevant benefit; or
    - (ii) in the case of the scheme continued by section 29(1)(c), the pension value factor for any Member of that scheme,to less than it was immediately before 17 February 2001; 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.
- (5B) In subsection (5A) and in this subsection —
- 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 17 February 2001, calculated as a multiple of a Member's salary.
- (5C) Subsections (3) and (5A) do not apply in respect of regulations that reduce or provide for the reduction of a Member's benefit if —
- (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.
- (5D) In subsection (5C) —  
**flag lifting agreement** has the meaning given in the *Family Law Act 1975* (Commonwealth) section 90MD;  
**splitting order** has the meaning given in the *Family Law Act 1975* (Commonwealth) section 90MD;  
**superannuation agreement** has the meaning given in the *Family Law Act 1975* (Commonwealth) section 90MD.
- (5E) Regulations under subsection (1) may permit the Board to pay a pension or other benefit under the scheme continued by section 29(1)(c) for the purpose of —
- (a) giving effect to a payment split; or
  - (b) satisfying the requirements of the *Family Law (Superannuation) Regulations 2001* (Commonwealth) Division 2.2 in relation to an entitlement in respect of a superannuation interest in the scheme.
- (5F) In subsection (5E) —  
**payment split** has the meaning given in the *Family Law Act 1975* (Commonwealth) section 90MD;  
**superannuation interest** has the meaning given in the *Family Law Act 1975* (Commonwealth) section 90MD.
- (5) In section 38(5):
- (a) delete "Regulations that —" and insert:

Regulations cannot be made under subsection (1), unless they have been approved by the Treasurer, if they —

- (b) in paragraph (a) delete “Part to the extent that” and insert:  
  
Act and
- (c) in paragraph (b) delete “subsection (2)(j),” and insert:  
  
subsection (2)(j).
- (d) delete “cannot be made unless they have been approved by the Treasurer.”.
- (6) Delete section 38(6) and insert:  
  
(6) Regulations that prescribe an authority, body or person for the purposes of the definition of *Employer* in section 3 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.
- (7) In section 38(8) delete “section 37 or”.
- (8) Delete section 38(9) and (10).
- 27. **Section 40 amended**  
In section 40 delete “this Part and the regulations referred to in section 38” and insert:  
  
this Act and the regulations made or applying under it
- 28. **Parts 4, 4A and 5 deleted**  
Delete Parts 4, 4A and 5.
- 29. **Schedule 1 amended**  
In Schedule 1 clause 6(2)(e) delete “Part 3; or” and insert:

this Act; or

**30. Schedule 2 amended**

In Schedule 2 clause 1 delete “Part 3.” and insert:

this Act.

**Part 3 — Amendments relating to the Treasurer**

**31. Various references to “Minister” amended**

In the provisions listed in the Table delete “Minister” (each occurrence) and insert:

Treasurer

**Table**

s. 3 def. of <i>actuary</i>	s. 7A(1) and (3)
s. 7B(5)	s. 8(1)(a)
s. 33B(1) and (3)	s. 34(1)
s. 35(1) and (2)	s. 36(1), (2), (3) and (4) def. of <i>information</i>
Sch. 1 cl. 1(1)	Sch. 1 cl. 1(2)
Sch. 1 cl. 2(1)	Sch. 1 cl. 2(2)
Sch. 1 cl. 6(1)(b) and (d)	Sch. 1 cl. 6(2)
Sch. 1 cl. 6(3)	Sch. 1 cl. 6(4)
Sch. 2 cl. 11(2)	Sch. 2 cl. 12(3)
Sch. 3 cl. 2(2)	Sch. 3 cl. 3(3)

Note: The heading to amended section 35 is to read:

**Treasurer may give directions to Board**

**32. Section 6 amended**

In section 6(1)(d) delete “the Minister and”.

**33. Section 7A amended**

Delete section 7A(2).

**34. Section 30 amended**

- (1) In section 30(1) delete “Minister and the Treasurer have” and insert:

Treasurer has

- (2) In section 30(2) delete “Minister and the Treasurer have” and insert:

Treasurer has

- (3) In section 30(3) delete “Minister and the”.

**35. Section 33B amended**

- (1) In section 33B(2)(d) delete “Board, the Minister” and insert:

Board

- (2) Delete section 33B(4).

**36. Section 36 amended**

In section 36(1) delete “Minister’s” and insert:

Treasurer’s

Note: The heading to amended section 36 is to read:

**Treasurer to have access to information**

**37. Section 37 deleted**

Delete section 37.

**38. Schedule 1 amended**

In Schedule 1 clause 7 delete “Minister” and insert:

Treasurer

**39. Schedule 3 amended**

In Schedule 3 clause 1 in the definition of *prior approval* delete “Minister given with the Treasurer’s concurrence.” and insert:

Treasurer.

**Part 4 — Amendments relating to administration and funding**

**40. Section 6 amended**

In section 6(1):

- (a) in paragraph (c) delete “schemes; and” and insert:

schemes or, in accordance with any relevant Treasurer’s guidelines, select and appoint external administrators of the schemes and monitor their administration; and

- (b) after paragraph (d) insert:

- (ea) so far as practicable, provide information to Members regarding their rights and entitlements under the schemes; and

- (c) in paragraph (f) after “under” insert:

this Act or

**41. Section 7 amended**

In section 7(2):

- (a) in paragraph (b) before “enter” insert:

in accordance with any relevant Treasurer’s guidelines,

- (b) in paragraph (c) before “enter” insert:

in accordance with any relevant Treasurer’s guidelines,

- (c) in paragraph (ca) delete “subsidiary for the purpose of performing the function referred to in section 6(1)(e); and” and insert:

subsidiary; and

**42. Section 11 amended**

- (1) In section 11(2) delete “Board.” and insert:

Board on the advice of the Public Sector Commissioner.

- (2) After section 11(2) insert:

- (3) If the Board appoints an external administrator to conduct the administration of a scheme or schemes and in connection with that appointment the external administrator makes an offer of employment to a person appointed or employed by the Board under subsection (1) or (2) (a **Board officer**), the Board may enter into an agreement with the Board officer on terms approved by the Public Sector Commissioner providing for —

- (a) in the case of a Board officer who is a permanent public service officer appointed or employed under subsection (1) —
- (i) the right of the Board officer, during a stated period, to resume appointment or employment under subsection (1); and
  - (ii) the making by the Board of a payment to the Board officer if the offer of employment is accepted and the right of election under subparagraph (i) expires without being exercised;

and

- (b) in the case of any other Board officer, the making by the Board of a payment to the Board officer if the offer of employment is accepted.

**43. Section 18 amended**

- (1) Delete section 18(2).
- (2) In section 18(3) —
  - (a) in paragraph (b) delete “investment,” and insert:  
  
investment.
  - (b) delete “as it considers appropriate.”

**44. Section 19 amended**

- (1) In section 19(1) delete “and give effect to a broad investment strategy for the investment of” and insert:  
  
a strategy for
- (2) After section 19(1) insert:  
  
(2A) The Board’s investment strategy for the Fund is to be consistent with any relevant Treasurer’s guidelines.
- (3) In section 19(2) delete “and in making investment decisions the Board is to endeavour to optimize returns having” and insert:  
  
the Board is to have
- (4) In section 19(3):
  - (a) in paragraph (a) delete “broad”;
  - (b) delete “the Treasurer’s” and insert:  
  
any relevant Treasurer’s
- (5) After section 19(3) insert:  
  
(4) In exercising its powers under section 18 the Board is to —
  - (a) act in accordance with any relevant Treasurer’s guidelines; and
  - (b) act so as to give effect to its investment strategy.



Note: The heading to amended section 19 is to read:

**Exercise of investment powers**

**45. Section 20A inserted**

After section 19 insert:

**20A. Reserves**

- (1) The Board may maintain reserves within the Fund.
- (2) The Board is to formulate a reserving strategy for the Fund.
- (3) The Board's reserving strategy for the Fund is to be consistent with —
  - (a) the Board's capacity to discharge the liabilities of the Fund, actual and contingent, as they fall due; and
  - (b) any relevant Treasurer's guidelines.
- (4) The Board is to review its reserving strategy from time to time in accordance with any relevant Treasurer's guidelines.
- (5) In exercising its power under subsection (1) the Board is to —
  - (a) act in accordance with any relevant Treasurer's guidelines; and
  - (b) act so as to give effect to the Fund reserving strategy.

**46. Section 22 replaced**

Delete section 22 and insert:

**22. Allocation of earnings and costs**

- (1) The Board is to allocate —
  - (a) earnings derived from the investment of the Fund; and
  - (b) the costs of managing and administering the Fund and the schemes,between the schemes and where appropriate between Members.
- (2) In allocating earnings and costs under subsection (1) the Board is to —
  - (a) ensure compliance with any relevant guidelines; and
  - (b) otherwise act in accordance with section 6(2).

**47. Section 23 amended**

In section 23(2) delete "the Treasurer's" and insert:

any relevant Treasurer's

**48. Section 24 amended**

In section 24(1)(c) delete "the Treasurer's" and insert:

any relevant Treasurer's

**49. Section 33 amended**

(1) In section 33(2):

(a) delete "may issue" and insert:

may, after consulting the Board, issue

(b) before paragraph (a) insert:

(aa) the exercise by the Board of its powers under section 6(1)(c) to select and appoint external administrators of the schemes and monitor their administration; and

(c) after paragraph (b) insert:

(ca) the exercise by the Board of its powers under section 7(2)(b) and (c); and

(d) in paragraph (d) delete "making of investments" and insert:

exercise of the Board's powers

(e) after paragraph (e) insert:

(fa) the formulation and review of an investment strategy under section 19; and

(f) after paragraph (f) insert:

(ga) the maintenance of reserves and the formulation and review of a reserving strategy under section 20A; and

(g) in paragraph (g) after “earnings” insert:

and costs of managing and administering the Fund and the schemes

(2) After section 33(3) insert:

(4A) Where guidelines are issued under subsection (2), the Treasurer is to —

- (a) publish notice of the guidelines in the *Gazette* within 21 days of the issue; and
- (b) make and, for so long as they remain current, keep the guidelines accessible on or through a website maintained by the Department.

(4B) In subsection (4A) —

**Department** means the department of the Public Service principally assisting in the administration of this Act.

## **Part 5 — Amendments to introduce choice**

### **50. Part 2A inserted**

After section 4 insert:

## **Part 2A — Employer contribution obligation**

### **4A. Terms used**

(1) In this Part —

**chosen fund** means a fund chosen by an employee in accordance with the SGA Act Part 3A Division 4;

**default fund** means —

- (a) in relation to an employee who is not an exempt employee, a fund prescribed by the regulations as the default fund for that employee; and
- (b) in relation to an exempt employee, a fund named by the Employer of that employee, with the approval of the Treasurer, as the default fund for that employee;

*employee* has the meaning given in the SGA Act section 12;  
*exempt employee* means an employee for whom an Employer, in accordance with section 30(1) or (2), makes or may make superannuation contributions to a fund that is not a scheme under this Act;

*fund* has the meaning given in the SGA Act section 32E;

*individual superannuation guarantee shortfall* has the meaning given in the SGA Act section 19;

*SGA Act* means the *Superannuation Guarantee (Administration) Act 1992* (Commonwealth);

*superannuation guarantee charge* means the charge imposed by the *Superannuation Guarantee Charge Act 1992* (Commonwealth).

- (2) For the purposes of this Part an employee is to be regarded as an employee of the person or body prescribed by the regulations for that employee.

**4B. Employers to make contributions**

- (1) An Employer must make superannuation contributions such that the Employer will avoid incurring an individual superannuation guarantee shortfall for any of its employees.
- (2) Where subsection (1) requires an Employer to make contributions for an employee, the Employer must pay the contributions to —
- (a) a chosen fund for the employee; or
  - (b) if at the time the contribution is paid there is no chosen fund for the employee, the default fund.
- (3) Except as prescribed in the regulations, an Employer must comply with the requirements of the SGA Act Part 3A Division 6, even if it is not required by that Act to do so.
- (4) If an Employer becomes liable to pay the superannuation guarantee charge as a result of incurring an individual superannuation guarantee shortfall for an employee for a period, the Employer has no obligation under subsection (1) to make contributions in respect of that employee for that period.
- (5) This section does not apply in relation to an employee who is in a class of employees prescribed by the regulations.

**4C. Regulations may require extra contributions**

- (1) Subject to subsection (2), the regulations may require an Employer to make superannuation contributions which exceed any contributions the Employer is required to make under section 4B or any other written law.

- (2) Regulations which require an Employer to make contributions to a fund must either —
- (a) specify the amount or rate of contributions to be made; or
  - (b) specify the way in which the amount or rate of contributions is to be determined, in which case the regulations must provide that the determination of the rate or amount of contributions is to be subject to the approval of the Treasurer.

**51. Section 6 amended**

After section 6(1)(a) insert:

- (ba) if so agreed with the Treasurer, provide a service of receiving superannuation contributions paid by Employers and —
  - (i) crediting them to the Fund; or
  - (ii) remitting them on behalf of the Employers to other funds,in accordance with Part 2A; and

**52. Section 15 amended**

After section 15(2)(a) insert:

- (aa) amounts transferred from the Fund to other superannuation funds; and

**53. Section 30 amended**

- (1) In section 30(2) delete “and only if the Minister and the Treasurer have” and insert:

the Treasurer has

- (2) After section 30(2) insert:

- (3A) An Employer may make superannuation contributions in accordance with section 4B(2) for persons who work for the Employer to a superannuation fund or scheme other than —
- (a) a scheme under this Act; or

- (b) a superannuation scheme or fund established in accordance with subsection (1); or
- (c) a superannuation scheme or fund established before 28 December 1989.