

Superannuation Legislation Amendment and Validation Bill 2006

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Western Australia

LEGISLATIVE ASSEMBLY

Superannuation Legislation Amendment and Validation Bill 2006

A Bill for

An Act to —

- **amend the *Parliamentary Superannuation Act 1970* and the *State Superannuation Act 2000*; and**
- **validate certain things done under the *State Superannuation Act 2000*, the *Government Employees Superannuation Act 1987* and the *Superannuation and Family Benefits Act 1938*.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Superannuation Legislation Amendment and Validation Act 2006*.

5 **2. Commencement**

This Act comes into operation on the day on which it receives the Royal Assent.

Part 2 — *Parliamentary Superannuation Act 1970* amended

3. The Act amended in this Part

5 The amendments in this Part are to the *Parliamentary Superannuation Act 1970**.

[* *Reprint 3 as at 4 April 2003.*]

4. Section 28 amended

(1) Section 28(3) is amended as follows:

10 (a) after paragraph (i) by inserting the following paragraph —

“

15 (ia) things that may be done to satisfy the requirements of Division 2.2 of the *Family Law (Superannuation) Regulations 2001* of the Commonwealth;

”;

(b) in paragraph (j) by deleting “(i)” and inserting instead —

“ (ia) ”.

20 (2) After section 28(4) the following subsections are inserted —

“

25 (5) Subsection (4) does not prevent the making of a determination that reduces or provides for the reduction of any benefits to which a member or former member is or will become entitled if —

(a) a superannuation agreement, flag lifting agreement or splitting order is in force in respect of the member or former member; and

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(b) the reduction does not reduce those benefits to less than the member's or former member's entitlement under the agreement or order.

5

(6) In subsection (5), “**flag lifting agreement**”, “**splitting order**” and “**superannuation agreement**” each have the meaning given to them in section 90MD of the *Family Law Act 1975* of the Commonwealth.

”.

Part 3 — State Superannuation Act 2000 amended

5. The Act amended in this Part

The amendments in this Part are to the *State Superannuation Act 2000**.

5 [* *Act No. 42 of 2000.*
For subsequent amendments see *Western Australian
Legislation Information Tables for 2005, Table 1, p. 431.*]

6. Section 3 amended

10 (1) Section 3(1) is amended by inserting after the definition of
“scheme” —

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

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

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

7. Section 6 amended

Section 6(1) is amended as follows:

25 (a) after each of paragraphs (a), (b), (c) and (d) by
inserting —
“ and ”;

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

“

(e) provide, or facilitate the provision of, products and services to —

(i) members of superannuation schemes administered by the Board under this Act or any other written law; and

(ii) Employers;

and

”.

8. Section 7 amended

Section 7(2) is amended as follows:

(a) after each of paragraphs (a), (b), (d) and (e) by inserting —

“ and ”;

(b) after paragraph (c) by inserting —

“

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

”.

9. Sections 7A and 7B inserted

After section 7 the following sections are inserted —

“

7A. Formation or acquisition of subsidiary

(1) The Board must obtain the approval of the Minister before it forms or acquires a subsidiary.

- 5
- (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.

7B. Control of subsidiary

- 10
- (1) In this section —
“Corporations Act” means the *Corporations Act 2001* of the Commonwealth.
 - (2) The Board must ensure that the constitution of every subsidiary of the Board that under a written law or the Corporations Act is required to have a constitution —
 - 15 (a) contains provisions to the effect of those required by Schedule 3; and
 - (b) is consistent with this Act; and
 - (c) is not amended in a way that makes it inconsistent with this Act.
 - (3) A director or a member of the staff of the Board may with the approval of the Board become a director of a company that is or is to be a subsidiary of the Board.
 - (4) The provisions of this Act prevail to the extent of any inconsistency with the constitution of any subsidiary of the Board.
 - 25 (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
30 subsidiary for the purposes of the Corporations Act.

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- 5 (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.

”.

10. Section 15 amended

- (1) Section 15(1)(b) is amended by deleting “in respect of Members”.
- 10 (2) Section 15(2) is amended as follows:
- (a) after paragraph (a) by inserting —
“ and ”;
- (b) before paragraph (c) by inserting —
“
- 15 (ba) expenditure relating to the establishment of a subsidiary under section 7(2)(ca); and

”.

11. Section 28 amended

- 20 (1) Section 28(2) is repealed and the following subsection is inserted instead —
“
- (2) A scheme, other than a scheme continued by section 29(b), (c) or (d), may provide for the spouses or former spouses of —
- 25 (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*,
- 30 to participate in the scheme.

”.

- (2) Section 28(3) is amended by inserting before the definition of “spouse” —

“

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

”.

12. Section 33 amended

Section 33(2) is amended as follows:

- 10 (a) after each of paragraphs (a) to (h) by inserting —
 “ and ”;
- (b) in paragraph (b) by deleting “other” and inserting
 instead —

“

15 , or the facilitation by the Board of the
 provision of,

”.

13. Section 36 amended

- (1) Section 36(1)(a) is amended by inserting after “Board” —
20 “ or a subsidiary ”.
- (2) Section 36(3) is amended by inserting after “Board” —
 “ or a subsidiary ”.

14. Section 38 amended

- (1) Section 38(2) is amended as follows:
25 (a) after each of paragraphs (a) to (j) by inserting —
 “ and ”;

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- (b) in paragraph (c) by deleting “to be made to” and inserting instead —
“ and transfers of money to ”;
- (c) in paragraph (j) by deleting “other” and inserting instead —
“ , or facilitation by the Board of the provision of, ”.
- (2) After section 38(4) the following subsections are inserted —
“
- (4a) Subsections (3) and (4) do not apply in respect of regulations that reduce or provide for the reduction of a Member’s benefit if —
- (a) a superannuation agreement, flag lifting agreement or splitting order is in force in respect of the Member; and
- (b) the reduction does not reduce the Member’s benefit to less than the Member’s entitlement under the agreement or order.
- (4b) In subsection (4a), “**flag lifting agreement**”, “**splitting order**” and “**superannuation agreement**” each have the meaning given to them in section 90MD of the *Family Law Act 1975* of the Commonwealth. ”.
- (3) Section 38(5)(b) is deleted and the following paragraph is inserted instead —
“
- (b) relate to a matter referred to in subsection (2)(j), ”.

15. **Section 40 inserted**

After section 39 the following section is inserted —

“

40. **Inconsistent written laws**

5

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

10

”.

16. **Schedule 3 inserted**

After Schedule 2 the following Schedule is inserted —

“

Schedule 3 — Provisions to be included in constitution of subsidiary

15

[s. 7B]

1. **Definition**

In this Schedule —

20

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

2. **Disposal of shares**

25

- (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.

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.

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(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.

5 (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.

4. Further shares

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

5. Alteration of constitution

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

6. Subsidiaries of subsidiary

15 (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.

20 (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.

”.

Part 4 — Validation provisions

17. Validation of certain payments

(1) In this section —

5 “**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,

15 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.

20 (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
25 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

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(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).

5
10 **18. Validation of contributions made for visiting medical practitioners**

(1) In this section —

15 **“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.

20 (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.

25 (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.

19. Validation of statutory membership of workers who ceased to be excluded

(1) A person who —

(a) when the *State Superannuation Regulations 2001* came into operation —

(i) was a worker; and

(ii) was excluded from becoming a statutory Member (as defined in those regulations) by the *State Superannuation Regulations 2001* regulation 51(2), (3) or (4);

and

(b) before the *State Superannuation Amendment Regulations 2006* came into operation, ceased to be so excluded,

is taken to have become a statutory Member when he or she ceased to be so excluded.

(2) Anything done or purported to have been done under the *State Superannuation Regulations 2001* before this Act came into operation in relation to a person to whom subsection (1) applies, is as valid as it would have been if the *State Superannuation Amendment Regulations 2006* had come into operation immediately after the *State Superannuation Regulations 2001* came into operation.

20. Validation of certain things done under the *Superannuation and Family Benefits Act 1938*

A thing done or purportedly done —

(a) under the *Superannuation and Family Benefits Act 1938* (whether as continued in force by the *State Superannuation (Transitional and Consequential Provisions) Act 2000* section 26 or not); and

s. 20

(b) before the *State Superannuation Amendment Regulations (No. 4) 2003* came into operation,

is, and is to be taken always to have been, as valid and effective as it would have been if the definition of “department” in the *Superannuation and Family Benefits Act 1938* section 6(1) had been amended on 1 January 1997 by inserting after “port authority” —

“

, every college (within the meaning of the *Vocational Education and Training Act 1996*)

”.

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