State Superannuation Bill 1999

Explanatory Memorandum

The purpose of the Bill is to change the structure of the current legislative framework governing the State public sector superannuation schemes to enable the Government Employees Superannuation Board (the Board) to:

- Provide more flexibility for members resulting in industry standard superannuation services and new products and services;
- Remove unintended anomalies and inequities;
- Comply with relevant Commonwealth legislation; and
- Support more efficient administration, which has the potential to deliver lower costs to members and savings to Government.

Superannuation for State public sector employees is provided through the Government Employees Superannuation Fund (the Fund), which is administered by the Board. The fund comprises three separate superannuation schemes established under two Acts:

- A closed pension and provident fund scheme established under the *Superannuation and Family Benefits Act 1938.*
- A closed defined-benefits lump sum scheme established under the *Government Employees Superannuation Act 1987*
- An accumulation lump sum scheme that is open to new members, and also established under the *Government Employees Superannuation Act 1987.* This scheme provides for State to meet the Commonwealth's superannuation guarantee requirements which are presently 7 per cent of salary rising to 9 per cent in 2002-03.

The Bill proposes to the repeal the *Superannuation and Family Benefits Act 1938* (the S&FB Act) and the *Government Employees Superannuation Act 1987* (the GES Act) and provides for their replacement with a new Act. This new Act will contain the rules regarding establishment and administration of the Board and the Fund, and the regulations to the Act will contain the specific arrangements for each scheme including the benefit design and scheme rules. The existing pension and lump sum schemes will continue, however this restructuring of the legislation is necessary to enable greater flexibility to respond to member needs, ensure timely compliance with relevant Commonwealth legislation and support more efficient administration.

The functions and powers of the Board have been updated and are now consistent with modern drafting provisions applying to other statutory corporations generally.

In summary, the Bill provides a flexible legislative framework for administration of the State's public sector schemes as well as updating the general functions and powers of the Board.

Outlined below is an examination of the contents of the Bill on a clause by clause basis.

PART 1 — PRELIMINARY

Part 1 contains the title of the Act, the relevant commencement provisions, definitions of terms used within the Bill and a provision binding the Crown.

A number of the terms relating to scheme rules that are currently defined in Part 1 of the GES Act together with the provisions defining remuneration for the schemes, are to be placed in the regulations under the proposed Act. The removal of scheme rules and definitions to the regulations and/or other subordinate legislation is intended to achieve greater flexibility and administrative efficiency.

Clause 1 *Short title*

Short title and citation.

This clause titles the legislation as the *State Superannuation Act 1999.*

Clause 2 *Commencement*

This clause sets out the commencement provisions, providing for the proposed Act to come into operation on the date it is proclaimed.

This date is intended to coincide with the proclamation of the initial regulations and the commencement of the *State Superannuation (Transitional and Consequential Provisions) Act 1999.*

Clause 3 *Interpretation*

This clause defines certain words and expressions used in the proposed Act. These are:

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

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

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

"Employer" means —

(a) the Crown;

(b) the Government of Western Australia;

(c) a Minister of the Crown; or

(d) an authority, body or person prescribed for the purposes of this definition;

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

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

"Member" means a member of a scheme;

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

"scheme", except in section 30, means a superannuation scheme under this Act;

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

Clause 4 *Act binds the Crown*

This clause clarifies that this Act binds the Crown.

This clause is necessary to ensure that the legislation applies to all Employers as defined under clause 3, some of whom may be the Crown or Crown agencies.

PART 2 - GOVERNMENT EMPLOYEES SUPERANNUATION BOARD

Part 2 provides for the continuation of the Government Employees Superannuation Board, based on the framework put in place by the GES Act.

It sets out the parameters within which the Board may operate, as well as updating the functions of the Board to be consistent with modern drafting standards and the powers and functions of other statutory authorities generally.

Clause 5 *Government Employees Superannuation Board*

This clause clarifies that the Board is a continuation of, and the same legal entity as, the Government Employees Superannuation Board established under the GES Act.

Clause 6
Functions of the Board

This clause updates the functions and duties of the Board and draws together functions that are currently set out in various sections of the GES Act.

Subclause 6(1)(a) – (c) clarifies the existing functions of the Board as being to administer the Act, manage the Fund and administer the schemes.

Under the GES Act, the function of managing the Fund is included in section 9.

Subclause 6(1)(d) formalises the Board's current practice of providing information, advice and assistance to the Minister and the Treasurer.

Section 8A of the GES Act requires that information be provided to the Minister only.

Subclause 6(1)(e) expands the Board's functions, providing for the introduction of new products and services by the Board in accordance with the regulations, and subject to the Treasurer's approval. These may include post-retirement products such as allocated pensions and roll-over facilities, but would not be confined to these types of products only. The Treasurer will take into account the public benefit and competition policy principles operating at the time when considering new products and services.

This provision is intended to enable the Board to respond to customer demands and emerging superannuation industry practices in a timely manner.

Subclause 6(2) requires the Board to act in the best interests of members as far as practicable, and to ensure that Members and Employers are fully informed of their rights and obligations under the Act.

This is similar to section 6(1)(d) of the GES Act, but includes Employers.

The administrative process for the provision of information to members, set out in section 8C of the GES Act, will be located in the subordinate legislation of the proposed Act, because it is subject to change in both its timing and content. The current requirement to provide information to members at different times is confusing for members and costly to the Board. In addition, the Commonwealth imposes changes on the specific information required from time to time. Placing the process in the regulations enables the Board to determine the best way of fulfilling this obligation.

Subclause 6(2) also extends the current requirement under section 6 of the GES Act for the Board to ensure equity between the members of each scheme to also ensuring equity between the Members of a scheme and the Members of each other scheme.

This provision is intended to empower the Board to address anomalies that may occur as a result of varying operational arrangements between the schemes, but is not intended to equalise the level of benefits in the different schemes.

Subclause 6(3) permits the Board to use and operate under one or more prescribed trading names.

This clause is aimed at providing the Board with flexibility when marketing its products and potentially diversified services. Whilst this relates to trading names, the use of brand names for the schemes is able to be dealt with in the general regulation making power under clause 38 of this Bill. Brand names currently used by the Board are West State Super, Gold State Super and the Pension Scheme.

Clause 7
Powers of the Board

This clause ensures the Board has the powers to perform its functions. It sets out the range of the Board's powers in the performance of its functions as a body corporate, both on its own and in conjunction with another person.

Unlike the GES Act, in which the functions and powers of the Board were scattered in various provisions, the proposed Act groups the general powers of the Board mainly in one clause, similar to the approach taken to the Board's general functions.

Subclause 7(1) ensures that the Board has the powers to perform its functions. This resembles the provisions of section 6(1)(b)&(c) of the GES Act, but adds that the Board has the power to do all things necessary.

Subclause 7(2) expands the Board's existing powers as a body corporate dealing with property, contracts and other arrangements. It is intended that "property" is not limited only to real property, but also includes personal and other property of the Board such as the assets of the Fund.

Subclause 7(2) also adds new powers to the Board, such as promotion and marketing, research and the publication of information.

Clause 8 *Composition of the Board*

The composition of the Board is the same as that of the Board established under the GES Act, however, the members of the Board are now its directors.

Subclause 8(2) gives effect to Schedule 1, which provides for matters relating to holding office on the Board.

Clause 9 *Protection from liability*

Subclause 9(1) protects persons other than the Board from liability for anything done in good faith under the proposed Act, subject to the *Statutory Corporations (Liability of Directors) Act 1996.*

A similar provision is made in the GES Act, Schedule 3 clause 4, but is updated here to reflect other standard liability protection clauses relating to statutory authorities.

Subclause 9(4) provides a defence for the Crown and the Board for actions relating to investments made in accordance with the investment strategy under subclause 19(1).

This provision reflects standard provisions in section 55(5) of the *Superannuation Industry (Supervision) Act 1993 Act* (SIS Act) which are applicable to superannuation funds generally.

Clause 10 *Meetings, procedures and common seal*

Subclause 10(1) gives effect to Schedule 2, which sets out requirements and procedures for Board meetings.

Schedule 2 of this Bill deals with similar matters to Schedule 3 of the GES Act.

Subclause 10(2) relates to the common seal of the Board and its use. This subclause is similar to Schedule 3 clause 11 of the GES Act.

Clause 11 *Staff*

This clause permits the Board to appoint or employ public service officers under the *Public Sector Management Act 1994,* and other persons on terms and conditions determined by the Board.

This is similar to section 8 of the GES Act, except that it does not refer to contracts for service, which are provided for in clause 7 of the proposed Act.

Clause 12 *Delegation*

This clause expands the power of the Board to delegate to any person or to a committee appointed under Schedule 2 clause 8. However this clause is subject to clause 23 of the proposed Act, which specifically provides for delegation to investment managers.

The existing powers of delegation of the Board under section 56 of the GES Act are more restrictive, because under this section the Board may only delegate to the chairman or an officer of the Board.

Clause 13 *Review of Board decisions*

This clause enables a person aggrieved by a decision of the Board to apply to have the decision reviewed and sets out the process for subsequent appeal or referral in accordance with the regulations.

This combines the existing provisions of section 54 of the GES Act and section 85 of the S&FB Act.

PART 3 — GOVERNMENT EMPLOYEES SUPERANNUATION FUND

Part 3 establishes the Fund and specifies the procedures the Board must follow in relation to the record keeping, investment strategy and management of the Fund.

In terms of its general scope, this part differs from Part 3 of the GES Act only by re-locating rules for the portability of benefits in the subordinate legislation. Portability provisions form part of the scheme rules, which are subject to change and are to be located in the regulations.

The requirement for the Board to comply with the Treasurer's guidelines in this part is more extensive than provided for by Part 3 of the GES Act, including matters such as actuarial investigation, earnings derived from investment and borrowing by the Board, as well as the investment of the Fund.

Clause 14 *The Fund*

This clause establishes the Government Employees Superannuation Fund, and clarifies that it is a continuation of the Government Employees Superannuation Fund established by section 9 of the GES Act.

Clause 15 *Contents of the Fund*

This clause defines what is to be credited or charged to the Fund.

This is similar to section 9(2) and 9(3) of the GES Act.

Clause 16 *Accounting records*

This clause sets out the requirement of the Board to keep accounting and other records.

This is similar to section 10 of the GES Act, but unlike section 10, does not include provision for the apportioning of income from the investment of the Fund. This is provided for in clause 22 of the proposed Act.

Clause 17 *Actuarial investigation*

This clause requires an actuarial investigation of the Fund to be carried out at least once every three years and at other times as directed by the Treasurer.

Subclauses 17(1) & (2) are similar to section 11 of the GES Act.

Subclause 17(3) requires the Board and the actuary to ensure that the investigation and report follow the Treasurer's guidelines.

Clause 18 *Power to invest*

This clause empowers the Board to manage the Fund and its investments, according to the Treasurer's approvals and guidelines.

This clause contains broader provisions than those in section 13 of the GES Act, with the intention of ensuring that the Board can access new and emerging market opportunities.

Clause 19 *Investment strategy*

This clause requires the Board to formulate and give effect to a broad investment strategy for the investment of the Fund, and to review it from time to time according to the Treasurer's guidelines.

Subclause 19(2) requires the Board to optimize returns having regard to:

- the need to exercise care and prudence to maintain the integrity of the Fund;
- the features of different kinds of investments;
- the desirability of diversifying its investments;

- the liquidity of the Fund;
- its expected cash flow requirements, and
- the level of existing and prospective liabilities.

This clause specifies a broader range of considerations to be made by the Board when formulating its strategy than set out in section 13(1) of the GES Act.

These broader provisions are similar to those made in section 52(2)(f)(i)-(iv) of the SIS Act.

Subclause 19(3) requires the Board to review its broad investment strategy and management and performance of investments in accordance with Treasurer's guidelines.

This is similar to section 13(6) of the GES Act.

Clause 20 *Limitation on in-house assets*

This clause limits the Board's powers to invest in debt paper or securities of an Employer (other than debt paper of the Western Australian Treasury Corporation).

This is similar to the provisions of section 13A(2), (3) and (4) of the GES Act.

Clause 21 *Loans to Members prohibited*

This clause prevents the Board from making a loan or giving financial assistance to a Member.

This is similar to section 13A(1)(a) of the GES Act.

Clause 22 *Earnings derived from investment*

This clause requires the Board to allocate earnings derived from the investment of the Fund between the schemes in accordance with the Treasurer's guidelines.

This is different from section 10(3) of the GES Act, which has specific requirements for the apportionment of income derived from investment.

This provision will support flexibility in the allocation of earnings, for example the adoption of reserving policies if these are necessary to support market linked or other products.

Clause 23 *Investment manager*

This clause enables the Board to appoint an employee of the Board or a person approved by the Treasurer as an investment manager, and to delegate its powers under clause 18 to that person, subject to the Treasurer's guidelines.

The clause clarifies that a person only becomes an investment manager when the functions under clause 18 are delegated to that person.

This is similar to section 13(4), (5) & (5a) of the GES Act.

Clause 24 *Borrowing*

This clause expands the Board's power to borrow for a purpose other than for overcoming a cash flow problem in the payment of benefits. However the Board must seek the Treasurer's approval in relation to that borrowing.

This reflects parts of section 14 of the GES Act, but also allows the Treasurer to set guidelines in relation to borrowing.

Clause 25 *Interest accrues on money owing to Fund*

This clause permits the Board to determine, charge and recover interest on money owing to the Fund.

This consolidates provisions made in various sections of the GES and S&FB Acts to charge interest.

Clause 26 *Recovery of money owing to Fund*

This clause provides for the recovery of money owing to the Fund, and sets out specific provisions for the recovery of money from an Employer and a Member, as well as general provisions relating to debtors.

This is similar to section 16 of the GES Act.

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

Under this clause, the *Unclaimed Money Act 1990* does not apply in relation to unclaimed benefits in the Fund.

This is similar to section 40A of the GES Act.

PART 4 — SUPERANNUATION SCHEMES

Part 4 provides for the continuation of schemes provided for in the GES Act and the S&FB Act, the establishment of other schemes under the regulations by the Governor, and the conditions under which an Employer may establish or make contributions to schemes not established under the proposed Act.

The benefit design and rules of the schemes will be located in the regulations supporting the proposed Act.

Clause 28 *Superannuation schemes*

Subclause 28(1) empowers the Governor to establish superannuation schemes by regulations for persons who are working for Employers. This provides the flexibility for new schemes to be established in the future if necessary.

Subclause 28(2) enables the spouses or ex-spouses of persons who are working, or have worked, for Employers to participate in a scheme other than a scheme continued by subclause 29(b), (c) or (d).

This allows members of the schemes established under Part 4 of this Bill to establish a spouse account in West State Super (the scheme established under subclause 29[a]) or any new schemes established under subclause 28(1).

Clause 29 *Continuation of superannuation schemes*

This clause provides for the continuation of the schemes administered by the Board under the provisions of the GES and S&FB Acts.

It clarifies that -

- the superannuation scheme provided for in Part VIIA of the GES Act, referred to in that Act as the 1993 scheme and to members by the brand name West State Super;
- the superannuation scheme provided for in Parts IV, V, VI and VII of the GES Act, referred to in that Act as the 1987 scheme, and to members by the brand name Gold State Super;
- the superannuation scheme provided for in Parts IV, V and VB of the S&FB Act, referred to by members as the Pension Scheme; and
- the superannuation scheme provided for in Parts VA and VB of the S&FB Act, referred to by members as the Provident Account,

are continued as schemes under the proposed Act on the day in which it comes into operation.

The regulations will contain the benefit design and scheme rules for each of these and any new schemes.

Clause 30 *Other public sector superannuation schemes*

Subclause 30(1) requires Employers to obtain the approval of the Minister and the Treasurer in order to establish a superannuation scheme for the benefit of its employees.

This is similar to section 56A of the GES Act.

Subclauses 30(2) and 30(3) allow contributions to be made to other schemes subject to the Minister's and Treasurer's approval.

This gives legislative effect to the practice currently administered as government policy.

PART 5 — GOVERNMENT GUARANTEES AND APPROPRIATION OF THE CONSOLIDATED FUND

Part 5 contains guarantees and standing appropriations of the Consolidated Fund to ensure that members receive the benefits to which they are entitled.

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

This clause requires the Crown to guarantee the payment of every benefit and may guarantee the performance of the Board and its obligations.

Subclauses 31(1)(a) and (2) make similar provisions to section 29 of the GES Act.

The Consolidated Fund is appropriated under subclause 31(2) for the payment of money under a guarantee provided under subclause 31(1).

This means that the Crown continues to guarantee the amount of the benefit payable under the scheme rules. However, in a market linked environment, the amount of the benefit would be determined by the actual investment return, rather than by a defined earning rate such as CPI + 2%. A market linked rate could be positive or negative, and the Crown will not guarantee the actual investment return.

Clause 32 *Appropriation to meet contribution and funding obligations*

This clause contains an appropriation provision for the funding of statutory employer contributions (Superannuation Guarantee) as well as other amounts, which will both be prescribed by regulations under the proposed Act.

This appropriation provision will also ensure that future governments continue fulfil the commitment made as part of the 1998-99 budget to concurrently fund employer contributions to West State Super from 1 July 1998.

A similar provision is made in section 28(2) of the GES Act.

PART 6 — MISCELLANEOUS

Part 6 includes provisions relating to the Treasurer's approval and guidelines, Employers' obligations under the proposed Act, and the powers and responsibilities of the Minister. Also, provision is made for the making of regulations, and previous Acts are repealed in this part.

The clauses relating to the Treasurer's and Minister's powers and responsibilities, in particular, provide for controls and safeguards over the Board's activities, and apply to many of the provisions made in the proposed Act.

Clause 33 *Treasurer's approvals and guidelines*

This clause requires the Treasurer's approval to be made in writing. Also under this clause, 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);

(b) the provision by the Board of other products and services under section 6(1)(e);

(c) the carrying out of actuarial investigations under section 17;

(d) the making of investments under section 18;

(e) the submission of matters to the Treasurer for approval under sections 18, 23, 24 and 38(4);

(f) the review by the Board of its investment strategy and the management and performance of its investments under section 19(3);

(g) the allocation of investment earnings under section 22;

(h) the appointment of investment managers under section 23(1);

(i) the delegation of functions to investment managers under section 23(2); and

(j) borrowing under section 24.

This provision enables the Treasurer to issue guidelines for a range of activities performed by the Board.

Subclause 33(3) clarifies that the Treasurer's guidelines are not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

Subclause 33(4) provides that in any case of inconsistency, the Treasurer's guidelines are to prevail over a direction given by the Minister.

Because the Treasurer's guidelines are required by law to be followed by the Board, a direction made by the Minister that was inconsistent with the guidelines would be considered unlawful for the purposes of section 16(2) of the *Statutory Corporations (Liability of Directors) Act 1996*.

Clause 34
Directions to Employers as to practice and procedure

This clause enables the Board or the Minister to give and amend written directions to Employers for the operation of the proposed Act, and requires Employers to comply with these directions.

Subclause 34(3) enables the Board to recover any costs incurred as a result of the Employer's failure to comply with such directions.

Subclause 34(4) sets out the general range of requirements that may be made in a direction, including the conferring of a discretion on a person, body or class of persons or bodies.

This subclause contains similar provisions to sections 52 & 52A of the GES Act, in which the Board may require information from employers and the Treasurer may issue employers with instructions.

Clause 35
Minister may give directions to the Board

This clause enables the Minister to give written directions to the Board with respect to its functions and powers, subject to the *Statutory Corporations (Liability of Directors) Act 1996*. The Board is required to give effect to these directions, and to include their text in its annual report, submitted under section 66 of the *Financial Administration and Audit Act 1985*.

Similar provisions are made in section 6(3) & 6(4) of the GES Act.

Clause 36
Minister to have access to information

This clause entitles the Minister to access information in the possession of the Board, but prevents the Minister from accessing information that discloses or may disclose confidential information about a beneficiary.

This is similar to the provisions of sections 8A and 8B of the GES Act, except that the interpretation of "beneficiary" has been broadened to include a person to whom a product or service has been provided by the Board.

Clause 37
Minister to consult with Treasurer

This clause requires the Minister to consult with the Treasurer before the Minister performs a function under the proposed Act which will or may affect the financial rights or obligations of the Crown under this Act. This is limited, however, to circumstances in which the value of that effect will or may exceed a prescribed amount.

Given that some of the powers of the Treasurer have shifted to the Minister under the new Act, this is aimed at ensuring the Treasurer is consulted on matters that may financially impact on the Crown in a significant way.

Clause 38 *Regulations*

This clause provides for the making by the Governor of regulations necessary or convenient to give effect to the purposes of the proposed Act, subject to specific limitations.

Subclause 38(2) sets out a range of matters in relation to which regulations may be made, including -

- scheme rules and administration;
- the management of the Fund;
- the establishment of schemes, and
- the provision by the Board of other products and services.

Under subclause 38(3), regulations cannot be made if they reduce the amount of a benefit that accrued, became payable or may become payable in relation to a period before the regulations came into operation.

Subclause 38(4) ensures that regulations that-

(a) will or may affect the financial rights or obligations of the Crown under this Act and the value of that effect will or may exceed the prescribed amount; or

(b) relate to other products and services that may be provided by the Board,

cannot be made under subsection (1) unless they have been approved by the Treasurer. Again, this is to ensure that the Treasurer is aware of potential significant impacts on the Crown impacts.

This clause also provides for the regulations to specify a date for the inclusion of an "Employer" on a day earlier than published in the *Gazette*. This is similar to section 48 of the GES Act.

Subclause 38(5) prevents the making of regulations that may prejudice a person's rights or impose liabilities.

This is a standard protection provision for retrospective regulations but is not applicable to an Employer or the Crown. It does not, for example, prevent the fulfilment of retrospective funding obligations to fund the superannuation scheme provided for in clause 29(a) of the new Act.

Subclause 38(6) permits regulations to be made prescribing an amount for the purposes of clause 37, which requires the Minister to consult with the Treasurer in relation to the exercise of functions regarding certain matters, or subclause (4)(a) regarding the making of certain regulations.

This allows the flexibility to prescribe amounts or other calculations - such as a percentage figure - for particular classes of Employers.

Clause 39 *Repeals*

This clause repeals the *Government Employees Superannuation Act 1987* and the *Superannuation and Family Benefits Act 1938.*

SCHEDULE 1 — GOVERNMENT EMPLOYEES SUPERANNUATION BOARD

This schedule addresses the composition of the Board, under subclause 8(2) of the main part of the proposed Act.

Many of the provisions of this schedule relate to the matters addressed in Schedule 3 of the GES Act, *Constitution and Proceedings of the Board.*

Clause 1 *Chairman*

Subclause 1(1) requires the Minister to consult with relevant unions or associations of unions before nominating a chairman under clause 8(1)(a) of the new Act. This is similar to section 5(3)(a) of the GES Act.

Subclause 1(2) prevents a member of the staff of the Board being nominated as chairman. This is similar to section 5(6) of the GES Act.

Clause 2 *Deputy chairman*

This clause provides for the Governor to appoint a deputy chairman, similar to Schedule 3 clause 2 of the GES Act, except adding the provision that a member of the staff of the Board may not be nominated as deputy chairman.

Clause 3 *Election of member directors*

This clause provides for member directors to be elected in relation to the expiry of term of office and casual vacancies.

Subclause 3(a) provides for elections to be during the 6 months preceding the expiry of the term of office of the current directors elected under clause 8(1)(c).

Subclause 3(b) requires an election to fill a casual vacancy be held not later than 60 days after the vacancy occurs.

This is similar to Schedule 2 clause 2(2) of the GES Act.

Clause 4 *Term of office*

Subclause 4(1) provides for the term of office of the chairman or an appointed director to be fixed in the instrument of appointment and to be no longer than 5 years. These terms of office are of the same duration as those specified in section 5(3)(a)&(b) of the GES Act.

Under subclause 4(2), a director is elected for 3 years. This is a similar provision to that made in Schedule 2 clause 3 of the GES Act.

Subclause 4(3) provides that a person may be appointed or elected as a director having been a director before. The GES Act makes a similar provision in relation to elected members, Schedule 2 clause 3, but this expands the provision to refer to appointed directors.

Clause 5 *Directors are part-time*

This clause provides for all directors to hold their offices on a part-time basis. This is similar to section 5(5) of the GES Act.

Clause 6 *Casual vacancies*

This clause specifies the causes of a casual vacancy occurring, the circumstances under which the appointor may remove a director from office, and provides for the Minister to appoint a Member on a temporary basis to fill a casual vacancy.

Subclause 5 defines **"appointor"** as —

(a) in the case of the chairman or a director appointed under section 8(1)(b), the Governor; and

(b) in the case of a director elected under section 8(1)(c), the Minister.

Subclauses 6(1) and (2) contain similar provisions to Schedule 3 clause 3 of the GES Act. However the provisions include the death of a director as causing a casual vacancy, a contravention of clause 10 or 11 of Schedule 2 (which relates to disclosure of interests) and the conviction of an offence involving dishonest conduct as reasons for being removed from office.

These provisions are similar to sections 120 and 121 of the SIS Act, which applies to other superannuation funds generally.

Subclauses 6(3)&(4) provide for the Minister to appoint a Member to fill a casual vacancy until a new director is elected, subject to having consulted with unions or associations of unions that appear to the Minister to be broadly representative of employees of the Employers.

This is similar to Schedule 2 clause 4(2) of the GES Act.

Clause 7 *Remuneration and allowances*

This clause entitles a director to the remuneration and allowances determined by the Minister on the recommendation of the Minister for Public Sector Management.

This is similar to section 7 of the GES Act.

SCHEDULE 2 — MEETINGS AND PROCEDURES

This Schedule is made under subclause 10(1) of the main part of the proposed Act.

Clause 1 *Board to determine own procedure*

This clause enables the Board to determine its own procedure, except to the extent that it is prescribed under the proposed Act.

This is similar to Schedule 3 section 7 of the GES Act.

Clause 2 *Quorum*

This clause specifies that the quorum at a Board meeting is 5 directors.

This is similar to clause 8 Schedule 3 of the GES Act, which specifies that the quorum at a Board meeting is 5 members.

Clause 3 *Presiding director*

This clause provides for a presiding director at a Board meeting.

This is similar to Schedule 3 clause 6 of the GES Act.

Clause 4 *Voting*

Subclause 4(a) provides for each director to have one vote at a Board meeting.

Under subclause 4(b), the person presiding does not have a casting vote. This is similar to schedule 3 clause 9(1) of the GES Act, in which a person presiding has a deliberative vote only.

Subclause 4(c) provides that a resolution is passed if 5 or more directors vote in favour of it. This is similar to Clause 9(2) schedule 3 of the GES Act.

Clause 5 *Minutes*

This clause requires minutes of meetings and resolutions to be kept and preserved.

This is similar to Schedule clause 10 of the GES Act, but also specifies minutes of each resolution passed by the Board.

Clause 6 *Resolution without meeting*

This provides that a written resolution signed by each director is as effectual as a vote passed at a Board meeting.

Clause 7 *Telephone or video attendance at meetings*

This clause empowers a director to 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.

The provisions in this clause and clause 6 update the means by which directors may communicate and make decisions without altering the Board's responsibilities under the proposed Act.

Clause 8 *Committees*

This clause enables the Board to appoint (and discharge) committees to assist it in the performance of its functions and to act on their advice.

A committee is able to determine its own procedure, subject to the directions of the Board, and the Board may appoint a person who is a director to a committee.

The GES Act does not provide specifically for the appointment of committees by the Board.

Clause 9
Material interest

Subclause 9(1) sets out the circumstances in which a person has a material interest in a matter for the purposes of this schedule. This is similar to Schedule 3 clause 5 of the GES Act but now includes non-pecuniary interests.

Subclause 9(2) sets out the interests that are not material interests. This is similar to Schedule 3 clause 5(7) of the GES Act.

Subclause 9(3) clarifies that a person does not have a material interest in an existing or proposed insurance contract that insures them against a liability in the capacity of a director or committee member, but does not apply if the Board is the insurer.

Clause 10
Disclosure of interests

This clause requires the prompt disclosure of material interests by a director or committee member, which is to be recorded in the minutes of the meeting.

This is similar to the provisions of subclauses 5(1),(2)&(4) of Schedule 3 of the GES Act, except that the GES Act provides for the disclosure of "pecuniary" rather than the broader range of interests set out as "material interests" in the proposed Act, and requires the disclosure to be recorded in a book kept for that purpose.

Subclause 10(3) sets out types of disclosure that are deemed to be sufficient in relation to matters arising after the disclosure has been made. This is similar to subclause 5(3) of Schedule 3 of the GES Act.

Subclause 10(4) provides that a contravention of this clause by a person does not invalidate a decision of the Board or committee.

This is similar to subclause 5(6) of Schedule 3 of the GES Act.

Clause 11
Voting by interested persons

This clause extends the provision of Schedule 3 subclause 5(5) of the GES Act, which prevents a member of the Board from being present or voting while a matter in which he or she has an interest is being dealt with to include:

- a committee member in relation to a matter being considered by a committee, and
- material interest, as provided for in clause 9 of this schedule, rather than solely pecuniary interest.

Subclause 11(2) empowers the Minister to deal with a matter 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 that matter.

Clause 12
Interested person may be permitted to vote

This clause enables the Board to pass a resolution permitting interested directors or members of a committee to vote on a matter, but prevents an interested director from being present while a proposed resolution of this kind is being considered and voted upon.

In addition, the Minister is empowered under subclause 12(3) to declare by notice that clause 11 does not apply in relation to a specified matter.

Subclause 12(4) requires the text of any such declaration by the Minister to be included in the Board's annual report under section 66 of the *Financial Administration and Audit Act 1985.*

These provisions reflect standard disclosure provisions applying to other statutory corporations generally.