

State Superannuation Bill 1999

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Defined Terms

Western Australia

LEGISLATIVE ASSEMBLY

State Superannuation Bill 1999

A Bill for

An Act to provide superannuation schemes for persons working for —

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

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

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *State Superannuation Act 1999*.

2. Commencement

This Act comes into operation on a day fixed by proclamation.

3. Interpretation

5 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;

10 “**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;

15 “**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;

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

25 “**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;

5 **“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).

4. Act binds the Crown

10 This Act binds the Crown.

Part 2 — Government Employees Superannuation Board

5. Government Employees Superannuation Board

- 5 (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.
- 10 (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

- 15 (1) The functions of the Board are to —
- (a) administer this Act;
 - (b) manage the Fund;
 - (c) administer the schemes;
 - 20 (d) provide information, advice and assistance to the
Minister and the Treasurer on matters relating to
superannuation;
 - (e) provide other products and services in accordance with
the regulations; and
 - 25 (f) perform any other functions conferred under any other
written law.

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

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;
 - (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;
 - (c) enter into a contract or arrangement with any person under which the Board is to provide products and

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services to that person and charge fees for providing those products and services;

(d) promote and market the Board, its activities, products and services;

5 (e) conduct research;

(f) produce and publish information; and

(g) do anything else that a body corporate may do.

10 (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.

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;

15 (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.

20 **9. Protection from liability**

(1) Subject to the *Statutory Corporations (Liability of Directors) Act 1996*, an action does not lie against a person, other than the Board, for anything done by the person in good faith in the performance, or purported performance, of a function under this Act.

25

(2) The protection given by this section applies even if the person would have been capable of doing the act if this Act had not been enacted.

(3) Subsection (1) does not relieve the Board or the Crown of any liability that they might have for anything done by a person against whom that subsection provides that an action does not lie.

5 (4) In an action against the Crown or the Board for loss or damage suffered by a person as a result of the making of an investment by the Board, it is a defence for the defendant to prove that the investment was made in accordance with the investment strategy formulated under section 19(1).

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

(1) Schedule 2 has effect.

(2) The common seal of the Board is to be —

(a) in a form determined by the Board;

(b) kept in safe custody as the Board directs; and

15 (c) used only as authorized by the Board.

11. Staff

(1) Public service officers may be appointed or employed under the *Public Sector Management Act 1994* to enable the Board to perform its functions.

20 (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

25 delegation, to —

(a) any person; or

(b) a committee appointed under clause 8 of Schedule 2.

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(2) A function performed by a delegate is taken to have been performed by the Board.

5 (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.

10 (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, if the regulations permit —

- 15 (a) appeal to a Judge; or
(b) refer the matter to a prescribed person or body for review.

(4) An appeal or referral is to be made and dealt with in accordance with the regulations, and in the case of an appeal, the rules of the Supreme Court.

20 (5) The decision on an appeal or review is to be given effect according to its tenor.

Part 3 — Government Employees Superannuation Fund

14. The Fund

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

15. Contents of the Fund

- 10 (1) The Board is to credit to the Fund —
- (a) contributions made under this Act;
 - (b) amounts transferred to the Fund from other superannuation funds in respect of Members;
 - (c) earnings derived from the investment of the Fund;

15 (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;

20 (b) costs incurred by the Board in carrying out its functions; and

 - (c) other amounts lawfully paid by the Board or charged to the Fund.

16. Accounting records

- 25 (1) The Board is to keep the accounting and other records that the Board considers appropriate in order to perform its functions.

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- (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

- 5 (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.
- 10 (3) The Board and actuary must ensure that the actuarial investigation and report are carried out in accordance with the Treasurer's guidelines.

15 **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.
- 20 (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,
- 25 as it considers appropriate.

19. Investment strategy

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

20. Limitation on in-house assets

- (1) The Board may only invest in debt paper or securities of an Employer if doing so will not result in a breach of subsection (3).

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(2) If at any time it appears to the Board that subsection (3) is being breached, the Board must remedy the breach.

5 (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

10 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.

15 **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.

20 (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.

25 (3) A person is not appointed as an investment manager within the meaning of this section unless the person is appointed for the purpose of enabling the Board to delegate a function to that person under subsection (2).

24. Borrowing

- (1) The Board cannot borrow money unless —
- (a) the borrowing is —
 - (i) for the purpose of overcoming a cash flow problem in the payment of benefits; or
 - (ii) for a purpose approved by the Treasurer;
 - (b) the terms of the borrowing have been approved by the Treasurer; and
 - (c) the borrowing complies with the Treasurer's guidelines.
- (2) When borrowing money the Board may give any security it considers appropriate.
- (3) In this section —
- “borrow money”** means borrow or raise money, obtain credit or arrange for other financial accommodation, and includes to re-borrow or obtain advances.

25. Interest accrues on money owing to Fund

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

26. Recovery of money owing to Fund

- (1) The Board may recover any money owing to the Fund —
- (a) as a debt in a court of competent jurisdiction;
 - (b) by deducting the amount owing from any amount that is, or becomes, payable from the Fund to the debtor;

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- (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).
- 5
- (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,
- 10
- and the Employer must comply with the direction.

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

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

Part 4 — Superannuation schemes

28. Superannuation schemes

- 5 (1) The Governor may, by regulations under section 38, establish superannuation schemes for persons who are working for Employers.
- (2) A scheme, other than a scheme continued by section 29(b), (c) or (d), may provide for the spouses or ex-spouses of persons who are working, or have worked, for Employers to participate in the scheme.

10 **29. Continuation of superannuation schemes**

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

- 15 (a) the superannuation scheme that was provided for in Part VIIA of the GES Act immediately before its repeal by section 39 (referred to in that Act as the 1993 scheme);
- 20 (b) the superannuation scheme that was provided for in Parts IV, V, VI and VII of the GES Act 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 Parts IV, V and VB of the S&FB Act immediately before its repeal by section 39; and
- 25 (d) the superannuation scheme that was provided for in Parts VA and VB of the S&FB Act immediately before its repeal by section 39.

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30. Other public sector superannuation schemes

- 5 (1) An Employer may establish a superannuation scheme or fund for the benefit of its employees, if and only if the Minister and the Treasurer have approved the establishment of that scheme or fund.
- 10 (2) An Employer may make superannuation contributions for its employees to a superannuation fund or scheme other than —
- (a) a scheme under this Act;
 - (b) a superannuation scheme or fund established in accordance with subsection (1); or
 - (c) a superannuation scheme or fund established before 28 December 1989,
- if and only if the Minister and the Treasurer have approved the making of those contributions.
- 15 (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 employee or class of employees; or
 - (c) a particular scheme or fund or class of schemes or funds.
- 20 (4) This section applies despite any other written law.

Part 5 — Government guarantees and appropriation of the Consolidated Fund

31. Guarantee of benefits and Board's obligations

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

32. Appropriation to meet contribution and funding obligations

 The Consolidated Fund 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
20 to the Fund on or after the commencement of this Act.

Part 6 — Miscellaneous

33. Treasurer's approvals and guidelines

- (1) An approval given by the Treasurer —
- 5 (a) must be in writing but may otherwise be given when and how the Treasurer determines; and
- (b) 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 —
- 10 (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);
- 15 (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);
- 20 (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);
- 25 (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*.

5 (4) If there is any inconsistency between guidelines issued under subsection (2) and a direction given under section 35, the guidelines prevail.

34. Directions to Employers as to practice and procedure

10 (1) The Board or the Minister may give written directions to Employers about the practices and procedures to be observed by Employers for the efficient operation of this Act and may amend those directions.

(2) An Employer must comply with directions given under subsection (1).

15 (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;

20 (b) apply to all Employers, to a particular Employer, or to Employers in a particular class;

(c) direct something to be done in a particular manner;

(d) require something to be approved by, or done to the satisfaction of, a particular person or body, or a member of a class of persons or bodies; or

25 (e) confer a discretion on a person or body, or a class of persons or bodies.

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35. Minister may give directions to the Board

- 5 (1) Subject to the *Statutory Corporations (Liability of Directors) Act 1996* the Minister may give written directions to the Board with respect to its functions and powers, either generally or with respect to a particular matter.
- (2) The Board is to give effect to directions given by the Minister.
- (3) The text of any direction received by the Board is to be included in the annual report submitted by the accountable authority of the Board under section 66 of the *Financial Administration and*
- 10 *Audit Act 1985*.

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 —
- 15 (a) to have information in the possession of the Board; 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 —
- 20 (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 in a form that —
- 25 (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 authorized by the beneficiary.

5 (4) In this section —

“beneficiary” means —

- (a) a Member;
(b) a former Member; or
(c) any other person to whom —

10 (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;

15 **“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;

20 **“parliamentary purposes”** means the purpose of —

(a) answering a question asked in a House of Parliament;
or

25 (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.

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37. Minister to consult with Treasurer

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

38. Regulations

10 (1) Subject to subsections (3) to (6), the Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to this Act.

 (2) Without limiting the generality of subsection (1) regulations may be made under subsection (1) in relation to —

15 (a) establishing schemes;

 (b) membership and Employer participation in the schemes;

 (c) contributions to be made to the Fund and other funding of the Fund;

 (d) benefits and how they are paid or dealt with;

 (e) insurance to be provided through the schemes;

20 (f) management of the Fund;

 (g) administration of the schemes;

 (h) accounts and records to be kept by the Board;

 (i) information and documents to be given to and by the Board;

25 (j) provision by the Board of other products and services;

 (k) appointment and election of directors; and

 (l) appeals against, and reviews of, decisions of the Board.

- (3) Regulations cannot be made under subsection (1) if they reduce the amount of a benefit that —
- (a) accrued or became payable before the regulations came into operation; or
 - 5 (b) is, or may become, payable in relation to a period before the regulations came into operation.
- (4) Regulations that —
- 10 (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.
- 15 (5) 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*.
- 20 (6) Regulations of the kind referred to in subsection (5) 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
 - 25 (b) imposing liabilities in respect of anything that occurred before the regulation was published.
- (7) Regulations prescribing an amount for the purposes of section 37 or subsection (4)(a) may prescribe an amount or a method of determining an amount.

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39. Repeals

The Government Employees Superannuation Act 1987 and the Superannuation and Family Benefits Act 1938 are repealed.

**Schedule 1 — Government Employees
Superannuation Board**

[s. 8(2)]

1. Chairman

- 5 (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 employees of the Employers.
- (2) The Minister must not nominate as chairman a person who is a member of the staff of the Board.

10 **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 a member of the staff of the Board.
- 15 (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.
- 20

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
 - 25 (b) in the case of an election to fill a casual vacancy, not later than 60 days after the vacancy occurs.

4. Term of office

- (1) The term for which a person is appointed to be the chairman or is appointed under section 8(1)(b) to be a director is to be fixed in the instrument of appointment and is not to be longer than 5 years.
- 5 (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

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

6. Casual vacancies

- (1) A casual vacancy in the office of a director occurs if the director —
- (a) dies;
- (b) resigns by notice to the appointor;
- 15 (c) is an insolvent under administration as defined in the Corporations Law; or
- (d) is removed from office by the appointor under subclause (2).
- (2) The appointor may remove a director from office if the appointor is satisfied that the director —
- 20 (a) has neglected his or her duty;
- (b) has misbehaved;
- (c) is incompetent;
- (d) has contravened clause 10 or 11 of Schedule 2;
- 25 (e) is suffering from mental or physical incapacity impairing the performance of his or her functions under this Act;
- (f) is absent from 4 consecutive meetings of the Board of which he or she has been given reasonable notice, unless he or she is absent on leave granted by the Board; or
- 30 (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.

5 (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 employees of the Employers.

(5) In this clause —
“appointor” means —

- 10 (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.

7. Remuneration and allowances

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

Schedule 2 — Meetings and procedures

[s. 10(1)]

1. Board to determine own procedure

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

2. Quorum

The quorum at a Board meeting is 5 directors.

3. Presiding director

10 A Board meeting is to be presided over by —

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

4. Voting

At a Board meeting —

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

5. Minutes

25 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.

5 **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.

10 **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.
- 15 (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

- 20 (1) For the purposes of this Schedule a person has a material interest in a matter if the person —
 - (a) subject to subclauses (2) and (3) has a direct or indirect pecuniary interest in the matter;
 - (b) has given advice for remuneration in relation to the matter to the Board or to the former Superannuation Board constituted under the S&FB Act; or
 - 25 (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 —
 - 30 (a) a Member;

- (b) an employee of an Employer;
 - (c) an Employer or a member of the board or other body responsible for the control or direction of an Employer;
 - (d) an employee of a union or association of unions; or
 - 5 (e) a member of a corporation listed on an Australian stock exchange, 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.
- 10
- (4) Subclause (3) does not apply if the Board is the insurer.

10. Disclosure of interests

- 15 (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.
- 20
- (3) A disclosure under subclause (1) by a person that he or she —
- (a) is a member or employee of a particular company or body;
 - (b) is a partner or employee of a particular person; or
 - (c) has some other specified interest relating to a particular company, body or person,
- 25
- 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.
- 30

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 —
- 5 (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
- 10 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 —
- 15 (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 —
- 20 (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
- 25 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
- 30 the annual report submitted by the accountable authority of the Board under section 66 of the *Financial Administration and Audit Act 1985*.
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Defined Terms

Defined Terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined Term	Provision(s)
actuary	3
appointor.....	Sch 1, cl. 6
beneficiary	36(4)
benefit.....	3
Board	3
borrow money	24(3)
document	36(4)
Employer	3
Fund	3
GES Act.....	3
information	36(4)
Member	3
parliamentary purposes.....	36(4)
S&FB Act	3
scheme.....	3
Treasurer's guidelines	3