

State Superannuation Amendment Bill 2011

Explanatory Memorandum

Overview of the Bill

In 2005, the State Government commenced a superannuation reform process committing to provide Western Australian public sector employees with the introduction of Choice of Superannuation Fund (Choice) by the end of 2008.

To allow for Choice, the *State Superannuation Act 2000* (the Act) was amended by the *State Superannuation Amendment Act 2007* (2007 Amendment Act). The 2007 Amendment Act came into effect in September 2007. As part of a package, the 2007 Amendment Act provided for the Government Employees Superannuation Board (GESB) to be mutualised prior to introducing Choice.

Choice is yet to be introduced due to several difficulties encountered with the mutualisation of GESB. The 2007 Amendment Act was structured in a manner that prevented the introduction of Choice without the mutualisation of GESB. Therefore, further amendments to the Act are required including the deletion of the mutualisation provisions.

Key Features (in order of appearance in the Bill)

***State Superannuation Amendment Act 2007* repealed and related amendments**

Reference

Bill	Page No	3-15	13
	Clause No	4-30	27

Comment

The principal change under these clauses of the Bill is the repeal of the 2007 Amendment Act. This repeal will not in itself reverse any of the measures currently in effect as a result of the 2007 Amendment Act. However, any required legislative amendments in relation to changes enacted and in operation as a result of the 2007 Amendment Act are dealt with separately in the Bill.

The decision not to proceed with the mutualisation of GESB has meant that Parts 4, 4A and 5 have been deleted from the Act and where certain provisions were required to be retained, they have been reinserted in the relevant sections.

Amendments relating to the Treasurer

Reference

Bill	Page No	16-18	3
	Clause No	31-39	9

Comment

The clauses in this section entrench the Treasurer as the Minister responsible for the Act.

Amendments relating to administration and funding

Reference

Bill	Page No	19-25	7
	Clause No	40-49	10

Comment

The clauses in this section contain amendments relating to the administration and funding of GESB superannuation schemes. These clauses clarify the role of the Treasurer as the Minister responsible for the Act, and clarify the role of GESB as the manager of the State superannuation schemes and overseer of the delivery of superannuation services to members and employers.

Section 11(2) is also to be amended to reflect that terms and conditions of employment under this section can only be made upon advice from the Public Sector Commissioner confirming that the terms and conditions of the position cannot be met under section 11(1) of the Act.

The amendments in these clauses also make provision for transition payments to staff that are offered and accept employment with an external administrator if services are procured from a commercial administrator. Provision is also made under the amendments for the right of a permanent public service officer to resume employment or appointment within a fixed period of time from taking up an offer of employment with an external administrator, in lieu of a transition payment.

Amendments to introduce Choice

Reference

Bill	Page No	26- 29	4
	Clause No	50 - 53	4

Comment

The amendments under these clauses of the Bill give effect to allowing for Choice of Superannuation Fund for Western Australian public sector employees. Choice will be one-way, with all employees who currently do not have Choice being able to choose GESB or any other complying fund that their employer will make contributions to. Where an employee does not nominate a fund, the Act will provide under these amendments a default fund to be used by the employer. The Act as amended by the Bill will reflect that employers have a specific obligation imposed upon them to pay superannuation contributions. Although the State is not subject to Commonwealth legislation in relation to Choice, the relevant changes in the Bill reflect the Commonwealth legislation in this regard.

Explanatory Memorandum Clause Notes

Outlined below is an examination of the contents of the *State Superannuation Bill 2011 (the Bill)* on a clause by clause basis.

PART 1 – PRELIMINARY	
Clause 1 <i>Short title</i>	This clause titles the amending legislation as the <i>State Superannuation Amendment Act 2011</i> (2011 Amendment Act).
Clause 2 <i>Commencement</i>	<p>This clause provides for the 2011 Amendment Act to come into operation as follows:</p> <ul style="list-style-type: none">(a) sections 1 and 2 – on the day on which the 2011 Amendment Act receives the Royal Assent; and(b) the rest of the 2011 Amendment Act – on a day fixed by proclamation, and different days may be fixed for different provisions.
Clause 3 <i>Act amended</i>	This clause clarifies that, other than Part 2 Division 1, the 2011 Amendment Act amends the <i>State Superannuation Act 2000</i> .
PART 2 – STATE SUPERANNUATION AMENDMENT ACT 2007 REPEALED AND RELATED AMENDMENTS	
Clause 4 <i>Repeal of the State Superannuation Amendment Act 2007</i>	<p>The <i>State Superannuation Amendment Act 2007</i> (2007 Amendment Act) is repealed under this clause.</p> <p>There are parts of the 2007 Amendment Act that are not yet in operation. This clause ensures no further changes will be effected by the provisions of the 2007 Amendment Act due to its repeal. It does not reverse any of the changes implemented by the 2007 Amendment Act currently in operation. Any required amendments to the Act in relation to changes currently in operation as a result of the 2007 Amendment Act are addressed separately in the relevant clauses contained in Part 2 of the Bill.</p>
Clause 5 <i>Long title replaced</i>	<p>This clause replaces the current long title of the Act with:</p> <p>“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.”</p> <p>The new long title reflects that mutualisation of GESB will not now occur, and therefore references to schemes being regulated by the Commonwealth in the existing long title are no longer relevant.</p>

<p>Clause 6 <i>Section 3 amended</i></p>	<p>Section 3 contains the interpretation provisions of the Act.</p> <ul style="list-style-type: none"> • <u>Subclause 6(1)</u> removes the definitions of “regulated superannuation fund”, “SIS Act”, “transfer time”, “West State Scheme” and “working day” from section 3(1) of the Act. These were new definitions inserted by the 2007 Amendment Act. • <u>Subclause 6(2)</u> restores the definitions of “benefit”, “Fund”, “Member”, “scheme”, “subsidiary” and “Treasurer’s Guidelines” previously set out in section 3 of the Act. These definitions were not deleted from the Act by the 2007 Amendment Act but moved to a new section 4E, inserted by the 2007 Amendment Act (Schemes administered by the Board). • <u>Subclause 6(3)</u> inserts a new section 3(3), incorporating the provisions of existing section 4E(2) inserted by the 2007 Amendment Act. These provisions establish that the Commonwealth’s <i>Corporations Act 2001</i> applies in determining whether a body is a subsidiary of the Board. <p>Section 4E(2) is contained in Part 3, Division 1 of the existing Act, which will be deleted under clause 8 of the Bill.</p>
<p>Clause 7 <i>Part 3 heading deleted</i></p>	<p>This clause deletes the existing heading to Part 3 of the Act that was inserted in the 2007 Amendment Act, to be replaced with the new heading inserted by clause 13.</p> <p>This is a consequential amendment inserted by the drafter of the Bill.</p>
<p>Clause 8 <i>Part 3 Division 1 deleted</i></p>	<p>This clause deletes the existing Part 3 Division 1 of the Act that was inserted in the 2007 Amendment Act. Interpretative provisions from section 4E(1) that are to be retained have been transferred to section 3 of the Act (see subclause 6(2) above).</p> <p>This is a consequential amendment inserted by the drafter of the Bill.</p>
<p>Clause 9 <i>Part 3 Division 2 heading replaced</i></p>	<p>This clause replaces the existing heading to Part 3, Division 2 with “Part 2 - Government Employees Superannuation Board”.</p> <p>This is a consequential amendment inserted by the drafter of the Bill.</p>
<p>Clause 10 <i>Section 6 amended</i></p>	<p>Section 6 deals with the functions of the Board.</p> <ul style="list-style-type: none"> • <u>Subclause 10(1)</u> deletes Section 6(1)(a) of the Act, which lists as a function of the Board, administration of the relevant Part of the Act. This change removes this as a function of the Board, restricting responsibility for all matters relating to administration of the Act to the Treasurer. <p>This change is a result of the decision that the Department of Treasury and Finance (DTF) will be the designated agency primarily advising the Treasurer on the administration of the Act. GESB will still have the functions of administering the schemes, as provided for in the existing Section 6(1)(c) of the Act.</p> <ul style="list-style-type: none"> • <u>Subclause 10(2)</u> amends section 6(1)(e)(i) by replacing the words “superannuation schemes administered by the Board under this Part or any other written law” with “the schemes and”. This is a change in wording to reflect that the definition of “schemes” has already been established.

<p>Clause 11 <i>Section 7B amended</i></p>	<p>Section 7B deals with control of a subsidiary.</p> <ul style="list-style-type: none"> • <u>Subclause 11(1)</u> amends section 7B(2)(b) by replacing “Part” with “Act”. • <u>Subclause 11(2)</u> amends section 7B(2)(c) by replacing “Part” with “Act”. • <u>Subclause 11(3)</u> amends section 7B(4) by replacing “Part” with “Act”. <p>The above amendments relate to the constitutions of any subsidiaries formed or acquired by the Board, requiring that their constitutions conform with the Act, are consistent with the Act and that the provisions of the Act will prevail where there is any inconsistency.</p> <p>This is a consequential amendment as a result of the repeal of the 2007 Amendment Act.</p>
<p>Clause 12 <i>Section 9 amended</i></p>	<p>Section 9 deals with the protection from liability of Board members.</p> <ul style="list-style-type: none"> • <u>Subclause 12(1)</u> amends section 9(1) by replacing “Part” with “Act”. • <u>Subclause 12(2)</u> amends section 9(2) by replacing “Part” with “Act” <p>These amendments deal with the position of Board members under the <i>Statutory Corporations (Liability of Directors) Act 1996</i>.</p> <p>The above are consequential amendments as a result of the repeal of the 2007 Amendment Act.</p>
<p>Clause 13 <i>Part 3 Division 3 heading replaced</i></p>	<p>This clause replaces the existing Part 3 Division 3 heading with a new heading “Part 3 - Government Employees Superannuation Fund”.</p> <p>This is a consequential amendment as a result of the repeal of the 2007 Amendment Act.</p>
<p>Clause 14 <i>Section 14 amended</i></p>	<p>Section 24 deals with the Fund established under the Act</p> <p>This clause deletes existing sections 14(3) and 14(4).</p> <p>This change reverses the effect of the 2007 Amendment Act, which provided for the Government Employees Superannuation (GES) Fund to be split into two sub funds at the separation time to facilitate mutualisation. As GESB is no longer mutualising, this removes the need for these provisions.</p>
<p>Clause 15 <i>Section 15 amended</i></p>	<p>Section 15 deals with contents of the Fund.</p> <p>This clause amends section 15(1) by replacing “Part” with “Act”.</p> <p>Section 15(1) provides for the crediting of amounts to the GES Fund.</p> <p>This is a consequential amendment as a result of the repeal of the 2007 Amendment Act.</p>
<p>Clause 16 <i>Part 3 Division 4 heading replaced</i></p>	<p>This clause replaces the existing Part 3 Division 4 heading with a new heading “Part 4 - Superannuation Schemes”.</p> <p>This is a consequential amendment as a result of the repeal of the 2007 Amendment Act</p>

<p>Clause 17 <i>Section 29 amended</i></p>	<p>Section 29 deals with the continuation of superannuation schemes</p> <ul style="list-style-type: none"> • <u>Subclause (1)</u> amends section 29(1) by replacing “Part” with “Act”. Section 29(1) relates to the continuance of those GESB superannuation schemes that were in operation under the various statutes preceding the Act. <p>This is a consequential amendment as a result of the repeal of the 2007 Amendment Act.</p> <ul style="list-style-type: none"> • <u>Subclause (2)</u> deletes existing section 29(2). This section of the Act provides details relating to the governing rules of West State Super at the separation time to facilitate mutualisation of GESB. This section is no longer relevant due to mutualisation not proceeding.
<p>Clause 18 <i>Section 30 amended</i></p>	<p>Section 30 deals with other public sector superannuation schemes</p> <p>This clause amends section 30(2) by replacing “Part” with “Act”.</p> <p>This section of the Act provides an exemption for the establishment by Employers and payment of contributions to schemes other than the GES Schemes under the Act .</p> <p>This is a consequential amendment as a result of the repeal of the 2007 Amendment Act.</p>
<p>Clause 19 <i>Part 3 Division 5 heading replaced</i></p>	<p>This clause replaces the existing heading in Part 3 Division 5 with a new heading “Part 5 - Government guarantees and appropriation of the Consolidated Account”.</p> <p>This is a consequential amendment as a result of the repeal of the 2007 Amendment Act and returns Division 5 back to Part 5.</p>
<p>Clause 20 <i>Section 31 amended</i></p>	<p>Section 31 deals with Guarantee of benefits and the Board's obligations.</p> <p>This clause amends section 31(1)(b) by replacing “Part” with “Act”.</p> <p>This is a consequential amendment as a result of the repeal of the 2007 Amendment Act.</p>
<p>Clause 21 <i>Part 3 Division 6 heading replaced</i></p>	<p>This clause replaces the existing heading to Part 3 Division 6 with new heading “Part 6 – Miscellaneous”.</p> <p>This is a consequential amendment as a result of the repeal of the 2007 Amendment Act and returns Division 6 back into Part 6.</p>
<p>Clause 22 <i>Section 33B amended</i></p>	<p>Section 33B deals with the strategic development plan and the statement of corporate intent.</p> <ul style="list-style-type: none"> • <u>Subclause 22(1)</u> amends section 33B(3) by replacing “section 78” with “Section 36A”.The provisions in section 78 of the 2007 Amendment Act to be repealed, relating to the laying of documents before Parliament, are now moved to new section 36A inserted by clause 25 of the Bill. • <u>Subclause 22(2)</u> inserts new subsection 33B(4), requiring that any directions to the Board from the Treasurer are to be included in the annual report. <p>The above are consequential amendments as a result of the repeal of the 2007 Amendment Act.</p>
<p>Clause 23</p>	<p>Section 34 deals with directions to employer.</p>

<p><i>Section 34 amended</i></p>	<p>This clause amends section 34(1) by replacing “Part” with “Act”, and is a consequential amendment as a result of the repeal of the 2007 Amendment Act.</p>
<p>Clause 24 <i>Section 35 amended</i></p>	<p>Section 35 deals with directions to the Board by the Treasurer.</p> <p>This clause amends section 35 by deleting existing subsection 35(3) and inserting new subsections 35(3), 35(4), 35(5), 35(6), 35(7) and 35(8).</p> <p>Existing section 35(3) provides that section 77 applies to any directions given by the Minister under section 35.</p> <p>Section 77 provides for effective date of directions, and a requirement to lay directions before Parliament and also to include details of a direction in the annual report.</p> <p>As section 77 is contained in part 5 of the existing Act to be removed under the changes in clause 28 of the Bill, the provisions of section 77 are now relocated to the new subsections inserted by this clause.</p>
<p>Clause 25 <i>Section 36A inserted</i></p>	<p>This clause inserts new section 36A after existing section 35. This new section contains supplementary provisions in relation to the laying of documents before Parliament, which in the existing Act are contained in section 78.</p> <p>Because Part 5 containing section 78 of the Act is removed in clause 28 of the Bill, the current provisions of section 78 are relocated to new section 36A.</p>
<p>Clause 26 <i>Section 38 amended</i></p>	<p>Section 38 deals with regulations prescribed under the Act or under section 26 of the <i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i>.</p> <p>The amendments in this clause are consequential amendments as a result of the deletion of Part 5 of the Act under amendments in clause 28 of the Bill.</p> <ul style="list-style-type: none"> • <u>Subclause 26(1)</u> inserts new section 38(1) before section 38(2). This section contains provisions concerning the Governor’s powers to make regulations in relation to the Act. This restores the previous provisions of the Act as they stood prior to the 2007 Amendment Act. • <u>Subclause 26(2)</u> amends section 38(2) by replacing “section 79 but subject to this section” with “subsection (1)”. This is a consequential amendment as a result of deletion of Part 5 of the Act containing section 79 under amendments in clause 28 of the Bill. • <u>Subclause 26(3)</u> replaces existing section 38(3) with new section 38(3) with revised wording concerning instances where regulations cannot be made under section 38(1). • <u>Subclause 26(4)</u> inserts the following new subsections after section 38(4): <ul style="list-style-type: none"> ➤ Section (5A) – provides that regulations cannot be made to existing schemes unless the Board and the Board’s actuary have certified that they will not affect members benefits or contributions; ➤ Section (5B) – provides the definitions of “multiplying factor”, “pension value factor” and “relevant benefit”; ➤ Section (5C) – provides that subsections (3) and (5A) do not apply in the case of transactions under the <i>Family Law Act 1975</i> (Commonwealth); ➤ Section (5D) – provides the definitions of “flag lifting agreement”, “splitting order” and “superannuation agreement” in relation to subsection (5C); ➤ Section (5E) – provides for the payment of pension benefits to give effect to a payment split or payment in terms of the <i>Family Law (Superannuation)</i>

	<p><i>Regulations 2001; and</i></p> <ul style="list-style-type: none"> ➤ Section (5F) - provides the definitions of “payment split” and “superannuation interest” in relation to subsection (5E). • <u>Subclause 26(5)</u> inserts new wording in subsection 38(5) to provide that regulations cannot be made under subsection (1) affecting the financial rights or obligations of the Crown unless approved by the Treasurer. • <u>Subclause 26(6)</u> deletes existing section 38(6) and inserts in its place new sections 38(6) and 38(7). New section 38(6) provides for the effective date of regulations prescribed for the purposes of the definition of ‘employer’ in section 3. New section 38(7) provides that regulations in relation to section 38(6) cannot be made that would prejudice rights or impose liabilities that did not exist before the regulations were made. • <u>Subclause 26(7)</u> is a consequential amendment as a result of removal of separate references to the “Treasurer” and “Minister”, the replacement in all cases with “Treasurer”. • <u>Subclause 26(8)</u> deletes existing sections 38(9) and (10). The definitions contained in these deleted sections are now contained in new subsections (5B), (5D) and (5F) inserted in subclause 26(4), above. <p>As a general comment in relation to the above amendments, the 2007 Amendment Act added a new enabling section 79 for the making of regulations under the Act, with section 38 containing a statement of restrictions applicable to section 79, when used to make regulations for certain purposes. Section 79 is deleted as a result of amendments in clause 28 of the Bill and the provisions of Section 38 prior to the 2007 Amendment Act have been restored with some minor changes in style and grouping of definitions.</p>
<p>Clause 27 <i>Section 40 amended</i></p>	<p>Section 40 deals with inconsistent written laws.</p> <p>This clause amends section 40 by replacing “this Part and the regulations referred to in section 38” with “this Act and the regulations made or applying under it”.</p> <p>This reverses the effects of the 2007 Amendment Act.</p>
<p>Clause 28 <i>Parts 4, 4A and 5 deleted</i></p>	<p>This clause deletes Parts 4, 4A and 5 of the Act. These Parts were inserted into the Act by the 2007 Amendment Act to make provision for the mutualisation of GESB. With the mutualisation of GESB no longer relevant, these Parts of the Act are no longer required.</p> <p>Part 4 provided for the establishment of a Commonwealth regulated superannuation fund for the State’s accumulation schemes and the transfer of assets and liabilities of those schemes to bodies known as MutualCo and TrustCo, being bodies established for that purpose.</p> <p>Part 4A provided for the splitting of the GES Fund into two sub funds to allow for the transition of West State Super to the TrustCo upon mutualisation.</p> <p>Part 5 contained a number of general provisions that included providing for Ministerial Directions (section 77), the laying of documents before Parliament (section 78) and a general power for the making of regulations by the Governor (section 79). In so far as these provisions are still required they are restored to section 35 under the relevant clauses in the Bill.</p>

<p>Clause 29 <i>Schedule 1 amended</i></p>	<p>This clause amends clause 6(2)(e) of Schedule 1 replacing “Part 3” with “this Act”.</p> <p>This is a consequential amendment as a result of the repeal of the 2007 Amendment Act.</p> <p>Schedule 1 of the Act relates to the GESB Board and includes the Minister’s power to remove a director from office. The relevant reference in clause 6(2)(e) of Schedule 1 is now in section 3 of the Act rather than in Part 3.</p>
<p>Clause 30 <i>Schedule 2 amended</i></p>	<p>This clause amends Schedule 2 by replacing “Part 3” with “this Act”.</p> <p>This is a consequential amendment as a result of the repeal of the 2007 Amendment Act.</p> <p>Schedule 2 of the Act covers the provisions for meeting and procedures. The relevant reference in Schedule 2 is now in section 3 of the Act rather than in Part 3.</p>
<p>PART 3 – AMENDMENTS RELATING TO THE TREASURER</p>	
<p>Clause 31 <i>Various provisions amended</i></p>	<p>This clause amends the sections listed in the table in this clause by replacing “Minister” with “Treasurer.”</p> <p>The amendments recognise that the Treasurer as the Minister responsible for the Act.</p>
<p>Clause 32 <i>Section 6 amended</i></p>	<p>Section 6 deals with the functions of the Board.</p> <p>This clause amends section 6(1)(d) by deleting “the Minister and”.</p> <p>This amendment recognises the Treasurer as the Minister responsible for the Act.</p>
<p>Clause 33 <i>Section 7A amended</i></p>	<p>Section 7A deals with the formation or acquisition of subsidiaries.</p> <p>This clause deletes section 7A(2). Previously the Minister could not approve the formation of a subsidiary without the Treasurer’s concurrence.</p> <p>This amendment recognises the Treasurer as the Minister responsible for the Act.</p>
<p>Clause 34 <i>Section 30 amended</i></p>	<p>Section 30 deals with other public sector superannuation schemes.</p> <ul style="list-style-type: none"> • <u>Subclause (1)</u> amends section 30(1) by replacing “Minister and the Treasurer have” with “Treasurer has”. • <u>Subclause(2)</u> amends in section 30(2) by replacing “Minister and the Treasurer have” with “Treasurer has”. • <u>Subclause (3)</u> amends section 30(3) by deleting “Minister and the”. <p>This amendment recognises the Treasurer as the Minister responsible for the Act.</p>
<p>Clause 35 <i>Section 33B amended</i></p>	<p>Section 33B deals with strategic development plan and statement of corporate intent.</p> <p>Section 33B has been amended as follows:</p> <ul style="list-style-type: none"> • <u>Subclause (1)</u> amends section 33B(2)(d) by replacing “Board, the Minister” with “Board”. • <u>Subclause (2)</u> deletes section 33B(4). This section required that the Minister could not make regulations under subsection (2) without concurrence of the

	<p>Treasurer.</p> <p>This amendment recognises the Treasurer as the Minister responsible for the Act.</p>
<p>Clause 36 <i>Section 36 inserted</i></p>	<p>Section 36 deals with the Treasurer to have access to information</p> <p>This clause amends section 36(1) by replacing “Minister’s and” with “Treasurer’s”.</p> <p>This amendment recognises the Treasurer as the Minister responsible for the Act.</p> <p>The heading to amended section 36 is also changed under this clause to “Treasurer to have access to information”.</p>
<p>Clause 37 <i>Section 37 deleted</i></p>	<p>Section 37 deals with Minister to consult with Treasurer.</p> <p>This clause deletes existing section 37. This section required the Minister to consult with the Treasurer if the performance of a function had an impact of the financial rights and obligations of the Crown. With there being only one responsible Minister, ie, the Treasurer, this section is no longer required.</p> <p>This amendment recognises the Treasurer as the Minister responsible the Act.</p>
<p>Clause 38 <i>Schedule 1 amended</i></p>	<p>This clause amends clause 7 of schedule 1 by replacing “Minister” (first concurrence) with “Treasurer”.</p> <p>This amendment recognises the Treasurer as the Minister responsible for the Act.</p>
<p>Clause 39 <i>Schedule 3 amended</i></p>	<p>This clause amends Schedule 3 clause 1 by replacing “Minister given with Treasurer’s concurrence” with “Treasurer”.</p> <p>This amendment recognises the Treasurer as the Minister responsible for the Act.</p>
<p>PART 4 – AMENDMENTS RELATING TO ADMINISTRATION AND FUNDING</p>	
<p>Clause 40 <i>Section 6 amended</i></p>	<p>Section 6 deals with functions of the Board.</p> <ul style="list-style-type: none"> • <u>Clause 40(a)</u> amends section 6(1)(c) by a change in wording to allow the Board to select, appoint and supervise one or more external administrators of the schemes. • <u>Clause 40(b)</u> inserts new paragraph (ea) after section 6(1)(d) which provides as a function of the Board the provision of information to members relating to their rights and entitlements within the scheme. This amendment is intended to ensure that the Board may finance a campaign such as the one envisaged in the Whithear Report in relation to the transfer of small balance accounts to a member’s primary superannuation fund, where the member is no longer employed by the State. • <u>Clause 40(c)</u> amends section 6(1)(f) by inserting “this Act or” after “under” to reflect that all functions performed by the Board must be performed in accordance with Act requirements.
<p>Clause 41 <i>Section 7 amended</i></p>	<p>Section 7 deals with powers of the Board.</p> <ul style="list-style-type: none"> • <u>Clause 41(a)</u> amends section 7(2)(b) by inserting “in accordance with any relevant Treasurer’s guidelines” before “enter”. This amendment provides that the Board must comply with any relevant guidelines in regard to the entering into contracts for the provision to the Board of products and services. • <u>Clause 41(b)</u> amends section 7(2)(c) by inserting “in accordance with any relevant Treasurer’s guidelines” before “enter”. This amendment provides that the Board must comply with any relevant guidelines in regard to entering into

	<p>contracts for the provision of products and services to other persons.</p> <p>These clauses reflect that where existing guidelines are in existence for function they must be complied with and where no guidelines are currently in place then the current procedure will remain.</p> <ul style="list-style-type: none"> • <u>Clause 41(c)</u> amends section 7(2)(ca) by replacing the words “subsidiary for the purpose of performing the function referred to in Section 6(1)(e): and” with “subsidiary and”. <p>As a general comment, section 7(2)(ca) provides authorisation to the Board to form or acquire a subsidiary to provide financial services subject to section 7A. The establishment of a subsidiary other than for the provision of financial services is permitted by sections 7(1) and/or 7(2)(g) and is not restricted by section 7A. The amendment allows for the establishment of a subsidiary for any purpose, however it will be subject to section 7A, which requires the approval of the Treasurer.</p>
<p>Clause 42</p> <p><i>Section 11 amended</i></p>	<p>Section 11 deals with staff.</p> <ul style="list-style-type: none"> • <u>Subclause 42(1)</u> amends section 11(2) by replacing “Board” with “Board on the advice of the Public Sector Commissioner” to provide that appointments can only be made under this section on advice from the Public Sector Commissioner. • <u>Subclause 42(2)</u> inserts new section 11(3) after existing section 11(2) regarding the offer and acceptance of employment by an external provider of administration services. <p>This new section allows a payment, as determined between GESB and the Public Sector Commissioner, to be paid to all employees who take up the offer of employment made by the external administrator. The new section also allows for employees who are permanent public service officers who take up employment with the external administrator, the right of return within a fixed period of time of the offer to public sector employment in lieu of a transition payment.</p>
<p>Clause 43</p> <p><i>Section 18 amended</i></p>	<p>Section 18 deals with the Board’s investment powers.</p> <p>This clause deletes existing section 18(2), which required that investments to be made in accordance with the Treasurer’s guidelines. This requirement has now been inserted in section 19. Following this amendment section 18 will exclusively provide the Board legal capacity to enter into investment transactions and confirms that the Board has the capacity to make investments and is silent on the basis on which this power is exercised. The formulation of the investment strategy of the fund is now subject to Treasurer’s guidelines and is governed by section 19 of the Act.</p>
<p>Clause 44</p> <p><i>Section 19 amended</i></p>	<p>Section 19 deals with the Board’s investment strategy.</p> <ul style="list-style-type: none"> • <u>Subclause 44(1)</u> amends section 19(1) by replacing “and give effect to a broad investment strategy for investment” with “an investment strategy for”. <p>This amendment relates to the formulation of the investment strategy, but not with carrying it into effect. The word “broad” has been removed (the strategy is now simply the “Fund investment strategy” in later references), as has the second reference to “investment” (“an investment strategy for the investment of the Fund”).</p> <ul style="list-style-type: none"> • <u>Subclause 44(2)</u> inserts new section 19(2A) after existing section 19(1). This new subsection provides that the Board’s investment strategy must be

	<p>consistent with Treasurer's guidelines.</p> <ul style="list-style-type: none"> • <u>Subclause 44(3)</u> amends section 19(2) by changing the wording to emphasise that the Board must formulate its investment strategy in line with Treasurer's guidelines. • <u>Subclause 44(4)</u> inserts new section 19(4) after existing section 19(3). This new section brings together two separate controls on the Board's investment activity - Treasurer's guidelines regarding investment powers and investment strategy. As a result, the Board is required to respect both of these matters, which means that the Treasurer must take care not to issue investment powers guidelines which cannot be reconciled with the investment strategy guidelines. <p>This clause also changes the heading of section 19 to "Exercise of Investment Powers".</p>
<p>Clause 45</p> <p><i>Section 20A inserted</i></p>	<p>Section 20A deals with Reserves</p> <p>This clause inserts new section 20A after existing section 19.</p> <p>New section 20A provides for the Board to maintain reserves and to formulate a reserving strategy. This new section has been structured to mirror the revised Section 18 and 19 (as amended by the Bill) with respect to investment powers.</p> <p>The provisions in new section 20A:</p> <ul style="list-style-type: none"> • give the Board an explicit power to maintain reserves (subsection 1); • require the Board to formulate a reserving strategy (subsection 2); • require the strategy to be consistent with the Fund's liability profile and within the Treasurer's guidelines (subsection 3); • require periodic review of the strategy, a process that may also be subject to guidelines (subsection 4); and • require the Board to exercise its reserving power in a way which accords with Treasurer's guidelines (giving the Treasurer a power, if required to be exercised, to control specific reserving decisions through guidelines as well as the overall reserving strategy) and give effect to the reserving strategy.
<p>Clause 46</p> <p><i>Section 22 amended</i></p>	<p>Section 22 deals with allocation of earnings and costs.</p> <p>This clause inserts new section 22 to replace existing section 22 of the Act.</p> <p><u>Subsection (1)</u> of new section 22 provides that earnings and costs are to be allocated between schemes and members appropriately. The purpose of this subsection is to ensure that any cross subsidisation of costs between schemes is eliminated. Costs related to administering each scheme will be met through agency superannuation contributions and recoupment of the scheme.</p> <p><u>Subsection (2)</u> of new section 22 provides that in allocating cost and earnings, the Board is to ensure compliance with any relevant guidelines, or otherwise act in accordance with section 6(2) of the Act. Section 6(2) requires the Board to ensure all functions carried out by the Board under the Act are equitable and, as far as practicable, in the best interests of members.</p>
<p>Clause 47</p> <p><i>Section 23 amended</i></p>	<p>Section 23 deals with Investment managers.</p> <p>This clause amends section 23 to reflect that functions must comply with any relevant Treasurer's guidelines where they have been issued.</p>

<p>Clause 48 <i>Section 24 amended</i></p>	<p>Section 24 deals with borrowings.</p> <p>This clause amends section 24 to state that borrowings are to comply with any relevant Treasurer's guidelines where they have been issued.</p>
<p>Clause 49 <i>Section 33 amended</i></p>	<p>Section 33 deals with Treasurer's approvals and guidelines.</p> <p>The broad intent of the amendments in this clause are to provide for additional matters in relation to which the Treasurer may issue guidelines, as follows:</p> <ul style="list-style-type: none"> • <u>Subclause 49(1)</u> amends section 33(2) by replacing "may issue" with "may, after consulting with the Board, issue", requiring the Treasurer to consult with the Board prior to the issue of guidelines. This subclause also: <ul style="list-style-type: none"> ➤ inserts new paragraph (aa) before paragraph (a) in section 33(2), allowing the Treasurer to issue guidelines for the Board to follow regarding the outsourcing of superannuation administration functions; ➤ inserts new paragraph (ca) before paragraph (c) in section 33(2), allowing for Treasurer's guidelines dealing with the Board's powers to deal with property, enter into contracts, promote and market itself, etc, under Section 7(2); ➤ amends paragraph (d) of section 33(2) by deleting "making of investments" and inserting "exercise of the Board's powers", which expands the power to issue Treasurer's guidelines regarding the Board's investment powers to reflect amendments to section 18 made in clause 43; ➤ inserts new paragraph (fa) before paragraph (f) of section 33(2), allowing Treasurer's guidelines to control the formulation of the investment strategy, reflecting amendments to section 19 made in clause 44; ➤ inserts new paragraph (ga) before paragraph (g) in section 33(2), allowing Treasurer's guidelines to establish formulation and review of the reserving strategy. This change is consequential as a result of the insertion of new section 20A in clause 45; and ➤ amends paragraph (g) of section 33(2) by inserting after "earnings" the phrase "and costs of managing and administering the Fund and the schemes". This change reflects amendments to section 22 made in clause 46 providing that the Treasurer is to issue guidelines regarding cost allocation across the schemes. • <u>Subclause 49(2)</u> inserts new subsections (4A) and (4B) after section 33(3). New subsection (4A) requires the Treasurer to publish notice of any guidelines issued, and also requires that these guidelines be accessible on the website of the department assisting in the administration of the Act. New subsection (4B) clarifies that the definition of "Department" noted in new subsection (4A) means the department of Public Service principally assisting in the administration of this Act.
<p>PART 5 – AMENDMENTS TO INTRODUCE CHOICE</p>	
<p>Clause 50 <i>Part 2A inserted</i></p>	<p>The clause inserts a new Part 2A with the heading "Employer contribution obligation".</p> <p>Part 2A contains 3 sections – 4A, 4B and 4C – which together provide the broad legislative mechanism for the introduction of Choice of Fund.</p> <p>New section 4A is an interpretation provision. Section 4A(1) provides for the definitions of "chosen fund", "default fund" "employee", "exempt employee", "fund",</p>

	<p>“individual superannuation guarantee shortfall”, “SGA Act”, and “superannuation guarantee charge”. Section 4A(2) provides a definition of employee to whom Choice of Fund is to apply.</p> <p>New section 4B requires an employer to make superannuation contributions on behalf of an employee to a fund chosen by the employee, or to a default fund so as to avoid a superannuation guarantee shortfall for that employee.</p> <p>New section 4C provides for the making of regulations to require an employer to make contributions in excess of the requirements under section 4B or any other written law. This would apply where a specific arrangement is in place where there was a requirement that contributions be made in excess of normal employer contributions.</p>
<p>Clause 51 <i>Section 6 amended</i></p>	<p>Section 6 deals with functions of the Board.</p> <p>This clause inserts new paragraph (ba) after existing paragraph (a) of section 6(1). This new paragraph provides the Board the power to operate a clearing house if agreed with by the Treasurer in providing a service to have contributions credited to a default fund or the remittance of contributions to the fund of employee choice.</p>
<p>Clause 52 <i>Section 15 amended</i></p>	<p>Section 15 deals with contents of the Fund.</p> <p>This clause inserts new paragraph (aa) after existing paragraph (a) of section 15(2).</p> <p>Section 15(2) lists amounts that can be charged to the GES Fund. The new paragraph inserted by this clause expands this list to include amounts to be remitted to other superannuation funds. This mirrors an existing provision in Section 15(1) which lists transfers into the Fund as amounts which can be credited to it. The amendment will not in itself operate to permit members to roll their entitlements into other funds; it merely puts beyond doubt the fact that the scheme rules may permit it.</p> <p>Section 15(2)(c) mentions “other amounts lawfully paid by the Board or charged to the Fund” which may cover these payments. However, since transfers in are explicitly mentioned in section 15(1), it is considered appropriate to specifically mention transfers out in section 15(2).</p>
<p>Clause 53 <i>Section 30 amended</i></p>	<p>Section 30 deals with other public sector superannuation schemes, and relates to schemes that may be established by Employers as a default fund instead of the current GESB scheme default.</p> <ul style="list-style-type: none"> • <u>Subclause 53(1)</u> amends section 30(2) by replacing the phrase “and only if the Minister and Treasurer have” with “the Treasurer has”. This change confirms the Treasurer as the responsible Minister. • <u>Subclause 53(2)</u> inserts new subsection (3A) after 30(2), which provides for the Employer to contribute to a fund nominated by the employee under the Choice of Fund arrangements.