State Superannuation Act 2000

Incorporating the amendments proposed by the State Superannuation Amendment
Bill 2011 (Bill No. 200-1)

Western Australia

State Superannuation Act 2000

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State Superannuation Act 2000

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.

[Long title inserted by the State Superannuation Amendment Bill 2011 cl. 5.]

An Act to provide for —

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

and for related purposes.

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

Part 1 — Preliminary

1. Short title

This Act may be cited as the State Superannuation Act 2000 1.

2. Commencement

This Act comes into operation on a day fixed by proclamation ¹.

3. Interpretation

(1) In this Act —

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

<u>benefit</u> 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;

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

Employer means —

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

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;

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

scheme, except in section 30, means a superannuation scheme established or continued under this Act;

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

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

transfer time means the time fixed under section 56;

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

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

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

- (2) For the purposes of this Act, a person who
 - (a) holds an office or position established or continued under a written law; or
 - (b) is appointed to an office or position by the Governor, a Minister, an Employer or a person who works for an Employer,

is taken to work for an Employer.

- (3) Part 1.2 Division 6 of the Corporations Act applies for the purpose of determining whether a body is a subsidiary of the Board.
- $-\frac{I(3)}{deleted}$

[Section 3 amended by No. 18 of 2006 s. 6; No. 25 of 2007 s. 5 and 19(2); the State Superannuation Amendment Bill 2011 cl. 6 and 31.]

4. Act binds the Crown

This Act binds the Crown.

s. 4A

Part 2A — Employer contribution obligation

[Heading inserted by the State Superannuation Amendment Bill 2011 cl. 50.]

4A. Terms used

(1) In this Part —

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

default fund means —

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

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

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

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

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

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

<u>superannuation guarantee charge</u> means the charge imposed by the <u>Superannuation Guarantee Charge Act 1992</u> (Commonwealth).

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

[Section 4A inserted by the State Superannuation Amendment Bill 2011 cl. 50.]

4B. Employers to make contributions

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

- (2) Where subsection (1) requires an Employer to make contributions for an employee, the Employer must pay the contributions to
 - (a) a chosen fund for the employee; or
 - (b) if at the time the contribution is paid there is no chosen fund for the employee, the default fund.
- (3) Except as prescribed in the regulations, an Employer must comply with the requirements of the SGA Act Part 3A Division 6, even if it is not required by that Act to do so.
- (4) If an Employer becomes liable to pay the superannuation guarantee charge as a result of incurring an individual superannuation guarantee shortfall for an employee for a period, the Employer has no obligation under subsection (1) to make contributions in respect of that employee for that period.
- (5) This section does not apply in relation to an employee who is in a class of employees prescribed by the regulations.
 - [Section 4B inserted by the State Superannuation Amendment Bill 2011 cl. 50.]

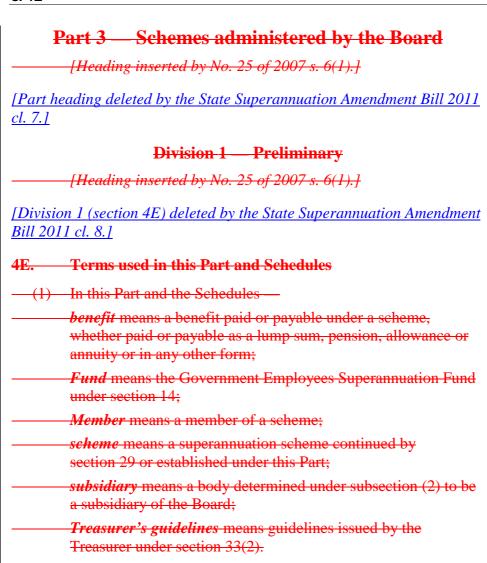
4C. Regulations may require extra contributions

- (1) Subject to subsection (2), the regulations may require an Employer to make superannuation contributions which exceed any contributions the Employer is required to make under section 4B or any other written law.
- (2) Regulations which require an Employer to make contributions to a fund must either
 - (a) specify the amount or rate of contributions to be made; or
 - (b) specify the way in which the amount or rate of contributions is to be determined, in which case the regulations must provide that the determination of the rate or amount of contributions is to be subject to the approval of the Treasurer.

[Section 4C inserted by the State Superannuation Amendment Bill 2011 cl. 50.]

[Part 2 has not come into operation 6.]

s. 4E



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

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

Part 2 — Government Employees Superannuation Board

[Heading inserted by the State Superannuation Amendment Bill 2011 cl. 9.]

Division 2 — Government Employees Superannuation Board

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

5. Government Employees Superannuation Board

- (1) There is a board called the Government Employees Superannuation Board.
- (2) The Board is
 - (a) a body corporate with perpetual succession; and
 - (b) a Crown agency.
- (3) The Board is a continuation of, and the same legal entity as, the Government Employees Superannuation Board established under the GES Act.
- (4) Proceedings may be taken by or against the Board in its corporate name.

6. Functions of the Board

- (1) The functions of the Board are to
 - [(a) deleted]
 - (a) administer this Part; and
 - (ba) if so agreed with the Treasurer, provide a service of receiving superannuation contributions paid by Employers and
 - (i) crediting them to the Fund; or
 - (ii) remitting them on behalf of the Employers to other funds,

in accordance with Part 2A; and

- (b) manage the Fund; and
- (c) administer the schemes or, in accordance with any relevant Treasurer's guidelines, select and appoint external administrators of the schemes and monitor their administration; and schemes; and

- (d) provide information, advice and assistance to the Minister and the Treasurer on matters relating to superannuation; and
- (ea) so far as practicable, provide information to Members regarding their rights and entitlements under the schemes; and
- (e) provide, or facilitate the provision of, products and services to
 - (i) members of the schemes; and superannuation schemes administered by the Board under this Part or any other written law; and
 - (ii) Employers;

and

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

[Section 6 amended by No. 18 of 2006 s. 7; No. 25 of 2007 s. 6(5) and 19(1); the State Superannuation Amendment Bill 2011 cl. 10, 32, 40 and 51.]

7. Powers of the Board

- (1) The Board has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.
- (2) Without limiting subsection (1), the Board may
 - (a) acquire, hold, deal with and dispose of property of any sort; and

- (b) <u>in accordance with any relevant Treasurer's guidelines</u>, 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

and pay out of the Fund fees charged by the person in accordance with the contract or arrangement; and

- (c) in accordance with any relevant Treasurer's guidelines, enter into a contract or arrangement with any person under which the Board is to provide products and services to that person and charge fees for providing those products and services; and
- (ca) subject to section 7A, form or acquire a <u>subsidiary</u>; and <u>subsidiary for the purpose of performing the function</u> referred to in section 6(1)(e); and
- (d) promote and market the Board, its activities, products and services; and
- (e) conduct research; and
- (f) produce and publish information; and
- (g) do anything else that a body corporate may do.
- (3) Without limiting subsection (1) if the Board has power to do something, it may do that thing on its own or in conjunction with any person.

[Section 7 amended by No. 18 of 2006 s. 8; the State Superannuation Amendment Bill 2011 cl. 41.]

7A. Formation or acquisition of subsidiary

(1) The Board must obtain the approval of the <u>Treasurer Minister</u> before it forms or acquires a subsidiary.

[(2) deleted]

- (2) The Minister must not give approval under subsection (1) except with the Treasurer's concurrence.
 - (3) When seeking approval under subsection (1) the Board must give to the <u>Treasurer Minister</u> a copy of the subsidiary's constitution or proposed constitution, as the case requires.

[Section 7A inserted by No. 18 of 2006 s. 9; amended by the State Superannuation Amendment Bill 2011 cl. 31, 33 and 41.]

s. 7B

7B. Control of subsidiary

- [(1) deleted]
- (2) The Board must ensure that the constitution of every subsidiary of the Board that under a written law or the Corporations Act is required to have a constitution
 - (a) contains provisions to the effect of those required by Schedule 3; and
 - (b) is consistent with this Act; and Part; and
 - (c) is not amended in a way that makes it inconsistent with this Act. Part.
- (3) A director or a member of the staff of the Board may with the approval of the Board become a director of a company that is or is to be a subsidiary of the Board.
- (4) The provisions of this <u>Act Part</u>-prevail to the extent of any inconsistency with the constitution of any subsidiary of the Board.
- (5) Neither
 - (a) subsection (2); nor
 - (b) provisions referred to in subsection (2)(a) included in the constitution of a subsidiary,
 - make the Board or the <u>Treasurer Minister</u> a director of a subsidiary for the purposes of the Corporations Act.
- (6) Subsections (2) to (5) and Schedule 3 are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the Corporations legislation as defined in section 9 of the Corporations Act.

[Section 7B inserted by No. 18 of 2006 s. 9; amended by No. 25 of 2007 s. 6(5) and 7; the State Superannuation Amendment Bill 2011 cl. 11 and 31.]

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 Treasurer Minister; and
 - (b) 3 are to be appointed by the Governor as Employer directors; and

- (c) 3 are to be elected in accordance with the regulations as Member directors.
- (2) Schedule 1 has effect.

[Section 8 amended by No. 25 of 2007 s. 19(1); the State Superannuation Amendment Bill 2011 cl. 31.]

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. Part.
- (2) The protection given by this section applies even if the person would have been capable of doing the act if this Act Part had not been enacted.
- (3) Subsection (1) does not relieve the Board or the Crown of any liability that they might have for anything done by a person against whom that subsection provides that an action does not lie.
- (4) In an action against the Crown or the Board for loss or damage suffered by a person as a result of the making of an investment by the Board, it is a defence for the defendant to prove that the investment was made in accordance with the investment strategy formulated under section 19(1).

[Section 9 amended by No. 25 of 2007 s. 6(5); the State Superannuation Amendment Bill 2011 cl. 12.]

10. Meetings, procedures and common seal

- (1) Schedule 2 has effect.
- (2) The common seal of the Board is to be
 - (a) in a form determined by the Board; and
 - (b) kept in safe custody as the Board directs; and
 - (c) used only as authorised by the Board.

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

11. Staff

- (1) Public service officers may be appointed or employed under the *Public Sector Management Act 1994* to enable the Board to perform its functions.
- (2) The Board may appoint or employ other persons on terms and conditions determined by the <u>Board on the advice of the Public Sector Commissioner. Board.</u>
- (3) If the Board appoints an external administrator to conduct the administration of a scheme or schemes and in connection with that appointment the external administrator makes an offer of employment to a person appointed or employed by the Board under subsection (1) or (2) (a *Board officer*), the Board may enter into an agreement with the Board officer on terms approved by the Public Sector Commissioner providing for
 - (a) in the case of a Board officer who is a permanent public service officer appointed or employed under subsection (1)
 - (i) the right of the Board officer, during a stated period, to resume appointment or employment under subsection (1); and
 - (ii) the making by the Board of a payment to the

 Board officer if the offer of employment is

 accepted and the right of election under
 subparagraph (i) expires without being exercised;

and

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

[Section 11 amended by the State Superannuation Amendment Bill 2011 cl. 42.]

12. Delegation

- (1) Subject to section 23 the Board may, in writing, delegate the performance of any of its functions, except this power of delegation, to
 - (a) any person; or
 - (b) a committee appointed under clause 8 of Schedule 2.
- (2) A function performed by a delegate is taken to have been performed by the Board.

(3) A person purporting to act under this section as a delegate is taken to have acted in accordance with the terms of the delegation unless the contrary is shown.

13. Review of Board decisions

- (1) A person aggrieved by a decision of the Board may apply to the Board to have the decision reviewed and the Board is to review the decision.
- (2) A person cannot apply to the Board under subsection (1) more than once in relation to the same decision.
- (3) A person aggrieved by a decision of the Board on a review under subsection (1) may
 - (a) if the decision relates to a superannuation scheme continued by section 29(1)(c) or (d), apply to the State Administrative Tribunal for a review of the decision; or
 - (b) in any case, refer the matter for independent review by a prescribed person or body.
- (4) A referral under subsection (3)(b) is to be made and dealt with in accordance with the regulations.
- (5) The decision on review is to be given effect according to its tenor.

[Section 13 amended by No. 55 of 2004 s. 1104; No. 25 of 2007 s. 8.]

Part 3 — Government Employees Superannuation Fund

[Heading inserted by the State Superannuation Amendment Bill 2011 cl. 13.]

Division 3 — Government Employees Superannuation Fund

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

14. The Fund

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

[(3), (4) deleted]

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

[Section 14 amended by No. 25 of 2007 s. 68; the State Superannuation Amendment Bill 2011 cl. 14.]

15. Contents of the Fund

- (1) The Board is to credit to the Fund
 - (a) contributions made under this Act; and Part; and
 - (b) amounts transferred to the Fund from other superannuation funds; and
 - (c) earnings derived from the investment of the Fund; and
 - (d) money borrowed by the Board; and
 - (e) other amounts lawfully received by the Board or credited to the Fund.
- (2) The Board is to charge to the Fund
 - (a) benefits paid under the schemes; and
 - (aa) amounts transferred from the Fund to other superannuation funds; and

- (b) costs incurred by the Board in carrying out its functions; and
- (ba) expenditure relating to the establishment of a subsidiary under section 7(2)(ca); and
- (c) other amounts lawfully paid by the Board or charged to the Fund.

[Section 15 amended by No. 18 of 2006 s. 10; No. 25 of 2007 s. 6(5) and 19(1); the State Superannuation Amendment Bill 2011 cl. 15 and 52.]

16. Accounting records

- (1) The Board is to keep the accounting and other records that the Board considers appropriate in order to perform its functions.
- (2) The Board may keep its records in or on any medium, or combination of mediums, capable of recording information and may vary the manner or form in which they are kept.

17. Actuarial investigation

- (1) The Board is to cause an actuary to carry out an investigation of the state and sufficiency of the Fund at least once every 3 years and at any other times the Treasurer directs.
- (2) The actuary is to report the results of the investigation to the Board within 12 months of the date as at which the investigation is carried out or within any longer period the Treasurer approves.
- (3) The Board and actuary must ensure that the actuarial investigation and report are carried out in accordance with the Treasurer's guidelines.

18. Power to invest

(1) The Board may invest the assets of the Fund in any form of investment that is, or is of a kind that is, approved by the Treasurer.

[(2) deleted]

- (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, investment,

as it considers appropriate.

[Section 18 amended by the State Superannuation Amendment Bill 2011 cl. 43.]

19. Exercise of investment powers Investment strategy

- (1) The Board is to formulate <u>a strategy for and give effect to a broad investment strategy for the investment of the Fund.</u>
- (2A) The Board's investment strategy for the Fund is to be consistent with any relevant Treasurer's guidelines.
 - (2) In formulating its investment strategy the Board is to have and in making investment decisions the Board is to endeavour to optimize returns having regard to all of the circumstances of the Fund including
 - (a) the need to exercise care and prudence to maintain the integrity of the Fund; and
 - (b) the
 - (i) nature of; and
 - (ii) potential for capital appreciation and income return from; and
 - (iii) costs associated with making; and
 - (iv) risks associated with,

different investments and different kinds of investments; and

- (c) the desirability of diversifying its investments; and
- (d) the liquidity of the Fund; and
- (e) its expected cash flow requirements; and
- (f) the level of existing and prospective liabilities.
- (3) The Board is to review
 - (a) its broad investment strategy; and
 - (b) the management and performance of its investments,

from time to time in accordance with <u>any relevant Treasurer's</u> the Treasurer's guidelines.

- (4) In exercising its powers under section 18 the Board is to—
 - (a) act in accordance with any relevant Treasurer's guidelines; and
 - (b) act so as to give effect to its investment strategy.

[Section 19 amended by No. 25 of 2007 s. 19(1); the State Superannuation Amendment Bill 2011 cl. 44.]

20A. Reserves

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

[Section 20A inserted by the State Superannuation Amendment Bill 2011 cl. 45.]

20. Limitation on in-house assets

- (1) The Board may only invest in debt paper or securities of an Employer if doing so will not result in a breach of subsection (3).
- (2) If at any time it appears to the Board that subsection (3) is being breached, the Board must remedy the breach.
- (3) This subsection is breached if the cost of the Board's investments in debt paper or securities of an Employer (other than debt paper of the Western Australian Treasury Corporation) exceeds the prescribed percentage of the cost of all of the Board's investments.

21. Loans to Members prohibited

The Board must not use the assets of the Fund to make a loan or give financial assistance to a Member.

22. Allocation of earnings and costs

- (1) The Board is to allocate
 - (a) earnings derived from the investment of the Fund; and
 - (b) the costs of managing and administering the Fund and the schemes,

between the schemes and where appropriate between Members.

- (2) In allocating earnings and costs under subsection (1) the Board is to
 - (a) ensure compliance with any relevant guidelines; and
 - (b) otherwise act in accordance with section 6(2).

[Section 22 inserted by the State Superannuation Amendment Bill 2011 cl. 46.]

22. Earnings derived from investment

The Board is to allocate earnings derived from the investment of the Fund between the schemes in accordance with the Treasurer's guidelines and otherwise as it considers appropriate.

23. Investment manager

- (1) The Board may appoint
 - (a) an employee of the Board; or
 - (b) a person approved by the Treasurer,

as an investment manager on terms determined by the Board.

- (2) Subject to <u>any relevant Treasurer's</u> the Treasurer's guidelines the Board may delegate to an investment manager all or any of its functions under section 18 with respect to all or part of the Fund.
- (3) A person is not appointed as an investment manager within the meaning of this section unless the person is appointed for the purpose of enabling the Board to delegate a function to that person under subsection (2).

[Section 23 amended by the State Superannuation Amendment Bill 2011 cl. 47.]

24. Borrowing

- (1) The Board cannot borrow money unless
 - (a) the borrowing is
 - (i) for the purpose of overcoming a cash flow problem in the payment of benefits; or
 - (ii) for a purpose approved by the Treasurer; and
 - (b) the terms of the borrowing have been approved by the Treasurer; and
 - (c) the borrowing complies with <u>any relevant Treasurer's</u> the Treasurer's guidelines.
- (2) When borrowing money the Board may give any security it considers appropriate.
- (3) In this section —

"borrow money" means borrow or raise money, obtain credit or arrange for other financial accommodation, and includes to re-borrow or obtain advances.

[Section 24 amended by No. 25 of 2007 s. 19(1); the State Superannuation Amendment Bill 2011 cl. 48.]

25. Interest accrues on money owing to Fund

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

26. Recovery of money owing to Fund

- (1) The Board may recover any money owing to the Fund
 - (a) as a debt in a court of competent jurisdiction; or
 - (b) by deducting the amount owing from any amount that is, or becomes, payable from the Fund to the debtor; or
 - (c) if the money is owed by an Employer, by entering into an arrangement for the satisfaction of the debt in such manner as the Board considers appropriate; or
 - (d) if the money is owed by a Member, by deduction of the amount owing from the Member's pay under subsection (2).

- (2) If a Member owes money to the Fund the Board may direct the Employer of the Member to
 - (a) deduct the amount owing from the Member's pay in the instalments and at the times set out in the direction; and
 - (b) pay the amount deducted to the Fund,

and the Employer must comply with the direction.

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

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

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

Part 4 — Superannuation Schemes

[Heading inserted by the State Superannuation Amendment Bill 2011 cl. 16.]

Division 4 — Superannuation schemes

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

28. Superannuation schemes

- (1) The Governor may, by regulations, establish superannuation schemes for persons who are working, or have worked, for Employers.
- (2) A scheme, other than a scheme continued by section 29(1)(b), (c) or (d), may provide for the spouses or former spouses of
 - (a) persons who are working, or have worked, for Employers; or
 - (b) persons who are, or will become, entitled to benefits under the *Parliamentary Superannuation Act 1970*,

to participate in the scheme.

(3) In subsection (2) —

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

"spouse", in relation to a person, includes a de facto partner of that person.

[Section 28 amended by No. 3 of 2002 s. 102; No. 18 of 2006 s. 11; No. 25 of 2007 s. 9.]

29. Continuation of superannuation schemes

- (1) On 17 February 2001 the following superannuation schemes become superannuation schemes under this Act Part—
 - (a) the superannuation scheme that was provided for in the *Government Employees Superannuation Act 1987*Part VIIA immediately before its repeal by section 39 (referred to in that Act as the 1993 scheme);
 - (b) the superannuation scheme that was provided for in the *Government Employees Superannuation Act 1987*Parts IV, V, VI and VII immediately before its repeal by section 39 (referred to in that Act as the 1987 scheme);

- (c) the superannuation scheme that was provided for in the Superannuation and Family Benefits Act 1938 Parts IV, V and VB immediately before its repeal by section 39;
- (d) the superannuation scheme that was provided for in the *Superannuation and Family Benefits Act 1938* Parts VA and VB immediately before its repeal by section 39.

[(2) deleted]

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

[Section 29 amended by No. 25 of 2007 s. 6(3), 10 and 69; the State Superannuation Amendment Bill 2011 cl. 17.]

30. Other public sector superannuation schemes

- (1) An Employer may establish a superannuation scheme or fund for the benefit of persons who work for the Employer, if and only if the <u>Treasurer has Minister and the Treasurer have</u> approved the establishment of that scheme or fund.
- (2) An Employer may make superannuation contributions for persons who work for the Employer to a superannuation fund or scheme other than
 - (a) a scheme under this Act; or Part;
 - (b) a superannuation scheme or fund established in accordance with subsection (1); or
 - (c) a superannuation scheme or fund established before 28 December 1989.

if <u>the Treasurer has and only if the Minister and the Treasurer have</u> approved the making of those contributions.

- (3A) An Employer may make superannuation contributions in accordance with section 4B(2) for persons who work for the Employer to a superannuation fund or scheme other than
 - (a) a scheme under this Act; or
 - (b) a superannuation scheme or fund established in accordance with subsection (1); or
 - (c) a superannuation scheme or fund established before 28 December 1989.

- (3) An approval given by the Minister and the Treasurer under this section must be in writing and may relate to
 - (a) a particular Employer or class of Employers;
 - (b) a particular person who works for an Employer, or class of such persons; or
 - (c) a particular scheme or fund or class of schemes or funds.
- (4) This section applies despite any other written law.

[Section 30 amended by No. 25 of 2007 s. 6(5); the State Superannuation Amendment Bill 2011 cl. 18, 34 and 53.]

<u>Part 5 — Government guarantees and appropriation of</u> the Consolidated Account

[Heading inserted by the State Superannuation Amendment Bill 2011 cl. 19.]

Division 5 — Government guarantees and appropriation of the Consolidated Account

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

31. Guarantee of benefits and Board's obligations

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

[Section 31 amended by No. 77 of 2006 s. 4; No. 25 of 2007 s. 6(5); the State Superannuation Amendment Bill 2011 cl. 20.]

32. Appropriation to meet contribution and funding obligations

The Consolidated Account is appropriated to the extent necessary to meet the payment of contributions and other amounts required by regulations under this Act to be paid by the Crown to the Fund on or after 17 February 2001.

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

Part 6 — Miscellaneous

[Heading inserted by the State Superannuation Amendment Bill 2011 cl. 21.]

Division 6 — Miscellaneous

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

33. Treasurer's approvals and guidelines

- (1) An approval given by the Treasurer
 - (a) must be in writing; and
 - (b) may be given when and how the Treasurer determines; and
 - (c) may be given in relation to a particular matter or matters of a particular kind.
- (2) The Treasurer may, after consulting the Board, issue may, after consulting the Board, issue may issue written guidelines to be followed by the Board in relation to
 - (aa) the exercise by the Board of its powers under section 6(1)(c) to select and appoint external administrators of the schemes and monitor their administration; and
 - (a) the information, advice and assistance to be provided by the Board under section 6(1)(d); and
 - (b) the provision by the Board of, or the facilitation by the Board of the provision of, products and services under section 6(1)(e); and
 - (ca) the exercise by the Board of its powers under section 7(2)(b) and (c); and
 - (c) the carrying out of actuarial investigations under section 17; and
 - (d) the <u>exercise of the Board's powers</u> making of investments under section 18; and
 - (e) the submission of matters to the Treasurer for approval under sections 18, 23, 24 and 38(5); and
 - (fa) the formulation and review of an investment strategy under section 19; and
 - (f) the review by the Board of its investment strategy and the management and performance of its investments under section 19(3); and

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- (ga) the maintenance of reserves and the formulation and review of a reserving strategy under section 20A; and
- (g) the allocation of investment earnings <u>and costs of</u> <u>managing and administering the Fund and the schemes</u> under section 22; and
- (h) the appointment of investment managers under section 23(1); and
- (i) the delegation of functions to investment managers under section 23(2); and
- (j) borrowing under section 24.
- (3) Guidelines issued under subsection (2) are not subsidiary legislation for the purposes of the *Interpretation Act 1984*.
- (4A) Where guidelines are issued under subsection (2), the Treasurer is to
 - (a) publish notice of the guidelines in the *Gazette* within 21 days of the issue; and
 - (b) make and, for so long as they remain current, keep the guidelines accessible on or through a website maintained by the Department.
- (4B) In subsection (4A) —

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

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

[Section 33 amended by No. 18 of 2006 s. 12; No. 25 of 2007 s. 19(1); the State Superannuation Amendment Bill 2011 cl. 49.]

33A. Duty to observe policy instruments

The Board is to perform its functions in accordance with its strategic development plan and its statement of corporate intent as existing from time to time.

[Section 33A inserted by No. 28 of 2006 s. 434.]

33B. Strategic development plan and statement of corporate intent

- (1) The Board must, at the prescribed times, prepare and submit to the Treasurer Minister—
 - (a) a strategic development plan for the Board; and

- (b) a statement of corporate intent for the Board.
- (2) The regulations may make provision for the following
 - the manner and form in which the Board is to prepare, submit, revise or modify a strategic development plan or statement of corporate intent;
 - (b) the period a strategic development plan or statement of corporate intent is to cover;
 - the matters to be set out in a strategic development plan (c) or statement of corporate intent;
 - the functions of the Board Board, the Minister and the Treasurer in relation to the development, approval or modification of a strategic development plan or statement of corporate intent;
 - the operation of a strategic development plan or (e) statement of corporate intent.
- If a regulation referred to in subsection (2) enables the Treasurer Minister to give directions to the Board, the Treasurer Minister must cause a copy of a direction given under the regulation to be laid before each House of Parliament or be dealt with in accordance with section 36A — section 78
 - within 14 days after the direction is given; or
 - if the direction is the subject of a notice under section 17 (b) of the Statutory Corporations (Liability of Directors) Act 1996, within 14 days after it is confirmed under that section.

I(4) deleted

- (4) Regulations referred to in subsection (2) are not to be made except with the Treasurer's concurrence.
- The text of a direction referred to in subsection (3) is to be included in the annual report submitted by the accountable authority of the Board under the Financial Management Act 2006 Part 5.

[Section 33B inserted by No. 28 of 2006 s. 434; amended by No. 25 of 2007 s. 11; the State Superannuation Amendment Bill 2011 cl. 22, 31 and 35.]

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

34. Directions to Employers as to practice and procedure

- (1) The Board or the <u>Treasurer Minister</u> may give written directions to Employers about the practices and procedures to be observed by Employers for the efficient operation of this <u>Act Part</u> and may amend those directions.
- (2) An Employer must comply with directions given under subsection (1).
- (3) The Board may recover from an Employer any costs or expenses incurred by the Board as a result of the Employer's failure to comply with a direction given under subsection (1).
- (4) Directions given under subsection (1) may
 - (a) apply at all times, at a particular time, or for a particular period; or
 - (b) apply to all Employers, to a particular Employer, or to Employers in a particular class; or
 - (c) direct something to be done in a particular manner; or
 - (d) require something to be approved by, or done to the satisfaction of, a particular person or body, or a member of a class of persons or bodies; or
 - (e) confer a discretion on a person or body, or a class of persons or bodies.

[Section 34 amended by No. 25 of 2007 s. 6(5) and 19(2); the State Superannuation Amendment Bill 2011 cl. 23 and 31.]

35. Treasurer Minister may give directions to the Board

- (1) Subject to the *Statutory Corporations (Liability of Directors)*Act 1996 the <u>Treasurer Minister may give written directions to the Board with respect to its functions and powers, either generally or with respect to a particular matter.</u>
- (2) The Board is to give effect to directions given by the <u>Treasurer</u> Minister.
- (3) Subject to subsections (5) and (6), a direction becomes effective on the expiry of 7 days after the Board receives it or of such longer period as the Treasurer may, at the Board's request, determine.
- (3) Section 77 applies to any direction given under this section.
- (4) If the Board asks the Treasurer to extend the 7 day period under subsection (3), the Treasurer must decide whether or not to

- agree to the request and notify the Board of that decision before the 7 day period has expired.
- (5) If a direction is the subject of a notice under the *Statutory*Corporations (Liability of Directors) Act 1996 section 17, it does not become effective before it is confirmed under that section or the expiry of any extension of time notified under subsection (2).
- (6) Despite the Statutory Corporations (Liability of Directors)

 Act 1996 section 17(4), the Treasurer may, when confirming a direction under that section, extend the time for the direction to become effective and is to notify the Board of the extension.
- (7) The Treasurer must cause a copy of a direction to be laid before each House of Parliament or dealt with under section 36A
 - (a) within 14 days after the direction is given; or
 - (b) if the direction is the subject of a notice under the

 Statutory Corporations (Liability of Directors) Act 1996
 section 17, within 14 days after it is confirmed under that section.
- (8) The text of a direction is to be included in the annual report submitted by the accountable authority of the Board under the Financial Management Act 2006 Part 5.

[Section 35 amended by No. 77 of 2006 s. 17; No. 25 of 2007 s. 13; the State Superannuation Amendment Bill 2011 cl. 24 and 31.]

36A. Supplementary provision about laying documents before Parliament

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

(3) The laying of a copy of a direction that is regarded as having occurred under subsection (2) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

[Section 36A inserted by the State Superannuation Amendment Bill 2011 cl. 25.]

Treasurer Minister to have access to information

- (1) For parliamentary purposes or for the proper conduct of the <u>Treasurer's Minister's</u>-public business, the <u>Treasurer Minister</u> is entitled
 - (a) to have information in the possession, or under the control, of the Board or a subsidiary; and
 - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the <u>Treasurer Minister may</u>, in writing, request the Board to
 - (a) give the <u>Treasurer Minister</u> information or access to information; and
 - (b) make its staff and facilities available to enable the <u>Treasurer Minister</u> to access information,

and the Board is to comply with that request.

- (3) This section does not entitle the <u>Treasurer Minister</u> to information in the possession of the Board or a subsidiary in a form that
 - (a) discloses confidential information about a beneficiary; or
 - (b) might enable confidential information about a beneficiary to be ascertained,

unless disclosure of the information is —

- (c) authorised by the beneficiary; or
- (d) authorised or required by a written law.
- (4) In this section —

"beneficiary" means —

- (a) a Member; or
- (b) a former Member; or

- (c) any other person to whom
 - a benefit has been or is being paid, or is or may become payable; or
 - a product or service has been provided by the Board:
- "document" includes any tape, disc or other device or medium on which data is recorded or stored mechanically, photographically, electronically or otherwise;
- "information" means information specified, or of a description specified, by the <u>Treasurer Minister</u> that relates to the functions or powers of the Board;
- "parliamentary purposes" means the purpose of
 - answering a question asked in a House of Parliament; or
 - complying with a written law, or an order or resolution (b) of a House of Parliament, that requires information to be furnished to a House of Parliament.

[Section 36 amended by No. 18 of 2006 s. 13; No. 25 of 2007 s. 19(2); the State Superannuation Amendment Bill 2011 cl. 31 and 36.]

Deleted by the State Superannuation Amendment Bill 2011 [37. cl. 37.1

Minister to consult with Treasurer

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

ISection 37 amended by No. 25 of 2007 s. 6(5).1

38. Regulations

- Subject to subsections (3) to (8), the Governor may make (1) regulations prescribing all matters that are required or permitted by this Act or the State Superannuation (Transitional and Consequential Provisions) Act 2000 section 26 to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- I(1) deleted1

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- (2) Without limiting the generality of <u>subsection (1)</u>, <u>section 79 but subject to this section</u>, regulations may be made <u>under subsection (1) under section 79</u> in relation to
 - (a) establishing schemes; and
 - (b) membership and Employer participation in the schemes; and
 - (c) contributions and transfers of money to the Fund and other funding of the Fund; and
 - (d) benefits and how they are paid or dealt with; and
 - (e) insurance to be provided through the schemes; and
 - (f) management of the Fund; and
 - (g) administration of the schemes; and
 - (h) accounts and records to be kept by the Board; and
 - (i) information and documents to be given to and by the Board; and
 - (j) provision by the Board of, or facilitation by the Board of the provision of, products and services; and
 - (k) appointment and election of directors; and
 - (l) reviews, other than by the State Administrative Tribunal, of decisions of the Board.
- (3) Regulations cannot be made under subsection (1) if they reduce the amount of a benefit that
 - (a) accrued or became payable before the regulations came into operation; or
 - (b) is, or may become, payable in relation to a period before the regulations came into operation.
 - (3) Regulations cannot be made if they -
 - (a) reduce the amount of a benefit that
 - (i) accrued or became payable before the regulations came into operation; or
 - (ii) is, or may become, payable in relation to a period before the regulations came into operation;

-or

- (b) reduce, or have the same effect as reducing
 - (i) in the case of the West State scheme or the scheme continued by section 29(1)(b), the multiplying factor for any relevant benefit; or

(ii) in the case of the scheme continued by section 29(1)(c), the pension value factor for any Member of that scheme,

to less than it was immediately before 17 February 2001.

- (4) Subsection (3) does not apply if
 - (a) the Treasurer has certified that the Treasurer is satisfied that the change to be made by the regulations is a change that, if each scheme affected by the regulations were a regulated superannuation fund, would be permitted under the SIS Act to be made to the governing rules of that fund; or
 - (b) the reduction would apply only in respect of Members who agree with the Board that the reduction is to apply in relation to them; or
 - (c) the regulations would reduce or provide for the reduction of a Member's benefit only if
 - (i) a superannuation agreement, flag lifting agreement or splitting order is in force in respect of the Member; and
 - (ii) the reduction does not reduce the Member's benefit to less than the Member's entitlement under the agreement or order.

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

- (5A) Regulations cannot be made under subsection (1) in relation to the superannuation schemes continued by section 29(1)(a), (b) or (c) unless—
 - (a) the Board has certified that it is satisfied that the proposed regulations will not affect contributions or benefits; or
 - (b) an actuary appointed by the Board has certified that the proposed regulations will not reduce, or have the same effect as reducing
 - (i) in the case of a scheme continued by section 29(1)(a) or (b), the multiplying factor for any relevant benefit; or
 - (ii) in the case of the scheme continued by section 29(1)(c), the pension value factor for any Member of that scheme,

to less than it was immediately before 17 February 2001;

<u>or</u>

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(c) any reduction of the kind referred to in paragraph (b) will apply only in respect of Members who have agreed with the Board that the reduction is to apply in the calculation of their benefit.

(5B) In subsection (5A) and in this subsection —

multiplying factor, in relation to a relevant benefit, means the components of the benefit formula by which the Member's salary is to be multiplied in order to calculate the benefit;

pension value factor means —

- (a) the number of units that a Member may, or may become entitled to, acquire per dollar of the Member's salary; or
- (b) the amount of the pension that will or may become payable in respect of each unit held by a Member;

relevant benefit means a benefit, or part of a benefit, the amount of which was, immediately before 17 February 2001, calculated as a multiple of a Member's salary.

- (5C) Subsections (3) and (5A) do not apply in respect of regulations
 that reduce or provide for the reduction of a Member's benefit
 if—
 - (a) a superannuation agreement, flag lifting agreement or splitting order is in force in respect of the Member; and
 - (b) the reduction does not reduce the Member's benefit to
 less than the Member's entitlement under the agreement
 or order.

(5D) In subsection (5C) —

flag lifting agreement has the meaning given in the *Family Law Act 1975* (Commonwealth) section 90MD;

splitting order has the meaning given in the Family Law Act 1975 (Commonwealth) section 90MD;

superannuation agreement has the meaning given in the *Family Law Act 1975* (Commonwealth) section 90MD.

- (5E) Regulations under subsection (1) may permit the Board to pay a pension or other benefit under the scheme continued by section 29(1)(c) for the purpose of
 - (a) giving effect to a payment split; or
 - (b) satisfying the requirements of the Family Law

 (Superannuation) Regulations 2001 (Commonwealth)

 Division 2.2 in relation to an entitlement in respect of a superannuation interest in the scheme.



payment split has the meaning given in the Family Law Act 1975 (Commonwealth) section 90MD;

superannuation interest has the meaning given in the Family Law Act 1975 (Commonwealth) section 90MD.

- (5) Regulations cannot be made under subsection (1), unless they have been approved by the Treasurer, if they Regulations that
 - (a) will or may affect the financial rights or obligations of the Crown under this <u>Act and Part to the extent that</u> the value of that effect will or may exceed the prescribed amount; or
 - (b) relate to a matter referred to in subsection (2)(j). subsection (2)(j),

cannot be made unless they have been approved by the Treasurer.

- (6) Regulations that prescribe an authority, body or person for the purposes of the definition of *Employer* in section 3 may specify as the day on which they come into operation a day that is earlier than the day on which they are published in the *Gazette*.
- (6) Regulations may permit the Board to pay a pension or other benefit from the scheme continued by section 29(1)(c) for the purpose of
 - (a) giving effect to a payment split; or
 - (b) satisfying the requirements of the Family Law
 (Superannuation) Regulations 2001 (Commonwealth)
 Division 2.2 in relation to an entitlement in respect of a superannuation interest in the scheme.
 - (7) Regulations of the kind referred to in subsection (6) cannot be made if they will or may affect a person, except the Crown or an Employer, by—
 - (a) prejudicing rights that existed before the regulation was published; or
 - (b) imposing liabilities in respect of anything that occurred before the regulation was published.

- [(7) - deleted]

(8) Regulations prescribing an amount for the purposes of section 37 or subsection (5)(a) may prescribe an amount or a method of determining an amount.

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[(9) and (10) deleted]

- (9) In subsection (3) and this subsection
 - "multiplying factor", in relation to a relevant benefit, means the components of the benefit formula by which the Member's salary is to be multiplied in order to calculate the benefit;
 - "pension value factor" means
 - (a) the number of units that a Member may, or may become entitled to, acquire per dollar of the Member's salary; or
 - (b) the amount of the pension that will or may become payable in respect of each unit held by a Member;
 - "relevant benefit" means a benefit, or part of a benefit, the amount of which was, immediately before 17 February 2001, calculated as a multiple of a Member's salary.
- (10) In this section each of the following terms has the meaning given in the *Family Law Act 1975* (Commonwealth) section 90MD—
 - (a) flag lifting agreement;
 - (b) payment split;
 - (c) splitting order;
 - (d) superannuation agreement;
 - (e) superannuation interest.

[Section 38 amended by No. 55 of 2004 s. 1105; No. 18 of 2006 s. 14; No. 25 of 2007 s. 14; the State Superannuation Amendment Bill 2011 cl. 26.]

39. Repeals

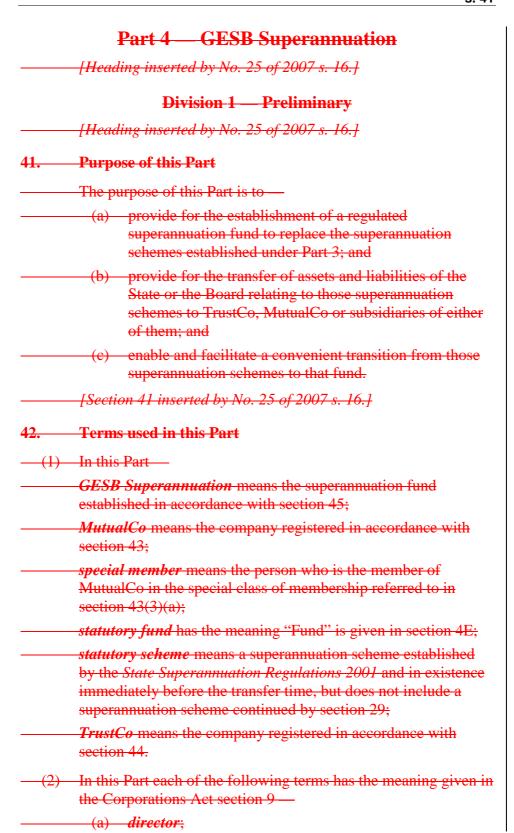
The Government Employees Superannuation Act 1987² and the Superannuation and Family Benefits Act 1938² are repealed.

40. Inconsistent written laws

The provisions of this Act and the regulations made or applying under it this Part and the regulations referred to in section 38 that deal with the payment of benefits under a scheme prevail over section 10 of the *Administration Act 1903* to the extent of any inconsistency.

[Section 40 inserted by No. 18 of 2006 s. 15; amended by No. 25 of 2007 s. 15; the State Superannuation Amendment Bill 2011 cl. 27.]

Division 1



GESB Superannuation

Part 4

rail 4	GEOD Superannuation
Division 2	Formation of companies and superannuation fund
s. 43	
(b)) registered office;
(e)) special resolution;
(d) subsidiary.
[Sec	ction 42 inserted by No. 25 of 2007 s. 16.]
Division 2	— Formation of companies and superannuation fund
[He	ading inserted by No. 25 of 2007 s. 16.]
43. For	mation of MutualCo
limi	Board is to take the necessary steps to form a company ted by guarantee and cause it to be registered under the porations Act.
—(2)—The	company is to be formed and registered with —
(a) one member, being the Treasurer as the special member; and
(b) not less than 3 directors nominated by the Treasurer; and
(e) a constitution that has been approved by the Treasurer.
	Treasurer must not approve a constitution unless satisfied it contains provisions to the effect that—
(a	the company, when formed, will have a special class of membership of the company to which class only the person who is for the time being the Treasurer can belong; and
————(b) if the special member resigns, the special class of membership referred to in paragraph (a) will terminate; and
(e)) while there is a special member, the special member will have a power to veto the exercise by the company or the directors of its or their power —
	(i) to alter the constitution of the company; or
	(ii) to appoint a person as a director of the company;
	(iii) to remove all of the directors of the company within any 12 month period; or
	(iv) to form, acquire or dispose of a subsidiary after

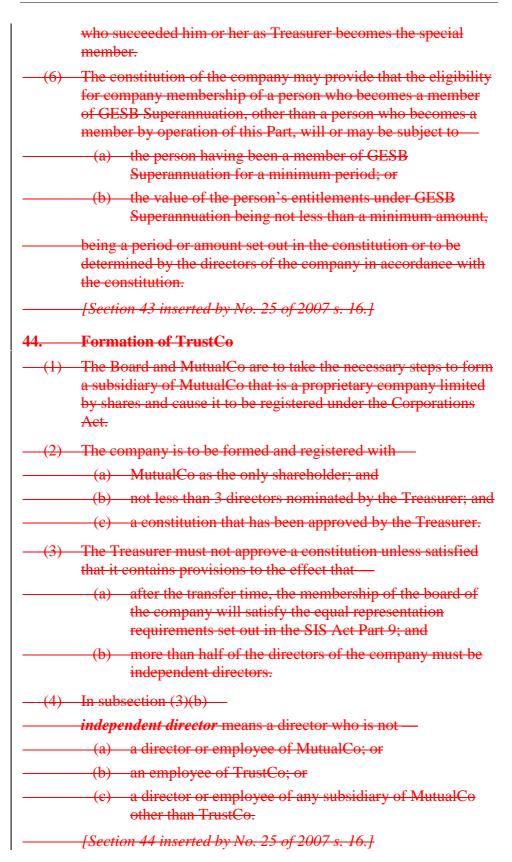
the transfer time; or

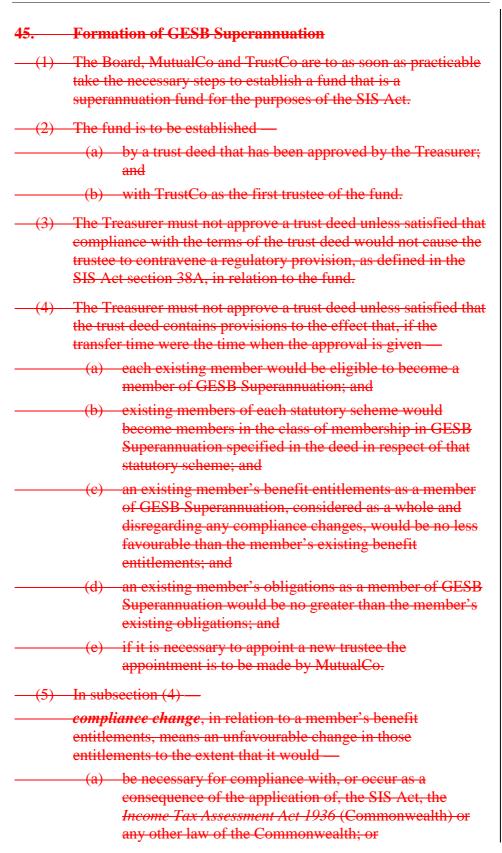
Division 2

-	<u> </u>
	(v) as a holding company of TrustCo, to vote in favour of a resolution to alter the constitution of TrustCo; or
	(vi) to raise capital or borrow money; or
	vii) to alter or terminate an agreement entered into in accordance with section 47(3); or
(v	iii) to appoint, under the trust deed for GESB Superannuation, a new trustee of that fund;
al	nd
S th	very person who becomes a member of GESB uperannuation will be eligible to become a member of ne company unless ineligible because of a provision of ne kind described in subsection (6); and
Ŧ	re company must not dispose of any of its shares in crustCo unless the disposal is approved by special esolution; and
# # # # #	person is not eligible to be a director of the company nless the person meets criteria for fitness and propriety nat are, in the Treasurer's opinion, no less stringent than the criteria set out in the prudential standards made for the purposes of the Banking Act 1959 (Commonwealth) pection 23(2)(b) for fitness and propriety of directors of authorised deposit taking institutions; and
	ne chairman of directors must be an independent irector; and
	nore than half of the directors of the company must be independent directors.
— (4) In subsec	etion (3)(g) and (h)
independ	lent director means a director who is not—
(a) ar	n employee of the company or any subsidiary of the ompany; or
(b) a	director of the Board; or
` '	director of a subsidiary of the company; or
(d) ar	n employee as defined in the <i>Public Sector</i> Aanagement Act 1994 section 3(1).
subsectio	oution does not fail to satisfy the requirements of on (3)(a) only because it allows for a person who was curer to remain as the special member until the person

Part 4 GESB Superannuation

Division 2 Formation of companies and superannuation fund





GESB Superannuation

Part 4

Division 2 Formation of companies and superannuation fund s. 46 occur as a result of the member's benefits ceasing to be benefits payable under a scheme for the purposes of section 31: existing means existing under a statutory scheme at the time the Treasurer approves the trust deed. [Section 45 inserted by No. 25 of 2007 s. 16.] Licences, approvals etc. to be obtained The Board, MutualCo and TrustCo are to take the necessary steps to ensure that, as soon as is practicable all necessary licences, approvals, registrations, exemptions and other kinds of authorisations have been issued, granted or obtained; and all other requirements with which it is necessary to comply, have been complied with. In subsection (1) necessary means necessary, under a written law or a law of the Commonwealth, to be done before the transfer time, in order to enable GESB Superannuation— (a) to function as a regulated superannuation fund from the transfer time; or to become a complying superannuation fund in relation to the year of income in which the transfer time occurs. [Section 46 inserted by No. 25 of 2007 s. 16.] Service agreements The Board must, as soon as is practicable, prepare and submit to the Treasurer a draft of an agreement to be entered into by MutualCo and TrustCo for the provision by MutualCo to TrustCo of services relating to the performance by TrustCo of its functions as trustee of GESB Superannuation; and a draft of an agreement to be entered into by MutualCo and the Board for the provision by MutualCo to the Board of services relating to the performance by the Board of its functions. The Treasurer may approve a draft agreement submitted under subsection (1); or

Division 3

s. 48

- (b) direct that it be amended and approve it in an amended form.
- (3) As soon as is practicable after the Treasurer has approved a draft agreement MutualCo and TrustCo or the Board, as the case requires, are to enter into an agreement on the terms of the draft agreement approved by the Treasurer.

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

Division 3 — Continuing provisions relating to MutualCo and TrustCo

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

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

Table

- 1. The registered office and principal place of business of the company must be located in Western Australia.
- More than half of the directors of the company must be ordinarily resident in Western Australia.
- (2) To the extent that they are governed by this section, the constitutions of MutualCo and TrustCo are declared to be excluded matters for the purposes of the Corporations Act section 5F in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies.

Section 48 inserted by No. 25 of 2007 s. 16.1

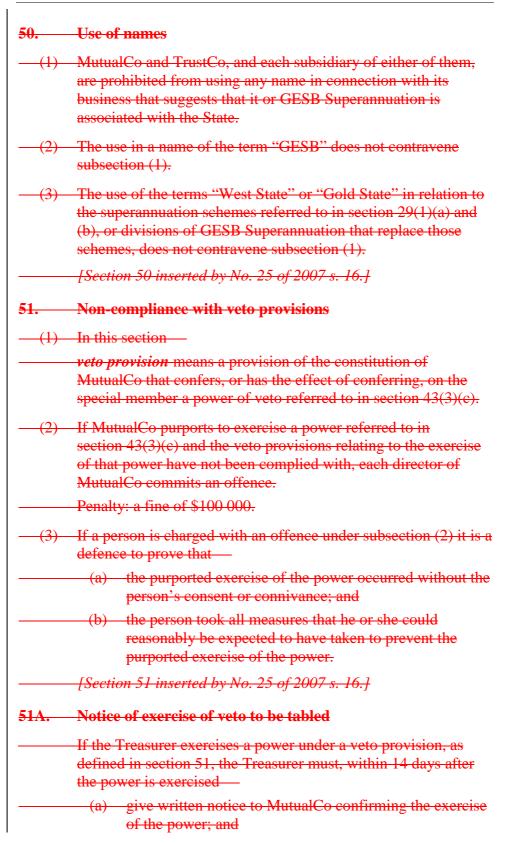
49. MutualCo and TrustCo not agents of the State

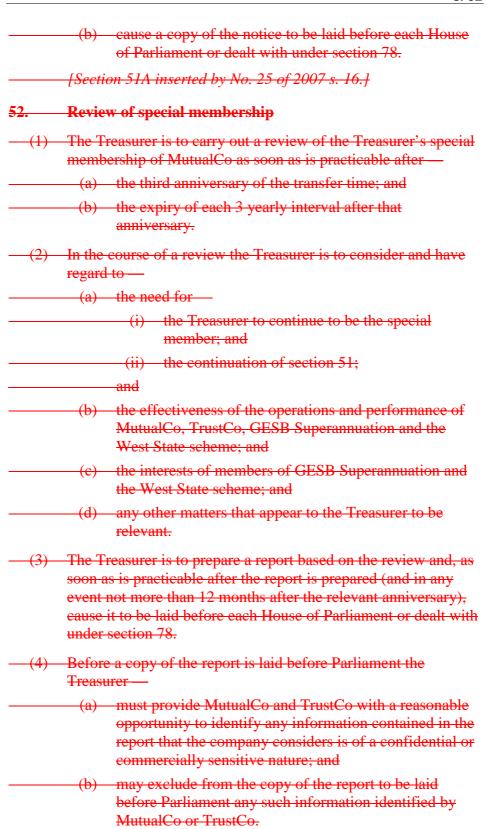
MutualCo and TrustCo, and any subsidiary of either of them, are not agents of the State and do not have the status, immunities or privileges of the State.

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

Part 4 GESB Superannuation

Division 3 Continuing provisions relating to MutualCo and TrustCo

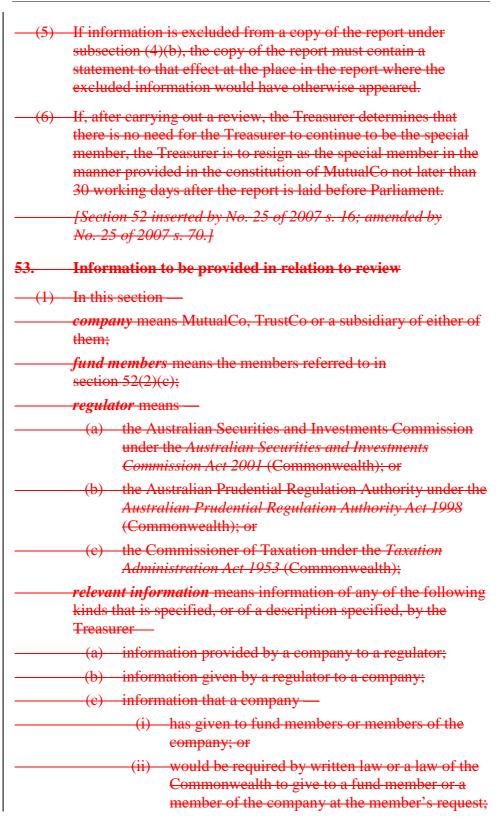


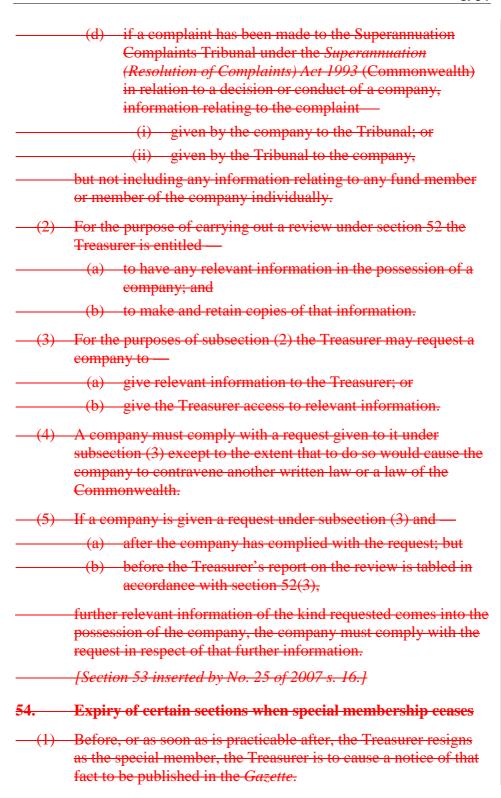


Part 4 GESB Superannuation

Division 3 Continuing provisions relating to MutualCo and TrustCo

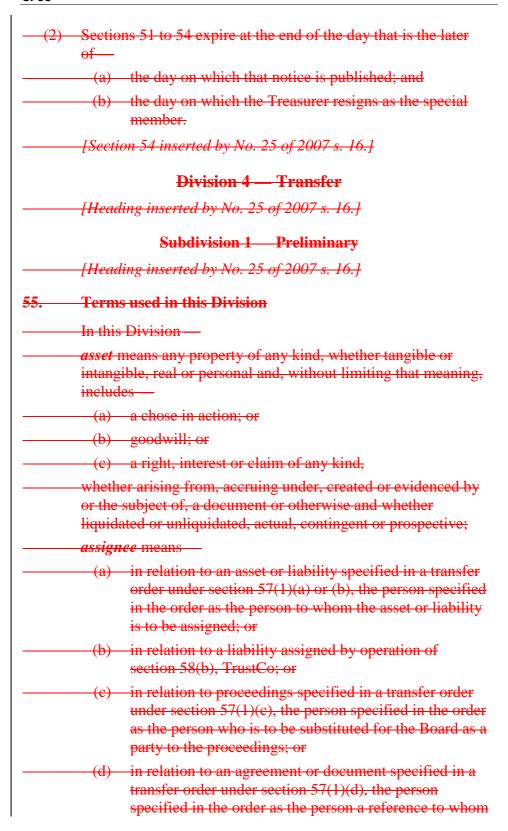




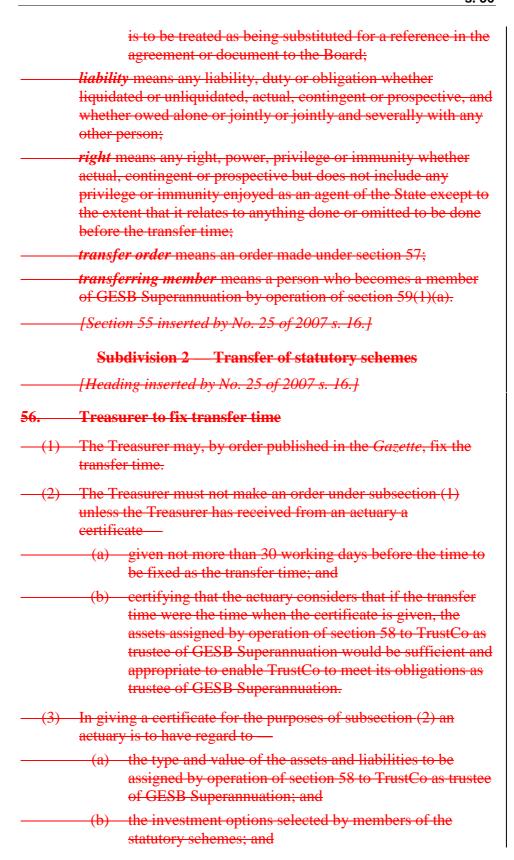


Part 4 GESB Superannuation

Division 4 Transfer

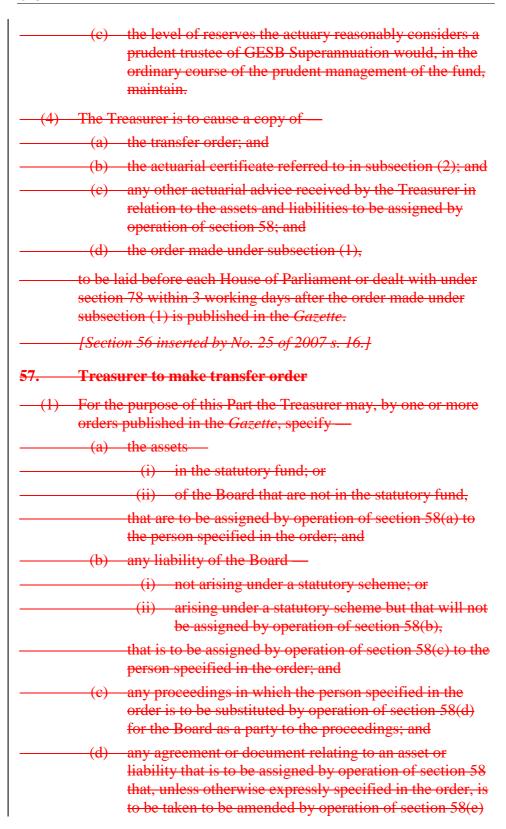


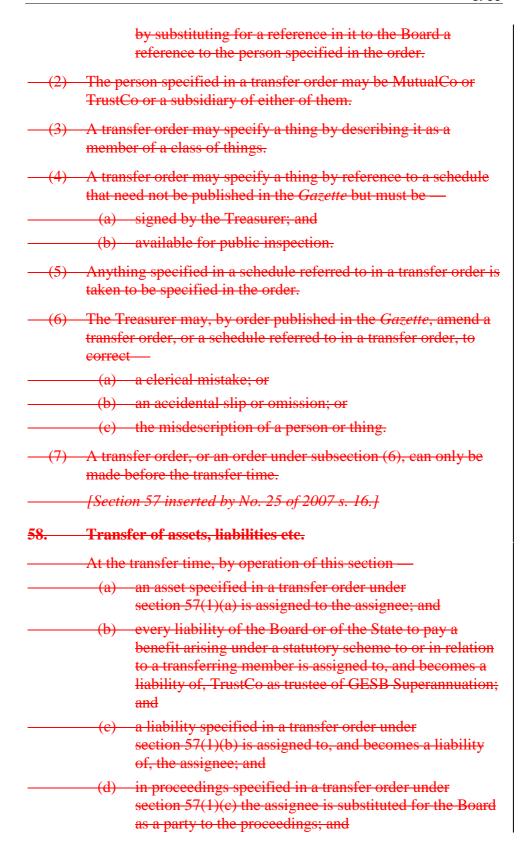
Division 4



Part 4 GESB Superannuation

Division 4 Transfer





GESB Superannuation

Part 4

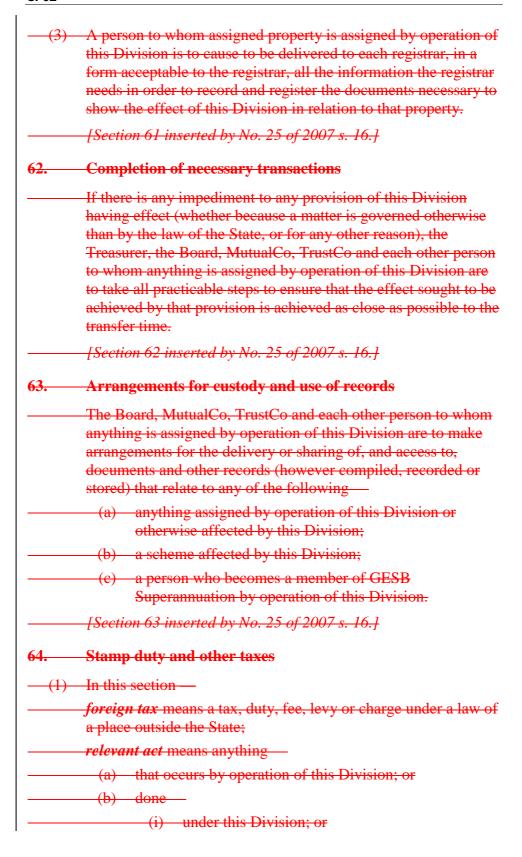
Division 4 Transfer s. 59 an agreement or document specified in a transfer order under section 57(1)(d) is, unless otherwise expressly specified in the order, taken to be amended by substituting for any reference in it to the Board a reference to the assignee. [Section 58 inserted by No. 25 of 2007 s. 16.] Transfer of members At the transfer time, by operation of this section, a person who was, immediately before the transfer time, a member of a statutory scheme — (a) becomes a member of GESB Superannuation; and (b) ceases to be a member of the statutory scheme. The Board and MutualCo are to take the necessary steps to ensure that at the transfer time every transferring member becomes a member of MutualCo. For the purposes of subsection (2), the Board is appointed as attorney for each person who is a member of a statutory scheme for the purpose of executing any documents the Board considers necessary or desirable to enable that person, if he or she becomes a transferring member, to become a member of MutualCo; and to nominate for the person how MutualCo may send or make available to the person notices, reports and other communications that MutualCo is required under the Corporations Act to send to members of the company. [Section 59 inserted by No. 25 of 2007 s. 16.] 60. Effect on rights, remedies etc. After the transfer time any proceedings that might have been commenced by or against the Board or the State in relation to an asset or liability assigned by operation of section 58 may be commenced by or against the assignee; cannot be commenced by or against the Board or the State:

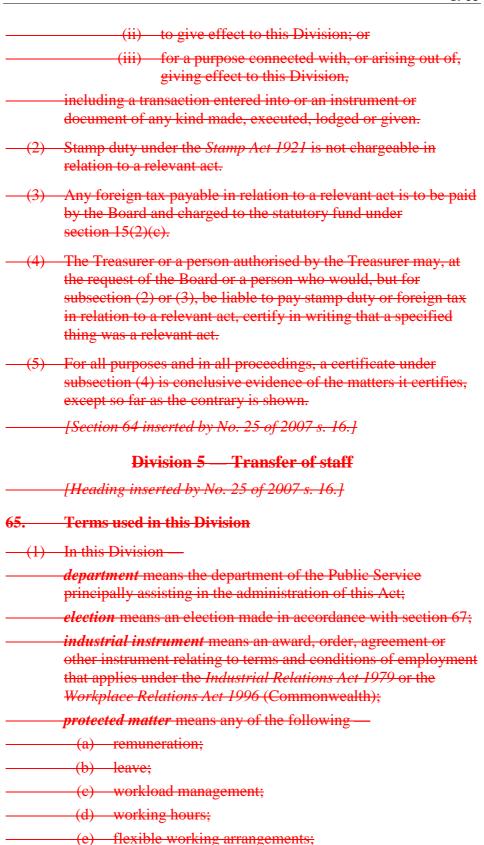
and

	5.0.
——————————————————————————————————————	any remedy that would have been available to or against the Board or the State in relation to an asset or liability assigned by operation of section 58—
	(i) is available to or against the assignee; and
	(ii) is not available to or against the Board or the State;
	and
	anything relating to an asset or liability assigned by operation of section 58 that was done or omitted to be done by, to, or in respect of, the Board or the State before the transfer time and is of any ongoing effect is to be taken to have been done or omitted to be done by, to, or in respect of, the assignee.
[Section	n 60 inserted by No. 25 of 2007 s. 16.]
Subdivis	ion 3 — General provisions relating to transfer
	ng inserted by No. 25 of 2007 s. 16.]
61. Notific	ation and registration of assignment
-(1) In this s	section
	d property means an asset or liability assigned by on of this Division;
registra	u means —
(a)	a WA registrar; or
(b)	a person authorised or required by a law of a place outside the State to record and give effect to the registration of documents relating to transactions affecting assigned property;
WA reg	ristrar means —
(a)	the Registrar of Titles; or
(b)	the Registrar of Deeds and Transfers; or
(c)	the Minister administering the Mining Act 1978; or
(d)	any other person authorised by a written law to record and give effect to the registration of documents relating to transactions affecting assigned property.
register	registrar is to take notice of this Division and record and in the appropriate manner the documents necessary to be effect of this Division.

Part 4 GESB Superannuation

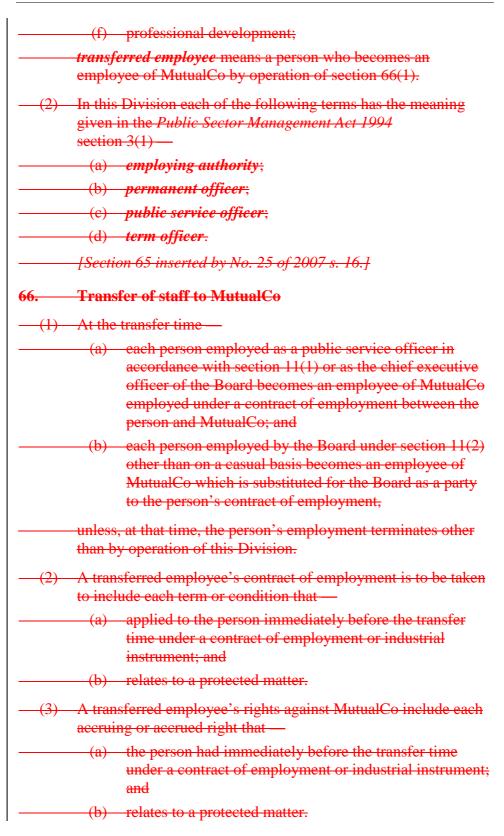
Division 4 Transfer



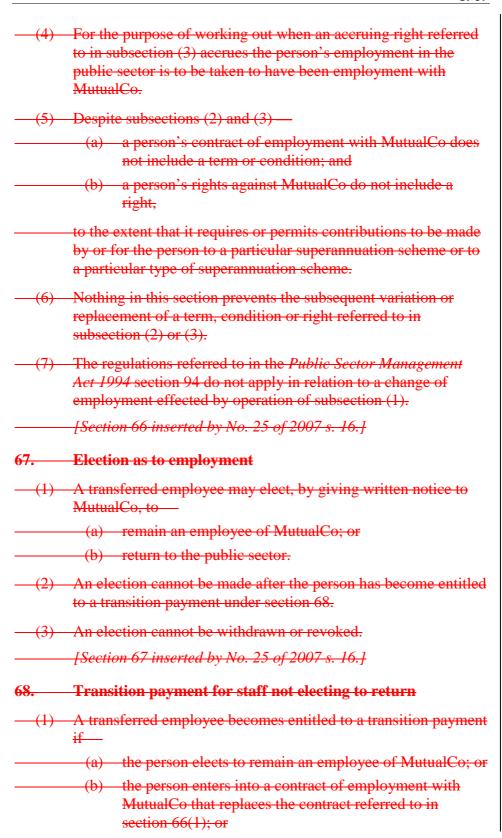


Part 4 GESB Superannuation

Division 5 Transfer of staff

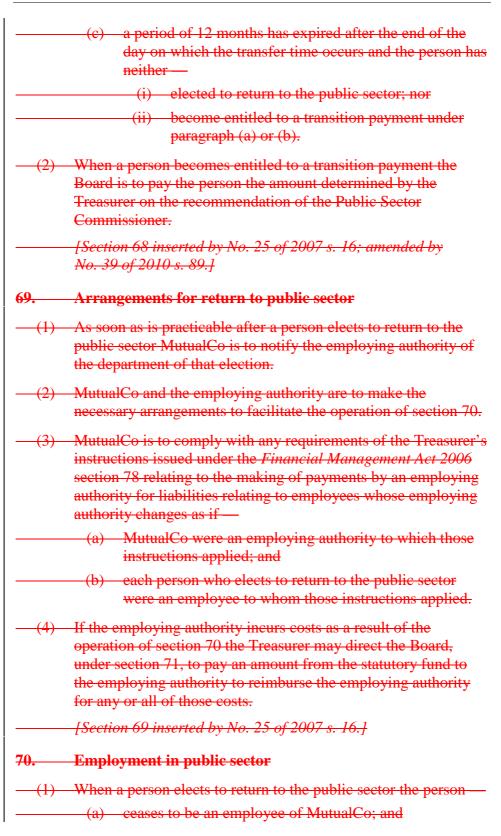


Division 5

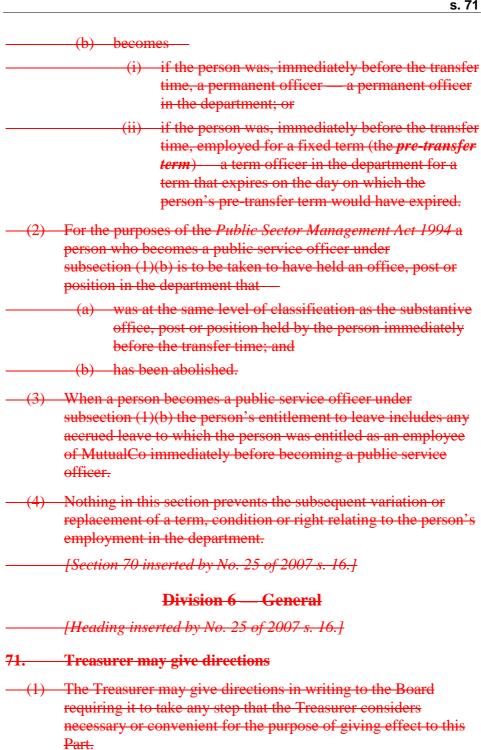


Part 4 GESB Superannuation
Division 5 Transfer of staff





s. 71



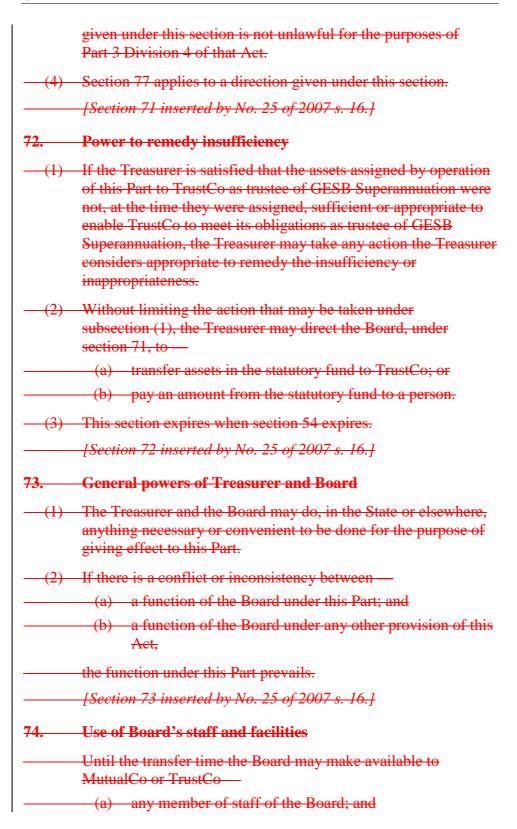
subsection (1).

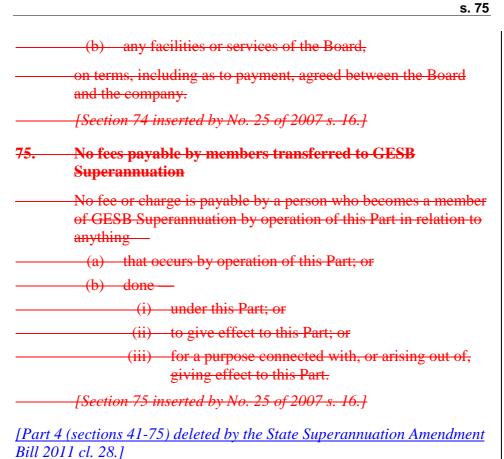
The Board must comply with a direction given to it under

This section applies despite the Statutory Corporations (Liability of Directors) Act 1996 section 6(a) and a direction

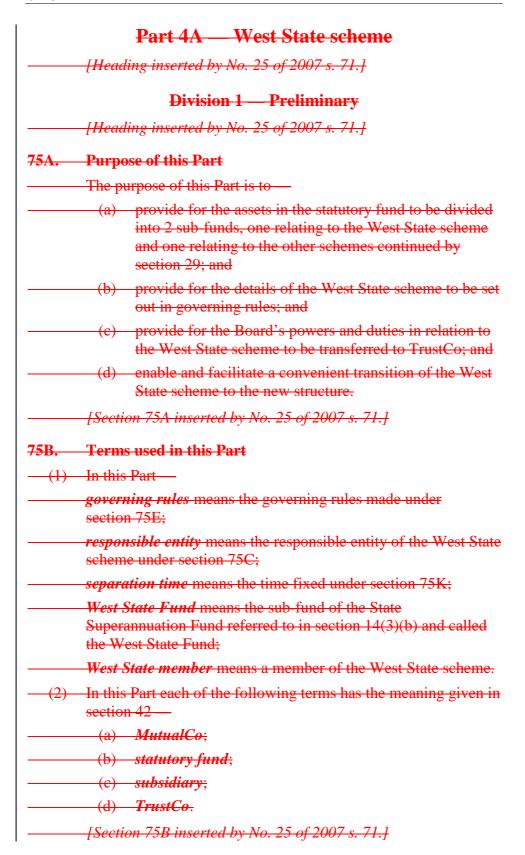
Part 4 GESB Superannuation

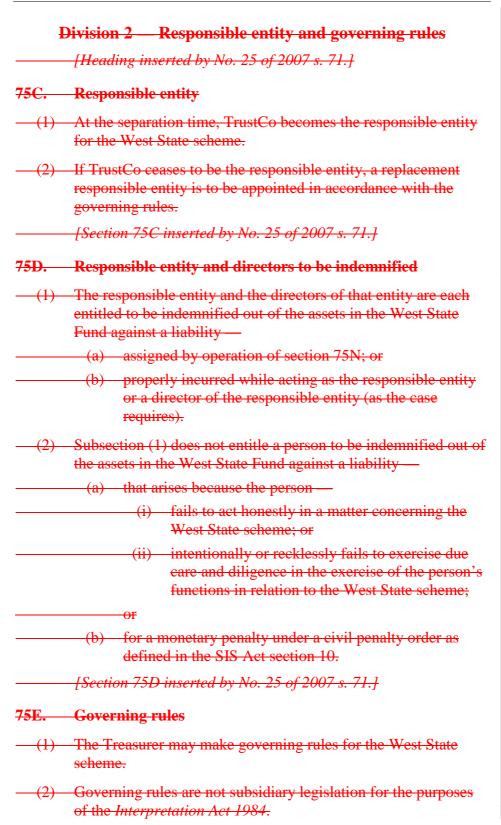
Division 6 General





s. 75A

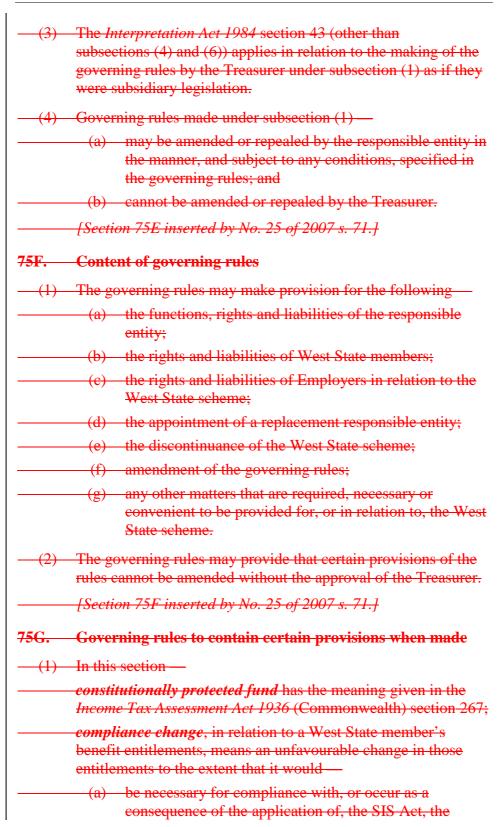


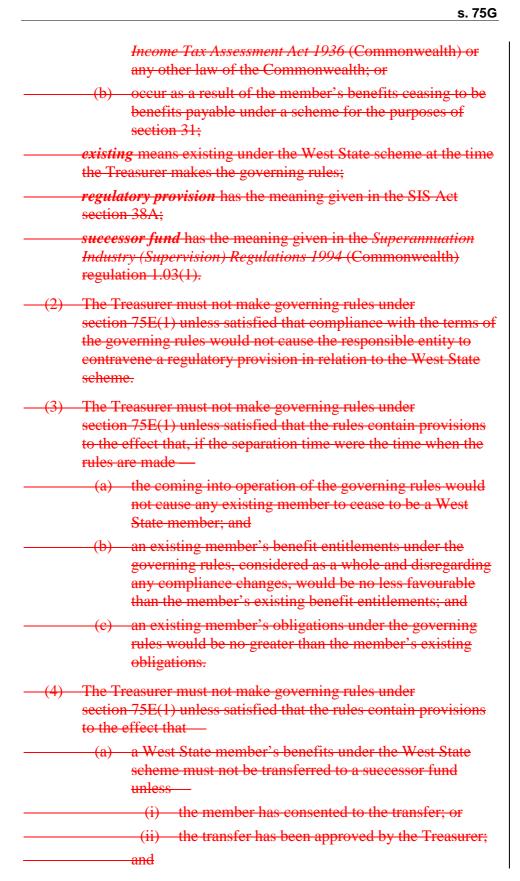


Part 4A West State scheme

Division 2 Responsible entity and governing rules



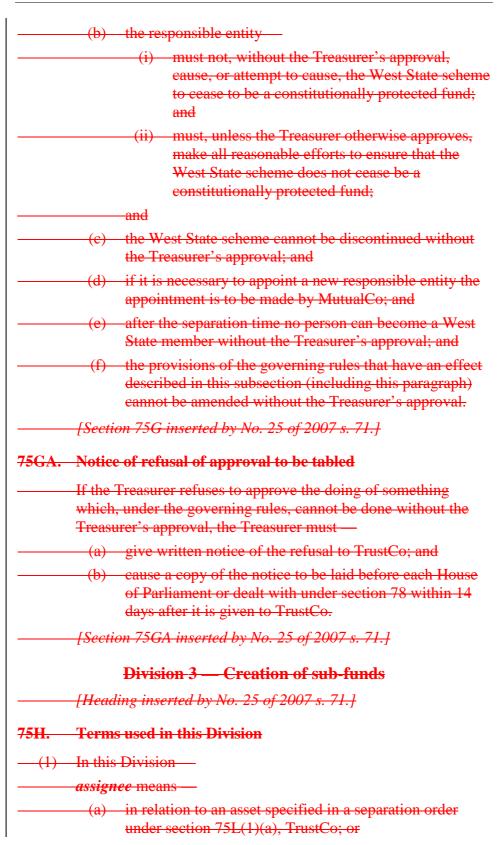


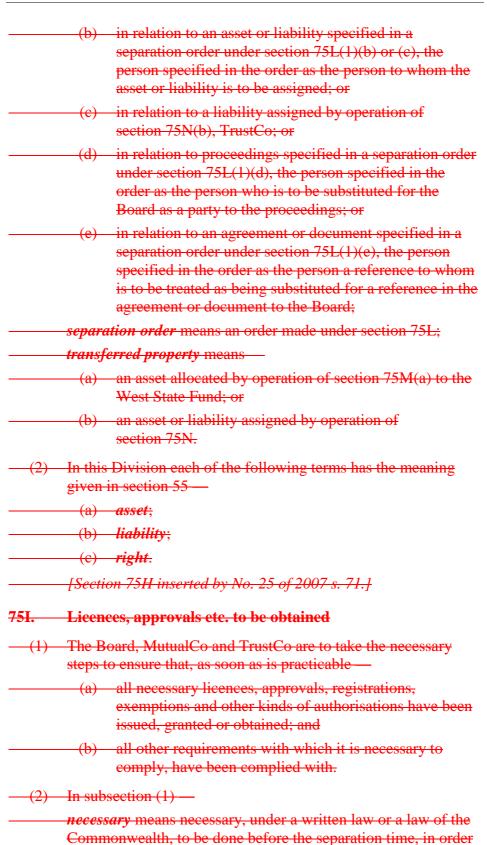


Part 4A West State scheme

Division 3 Creation of sub-funds

s. 75GA

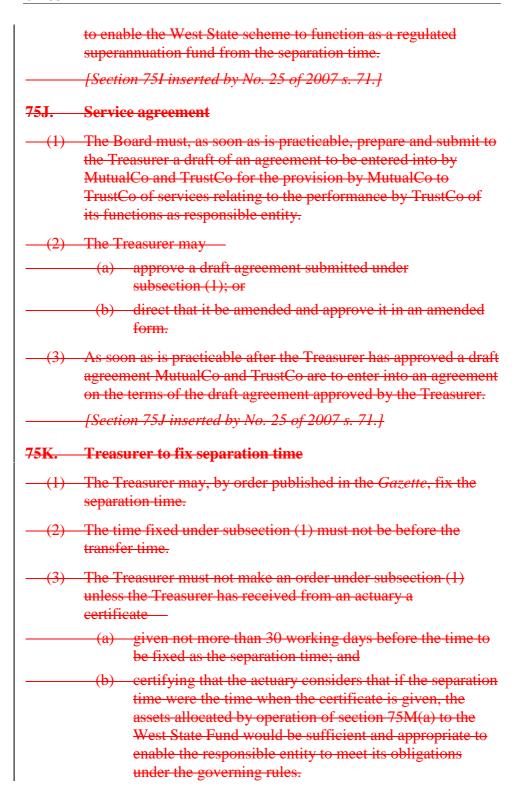


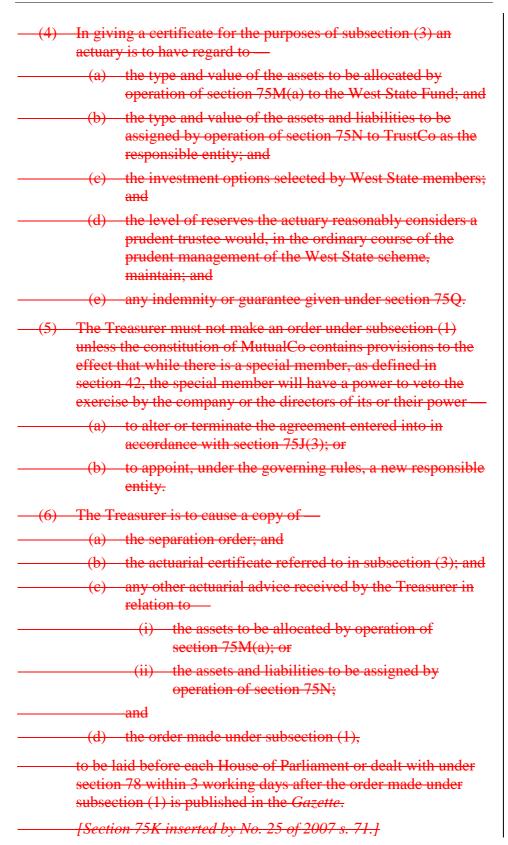


Part 4A West State scheme

Division 3 Creation of sub-funds

s. 75J

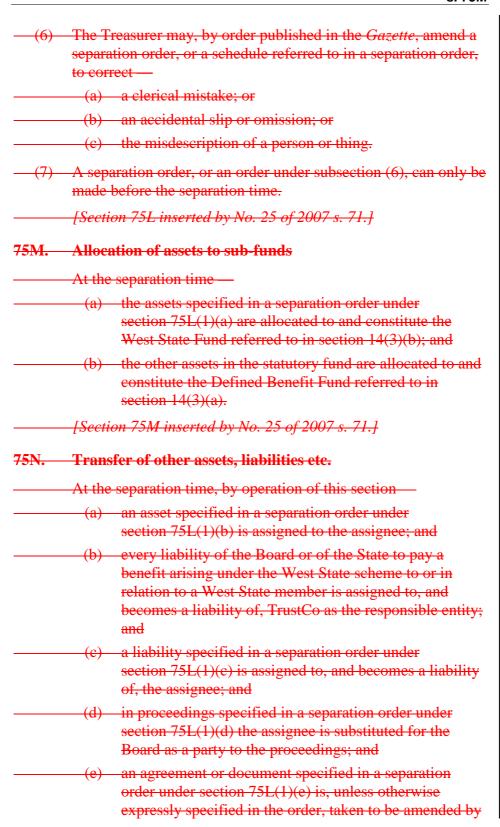




Part 4A West State scheme Division 3 Creation of sub-funds

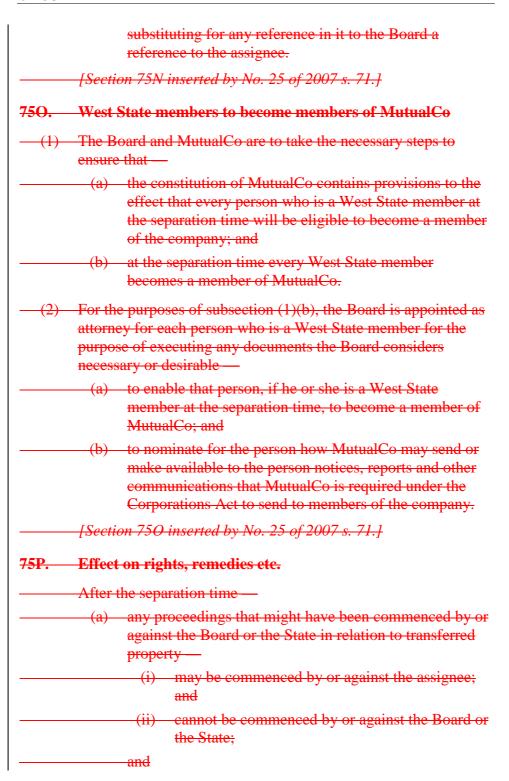
s. 75L

75L.	Treasurer to make separation order
(1)	For the purpose of this Part the Treasurer may, by one or more orders published in the <i>Gazette</i> , specify—
	(a) the assets in the statutory fund that are to be allocated by operation of section 75M(a) to the West State Fund; and
	(b) any assets —
	(i) in the statutory fund; or
	(ii) of the Board that are not in the statutory fund,
	that are to be assigned by operation of section 75N(a) to the person specified in the order; and
	(c) any liability of the Board —
	(i) not arising under the West State scheme; or
	(ii) arising under the West State scheme but that will not be assigned by operation of section 75N(b),
	that is to be assigned by operation of section 75N(c) to the person specified in the order; and
	(d) any proceedings in which the person specified in the order is to be substituted by operation of section 75N(d) for the Board as a party to the proceedings; and
	(e) any agreement or document relating to transferred property that, unless otherwise expressly specified in the order, is to be taken to be amended by operation of section 75N(e) by substituting for a reference in it to the Board a reference to the person specified in the order.
(2)	The person specified in a separation order may be MutualCo or TrustCo or a subsidiary of either of them.
(3)	A separation order may specify a thing by describing it as a member of a class of things.
(4)	A separation order may specify a thing by reference to a schedule that need not be published in the <i>Gazette</i> but must be—
	(a) signed by the Treasurer; and
	(b) available for public inspection.
(5)	Anything specified in a schedule referred to in a separation order is taken to be specified in the order.

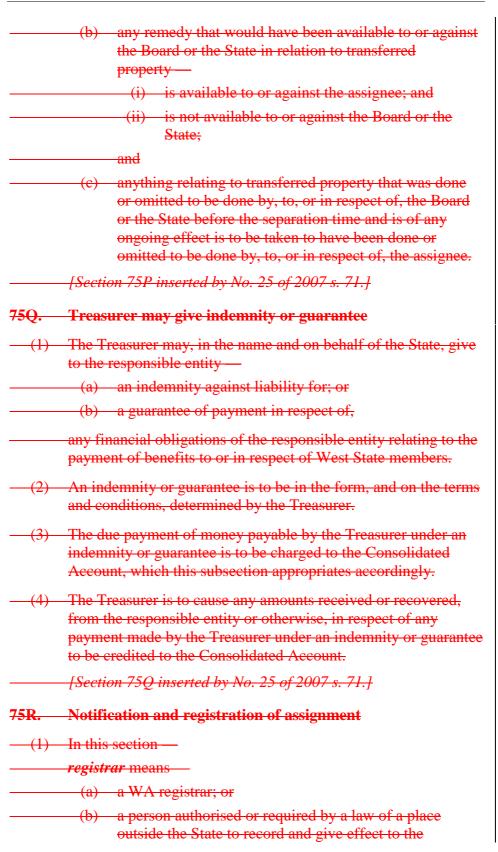


Part 4A West State scheme
Division 3 Creation of sub-funds

s. 750



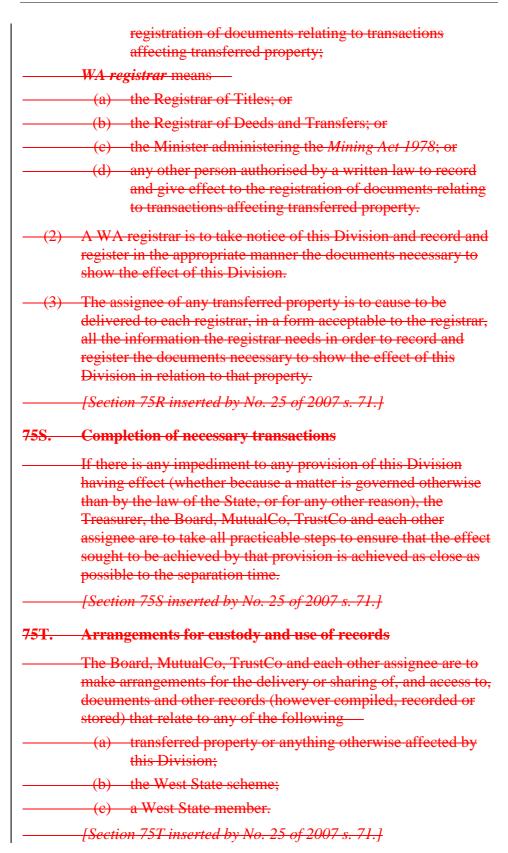
s. 75Q

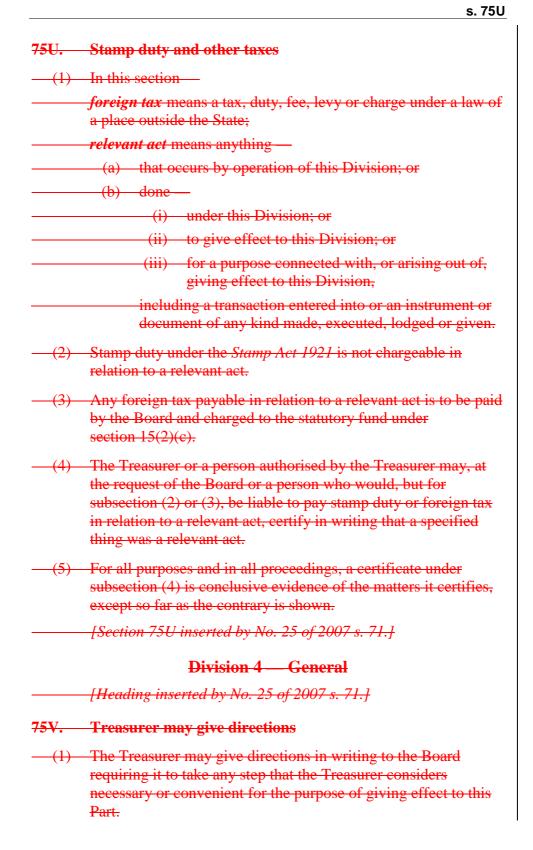


Part 4A West State scheme

Division 3 Creation of sub-funds

s. 75S

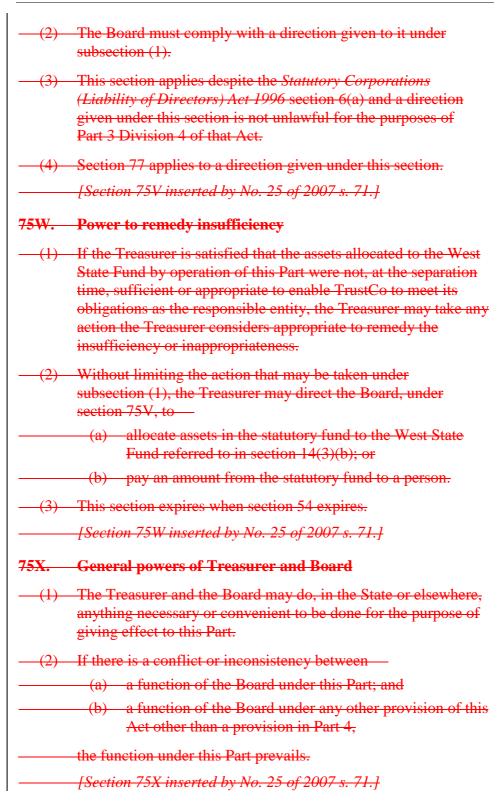




Part 4A West State scheme

Division 4 General





s. 75Y

75Y. No fees payable by West State members

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

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

(b) done

(i) under this Part; or

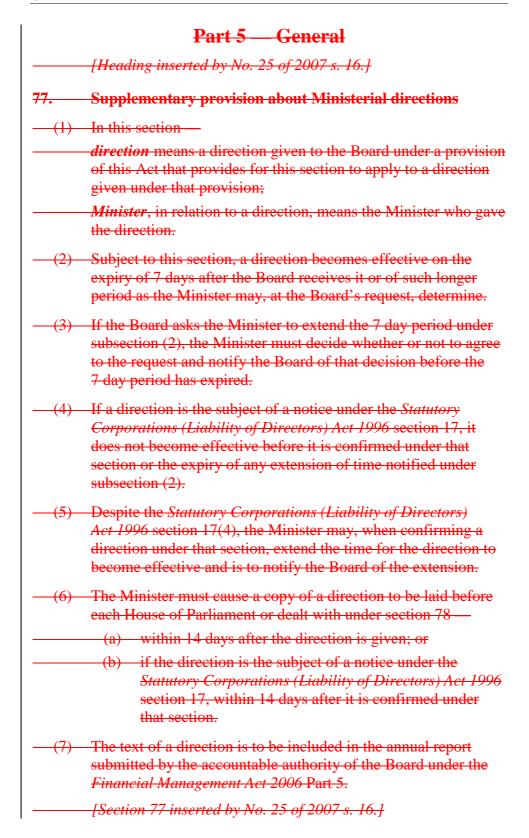
(ii) to give effect to this Part; or

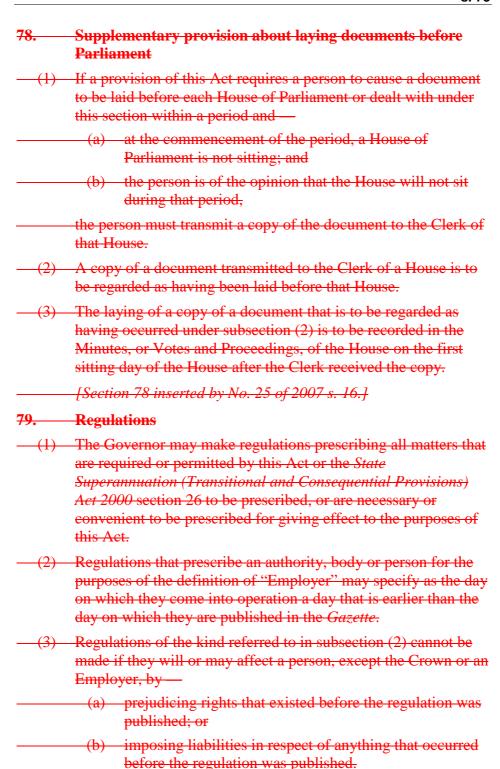
(iii) for a purpose connected with, or arising out of, giving effect to this Part.

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

[Part 4A (sections 75A-75Y) deleted by the State Superannuation Amendment Bill 2011 cl. 28.]

s. 77





[Part 5 (sections 77-79) deleted by the State Superannuation Amendment Bill 2011 cl. 28.]

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

Schedule 1 — Government Employees Superannuation Board

[s. 8(2)]

1. Chairman

- (1) Before making a nomination under section 8(1)(a) the <u>Treasurer Minister</u> is to consult with unions or associations of unions that appear to the <u>Treasurer Minister</u> to be broadly representative of persons who work for Employers.
- (2) The <u>Treasurer Minister</u> must not nominate as chairman a person who is an officer or employee of the Board.

[Clause 1 amended by the State Superannuation Amendment Bill 2011 cl. 31.]

2. Deputy chairman

- (1) The Governor may from time to time appoint a director, nominated by the <u>Treasurer Minister</u>, to be deputy chairman.
- (2) The <u>Treasurer Minister</u> must not nominate as deputy chairman a person who is an officer or employee of the Board.
- (3) In the absence of the chairman, the deputy chairman
 - (a) is to act in the place of the chairman; and
 - (b) while so acting, has all the functions of, and is taken to be, the chairman.
- (4) No act or omission of a deputy chairman is to be questioned on the ground that the occasion for the acting had not arisen or had ceased.

[Clause 2 amended by the State Superannuation Amendment Bill 2011 cl. 31.]

3. Election of member directors

Elections for the purposes of section 8(1)(c) are to be held —

- (a) during the 6 months preceding the expiry of the term of office of the current directors elected under section 8(1)(c); or
- (b) in the case of an election to fill a casual vacancy, not later than 60 days after the vacancy occurs.

4. Term of office

- (1) The term for which a person is appointed to be the chairman or is appointed under section 8(1)(b) to be a director is to be fixed in the instrument of appointment and is not to be longer than 5 years.
- (2) The term for which a director is elected under section 8(1)(c) is 3 years.

(3) A person's eligibility for appointment or election as a director is not affected by the person having been a director before.

5. Directors are part-time

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

6. Casual vacancies

- (1) A casual vacancy in the office of a director occurs if the director
 - (a) dies; or
 - (b) resigns by notice to the <u>Treasurer Minister</u>; or
 - (c) is an insolvent under administration as defined in the Corporations Act; or
 - (d) is removed from office by the <u>Treasurer Minister</u> under subclause (2).
- (2) The <u>Treasurer Minister</u> may remove a director from office if the <u>Treasurer Minister</u> is satisfied that the director
 - (a) has neglected his or her duty; or
 - (b) has misbehaved; or
 - (c) is incompetent; or
 - (d) has contravened clause 10 or 11 of Schedule 2; or
 - (e) is suffering from mental or physical incapacity impairing the performance of his or her functions under this Act; or Part 3;
 - (f) is absent from 4 consecutive meetings of the Board of which he or she has been given reasonable notice, unless he or she is absent on leave granted by the Board; or
 - (g) has been convicted of an offence involving dishonest conduct.
- (3) If a casual vacancy occurs in the office of a director elected under section 8(1)(c), the <u>Treasurer Minister</u> may appoint a Member to fill the vacancy until a new director is elected.
- (4) Before appointing a person under subclause (3) the <u>Treasurer Minister</u> is to consult with unions or associations of unions that appear to the <u>Treasurer Minister</u> to be broadly representative of persons who work for Employers.

[Clause 6 amended by No. 10 of 2001 s. 220; No. 25 of 2007 s. 6(6), 17 and 19(2); the State Superannuation Amendment Bill 2011 cl. 29 and 31.]

cl. 7

7. Remuneration and allowances

A director is entitled to the remuneration and allowances determined by the <u>Treasurer Minister</u> on the recommendation of the Public Sector Commissioner.

[Clause 7 amended by No. 39 of 2010 s. 89; the State Superannuation Amendment Bill 2011 cl. 38.]

Schedule 2 — Meetings and procedures

[s. 10(1)]

1. Board to determine own procedure

The Board may determine its own procedure for calling and conducting Board meetings except to the extent that it is prescribed under this Act. Part 3.

[Clause 1 amended by No. No. 25 of 2007 s. 6(7); the State Superannuation Amendment Bill 2011 cl. 30.]

2. Quorum

The quorum at a Board meeting is 5 directors.

3. Presiding director

A Board meeting is to be presided over by —

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

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

4. Voting

At a Board meeting —

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

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

5. Minutes

The Board is to cause accurate minutes to be kept and preserved of the proceedings at each Board meeting and of each resolution passed by the Board.

6. Resolution without meeting

A written resolution signed by each director who would have been entitled to vote on the resolution at a meeting is as effectual as if it had been passed at a Board meeting.

7. Telephone or video attendance at meetings

A director may attend a Board meeting by telephone, audio-visual link-up or any other form of instantaneous communication if all directors attending the meeting are simultaneously in contact with each other.

8. Committees

- (1) The Board may appoint committees to assist it in the performance of its functions, and may discharge or alter any committee so appointed.
- (2) The Board may appoint a person to a committee whether or not the person is a director.
- (3) The Board may act on the advice of a committee.
- (4) Subject to any directions given by the Board, a committee may determine its own procedure.

9. Material interest

- (1) For the purposes of this Schedule a person has a material interest in a matter if the person
 - (a) subject to subclauses (2) and (3) has a direct or indirect pecuniary interest in the matter; or
 - (b) has given advice for remuneration in relation to the matter to the Board; or
 - (c) subject to subclauses (2) and (3) has a non-pecuniary interest in the matter.
- (2) An interest in a matter is not a material interest if it arises by reason only that the person is
 - (a) a Member; or
 - (b) a person who works for an Employer; or
 - (c) an Employer or a member of the board or other body responsible for the control or direction of an Employer; or
 - (d) an employee of a union or association of unions; or
 - (e) a member of a corporation listed on a prescribed financial market (within the meaning given by section 9 of the Corporations Act) in Australia, unless that interest is material in relation to that corporation.
- (3) The interest of a person in an existing or proposed contract of insurance is not a material interest if it arises by reason only that the contract insures, or is proposed to insure, the person against a liability incurred by the person in his or her capacity as a director or committee member.

Schedule 2

(4) Subclause (3) does not apply if the Board is the insurer.

[Clause 9 amended by No. 21 of 2003 s. 34; No. 25 of 2007 s. 18 and 19(2).]

10. Disclosure of interests

- (1) A director or committee member who has a material interest in a matter involving the Board or the Fund must, as soon as possible after the relevant facts have come to the person's knowledge, disclose the nature of the interest at a meeting of the Board or committee.
- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.
- (3) A disclosure under subclause (1) by a person that he or she
 - (a) is a member or employee of a particular company or body; or
 - (b) is a partner or employee of a particular person; or
 - (c) has some other specified interest relating to a particular company, body or person,

is a sufficient disclosure of the person's interest in relation to any matter or thing involving that company, body or person which arises after the disclosure is made.

(4) A contravention of this clause by a person does not invalidate a decision of the Board or committee.

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

11. Voting by interested persons

- (1) A director or committee member who has a material interest in a matter being considered by the Board or committee
 - (a) must not be present while the matter is being considered at a meeting of the Board or committee; and
 - (b) must not vote on the matter, whether at a meeting or otherwise.
- (2) If as a result of one or more directors being disqualified under subclause (1) the Board is unable to form a quorum in relation to a matter, the <u>Treasurer Minister</u> may deal with the matter.

[Clause 11 amended by the State Superannuation Amendment Bill 2011 cl. 31.]

12. Interested person may be permitted to vote

- (1) Clause 11 does not apply if the Board has at any time passed a resolution that
 - (a) specifies the director or committee member, the interest and the matter; and

- (b) states that the directors voting for the resolution are satisfied that the interest should not disqualify the director or committee member from considering or voting on the matter.
- (2) A director who has a material interest in a matter
 - (a) must not be present at a meeting of the Board while a proposed resolution under subclause (1) in relation to that matter is being considered; and
 - (b) must not vote, whether at a meeting or otherwise, on a proposed resolution under subclause (1) in relation to the matter, whether in relation to that or a different director.
- (3) The <u>Treasurer Minister</u> may by notice to the Board declare that clause 11 does not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (4) The text of any declaration received by the Board is to be included in the annual report submitted by the accountable authority of the Board under Part 5 of the *Financial Management Act 2006*.

[Clause 12 amended by No. 77 of 2006 s. 17; the State Superannuation Amendment Bill 2011 cl. 31.]

Schedule 3 — Provisions to be included in constitution of subsidiary

[s. 7B]

[Heading inserted by No. 18 of 2006 s. 16.]

1. Definition

In this Schedule —

prior approval means the prior written approval of the <u>Treasurer</u>. <u>Minister given with the Treasurer's concurrence</u>.

[Clause 1 inserted by No. 18 of 2006 s. 16; amended by the State Superannuation Amendment Bill 2011 cl. 39.]

2. Disposal of shares

- (1) The Board must not sell or otherwise dispose of shares in the subsidiary without prior approval.
- (2) The <u>Treasurer Minister</u> is empowered to execute a transfer of any shares in the subsidiary held by the Board.

[Clause 2 inserted by No. 18 of 2006 s. 16; amended by the State Superannuation Amendment Bill 2011 cl. 31.]

3. Directors

- (1) The directors of the subsidiary are to be appointed by the Board, but no such director may be appointed without prior approval.
- (2) All decisions relating to the operation of the subsidiary are to be made by or under the authority of the board of the subsidiary in accordance with the statement of corporate intent of the Board and the subsidiary.
- (3) The board of the subsidiary is accountable to the <u>Treasurer Minister</u> in the manner set out in section 36 and in the constitution of the subsidiary.

[Clause 3 inserted by No. 18 of 2006 s. 16; amended by the State Superannuation Amendment Bill 2011 cl. 31.]

4. Further shares

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

[Clause 4 inserted by No. 18 of 2006 s. 16.]

5. Alteration of constitution

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

[Clause 5 inserted by No. 18 of 2006 s. 16.]

cl. 6

6. Subsidiaries of subsidiary

- (1) The subsidiary must not form or acquire any subsidiary without prior approval.
- (2) The subsidiary must ensure that the constitution of each of its subsidiaries at all times complies with this Act.
- (3) The subsidiary must, to the maximum extent practicable, ensure that each of its subsidiaries complies with its constitution and with the requirements of this Act.

[Clause 6 inserted by No. 18 of 2006 s. 16.]

Notes

This is a compilation of the *State Superannuation Act 2000* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

	Comp	nation table	
Short title	Number and year	Assent	Commencement
State Superannuation Act 2000	42 of 2000	2 Nov 2000	17 Feb 2001 (see s. 2 and <i>Gazette</i> 16 Feb 2001 p. 903)
Corporations (Consequential Amendments) Act 2001 s. 220	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and Gazette 29 Jun 2001 p. 3257 and Cwlth Gazette 13 Jul 2001 No. S285)
Acts Amendment (Lesbian and Gay Law Reform) Act 2002 Pt. 19	3 of 2002	17 Apr 2002	21 Sep 2002 (see s. 2 and <i>Gazette</i> 20 Sep 2002 p. 4693)
Corporations (Consequential Amendments) Act (No. 3) 2003 Pt. 15 ³	21 of 2003	23 Apr 2003	11 Mar 2002 (see s. 2 and Cwlth <i>Gazette</i> 24 Oct 2001 No. GN42)
State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 120 ⁴	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
Superannuation Legislation Amendment and Validation Act 2006 Pt. 3 ⁵	18 of 2006	31 May 2006	31 May 2006 (see s. 2)
Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 17 Div. 9	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
Reprint 1: The <i>State Super</i> listed above)	annuation Ac	t 2000 as at 18	Aug 2006 (includes amendments
Financial Legislation Amendment and Repeal Act 2006 s. 4 and 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and <i>Gazette</i> 19 Jan 2007 p. 137)
State Superannuation Amendment Act 2007 Pt. 1, 2 and 5 (other than Div. 3 Subdiv. 2)	25 of 2007	16 Oct 2007	Pt. 1: 16 Oct 2007 (see s. 2(1)(a)); Pt. 2: 6 Dec 2007 (see s. 2(1)(b) and <i>Gazette</i> 5 Dec 2007

p. 5973);

Pt. 5 Div. 1 and 2 repealed by No. 25 of 2007 s. 2(8)(a); Pt. 5 Div. 3 Subdiv. 1: 6 Dec 2007 (see s. 2(1)(e) and *Gazette* 5 Dec 2007 p. 5973)

Short title	Number and year	Assent	Commencement
Public Sector Reform Act 2010 s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
State Superannuation Amendment Bill 2011	<u>Current Bill</u> (200-1)		

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

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
State Superannuation Amendment Act 2007 Pt. 3, 4 and 5 Div. 3 Subdiv. 2 6	25 of 2007	16 Oct 2007	Pt. 3: operative on publication of an order under the State Superannuation Act 2000 s. 56 ("transfer time") (see s. 2(1)(c)); Pt. 4: to be proclaimed (see s. 2(1)(d)); Pt. 5 Div. 3 Subdiv. 2: operative on publication of an order under the State Superannuation Act 2000 s. 75K ("separation time") (see s. 2(8)(b))

The Superannuation and Family Benefits Act 1938 and the Government Employees Superannuation Act 1987 were repealed by s. 39 of this Act. Certain provisions of those Acts continue to apply to and in relation to certain schemes because of the State Superannuation (Transitional and Consequential Provisions) Act 2000 s. 26.

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2. Commencement

- (1) If this Act receives the Royal Assent before the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act comes into operation at the same time as that Schedule comes into operation.
- (2) If this Act receives the Royal Assent on or after the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act is deemed to have come into operation at the same time as that Schedule comes into operation.

3. Interpretation

In this Part —

Financial Services Reform Act means the *Financial Services Reform Act* 2001 of the Commonwealth;

The Corporations (Consequential Amendments) Act (No. 3) 2003 s. 2-4 read as follows:

FSR commencement time means the time when Schedule 1 to the Financial Services Reform Act comes into operation; **statutory rule** means a regulation, rule or by-law.

4. Validation

- (1) This section applies if this Act comes into operation under section 2(2).
- (2) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent that could have been done if this Act had received the Royal Assent before the FSR commencement time is taken to be as valid and lawful, and to always have been as valid and lawful, as it would have been if this Act had received the Royal Assent before the FSR commencement time.
- (3) Anything done or omitted to have been done by a person after the FSR commencement time and before this Act received the Royal Assent that would have been valid and lawful if the Financial Services Reform Act had not commenced, is taken to be valid and lawful.
- (4) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent
 - that could only have been validly and lawfully done or omitted because this Act received the Royal Assent after the FSR commencement time; and
 - (b) that could not have been validly and lawfully done or omitted if this Act had received the Royal Assent before the FSR commencement time,

is taken not to be valid, and to never have been valid.

- The State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 5, the State Administrative Tribunal Act 2004 s. 167 and 169, and the State Administrative Tribunal Regulations 2004 r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.
- The Superannuation Legislation Amendment and Validation Act 2006 s. 17 and 18 read as follows:

17. Validation of certain payments

(1) In this section —

Superannuation Act means the State Superannuation Act 2000, the Government Employees Superannuation Act 1987 or the Superannuation and Family Benefits Act 1938.

- (2) A payment or purported payment of a benefit under the *State Superannuation Act 2000*, the *Government Employees Superannuation Act 1987* or the *Superannuation and Family Benefits Act 1938* that was
 - (a) made before this section came into operation; and

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(b) invalid or ineffective because of the *Administration Act 1903* section 10.

is, and is to be taken always to have been, as valid and effective as it would have been if the *State Superannuation Act 2000* section 40, as inserted by section 15 of this Act, had been in operation in respect of each Superannuation Act at the time of the payment.

- (3) If
 - (a) a benefit under the *State Superannuation Act 2000*, the *Government Employees Superannuation Act 1987* or the *Superannuation and Family Benefits Act 1938* was paid to an executor or administrator of the estate of a deceased person before this section came into operation; and
 - (b) the executor or administrator paid, or purportedly paid, some or all of the benefit to another person before this section came into operation; and
 - (c) the payment was invalid or ineffective because of the *Administration Act 1903* section 10,

the executor or administrator is, and is to be taken always to have been, as liable for the payment referred to in paragraph (b) as the executor or administrator would have been if the *State Superannuation Act 2000* section 40, as inserted by section 15 of this Act, had been in operation in respect of each Superannuation Act at the time of the payment referred to in paragraph (a).

18. Validation of contributions made for visiting medical practitioners

- (1) In this section
 - **Board** means the Government Employees Superannuation Board referred to in the *State Superannuation Act 2000* section 5; *visiting medical practitioner* means a medical practitioner engaged, other than as an employee, to provide services in a hospital.
- (2) This section applies in relation to superannuation contributions made, or purportedly made, under the *Government Employees Superannuation Act 1987* or the *State Superannuation Act 2000* in respect of a visiting medical practitioner between 1 July 1992 and 30 June 2001.
- (3) A thing done, or purportedly done, by the Board in consequence of a superannuation contribution having been made, or purportedly made, in respect of a visiting medical practitioner is, and is to be taken always to have been, as valid and effective as if the contribution had been made in respect of a person who was a member of the relevant scheme.

"

On the date as at which this compilation was prepared, the State Superannuation Amendment Act 2007 Pt. 3, 4 and 5 Div. 3 Subdiv. 2 had not come into operation. They read as follows: Part 3 — Amendments at transfer time Section 3 amended Section 3(1) is amended as follows: (a) in the definition of "Board" by deleting "Government Employees" and inserting instead — "State": (b) by deleting the definition of "GES Act". 21. Part 2 inserted After section 4 the following Part is inserted — 66 Part 2 — Employer contribution obligation 4A. Terms used in this Part (1) In this Part — - chosen fund means a fund chosen by an employee in accordance with the SGA Act Part 3A Division 4; employee has the meaning given in the SGA Act section 12; fund has the meaning given in the SGA Act section 32E; individual superannuation guarantee shortfall has the meaning given in the SGA Act section 19; — prescribed fund, in relation to an employee, means the fund prescribed by the regulations for that employee; SGA Act means the Superannuation Guarantee (Administration) Act 1992 (Commonwealth); superannuation guarantee charge means the charge imposed by the Superannuation Guarantee Charge Act 1992 (Commonwealth). (2) For the purposes of this Part an employee is to be regarded as an employee of the person or body prescribed by the regulations for that employee. **Employers to make contributions** (1) An Employer must make contributions to the prescribed fund for each of its employees such that the Employer will avoid incurring an individual superannuation guarantee shortfall for the employee. (2) If an Employer becomes liable to pay the superannuation guarantee charge as a result of incurring an individual superannuation guarantee shortfall for an employee for a period, the Employer's obligation under subsection (1) to contribute for that employee for that period ceases. This section does not apply in relation to an employee who is in a

class of employees prescribed by the regulations.

4C.	Regulations may require extra contributions	
	Regulations made under section 79 may require an Employer to make contributions to a fund in addition to any contributions the Employer is required to make under section 4B or any other written law.	
4D.	No contributions to other funds	
	An Employer must not make contributions for an employee to a fund other than the prescribed fund unless the Treasurer has approved the making of those contributions.	,,
22.	—Section 4E amended	
(1)	Section 4E(1) is amended as follows:	
. ,	(a) by deleting "the Schedules —" and inserting instead — "Schedules 1 and 2 — ";	
	— (b) in the definition of "Fund" by deleting "Government Employees" and inserting instead "State";	
	(c) in the definition of "scheme" by deleting "or established under this Part";	
	— (d) by deleting the definition of "subsidiary".	
(2)	Section 4E(2) is repealed.	
23.	Division heading amended	
	The heading to Part 3 Division 2 is amended by deleting "Government Employees" and inserting instead —	
	"State".	
24.	—Section 5 amended	
—(1)	—Section 5(1) is repealed and the following subsection is inserted instead —	
<u> </u>		
—(1)	There is a body called the State Superannuation Board.	,,
(2)	Section 5(3) is repealed and the following subsection is inserted instead —	•
<u>"</u>		
(3)	The Board is a continuation of, and the same legal entity as, the body that was, before the transfer time, called the Government Employees Superannuation Board.	
	-	**
	Note: The heading to section 5 will be altered by deleting "Government Employees" and inserting instead "State".	

25.	—Section 6 amended
(1)	Section 6(1) is amended as follows:
	— (a) after paragraph (c) by inserting —
	<u>«</u>
	— (ca) with the approval of the Treasurer, administer any other superannuation scheme established by or under a written
	law; and
	aw, and
	(b) by deleting personent (a) and "and" after it and inserting
	(b) by deleting paragraph (e) and "and" after it and inserting instead—
	<u>"</u>
	(e) facilitate the provision of services to members of
	superannuation schemes administered by the Board and
	to Employers; and
	-
(2)	Section 6(3) is amended by inserting after "trading names"
, being n	ames that are not, and do not include, the term "GESB"
	-
26.	Section 7 amended
(1)	Section 7(2)(c), (ca), (d), (e) and (f) and "and" after each of them
(-)	are deleted.
(2)	After section 7(3) the following subsection is inserted —
	The section 7(3) the following subsection is inserted
<u> </u>	
(4) -	Without limiting subsection (1) the Board may charge a fee for
	administering a superannuation scheme of a kind referred to in
	section 6(1)(ca).
	-
27.	Sections 7A and 7B repealed
	Sections 7A and 7B are repealed.
20	-
28.	—Section 8 amended
	Section 8(1) is repealed and the following subsections are inserted
	instead —
<u> </u>	
(1)	The Board comprises the prescribed number of directors —
` '	(a) of whom one is to be appointed by the Governor as
	chairman on the nomination of the Treasurer; and
	— (b) — of the others of whom —
	— (i) half are to be appointed by the Governor as
	(1) han are to be appointed by the Governor as
	Employer directors; and (ii) half are to be elected or appointed in accordance

, ,	The number prescribed for the purposes of subsection (1) must be an odd number not exceeding 7.
20	—Section 11 replaced
	Section 11 is repealed and the following section is inserted instead —
11.	Use of government staff and facilities
(1)	The Board may by arrangement with the relevant employer mak use, either full-time or part-time, of the services of any officer of employee—
	(a) in the Public Service; or
	(b) in a State agency; or
	— (c) — otherwise in the service of the State.
(2)	The Board may by arrangement with —
	(a) a department of the Public Service; or
	— (b) a State agency,
	make use of any facilities of the department or agency.
(3)	An arrangement under subsection (1) or (2) is to be made on
(3)	terms, including as to payment, agreed to by the parties.
30.	
	terms, including as to payment, agreed to by the parties.
	terms, including as to payment, agreed to by the parties. Section 12 amended Section 12(1) is amended by deleting "section 23" and inserting
30.	 Section 12 amended Section 12(1) is amended by deleting "section 23" and inserting instead
30.	terms, including as to payment, agreed to by the parties. Section 12 amended Section 12(1) is amended by deleting "section 23" and inserting instead— "section 18(4)—".
30.	terms, including as to payment, agreed to by the parties. Section 12 amended Section 12(1) is amended by deleting "section 23" and inserting instead— "section 18(4)—". Division heading amended The heading to Part 3 Division 3 is amended by deleting
31.	Section 12 amended Section 12(1) is amended by deleting "section 23" and inserting instead— "section 18(4)—". Division heading amended The heading to Part 3 Division 3 is amended by deleting "Government Employees" and inserting instead—
31.	Section 12 amended Section 12(1) is amended by deleting "section 23" and inserting instead— "section 18(4)—". Division heading amended The heading to Part 3 Division 3 is amended by deleting "Government Employees" and inserting instead— "State—". Section 14 amended
31.	section 12 amended Section 12(1) is amended by deleting "section 23" and inserting instead— "section 18(4)—". Division heading amended The heading to Part 3 Division 3 is amended by deleting "Government Employees" and inserting instead— "State—".
31.	Section 12 amended Section 12(1) is amended by deleting "section 23" and inserting instead "section 18(4) ". Division heading amended The heading to Part 3 Division 3 is amended by deleting "Government Employees" and inserting instead "State ". Section 14 amended Section 14(1) is amended by deleting "Government Employees"
31.	Section 12 amended Section 12(1) is amended by deleting "section 23" and inserting instead— "section 18(4)—". Division heading amended The heading to Part 3 Division 3 is amended by deleting "Government Employees" and inserting instead— "State—". Section 14 amended Section 14(1) is amended by deleting "Government Employees" and inserting instead— and inserting instead—
30. 31. 32. (1)	Section 12 amended Section 12(1) is amended by deleting "section 23" and inserting instead— "section 18(4)—". Division heading amended The heading to Part 3 Division 3 is amended by deleting "Government Employees" and inserting instead— "State—". Section 14(1) is amended by deleting "Government Employees" and inserting instead— "State—". Section 14(2) is repealed and the following subsection is inserted.
30. 31. 32. (1) (2)	Section 12 amended Section 12(1) is amended by deleting "section 23" and inserting instead— "section 18(4)—". Division heading amended The heading to Part 3 Division 3 is amended by deleting "Government Employees" and inserting instead— "State—". Section 14(1) is amended by deleting "Government Employees" and inserting instead— section 14(1) is amended by deleting "Government Employees" and inserting instead— "State—". Section 14(2) is repealed and the following subsection is inserted instead—
30. 31. 32. (1) (2)	Section 12 amended Section 12(1) is amended by deleting "section 23" and inserting instead— "section 18(4)—". Division heading amended The heading to Part 3 Division 3 is amended by deleting "Government Employees" and inserting instead— "State—". Section 14(1) is amended by deleting "Government Employees" and inserting instead— "State—". Section 14(2) is repealed and the following subsection is inserted.

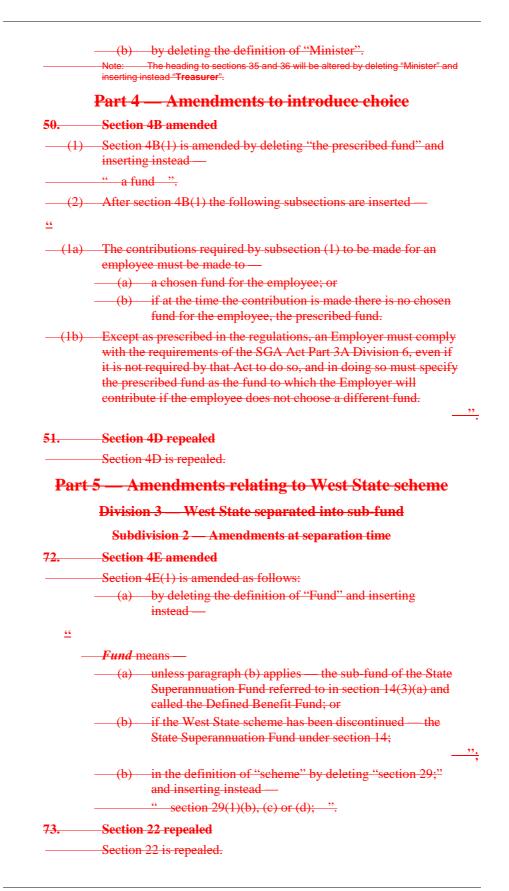
33.	— Section 15 amended
	Section 15(2)(ba) and "and" after it are deleted.
34.	Section 18 amended
(1)	Section 18(3) is amended by deleting from "an investment," to the end of the subsection and inserting instead —
	<u>"</u>
	an investment; and
	(c) mix investments with investments of any other person,
	as if it were dealing with its own property as it considers appropriate.
(2)	After section 18(3) the following subsection is inserted—
(4)	Subject to the Treasurer's guidelines the Board may delegate any or all of its functions under this section to a person approved by the Treasurer.
35	Section 23 repealed
33.	
	Section 23 is repealed.
36. —	—Section 28 replaced
	Section 28 is repealed and the following section is inserted in Part 3 Division 3—
28.	— Application of Financial Management Act 2006 and Auditor General Act 2006
	The provisions of the <i>Financial Management Act</i> 2006 and the <i>Auditor General Act</i> 2006 regulating the financial administration, audit and reporting of agencies apply to and in respect of the Board and its operations.
37	Section 30 repealed
	Section 30 is repealed.
38.	Section 33 amended
20.	Section 33(2) is amended as follows:
	(a) in paragraph (b) by deleting "the provision by the Board
	of, or" and ", products and";
	(b) in paragraph (d) by inserting after "investments"—
	", and the delegation of functions, ";
	— (c) in paragraph (e) by deleting "sections 18, 23, 24 and 38(5);" and inserting instead —
	" sections 18 and 24; ";
	(d) by deleting paragraphs (h) and (i) and "and" after each of

39.	Sections 33A and 33B repealed
	Sections 33A and 33B are repealed.
40.	—Section 36 amended
(1)	Section 36(1)(a) and (3) are amended by deleting "or a subsidiary".
(2)	Section 36(2)(b) is amended by inserting after "facilities"—
	" (including any being used in accordance with section 11) ".
(3) -	Section 36(4) is amended in the definition of "beneficiary" by deleting paragraph (c) and inserting instead—
	<u>"</u>
	(c) any other person to whom a benefit has been or is being paid, or is or may become payable;
41.	Section 37 repealed
	Section 37 is repealed.
42.	—Section 38 amended
(1)	Section 38(2) is amended as follows:
	— (a) by deleting paragraph (a) and "and" after it;
	(b) by deleting paragraph (j) and "and" after it and inserting instead—
	<u>"</u>
	(j) facilitation by the Board of the provision of services under section 6(1)(e); and
	(c) after paragraph (l) by deleting the full stop and inserting instead—
	<u>"</u>
	; and
	— (m) the discontinuance of a scheme. — ".
(2)	Section 38(5) is repealed.
(3)	Section 38(8) is repealed and the following subsections are inserted instead —
<u>"</u>	
(7)	Regulations cannot be made after the transfer time if they would permit a person to become —
	(a) a member of the West State scheme or the scheme continued by section 29(1)(b); or
	(b) a contributor or subscriber to a scheme continued by section 29(1)(c) or (d).
—(7a)	Subsection (7) does not affect any regulation, or provision of the Superannuation and Family Benefits Act 1938 continued under the State Superannuation (Transitional and Consequential Provisions)

	Act 2000 section 26(1)(c), that is in force immediately before the transfer time.
(8)	Regulations providing for the discontinuance of a scheme cannot be made unless —
	(a) there are no members, contributors or subscribers left in the scheme; or
	(b) the regulations provide for the transfer of members', contributors' or subscribers' benefits in the scheme to another superannuation fund or scheme in a manner that, if each scheme affected by the regulations were a regulated superannuation fund, would be permitted under the SIS Act.
43	—Section 76 inserted
	Before section 77 the following section is inserted in Part 5—
76.	Restriction on other public sector superannuation schemes
(1)	An Employer may establish a superannuation scheme or fund for the benefit of persons who work for the Employer, if and only if the Treasurer has approved the establishment of that scheme or fund.
(2)	An approval given by the Treasurer under this section must be in writing and may relate to—
	 (a) a particular Employer or class of Employers; or (b) a particular person who works for an Employer, or class of such persons; or
	(c) a particular scheme or fund or class of schemes or funds.
(3)	This section applies despite any other written law.
44.	Section 79 amended
	After section 79(3) the following subsection is inserted—
<u>"</u>	
(4)	If the Minister responsible for the administration of this Act is not the Treasurer, regulations cannot be made for the purposes of this Act unless they have been approved by the Treasurer.
45.	Section 80 inserted
	After section 79 the following section is inserted—
80.	Transitional and saving provisions
	Schedule 3 sets out transitional and savings provisions.
46.	Schedule 1 amended

(2)	The Schedule heading is amended by deleting "Government Employees" and inserting instead —
	"State".
(3)	Clauses 1(2), 2(2) and 3 are repealed.
(4)	Clause 4(1) is amended by deleting "section 8(1)(b)" and inserting instead —
	" section 8(1)(b)(i) ".
(5)	Clause 4(2) is amended by deleting "under section 8(1)(c)" and inserting instead —
	" or appointed under section 8(1)(b)(ii) ".
(6)	Clause 6(1) is amended by deleting "A casual vacancy in the office of a director occurs if the director —" and inserting instead —
	"A person ceases to be a director if the person ".
(7)	Clause 6(2)(c) and "or" after it are deleted and the following is inserted instead—
	<u>"</u>
	(c) is incompetent or is otherwise not a fit and proper person to be a director; or
(8)	Clause 6(3) and (4) are repealed.
(0)	Note: The heading to clause 6 will be deleted and the following heading will be inserted instead "Vacation of office by director".
47.	Schedule 2 amended
(1)	The amendments in this section are to Schedule 2.
(2)	Clause 2 is amended by deleting "5 directors." and inserting instead—
	" two thirds of the total number of directors. ".
(3)	Clause 4(c) is amended by deleting "5 or more directors" and inserting instead—
	" at least the number of directors required to form a quorum ".

Schedule 3 replaced Schedule 3 is repealed and the following Schedule is inserted instead -Schedule 3 — Transitional and saving provisions [s. 80] **Division 1** Provisions for State Superannuation Amendment Act 2007 1. References to Board and Fund (1) A reference in a written law or other document to the Government Employees Superannuation Board may be read as if it had been amended to be a reference to the State Superannuation Board. A reference in a written law or other document to the Government Employees Superannuation Fund may be read as if it had been amended to be a reference to the Fund as defined in the State Superannuation Act 2000 section 4E. (3) This clause applies to the extent that a contrary intention does not appear. Transitional provision in relation to Minister After the transfer time anything that was done or omitted to be done by, to, or in relation to, the Minister before the transfer time and is of any ongoing effect, has the same effect after that time as if it had been done or was omitted to be done by, to, or in relation to, the Treasurer. Various references to Minister amended (1) The provisions listed in the Table to this subsection are amended by deleting "Minister" in each place where it occurs and inserting instead -" Treasurer ". **Table** s. 3(1) (defn. of "actuary") Sch. 1 cl. 2(1) s.34(1)Sch. 1 cl. 6(1), (2) s. 35(1) and (2) Sch. 1 cl. 7 (first place only) s. 36(1), (2), (3) and (4) Sch. 2 cl. 11(2) (defn. of "information") Sch. 2 cl. 12(3) s. 77(2), (3), (5) and (6) Sch. 1 cl. 1(1) (2) Section 6(1)(d) is amended by deleting "Minister and the". (3) Section 36(1) is amended by deleting "Minister's" and inserting instead -" Treasurer's ". (4) Section 77(1) is amended as follows: (a) after the definition of "direction" by deleting the semicolon and inserting instead a full stop;



74.	Section 33 amended	
-	Section 33(2)(g) and "and" after it are deleted.	
75.	Section 38 amended	
(1)	Section 38(3)(b)(i) is amended by deleting "the West State scheme or".	
(2)	Section 38(7)(a) is amended by deleting "the West State scheme or".	
76.	Section 51 amended	
	Section 51(1) and (2) are amended by inserting after "section 43(3)(c)"—	
	" or 75K(5) ".	,,