



New South Wales

Superannuation Administration Amendment (Investment Management and Other Matters) Act 2015 No 53

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Superannuation Administration Amendment (Investment Management and Other Matters) Act 2015 No 53

Act No 53, 2015

An Act to amend the *Superannuation Administration Act 1996* in relation to the investment management of superannuation funds, and to other matters. [Assented to 5 November 2015]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Superannuation Administration Amendment (Investment Management and Other Matters) Act 2015*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Superannuation Administration Act 1996 No 39

[1] Section 4 Definitions

Insert in alphabetical order:

investment manager means a person who provides superannuation investment management services for a superannuation fund or funds or part of any such fund under a contract or an arrangement with STC, and includes any other person engaged by that person to provide all or any of those superannuation investment management services.

mandated investment manager—see section 60.

superannuation investment management services include (but are not limited to) the following:

- (a) managing investments for any superannuation fund or funds or part of any such fund,
- (b) advising on investments and investment strategies and other related strategies for any superannuation fund or funds or part of any such fund,
- (c) providing services in relation to the custody of the assets and securities of any superannuation fund or funds or part of any such fund.

[2] Section 51 Duties relating to functions

Insert at the end of section 51 (2) (d):

, and

- (e) the role of employers under STC schemes in funding benefits under those schemes.

[3] Section 53 Power to enter into contracts or arrangements

Insert “all or any” before “superannuation investment management services” in section 53 (1) (a).

[4] Section 53 (1) (c)

Omit the paragraph.

[5] Section 53 (1A)

Insert after section 53 (1):

- (1A) An investment manager who enters into a contract or arrangement with STC to provide superannuation investment management services may (subject to the terms of that contract or arrangement) engage another investment manager to provide any such service. In that case, a reference in this section to the person who enters into or makes the contract or arrangement with STC includes a reference to any such other investment manager engaged to provide the service.

[6] Section 54 Minister’s consent required

Omit “section 53 (1) (a), (b) or (c)”.

Insert instead “section 53 (1) (a) or (b) with a person other than a mandated investment manager”.

[7] Section 54 (2)

Insert at the end of section 54:

- (2) The Minister may, by notice in writing given to STC, waive the requirement for consent generally or in such circumstances as may be specified by the Minister.

[8] Section 58 Investment strategy

Insert “, subject to this Part and section 129A,” after “STC must” in section 58 (1).

[9] Section 59 Investment manager to be appointed

Omit section 59 (2). Insert instead:

- (2) STC must ensure that any such investment manager (and others the investment manager engages to provide the relevant services) operates within the investment powers of STC and complies with the investment strategy determined by STC and notified to the investment manager.

[10] Section 59 (3A)

Insert after section 59 (3):

- (3A) A contract or arrangement under which an investment manager undertakes to provide all superannuation investment management services for a superannuation fund or part of a fund is to make provision for the engagement of a separate person to provide services in relation to the custody of assets and securities.

[11] Section 59 (5)

Omit the subsection.

[12] Section 59, note

Omit the note. Insert instead:

Note. The Minister’s consent is required to any such contract or arrangement that is entered into with a person other than a mandated investment manager unless that requirement is waived (see section 54).

[13] Section 60

Insert after section 59:

60 Mandated investment managers

- (1) The Treasurer may, with the approval of the Minister, by order in writing given to STC, require:
 - (a) the investment of the whole or any part of the STC funds to be managed by one or more investment managers approved by the Treasurer (a *mandated investment manager*), and
 - (b) STC to enter into a contract or arrangement referred to in section 59 with any such mandated investment manager with respect to superannuation investment management services for the whole or that part of the STC funds subject to the terms and conditions set out or described in the order.
- (2) Subsection (1) does not prevent STC from entering into a contract or arrangement containing additional terms or conditions that are not inconsistent with the terms and conditions set out or described in the order.

- (3) The Treasurer must consult with STC and the proposed mandated investment manager before giving an order under this section.
- (4) A mandated investment manager (or an investment manager engaged by a mandated investment manager to provide relevant services):
 - (a) may invest the whole or part of the STC funds concerned only in any investment that is authorised or permitted by this Act or any other applicable legislation, and
 - (b) must carry out the superannuation investment management services concerned subject to the applicable terms and conditions and consistently with any relevant investment strategy or policy.
- (5) STC is taken to have discharged the obligations and duties imposed on it under this and any other law (written or unwritten) in relation to the investment and management of the whole or part of the STC funds, if a mandated investment manager (or an investment manager engaged by a mandated investment manager) provides superannuation investment management services in respect of the STC funds or part of the STC funds on behalf of STC in accordance with subsection (4).

Note. Under section 69 (6) any act, matter or thing done in the name of, or on behalf of, STC by the STC Board is taken to have been done by STC. Section 80 protects persons such as the chief executive officer (who is subject to the control and direction of the Board) from personal and other liability.
- (6) An order under this section takes effect on the day specified in the order.
- (7) In this section:

relevant investment strategy or policy, in relation to the whole or any part of the STC funds, means an investment strategy or reserves strategy determined by STC under section 58, or custodial policy determined by STC under this Act, in relation to the whole or that part of the STC funds.

[14] Section 61 Custodian to be appointed

Omit the section.

[15] Section 127A

Insert after section 127:

127A Transfers to successor funds

- (1) The Minister may, at the request of STC, approve the transfer of part of the benefits of all or some members of an STC scheme to a successor fund.
- (2) The Minister must not approve the transfer of a part of the benefit of a member of an STC scheme if that part consists of or includes a defined benefit interest within the meaning of the *Superannuation Industry (Supervision) Regulations 1994* of the Commonwealth.
- (3) The Minister must not approve a transfer unless the Minister is satisfied that the transfer complies with the requirements of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth and any regulations or other instruments under that Act that would apply to the transfer to a successor fund if the STC scheme was not an exempt public sector superannuation scheme under that Act.
- (4) Without limiting subsection (3), the trust deed of any successor fund must include provisions to ensure that a right that a contributor to, or a member of, the STC scheme had immediately before the transfer to the successor fund is

not removed or restricted. The rules included in the deed may, however, confer additional rights on a contributor or member.

- (5) Regulations may be made for or with respect to the following matters, in relation to a transfer to a successor fund:
- (a) the transfer of benefits of members of, or contributors to, an STC scheme from that scheme to the successor fund,
 - (b) the transfer of assets and liabilities of an STC scheme, in respect of transferred benefits of members or contributors or former members or contributors, to the successor fund,
 - (c) the payment of benefits transferred to the successor fund,
 - (d) the funds and reserves to be established in respect of the successor fund,
 - (e) the preservation or deferral of benefits transferred to the successor fund,
 - (f) the entitlements, rights and obligations of a member of, or contributor to, an STC scheme whose benefit is transferred to the successor fund,
 - (g) the deeming of employers to be no longer employers under an STC scheme where all the benefits of the relevant employees are transferred from the STC scheme to the successor fund.

[16] Section 129A

Insert after section 129:

129A Prudential standards or reporting and auditing requirements

- (1) The Minister may, by order published in the Gazette, declare that prudential standards, or reporting and auditing requirements, specified or described in the order are standards or requirements that apply to STC in the exercise of any principal function of STC described in the order.
- (2) Before making an order under this section, the Minister is to consult STC on the proposed standards or requirements.
- (3) An order under this section takes effect on the day specified in the order.
- (4) STC, and any person carrying out a principal function on behalf of STC, must comply with any standard or requirement applied to STC under this section.

[17] Schedule 3 Savings and transitional provisions

Insert at the end of clause 1 (1):

any other Act that amends this Act

[Second reading speech made in—
Legislative Assembly on 20 October 2015
Legislative Council on 28 October 2015]