



New South Wales

Superannuation Administration Corporation (Pillar) (Authorised Transaction) Act 2016 No 19

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New South Wales

Superannuation Administration Corporation (Pillar) (Authorised Transaction) Act 2016 No 19

Act No 19, 2016

An Act to provide for the transfer of the business of the Superannuation Administration Corporation; and for other purposes. [Assented to 19 May 2016]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Superannuation Administration Corporation (Pillar) (Authorised Transaction) Act 2016*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 5 (Ownership restrictions in floated transaction companies) commences on a day to be appointed by proclamation.

3 Interpretation—key definitions

Note. Schedule 1 contains other interpretative provisions.

In this Act:

authorised transaction means a transfer of Pillar assets authorised by Part 2.

Pillar means the Superannuation Administration Corporation constituted by the *Superannuation Administration Authority Corporatisation Act 1999*.

Note. The Superannuation Administration Corporation operates under the trading name of Pillar Administration.

Pillar assets means the assets, rights and liabilities of Pillar.

Part 2 The authorised transaction

4 Authorisation for transfer of Pillar assets

This Act authorises the transfer of Pillar assets to the private sector or to any public sector agency.

5 Payment and application of proceeds of transaction

- (1) The proceeds of the transfer of Pillar assets to the private sector pursuant to the authorised transaction (*the transaction proceeds*) belong to and are payable directly to the State.
- (2) The transaction proceeds paid to the State are to be paid into the Restart NSW Fund (*the Restart Fund*) established under the *Restart NSW Fund Act 2011*.
- (3) The following deductions are authorised to be made from the transaction proceeds:
 - (a) deduction of such amounts as the Treasurer approves to repay debt and satisfy other liabilities of a public sector agency in respect of Pillar assets transferred for the purposes of the authorised transaction,
 - (b) deduction of such amounts as the Treasurer approves to reimburse public sector agencies for payments made by them in respect of any tax, duty, fee or charge imposed by any Act or law of the State or any other jurisdiction in connection with a transaction arrangement,
 - (c) deduction of such amounts as the Treasurer approves to satisfy any liability of a public sector agency arising under or in connection with a transaction arrangement,
 - (d) deduction of such amounts as the Treasurer approves to meet expenses reasonably incurred by public sector agencies for the purposes of the authorised transaction.
- (4) The transaction proceeds do not include any amount certified by the Treasurer as paid or payable to a public sector agency as a tax, duty, fee or charge imposed by any Act or law of the State in connection with a transaction arrangement.
- (5) The deductions authorised to be made from the transaction proceeds may be made before payment of the transaction proceeds into the Restart Fund, or may be made by payment from the Restart Fund.
- (6) The requirements of this section do not affect the validity of a transaction arrangement.

6 Regional commitment

- (1) The Treasurer must ensure that the private sector entity that becomes the owner of Pillar assets pursuant to the authorised transaction provides a guarantee to the effect that Pillar's existing Illawarra operations immediately before completion of the authorised transaction will continue to be conducted in the Illawarra for at least 10 years after completion of the authorised transaction.
- (2) In this section:

existing clients means the superannuation schemes in respect of which Pillar provides services immediately before completion of the authorised transaction.

existing Illawarra operations means the business activities undertaken by Pillar in the Illawarra in the exercise of functions that are associated with the delivery of member services and that are designated within Pillar's business as "Operations", but limited to business activities that relate to Pillar's existing clients.

the Illawarra means the area designated by the Australian Bureau of Statistics as the Illawarra Statistical Division.

Part 3 Facilitating the authorised transaction

7 Treasurer's functions

The Treasurer has and may exercise all such functions as are necessary or convenient for the purposes of the authorised transaction. The functions conferred on the Treasurer by any other provision of this Act do not limit the Treasurer's functions under this section.

8 Manner of effecting authorised transaction

- (1) The authorised transaction is to be effected as directed by the Treasurer and can be effected in any manner considered appropriate by the Treasurer.
- (2) There are no limitations as to the nature of the transactions or arrangements that can be entered into or used for the purposes of the authorised transaction.
- (3) The provisions of this Act for the establishment of various kinds of transaction entity do not limit the nature of the entities or arrangements that can be used for the purposes of the authorised transaction.

9 Transaction SOCs

- (1) A statutory State owned corporation may be established under this Act as a transaction SOC for the purposes of the authorised transaction.
- (2) The Governor may by order published in the Gazette:
 - (a) create a corporation under a corporate name specified in the order, and
 - (b) specify the functions of the corporation, and
 - (c) direct that the corporation is established as a statutory State owned corporation and as a transaction SOC.
- (3) On the day on which the order takes effect:
 - (a) a corporation is constituted with the corporate name and functions specified in the order, and
 - (b) the *State Owned Corporations Act 1989* is amended by inserting in Schedule 5 the corporate name specified in the order (to establish the corporation as a statutory State owned corporation under that Act), and
 - (c) the State owned corporation thereby established is a transaction SOC for the purposes of this Act.
- (4) The portfolio Minister of a SOC established under this section is the Minister administering the *Superannuation Administration Authority Corporatisation Act 1999*.
- (5) Schedule 2 has effect with respect to a transaction SOC. The provisions of that Schedule are in addition to and (except to the extent to which that Schedule otherwise provides) do not derogate from the provisions of the *State Owned Corporations Act 1989*.

10 Transaction companies

- (1) The Treasurer may for the purposes of the authorised transaction establish, or direct the establishment of, companies as transaction companies in any of the following ways:
 - (a) the formation or acquisition by or on behalf of the State or a SOC of a company limited by shares, so that all the issued shares in the company are held by or on behalf of the State or a SOC (or both),

- (b) the formation or acquisition of a company as a wholly owned subsidiary company of a transaction company,
 - (c) the conversion of Pillar or a transaction SOC into a company limited by shares as provided by Schedule 3.
- (2) A transaction company that is a public sector agency may be converted from one kind of company to any other kind of company.
- (3) Except by express agreement with the Treasurer:
 - (a) a transaction company is not and does not represent the State, and
 - (b) the debts, liabilities and obligations of a transaction company are not guaranteed by the State.
- (4) The Treasurer may act for or on behalf of the State, a SOC or a transaction company that is a public sector agency in connection with the rights, privileges and benefits, and the duties, liabilities and obligations, of the State, a SOC or a transaction company as the holder of shares or other securities in or issued by a transaction company.
- (5) Shares and other securities in or issued by a transaction company that is a public sector agency may be issued or transferred in accordance with the directions of the Treasurer. The Treasurer may on behalf of the State, a SOC or a transaction company that is a public sector agency, enter into and carry out transaction arrangements for the issue or transfer of shares and other securities in or issued by a transaction company.
- (6) If Pillar becomes a transaction company by being converted into a company under this section, a reference in this Act to Pillar includes a reference to that transaction company.
- (7) The provisions of this section are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of the Corporations legislation generally.

11 Functions of Pillar and transaction entities

- (1) Pillar and each transaction entity has and may exercise all such functions as are necessary or convenient for the purposes of the authorised transaction.
- (2) The functions conferred by this section are in addition to any other functions that Pillar or a transaction entity has apart from this section and those other functions do not prevent or otherwise limit the exercise of the additional functions conferred by this section.
- (3) The Treasurer may act for or on behalf of Pillar or a transaction entity in the exercise of any of its functions for the purposes of the authorised transaction while it is a public sector agency.

12 Direction and control of Pillar and transaction entities

- (1) Pillar and each transaction entity is subject to the direction and control of the Treasurer in the exercise of any of its functions for the purposes of the authorised transaction while it is a public sector agency.
- (2) The Treasurer may give directions for the purposes of the authorised transaction to Pillar or a transaction entity, and to the directors and other officers of Pillar or a transaction entity. Any such directions must be complied with by Pillar, the transaction entity or the directors or other officers concerned.

- (3) Directions to a transaction entity (or its directors and other officers) can only be given and are only required to be complied with while the transaction entity is a public sector agency.
- (4) The power to give directions under this section extends to directions with respect to the way in which Pillar or a transaction entity is to conduct its business and other affairs.
- (5) Action taken by Pillar or a transaction SOC to comply with a direction of the Treasurer under this Act does not require the approval of the voting shareholders or portfolio Minister of the corporation.
- (6) Anything done or omitted to be done by a director or other officer of Pillar or a transaction entity in compliance or purported compliance with a direction given by the Treasurer under this Act does not subject the director or officer personally to any action, liability, claim or demand.
- (7) The provisions of this section are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of the Corporations legislation generally.

13 Establishment of Superannuation Administration Assets Ministerial Holding Corporation

- (1) There is constituted by this Act a corporation with the corporate name of the Superannuation Administration Assets Ministerial Holding Corporation.
- (2) The Corporation is a statutory body representing the Crown.
- (3) The affairs of the Corporation are to be managed by the Treasurer who may authorise another Minister to exercise functions in relation to particular assets, rights and liabilities.
- (4) Any act, matter or thing done in the name of, or on behalf of, the Corporation by the Treasurer or a Minister authorised by the Treasurer, or with the authority of the Treasurer or any such Minister, is taken to have been done by the Corporation.
- (5) The Corporation has the functions conferred or imposed on it by or under this or any other Act.
- (6) The functions of the Corporation are:
 - (a) to hold, on behalf of the Crown, Pillar assets acquired by it or transferred to it, and
 - (b) to carry on any activities or business that relate to any Pillar assets held by it, including demanding, collecting and receiving charges, levies, rates and fees, and
 - (c) such other functions for the purposes of the authorised transaction as may be prescribed by the regulations.
- (7) Assets, rights and liabilities held by the Corporation may be transferred by the Corporation to any other public sector agency whether or not the transfer is for the purposes of the authorised transaction.
- (8) The regulations may dissolve the Corporation.

14 Special Deposit Account funds for Ministerial Holding Corporation

- (1) A fund is to be established in the Special Deposits Account for the Superannuation Administration Assets Ministerial Holding Corporation.
- (2) The fund is to be administered by the Treasurer.

- (3) There is payable into the fund all money received by the Corporation in the exercise of its functions under this or any other Act.
- (4) There is payable from the fund such amounts as the Treasurer directs from time to time for:
 - (a) payment of expenditure by the Corporation in the exercise of its functions, or
 - (b) payment of administrative expenses incurred in relation to the fund, or
 - (c) payment to the Consolidated Fund.
- (5) The Treasurer may invest money in the fund in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*.

Part 4 Arrangements for transfer of staff

15 Interpretation

In this Part, *Pillar employee* means an employee of Pillar or a wholly-owned subsidiary of Pillar, and includes a person who was an employee of Pillar or a wholly-owned subsidiary of Pillar immediately before the person's employment was transferred under this Part to the employment of another public sector agency.

16 Transfers of staff within public sector

- (1) The Treasurer may, for the purposes of the authorised transaction, by order in writing transfer the employment of a Pillar employee to the employment of another public sector agency.
- (2) A transfer of employment under this section does not require the consent of the person transferred.
- (3) An employee whose employment is transferred under this section is (until other provision is duly made under any Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the employee had the employee remained an employee of Pillar.
- (4) The Treasurer may negotiate and enter into agreements or industrial instruments concerning workplace relations for or on behalf of a public sector agency in connection with the operation of this section.

17 Transfers of staff to private sector employment

- (1) The Treasurer may, for the purposes of the authorised transaction, by order in writing transfer the employment of a Pillar employee (a *transferred employee*) to the employment of a private sector entity (the *new employer*).
- (2) A transfer of employment under this section does not require the consent of the Pillar employee transferred.
- (3) The employment of a transferred employee with the new employer is to be on the same terms and conditions as applied under a relevant award to the employee as a Pillar employee immediately before the transfer of employment.
- (4) Those terms and conditions cannot be varied during any employment guarantee period for the transferred employee except by agreement entered into by or on behalf of the transferred employee or in accordance with the *Fair Work Act 2009* of the Commonwealth.
- (5) The employment of a transferred employee with the new employer cannot be terminated by the new employer during any employment guarantee period for the transferred employee, except:
 - (a) for serious misconduct, or
 - (b) pursuant to the proper application of reasonable disciplinary procedures, or
 - (c) by agreement with the employee.
- (6) There is an *employment guarantee period* for transferred employees who are permanent or temporary employees, as follows:
 - (a) for permanent employees the employment guarantee period is 2 years after the transfer date,
 - (b) for temporary employees the employment guarantee period is the remainder of the employee's current term of employment (as specified in the arrangements under which the employee was engaged as a temporary employee)

immediately before the transfer date or the period of 2 years after the transfer date, whichever period ends first.

Note. There is no employment guarantee period for contract employees or casual employees. The employment of a transferred employee who is a contract employee remains governed by the contract of employment.

(7) In this section:

casual employee means an employee whose employment is in a category of employment that is described in or classified under a relevant award as casual employment or who is otherwise engaged as a casual employee.

contract employee means an employee whose terms and conditions of employment are provided by an individual contract and not by a relevant award.

permanent employee means an employee whose employment is of indefinite duration and who is not a casual employee, temporary employee or contract employee.

relevant award means any award, agreement or other industrial instrument (under a law of the State or the Commonwealth) that provides for the terms and conditions of employment of employees.

temporary employee means an employee (other than a casual employee or contract employee) whose employment is in a category of employment that is described in or classified under a relevant award as temporary employment or whose employment is, under the terms of his or her employment, for a limited period.

transfer date means the date on which the employment of a transferred employee is transferred under this section to the new employer.

18 Continuity of entitlements of transferred employees

- (1) On the transfer by order under this Part of an employee's employment from one employer (the **current employer**) to another employer (the **new employer**) the following provisions have effect:
- (a) the employee is entitled to continue as a contributor, member or employee for the purposes of any superannuation scheme in respect of which he or she was a contributor, member or employee (as an employee of the current employer) immediately before the transfer of employment and remains so entitled subject to any variation to that entitlement made either by agreement or otherwise in accordance with law,
 - (b) the new employer is taken to be an employer for the purposes of any superannuation scheme in respect of which the employee continues as a contributor, member or employee pursuant to an entitlement under this section,
 - (c) the continuity of the employee's contract of employment is taken not to have been broken by the transfer of employment, and service of the employee with the current employer (including service deemed to be service with the current employer) that is continuous service up to the time of transfer is taken for all purposes to be service with the new employer,
 - (d) the employee retains any rights to sick leave, annual leave or extended or long service leave accrued or accruing immediately before the transfer (except accrued leave for which the employee has, on ceasing to be an employee of the current employer, been paid the monetary value in pursuance of any other entitlement of the employee).
- (2) The Treasurer may in connection with the operation of this Part give a certificate in writing as to the extent of the accrued rights to annual leave, extended or long service leave or sick leave that are retained by the employee under this Part, and such a certificate is evidence of the matters certified.

- (3) Nothing in the *Long Service Leave Act 1955* prevents payment in connection with the transfer under this Act of the employment of an employee to the employment of a private sector entity of the monetary value of long service leave in lieu of an entitlement to that leave accrued as a Pillar employee before the transfer of the employee's employment.
- (4) An employee is not entitled in respect of the same period of service to claim a benefit under this Act and another law or instrument.

19 Operation of other laws and entitlements

The following provisions apply in relation to the transfer of a person's employment under this Part:

- (a) the transfer has effect despite any other law, contract or instrument under a law,
- (b) the transfer does not constitute a retrenchment, redundancy or termination of employment at the initiative of the Crown or any other public sector agency,
- (c) the person transferred is not entitled to any payment or other benefit by reason only of having ceased to be an employee of a public sector agency as a result of the transfer,
- (d) a public sector agency is not required to make any payment to the transferred person in relation to the transferred person's accrued rights in respect of annual leave, sick leave or extended or long service leave.

20 Operation of Commonwealth law

A provision of this Act (including a provision to the extent that it imposes or continues a term or condition of employment) has no effect to the extent of any inconsistency with any provision of the *Fair Work Act 2009* of the Commonwealth or of any instrument under that Act.

Part 5 Arrangements for transfer of assets and functions

21 Vesting orders

The Treasurer may make vesting orders under Schedule 4 for the purposes of the authorised transaction.

22 Grant of relevant authorisations

- (1) The Treasurer may by order in writing given to the relevant administering agency direct the grant of a specified relevant authorisation to a person who becomes or who it is proposed will become the new owner of any Pillar assets pursuant to the authorised transaction.
- (2) Such a direction (a **grant direction**) operates to grant the specified relevant authorisation on such terms and conditions and subject to such endorsements as may be specified in the direction, and so operates:
 - (a) without the need for any action by the relevant administering agency, and
 - (b) without the need for the making or determination of any application for the relevant authorisation, and
 - (c) despite any requirement of or restriction imposed by a relevant law in relation to the grant of a relevant authorisation.
- (3) A grant direction may only direct the grant of a relevant authorisation that:
 - (a) operates to transfer or replace a relevant authorisation that is currently in force, and
 - (b) is subject to terms, conditions or endorsements that are the same (or to substantially the same effect) as those to which that relevant authorisation is subject.
- (4) A grant direction may direct the grant of more than one relevant authorisation to transfer or replace an existing relevant authorisation.
- (5) The Treasurer is to consult with the relevant administering agency before giving a grant direction for a relevant authorisation.
- (6) The Treasurer may direct the relevant administering agency to give effect to a grant direction by formally granting, and issuing the appropriate documentation for, the relevant authorisation concerned. The relevant administering agency must comply with the Treasurer's direction within the period specified in the direction.
- (7) Anything done by Pillar or another public sector agency in compliance with a condition or endorsement of a relevant authorisation in relation to Pillar assets of which a person is the new owner is taken to have been done by the new owner for the purposes of any corresponding condition or endorsement of a relevant authorisation granted to the new owner pursuant to this section.
- (8) A relevant authorisation granted to Pillar or to the new owner of Pillar assets may not be suspended or cancelled on the ground of the conversion of Pillar or new owner to a company or on the ground of any change that has occurred in the officers or shareholders of the company as a result of that conversion or pursuant to a transaction arrangement.
- (9) In this section:

grant includes issue and transfer.

new owner of Pillar assets means:

 - (a) a public sector agency to which any Pillar assets are transferred for the purposes of the authorised transaction, or

- (b) a person (or the nominee of a person) who becomes the owner of Pillar assets pursuant to the authorised transaction.

relevant administering agency, in relation to a relevant authorisation, means the public sector agency or public official having the function of granting the relevant authorisation.

relevant authorisation means a licence, permit, consent, entitlement, accreditation, exemption or other authorisation held by Pillar or a subsidiary of Pillar, or held by another public sector agency as a result of being granted pursuant to this section.

23 Adjustment of Pillar objectives and functions

- (1) The Treasurer may by direction in writing to Pillar adjust the objectives and functions of Pillar in such manner as the Treasurer considers appropriate to ensure that the objectives and functions of Pillar remain appropriate, having regard to:
- (a) the capacity of Pillar to give effect to or exercise its existing objectives and functions following the transfer of any of its assets, rights and liabilities for the purposes of the authorised transaction, and
 - (b) the objectives and functions that would be appropriate for any remaining assets, rights and liabilities of Pillar.
- (2) The objectives and functions of Pillar may be adjusted under this section by being limited or dispensed with but not by being broadened.

Part 6 Operation of other laws

24 State taxes

(1) In this section:

relevant matter means any of the following:

- (a) any transaction arrangement,
- (b) a vesting of assets, rights or liabilities by operation of Schedule 4 (Vesting of assets, rights and liabilities) and anything certified by the Treasurer as having been done in consequence of such a vesting (for example, the transfer or registration of an interest in land),
- (c) the issue, disposal or purchase of shares or other securities or interest in or issued by an entity for the purposes of the authorised transaction,
- (d) any matter connected with the corporate conversion of Pillar or a transaction SOC for the purposes of the authorised transaction,
- (e) any transaction, agreement or other arrangement (a **post-completion arrangement**) occurring within 2 years after completion of the authorised transaction and certified by the Treasurer to have been entered into in connection with the transfer of Pillar assets to the private sector pursuant to the authorised transaction,
- (f) such other matters for the purposes of the authorised transaction as may be prescribed by the regulations.

State tax means application, transfer or registration fees, duty under the *Duties Act 1997* or any other tax, duty, fee or charge imposed by any Act or law of the State.

- (2) State tax is not payable by a public sector agency in relation to a relevant matter.
- (3) The Treasurer may by order in writing direct that subsection (2) does not apply to a public sector agency either generally or in respect of a particular relevant matter or class of relevant matters.
- (4) State tax is not payable by a person or body (other than a public sector agency) in relation to a relevant matter to such extent (if any) as the Treasurer may direct by order in writing, either generally or in a particular case.
- (5) The Treasurer may by order in writing limit the application of this section in respect of a particular post-completion arrangement by imposing conditions on the application of this section to the arrangement.
- (6) An order may be made by the Treasurer under this section before or after the liability to pay the State tax concerned accrues.
- (7) The Treasurer must give a copy of an order under this section to the Chief Commissioner of State Revenue.

25 General relationship of Act with other State legislation

- (1) None of the following provisions operate to prevent, restrict or otherwise limit the carrying out of a transaction arrangement or the exercise of a function for the purposes of the authorised transaction:
 - (a) any provision of the *State Owned Corporations Act 1989*,
 - (b) any provision of the *Superannuation Administration Authority Corporatisation Act 1999*,
 - (c) any provision of the constitution of a statutory SOC or a subsidiary of a statutory SOC.

- (2) In the event of any inconsistency between the provisions of this Act or the regulations and a provision of any other State legislation that is prescribed by the regulations as an inconsistent provision for the purposes of this section, the provisions of this Act or the regulations (as the case may be) prevail to the extent of the inconsistency.
- (3) The requirements of any other Act (whether enacted before or after this Act) for the approval by resolution of either or both Houses of Parliament (or by Act) of any act that constitutes the transfer of Pillar assets for the purposes of the authorised transaction is satisfied by the enactment of this Act.

26 Public Authorities (Financial Arrangements) Act

The *Public Authorities (Financial Arrangements) Act 1987* does not apply to any transaction arrangement.

27 Release of information by Auditor-General

Section 38 (Secrecy) of the *Public Finance and Audit Act 1983* does not apply to or in respect of a report or communication that the Treasurer authorises the Auditor-General to make to a person for the purposes of the authorised transaction or for the purposes of the audit (before or after the completion of the authorised transaction) of records relating to Pillar assets transferred pursuant to the authorised transaction.

28 Conveyancing Act

Section 52A of the *Conveyancing Act 1919* does not apply to a contract entered into for the purposes of the authorised transaction.

29 Protection against breach of contractual and other obligations

- (1) The following matters and things are protected by this section:
 - (a) the operation of this Act (including any regulation or order under this Act),
 - (b) the transfer of Pillar assets for the purposes of the authorised transaction,
 - (c) the entering into or performance of obligations under a transaction, agreement or other arrangement for the purposes of the authorised transaction,
 - (d) a disclosure of information by, on behalf of or with the consent of a public sector agency for the purposes of the authorised transaction,
 - (e) anything else done or omitted to be done under or for the purposes of this Act or the authorised transaction.
- (2) None of the matters or things protected by this section are to be regarded as:
 - (a) a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) a breach of any instrument (including, without limitation, any provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities) or as requiring any act to be done under an instrument, or
 - (c) giving rise to any right or remedy by a party to a contract or other instrument, or as causing or permitting the termination of, or exercise of rights under, any contract or other instrument, or
 - (d) an event of default under any contract or other instrument, or
 - (e) giving rise to a breach of or an offence against a provision of an Act that prohibits or restricts the disclosure of information, or
 - (f) releasing a surety or other obligee wholly or in part from an obligation.

- (3) This section does not affect rights and obligations that arise under a transaction, agreement or other arrangement entered into for the purposes of the authorised transaction.
- (4) In this section:
instrument means an instrument (other than an instrument made under this Act) or any other document that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order, process or other instrument issued by a court or tribunal.

30 Compensation not payable

- (1) Compensation is not payable by or on behalf of the State:
- (a) because of the enactment or operation of this Act, or for any consequence of that enactment or operation, or
 - (b) because of any statement or conduct relating to the enactment of this Act.
- (2) This section does not extend to compensation payable under a transaction arrangement to a party to the transaction arrangement in connection with the performance of obligations under the transaction arrangement.
- (3) In this section:
compensation includes damages or any other form of monetary compensation.
conduct includes any act or omission, whether unconscionable, misleading, deceptive or otherwise.
operation of this Act includes the operation of any notice or order under this Act and any agreement entered into under or for the purposes of this Act.
statement includes a representation of any kind:
 - (a) whether made verbally or in writing, and
 - (b) whether negligent, false, misleading or otherwise.**the State** means the Crown within the meaning of the *Crown Proceedings Act 1988*, and includes a public sector agency and an officer, employee or agent of the Crown or a public sector agency.

Part 7 Miscellaneous

31 Delegation

The Treasurer may delegate to the Secretary of the Treasury, or to any other Public Service employee prescribed by the regulations, any function of the Treasurer under this Act except this power of delegation.

32 Act to bind State and other jurisdictions

- (1) This Act binds the State and, in so far as the legislative power of the Parliament of New South Wales permits, the other States, the Territories and the Commonwealth.
- (2) Without limiting subsection (1), this Act has effect despite any privilege or immunity of the Crown in any of its capacities.
- (3) This Act does not make any State or Territory, the Commonwealth, or the Crown in any of its capacities, liable to be prosecuted for an offence.
- (4) A reference in this section to a State, Territory or the Commonwealth includes a reference to the Government of the State, Territory or Commonwealth.

33 Extraterritorial operation of Act

- (1) It is the intention of the Parliament of New South Wales that the operation of this Act should, as far as possible, include operation in relation to the following:
 - (a) things situated in or outside the territorial limits of the State,
 - (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of the State,
 - (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of another State, a Territory, the Commonwealth or a foreign country.
- (2) Without limiting subsection (1), it is the intention of the Parliament of New South Wales that the provisions of this Act have an operation in relation to the things, acts, transactions and matters referred to in that subsection even if the rules of private international law (whether at general law or as provided by legislation) would require the application of a law other than this Act instead of the provisions of this Act.

34 Construction of Act and instruments so as not to exceed legislative power

- (1) Unless a contrary intention appears, if a provision of this Act or an instrument made under this Act:
 - (a) would, apart from this section, have an invalid application, but
 - (b) also has at least one valid application,it is the intention of the Parliament of New South Wales that the provision is not to have the invalid application, but is to have every valid application.
- (2) Despite subsection (1), the provision is not to have a particular valid application if:
 - (a) apart from this section, it is clear, taking into account the provision's context and the purposes or objects underlying this Act, that the provision was intended to have that valid application only if every invalid application, or a particular invalid application, of the provision had also been within the legislative power of the Parliament of New South Wales, or
 - (b) the provision's operation in relation to that valid application would be different in a substantial respect from what would have been its operation in relation to that valid application if every invalid application, or a particular

invalid application, of the provision had been within the legislative power of the Parliament of New South Wales.

- (3) Subsection (2) does not limit the cases in which a contrary intention may be taken to appear for the purposes of subsection (1).
- (4) This section is in addition to, and not in derogation of, section 31 of the *Interpretation Act 1987*.
- (5) In this section:
application means an application in relation to:
 - (a) one or more particular persons, things, matters, places, circumstances or cases, or
 - (b) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases.

invalid application, in relation to a provision, means an application because of which the provision exceeds the legislative power of the Parliament of New South Wales.

valid application, in relation to a provision, means an application which, if it were the provision's only application, would be within the legislative power of the Parliament of New South Wales.

35 Orders

- (1) An order made under a provision of this Act takes effect at the beginning of the day on which it is made, unless the order otherwise provides.
- (2) An order cannot provide for the order to take effect earlier than the beginning of the day on which it is made (but can provide for the order to take effect at a time on the day on which it is made that is earlier than the time at which it is made).
- (3) A document purporting to be an order made under a provision of this Act is, unless the contrary is established, taken to be such an order and to have been properly made.
- (4) A certificate purporting to be signed by the Treasurer or an officer prescribed by the regulations certifying that an order specified or referred to in the certificate is an order made under a specified provision of this Act is admissible in evidence in any legal proceedings and is evidence of the matters certified.
- (5) A provision of another Act that results from an amendment made by this Act and that provides for the making of an order is deemed for the purposes of this section to be a provision of this Act (and the order is deemed to be an order made under a provision of this Act).

36 Service or giving of documents

- (1) A document that is authorised or required by this Act or the regulations to be served on or given to any person may be served or given:
 - (a) in the case of a natural person:
 - (i) by delivering it to the person personally, or
 - (ii) by sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
 - (iii) by sending it by facsimile transmission to the facsimile number of the person, or

- (b) in the case of a body corporate:
 - (i) by leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
 - (ii) by sending it by facsimile transmission to the facsimile number of the body corporate.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

37 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 1 Interpretative provisions

1 Definitions

In this Act:

assets means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

authorised transaction—see section 3.

completion of the authorised transaction occurs on the date designated by the Treasurer by order in writing as the date of completion of the authorised transaction.

corporate conversion, in relation to Pillar or a transaction SOC, means the registration of the corporation as a company under the Corporations Act.

Corporations Act means the *Corporations Act 2001* of the Commonwealth.

Corporations legislation means the Corporations legislation to which Part 1.1A of the Corporations Act applies.

entity means a body corporate, a partnership, an unincorporated body, an individual or a trust (including the trustee of a trust).

function includes a power, authority or duty, and **exercise** a function includes perform a duty.

general law means the common law and equity (as modified from time to time by legislation).

legislation includes:

- (a) any statute of a legislature (whether enacted or made in Australia or elsewhere), and
- (b) any proclamation, regulation, rule, by-law, order or any other kind of subordinate legislation (however described) made under the authority of a statute (whether enacted or made in Australia or elsewhere).

liabilities means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).

Pillar—see section 3.

Pillar assets—see section 3 (and clause 4 of this Schedule).

private sector means any person other than a public sector agency and includes a private sector entity.

Note. A person who is a public sector agency of another jurisdiction is a private sector person for the purposes of this Act.

private sector entity means an entity in which the private sector has an interest.

public sector agency means any of the following:

- (a) the State (including the Crown in right of the State),
- (b) a Minister,
- (c) the Ministerial Holding Corporation constituted by the *State Owned Corporations Act 1989*,
- (d) the Superannuation Administration Assets Ministerial Holding Corporation,
- (e) a SOC,
- (f) a public authority of the State (including a council under the *Local Government Act 1993*),
- (g) any other person acting on behalf of the State (or the Crown in right of the State),

- (h) a transaction company, but only while all the shares in the transaction company are held by or on behalf of the State or a SOC or the transaction company is the subsidiary of another transaction company all the shares in which are held by or on behalf of the State or a SOC,
- (i) a wholly-owned subsidiary of a public sector agency.

rights means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).

SOC means a State owned corporation within the meaning of the *State Owned Corporations Act 1989*.

State legislation means any legislation of the State.

Superannuation Administration Assets Ministerial Holding Corporation or the Corporation means the Superannuation Administration Assets Ministerial Holding Corporation constituted by this Act.

the State means the State of New South Wales.

transaction arrangement means a transaction, agreement or other arrangement entered into by or on behalf of a public sector agency for the purposes of the authorised transaction.

transaction company means a company established as a transaction company pursuant to this Act.

transaction entity means a transaction SOC, transaction company or any other entity established for the purposes of the authorised transaction.

transaction SOC means a SOC established as a transaction SOC pursuant to this Act.

transfer, in relation to assets, rights and liabilities, includes any action that results in the vesting of assets, rights and liabilities in another person or the creation or transfer of any interest in or right in respect of assets.

2 Words and expressions defined in Corporations Act

In this Act, the following expressions have the meaning that they have in the Corporations Act (except where a definition of the expression in this Act otherwise requires):

company

company limited by shares

corporation

subsidiary

wholly-owned subsidiary

3 Functions for the purposes of authorised transaction

For the purposes of this Act, any act, matter or thing is done or has effect for the purposes of the authorised transaction if:

- (a) it is done or has effect for the purpose of effecting or facilitating the authorised transaction, or
- (b) it is done or has effect for any purpose connected with, ancillary or incidental to or consequential on the authorised transaction, or
- (c) it is done or has effect for any purpose connected with the vesting of Pillar assets in, or the transfer of staff of Pillar to, a public sector agency at any time after completion of the authorised transaction, or
- (d) it is done or has effect after the completion of the authorised transaction for any purpose that is necessary or convenient in connection with the ongoing operation of or the winding up of the affairs of Pillar or any transaction entity.

4 Transfer and acquisition of assets, rights and liabilities

- (1) The assets, rights and liabilities of a body corporate include the assets, rights and liabilities of a wholly-owned subsidiary of the body corporate.

Note. Pillar assets include the assets, rights and liabilities of a wholly-owned subsidiary of Pillar.

- (2) Without limiting the ways in which assets, rights and liabilities can be transferred for the purposes of the authorised transaction (and without preventing the direct transfer of assets, rights and liabilities to a transferee):

- (a) assets, rights and liabilities of a body corporate can be transferred to another person (the *transferee*) by a transfer of shares or any other transaction that results in the body corporate becoming a wholly-owned subsidiary of the transferee, and
- (b) assets, rights and liabilities of a body corporate are acquired by (and become assets, rights and liabilities of) a transferee when the body corporate becomes a wholly-owned subsidiary of the transferee.

5 Employees of Pillar

If a transaction company is established by the conversion of Pillar into a company, a reference in a provision of this Act to an employee of Pillar includes a reference to an employee of the transaction company and a reference in the provision to Pillar is to be read as a reference to the transaction company.

6 Transfers to public sector agencies

No compensation is payable in connection with the transfer for the purposes of the authorised transaction of assets, rights or liabilities to a public sector agency (but this does not prevent such a transfer being for consideration).

7 When events occur

If this Act provides for an event or other thing to occur on a particular day, that event or thing is taken to occur at the beginning of that day.

8 Notes

Notes included in this Act do not form part of this Act.

Schedule 2 Provisions concerning transaction SOCs

(Section 9)

1 Board of directors

- (1) Each transaction SOC is to have a board of directors.
- (2) The board is to consist of:
 - (a) the chief executive officer, and
 - (b) at least 3 and not more than 5 other directors appointed by the voting shareholders.
- (3) Of the directors appointed under subclause (2) (b), one is (in and by the director's instrument of appointment as director or in and by another instrument executed by the voting shareholders) to be appointed as Chairperson of the Board.
- (4) The board is accountable to the voting shareholders in the manner set out in Part 4 of the *State Owned Corporations Act 1989* and in the constitution of the transaction SOC.
- (5) The voting shareholders may remove a director, or the chairperson, from office at any time for any or no reason and without notice and, in that event, the office of the director or chairperson is taken to have become vacant for the purposes of Schedule 8 to the *State Owned Corporations Act 1989*.
- (6) Except as provided by this clause, Schedule 8 to the *State Owned Corporations Act 1989* has effect with respect to the constitution and procedure of the board.
- (7) The provisions of section 20J of the *State Owned Corporations Act 1989*, and of clauses 2 (1) and (2) and 7 (1) (d) and (2) of Schedule 8 to that Act, do not apply to a transaction SOC or to the chairperson.
- (8) The provisions of clause 6 of Schedule 8 to the *State Owned Corporations Act 1989* do not apply to the chief executive officer, and the chief executive officer is not entitled to remuneration under that clause, in his or her capacity as a director.

2 Chief executive officer

- (1) The chief executive officer of a transaction SOC is to be appointed by the board after consultation with the voting shareholders.
- (2) The board may remove a person from office as chief executive officer, at any time, for any or no reason and without notice, but only after consultation with the voting shareholders.
- (3) The chief executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine.
- (4) The board may, after consultation with the voting shareholders, fix the conditions of employment of the chief executive officer in so far as they are not fixed by or under any other Act or law.
- (5) The *Government Sector Employment Act 2013* (Part 6 included) does not apply to the chief executive officer.
- (6) Subject to subclause (7), Schedule 9 to the *State Owned Corporations Act 1989* has effect with respect to the chief executive officer.
- (7) The provisions of section 20K of the *State Owned Corporations Act 1989*, and of clauses 2, 3 and 6 of Schedule 9 to that Act, do not apply to the chief executive officer.

3 Acting chief executive officer

- (1) The board may, from time to time, appoint a person to act in the office of chief executive officer during the illness or absence of the chief executive officer.
- (2) The board may remove a person from office as acting chief executive officer, at any time, for any or no reason and without notice.
- (3) A person, while acting in the office of chief executive officer:
 - (a) has all the functions of the chief executive officer and is taken to be the chief executive officer, and
 - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine.
- (4) For the purposes of this clause, a vacancy in the office of chief executive officer is regarded as an absence from office.
- (5) Clause 5 of Schedule 9 to the *State Owned Corporations Act 1989* does not apply to an acting chief executive officer of a transaction SOC.

4 Dividends

- (1) The voting shareholders of a transaction SOC, in consultation with the board, are to determine the corporation's share dividends scheme.
- (2) The dividends to be paid by a transaction SOC are to be declared by the board in accordance with the share dividends scheme so determined.
- (3) The provisions of section 20S (1) of the *State Owned Corporations Act 1989* do not apply to a transaction SOC.

5 Supply of information to portfolio Minister

The provisions of section 29 (2) of the *State Owned Corporations Act 1989* do not apply to a transaction SOC.

Schedule 3 Corporate conversion of Pillar and transaction SOCs

(Section 10)

1 Direction for corporate conversion of Pillar and transaction SOCs

The Treasurer may direct by order in writing (a *corporate conversion direction*) that Pillar or a transaction SOC be converted into a company limited by shares of a specified type.

2 Application for conversion to company

- (1) A SOC to which a corporate conversion direction has been given is authorised to apply to be registered under Part 5B.1 of the Corporations Act as a company limited by shares of the type specified in the direction.
- (2) That application can only be made if the Treasurer has issued a certificate to the corporation that certifies that the Treasurer is satisfied that the provisions of this Act have been complied with concerning the transfer of its incorporation to the Corporations Act.
- (3) A certificate issued by the Treasurer for the purposes of this clause:
 - (a) cannot be challenged, reviewed or called into question in proceedings before any court or tribunal, and
 - (b) is conclusive evidence in any proceedings before a court or tribunal that all the requirements of this Act have been complied with concerning the transfer of the incorporation of the corporation to the Corporations Act.

3 Effect of conversion

- (1) The following provisions are taken to have had effect immediately before a SOC to which a corporate conversion direction has been given is registered as a company under the Corporations Act:
 - (a) the corporation ceases to be a statutory State owned corporation for the purposes of the *State Owned Corporations Act 1989* or any other State legislation,
 - (b) the voting shareholders (within the meaning of the *State Owned Corporations Act 1989*) of the corporation cease to be members of the corporation,
 - (c) the board of directors of the corporation is dissolved and each member (including any acting member) of the board ceases to hold office as such,
 - (d) any person who holds a statutory office of the corporation ceases to hold that office,
 - (e) any person who ceases to be a member of the corporation or to hold an office because of the operation of this subclause is not entitled to any compensation for the loss of that membership or office.
- (2) Nothing in this clause prevents any person from becoming an officer of the company into which the corporation is being converted in accordance with its constitution and the provisions of the Corporations Act.
- (3) A SOC to which a corporate conversion direction has been given becomes a transaction company for the purposes of this Act only when it is registered as a company under the Corporations Act.

- (4) When a SOC is registered as a company under the Corporations Act pursuant to a corporate conversion direction, section 43A (General audit of former statutory bodies) of the *Public Finance and Audit Act 1983* applies as if the SOC had been abolished.

Schedule 4 Vesting of assets, rights and liabilities

(Section 21)

1 Definitions

In this Schedule:

transferee means the person or body in whom any assets, rights or liabilities are vested by a vesting order.

transferor means the person or body from whom any assets, rights or liabilities are divested by a vesting order.

vesting order means an order made by the Treasurer in writing for the purposes of this Schedule.

2 Making of vesting order

- (1) A vesting order may vest assets, rights and liabilities comprising Pillar assets in a person specified in the order as the transferee.
- (2) A vesting order may vary the terms and conditions of any instrument or contract that relates to assets, rights or liabilities to the extent that is necessary or convenient for the purposes of the authorised transaction.

3 Effect of vesting order

- (1) When any assets, rights or liabilities are vested by a vesting order, the following provisions have effect except as otherwise provided by the vesting order:
 - (a) the assets vest in the transferee by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,
 - (b) the rights and liabilities become, by virtue of this clause, the rights and liabilities of the transferee,
 - (c) all proceedings relating to the assets, rights or liabilities pending by or against the transferor are taken to be proceedings pending by or against the transferee,
 - (d) the transferee has all the entitlements and obligations of the transferor in relation to the assets, rights and liabilities that the transferor would have had but for the order, whether or not those entitlements and obligations were actual or potential at the time the order took effect,
 - (e) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities by, to or in respect of the transferor is (to the extent that the act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
 - (f) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent that it relates to those assets or liabilities and except as otherwise provided by the regulations) to be read as, or as including, a reference to the transferee.
- (2) A vesting order that varies the terms and conditions of any instrument or contract has effect according to its tenor.
- (3) No attornment to the transferee by a lessee from the transferor is required.

4 Terms and conditions of vesting

A vesting order may be made on such terms and conditions as are specified in the order.

5 Consideration for vesting

A vesting order may specify the consideration for which a vesting to which it applies is made and the value or values at which assets, rights or liabilities are vested.

6 Vesting of interests in land

- (1) A vesting order may vest an interest in respect of land vested in the transferor without vesting the whole of the interests of the transferor in that land.
- (2) If the interest vested is not a separate interest, the order operates to create the interest vested in such terms as are specified in the order.
- (3) This clause does not limit any other provision of this Schedule.

7 Confirmation of vesting

- (1) The Treasurer may by order in writing confirm a vesting of assets, rights or liabilities, or a variation of the terms and conditions of an instrument or contract, by operation of this Schedule.
- (2) Such an order is evidence of that vesting or variation.

8 Determinations by Treasurer

For the purposes of the making of a vesting order, the Treasurer may determine whether or not particular assets, rights or liabilities comprise Pillar assets, and such a determination is conclusive as to the matters determined.

9 Certification to registration authorities

- (1) A party to a vesting order may lodge with a registration authority a certificate certifying as to such information as the party considers the registration authority reasonably requires to enable the registration authority to exercise any function of the registration authority arising in connection with the vesting of any asset, right or liability, or the variation of any terms and conditions of an instrument or contract, by operation of this Schedule.
- (2) Such a certificate is to be accepted and acted upon by the registration authority and, despite any other law, the registration authority is not entitled to require that the information concerned be provided to it in any particular form or in any particular manner.
- (3) A certificate under this clause is a dealing for the purposes of the *Real Property Act 1900* to the extent that any recording in the Register under that Act is permitted to be made on the basis of the certificate because of the operation of this clause.
- (4) No fee or charge is payable by the transferee to a registration authority for or in respect of the exercise of any function by the registration authority in connection with the vesting of an asset, right or liability, or the variation of any terms and conditions of an instrument or contract, by operation of this Schedule.
- (5) A document purporting to be a certificate given under this clause is, unless the contrary is established, taken to be such a certificate and to have been properly given.
- (6) Each of the Treasurer and a public sector agency that is the transferee or transferor under a vesting order is a party to the vesting order for the purposes of this clause.
- (7) In this clause:
registration authority means a person or body that has functions under any law in connection with the keeping of a register in respect of assets, rights or liabilities or transactions affecting assets, rights or liabilities.

10 Public sector accounting policies

The Treasurer may give directions to public sector agencies for or with respect to accounting policies to be applied by public sector agencies in connection with the transfer between public sector agencies of assets, rights and liabilities comprising Pillar assets for the purposes of the authorised transaction (in place of public sector accounting policies that would otherwise be applicable in respect of any such transfer).

Schedule 5 Ownership restrictions in floated transaction companies

Part 1 Ownership restrictions

Note. Some of the terms and expressions used in this Part are defined in Part 5 (Interpretative provisions) of this Schedule.

1 Maximum ownership level

- (1) If Pillar assets are transferred pursuant to the authorised transaction by means of an initial public offer of shares in a transaction company, this Schedule applies to impose ownership restrictions in relation to the company.
- (2) The *maximum ownership level* for the purposes of this Schedule is set at the percentage prescribed by the regulations.
- (3) This Schedule ceases to apply in relation to a transaction company at the end of the period of 2 years (or such longer period as may be prescribed by the regulations as the period for which this Schedule is to apply to the company) beginning on the day on which the company is first listed on a stock exchange that is a prescribed financial market under the Corporations Act.
- (4) A regulation may not be made under this clause in respect of a company after the commencement of the period during which an offer of shares in the company (for the purposes of the initial public offer concerned) can be accepted.
- (5) If Pillar assets are transferred pursuant to the authorised transaction by means of an initial public offer of securities of or interests in a transaction entity that is not a transaction company, this Schedule applies to impose ownership restrictions in relation to the transaction entity and so applies:
 - (a) as if a reference to a company included a reference to the entity and a reference to shares in a company included a reference to securities of or interests in the entity, and
 - (b) with such modifications as may be prescribed by the regulations.

2 Meaning of “prohibited ownership situation”

For the purposes of this Schedule, a *prohibited ownership situation* exists in relation to a floated transaction company and in relation to a particular person if the person holds a particular type of stake in the company of more than the maximum ownership level set by clause 1.

Note. A person’s *stake* includes the interests of the person’s associates—see Part 5 of this Schedule.

3 Acquisition of shares that result in prohibited ownership situation

A person, or 2 or more persons under an arrangement, who acquire shares in a floated transaction company are each guilty of an offence if:

- (a) the acquisition has any of the following results:
 - (i) a prohibited ownership situation comes into existence in relation to the company and in relation to a person,
 - (ii) if a prohibited ownership situation already exists in relation to the company and in relation to a person—there is an increase in any type of stake held by the person in the company, and
- (b) the person or persons under the arrangement knew, or were reckless as to whether, the acquisition would have that result.

Maximum penalty: 400 penalty units.

4 Floated transaction company to take reasonable steps to prevent contraventions of ownership restrictions

- (1) A floated transaction company must take all reasonable steps to ensure that a prohibited ownership situation does not exist in relation to the company.
- (2) A floated transaction company is guilty of an offence if it engages in conduct that contravenes a requirement of subclause (1).

Maximum penalty: 500 penalty units.

Note. If a floated transaction company contravenes this subclause, clause 22 operates to make each person who is a director of the company or who is concerned in the management of the company liable for the offence if the person knowingly authorised or permitted the contravention.

- (3) An offence under subclause (2) is a strict liability offence.

5 Contravention of Part does not affect validity of acts

An act is not invalidated only because it constitutes an offence under this Part.

Part 2 Location of Member Registers of floated transaction companies

6 Member Register to be within the State

A floated transaction company must not, without the written approval of the Treasurer:

- (a) change the location where any Member Register of the company is kept to a location that is outside of the territorial limits of the State, or
- (b) keep any Member Register of the company at a location that is outside of the territorial limits of the State.

Maximum penalty: 500 penalty units.

Note. If a floated transaction company contravenes this clause, clause 22 operates to make each person who is a director of the company or who is concerned in the management of the company liable for the offence if the person knowingly authorised or permitted the contravention.

Part 3 Records and information

7 Record-keeping and information giving

- (1) The regulations may make provision for or with respect to requiring a person:
 - (a) to keep and retain records, where the records are relevant to an ownership matter, and
 - (b) to give information to the Treasurer or a floated transaction company that is relevant to:
 - (i) an ownership matter, or
 - (ii) ascertaining whether Part 1 of this Schedule has been or is being complied with.
- (2) The regulations may provide that information given in accordance with a requirement of regulations made for the purposes of subclause (1) (b) must be verified by statutory declaration.
- (3) A person is not excused from giving information in accordance with a requirement of regulations made for the purposes of subclause (1) (b) on the ground that the information may tend to incriminate the person or expose the person to a penalty.

- (4) However, any information obtained from a natural person in compliance with a requirement of regulations made for the purposes of subclause (1) (b) is not admissible against the person in criminal proceedings other than proceedings for an offence under this clause.
- (5) A person must keep records, and provide information, in compliance with any requirements of regulations made for the purposes of subclause (1) (b).
Maximum penalty: 50 penalty units.
- (6) In this clause:
control includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.
ownership matter means any of the following matters:
 - (a) whether a person holds a particular type of stake in a floated transaction company and, if so, the level of that stake,
 - (b) whether the directors of a floated transaction company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person (either alone or together with associates),
 - (c) whether a person (either alone or together with associates) is in a position to exercise control over a floated transaction company.

Part 4 Remedial orders

8 Applications to Supreme Court for remedial orders

- (1) If a prohibited ownership situation exists in relation to a floated transaction company, the company or the Treasurer (or both) may apply to the Supreme Court to make such orders as the Court considers appropriate for the purpose of ensuring that the situation ceases to exist.
- (2) Without limiting subclause (1), the Court may make any of the following orders on any such application:
 - (a) an order directing the disposal of shares,
 - (b) an order restraining the exercise of any rights attached to shares,
 - (c) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the person,
 - (d) an order that any exercise of rights attached to shares be disregarded.
- (3) The Supreme Court may, before making an order under this clause, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.
- (4) A floated transaction company and its directors and secretary are specifically authorised and required to ensure that any rights attached to shares are not exercised in contravention of an order made under this clause (including ensuring that meetings of the company are conducted in accordance with requirements of any such order).

9 Injunctions

If a person has engaged, is engaging or is proposing to engage in any conduct in contravention of this Schedule, the Supreme Court may, on the application of a floated transaction company or the Treasurer (or both), grant an injunction:

- (a) restraining the person from engaging in the conduct, or

- (b) requiring the person to do something.

Part 5 Interpretative provisions

10 Definitions

In this Schedule:

acquisition includes an agreement to acquire, but does not include:

- (a) an acquisition by will or by devolution by operation of law, or
- (b) an acquisition by way of enforcement of a loan security.

aggregate substantial interest, in relation to a trust estate, has the meaning given by clause 20.

arrangement—see clause 11.

associate—see clause 12.

company means a body corporate.

constituent document, in relation to a company, means:

- (a) the constitution of the company, or
- (b) any rules or other documents constituting the company or governing its activities.

contravene includes fail to comply with.

direct control interest—see clause 19.

director includes any person occupying the position of director of a company, by whatever name called.

discretionary trust means a trust where:

- (a) a person (who may include the trustee) is empowered (either unconditionally or on the fulfilment of a condition) to exercise any power of appointment or other discretion, and
- (b) the exercise of the power or discretion, or the failure to exercise the power or discretion, has the effect of determining, to any extent, either or both of the following:
 - (i) the identities of those who may benefit under the trust,
 - (ii) how beneficiaries are to benefit, as between themselves, under the trust.

engage in conduct means do an act or omit to do an act.

floated transaction company means a transaction company in relation to which the ownership restrictions set out in this Schedule apply.

increase, in relation to a stake in a company, includes an increase from a starting point of nil.

interest in a share—see clause 15.

lender, in relation to a loan security, means the person who is entitled to enforce the security.

lending money includes providing non equity finance where the provision of the finance may reasonably be regarded as equivalent to lending money.

loan security means a security held solely for the purposes of a moneylending agreement.

Member Register of a company means a register of members of the company kept under Chapter 2C of the Corporations Act.

moneylending agreement means an agreement entered into in good faith in the ordinary course of carrying on a business of lending money, but does not include an agreement dealing with any matter unrelated to the carrying on of that business.

officer, in relation to a company, includes:

- (a) a director, secretary or employee of the company, or
- (b) a receiver and manager of any part of the undertaking of the company appointed under a power contained in any instrument, or
- (c) a liquidator of the company appointed in a voluntary winding up.

power to appoint a director—see clause 13.

relative, in relation to a person, means:

- (a) the person's spouse or the person's de facto partner (being the other party to a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*, with the person), or
- (b) a parent or remoter lineal ancestor of the person, or
- (c) a child or remoter issue of the person, or
- (d) a sibling of the person.

share, in relation to a company, means a share in the share capital of the company, and includes an interest in such a share.

stake—see clause 18.

substantial interest—see clause 20.

voting power—see clause 17.

11 Entering into an agreement or arrangement

- (1) For the purposes of this Schedule, a person is taken to have proposed to enter into an agreement or arrangement if the person takes part in, or proposes to take part in, negotiations with a view to entering into the agreement or arrangement.
- (2) A reference in this Schedule to **entering into an agreement or arrangement** includes a reference to altering or varying an agreement or arrangement.
- (3) A reference in this Schedule to **entering into an arrangement** is a reference to entering into any formal or informal scheme, arrangement or understanding, whether expressly or by implication and, without limiting the generality of the foregoing, includes a reference to:
 - (a) entering into an agreement, or
 - (b) creating a trust, whether express or implied, or
 - (c) entering into a transaction,and a reference in this Schedule to an arrangement is to be construed accordingly.
- (4) A reference in this Schedule to an **arrangement** does not include a reference to a moneylending agreement.

12 Associates

- (1) For the purposes of this Schedule, the following persons are, subject to subclause (3), **associates** of a person:
 - (a) a relative of the person,
 - (b) a partner of the person,
 - (c) a company of which the person is an officer,
 - (d) if the person is a company—an officer of the company,

- (e) an employee or employer of the person,
 - (f) an officer of a company of which the person is an officer,
 - (g) an employee of an individual of whom the person is an employee,
 - (h) the trustee of a discretionary trust where the person or another person who is an associate of the person by virtue of another paragraph of this subclause benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust, either directly or through any interposed companies, partnerships or trusts,
 - (i) a company whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person,
 - (j) a company where the person is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the company,
 - (k) a company in which the person has, apart from this paragraph, a particular type of stake of not less than 15 percent,
 - (l) if the person is a company—a person who holds, apart from this paragraph, a particular type of stake in the company of not less than 15 percent,
 - (m) a person who is, because of this subclause, an associate of any other person who is an associate of the person (including a person who is an associate of the person by any other application or applications of this paragraph).
- (2) If a person (the *first person*) enters, or proposes to enter, into an arrangement with another person (the *second person*) that relates to any of the following matters:
- (a) the first person and the second person being in a position, by acting together, to control any of the voting power in a company,
 - (b) the power of the first person and the second person, by acting together, to appoint or remove a director of a company,
 - (c) the situation where one or more of the directors of a company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the first person and the second person acting together,
- the second person is taken to be an associate of the first person for the purposes of the application of a provision of this Schedule in relation to the matter concerned.
- (3) The regulations may provide that, for the purposes of this Schedule, a specified person (or class of persons) is not an associate of another specified person (or class of persons).

13 Power to appoint director

- (1) A reference in this Schedule to a *power to appoint a director* includes a reference to such a power whether exercisable with or without the consent or concurrence of any other person.
- (2) For the purposes of this Schedule, a person is taken to have the power to appoint a director if:
 - (a) the person has the power (whether exercisable with or without the consent or concurrence of any other person) to veto such an appointment, or
 - (b) a person's appointment as a director of the company follows necessarily from that person being a director or other officer of the first mentioned person.

14 Meaning of “entitled to acquire”

For the purposes of this Schedule, a person is *entitled to acquire* anything if the person is absolutely or contingently entitled to acquire it, whether because of any constituent document of a company, the exercise of any right or option or for any other reason.

15 Meaning of “interest in a share”

- (1) Subject to this clause, a person holds an *interest in a share* if the person has any legal or equitable interest in the share.
- (2) Without limiting subclause (1), a person is taken to hold an interest in a share if:
 - (a) the person has entered into a contract to purchase the share, or
 - (b) the person has a right (otherwise than because of having an interest under a trust) to have the share transferred to the person or to the person’s order (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition), or
 - (c) the person has a right to acquire the share, or an interest in the share, under an option (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition), or
 - (d) the person is otherwise entitled to acquire the share or an interest in the share, or
 - (e) the person is entitled (otherwise than because of having been appointed as a proxy or representative to vote at a meeting of members of the company or of a class of its members) to exercise or control the exercise of a right attached to the share.
- (3) A person is taken to hold an interest in a share even if the person holds the interest in the share jointly with another person.
- (4) For the purpose of determining whether a person holds an interest in a share, it is immaterial that the interest cannot be related to a particular share.
- (5) An interest in a share is not to be disregarded only because of:
 - (a) its remoteness, or
 - (b) the manner in which it arose, or
 - (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

16 Certain interests and stakes to be disregarded

- (1) For the purposes of this Schedule, the following interests and stakes must be disregarded:
 - (a) an interest in a share held by a person whose ordinary business includes the lending of money if the person holds the interest as a loan security,
 - (b) an interest in a share held by a person, being an interest held by the person because the person holds an office (or an office belonging to a class of offices) prescribed by the regulations,
 - (c) an interest of a prescribed kind in a share, being an interest held by such persons (or persons belonging to a class of persons) as are prescribed by the regulations,
 - (d) an interest in a share held by a public sector agency,

- (e) a stake of a kind prescribed by the regulations in a company, being a stake held by a person (or person belonging to a class of persons) prescribed by the regulations.
- (2) For the purposes of this Schedule, if:
- (a) a person holds an interest in a share as a loan security, and
 - (b) the ordinary business of the person includes the lending of money, and
 - (c) the loan security is enforced, and
 - (d) as a result of the enforcement of the loan security, the person becomes the holder of the share, and
 - (e) the person holds the share for a continuous period (the *holding period*) beginning at the time when the security was enforced,
- the person's interest in the share must be disregarded at all times during so much of the holding period as occurs during whichever of the following periods is applicable:
- (f) the period of 90 days beginning when the security was enforced,
 - (g) if the Treasurer, by written notice given to the person, allows a longer period—the end of that longer period.
- (3) For the purposes of this Schedule, if:
- (a) a person acquires an interest in a share in a floated transaction company, and
 - (b) the interest was acquired in the person's capacity as an underwriter or a sub-underwriter in connection with the transfer or issue of shares in the company by or on behalf of a public sector agency or the company (whether under an initial public offer of the company or otherwise),
- the person's interest in the share must be disregarded at all times during whichever of the following periods is applicable:
- (c) the period of 90 days beginning when the person acquired the interest,
 - (d) if the Treasurer, by written notice given to the person, allows a longer period—that longer period.

17 Voting power

- (1) A reference in this Schedule to the *voting power* in a company is a reference to the total rights of shareholders to vote, or participate in any decision making, concerning any of the following:
- (a) the making of distributions of capital or profits of the company to its shareholders,
 - (b) the constituent document of the company,
 - (c) any variation of the share capital of the company.
- (2) A reference in this Schedule to *control of the voting power* in a company is a reference to control that is direct or indirect, including control that is exercisable as a result of or by means of arrangements or practices:
- (a) whether or not having legal or equitable force, and
 - (b) whether or not based on legal or equitable rights.
- (3) If the percentage of total rights to vote or participate in decision making differs as between different types of voting or decision making, the highest of those percentages applies for the purposes of this clause.
- (4) If a company:
- (a) is limited both by shares and by guarantee, or

(b) does not have a share capital,
this clause has effect as if the members or policy holders of the company were shareholders in the company.

18 Stake in a company

- (1) A particular type of *stake* that a person holds in a company at a particular time is the aggregate of:
 - (a) the direct control interests in the company of that type that the person holds at that time, and
 - (b) the direct control interests in the company of that type held at that time by associates of the person.
- (2) In calculating the stake that a person holds in a company, a direct control interest held because of clause 19 (5) is not to be counted under subclause (1) (a) to the extent to which it is calculated by reference to a direct control interest in the company that is taken into account under subclause (1) (b).

19 Direct control interests in a company

- (1) A person holds a *direct control interest* in a company at a particular time equal to the percentage of the total paid-up share capital of the company in which the person holds an interest at that time.
- (2) A person also holds a *direct control interest* in a company at a particular time equal to the percentage of the voting power in the company that the person is in a position to control at that time.
- (3) A person also holds a *direct control interest* in a company at a particular time equal to the percentage that the person holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders on winding up.
- (4) A person also holds a *direct control interest* in a company at a particular time equal to the percentage that the person holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding up.
- (5) If:
 - (a) a person holds a particular type of direct control interest (including a direct control interest that is taken to be held because of one or more previous applications of this subclause) in a company (the *first level company*), and
 - (b) the first level company holds the same type of direct control interest in another company (the *second level company*),

the person is taken to hold that type of direct control interest in the second level company equal to the percentage worked out using the formula:

first level percentage × second level percentage

where:

first level percentage means the percentage of the direct control interest held by the person in the first level company.

second level percentage means the percentage of the direct control interest held by the first level company in the second level company.

- (6) The regulations may make provision for or with respect to the application of this clause to interests in an entity other than a company.

20 Substantial interests in trust estates

- (1) For the purposes of this Schedule:
 - (a) a person is taken to hold a *substantial interest* in a trust estate if the person, alone or together with an associate or associates, holds a beneficial interest in not less than 15 percent of the corpus or income of the trust estate, and
 - (b) 2 or more persons are taken to hold an *aggregate substantial interest* in a trust estate if the persons, together with an associate or associates, hold, in the aggregate, beneficial interests in not less than 40 percent of the corpus or income of the trust estate.
- (2) For the purposes of subclause (1), if, under the terms of a trust, a trustee has a power or discretion as to the distribution of the income or corpus of the trust estate to beneficiaries, each beneficiary is taken to hold a beneficial interest in the maximum percentage of income or corpus of the trust estate that the trustee is empowered to distribute to that beneficiary.

Part 6 Miscellaneous

21 Displacement of Corporations legislation

The provisions of this Schedule are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of the Corporations legislation generally.

22 Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Schedule, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subclause (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
- (3) Nothing in this clause affects any liability imposed on a corporation for an offence committed by the corporation under this Schedule.

23 Proceedings for offences

- (1) Proceedings for an offence under this Schedule may be dealt with summarily before the Local Court or before the Supreme Court in its summary jurisdiction.
- (2) If proceedings for an offence to which this clause applies are brought in the Local Court, the maximum penalty that the Court may impose in respect of the offence is, despite any other provision of this Schedule, \$50,000 or the maximum penalty provided by this Schedule, whichever is the lesser.
- (3) If proceedings for an offence to which this clause applies are brought in the Supreme Court in its summary jurisdiction, the Supreme Court may impose a penalty not exceeding the maximum penalty provided by this Schedule in respect of the offence.

Schedule 6 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) Any such provision may, if the regulations so provide, have effect notwithstanding any other provision of this Schedule.
- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than a public sector agency), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than a public sector agency) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Half-yearly reports

The Treasurer may by direction in writing to Pillar vary the information required to be included in a report of the operations of Pillar under section 23 of the *State Owned Corporations Act 1989*.

Schedule 7 Amendment of Subordinate Legislation Act 1989 No 146

Schedule 4 Excluded instruments

Insert at the end of the Schedule with appropriate item number:

Regulations under the *Superannuation Administration Corporation (Pillar)*
(Authorised Transaction) Act 2016.

[Second reading speech made in—
Legislative Assembly on 3 May 2016
Legislative Council on 11 May 2016]