

[Act 1996 No 40]



New South Wales

Superannuation (Axiom Funds Management Corporation) Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

This Bill is cognate with the *Superannuation Administration Bill 1996*.

Overview of Bill

The objects of this Bill are to:

- (a) establish the Axiom Funds Management Corporation (AFMC) to provide superannuation investment management services to State public sector superannuation schemes and other superannuation schemes, and
- (b) provide for the conversion of that body to a company and provide for its sale.

* Amended in committee—see table at end of volume.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 sets out the objects of the proposed Act, which are to establish the AFMC to provide superannuation investment management services for State public sector superannuation schemes and other schemes and to provide for the conversion of that corporation to a company and to provide for its sale.

Clause 4 defines words and expressions used in the proposed Act.

Clause 5 provides that introductory notes to Parts or Divisions and other notes in the text do not form part of the proposed Act.

Part 2 Axiom Funds Management Corporation (AFMC)

Division 1 Establishment and principal functions of AFMC

Clause 6 constitutes AFMC.

Clause 7 sets out the principal functions of AFMC, including the provision of superannuation investment management services for State public sector superannuation schemes and other approved schemes, providing for the custody of assets and securities of superannuation schemes and entering into contracts or arrangements for those purposes and other related businesses.

Clause 8 sets out what is comprised in superannuation investment management services, including acting as investment manager and advising on investments and other related strategies.

Clause 9 requires AFMC to enter into contracts or arrangements with the SAS Trustee Corporation (STC) to provide superannuation investment management services for the STC schemes for a fixed period from a date to be specified by the Minister. The period and date are to be determined under the proposed *Superannuation Administration Act 1996*. STC is to be the trustee for the primarily defined benefits style State public sector superannuation schemes. Further contracts or arrangements may be entered into after the first contract or arrangement ends.

Clause 10 confers on AFMC power to enter into a contract or arrangement with the FSS Trustee Corporation (FTC), the trustee for the accumulation style State public sector superannuation schemes, to provide superannuation investment management services for the FTC funds or part of them.

Clause 11 enables AFMC to enter into contracts or arrangements for the purpose of providing custodial services for superannuation schemes.

Clause 12 enables AFMC to enter into contracts or arrangements for the purposes of administering or managing businesses related to its principal functions.

Clause 13 requires AFMC to charge on a commercial basis for services provided.

Clause 14 requires AFMC to have regard to written Government policy statements when exercising its functions.

Clause 15 sets out a procedure for laying Government policy statements given under proposed section 14 before each House of Parliament.

Clause 16 confers on AFMC powers to do all things necessary or convenient for, or in connection with, the exercise of its functions and also gives it the same legal capacity, powers and authority as a company under the *Corporations Law*.

Division 2 Management of AFMC

Clause 17 establishes the AFMC Board. It is to have 6 part-time members appointed by the Minister, and the chief executive officer of AFMC as a member. Members must have specified relevant experience and the Minister may not appoint a part-time member without consulting the Labor Council of New South Wales.

Clause 18 gives the AFMC Board the functions of determining the policies of AFMC and managing and controlling the affairs of AFMC.

Clause 19 provides for the appointment of a chief executive officer of AFMC and confers on the chief executive officer the function of exercising the day-to-day management of AFMC. The chief executive officer will be subject to the control and direction of the AFMC Board.

Clause 20 provides for the employment of AFMC staff.

Clause 21 enables AFMC to appoint agents.

Clause 22 gives AFMC the power to delegate its functions.

Clause 23 enables the AFMC Board to establish committees to give advice and assistance to the Board in connection with any particular matter or function of the Board.

Clause 24 requires AFMC to prepare a statement of corporate intent for each financial year and sets out the matters it is to contain.

Clause 25 requires the annual report of AFMC to include departures from performance targets' in the statement of corporate intent and the reasons for the departures.

Clause 26 exempts an AFMC Board member, or a person acting under the direction of AFMC or the Board, from liability for an act or omission done or omitted in good faith for the purpose of executing the proposed Act or any other Act.

Division 3 Financial provisions

Clause 27 requires AFMC to maintain an AFMC Account.

Clause 28 enables AFMC to obtain financial accommodation, effect financial adjustments and make investments under the *Public Authorities (Financial Arrangements) Act 1987*.

Clause 29 makes the year commencing 1 July the financial year of AFMC.

Division 4 Miscellaneous provisions relating to AFMC

Clause 30 enables the Minister to request information from time to time from AFMC.

Clause 31 provides for the manner and form of accounts and other records relating to AFMC.

Clause 32 provides for the manner in which documents may be served on AFMC.

Clause 33 removes the need to prove (unless evidence to the contrary is given) matters relating to the constitution and resolutions of AFMC and appointments of AFMC Board members and their meetings.

Clause 34 enables AFMC to recover money owed to it as a debt in a court of competent jurisdiction.

Clause 35 requires the proceeds of any sale of the business undertaking of AFMC to be paid to STC in its capacity as trustee of the STC funds for payment into employer reserves.

Clause 36 enables AFMC to publish procedures or guidelines with respect to disclosure of conflicts of interest and arrangements with consultants.

Clause 37 provides for the keeping and use of the seal of AFMC.

Part 3 Conversion of AFMC to company (AFML)

Division 1 Preliminary

Clause 38 sets out the object of the Part, which is to convert AFMC from a statutory body to a company under the *Corporations Law*.

Clause 39 defines *AFMC* for the purposes of the Part.

Division 2 Creation of capital structure and other steps prior to conversion to public company

Clause 40 gives AFMC a share capital divided into shares of \$1 each and provides that it may be divided into classes of shares and that shares may have rights attached to them.

Clause 41 requires AFMC to pay up its shares to the amount determined by the Treasurer by order in writing.

Clause 42 sets out the steps AFMC must take to prepare for conversion to a company, including applying for registration under the *Corporations Law* and lodging its proposed memorandum and articles of association specifying the State as the sole subscriber to the memorandum.

Clause 43 requires the memorandum and articles of association to contain certain provisions applicable to those of statutory State owned corporations under the *State Owned Corporations Act 1989*.

Clause 44 reserves the name “Axiom Funds Management Limited” under the *Corporations Law*.

Division 3 Conversion of AFMC to AFML

Clause 45 provides that AFMC is taken to be registered under the *Corporations Law* under the name “Axiom Funds Management Limited” as a public company limited by shares as from the commencement of the proposed Division.

Clause 46 provides for the change of name of AFMC.

Clause 47 gives effect to the memorandum and articles of Axiom Funds Management Limited (AFML) as if they had been registered under the *Corporations Law*.

Clause 48 makes the State of New South Wales a member of AFML as at its conversion.

Clause 49 empowers the Treasurer to act for or on behalf of the State of New South Wales in the State's capacity as shareholder.

Clause 50 provides that AFML is a continuation of, and the same legal entity as, AFMC and provides that references to AFMC are to be read as references to AFML.

Clause 51 continues existing contracts or arrangements entered into by AFMC.

Clause 52 gives effect to amendments of Acts consequential on the conversion of AFMC to AFML and repeals Part 2 (which establishes AFMC).

Division 4 Management of AFML after conversion and before sale

Clause 53 applies the proposed Division to any period after the conversion of AFMC when the shares in AFML are held by the State of New South Wales.

Clause 54 makes the board of directors of AFML subject to the direction and control of the Treasurer and removes liability for actions done under the direction of the Treasurer.

Clause 55 makes AFML a public authority of the State but provides that it is not, and does not, represent the State of New South Wales and is not exempt from any rate, tax, duty or other impost. AFML cannot render the State liable for any debts, liabilities or obligations.

Clause 56 applies certain provisions of the *State Owned Corporations Act 1989* to AFML.

Part 4 Sale of AFML to private sector

Division 1 Sale process

Clause 57 authorises AFML to be sold to an approved buyer in accordance with the proposed Part.

Clause 58 provides for the approval of a person by the Governor-in-Council as an approved buyer.

Clause 59 authorises the Premier and the Treasurer to negotiate, enter into and carry out an agreement for the sale of shares in AFML. The proposed section also authorises the Treasurer to transfer shares in AFML to an approved buyer. The sale agreement is to provide for the repayment to Treasury Corporation of any money loaned by that Corporation to AFML.

Clause 60 provides that proposed Division 4 of Part 3 (which relates to the interim period after conversion and before the sale of AFML) does not apply to AFML as from a day to be appointed by proclamation and gives effect to Schedule 2, which contains amendments to other Acts consequential on the sale.

Clause 61 enables the Treasurer to make necessary amendments to the memorandum and articles of association of AFML before the sale takes effect.

Clause 62 provides that the obligations of AFML are not guaranteed by the State of New South Wales.

Division 2 Results of sale

Clause 63 requires the proceeds of the sale of AFML to be paid to STC as trustee for the STC schemes for payment into STC funds. Amounts to meet the expenses of the sale are to be deducted from the proceeds.

Clause 64 provides that the staff of AFML are to be continued to be employed by AFML, on the same terms and conditions, after the sale.

Clause 65 provides that the validity and the enforceability of a sale agreement are not affected by any law relating to the enforceability of property or restraint of trade.

Part 5 Miscellaneous

Clause 66 provides that the proposed Act binds the Crown.

Clause 67 provides that offences under the proposed Act are to be dealt with summarily by a Local Court.

Clause 68 sets out the power to make regulations under the proposed Act.

Clause 69 is a formal provision giving effect to Schedule 4 which contains savings and transitional provisions.

Clause 70 provides that matters relating to the sale of AFMC, including the operation of the proposed Act, the sale, associated agreements and documents and disclosures of information, are not to be regarded as civil wrongs, as giving rise to other actions, as breaches of contract, or as events of default, as giving rise to any right or remedy or as a contravention of section 205 of the *Corporations Law*.

Clause 71 exempts from State tax the issue of shares in AFML, applications for registration as a company under the proposed Act and any other matter related to the conversion of AFMC to a company.

Clause 72 provides for the review of the proposed Act by the Minister 5 years after the date of assent to the proposed Act.

Schedule 1 Provisions relating to AFMC Board

Part 1 Definitions

Part 1 defines expressions used in the Schedule.

Part 2 Members

Part 2 contains provisions relating to the appointment and conditions and vacation of office of members.

Part 3 Procedure

Part 3 contains provisions relating to the procedure of the Board.

Part 4 Chief executive officer of AFMC

Part 4 contains provisions relating to the conditions of employment of the chief executive officer.

Schedule 2 Consequential amendments to other Acts

The Schedule contains amendments to other Acts consequential on the conversion of AFMC. Other amendments consequential on the enactment of the proposed Act are also contained in the proposed *Superannuation Administration Act 1996*.

Schedule 3 Further consequential amendments to other Acts

The Schedule contains further amendments to other Acts consequential on the sale of AFML.

Schedule 4 Savings and transitional provisions

The Schedule contains savings and transitional provisions consequent on the enactment of the proposed Act.