



New South Wales

# Superannuation Administration Amendment (Investment Management and Other Matters) Bill 2015

## Explanatory note

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

This Bill is cognate with the *Treasury Corporation Amendment Bill 2015*.

## Overview of Bill

The object of this Bill is to amend the *Superannuation Administration Act 1996* to make provision with respect to the investment management of the public sector superannuation schemes under that Act (*STC funds* or *STC schemes*) and the fiduciary and other obligations and powers of the SAS Trustee Corporation (*STC*), which administers those schemes.

The amendments made by this Bill:

- (a) authorise the Treasurer to require STC to appoint an investment manager approved by the Treasurer (a **mandated investment manager**) to provide investment management services in relation to an STC fund subject to any terms and conditions determined by the Treasurer and consistently with STC's investment strategies, reserves strategy and custodial policies for the STC fund, and
- (b) clarify that a mandated or other investment manager appointed by STC may engage other investment managers to provide the relevant investment management services, and
- (c) enable the Minister to declare prudential standards, or reporting and auditing requirements, and to require STC to comply with them, and
- (d) enable, at the request of STC, the transfer of accumulation-style components of benefits under a STC scheme to a successor fund.

## Outline of provisions

**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.

### **Schedule 1      Amendment of Superannuation Administration Act 1996 No 39**

**Schedule 1 [1]** inserts definitions of terms used in the other proposed amendments. The proposed amendment transfers, from section 59 to the general definition section, the definition of *superannuation investment management services* and expands the definition to include providing services in relation to the custody of the assets and securities of a superannuation fund. **Schedule 1 [3], [4], [6] and [11]** make consequential amendments on the extension of that definition.

**Schedule 1 [2]** requires STC to have regard to the role of employers under STC schemes in funding benefits under those schemes when exercising its functions.

**Schedule 1 [5]** ensures that an investment manager appointed by STC to carry out the function of providing superannuation investment management services on behalf of STC may engage another investment manager to provide those services.

**Schedule 1 [7]** enables the Minister to waive the obligation to obtain the Minister's consent to a contract or arrangement for the appointment of an investment or scheme administration manager.

**Schedule 1 [9]** requires STC to ensure that any investment manager providing superannuation investment management services on its behalf complies with the investment strategy determined by STC for the fund concerned.

**Schedule 1 [10]** requires an investment manager who carries out all superannuation investment management services for a superannuation fund of STC to engage a separate person to undertake services relating to the custody of assets and securities.

**Schedule 1 [13]** inserts proposed section 60 to enable the Treasurer, by order given to STC, to require the investment of the whole or any part of the STC funds to be managed by one or more investment managers approved by the Treasurer (a *mandated investment manager*). The order of the Treasurer may be given only with the approval of the Minister administering the principal Act. A mandated investment manager may, subject to any terms and conditions set out or described in the order and any investment or reserves strategy or custodial policy determined by STC, invest the STC funds concerned in any investment that is authorised or permitted by the principal Act or any other applicable legislation.

Under the proposed section, the terms and conditions that may be set out or described in the order, may, for example, relate to any or all of the following matters:

- (a) the kind and extent of superannuation investment management services to be provided,
- (b) the period during which the STC funds are to be managed by the mandated investment manager,
- (c) the engagement by the mandated investment manager of a person to provide custodial services and the kind and extent of such custodial services,
- (d) the circumstances in which the contract or arrangement may be varied or terminated.

The proposed amendment also provides that STC is taken to have discharged the obligations and duties imposed on it in relation to the investment and management of the relevant STC funds, if a mandated investment manager provides superannuation investment management services in respect of the relevant STC funds on behalf of STC, or engages another person to provide them, under a contract or arrangement entered into by STC in accordance with section 59. **Schedule 1 [6] and [12]** make consequential amendments.

**Schedule 1 [14]** omits provisions relating to services for the custody of the assets and securities of an STC scheme as a result of the extension of the meaning of “superannuation investment management services” to cover such custodial services.

**Schedule 1 [15]** enables STC to request, and the Minister to approve, the transfer of part of the benefits of all or some members of an STC fund to a successor superannuation fund. Any successor fund must provide for the maintenance of existing rights of persons whose benefits are transferred and the transfer and successor fund must comply with Commonwealth legislation regulating such transfers. Any part of benefits that are transferred cannot consist of defined benefit interests.

**Schedule 1 [16]** enables the Minister, by order published in the Gazette, to declare that specified prudential standards, or reporting or auditing requirements, apply to STC (and those engaged by STC) in the exercise of the principal functions of STC specified in the order. **Schedule 1 [8]** makes a consequential amendment.

**Schedule 1 [17]** provides for the making of savings and transitional regulations consequent on the enactment of any Act that amends the *Superannuation Administration Act 1996*.



New South Wales

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New South Wales

# **Superannuation Administration Amendment (Investment Management and Other Matters) Bill 2015**

No. , 2015

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## **A Bill for**

An Act to amend the *Superannuation Administration Act 1996* in relation to the investment management of superannuation funds, and to other matters.

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**The Legislature of New South Wales enacts:**

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**1 Name of Act**

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

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**2 Commencement**

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

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<b>Schedule 1</b>	<b>Amendment of Superannuation Administration Act 1996 No 39</b>	1
		2
<b>[1] Section 4 Definitions</b>		3
Insert in alphabetical order:		4
<i>investment manager</i> means a person who provides superannuation investment management services for a superannuation fund or funds or part of any such fund under a contract or an arrangement with STC, and includes any other person engaged by that person to provide all or any of those superannuation investment management services.		5
<i>mandated investment manager</i> —see section 60.		6
<i>superannuation investment management services</i> include (but are not limited to) the following:		7
(a) managing investments for any superannuation fund or funds or part of any such fund,		8
(b) advising on investments and investment strategies and other related strategies for any superannuation fund or funds or part of any such fund,		9
(c) providing services in relation to the custody of the assets and securities of any superannuation fund or funds or part of any such fund.		10
<b>[2] Section 51 Duties relating to functions</b>		11
Insert at the end of section 51 (2) (d):		12
, and		13
(e) the role of employers under STC schemes in funding benefits under those schemes.		14
<b>[3] Section 53 Power to enter into contracts or arrangements</b>		15
Insert “all or any” before “superannuation investment management services” in section 53 (1) (a).		16
<b>[4] Section 53 (1) (c)</b>		17
Omit the paragraph.		18
<b>[5] Section 53 (1A)</b>		19
Insert after section 53 (1):		20
(1A) An investment manager who enters into a contract or arrangement with STC to provide superannuation investment management services may (subject to the terms of that contract or arrangement) engage another investment manager to provide any such service. In that case, a reference in this section to the person who enters into or makes the contract or arrangement with STC includes a reference to any such other investment manager engaged to provide the service.		21
<b>[6] Section 54 Minister’s consent required</b>		22
Omit “section 53 (1) (a), (b) or (c)”.		23
Insert instead “section 53 (1) (a) or (b) with a person other than a mandated investment manager”.		24

<b>[7] Section 54 (2)</b>	1
Insert at the end of section 54:	2
(2) The Minister may, by notice in writing given to STC, waive the requirement for consent generally or in such circumstances as may be specified by the Minister.	3 4 5
<b>[8] Section 58 Investment strategy</b>	6
Insert “, subject to this Part and section 129A,” after “STC must” in section 58 (1).	7
<b>[9] Section 59 Investment manager to be appointed</b>	8
Omit section 59 (2). Insert instead:	9
(2) STC must ensure that any such investment manager (and others the investment manager engages to provide the relevant services) operates within the investment powers of STC and complies with the investment strategy determined by STC and notified to the investment manager.	10 11 12 13
<b>[10] Section 59 (3A)</b>	14
Insert after section 59 (3):	15
(3A) A contract or arrangement under which an investment manager undertakes to provide all superannuation investment management services for a superannuation fund or part of a fund is to make provision for the engagement of a separate person to provide services in relation to the custody of assets and securities.	16 17 18 19 20
<b>[11] Section 59 (5)</b>	21
Omit the subsection.	22
<b>[12] Section 59, note</b>	23
Omit the note. Insert instead:	24
<b>Note.</b> The Minister’s consent is required to any such contract or arrangement that is entered into with a person other than a mandated investment manager unless that requirement is waived (see section 54).	25 26 27
<b>[13] Section 60</b>	28
Insert after section 59:	29
<b>60 Mandated investment managers</b>	30
(1) The Treasurer may, with the approval of the Minister, by order in writing given to STC, require:	31 32
(a) the investment of the whole or any part of the STC funds to be managed by one or more investment managers approved by the Treasurer ( <i>a mandated investment manager</i> ), and	33 34 35
(b) STC to enter into a contract or arrangement referred to in section 59 with any such mandated investment manager with respect to superannuation investment management services for the whole or that part of the STC funds subject to the terms and conditions set out or described in the order.	36 37 38 39 40
(2) Subsection (1) does not prevent STC from entering into a contract or arrangement containing additional terms or conditions that are not inconsistent with the terms and conditions set out or described in the order.	41 42 43



(3)	The Treasurer must consult with STC and the proposed mandated investment manager before giving an order under this section.	1 2
(4)	A mandated investment manager (or an investment manager engaged by a mandated investment manager to provide relevant services):	3 4
(a)	may invest the whole or part of the STC funds concerned only in any investment that is authorised or permitted by this Act or any other applicable legislation, and	5 6 7
(b)	must carry out the superannuation investment management services concerned subject to the applicable terms and conditions and consistently with any relevant investment strategy or policy.	8 9 10
(5)	STC is taken to have discharged the obligations and duties imposed on it under this and any other law (written or unwritten) in relation to the investment and management of the whole or part of the STC funds, if a mandated investment manager (or an investment manager engaged by a mandated investment manager) provides superannuation investment management services in respect of the STC funds or part of the STC funds on behalf of STC in accordance with subsection (4).	11 12 13 14 15 16 17
	<b>Note.</b> Under section 69 (6) any act, matter or thing done in the name of, or on behalf of, STC by the STC Board is taken to have been done by STC. Section 80 protects persons such as the chief executive officer (who is subject to the control and direction of the Board) from personal and other liability.	18 19 20 21
(6)	An order under this section takes effect on the day specified in the order.	22
(7)	In this section:	23
	<i>relevant investment strategy or policy</i> , in relation to the whole or any part of the STC funds, means an investment strategy or reserves strategy determined by STC under section 58, or custodial policy determined by STC under this Act, in relation to the whole or that part of the STC funds.	24 25 26 27
<b>[14]</b>	<b>Section 61 Custodian to be appointed</b>	28
	Omit the section.	29
<b>[15]</b>	<b>Section 127A</b>	30
	Insert after section 127:	31
<b>127A</b>	<b>Transfers to successor funds</b>	32
(1)	The Minister may, at the request of STC, approve the transfer of part of the benefits of all or some members of an STC scheme to a successor fund.	33 34
(2)	The Minister must not approve the transfer of a part of the benefit of a member of an STC scheme if that part consists of or includes a defined benefit interest within the meaning of the <i>Superannuation Industry (Supervision) Regulations 1994</i> of the Commonwealth.	35 36 37 38
(3)	The Minister must not approve a transfer unless the Minister is satisfied that the transfer complies with the requirements of the <i>Superannuation Industry (Supervision) Act 1993</i> of the Commonwealth and any regulations or other instruments under that Act that would apply to the transfer to a successor fund if the STC scheme was not an exempt public sector superannuation scheme under that Act.	39 40 41 42 43 44
(4)	Without limiting subsection (3), the trust deed of any successor fund must include provisions to ensure that a right that a contributor to, or a member of, the STC scheme had immediately before the transfer to the successor fund is	45 46 47

not removed or restricted. The rules included in the deed may, however, confer additional rights on a contributor or member.	1 2
(5) Regulations may be made for or with respect to the following matters, in relation to a transfer to a successor fund:	3 4
(a) the transfer of benefits of members of, or contributors to, an STC scheme from that scheme to the successor fund,	5 6
(b) the transfer of assets and liabilities of an STC scheme, in respect of transferred benefits of members or contributors or former members or contributors, to the successor fund,	7 8 9
(c) the payment of benefits transferred to the successor fund,	10
(d) the funds and reserves to be established in respect of the successor fund,	11
(e) the preservation or deferral of benefits transferred to the successor fund,	12
(f) the entitlements, rights and obligations of a member of, or contributor to, an STC scheme whose benefit is transferred to the successor fund,	13 14
(g) the deeming of employers to be no longer employers under an STC scheme where all the benefits of the relevant employees are transferred from the STC scheme to the successor fund.	15 16 17
<b>[16] Section 129A</b>	18
Insert after section 129:	19
<b>129A Prudential standards or reporting and auditing requirements</b>	20
(1) The Minister may, by order published in the Gazette, declare that prudential standards, or reporting and auditing requirements, specified or described in the order are standards or requirements that apply to STC in the exercise of any principal function of STC described in the order.	21 22 23 24
(2) Before making an order under this section, the Minister is to consult STC on the proposed standards or requirements.	25 26
(3) An order under this section takes effect on the day specified in the order.	27
(4) STC, and any person carrying out a principal function on behalf of STC, must comply with any standard or requirement applied to STC under this section.	28 29
<b>[17] Schedule 3 Savings and transitional provisions</b>	30
Insert at the end of clause 1 (1):	31
any other Act that amends this Act	32