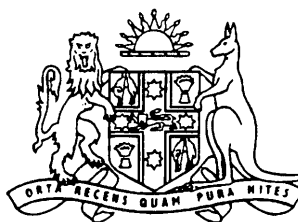


[Act 1996 No 39]



New South Wales

Superannuation Administration Bill 1996

Explanatory note

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

The *Superannuation (Axiom Funds Management Corporation) Bill 1996* is cognate with this Bill.

Overview of Bill

The object of this Bill is to establish trustees for State public sector superannuation schemes, and to provide for the provision of administration services and investment management services for State public sector superannuation schemes, and to enable the establishment of additional superannuation schemes for State public sector employees by trust deed.

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

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days appointed by proclamation.

Clause 3 sets out the objects of the proposed Act, which are to establish separate trustees for the accumulation style State public sector superannuation schemes (the FSS Trustee Corporation (FTC)) and the defined benefit style State public sector superannuation schemes (the SAS Trustee Corporation (STC)), to establish statutory bodies to provide scheme administration services (the Superannuation Administration Authority of New South Wales (SAA)) and to provide for investment services (to be provided for STC schemes by the Axiom Funds Management Corporation (AFMC)), to define their responsibilities and functions and to enable the establishment of additional superannuation schemes for State public sector employees by trust deed.

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

Clause 5 enables additional superannuation schemes to be brought within the Act by proclamation.

Clause 6 provides that introductory notes to Parts or Divisions and other notes in the text of the Act do not form part of the proposed Act.

Part 2 Trustee for FTC schemes (KC)

Division 1 Establishment and principal functions of FTC

Clause 7 constitutes FTC.

Clause 8 makes FTC the trustee for the FTC schemes. These schemes will be the First State Superannuation Scheme and the Public Sector Executives Superannuation Scheme. Both schemes are open to State public sector employees and both provide benefits of an “accumulation” kind rather than specified or defined benefits. FTC will be a trustee for the purposes of Division 2 of Part 2 of the *Trustee Act 1925*, which has the effect of applying the obligations, duties and rights of trustees under that Act to it.

Clause 9 sets out the principal functions of FTC, including the administration and investment and management of the FTC schemes and the FTC funds, providing for the custody of assets and securities of the FTC schemes, and the payment of benefits under the schemes.

Clause 10 imposes on FTC duties to act honestly in relation to its trustee functions, to exercise due care, skill and diligence, to exercise its functions in the best interests of the beneficiaries under the FTC schemes and not to do anything that would hinder the exercise of its functions as trustee. All of these duties reflect those imposed on superannuation trustees under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth (the "Commonwealth Act"). FTC must also take into account Government policy statements, the interests of beneficiaries and the Heads of Government Agreement between the State and the Commonwealth Government as to requirements for State public sector superannuation schemes. The Commonwealth Act sets out the requirements for superannuation trustees and schemes, although it will not apply directly to the State public sector superannuation schemes the proposed Act will apply many of its requirements.

Clause 11 sets out a procedure for laying Government policy statements given under proposed section 10 before each House of Parliament.

Clause 12 confers on FTC power to enter into contracts or arrangements with other persons to provide superannuation investment management services for the FTC funds or part of them and to provide superannuation scheme administration services and custodial services, as well as for other services.

Clause 13 confers on FTC all powers necessary or convenient for, or in connection with, the exercise of FTC's functions.

Division 2 Investment of FTC funds

Clause 14 requires FTC to determine and give effect to an investment strategy and a reserves strategy for the FTC funds and sets out the matters FTC must have regard to in doing so.

Clause 15 requires FTC, in exercising its function of investing and managing the FTC funds, to enter into a contract or an arrangement with an investment manager or managers for the provision of superannuation investment management services. FTC must ensure that any such manager

operates within FTC's investment powers and complies with its investment strategy and reserves strategy. FTC may, but is not required to, enter into a contract or an arrangement with AFMC.

Clause 16 requires FTC to exercise its function of providing for the custody of the assets and securities of an FTC scheme by entering into a contract or an arrangement with a person to provide custodial services. FTC must ensure that the person operates within FTC's powers and complies with FTC's policies.

Clause 17 sets out FTC's borrowing and investment powers.

Clause 18 places restrictions on investment of the FTC fund, including prohibiting investment other than on an arms-length basis.

Division 3 Administration of FTC schemes

Clause 19 requires FTC to exercise its function of administering the FTC schemes by entering into a contract or an arrangement with a person to provide superannuation scheme administration services. FTC must ensure that any such person operates within FTC's powers and complies with its policies. FTC may, but is not required to, enter into a contract or an arrangement with SAA.

Clause 20 enables FTC to enter into contracts or arrangements for the provision of additional benefits under the FTC schemes, in the event of the death or invalidity of a scheme member.

Clause 21 enables FTC to compromise or otherwise settle claims.

Clause 22 enables FTC to determine disputes relating to FTC schemes.

Clause 23 confers on FTC power to request evidence from third parties for the purpose of settling claims or determining disputes.

Division 4 Management of FTC

Clause 24 establishes the FTC Board. It is to have 9 part-time members appointed by the Minister and is to manage and control the affairs of FTC. Four members are to represent the interests of employers and four are to represent the interests of employees, the other member is to be the Chairperson.

Clause 25 provides for the appointment of the Chairperson of the FTC Board by the Minister and sets out the experience required for appointment. The Minister must consult with the Labor Council of New South Wales before making the appointment.

Clause 26 sets out the requirements for the appointment of the employer representative members.

Clause 27 sets out the requirements for the appointment of the employee representative members.

Clause 28 imposes a duty on members of the FTC Board to exercise a reasonable degree of care and diligence for the purpose of ensuring that FTC carries out its duties as trustee.

Clause 29 provides for the appointment of a chief executive officer of FTC and confers on the chief executive officer the function of exercising the day-to-day management of FTC. The chief executive officer will be subject to the control and direction of the FTC Board.

Clause 30 provides for the employment of FTC staff.

Clause 31 enables FTC to appoint agents.

Clause 32 gives FTC the power to delegate its functions.

Clause 33 enables the FTC Board to establish committees to give advice and assistance to the Board in connection with any particular matter or function of the Board.

Clause 34 requires FTC to prepare a corporate plan for each financial year and sets out the matters it is to contain.

Clause 35 exempts an FTC Board member, or a person acting under the direction of FTC 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. The proposed section also provides for the FTC funds to indemnify FTC for liability resulting from actions, liabilities, claims or demands against FTC.

Division 5 Financial provisions

Clause 36 requires FTC to maintain an FTC Administration Account.

Clause 37 provides for FTC's administration costs to be charged against the Administration Account and for their recovery from employers, members and former members of, and contributors and former contributors to, the FTC schemes. FTC is to determine the amount, rate or basis for contribution to administration costs.

Clause 38 provides for the source of payment of administration costs in the FTC schemes.

Clause 39 makes the year commencing 1 July the financial year of FTC.

Division 6 Miscellaneous

Clause 40 enables a person aggrieved by a decision of FTC about a dispute to appeal to the Industrial Relations Commission in Court Session.

Clause 41 requires the FTC Board to report matters having a significant adverse effect on the functions of FTC to the Minister. The report must be made within 3 days of becoming aware of the matter. Written notice must be given of any event which results in an inability to pay benefits.

Clause 42 enables the Minister to request information from time to time from FTC.

Clause 43 provides for the manner and form of accounts and other records relating to FTC schemes.

Clause 44 provides for the manner in which documents may be served on FTC.

Clause 45 removes the need to prove (unless evidence to the contrary is given) matters relating to the constitution and resolutions of FTC and appointments of FTC Board members and their meetings.

Clause 46 enables FTC to recover money owed to it as a debt in a court of competent jurisdiction.

Clause 47 provides for the keeping and use of FTC's seal.

Part 3 Trustee for STC schemes (STC)

Division 1 Establishment and principal functions of STC

Clause 48 continues the State Authorities Superannuation Board and renames it the SAS Trustee Corporation.

Clause 49 makes STC the trustee for the STC schemes. These schemes will include the State Superannuation Scheme, the State Authorities Superannuation Scheme, the State Authorities Non-contributory Superannuation Scheme and the Police Superannuation Scheme and other schemes. None of these schemes are currently open to new members, though some still have contributors. They all provide benefits of a specified kind or defined benefits, related to contributions and years of service. STC will be a trustee for the purposes of Division 2 of Part 2 of the *Trustee Act 1925*, which has the effect of applying the obligations, duties and rights of trustees under that Act to it.

Clause 50 sets out the principal functions of STC, including the administration and investment and management of the STC schemes and the STC funds, providing for the custody of assets and securities of the STC schemes, and the payment of benefits under the schemes.

Clause 51 imposes on STC duties to act honestly in relation to its trustee functions, to exercise due care, skill and diligence, to exercise its functions in the best interests of the beneficiaries under the STC schemes and not to do anything that would hinder the exercise of its functions as trustee. All of these duties reflect those imposed on superannuation trustees under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth (the “Commonwealth Act”). STC must also take into account Government policy statements, the interests of beneficiaries and the Heads of Government Agreement between the State and the Commonwealth Government as to requirements for State public sector superannuation schemes as well as future liabilities. The Commonwealth Act sets out the requirements for superannuation trustees and schemes, although it will not apply directly to the State public sector superannuation schemes the proposed Act will apply many of its requirements.

Clause 52 sets out a procedure for laying Government policy statements given under proposed section 51 before each House of Parliament.

Clause 53 confers on STC power to enter into contracts or arrangements with other persons to provide superannuation investment management services for one or more of the STC funds, or part of an STC fund, and to provide superannuation scheme administration services and custodial services, as well as for other services.

Clause 54 prohibits STC from entering into a contract or an arrangement under proposed section 53 (1) (a), (b) or (c) except with the Minister’s consent.

Clause 55 enables the Minister to give directions to STC as to the exercise of its functions if the Minister is of the opinion that an act or omission by STC has had or may have a significant adverse effect on the Consolidated Fund or the financial management of the State. STC must comply with any such direction.

Clause 56 sets out a procedure for laying Ministerial directions to STC before Parliament within 14 sitting days after any such direction is given.

Clause 57 confers on STC all powers necessary or convenient for, or in connection with, the exercise of STC’s functions.

Division 2 Investment of STC funds

Clause 58 requires STC to determine and give effect to an investment strategy and a reserves strategy for the STC funds and sets out the matters STC must have regard to in doing so.

Clause 59 requires STC, in exercising its function of investing and managing the STC funds, to enter into a contract or an arrangement with an investment manager or managers for the provision of superannuation investment management services. STC must ensure that any such manager operates within STC's investment powers and complies with its investment strategy and reserves strategy.

Clause 60 provides that STC must enter into a contract or an arrangement with AFMC to be the first investment manager. The contract or arrangement is to be for a fixed period, determined by the Minister, from the commencement of the proposed section. After the end of that period, STC may enter another contract or arrangement with AFMC (or its successors) or with another service provider.

Clause 61 requires STC to exercise its function of providing for the custody of the assets and securities of an STC scheme by entering into a contract or an arrangement with a person to provide custodial services. STC must ensure that the person operates within STC's powers and complies with STC's policies.

Clause 62 sets out STC's borrowing and investment powers.

Clause 63 places restrictions on investment of the STC fund, including prohibiting investment other than on an arms-length basis.

Division 3 Administration of STC schemes

Clause 64 requires STC to exercise its function of administering the STC schemes by entering into a contract or an arrangement with a person to provide superannuation scheme administration services. STC must enter into a contract or an arrangement with SAA and must ensure that any such person operates within STC's powers and complies with its policies.

Clause 65 enables STC to enter into contracts or arrangements for the provision of additional benefits under STC schemes, in the event of the death or invalidity of a scheme member.

Clause 66 enables STC to compromise or otherwise settle claims.

Clause 67 enables STC to determine disputes relating to STC schemes.

Clause 68 confers on STC power to request evidence from third parties for the purpose of settling claims or determining disputes.

Division 4 Management of STC

Clause 69 establishes the STC Board. It is to have 8 part-time members and 1 full-time member appointed by the Minister and is to manage and control the affairs of STC. Four members are to represent the interests of employers and four are to represent the interests of employees (one of these is to be a full-time member).

Clause 70 provides for the appointment of the Chairperson of the STC Board by the Minister and sets out the experience required for appointment. The Minister must consult with the Labor Council of New South Wales before making the appointment.

Clause 71 sets out the requirements for the appointment of the employer representative members.

Clause 72 sets out the requirements for the appointment of the employee representative members.

Clause 73 imposes a duty on members of the STC Board to exercise a reasonable degree of care and diligence for the purpose of ensuring that STC carries out its duties as trustee.

Clause 74 provides for the appointment of a chief executive officer of STC and confers on the chief executive officer the function of exercising the day-to-day management of STC. The chief executive officer will be subject to the control and direction of the STC Board.

Clause 75 provides for the employment of STC staff.

Clause 76 enables STC to appoint agents.

Clause 77 gives STC the power to delegate its functions.

Clause 78 enables the STC Board to establish committees to give advice and assistance to the Board in connection with any particular matter or function of the Board.

Clause 79 requires STC to prepare a corporate plan for each financial year and sets out the matters it is to contain.

Clause 80 exempts an STC Board member, or a person acting under the direction of STC 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. The proposed section also provides for the STC funds to indemnify STC for liability resulting from actions, liabilities, claims or demands against STC.

Division 5 Financial provisions

Clause 81 continues the amalgamation of the STC funds under the *Superannuation Administration Act 1991*, with each fund having a separate account.

Clause 82 enables STC to re-establish the amalgamated funds as separate funds and to amalgamate separated funds.

Clause 83 confers on STC any powers necessary or convenient in relation to the re-establishment of separate funds or their amalgamation.

Clause 84 requires STC to maintain an STC Administration Account.

Clause 85 provides for STC's administration costs to be charged against the Administration Account and for their recovery from employers, members and former members of, and contributors and former contributors to, the STC schemes. STC is to determine the amount, rate or basis for contribution to administration costs.

Clause 86 provides for the source of payment of administration costs in the STC schemes.

Clause 87 makes the year commencing 1 July the financial year of STC.

Division 6 Miscellaneous

Clause 88 enables a person aggrieved by a decision of STC about a dispute to appeal to the Industrial Relations Commission in Court Session.

Clause 89 requires the STC Board to report matters having a significant adverse effect on the functions of STC to the Minister. The report must be made within 3 days of becoming aware of the matter. Written notice must be given of any event which results in an inability to pay benefits.

Clause 90 enables the Minister to request information from time to time from STC.

Clause 91 provides for the manner and form of accounts and other records relating to STC schemes.

Clause 92 provides for the manner in which documents may be served on STC.

Clause 93 removes the need to prove (unless evidence to the contrary is given) matters relating to the constitution and resolutions of STC and appointments of STC Board members and their meetings.

Clause 94 enables STC to recover money owed to it as a debt in a court of competent jurisdiction.

Clause 95 provides for the keeping and use of STC's seal.

Part 4 Superannuation Administration Authority (SAA)

Division 1 Establishment and principal functions of SAA

Clause 96 constitutes the Superannuation Administration Authority of New South Wales.

Clause 97 gives SAA the functions of providing superannuation scheme administration services for State public sector superannuation schemes on behalf of trustees and other ancillary functions, including entering into contracts or arrangements with scheme trustees and other administrative functions.

Clause 98 sets out services which are taken to be superannuation scheme administration services, including collecting contributions, keeping and maintaining member records, preparing financial statements on behalf of trustees and processing claims and the payment of benefits.

Clause 99 requires SAA to charge consideration for the provision of its services.

Clause 100 confers on SAA power to enter into contracts or arrangements with trustees to provide superannuation scheme administration services. SAA may enter into such a contract or an arrangement with FTC in relation to the ETC schemes. SAA must enter into such a contract or arrangement with STC in relation to the STC schemes.

Clause 101 confers on SAA all powers necessary or convenient for, or in connection with, the exercise of SAA's functions.

Division 2 Management of SAA

Clause 102 provides for the appointment of a chief executive officer of SAA and his or her conditions of appointment.

Clause 103 provides that the chief executive officer is to manage and control the affairs of SAA and that any act, matter or thing done in the name of, or on behalf of, SAA by the chief executive officer is taken to have been done by SAA.

Clause 104 makes SAA subject to the direction and control of the Minister in the exercise of its functions.

Clause 105 enables SAA to employ staff and to fix their wages, salary and conditions and to engage consultants.

Clause 106 gives SAA the power to delegate its functions.

Clause 107 requires SAA to prepare a corporate plan for each financial year and sets out the matters it is to contain.

Clause 108 exempts the chief executive officer of SAA, or any person acting under the direction of SAA or the chief executive officer from liability for an act or thing done or omitted to be done in good faith for the purpose of executing the proposed Act or any other Act.

Division 3 Financial provisions

Clause 109 requires SAA to maintain an SAA Administration Account.

Clause 110 provides for SAA's administration costs to be charged against the Administration Account and for the recovery of costs related to the STC funds from STC.

Clause 111 sets out SAA's borrowing and investment powers and exempts SAA from stamp duty.

Clause 112 makes the year commencing 1 July the financial year of SAA.

Division 4 Miscellaneous

Clause 113 requires the chief executive officer of SAA to report matters having a significant effect on the functions of SAA to the Minister. The report must be made within 3 days of becoming aware of the matter.

Clause 114 enables the Minister to request information from time to time from SAA.

Clause 115 provides for the manner in which documents may be served on SAA.

Clause 116 provides for the recovery of money owing to SAA as a debt in a court of competent jurisdiction.

Clause 117 enables SAA to publish procedures or guidelines as to conflicts of interests in relation to contracts and other commercial arrangements with SAA.

Clause 118 provides for the keeping and use of SAA's seal.

Part 5 Miscellaneous

Division 1 Offences and remedies relating to officers

Clause 119 makes it an offence for the chief executive officer of a superannuation authority, a member of the Board of an authority or another person who is concerned in, or takes part in, the authority's management, to fail to act honestly in the exercise of powers, and discharge of functions as such an officer (maximum penalty \$50,000 or 5 years imprisonment). It also makes it an offence for such a person to fail to use a reasonable degree of care and diligence when exercising powers and discharging functions (maximum penalty \$10,000), to make improper use of information acquired because of his or her position and to use his or her position to gain an advantage or to cause detriment to the authority (maximum penalty for each offence \$50,000 or 5 years imprisonment). FTC, STC, SAA and AFMC are superannuation authorities.

Clause 120 enables a superannuation authority to recover, as a debt owed to it, any profit made by a person from a contravention of proposed section 119 or loss or damage caused to the authority by such a contravention.

Clause 121 enables persons other than FTC or STC to recover for loss or damage suffered as a result of a contravention of proposed sections relating to the trustees' and Board members' duties from any person knowingly involved in the contravention.

Clause 122 provides a defence for an action under proposed section 121 where the contravention concerned an investment and the investment was in accordance with the investment strategy.

Clause 123 provides a defence for an action under proposed section 121 where the contravention concerned FTC or STC funds reserves and their management was in accordance with the reserves strategy.

Clause 124 sets out defences for actions under proposed section 121 where it can be shown there was a reasonable mistake or reasonable reliance on information supplied by another person or that the contravention was due to the act or default of another person or an accident or some other cause beyond the person's control.

Division 2 General provisions

Clause 125 provides that the proposed Act binds the Crown.

Clause 126 provides that offences under the proposed Act are to be dealt with summarily by a Local Court or the Supreme Court in its summary jurisdiction. It limits the maximum penalty that may be imposed by a Local Court for an offence to \$5,000 or 12 months imprisonment, or both.

Clause 127 provides for the Minister to approve the preparation of a trust deed providing for a superannuation scheme for the benefit of State public sector employees, or a class or classes of State public sector employees. The clause also provides for arrangements to be made to incorporate a trustee for any such scheme.

Clause 128 enables regulations to be made in respect of the transfer of members of FTC or STC schemes to any such new superannuation scheme, and in relation to related matters.

Clause 129 sets out the power to make regulations under the proposed Act.

Clause 130 repeals the *Superannuation Administration Act 1991* and the *Superannuation Administration Amendment Act 1995*.

Clause 131 is a formal provision giving effect to Schedule 3 which contains savings and transitional provisions.

Clause 132 is a formal provision giving effect to Schedule 4 which contains consequential amendments to other Acts.

Clause 133 provides for the review of the Act by the Minister 5 years after the date of assent to the Act.

Schedule 1 Provisions relating to FTC 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.

Schedule 2 Provisions relating to STC 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.

Schedule 3 Savings and transitional provisions

The Schedule contains savings and transitional provisions consequent on the enactment of the proposed Act and the proposed *Superannuation (Axiom Funds Management Corporation) Act 1996*.

Schedule 4 Consequential amendments to other Acts

The Schedule contains amendments to other Acts consequential on the enactment of the proposed Act and the proposed *Superannuation (Axiom Funds Management Corporation) Act 1996*. These amendments include the abolition of the Public Sector Executives Superannuation Board (its functions will be exercised by FTC).