

First State Superannuation Legislation Amendment (Conversion) Act 2005 No 91

[2005-91]



New South Wales

Status Information

Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **See also**
[Statute Law \(Miscellaneous Provisions\) Bill 2006](#)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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First State Superannuation Legislation Amendment (Conversion) Act 2005 No 91



New South Wales

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First State Superannuation Legislation Amendment (Conversion) Act 2005 No 91



New South Wales

An Act to amend the *Superannuation Administration Act 1996* and the *First State Superannuation Act 1992* with respect to the conversion of the FSS Trustee Corporation to a proprietary company limited by shares and the conversion of the First State Superannuation Fund to a superannuation fund regulated under Commonwealth legislation; and for other purposes.

1 Name of Act

This Act is the *First State Superannuation Legislation Amendment (Conversion) Act 2005*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsections (3) and (4).
- (2) A day may not be appointed under subsection (1) that is earlier than the registration day within the meaning of Schedule 2A to the *Superannuation Administration Act 1996* (as inserted by Schedule 1.2 [2] to this Act).
- (3) Sections 3 and 6 and Schedules 1 and 4 commence on the date of assent to this Act.
- (4) Schedule 3.4, 3.6 [7], 3.11 [7], 3.12 [7] and 3.13 [8] commence on the commencement of Schedule 2 [2], Schedule 7 [5], Schedule 10 [7], Schedule 11 [9] and Schedule 12 [11], respectively, to the *Superannuation Legislation Amendment (Family Law) Act 2003*.

3 Amendment of Acts relating to conversion of FTC to proprietary company

The Acts specified in Schedule 1 are amended as set out in that Schedule.

4 Amendment of other Acts and regulations

The Acts and regulations specified in Schedules 2 and 3 are amended as set out in those Schedules.

5 Repeal of [Superannuation Administration \(Savings and Transitional\) Regulation 1997](#)

The [Superannuation Administration \(Savings and Transitional\) Regulation 1997](#) is repealed.

6 Amendment of First State Superannuation Trust Deed

Schedule 4 has effect.

Schedule 1 Amendment of Acts to convert FTC into proprietary company

(Section 3)

1.1 First State Superannuation Act 1992 No 100

Dictionary

Omit the definition of **FTC**. Insert instead:

FTC means:

- (a) before the registration day (within the meaning of Schedule 2A to the [Superannuation Administration Act 1996](#))—FSS Trustee Corporation established by that Act, or
- (b) on and after the registration day (within the meaning of Schedule 2A to the [Superannuation Administration Act 1996](#))—the company called FSS Trustee Corporation that is taken to be registered under the [Corporations Act 2001](#) of the Commonwealth by reason of the operation of clause 3 of that Schedule.

1.2 Superannuation Administration Act 1996 No 39

[1] Section 128C

Insert after section 128B:

128C Conversion of FSS Trustee Corporation into proprietary company

Schedule 2A has effect.

[2] Schedule 2A

Insert after Schedule 2:

Schedule 2A Conversion of FSS Trustee Corporation into

proprietary company

(Section 128C)

Part 1 General

1 Interpretation

(1) In this Schedule:

ASIC means the Australian Securities and Investments Commission.

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.

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.

FTC means the FSS Trustee Corporation that was originally established by this Act.

FTC Board means the board of FTC as constituted under this Act at the relevant time.

instrument means an instrument (other than this Act or 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.

Note—

Section 21 (1) of the [Interpretation Act 1987](#) provides that a reference in an Act to **document** means any record of information, and includes:

- (a) anything on which there is writing, or
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them, or
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else, or
- (d) a map, plan, drawing or photograph.

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

registered FTC means FTC on or after the registration day.

registration day means the day specified by the Minister in a registration order as the day on which FTC is to be taken to be registered as a proprietary company limited by shares for the purposes of section 5H of the Corporations Act.

registration order means an order made by the Minister under clause 4 specifying a registration day.

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

transition period means the period commencing at the beginning of the registration day and ending at the end of the day that is the third anniversary of the registration day.

- (2) Words and expressions used in this Schedule have the same meanings as in section 9 of the Corporations Act, except in so far as they are defined differently in this Act or the context or subject-matter otherwise indicates or requires.
- (3) If this Schedule 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.
- (4) This Schedule is intended to have extraterritorial application in so far as the legislative powers of the Parliament of the State permit.

Part 2 Overview of corporate conversion of FTC

2 Summary of the steps involved in corporate conversion of FTC

- (1) The following is a summary of the steps involved in the conversion of FTC into a proprietary company limited by shares under the Corporations Act:

FTC Board approves constitution and share issue

The FTC Board passes resolutions in accordance with Division 2 of Part 3 that approve a constitution for registered FTC and the issue of shares in registered FTC.

FTC Board to lodge notice under Corporations Act

The FTC Board, with the approval of the Minister, causes a notice to be lodged with ASIC under section 5H (2) of the Corporations Act that sets out certain information about the proposed conversion of FTC into a registered company.

Minister specifies a registration day

The Minister makes a registration order under clause 4 specifying the day on which FTC is taken to be registered as a proprietary company limited by

shares under section 5H of the Corporations Act.

FTC registered as proprietary company limited by shares

Section 5H of the Corporations Act operates on the registration day to register FTC as a proprietary company limited by shares with the name “FSS Trustee Corporation”.

- (2) This clause does not affect the meaning or interpretation of any provision of this Schedule that it summarises.

Part 3 Registration of FTC as proprietary company under Corporations Act

Division 1 Corporate conversion of FTC

3 FTC becomes deemed registration company on registration day

- (1) FTC is a deemed registration company for the purposes of section 5H of the Corporations Act.
- (2) For the purposes of that section:
- (a) the day on which FTC is to be taken to be registered as a company is the registration day, and
 - (b) the type of company that FTC is to be registered as is a proprietary company limited by shares, and
 - (c) the company’s proposed name is “FSS Trustee Corporation”.

Note—

Section 5H of the Corporations Act provides that a body is taken to be registered under that Act as a company of a particular type under section 118 of that Act if a law of a State or Territory to which the Act applies:

- (a) provides that the body is a deemed registration company for the purposes of the section, and
- (b) specifies:
 - (i) the day on which the body is to be taken to be registered (the registration day) or the manner in which that day is to be fixed, and
 - (ii) the type of company the body is to be registered as under the Act, and
 - (iii) the company’s proposed name (unless the ACN is to be used in its name),

and if section 5H (2) and (3) (relating to the lodgment of certain notices and documents with ASIC) are satisfied.

4 Order specifying registration day

- (1) The Minister may, by order published in the Gazette, specify a day on which FTC is to be taken to be registered as a proprietary company limited by shares for the purposes of section 5H of the Corporations Act.
- (2) The Minister may make an order under subclause (1) only if the Minister is satisfied that:
 - (a) the FTC Board has approved a constitution for registered FTC in accordance with the provisions of this Part, and
 - (b) the FTC Board has approved persons to be members of registered FTC and the shares to be issued to those persons in accordance with the provisions of this Part, and
 - (c) FTC has complied with section 5H (2) of the Corporations Act.
- (3) The Minister is to provide ASIC with a copy of an order made under this clause as soon as practicable after it is issued to FTC. However, a failure to provide such a copy does not affect the validity of the order.
- (4) An order under this clause cannot be challenged, reviewed or called into question in proceedings before any court or tribunal.
- (5) An order under this clause is conclusive evidence in any proceedings before a court or tribunal that all the requirements of this Schedule have been complied with concerning the registration of FTC under the Corporations Act as a proprietary company limited by shares.

Division 2 Procedural preconditions to corporate conversion of FTC

5 Approval of constitution of registered FTC

- (1) The FTC Board may, by a resolution that is duly passed at a meeting of the Board, approve a constitution for FTC to take effect on its registration as a proprietary company limited by shares under the Corporations Act.
- (2) A constitution for registered FTC approved by the FTC Board may contain only such matter that could be included in the constitution of a proprietary company limited by shares under the Corporations Act.
- (3) The FTC Board may, by a further resolution that is duly passed at a meeting of the Board, revoke a resolution approving a constitution for registered FTC at any time before the registration day.

- (4) However, nothing in subclause (3) prevents the FTC Board from subsequently approving the same or another constitution under subclause (1).

6 Approval of members of and shareholdings in registered FTC

- (1) The FTC Board may, by one or more resolutions that are duly passed at a meeting of the Board, approve:
- (a) the number and classes of shares that are to be issued in respect of registered FTC on its registration as a proprietary company limited by shares under the Corporations Act, and
 - (b) the persons to whom the shares are to be issued, and
 - (c) the amounts that are payable for shares to be issued in registered FTC and whether or not the amounts must be paid in full by the registration day.
- (2) The FTC Board may, by a further resolution that is duly passed at a meeting of the Board, revoke a resolution under subclause (1) at any time before the registration day.
- (3) However, nothing in subclause (2) prevents the FTC Board from passing the same or another resolution under subclause (1).

7 Lodgment of notice under section 5H of Corporations Act

The FTC Board may cause the notice referred to in section 5H (2) of the Corporations Act to be lodged with ASIC before the registration day if:

- (a) the Board has approved a constitution for registered FTC in accordance with the provisions of this Part, and
- (b) the Board has approved the issue of shares in registered FTC in accordance with the provisions of this Part, and
- (c) the Minister has consented in writing to the lodgment of the notice.

Note—

Certain consents and agreements will be required to be obtained before the notice referred to in section 5H (2) of the Corporations Act is lodged. That provision requires the notice to contain the names and addresses of persons who consent to be members and the number and class of shares the member agrees in writing to take up. On registration, the shares specified in the notice are, under the Corporations Act, taken to be issued to the members specified in the notice.

Part 4 Provisions consequent on corporate conversion of

FTC

8 Registered FTC is continuation of FTC

- (1) Registered FTC is taken for all purposes (including the rules of private international law) to be a continuation of, and the same legal entity, as FTC.
- (2) Without limiting subclause (1), the registration of FTC as a proprietary company limited by shares under the Corporations Act does not:
 - (a) create a new legal entity, or
 - (b) affect FTC's existing assets, rights or liabilities (except as against the members of FTC in their capacity as members), or
 - (c) render defective any legal proceedings by or against FTC or its members, or
 - (d) affect the employment, or entitlements as an employee, of a person who was a member of staff of FTC immediately before the registration day.
- (3) Subclauses (1) and (2) 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.

Note—

Section 5G (11) of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

- (4) A reference in any instrument to FTC is to be read on and after the registration day as including a reference to registered FTC.

9 Registered FTC is authorised to use existing name

- (1) Registered FTC is authorised to use the name "FSS Trustee Corporation" as its corporate name without the words "Pty Limited" being included in that name.
- (2) Nothing in subclause (1) prevents registered FTC from changing its name in accordance with the provisions of the Corporations Act to include the words "Pty Limited" in its name.
- (3) Subclause (1) has effect only for so long as registered FTC retains the name "FSS Trustee Corporation".
- (4) Subclause (1) is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act in relation to the provisions of Part 2B.6 of that Act.

Note—

Section 5G (6) of the Corporations Act provides that the provisions of Part 2B.6 and Part 5B.3 of that Act (which relate to the use of names) do not:

- (a) prohibit a company or other body from using a name if the use of the name is expressly provided for, or authorised by, a provision of a law of a State or Territory, or
- (b) require a company or other body to use a word as part of its name if the company or body is expressly authorised not to use that word by a provision of a law of a State or Territory.

However, section 5G (3) of that Act provides that section 5G will only apply to a provision of a law of a State or Territory enacted after the commencement of that Act if a law of the State or Territory declares the provision to be a Corporations legislation displacement provision for the purposes of that section.

10 Alterations to constitution of registered FTC concerning directors

- (1) Any alteration to the constitution of registered FTC during the transition period with respect to the number, manner of appointment or manner of removal of directors of the company does not have effect unless the Minister consents in writing to the alteration.
- (2) The Minister:
 - (a) must consent to any alteration to the constitution required for compliance with the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth or any regulations or other instruments made under that Act, and
 - (b) may not consent to any alteration that would be inconsistent with that Act, those regulations or any such instrument.
- (3) Subclause (1) is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act in relation to the provisions of the Corporations legislation generally.

Note—

Section 5G (10) of the Corporations Act provides that if a provision of a law of a State or Territory provides that additional requirements must be met for an alteration of a company's constitution to take effect, the alteration does not take effect unless those requirements are met.

11 Role of Auditor-General during transition period

- (1) The provisions of the *Public Finance and Audit Act 1983* (the **Audit Act**) cease to apply in relation to registered FTC on the registration day, except as provided by this clause.
- (2) Subject to such modifications as may be prescribed by the regulations, the following provisions of Part 3 (Audit) of the Audit Act apply as specified in relation to registered FTC for the first 3 financial years in which the transition period occurs:

- (a) Division 2A (Performance audits of activities) applies as if:
 - (i) a reference in that Division to an authority included a reference to registered FTC, and
 - (ii) a reference in that Division to the responsible Minister in relation to registered FTC was a reference to the Minister administering this clause,
 - (b) Division 4 (Particular audit of statutory bodies, funds and accounts) applies as if:
 - (i) a reference in that Division to a statutory body included a reference to registered FTC, and
 - (ii) a reference in that Division to the responsible Minister in relation to registered FTC was a reference to the Minister administering this clause, and
 - (iii) the Minister administering this clause had requested that the Auditor-General carry out functions under that Division in respect of the First State Superannuation Fund for each of those financial years,
 - (c) Division 2 (Audit—generally) applies to an inspection or audit conducted under a provision of the Audit Act applied by paragraph (a) or (b) in the same way as it applies to any other inspection or audit to which that Division applies under that Act.
- (3) To avoid doubt, section 43A of the Audit Act does not apply in respect of the removal of registered FTC from the application of the Audit Act as a consequence of the operation of any provision of the *First State Superannuation Legislation Amendment (Conversion) Act 2005*.
- (4) The Auditor-General may, if engaged to do so by registered FTC, carry out auditing functions for FTC (including in respect of the First State Superannuation Fund) at any time during or after the financial years in which the transition period occurs.
- (5) Subclauses (1) and (2) 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.

Note—

Section 5G (11) of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

- (6) In this clause:

modification includes addition, exception, omission or substitution.

12 Application of State law to registered FTC and its officers and employees

- (1) Immediately before the registration day:
 - (a) FTC ceases to be a statutory body representing the Crown, and
 - (b) the FTC Board is dissolved and each member (including any acting member) of the Board ceases to hold office as such, and
 - (c) the chief executive officer (or an acting chief executive officer) of FTC ceases to hold office and the provisions of the *Public Sector Employment and Management Act 2002* cease to apply to his or her employment.
- (2) On and from the registration day:
 - (a) except as provided by paragraph (b), the following provisions of this Act cease to apply in relation to registered FTC:
 - (i) Divisions 1, 4 and 5 of Part 2,
 - (ii) sections 17 and 18,
 - (iii) Division 6 (other than section 40) of Part 2,
 - (iv) Schedule 1, and
 - (b) section 7 (1), as in force immediately before the registration day, is taken to continue to apply to registered FTC even if it is repealed, but only to the extent necessary to support the continued operation of clause 3.
- (3) Any person who ceases to hold an office by reason of the operation of subclause (1) is not entitled to any compensation for the loss of that office.
- (4) However, nothing in subclause (1) prevents any person from becoming an officer of registered FTC on and from the registration day in accordance with the provisions of its constitution.
- (5) Nothing in this clause operates to limit the generality of the provisions of clause 8.

Schedule 2 Amendment of Acts relating to conversion of First State

Superannuation Scheme

(Section 4)

2.1 First State Superannuation Act 1992 No 100

[1] Long title

Omit “to establish a superannuation scheme for certain employees in the public sector”.

Insert instead “to provide for employer contributions to superannuation for certain employees in the public sector”.

[2] Section 2, note

Omit the note.

[3] Section 3A Meaning of “salary or wages”

Omit “a member” wherever occurring. Insert instead “an employee”.

[4] Section 3A

Omit “the member” wherever occurring. Insert instead “the employee”.

[5] Section 3A

Omit “members” wherever occurring. Insert instead “employees”.

[6] Section 3A

Omit “FTC” wherever occurring. Insert instead “the trustee”.

[7] Section 3A

Omit “A member” wherever occurring. Insert instead “An employee”.

[8] Section 3A

Omit “member’s” wherever occurring. Insert instead “employee’s”.

[9] Section 3A (10)

Insert in alphabetical order:

trustee means the trustee of the superannuation scheme or approved deposit fund, or the provider of the retirement savings account, to which the compulsory employer superannuation contributions are payable.

[10] Sections 3A and 4

Renumber as sections 4 and 5, respectively.

[11] Part 2

Omit Parts 2-5A. Insert instead:

Part 2 Compulsory employer superannuation contributions

6 Employers to whom Act applies

- (1) The employers to whom this Act applies are:
 - (a) the Crown, the Government or a Minister of the Crown, and
 - (b) the authorities specified in Schedule 1.
- (2) Members of NSW Police are, for the purposes of this Act, taken to be employed in NSW Police by the Crown.
- (3) An employee who is employed by the Crown, the Government or a Minister of the Crown is, for the purposes of this Act, taken to be employed by the person or organisation prescribed by the regulations for the purposes of this section.

7 Employers may be changed

- (1) The Governor may, by order published in the Gazette, amend Schedule 1.
- (2) An order under this section, and any order revoking or varying such an order, may be made:
 - (a) to take effect on and from a day specified in the order, whether or not the day is earlier than the day of publication of the order, and
 - (b) to effect the amendment to which it relates with such limitations as are specified in the amendment.

8 Compulsory employer superannuation contributions

- (1) An employer must make, for each employee (other than an excluded employee), a superannuation contribution equivalent to the salary contribution percentage for the employee for each financial year, or part, for which the employee is an employee.
- (2) The salary contribution percentage for a person means 9% of the salary or wages of the person.
- (3) An employer is not required to make a contribution in respect of an employee if,

in order to be consistent with any relevant Commonwealth superannuation standard, a superannuation fund must not accept contributions in respect of the employee.

- (4) Nothing in this section prevents an employer from making superannuation contributions in addition to those required by this section in respect of employees.

9 Payment of compulsory employer superannuation contributions

- (1) An employer must pay the compulsory employer superannuation contribution for an employee to:
- (a) the Fund, or
 - (b) if a nomination is in force under this section, the nominated complying superannuation fund, complying approved deposit fund or retirement savings account.
- (2) An employee may, by written notice to the employer, nominate a complying superannuation fund other than the Fund or a complying approved deposit fund or a retirement savings account as the fund or account to which the compulsory employer superannuation contribution is to be paid.
- (3) An employee may, by written notice to the employer, revoke or vary a nomination under this section at any time.

10 Excluded employees

- (1) The compulsory employer superannuation contribution is not payable for the following employees:
- (a) an employee who is a contributor to or a member of an STC scheme (within the meaning of the *Superannuation Administration Act 1996*) in respect of the same contract of employment,
 - (b) an employee who is a Judge within the meaning of the *Judges' Pensions Act 1953*, a master within the meaning of the *Supreme Court Act 1970*, the Solicitor General or the Director of Public Prosecutions,
 - (c) an employee who, while receiving salary or wages for work done outside Australia, is not treated as a resident of Australia for the purposes of the *Income Tax Assessment Act 1936* of the Commonwealth.
- (2) Subsection (1) (a) does not apply to an employee who has preserved a benefit in an STC scheme, or is entitled to a deferred accrued benefit under the *State Authorities Non-contributory Superannuation Act 1987*, and who is not otherwise a participant in any such scheme.

11 Certain employees may elect to have compulsory employer superannuation contributions cease where pension RBL exceeded

- (1) An employee may give his or her employer a written notice requiring the employer to cease to make the compulsory employer superannuation contribution in respect of the employee.
- (2) The notice may be given only if it is accompanied by the statements referred to in section 19 (4) (b) of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth.
- (3) A notice given under this section is irrevocable.
- (4) An employer who is given a notice under this section:
 - (a) must comply with it, and
 - (b) is not required to make the compulsory employer superannuation contribution in respect of the employee concerned.

12 Contributions for employees who fund their own superannuation

- (1) This section applies to an employee, other than an executive officer, who is employed under a contract under which contributions made by the employer to the employee's superannuation form part of the total remuneration package of the employee and are deducted from the monetary remuneration otherwise payable to the employee.
- (2) An employee to whom this section applies may give his or her employer a written notice requiring the employer to cease to make the compulsory employer superannuation contribution in respect of an amount of salary or wages of the employee that exceeds the maximum contribution base.
- (3) An employer who is given such a notice:
 - (a) must comply with it, and
 - (b) is not required to make the compulsory employer superannuation contribution in respect of that part of the salary or wages of the employee that exceeds the maximum contribution base, as applicable from time to time.
- (4) A notice given under this section may be revoked by the employee by further written notice given to the employer.
- (5) If the notice is revoked, the employer is required to resume making the compulsory employer superannuation contribution in respect of that part of the salary or wages of the employee that exceeds the maximum contribution base in

the financial year that commences after the notice of revocation is given to the employer.

[12] Section 63 Removal of employers from Act

Omit “and the trust deed, and they apply accordingly” from section 63 (2).

[13] Section 64 Benefit not to be assigned, charged or treated as an asset in a member’s estate

Omit the section.

[14] Section 65

Insert before section 73:

65 Trust deed to continue previous firefighter disability arrangements

- (1) The trust deed or rules made under the trust deed must make provision for or with respect to the continuation of arrangements, in force immediately before the registration day for FTC, relating to the payment of amounts from the Fund in respect of death or incapacity benefits under the firefighters award, and the subsequent reduction or application of benefits, and other ancillary matters.
- (2) Provision made for the purposes of this section may be in general or particular terms and may be by means of special arrangements permitted to be entered into under the trust deed or rules under the trust deed.
- (3) Nothing in this section requires the continuation of any arrangement at any time after the relevant provisions of the firefighters award cease to have effect.
- (4) Nothing in this section requires the trust deed or rules under the trust deed to make provision for or with respect to a matter that is inconsistent with the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth or any regulations or other instruments made under that Act.
- (5) In this section:
 - death or incapacity benefit** means a benefit payable to or in respect of a firefighter under the firefighters award if:
 - (a) the firefighter dies, or
 - (b) the firefighter suffers total and permanent incapacity or partial and permanent incapacity.
 - firefighter** means:
 - (a) a member of the permanent fire brigade, or

(b) a member of a volunteer fire brigade,
under the *Fire Brigades Act 1989*.

firefighters award means the *Crown Employees (NSW Fire Brigades Firefighting Staff Death and Disability) Award 2003*.

registration day for FTC means the day on which FTC is taken to be registered as a proprietary company limited by shares for the purposes of section 5H of the *Corporations Act 2001* of the Commonwealth.

[15] Sections 73 and 74

Omit the sections.

[16] Section 76 Regulations

Insert at the end of the section:

(2) In particular, the regulations may make provision for or with respect to the manner in which notices under this Act are to be given.

[17] Part 6, heading

Re-number as Part 3.

[18] Sections 63, 65 (as inserted by this Act), 76, 77 and 79

Re-number as sections 13, 14, 15, 16 and 17, respectively.

[19] Schedule 1 Employers

Omit "Section 7". Insert instead "Sections 6 and 7".

[20] Schedule 2 Employees who are not full members of the Fund

Omit the Schedule.

[21] Schedule 3 Savings, transitional and other provisions

Omit "Section 77". Insert instead "Section 16".

[22] Schedule 3

Insert before clause 1:

Part 1 **Preliminary**

[23] Schedule 3

Insert at the end of clause 1 (1):

First State Superannuation Legislation Amendment (Conversion) Act 2005

[24] Schedule 3

Insert after clause 1:

Part 2 **Provisions consequent on pre-2005 Acts**

[25] Schedule 3

Insert at the end of the Schedule with appropriate Part and clause numbers:

Part Provisions consequent on enactment of *First State Superannuation Legislation Amendment (Conversion) Act 2005*

Definitions

In this Part:

existing rules means the rules made under the existing trust deed, as in force immediately before the repeal of section 13 by the amending Act.

existing trust deed means the trust deed entered into by the Premier and FTC pursuant to this Act, as in force immediately before the repeal of section 13 by the amending Act.

existing trust fund means the First State Superannuation Fund as maintained and administered under the existing trust deed immediately before the repeal of section 18 by the amending Act.

the amending Act means the *First State Superannuation Legislation Amendment (Conversion) Act 2005*.

Continuation of trust deed, rules of First State Superannuation Fund and trust fund

- (1) The existing trust deed and existing rules continue to have effect despite the repeal of Part 4 of this Act, or any other provision of this Act, by the amending Act.
- (2) The existing trust deed and existing rules may be varied or terminated in any way, and may be varied to contain any matters, permitted by or under the trust deed (as amended by the amending Act) or any Act or other law.
- (3) Nothing in the amending Act affects the validity or operation of the existing trust

deed or existing rules, or the existing trust fund, except as provided by this Part.

(4) Without limiting any other provision of this Part:

- (a) the existing trust fund continues in force and is the same trust fund settlement as it was immediately before the repeal of sections 13 and 18 by the amending Act, and
- (b) the amendment of the existing trust deed by Schedule 4 to the amending Act does not:
 - (i) create a new trust or otherwise affect the nature, existence or continuity of the trust fund settlement established under the existing trust deed, or
 - (ii) create any interest or vary any beneficial interest of any member, beneficiary or other person interested in the existing trust fund.

Existing members

A person who was a member of the Fund immediately before the commencement of this clause continues to be a member of the Fund until the person ceases to be a member by operation of the governing rules of the Fund or any Act or other law.

Contributions of existing employees

- (1) An employer must continue to pay contributions for an employee to the Fund, if those contributions were payable to the Fund immediately before the repeal of section 12 by the amending Act.
- (2) A notification or an election having effect under section 10, as in force immediately before its repeal by the amending Act, continues to have effect and may be revoked or varied in accordance with this Act or the provisions of the trust deed as in force from time to time.
- (3) Nothing in this clause prevents an employee who was a member of the Fund immediately before the commencement of this clause from making an election in accordance with this Act to have compulsory employer superannuation contributions paid to another complying superannuation fund or a complying approved deposit fund or retirement savings account.

Existing disputes

A dispute relating to or in respect of FTC or a member or former member of the Fund, that arose before the commencement of this clause, is to continue to be dealt with under this Act and the [Superannuation Administration Act 1996](#), as in force before the commencement of this clause.

Superannuation appeals

Nothing in the amending Act affects:

- (a) an appeal made under section 40 of the *Superannuation Administration Act 1996* and not determined before the repeal of that section by the amending Act, or
- (b) a right to make an appeal in respect of a dispute or other matter that arose under that section before that commencement, or
- (c) the jurisdiction of the Industrial Relations Commission to determine any such appeal.

Existing investment management and custodial arrangements and other arrangements

- (1) An existing arrangement continues in force.
- (2) Any such existing arrangement may be varied or terminated in accordance with the terms of the arrangement or any other Act or law.
- (3) In this clause:

existing arrangement means:

- (a) a contract or an arrangement entered into by FTC under section 12 of the *Superannuation Administration Act 1996* and in force immediately before the commencement of clause 12 of Schedule 2A to that Act, or
- (b) a contract or an arrangement entered into by FTC under section 15, 16 or 20 of that Act and in force immediately before the repeal of those provisions by the amending Act.

Operation of amending Act

The operation of the amending Act and any amendments to the existing trust deed or existing rules consequential on that Act are not to be regarded:

- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the provision of services to or by FTC in connection with the Fund or its functions under the existing trust deed or existing rules, or
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, or
- (d) as an event of default under any contract or other instrument.

[26] Dictionary

Omit the Dictionary. Insert instead:

Dictionary

(Section 3)

chief executive officer means:

- (a) a chief executive officer within the meaning of the *Public Sector Employment and Management Act 2002*, or
- (b) any other employee of an employer who holds an office designated by the Director-General of the Premier's Department as the office of a chief executive officer.

complying approved deposit fund means a complying approved deposit fund for the purposes of section 47 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

complying superannuation fund means a complying superannuation fund for the purposes of section 45 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

compulsory employer superannuation contribution means the superannuation contribution payable by an employer under section 8.

employee means a person who is an employee within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth and who is employed, within the meaning of that Act, by an employer.

employer means an employer referred to in section 6.

employment with an employer includes employment with successive employers.

excluded employee means an employee for whom the compulsory employer superannuation contribution is not payable.

executive officer means an employee who is:

- (a) a chief executive officer, or
- (b) a senior executive officer, or
- (c) a police executive officer within the meaning of the *Police Act 1990*, or
- (d) an office holder nominated for the purposes of section 11A of the *Statutory and Other Offices Remuneration Act 1975*.

FTC means the company called FSS Trustee Corporation that is taken to be registered under the [Corporations Act 2001](#) of the Commonwealth by reason of the operation of clause 3 of Schedule 2A to the [Superannuation Administration Act 1996](#).

Fund means the First State Superannuation Fund maintained and administered under the trust deed.

maximum contribution base has the same meaning as in the [Superannuation Guarantee \(Administration\) Act 1992](#) of the Commonwealth.

relevant Commonwealth superannuation standard means a standard that is applicable under the [Superannuation Industry \(Supervision\) Act 1993](#) of the Commonwealth to a regulated superannuation fund under that Act.

retirement savings account has the same meaning as in the [Retirement Savings Accounts Act 1997](#) of the Commonwealth.

salary or wages—see section 4.

senior executive officer means:

- (a) a senior executive officer within the meaning of the [Public Sector Employment and Management Act 2002](#), or
- (b) an employee (not being an officer referred to in paragraph (a)) of an authority specified in Schedule 1, being an employee who holds an office designated by the Director-General of the Premier's Department as the office of a senior executive officer.

trust deed means the trust deed entered into in pursuance of this Act between the Premier and FSS Trustee Corporation on 19 February 1999, as in force from time to time.

2.2 Superannuation Administration Act 1996 No 39

[1] Long title

Omit “; to constitute as a trustee for the accumulation style schemes open to new members the FSS Trustee Corporation”.

[2] Section 3 Objects of Act

Omit section 3 (a). Insert instead:

- (a) to establish the SAS Trustee Corporation as the trustee for the State defined benefit public sector superannuation schemes,

[3] Section 4 Definitions

Omit the definitions of **FTC**, **FTC dispute function**, **FTC disputes committee** and **FTC fund** or **FTC scheme**.

[4] Section 5 Declaration of FTC schemes and funds

Omit the section.

[5] Part 2 Trustee for FTC schemes (FTC)

Omit the Part.

[6] Part 4, heading

Omit “**superannuation authorities**”. Insert instead “**STC**”.

[7] Section 96 Definition

Omit the definition of **superannuation authority**.

[8] Sections 97 (1), 98 (1) and 119 (1)

Omit “a superannuation authority” wherever occurring. Insert instead “STC”.

[9] Sections 97 (1) and (4), 98 (1), 99 (1) (a) and 119 (3) (b) and (4) (b)

Omit “the superannuation authority” wherever occurring.

Insert instead “STC”.

[10] Sections 97 (2) and 98 (2)

Omit “A superannuation authority” wherever occurring. Insert instead “STC”.

[11] Section 97 (3)

Omit “the superannuation authority’s”. Insert instead “STC’s”.

[12] Sections 98 (1), 119 (1) and 120 (1) (b)

Omit “the authority” wherever occurring. Insert instead “STC”.

[13] Section 99 Access to premises

Omit “any superannuation authority” from section 99 (1).

Insert instead “STC”.

[14] Section 119 Duties and liabilities of persons involved in management

Omit “chief executive officer of a superannuation authority” from the definition of **officer** in section 119 (5).

Insert instead “chief executive officer of STC”.

[15] Section 119 (5), definition of “officer”

Omit “Board of a superannuation authority” and “a superannuation authority’s”.

Insert instead “STC Board” and “STC’s”, respectively.

[16] Section 119 (5), definition of “superannuation authority”

Omit the definition.

[17] Section 120 Recovery of profits from officers

Omit “the superannuation authority concerned may recover from the person as a debt due to the authority” from section 120 (1).

Insert instead “STC may recover from the person as a debt due to STC”.

[18] Section 121 Contraventions of trustee duties

Omit “FTC or” from section 121 (1).

[19] Section 121 (1)

Omit “10, 28,”.

[20] Sections 122, 123 and 127

Omit “FTC or” wherever occurring.

[21] Section 128 Provisions consequent on establishment of additional superannuation schemes

Omit “an FTC scheme or” wherever occurring.

[22] Section 128 (1) (i)

Omit “the FTC scheme or”.

[23] Section 128B Provisions consequent on extension of superannuation schemes to additional employees

Omit “an FTC scheme or” wherever occurring.

[24] Section 129 Regulations

Omit “the FTC schemes and” from section 129 (2) (a).

[25] Section 129 (2) (b)

Omit “the FTC board or”.

[26] Schedule 1 Provisions relating to FTC Board

Omit the Schedule.

[27] Schedule 3 Savings and transitional provisions

Insert at the end of clause 1 (1):

First State Superannuation Legislation Amendment (Conversion) Act 2005 (but only to the extent that it amends this Act)

Schedule 3 Consequential amendment of other Acts and regulations

(Section 4)

3.1 Freedom of Information Act 1989 No 5

Schedule 2 Exempt bodies and offices

Omit “The FSS Trustee Corporation—investment functions.”.

3.2 Government and Related Employees Appeal Tribunal Act 1980 No 39

Schedule 4 Employing authorities

Omit “FSS Trustee Corporation.”.

3.3 Housing Act 2001 No 52

[1] Schedule 2 Superannuation provisions

Omit “an FTC scheme or” wherever occurring in clauses 1 (c), 3 (1), 4 (1), (2) (a) and (3).

[2] Schedule 2, clause 3 (4)

Omit “, FTC”.

[3] Schedule 2, clause 4 (2) (b)

Omit “FTC scheme or”.

3.4 Judges’ Pensions Act 1953 No 41

[1] Section 15A Definitions (as inserted by the Superannuation Legislation Amendment (Family Law) Act 2003)

Omit the definition of **First State Superannuation Fund**. Insert instead:

First State Superannuation Fund has the same meaning as **Fund** has in the *First State Superannuation Act 1992*.

[2] Section 15A (as inserted by the Superannuation Legislation Amendment (Family Law) Act 2003)

Omit the definition of **FTC**. Insert instead:

FTC has the same meaning as in the *First State Superannuation Act 1992*.

3.5 Land Tax Management Act 1956 No 26

Section 10B

Omit the section. Insert instead:

10B Taxation of land owned by SAS Trustee Corporation

Nothing in this Act operates to exempt from taxation under this Act any land owned by the SAS Trustee Corporation that is not land solely occupied by the SAS Trustee Corporation as offices from which to exercise and perform its powers, authorities, duties and functions.

3.6 Police Regulation (Superannuation) Act 1906 No 28

[1] Section 1 Name of Act, commencement and definitions

Omit the definitions of **First State Superannuation Fund** and **FTC** from section 1 (2).

Insert instead:

First State Superannuation Fund has the same meaning as **Fund** has in the *First State Superannuation Act 1992*.

[2] Section 5B Contributor who is executive officer

Insert “or another complying superannuation fund, a complying approved deposit fund or a retirement savings account” after “Fund” in section 5B (5) (e).

[3] Section 5B (6) (b)

Omit “FSS Trustee Corporation established under the *Superannuation Administration Act 1996*”.

Insert instead “trustee or provider of the nominated fund or account”.

[4] Section 5B (6) (b)

Omit “entitled, and”. Insert instead “entitled.”.

[5] Section 5B (6) (c)

Omit the paragraph.

[6] Section 5B (9)

Insert after section 5B (8):

(9) In this section:

complying approved deposit fund means a complying approved deposit fund for the purposes of section 47 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

complying superannuation fund means a complying superannuation fund for the purposes of section 45 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

retirement savings account has the same meaning as in the *Retirement Savings Accounts Act 1997* of the Commonwealth.

[7] Section 14P Payment splits (as inserted by the *Superannuation Legislation Amendment (Family Law) Act 2003*)

Insert after section 14P (7):

(8) In this section:

FTC has the same meaning as it has in the *First State Superannuation Act 1992*.

3.7 Public Authorities (Financial Arrangements) Regulation 2005

[1] Schedule 1 Definitions of “authority” and “controlled entity”

Omit “FSS Trustee Corporation, but only for the purposes of section 25 of the Act” from Part 2.

[2] Schedule 4 Authorities having Part 4 investment powers

Omit “FSS Trustee Corporation”.

3.8 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Omit “FSS Trustee Corporation”.

3.9 Public Finance and Audit Regulation 2005

Clause 17 Prescribed statutory bodies under Division 4 of Part 3 of the Act

Omit clause 17 (2) (h).

3.10 Public Sector Employment and Management Act 2002 No 43

[1] Section 133 Declared authorities to which Part applies

Omit “FSS Trustee Corporation” from the Table to the section.

[2] Schedule 2 Executive positions (other than non-statutory SES positions)

Omit “Chief Executive of the FSS Trustee Corporation” from Part 2.

3.11 State Authorities Non-contributory Superannuation Act 1987 No 212

[1] Section 3 Definitions

Omit the definition of **First State Superannuation Fund** from section 3 (1).

Insert instead:

First State Superannuation Fund has the same meaning as **Fund** has in the [First State Superannuation Act 1992](#).

[2] Section 26I Preservation of deferred accrued benefits

Omit “Fund established under the [First State Superannuation Act 1992](#)” from section 26I (2).

Insert instead “First State Superannuation Fund”.

[3] Section 27AD Transfer of eligible preserved benefits and associated preserved benefits

Omit the definition of **FTC** from section 27AD (1).

[4] Section 27AD (1)

Insert in alphabetical order:

complying approved deposit fund means a complying approved deposit fund for the purposes of section 47 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

complying superannuation fund means a complying superannuation fund for the purposes of section 45 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

retirement savings account has the same meaning as in the *Retirement Savings Accounts Act 1997* of the Commonwealth.

[5] Section 27AD (2) and (2A)

Omit the subsections. Insert instead:

- (2) STC must, on or after 9 December 2001, transfer the amount of any eligible preserved benefit preserved in respect of a person to the trustee of the First State Superannuation Fund or the trustee or provider of another complying superannuation fund, complying approved deposit fund or retirement savings account nominated in writing by or on behalf of the person if STC is satisfied that the person is or will be accepted as a member of the fund or account.
- (2A) STC must, on the transfer of an eligible deferred benefit to another superannuation fund, approved deposit fund or retirement savings account under Part 5B of the *State Authorities Superannuation Act 1987*, transfer the amount of any associated preserved benefit to the trustee or provider of the fund or account.

[6] Section 27AD (4) and (5)

Insert after section 27AD (3):

- (4) If a person fails to nominate a complying superannuation fund, complying approved deposit fund or retirement savings account within the approved period, STC must transfer the eligible preserved benefit to the trustee of the First State Superannuation Fund.
- (5) Nothing in this Part affects any rights, liabilities or obligations of STC relating to eligible deferred benefits in existence immediately before the transfer of the benefits under this Part.

[7] Section 27AH Definitions (as inserted by the *Superannuation Legislation Amendment (Family Law) Act 2003*)

Insert in alphabetical order:

FTC has the same meaning as it has in the *First State Superannuation Act 1992*.

3.12 State Authorities Superannuation Act 1987 No 211

[1] Section 3 Definitions

Omit the definition of **First State Superannuation Fund** from section 3 (1).

Insert in alphabetical order:

complying approved deposit fund means a complying approved deposit fund for the purposes of section 47 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

complying superannuation fund means a complying superannuation fund for the purposes of section 45 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

First State Superannuation Fund has the same meaning as **Fund** has in the *First State Superannuation Act 1992*.

retirement savings account has the same meaning as in the *Retirement Savings Accounts Act 1997* of the Commonwealth.

[2] Section 30A Contributor who is executive officer

Insert “or another complying superannuation fund, a complying approved deposit fund or a retirement savings account” after “Fund” where firstly occurring in section 30A (5) (e).

[3] Section 30A (5) (e)

Omit “Fund” where secondly occurring. Insert instead “fund or account”.

[4] Section 30A (6) (b)

Omit “FSS Trustee Corporation established under the *Superannuation Administration Act 1996*”.

Insert instead “trustee or provider of the nominated fund or account”.

[5] Section 30A (6) (b)

Omit “entitled, and”. Insert instead “entitled.”.

[6] Section 30A (6) (c)

Omit the paragraph.

[7] Section 45F Definitions (as inserted by the *Superannuation Legislation Amendment*

(Family Law) Act 2003)

Insert in alphabetical order:

FTC has the same meaning as it has in the *First State Superannuation Act 1992*.

[8] Section 46AE Transfer of eligible deferred benefits

Omit the definition of **FTC** from section 46AE (1).

[9] Section 46AE (2)

Insert “or another complying superannuation fund, complying approved deposit fund or retirement savings account (the **nominated fund or account**)” after “First State Superannuation Fund”.

[10] Section 46AE (3) and (4)

Omit the subsections. Insert instead:

- (3) STC must, on the written election of an eligible person, transfer the eligible deferred benefit to the trustee or provider of the nominated fund or account if STC is satisfied that the eligible person is or will be accepted as a member of the fund or account.
- (4) If an eligible person fails to make an application for payment or an election within the approved period, the person is taken to have made a written election to transfer the eligible deferred benefit to the First State Superannuation Fund.

[11] Section 46AE (6)

Insert after section 46AE (5):

- (6) Nothing in this Part affects any rights, liabilities or obligations of STC relating to eligible deferred benefits in existence immediately before the transfer of the benefits under this Part.

3.13 Superannuation Act 1916 No 28

[1] Section 3 Definitions

Omit the definitions of **First State Superannuation Fund** and **FTC** from section 3 (1).

Insert instead:

First State Superannuation Fund has the same meaning as **Fund** has in the *First*

State Superannuation Act 1992.

[2] Section 20AB Contributor who is executive officer

Omit section 20AB (5) (e). Insert instead:

- (e) may elect at any time before the benefit is paid to have the benefit paid to the credit of the contributor in the First State Superannuation Fund or another complying superannuation fund, complying approved deposit fund or retirement savings account.

[3] Section 20AB (6) (b)

Omit “FSS Trustee Corporation established under the *Superannuation Administration Act 1996*”.

Insert instead “trustee or provider of the nominated fund or account”.

[4] Section 20AB (6) (b)

Omit “entitled, and”. Insert instead “entitled.”.

[5] Section 20AB (6) (c)

Omit the paragraph.

[6] Section 20AB (9)

Insert after section 20AB (8):

(9) In this section:

complying approved deposit fund means a complying approved deposit fund for the purposes of section 47 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

complying superannuation fund means a complying superannuation fund for the purposes of section 45 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

retirement savings account has the same meaning as in the *Retirement Savings Accounts Act 1997* of the Commonwealth.

[7] Section 20M Payment of conversion benefit

Omit “established under the *First State Superannuation Act 1992*” from section 20M (4).

[8] Section 61W Definitions (as inserted by the *Superannuation Legislation Amendment*

(Family Law) Act 2003)

Insert in alphabetical order:

FTC has the same meaning as it has in the *First State Superannuation Act 1992*.

3.14 Superannuation Administration (Electricity Superannuation Scheme Transitional Provisions) Regulation 1997

[1] Clause 3 Definitions

Omit the definition of **First State Superannuation Scheme**. Insert instead:

First State Superannuation Fund has the same meaning as **Fund** under the *First State Superannuation Act 1992*.

[2] Clause 13 Adjustment of transfers

Omit “First State Superannuation Scheme” from clause 13 (5).

Insert instead “First State Superannuation Fund”.

3.15 Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997

[1] Clause 3 Definitions

Omit the definition of **First State Superannuation Scheme**. Insert instead:

First State Superannuation Fund has the same meaning as **Fund** under the *First State Superannuation Act 1992*.

[2] Clause 14 Adjustment of transfers

Omit “First State Superannuation Scheme” from clause 14 (5).

Insert instead “First State Superannuation Fund”.

3.16 Unclaimed Money Act 1995 No 75

[1] Section 13A Definitions

Omit “(b) or” from paragraph (a) of the definition of **trustee**.

[2] Section 13A, definition of “trustee”

Omit paragraph (b).

Schedule 4 Amendment of First State Superannuation Trust Deed

(Section 6)

1 Amendment of First State Superannuation Trust Deed

The trust deed entered into pursuant to section 13 of the *First State Superannuation Act 1992* is amended by omitting clause 25 and by inserting instead the following clause:

25 VARIATION OF DEED

25.1 Method of variation

The Trustee may, by deed, vary all or any of the provisions of this Deed, including this clause 25 (whether by way of alteration, addition, deletion, modification, removal or replacement) (each a **variation**) without the consent of Members or Employers where the variation is made:

- (a) to satisfy a requirement of Superannuation Law (including, without limitation, a licensing or other legal requirement of the trustee of the Fund),
- (b) to authorise the payment to the Trustee, as a transfer from any unallocated reserve, for the purpose of the Trustee satisfying any financial capacity or solvency requirement imposed on trustees of superannuation funds by a Superannuation Authority,
- (c) to authorise the payment to the Trustee of fees for acting as trustee of the Fund to be retained for the Trustee's own purposes,
- (d) to facilitate the transition of the Fund to a public offer superannuation fund as defined under Superannuation Law,
- (e) to enable the Fund to be more conveniently, advantageously, efficiently or economically administered, promoted or invested,
- (f) in respect of the retirement of the Trustee as trustee of the Fund, the appointment of new or additional trustees of the Fund or to remove or replace a trustee of the Fund,
- (g) to introduce a new, or to change existing, sub-fund, division, Member qualification, Employer qualification or benefit design,
- (h) to correct a manifest error,
- (i) as a consequence of the repeal or amendment of all, or any provision, of a Superannuation Law (including, without limitation, incorporating a provision from the repealed or amended provisions into this Deed with effect from the time of

the repeal or amendment of the provision), or

- (j) in the opinion of the Trustee, in the best interests of the Members, future Members or other beneficiaries or potential beneficiaries of the Fund.

25.2 Timing of variation

- (a) A variation of this Deed will take effect on the date specified in the deed under which the variation is made (**effective date**) or, if no date is specified, on the date of execution of such deed.
- (b) The effective date may be before, on or after the date of execution of the deed under which the variation is made.

25.3 Limitation on variations

- (a) No variation may be made to this Deed which will have the effect of:
 - (i) allowing a person other than a constitutional corporation (as defined under Superannuation Law) to be eligible to be appointed as the trustee of the Fund unless this Deed provides, or would continue to provide after the change is made, that the sole or primary purpose of the Fund is the provision of old-age pensions, or
 - (ii) causing the Fund to cease to be approved by a Superannuation Authority under any provision of Superannuation Law.
- (b) No variation may be made to this Deed which will reduce any benefits or entitlements accrued to Members or adversely affect the basis for the calculation of retirement benefits and other benefits or entitlements of Members in respect of Members' periods of membership to the date such change is made or comes into effect, unless such change is made to comply with the provisions of Superannuation Law:
 - (i) in circumstances permitted or sanctioned by Superannuation Law and approved, where required, by the relevant Superannuation Authority, or
 - (ii) with the consent in writing of all Members materially and adversely affected.