

Superannuation Administration Authority Corporatisation Act 1999 No 5

[1999-5]



New South Wales

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Superannuation Administration Authority Corporatisation Act 1999 No 5



New South Wales

An Act to establish the Superannuation Administration Corporation as a statutory State owned corporation and specify its functions; to dissolve the statutory body named the Superannuation Administration Authority; to make consequential amendments to other Acts; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Superannuation Administration Authority Corporatisation Act 1999*.

2 Commencement

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

3 Definitions

(1) In this Act:

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

exercise a function includes perform a duty.

function includes a power, authority or duty.

liabilities means all liabilities, debts and obligations (whether present or future and whether vested or contingent).

Ministerial Holding Corporation means the Ministerial Holding Corporation constituted under section 37B of the *State Owned Corporations Act 1989*.

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

SAA means the Superannuation Administration Authority of New South Wales

established by the *Superannuation Administration Act 1996*.

superannuation scheme means a scheme, fund or arrangement (whether or not established by an Act) under which any benefits are provided.

the Corporation means the statutory State owned corporation constituted by this Act.

(2) Words and expressions used in this Act and also the *State Owned Corporations Act 1989* have the same meanings in this Act as they have in that Act.

(3) Notes in the text of this Act do not form part of this Act.

4 Dissolution of SAA

(1) SAA is dissolved.

(2) The following Schedules have effect:

Schedule 1 (Transfer of assets, rights and liabilities)

Schedule 2 (Transfer of staff).

Part 2 Establishment of Superannuation Administration Corporation as statutory State owned corporation

5 Establishment of statutory SOC

(1) There is constituted by this Act a corporation with the corporate name of Superannuation Administration Corporation. The Governor may by regulation change the corporate name of the Corporation.

(2) The *State Owned Corporations Act 1989* is amended by inserting in Schedule 5, in alphabetical order, the words “Superannuation Administration Corporation”.

Note—

The *State Owned Corporations Act 1989* contains many provisions that apply to the Corporation as a statutory State owned corporation. In particular, Part 3 contains provisions relating to its status, the application of the *Corporations Act 2001* of the Commonwealth, the issue of shares to the Treasurer and another Minister, the board of directors, the chief executive officer, the employment of staff, the giving of directions by the portfolio Minister (including directions for the performance of non-commercial activities or the carrying out of public sector policies), the memorandum and articles, dividends and tax-equivalent payments, government guarantees, the sale or disposal of assets and legal capacity. Part 4 deals with the accountability of State owned corporations (including statements of corporate intent, annual reports and accounts). Part 5 deals with miscellaneous matters (including the duties and liabilities of directors and the application of public sector legislation).

6 (Repealed)

7 Functions of the Corporation

- (1) The Corporation has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) The principal functions of the Corporation are the development, promotion and conduct of its business of providing superannuation scheme administration and related services.
- (3) For the purposes of exercising its principal functions, the Corporation may provide services that include (but are not limited to) the following:
 - (a) collecting contributions to superannuation schemes,
 - (b) keeping and maintaining member records,
 - (c) providing information and advice to members,
 - (d) preparing financial statements on behalf of trustees,
 - (e) processing of claims and payment of benefits.
- (3A) The Corporation may also provide administration and related services to financial service providers.
- (3B) For that purpose, the Corporation may provide services that include (but are not limited to) the following:
 - (a) collecting payments on behalf of financial service providers,
 - (b) providing information and advice to clients of financial service providers,
 - (c) keeping and maintaining client records,
 - (d) preparing financial statements on behalf of financial service providers,
 - (e) processing claims and other transactions on behalf of financial service providers.
- (3C) The Corporation has such other functions as may be prescribed by the regulations.
- (4) This section does not limit the functions of the Corporation apart from this section, but is subject to the provisions of this Act, the *State Owned Corporations Act 1989*, the *Superannuation Administration Act 1996* and any other Act or law.

Note—

Section 20E of the *State Owned Corporations Act 1989* sets out the principal objectives of statutory State owned corporations.

8 Transfer of general assets, rights and liabilities of SAA

- (1) The general assets, rights and liabilities of SAA are transferred to the Corporation.
- (2) The general assets, rights and liabilities of SAA are the assets, rights and liabilities of SAA immediately before its dissolution by this Act.
- (3) Schedule 1 applies to the transfer effected by this section.

9 Transfer of specified assets, rights and liabilities to Ministerial Holding Corporation or other person

- (1) The Minister may, on or before the dissolution of SAA, by order in writing, transfer such assets, rights and liabilities of SAA as are specified or referred to in the order to the Ministerial Holding Corporation or to any other person on behalf of the State.
- (2) Schedule 1 applies to a transfer under this section.

10 Transfer of assets, rights and liabilities of the Corporation

- (1) The Minister may, by order in writing, transfer such assets, rights and liabilities of the Corporation as:
 - (a) were transferred to the Corporation from SAA by operation of section 8, and
 - (b) are specified or referred to in the order,to the Ministerial Holding Corporation or to any other person on behalf of the State, but only during the period of 12 months after the dissolution of SAA.
- (2) Schedule 1 applies to a transfer under this section.

11 Special provisions concerning management of the Corporation

- (1) Schedule 3 has effect.
- (2) The provisions of Schedule 3 are in addition to and (except to the extent to which that Schedule provides) do not derogate from the provisions of the *State Owned Corporations Act 1989*.

Part 3 Miscellaneous

12 Confidentiality

The provisions of section 29 of the *State Owned Corporations Act 1989* do not apply to require the board to supply to the voting shareholders or the portfolio Minister information relating to an individual member of a superannuation scheme, and the board must not furnish any such information except with the member's consent.

13 (Repealed)

14 Service of documents on the Corporation

- (1) A document may be served on the Corporation by leaving it at, or by sending it by post to, the principal office of the Corporation.
- (2) Nothing in this section affects the operation of any other Act or law, or of any rules of court, that authorise a document to be served on the Corporation in any other manner.

15 Regulations

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

16, 17 (Repealed)

18 Savings, transitional and other provisions

Schedule 6 has effect.

Schedule 1 Transfer of assets, rights and liabilities

(Sections 4, 8, 9 and 10)

1 Definition

In this Schedule:

instrument means an instrument (other than this Act) 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 or process of a court.

2 Application and interpretation

- (1) This Schedule applies to the following:
 - (a) the transfer of the general assets, rights and liabilities from SAA to the Corporation by the operation of section 8,
 - (b) the transfer of assets, rights and liabilities of SAA to the Ministerial Holding Corporation or to any person on behalf of the State by the operation of an order under section 9,
 - (c) the transfer of assets, rights and liabilities of the Corporation to the Ministerial Holding Corporation or to any person on behalf of the State by the operation of an order under section 10.
- (2) In this Schedule, the body or person from whom assets, rights or liabilities are so transferred is called the **transferor** and the body or person to whom they are being

so transferred is called the **transferee**.

3 Vesting of undertaking in transferee

When assets, rights or liabilities are transferred under section 8, 9 or 10, the following provisions have effect:

- (a) those assets of the transferor vest in the transferee by virtue of this Schedule and without the need for any conveyance, transfer, assignment or assurance,
- (b) those rights or liabilities of the transferor become by virtue of this Schedule the rights or liabilities of the transferee,
- (c) all proceedings relating to those assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
- (d) any act, matter or thing done or omitted to be done in relation to those assets, rights or liabilities before the transfer by, to or in respect of the transferor is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
- (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent that it relates to those assets, rights or liabilities but subject to the regulations or other provisions under Schedule 6), to be read as, or as including, a reference to the transferee.

4 Operation of Schedule

- (1) The operation of this Schedule is 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 assignment or transfer of assets, rights or liabilities, or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (2) The operation of this Schedule is not to be regarded as an event of default under any contract or other instrument.
- (3) No attornment to the transferee by a lessee from the transferor is required.
- (4) A transfer under section 9 or 10 is subject to the terms and conditions of the order by which it is effected.

- (5) No compensation is payable to any person in connection with a transfer to which this Schedule applies except, in the case of a transfer under section 9 or 10, to the extent (if any) to which the order giving rise to the transfer so provides.
- (6) In this clause, a reference to the operation of this Schedule includes a reference to the making of an order under section 9 or 10.

5 Date of vesting

- (1) An order under section 9 takes effect on the date specified in the order, being a date that is after the dissolution of SAA but earlier than 12 months after that dissolution.
- (2) An order under section 10 takes effect on the date specified in the order, being a date that is after the dissolution of SAA but earlier than 12 months after that dissolution.

6 Consideration for vesting

The Minister may, by order in writing, specify the consideration on which a transfer to which this Schedule applies is made and the value or values at which the assets, rights or liabilities are transferred.

7 Duty

Duty is not chargeable in respect of:

- (a) the transfer of assets, rights and liabilities to which this Schedule applies, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or registration of an interest in land).

8 Confirmation of vesting

- (1) The Minister may, by notice in writing, confirm a transfer of particular assets, rights or liabilities by operation of this Schedule.
- (2) Such a notice is conclusive evidence of that transfer.

Schedule 2 Transfer of staff

(Section 4)

1 Definition

In this Schedule, **former SAA staff** means the members of staff of SAA immediately before the dissolution of SAA.

2 Chief executive officer of SAA

- (1) The person who, immediately before the dissolution of SAA, held office as the chief executive officer of SAA:

(a) ceases to hold that office, and

(b) is eligible (if otherwise qualified) to be appointed as the chief executive officer of the Corporation.

(2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office, except as provided by subclause (3).

(3) Part 2A of the *Public Sector Management Act 1988* applies to a person who so ceases to hold office as if the person had ceased to be an executive officer as referred to in section 42Q (4) of that Act.

3 Transfer of former SAA staff to the Corporation

(1) The former SAA staff are transferred to the Corporation and are to be regarded for all purposes as having become employees of the Corporation on the day on which SAA is dissolved.

(2) SAA is taken to be an authority to which all of Schedule 4 (Provisions relating to certain staff) of the *State Owned Corporations Act 1989* applies except clause 5 of that Schedule.

4 General saving of conditions of employment

(1) A person who is transferred under this Schedule is (until other provision is duly made under any Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the person if the person had not been transferred but had instead remained on the staff of SAA (and SAA had continued in existence).

(2) However, nothing in this clause affects the application of section 36 (1) of the *State Owned Corporations Act 1989* to the Corporation. Accordingly, Part 7 of Chapter 2 of the *Industrial Relations Act 1996* does not apply to the Corporation or any subsidiary of the Corporation.

5 Saving of leave

A member of the staff of the Corporation who is a member of the former SAA staff retains any rights to annual leave, extended service leave, sick leave, and other forms of leave, accrued or accruing in his or her employment with SAA.

6 No payment out on transfer or dual benefits

(1) This clause applies to a person who becomes, because of this Schedule, a member of the staff of the Corporation.

(2) A person to whom this clause applies is not entitled to receive any payment or other benefit merely because the person ceases to be a member of the staff of SAA.

- (3) A person to whom this clause applies is not entitled to claim, both under this Act and under any other Act, dual benefits of the same kind for the same period of service.

Schedule 3 Special provisions concerning management of the Corporation

(Section 11)

1 Board of directors

- (1) The Corporation is to have a board of directors consisting of:
- (a) the chief executive officer of the Corporation, and
 - (b) (Repealed)
 - (c) at least 3 and not more than 6 other directors, to be appointed by the voting shareholders at their discretion.
- (2) (Repealed)
- (3) One of the directors referred to in subclause (1) (c) is (in and by the director's instrument of appointment or in and by another instrument executed by the voting shareholders) to be appointed as chairperson of the board.
- (4) The board is accountable to the voting shareholders in the manner set out in Part 4 of the *State Owned Corporations Act 1989* and in the constitution of the Corporation.
- (5) The voting shareholders may remove a director, or the chairperson, from office at any time for any or no reason and without notice (but only at a duly convened meeting of the voting shareholders) and, in that event, the office of the director or chairperson is taken to have become vacant for the purposes of Schedule 8 to the *State Owned Corporations Act 1989*.
- (6) A person is not eligible to be a director if the person is a member of the Board of FSS Trustee Corporation or SAS Trustee Corporation. The office of a director becomes vacant if the director becomes a member of either of those Boards.

2 Application of SOC Act Schedule 8

- (1) Subject to this clause, Schedule 8 to the *State Owned Corporations Act 1989* has effect with respect to the constitution and procedure of the board.
- (2) The provisions of section 20J of the *State Owned Corporations Act 1989*, and of clauses 2 (1) and (2) and 7 (1) (d) and (2) of Schedule 8 to that Act, do not apply to the Corporation or to the chairperson.
- (3) The provisions of clause 6 of Schedule 8 to the *State Owned Corporations Act 1989* do not apply to the chief executive officer, and the chief executive officer is not entitled

to remuneration under that clause, in his or her capacity as a director.

3 Chief executive officer

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

4 Acting chief executive officer

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

Schedules 4, 5 (Repealed)

Schedule 6 Savings, transitional and other provisions

(Section 18)

Part 1 Regulations

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Such a provision may deal, among other things, with the interpretation of references to SAA or to any employee of SAA.
- (3) Such a provision may, if the regulations so provide, take effect on the date of assent to this Act or a later date.
- (4) To the extent to which such a provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State, SAA, the Corporation or any authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State, SAA, the Corporation or any authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 References in other Acts or instruments

In any Act (other than this Act), in any instrument made under any Act or in any document, a reference to Superannuation Administration Authority is taken to be a reference to the Corporation.

3 Interim CEO

- (1) The person holding office as chief executive officer of SAA immediately before the dissolution of SAA is taken to have been appointed as acting chief executive officer of the Corporation by the board under clause 4 of Schedule 3.
- (2) For the purposes of section 42S of the *Public Sector Management Act 1988*, service as acting chief executive officer of the Corporation pursuant to this clause is not employment in the service of the Corporation.

4 Timetable for first statement of corporate intent

A period within which any matter is required to be done under section 21 of the *State Owned Corporations Act 1989* in connection with the first statement of corporate intent of the Corporation may be extended by the voting shareholders of the Corporation.

5 Final annual report of SAA

- (1) An annual report relating to SAA is to be prepared, submitted, presented, and made publicly available, in accordance with the *Annual Reports (Statutory Bodies) Act 1984* in the same way as those things would have been required to be done if:
 - (a) the financial year had started normally but ended on the day on which SAA was dissolved, and
 - (b) SAA had not ceased to be a statutory body within the meaning of that Act.
- (2) It does not matter that the financial year for the purposes of the report is therefore less than 12 months long.
- (3) The annual report may be so prepared, submitted and made available by the individuals who were responsible for the affairs of SAA or instead by the Corporation.
- (4) If arrangements are made by the Auditor-General under section 43A (4) of the *Public Finance and Audit Act 1983* to treat the affairs of SAA and the Corporation in a composite way or otherwise, the annual report required by this clause may be so treated as to be compatible with those requirements.
- (5) Despite the *Annual Reports (Statutory Bodies) Act 1984*, the final annual report for SAA need not contain any information (for example, a budget) that would have related to the next financial year of SAA if it had not been dissolved.

6 SAA financial accounts before dissolution

For the purpose of the application of section 43A (General audit of former statutory bodies) of the *Public Finance and Audit Act 1983* to SAA, the Corporation is taken to be the successor to SAA.

7 Corporation same entity as SAA

- (1) On the dissolution of SAA, the Corporation is taken for all purposes, including the rules of private international law, to be a continuation of and the same legal entity as SAA.
- (2) This clause does not affect any transfer of assets, rights and liabilities under Part 2 of this Act.