

# Superannuation Administration Act 1996 No 39

[1996-39]



New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
*Industrial Relations Amendment (Industrial Court) Act 2016 No 48* (not commenced — to commence on 8.12.2016)

### Authorisation

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## Contents

<b>Long title</b> .....	6
<b>Part 1 Preliminary</b> .....	6
1 Name of Act .....	6
2 Commencement .....	6
3 Objects of Act .....	6
4 Definitions .....	6
5 (Repealed) .....	8
6 Notes in text .....	8
<b>Part 2 (Repealed)</b> .....	8
<b>Part 3 Trustee for STC schemes (STC)</b> .....	8
Introductory note .....	8
<b>Division 1 Establishment and principal functions of STC</b> .....	9
48 Continuation of STC (formerly the State Authorities Superannuation Board) .....	9
49 STC to be trustee for STC schemes .....	9
50 Principal functions of STC .....	9
51 Duties relating to functions .....	10
52 Government policy statements to be laid before Parliament .....	11
53 Power to enter into contracts or arrangements .....	11
54 Minister's consent required .....	12
55 STC to be subject to Minister's directions in certain circumstances .....	12
56 Direction to be laid before Parliament .....	13

57 Powers of STC .....	13
<b>Division 2 Investment of STC funds .....</b>	<b>14</b>
58 Investment strategy .....	14
59 Investment manager to be appointed .....	14
60 Mandated investment managers .....	15
61 (Repealed) .....	16
62 Borrowing and investment powers .....	16
63 Restrictions on investment powers .....	16
<b>Division 3 Administration of STC schemes .....</b>	<b>17</b>
64 Administrator to be appointed .....	17
65 Provision of additional benefits .....	17
66 STC may compromise or settle claims .....	17
67 Determination of disputes .....	18
68 Evidence from third parties .....	18
<b>Division 4 Management of STC .....</b>	<b>19</b>
69 STC Board .....	19
70 Chairperson of STC Board .....	19
71 Employer representative members .....	19
72 Employee representative members .....	20
73 Duties of members of STC Board .....	20
74 Chief executive officer of STC .....	20
75 Staff .....	21
76 Agents .....	21
77 Delegation of functions .....	21
78 Committees .....	22
79 Corporate plan .....	22
80 Personal and other liability .....	22
80A STC not to indemnify officers without Ministerial approval .....	23
<b>Division 5 Financial provisions .....</b>	<b>24</b>
81 Amalgamation of funds and adjustment of accounts .....	24
81A Adjustment of employer reserves for surplus funds .....	25

82 Re-establishment of separate funds and subsequent amalgamation .....	25
83 Powers of STC .....	25
84 STC to maintain administration account.....	25
85 Administration costs generally .....	25
86 Source of administration costs .....	26
87 Financial year of STC .....	26
<b>Division 6 Miscellaneous</b> .....	<b>26</b>
88 Appeals.....	26
89 STC Board must report events affecting functions .....	27
90 Provision of information to relevant Ministers .....	27
90A (Repealed).....	27
91 Accounts and records of STC .....	27
92 Service of documents .....	28
93 Proof of certain matters not required .....	28
94 Recovery of amounts payable by STC .....	28
95 Seal of STC .....	28
<b>Part 4 Monitoring STC</b> .....	<b>29</b>
96 Definition.....	29
97 Information to be given to Minister and authorised persons .....	29
98 Minister and authorised persons may require production of books .....	29
99 Access to premises .....	29
100-118 (Repealed) .....	30
<b>Part 5 Miscellaneous</b> .....	<b>30</b>
<b>Division 1 Offences and remedies relating to officers</b> .....	<b>30</b>
119 Duties and liabilities of persons involved in management .....	30
120 Recovery of profits from officers.....	31
121 Contraventions of trustee duties .....	31
122 Defence relating to investment strategy .....	32
123 Defence relating to management of reserves .....	32
124 Defences relating generally to actions arising from breach of duties .....	32
<b>Division 2 General provisions</b> .....	<b>33</b>

125 Act binds Crown.....	33
126 Proceedings for offences .....	33
127 Additional State public sector superannuation schemes .....	33
127A Transfers to successor funds .....	34
128 Provisions consequent on establishment of additional superannuation schemes .....	35
128A Mobility between public sector schemes and EISS and LGSS .....	36
128B Provisions consequent on extension of superannuation schemes to additional persons.....	38
128C Conversion of FSS Trustee Corporation into proprietary company .....	39
129 Regulations.....	39
129A Prudential standards or reporting and auditing requirements.....	39
130 Repeals.....	39
131 Savings and transitional provisions .....	40
132 (Repealed) .....	40
133 Review of Act.....	40
<b>Schedule 1 (Repealed) .....</b>	<b>40</b>
<b>Schedule 2 Provisions relating to STC Board .....</b>	<b>40</b>
<b>Schedule 2A Conversion of FSS Trustee Corporation into proprietary company</b> .....	<b>44</b>
<b>Schedule 3 Savings and transitional provisions .....</b>	<b>53</b>
<b>Schedule 4 (Repealed) .....</b>	<b>64</b>

# Superannuation Administration Act 1996 No 39



New South Wales

An Act to provide for trustees for State public sector superannuation schemes and the provision of investment and administration services for such schemes; to continue as a trustee for the defined benefit style schemes closed to new members the SAS Trustee Corporation (formerly the State Authorities Superannuation Board); to enable the establishment of additional superannuation schemes for State public sector employees and associated persons by trust deed; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Superannuation Administration Act 1996*.

### 2 Commencement

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

### 3 Objects of Act

The objects of this Act are as follows:

- (a) to establish the SAS Trustee Corporation as the trustee for the State defined benefit public sector superannuation schemes,
- (b) to provide for the provision of investment management services and other services for State public sector superannuation schemes,
- (c) to set out the functions and responsibilities of trustees and service providers for State public sector superannuation schemes,
- (d) (Repealed)
- (e) to enable the establishment of additional superannuation schemes for State public sector employees and associated persons by trust deed.

### 4 Definitions

In this Act:

**benefit** means a pension or lump sum retirement or superannuation benefit.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**investment manager** means a person who provides superannuation investment management services for a superannuation fund or funds or part of any such fund under a contract or an arrangement with STC, and includes any other person engaged by that person to provide all or any of those superannuation investment management services.

**local authority** means a council within the meaning of the [Local Government Act 1993](#).

**mandated investment manager**—see section 60.

**public authority** means a person or body constituted or established by an Act for a public purpose.

**SAC** means the Corporation constituted under the [Superannuation Administration Authority Corporatisation Act 1999](#).

**State sector employer** means an employer under an STC scheme that is included in the consolidated financial report for the Total State Sector under section 6 (1) of the [Public Finance and Audit Act 1983](#).

**STC** means the SAS Trustee Corporation continued by this Act.

**STC dispute function** means the principal function, referred to in section 50 (1) (e), to determine disputes under the Acts under which the STC schemes are established or constituted.

**STC disputes committee** means a committee delegated the STC dispute function under section 77.

**STC fund** or **STC scheme** means a superannuation fund or superannuation scheme established or constituted under any of the following Acts:

- (a) [Police Regulation \(Superannuation\) Act 1906](#),
- (b) [Superannuation Act 1916](#),
- (c) [Local Government and Other Authorities \(Superannuation\) Act 1927](#),
- (d) [Transport Employees Retirement Benefits Act 1967](#),
- (e) [New South Wales Retirement Benefits Act 1972](#),
- (f) [Public Authorities Superannuation Act 1985](#),
- (g) [State Public Service Superannuation Act 1985](#),

- (h) *State Authorities Superannuation Act 1987*,
- (i) *State Authorities Non-contributory Superannuation Act 1987*.

**superannuation fund** means a fund established under a superannuation scheme.

**superannuation investment management services** include (but are not limited to) the following:

- (a) managing investments for any superannuation fund or funds or part of any such fund,
- (b) advising on investments and investment strategies and other related strategies for any superannuation fund or funds or part of any such fund,
- (c) providing services in relation to the custody of the assets and securities of any superannuation fund or funds or part of any such fund.

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

**surplus funds** means the funds in an employer's reserve in an account maintained under section 81 that are in excess of the amount that is required to meet current and future liabilities under the STC scheme to which the account relates. The amount of surplus funds is the amount that is actuarially determined in accordance with Accounting Standard AASB 119: *Employee Benefits* made by the Australian Accounting Standards Board (as in force from time to time) or another standard prescribed by the regulations.

## 5 (Repealed)

## 6 Notes in text

Introductory notes to Parts or Divisions and other notes in the text of this Act do not form part of this Act.

## Part 2

### 7-47 (Repealed)

## Part 3 Trustee for STC schemes (STC)

### Introductory note—

This Part continues in existence the State Authorities Superannuation Board, renames it the SAS Trustee Corporation and gives it the functions of the trustee for the STC schemes. These schemes are primarily defined benefit schemes established under Acts and are closed to new members. Generally, the trustee will have functions (which include powers, authorities and duties) that are consistent with the requirements of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth. That Act regulates the functions of trustees of superannuation funds and the administration of superannuation schemes but does not apply directly to the STC schemes. The trustee will also be subject to provisions of the *Trustee Act 1925*. The trustee will have (among other functions) the function of administering the schemes and investing and managing the superannuation funds concerned. However, it will be required to arrange for these services to be provided by service providers in accordance with this Act. This will not detract from the primary responsibility and power of the trustee in these matters.



## **Division 1 Establishment and principal functions of STC**

### **48 Continuation of STC (formerly the State Authorities Superannuation Board)**

- (1) The corporation constituted by the *Superannuation Administration Act 1987* with the corporate name of State Authorities Superannuation Board and continued by the *Superannuation Administration Act 1991* is continued by this Act.
- (2) The continued corporation is to have the corporate name SAS Trustee Corporation. The body may also be called STC, and the use of that name has the same effect for all purposes as the use of its corporate name.
- (3) STC is, for the purposes of any Act, a statutory body representing the Crown.

### **49 STC to be trustee for STC schemes**

- (1) STC is the trustee for the STC schemes and is to hold in trust for the persons who are or will be entitled to benefits under the STC schemes all assets held by, and all contributions and other money paid or payable to, STC under this Act and any Act under which an STC scheme is constituted or established.
- (2) STC is a trustee for the purposes of the *Trustee Act 1925*. Accordingly, subject to this Act, and unless this Act, the *Trustee Act 1925* or any other Act otherwise provides, STC has the obligations, rights and duties of a trustee under Division 2 of Part 2 of the *Trustee Act 1925*.

#### **Note—**

The effect of this is that STC is subject to both the common law obligations, duties and rights of trustees and the obligations, duties and rights of trustees under the *Trustee Act 1925*. These are in addition to its obligations, duties and rights under this Act, unless the *Trustee Act 1925* or this Act otherwise provides.

### **50 Principal functions of STC**

- (1) The principal functions of STC are:
  - (a) to administer the STC schemes, and
  - (b) to invest and manage the STC funds, and
  - (c) to provide for the custody of the assets and securities of the STC schemes, and
  - (d) to ensure that benefits payable to the persons entitled to receive benefits under the STC schemes are paid in accordance with the Acts under which the schemes are established or constituted, and
  - (e) to determine disputes under those Acts, and
  - (f) to exercise such other functions with respect to the STC schemes and STC funds as the Minister may from time to time approve by order in writing.

- (1A) The Minister may in an order for the purposes of subsection (1) (f), direct that a function specified in the approval may be exercised by STC directly or only by entering into a contract or arrangement under section 53 with SAC or (if the direction so provides) with a person of STC's choosing, under which SAC or that person undertakes to carry out the function on behalf of STC.
- (2) STC has such other functions as may be conferred or imposed on it by or under this or any other Act.
- (3) (Repealed)

**Note—**

The STC schemes include the State Authorities Superannuation Scheme, the Police Superannuation Scheme, the State Superannuation Scheme, the State Authorities Non-contributory Superannuation Scheme and other public sector schemes. None of these schemes are currently open to new members, though public sector employees still contribute to some of them.

Other particular functions and obligations of STC are contained in the legislation establishing the STC schemes, including the [Police Regulation \(Superannuation\) Act 1906](#), the [Local Government and Other Authorities \(Superannuation\) Act 1927](#), the [Superannuation Act 1916](#), the [State Authorities Superannuation Act 1987](#) and the [State Authorities Non-contributory Superannuation Act 1987](#).

## **51 Duties relating to functions**

- (1) STC must:
  - (a) act honestly in all matters relating to its functions relating to the STC schemes, and
  - (b) exercise, in relation to all matters affecting the STC schemes, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide, and
  - (c) ensure that its functions relating to the STC schemes are exercised in the best interests of persons entitled to receive benefits under the STC schemes, and
  - (d) not enter into any contract or arrangement, or do anything else, that would prevent STC from, or hinder STC in, properly exercising STC's functions as a trustee.

**Note—**

The duties contained in subsection (1) reflect the covenants required of superannuation scheme trustees under the [Superannuation Industry \(Supervision\) Act 1993](#) of the Commonwealth.

- (2) In exercising its functions, STC must have regard to:
  - (a) the interests of persons entitled to receive benefits under the STC schemes, and
  - (b) the Heads of Government Agreement, commencing 1 July 1996, relating to the

exemption of certain State public sector superannuation schemes from the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth, and

- (c) the future liabilities of the STC funds, and
  - (d) any statement in writing of the policy of the Government on any matter that is relevant to the functions of STC given by the Minister to STC, and
  - (e) the role of employers under STC schemes in funding benefits under those schemes.
- (3) Subsection (1) (d) does not prevent STC from entering into a contract or an arrangement under section 53.

**Note—**

Members of the STC Board have a duty to ensure that STC carries out its duties (see section 73).

**52 Government policy statements to be laid before Parliament**

- (1) The Minister is required to lay before each House of Parliament, within 14 sitting days after giving a statement under section 51 (2) (d), a copy of the statement.
- (2) If a House of Parliament is not sitting when the Minister seeks to comply with this section, the Minister is required to present a copy of the relevant statement to the Clerk of the House.
- (3) A copy of a statement presented to the Clerk of a House of Parliament under this section:
  - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
  - (b) is required to be printed by authority of the Clerk, and
  - (c) if printed by the authority of that Clerk, is, for all purposes, taken to be a document published by order or under the authority of that House, and
  - (d) is to be recorded in the Minutes, or Votes and Proceedings, of that House on the first sitting day of that House after receipt of the copy by that Clerk.

**53 Power to enter into contracts or arrangements**

- (1) STC may enter into contracts or arrangements with any person:
  - (a) under which the person undertakes to carry out the function of providing all or any superannuation investment management services for a superannuation fund or part of a fund under one or more of the STC schemes, on behalf of STC, or
  - (b) under which the person undertakes to carry out the function of providing

superannuation scheme administration services to the STC schemes on behalf of STC, or

(c) (Repealed)

(d) under which the person undertakes to carry out any other functions on behalf of STC under this or any other Act, or

(e) for the performance of any other services.

- (1A) An investment manager who enters into a contract or arrangement with STC to provide superannuation investment management services may (subject to the terms of that contract or arrangement) engage another investment manager to provide any such service. In that case, a reference in this section to the person who enters into or makes the contract or arrangement with STC includes a reference to any such other investment manager engaged to provide the service.
- (2) The power of STC to enter into a contract or an arrangement does not extend to conferring on any other person the power of STC to appoint an actuary or actuaries to conduct an investigation into the state or sufficiency of an STC fund.
- (3) A person who enters into a contract or an arrangement with STC under this section has, while acting in accordance with the terms of the contract or arrangement, those functions of STC specified in the contract or arrangement.
- (4) STC may enter into a contract or an arrangement under this section only if STC is satisfied that the contract or arrangement is in the interests of the persons entitled to receive benefits under the STC schemes.
- (5) Any such contract or arrangement may deem the person with whom STC makes the contract or arrangement to be an agent of STC.
- (6) A contract or an arrangement entered into by STC under this section does not confer on the other party any of the principal functions and responsibilities of STC as trustee.

#### **54 Minister's consent required**

- (1) STC may not enter into a contract or an arrangement under section 53 (1) (a) or (b) with a person other than a mandated investment manager except with the Minister's consent.
- (2) The Minister may, by notice in writing given to STC, waive the requirement for consent generally or in such circumstances as may be specified by the Minister.

#### **55 STC to be subject to Minister's directions in certain circumstances**

- (1) The Minister may give a direction to STC relating to the exercise by STC of any one or more of its functions if the Minister is of the opinion that an act or omission, or

conduct, by STC has had or could reasonably be expected to have a significant adverse effect on the Consolidated Fund or the financial management of the State. A direction must not be inconsistent with this or any other Act.

- (2) STC must comply with any such direction.
- (3) In giving a direction the Minister must have regard to:
  - (a) the interests of persons entitled to receive benefits under the STC schemes, and
  - (b) the duties and obligations of STC and the members of the STC Board.
- (4) Nothing in this section constitutes the Minister as a trustee of the STC schemes.
- (5) STC is not liable for anything done or omitted for the purpose only of complying with a direction of the Minister under this section.

#### **56 Direction to be laid before Parliament**

- (1) The Minister is required to lay before each House of Parliament, within 14 sitting days after giving a direction under section 55, a copy of the direction.
- (2) If a House of Parliament is not sitting when the Minister seeks to comply with this section, the Minister is required to present a copy of the relevant statement to the Clerk of the House.
- (3) A copy of a statement presented to the Clerk of a House of Parliament under this section:
  - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
  - (b) is required to be printed by authority of that Clerk, and
  - (c) if printed by the authority of that Clerk, is, for all purposes, taken to be a document published by order or under the authority of that House, and
  - (d) is to be recorded in the Minutes, or Votes and Proceedings, of that House on the first sitting day of that House after receipt of the copy by that Clerk.

#### **57 Powers of STC**

Without limiting any other function conferred or imposed on it, STC may do all things that are necessary or convenient to be done for, or in connection with, the exercise of STC's functions.

## Division 2 Investment of STC funds

### 58 Investment strategy

- (1) STC must, subject to this Part and section 129A, determine and give effect to an investment strategy for the STC funds (the **investment strategy**) and a strategy for the prudential management of any reserves of the funds (the **reserves strategy**).
- (2) The investment strategy must have regard to the circumstances of the STC schemes, including but not limited to the following:
  - (a) the risk involved in making, holding and realising, and the likely return from, the investments having regard to the schemes' objectives and their cash flow requirements,
  - (b) the composition of the investments as a whole, including the extent to which the investments are diverse or involve exposure to risks from inadequate diversification,
  - (c) the liquidity of the investments having regard to the schemes' cash flow requirements,
  - (d) the ability to discharge the existing and prospective liabilities under the STC schemes,
  - (e) any other matter which a trustee is required to consider in determining an investment strategy under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.
- (3) The reserves strategy must be consistent with the investment strategy and the ability to discharge the existing and prospective liabilities under the STC schemes (whether actual or contingent) as and when they fall due.
- (4) In determining the reserves strategy, STC must have regard to any other matter which a trustee is required to consider in determining a reserves strategy under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.
- (5) STC may not contract out its functions under this section.

### 59 Investment manager to be appointed

- (1) In exercising its function of investing and managing an STC fund, or part of a fund, STC must enter into a contract or an arrangement under section 53 with an investment manager or managers who undertake to provide superannuation investment management services for a superannuation fund or part of a fund under the STC scheme concerned, on behalf of STC. STC may not itself provide such services.
- (2) STC must ensure that any such investment manager (and others the investment

manager engages to provide the relevant services) operates within the investment powers of STC and complies with the investment strategy determined by STC and notified to the investment manager.

- (3) STC may enter into contracts or arrangements for the provision of superannuation investment management services with more than one provider of services.
- (3A) A contract or arrangement under which an investment manager undertakes to provide all superannuation investment management services for a superannuation fund or part of a fund is to make provision for the engagement of a separate person to provide services in relation to the custody of assets and securities.
- (4), (5) (Repealed)

**Note—**

The Minister's consent is required to any such contract or arrangement that is entered into with a person other than a mandated investment manager unless that requirement is waived (see section 54).

## **60 Mandated investment managers**

- (1) The Treasurer may, with the approval of the Minister, by order in writing given to STC, require:
  - (a) the investment of the whole or any part of the STC funds to be managed by one or more investment managers approved by the Treasurer (a **mandated investment manager**), and
  - (b) STC to enter into a contract or arrangement referred to in section 59 with any such mandated investment manager with respect to superannuation investment management services for the whole or that part of the STC funds subject to the terms and conditions set out or described in the order.
- (2) Subsection (1) does not prevent STC from entering into a contract or arrangement containing additional terms or conditions that are not inconsistent with the terms and conditions set out or described in the order.
- (3) The Treasurer must consult with STC and the proposed mandated investment manager before giving an order under this section.
- (4) A mandated investment manager (or an investment manager engaged by a mandated investment manager to provide relevant services):
  - (a) may invest the whole or part of the STC funds concerned only in any investment that is authorised or permitted by this Act or any other applicable legislation, and
  - (b) must carry out the superannuation investment management services concerned subject to the applicable terms and conditions and consistently with any relevant investment strategy or policy.

- (5) STC is taken to have discharged the obligations and duties imposed on it under this and any other law (written or unwritten) in relation to the investment and management of the whole or part of the STC funds, if a mandated investment manager (or an investment manager engaged by a mandated investment manager) provides superannuation investment management services in respect of the STC funds or part of the STC funds on behalf of STC in accordance with subsection (4).

**Note—**

Under section 69 (6) any act, matter or thing done in the name of, or on behalf of, STC by the STC Board is taken to have been done by STC. Section 80 protects persons such as the chief executive officer (who is subject to the control and direction of the Board) from personal and other liability.

- (6) An order under this section takes effect on the day specified in the order.

- (7) In this section:

**relevant investment strategy or policy**, in relation to the whole or any part of the STC funds, means an investment strategy or reserves strategy determined by STC under section 58, or custodial policy determined by STC under this Act, in relation to the whole or that part of the STC funds.

**61 (Repealed)**

**62 Borrowing and investment powers**

- (1) STC may:

- (a) obtain financial accommodation, and
- (b) effect financial adjustments, and
- (c) make investments,

under and subject to the [Public Authorities \(Financial Arrangements\) Act 1987](#).

- (2) STC may take appropriate action to control or to enhance or protect the value of any investment made from the STC funds or to enhance or protect the return on any such investment.

**63 Restrictions on investment powers**

- (1) STC must not, from the assets of the funds under administration or in obtaining financial accommodation:

- (a) lend money to a contributor to, or to a person entitled to or receiving a benefit under, an STC scheme, either by lending the money directly or by lending it under arrangements entered into in the exercise of a general power of investment of the assets of the scheme, or

- (b) borrow money or maintain an existing borrowing of money, whether by way of a



secured or unsecured loan, otherwise than to obtain temporary finance, or

(c) invest any of the assets of an STC fund otherwise than on an arms-length basis, unless it is an in-house asset within the meaning of Part 8 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

(2) Subsection (1) does not prohibit the lending of money of an STC fund established before 25 May 1988 to a contributor if the trustee of the fund, on or before that date:

(a) had express power to lend money to contributors, or

(b) lent money to contributors and that lending was not expressly prohibited by the legislation establishing the fund.

### **Division 3 Administration of STC schemes**

#### **64 Administrator to be appointed**

(1) STC may exercise its function of administering an STC scheme only by entering into a contract or an arrangement under section 53 with a person (a **scheme administrator**) who undertakes to provide superannuation scheme administration services for the scheme on behalf of STC.

(2) STC must ensure that the scheme administrator operates within the powers of STC and complies with the policies determined by STC.

(3)-(7) (Repealed)

#### **65 Provision of additional benefits**

STC may enter into a contract or an arrangement under section 53 with any person:

(a) for the insurance by that person, or the arranging of insurance by that person (on an individual or a group basis), of members of an STC scheme for the purpose of paying death or invalidity benefits (not being benefits based on past service) to or in respect of them, or

(b) for the management of a scheme, carried out by or on behalf of that person, for the purpose of paying any such benefits to or in respect of any such members.

#### **66 STC may compromise or settle claims**

(1) STC may compromise or otherwise settle any claim made against it.

(2) If STC compromises or otherwise settles a claim in relation to a benefit, the compromise or settlement discharges STC's obligations as regards the benefit, and the amount payable is to be regarded as a benefit under the STC scheme concerned and is payable from the appropriate STC fund accordingly.

- (3) To the extent that an amount payable by STC following a compromise or settlement is not a benefit under the relevant STC scheme, the amount is payable from whichever fund or funds that STC considers appropriate.
- (4) STC may make such inquiries and investigations with respect to a claim made against it as it thinks fit.

## **67 Determination of disputes**

- (1) A dispute under this or any other Act concerning an STC scheme is to be determined by STC or an STC disputes committee, except as otherwise provided by the regulations.
- (2) Regulations made for the purposes of subsection (1) may require that a dispute concerning the entitlements or obligations of an employee or beneficiary arising in respect of service by the employee with an employer that:
  - (a) was responsible for the payment of benefits under an STC scheme of which the employee was a member or to which the employee was a contributor, and
  - (b) has ceased to be responsible for the payment of benefits under that scheme but is responsible for the payment of benefits under a new superannuation scheme created in accordance with section 127,be determined, not by STC or an STC disputes committee, but by the trustee of the new superannuation scheme.
- (3) In determining a dispute, STC, an STC disputes committee or the relevant trustee may inform itself on any matter in such manner as it thinks fit and, in so doing, is not bound to observe rules of law relating to evidence.
- (4) A trustee acting in accordance with regulations referred to in subsection (2) and an STC disputes committee have and may exercise the powers conferred on STC by sections 66 and 68.
- (5) This section does not apply to a dispute in respect of which an application may be made to the District Court under section 21 of the *Police Regulation (Superannuation) Act 1906*.

### **Note—**

The rights of a scheme member or other person to lodge a dispute with STC in relation to an STC scheme are set out in the *Police Regulation (Superannuation) Act 1906*, section 23E; the *State Authorities Non-contributory Superannuation Act 1987*, section 33B; the *State Authorities Superannuation Act 1987*, section 54B and the *Superannuation Act 1916*, section 85A.

## **68 Evidence from third parties**

- (1) STC may request a person who has made a claim against STC, or who has a dispute

with STC, to provide STC with an authority to obtain from a third person any information or evidence that is relevant to the subject-matter of the claim or dispute.

- (2) If such a person does not comply with any such request, STC is not obliged to proceed to process the claim or determine the dispute concerned.

## **Division 4 Management of STC**

### **69 STC Board**

- (1) STC is to have a Board consisting of 8 part-time members and 1 full-time member appointed by the Minister.
- (2) Of the members:
  - (a) 1 is to be appointed as Chairperson of the STC Board, and
  - (b) 4 are to be appointed as employer representatives, and
  - (c) 4 are to be appointed as employee representatives.
- (3) Of the members appointed as employee representatives, 1 is to be a full-time member.
- (4) Schedule 2 has effect with respect to the members and procedure of the Board.
- (5) The STC Board has the function of managing and controlling the affairs of STC.
- (6) Any act, matter or thing done in the name of, or on behalf of, STC by the STC Board is taken to have been done by STC.

### **70 Chairperson of STC Board**

- (1) The Chairperson of the STC Board is to be appointed by the Minister.
- (2) To be eligible for appointment as Chairperson, a person must:
  - (a) have significant knowledge of, and experience in, the conduct of superannuation schemes, investments, financial management or public administration, and
  - (b) be independent of employers and employees and their respective interests.
- (3) The Minister must not appoint a person as Chairperson without having consulted Unions NSW.

### **71 Employer representative members**

- (1) Of the members of the STC Board appointed as employer representatives, one is to be appointed on the recommendation of the Treasurer.
- (2) To be eligible for appointment as a member to represent the interests of employers a

person must have knowledge of, and experience in, the conduct of superannuation schemes, investments, financial management or public administration.

## **72 Employee representative members**

- (1) The members of the STC Board appointed as employee representatives are to be nominated by Unions NSW.
- (2) Unions NSW must not nominate a person to be a member unless it has consulted with organisations representing members of the STC schemes.
- (3) If Unions NSW fails to nominate persons for the purposes of this section within the period specified in a written request by the Minister to do so, the Minister may appoint a member or members as employee representatives. Any such member is taken to be properly appointed under this section.
- (4) (Repealed)

## **73 Duties of members of STC Board**

- (1) A member of the STC Board must exercise a reasonable degree of care and diligence for the purposes of ensuring that STC carries out the duties referred to in section 51.
- (2) For the purposes of this section, a reasonable degree of care and diligence is the degree of care and diligence that a reasonable person in the position of the member would exercise in STC's circumstances.

## **74 Chief executive officer of STC**

- (1) The STC Board is to employ a person as the chief executive officer of STC.
- (2) The chief executive officer has the function of exercising the day-to-day management of STC and has such other functions as may be conferred or imposed by or under this or any other Act.
- (3) The chief executive officer is subject to the control and direction of the STC Board.
- (4) The determination of the terms and conditions of employment of the chief executive officer of STC is subject to the concurrence of the Minister.
- (5) The Chairperson of the STC Board may, subject to any direction of the STC Board, appoint a member of staff of STC or other person to act in the office of the chief executive officer during the illness or absence of the chief executive officer (or during a vacancy in the office of chief executive officer), and the person while so acting has all the functions of the chief executive officer and is taken to be the chief executive officer.
- (5A)-(5C) (Repealed)

(6) The STC Board or Chairperson may, at any time, remove a person from office as acting chief executive officer.

(7), (8) (Repealed)

## 75 Staff

Persons may be employed in the Public Service under the *Government Sector Employment Act 2013* to enable STC to exercise its functions.

### Note—

Section 59 of the *Government Sector Employment Act 2013* provides that the persons so employed (or whose services STC makes use of) may be referred to as officers or employees, or members of staff, of STC. Section 47A of the *Constitution Act 1902* precludes STC from employing staff (other than the chief executive officer of STC—see section 74 (1)).

## 76 Agents

(1) STC may employ and pay an agent to transact any business or do any act (including receiving or paying money) that STC is authorised or required to transact or do in the exercise of its functions.

(2) An agent may be employed by STC to receive or pay money even though the agent, or any subagent employed by the agent, is not a bank, building society or credit union.

(3) Section 53 (3) of the *Trustee Act 1925* applies to agents employed under this section.

### Note—

That provision excuses a trustee from liability for the default of an agent employed in good faith.

## 77 Delegation of functions

(1) STC may delegate to an **authorised person** any of its functions, other than this power of delegation.

(2) STC may also delegate any of its functions relating to the STC schemes:

(a) to a natural person with whom STC has entered into a contract or an arrangement under this Act, or

(b) to the chief executive or Board of any organisation with which STC has entered into such a contract or an arrangement.

(3) STC may not delegate any of its principal functions as trustee under this section, other than the STC dispute function.

(3A) STC may, in respect of a dispute, a class of disputes or all disputes under the Acts under which the STC schemes are established or constituted, delegate the STC dispute function to a committee that is comprised of or includes members of the STC Board.

- (4) In this section, **authorised person** means a member of the STC Board, the chief executive of STC or a committee that is comprised of or includes members of the Board.
- (5) Section 64 (7) of the [Trustee Act 1925](#) applies to STC and to a delegate under this section.

## 78 Committees

- (1) The STC Board may establish committees to give advice and assistance to the Board in connection with any particular matter or function of the Board.
- (2) It does not matter that some or all of the members of any committee are not members of the STC Board.
- (3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Board or (subject to any determination of the Board) by the committee.

## 79 Corporate plan

- (1) STC is required to prepare and deliver to the Minister, at least 3 months before the beginning of each financial year of STC, a corporate plan for the financial year.
- (2) A corporate plan must specify:
  - (a) the objectives of STC's activities for the financial year concerned, and
  - (b) the nature and scope of the activities to be undertaken, and
  - (c) the strategies, policies and budgets for achieving those objectives (including the investment strategy and the reserves strategy), and
  - (d) targets and criteria for assessing the performance of STC.
- (3) An annual report of STC must include an assessment of STC's performance, according to the targets and criteria for assessment set out in the corporate plan applicable to the year concerned.
- (4) This section is subject to the requirements of any other Act or law.

### Note—

STC must prepare annual reports for presentation to Parliament under the [Annual Reports \(Statutory Bodies\) Act 1984](#).

## 80 Personal and other liability

- (1) A matter or thing done or omitted to be done by STC, the STC Board, a member of the Board, an STC disputes committee, a member of an STC disputes committee or any

person acting under the direction of STC or the Board does not, if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act, subject such a member or a person so acting personally to any action, liability, claim or demand.

- (2) A decision made, or any act or thing done or omitted, by STC, the STC Board, a member of the Board, an STC disputes committee, a member of an STC disputes committee or any person acting under the direction of STC or the Board may not be called into question on any of the following grounds:
  - (a) an alleged conflict of interest because STC, the Board or the person is involved in administering different Acts or different superannuation schemes,
  - (b) that knowledge gained by STC, the Board or the person is or may be relevant to the exercise of a function under another such Act or scheme.
- (3) Subsection (1) does not preclude STC from being subject to any action, liability, claim or demand. Any money becoming payable by STC in respect of an action, liability, claim or demand is to be paid out of an STC fund or funds as determined by STC.
- (4) However, money is not payable under subsection (3) in circumstances in which a trustee may not be indemnified under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.
- (5), (6) (Repealed)

#### **80A STC not to indemnify officers without Ministerial approval**

- (1) STC may indemnify a person who is or has been an officer of STC against a liability incurred as an officer of STC, or enter into an indemnity agreement, only with the written approval of the Minister.
- (2) For the purposes of this section, an **indemnity agreement** means an agreement or arrangement (whether made by deed or otherwise), between STC and a person who is or has been an officer of STC, that contains any one or more of the following provisions:
  - (a) a provision that requires STC to indemnify the person against any liability incurred as an officer of STC,
  - (b) a provision that requires STC to maintain an insurance policy in respect of any liability incurred by the person as an officer of STC,
  - (c) a provision that requires STC to pay money to or on behalf of the person to assist in defending or responding to any claim, investigation or other proceedings relating to the person's term of office as an officer of STC (including a provision that requires payment in advance of any liability being incurred by the person),

- (d) a provision that confers on the person a right of access to documents held by STC, in any specified circumstances, in connection with any claim, investigation or other proceedings relating to the person's term of office as an officer of STC.
- (3) If an indemnity agreement is entered into by STC in accordance with the approval of the Minister under this section, STC may indemnify a person, as required by that agreement, without obtaining a further approval from the Minister.
- (4) The approval of the Minister under this section:
  - (a) may be given generally or may be limited to a particular case or class of cases, and
  - (b) is subject to such conditions (if any) as are specified in the approval.
- (5) In this section:
  - officer of STC** means the following:
    - (a) a member of the STC Board,
    - (b) the chief executive officer of STC.

## **Division 5 Financial provisions**

### **81 Amalgamation of funds and adjustment of accounts**

- (1) The STC funds amalgamated as one fund under the *Superannuation Administration Act 1991* continue to be amalgamated.
- (2) STC is to maintain separate accounts in the amalgamated fund in relation to each STC scheme concerned.
- (3) A reference in any provision of this Act or the regulations or any other Act or other instrument (other than this section) to an STC fund is taken to be a reference to that part of the amalgamated fund that is maintained for the purposes of the relevant STC scheme.
- (4) STC may, at the request of an employer, from time to time adjust the amounts credited to the employer's reserve in an account established under this section by debiting an amount and crediting that amount to the employer's reserve in another account established in the amalgamated fund in relation to another STC scheme.
- (5) STC may, at the request of the Treasurer, adjust the amounts credited to an employer's reserve (being an employer for whom the Crown makes contributions to the amalgamated fund) in an account established under this section by debiting an amount and crediting that amount to the employer's reserve, or the employer reserve of another employer for whom the Crown makes contributions to the amalgamated fund, in the same or another account established under this section.



### **81A Adjustment of employer reserves for surplus funds**

- (1) STC may, at the request of the Treasurer, debit all or part of the surplus funds from an employer reserve of a State sector employer and credit that amount to any one or more of the following:
  - (a) an employer reserve of that employer in an account maintained in relation to another STC scheme,
  - (b) the employer reserve of one or more other State sector employers in an account maintained in relation to the same or another STC scheme.
- (2) STC may, at the request of an employer who is not a State sector employer and with the approval of the Treasurer, debit all or part of the surplus funds from the employer's reserve and pay that amount to that employer.

### **82 Re-establishment of separate funds and subsequent amalgamation**

- (1) STC may re-establish any of the STC funds as separate funds. On the re-establishment of the funds, section 81 (2) ceases to operate in relation to the funds, but without prejudice to the previous operation of that subsection.
- (2) STC may amalgamate into one fund any 2 or more STC funds separated under this section. Section 81 (2) and (3) apply to any such amalgamated fund.

### **83 Powers of STC**

Without limiting the generality of sections 81 and 82, STC has power in New South Wales and elsewhere to do all things necessary and convenient to be done for, or in connection with, the re-establishment or amalgamation of a fund under this Division.

### **84 STC to maintain administration account**

STC must maintain an account called the STC Administration Account.

### **85 Administration costs generally**

- (1) STC must charge administration costs that it incurs (including the remuneration or allowances of members of the STC Board and the chief executive officer) against the STC Administration Account.
- (2) The administration costs (including costs related to preserved benefits and investment management) that STC incurs in relation to the STC schemes are to be paid in accordance with this section to the STC Administration Account.
- (3) The administration costs (including costs related to preserved benefits and investment management) that STC incurs in relation to the STC schemes are payable by employers and contributors or members and former contributors or former members under the STC schemes, in accordance with the Acts under which those

schemes are established.

- (4) If employees are employed by a group of employers, the costs are payable by the group of employers. If a contributor or member belongs or a former contributor or a former member belonged to a group of contributors or members which contributes to a scheme, the costs are payable by the group of contributors or members.
- (5) The amount, the rate and the basis on which an employer, group of employers or contributor or member or former contributor or former member or group of contributors or members is required to pay is to be determined by STC from time to time.
- (6) After calculating the appropriate amount or rate payable, STC may debit the appropriate account, fund or reserve in the relevant STC fund in accordance with this Division.
- (7) (Repealed)

#### **86 Source of administration costs**

The administration costs (including costs relating to preserved benefits and investment management) payable in respect of an STC fund are to be paid in accordance with the Act under which the fund is established or, if the Act makes no provision, from the reserves or accounts established in the fund determined for the purposes of this section by STC.

#### **87 Financial year of STC**

- (1) The financial year of STC is the year commencing on 1 July.
- (2) A different financial year may be determined by the Treasurer under section 4 (1A) of the [Public Finance and Audit Act 1983](#).

### **Division 6 Miscellaneous**

#### **88 Appeals**

- (1) A person aggrieved by a determination of STC or an STC disputes committee under section 67 (relating to determination of disputes) may appeal against the determination to the Industrial Relations Commission in Court Session (the **Commission**).
- (2) The appeal must be made within 6 months after the appellant is notified of the determination or within such further period as the Commission allows.
- (3) In dealing with the appeal, the Commission may exercise any function that could have been exercised by STC or the STC disputes committee, as the case may be, in making the determination the subject of the appeal.

- (4) In dealing with the appeal, the Commission is to have regard to this Act and any other relevant provisions regulating the superannuation scheme concerned and such other matters as it considers to be relevant.
- (5) In dealing with the appeal, the Commission is not bound by the rules of evidence and may inform itself in any manner it thinks fit.
- (6) The final determination made by the Commission on the appeal is to be given effect to as if it were a determination of STC.

#### **89 STC Board must report events affecting functions**

- (1) If the STC Board becomes aware of the occurrence of an event, or of a change in circumstances, having a significant adverse effect on the exercise of the functions of STC, the Board must give written notice to the Minister setting out particulars of the event or change in circumstances.
- (2) The STC Board must give the notice no later than the third business day after becoming aware of the event or change in circumstances.
- (3) Without limiting subsection (1), the STC Board must give written notice of an event if, as a result of the event, STC will not, or may not, be able to make payments to beneficiaries as and when the obligation to make those payments arises.

#### **90 Provision of information to relevant Ministers**

- (1) STC must furnish to the Minister administering this Act or the Minister administering the STC fund Acts such information relating to the general administration and operation of the STC schemes and the STC funds as the Minister concerned may from time to time require.
- (2) Despite subsection (1), STC must not furnish information relating to an individual member of an STC scheme to a Minister under this section, except with the member's consent.
- (3) In this section, **STC fund Acts** mean the Acts referred to in the definition of **STC fund** in section 4.

#### **90A (Repealed)**

#### **91 Accounts and records of STC**

- (1) STC, or any person with whom STC makes a contract or an arrangement, may maintain accounts and other records relating to the STC schemes or any other related functions in or on any medium, or combination of media, capable of recording information and may, from time to time, vary the manner or form in which those accounts or other records are maintained.

- (2) Subsection (1) is subject to the terms of any contract or arrangement referred to in that subsection.

## **92 Service of documents**

- (1) A document may be served on STC by leaving it at, or by sending it by post to:
- (a) the office of STC, or
  - (b) if it has more than one office, any one of its offices.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on STC in any other manner.

## **93 Proof of certain matters not required**

In any legal proceedings, proof is not required (until evidence is given to the contrary) of:

- (a) the constitution of the STC Board, or
- (b) any resolution of the STC Board, or
- (c) the appointment of, or the holding of office by, any member of the STC Board, or
- (d) the presence or nature of a quorum at any meeting of the STC Board, or
- (e) the delegation of the STC dispute function to an STC disputes committee, or
- (f) the appointment of, or the holding of office by, any member of an STC disputes committee.

## **94 Recovery of amounts payable by STC**

- (1) Any charge, fee or money due to STC may be recovered by STC as a debt in a court of competent jurisdiction.
- (2) Without limiting subsection (1), STC may recover any money owing to it under this or any other Act, together with interest on the money, as a debt in a court of competent jurisdiction.
- (3) Interest at a rate from time to time determined by STC is payable on any amount of money owing to it under this or any other Act calculated from the date on which the amount became due for payment until the date on which the amount is recovered or is otherwise paid.

## **95 Seal of STC**

The seal of STC is to be kept by the chief executive officer of STC and may be affixed to a document only:

- (a) in the presence of the chief executive officer or a member of staff of STC authorised in

that behalf by the chief executive officer, and

- (b) with an attestation by the signature of the chief executive officer or that member of the fact of the affixing of the seal.

## **Part 4 Monitoring STC**

### **96 Definition**

In this Part:

**authorised person** means a person appointed in writing by the Minister as an authorised person for the purposes of this Part.

### **97 Information to be given to Minister and authorised persons**

- (1) The Minister or an authorised person may, by written notice to STC, require STC, within a specified period, to give to the Minister or authorised person in relation to a specified year of income the information, or a report on matters, specified in the notice.
- (2) STC must comply with any notice given to it under subsection (1).  
Maximum penalty: 50 penalty units.
- (3) The information or report required to be provided under subsection (1) must relate to STC's exercise of its functions.
- (4) If STC gives information or a report to the Minister or authorised person as required by this section, the Minister or authorised person must give to STC a written statement that the information or report has been received.

### **98 Minister and authorised persons may require production of books**

- (1) The Minister or an authorised person may, by written notice to STC, require STC to produce to the Minister or authorised person, at a reasonable time and reasonable place specified in the notice, any books relating to the affairs of STC.
- (2) STC must comply with a requirement referred to in subsection (1).  
Maximum penalty: 50 penalty units.
- (3) The Minister or an authorised person may inspect, take extracts from and make copies of any book, or of any version of any book, produced to the Minister or authorised person under this section.

### **99 Access to premises**

- (1) An authorised person may, for the purpose of monitoring the exercise by STC of its functions under this Act:

- (a) enter, at any reasonable time, any premises, other than any part of premises used for residential purposes, at which the authorised person has reason to believe books relating to the affairs of STC are kept, and
  - (b) inspect any book found on the premises that relates to those affairs or that the authorised person believes on reasonable grounds to relate to those affairs, and
  - (c) make copies of, or take extracts from, any such book.
- (2) The power of entry conferred by subsection (1) may only be exercised while business is being carried on, or during the hours that business is usually carried on, at or from the premises.

**100-118 (Repealed)**

**Part 5 Miscellaneous**

**Division 1 Offences and remedies relating to officers**

**119 Duties and liabilities of persons involved in management**

- (1) An officer must act honestly in the exercise of powers, and discharge of functions, as an officer of STC.

Maximum penalty:

- (a) if the contravention is committed with intent to deceive or defraud STC, creditors of STC or creditors of another person or for another fraudulent purpose—500 penalty units or imprisonment for 5 years, or
  - (b) in any other case—100 penalty units.
- (2) In the exercise of powers and the discharge of functions, an officer must exercise the degree of care and diligence that a reasonable person in a like position would exercise in the same circumstances.

Maximum penalty: 100 penalty units.

- (3) An officer, or a person who has been an officer, must not make improper use of information acquired because of his or her position as an officer:

- (a) to gain, directly or indirectly, an advantage for himself or herself or for another person, or
- (b) to cause detriment to STC.

Maximum penalty: 500 penalty units or imprisonment for 5 years.

- (4) An officer must not make improper use of his or her position as an officer:

(a) to gain, directly or indirectly, an advantage for himself or herself or for another person, or

(b) to cause detriment to STC.

Maximum penalty: 500 penalty units or imprisonment for 5 years.

(5) In this section:

**officer** means the chief executive officer of STC, a member of the STC Board or another person who is concerned, or takes part, in STC's management.

(6), (7) (Repealed)

### **120 Recovery of profits from officers**

(1) If a person contravenes section 119, STC may recover from the person as a debt due to STC:

(a) if the person or another person made a profit because of the contravention—an amount equal to the profit, and

(b) if STC suffered loss or damage because of the contravention—an amount equal to the loss or damage.

(2) An amount may be recovered from the person under this section whether or not the person has been convicted of an offence in relation to the contravention.

(3) This section is in addition to, and does not limit, the [Confiscation of Proceeds of Crime Act 1989](#).

### **121 Contraventions of trustee duties**

(1) A person (other than STC) who suffers loss or damage as a result of conduct of another person who was engaged in a contravention of, or failed to comply with, section 51 or 73 may recover the amount of the loss or damage by action against that other person or any other person knowingly involved in the contravention.

(2) An action under this section may be begun at any time within 6 years after the day on which the cause of action arose.

(3) For the purposes of this section, a person is knowingly involved in a contravention if, and only if, the person:

(a) has aided, abetted, counselled or procured the contravention, or

(b) has induced, whether by threats or promises or otherwise, the contravention, or

(c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention, or

(d) has conspired with others to effect the contravention.

### **122 Defence relating to investment strategy**

It is a defence to an action under section 121 for loss or damage suffered by a person as a result of the making of an investment by or on behalf of STC if the defendant establishes that the investment was made in accordance with an investment strategy formulated in accordance with this Act.

### **123 Defence relating to management of reserves**

It is a defence to an action under section 121 for loss or damage suffered by a person as a result of the management of any reserves by STC if the defendant establishes that the management of the reserves was in accordance with a reserves strategy formulated in accordance with this Act.

### **124 Defences relating generally to actions arising from breach of duties**

- (1) It is a defence to an action under section 121 for loss or damage suffered by a person if the defendant establishes that:
  - (a) the contravention was due to reasonable mistake, or
  - (b) the contravention was due to reasonable reliance on information supplied by another person, or
  - (c) the contravention was due to the act or default of another person, or an accident, or some other cause beyond the person's control and that the defendant took reasonable precautions and exercised due diligence to avoid the contravention.
- (2) For the purposes of subsection (1) (b), a reference to another person does not include a reference to a person who was, when the contravention occurred, an employee or agent of the defendant or, if the defendant is a corporation, a director, employee or agent of the defendant.
- (3) A defendant is not entitled to rely on a defence under subsection (1) that a contravention was due to reliance on information supplied by another person or the act or default of another person unless:
  - (a) the court grants leave, or
  - (b) the defendant has, not later than 7 days before the day on which the hearing of the proceedings begins, served on the person bringing the action a written notice containing information that:
    - (i) identifies, or would assist to identify, the other person, and
    - (ii) was in the defendant's possession at the time of the contravention.



## Division 2 General provisions

### 125 Act binds Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

### 126 Proceedings for offences

- (1) Proceedings for an offence against this Act are to be dealt with summarily before:
  - (a) the Local Court, or
  - (b) the Supreme Court in its summary jurisdiction.
- (2) The maximum penalty that may be imposed by the Local Court for an offence under this Act is 50 penalty units or imprisonment for 12 months, or both.

### 127 Additional State public sector superannuation schemes

- (1) The Minister may approve the preparation of a trust deed providing for a superannuation scheme (a **trust deed scheme**) for the benefit of any one or more of the following:
  - (a) State public sector employees,
  - (b) a class or classes of State public sector employees (including employees of a local authority or a public authority),
  - (c) employees, or a class or classes of employees, or former employees, of employers or former employers under STC schemes,
  - (d) other employees, or a class or classes of other employees, approved by the Minister,
  - (e) local government councillors or a class or classes of local government councillors,
  - (f) spouses or de facto partners of persons referred to in paragraphs (a)–(e), or a class or classes of such spouses or de facto partners.

#### Note—

“De facto partner” is defined in section 21C of the [Interpretation Act 1987](#).

- (1A) The Minister may approve the extension of the application of a trust deed scheme to additional persons or classes of persons, being persons or a class or classes of persons of a kind referred to in subsection (1).
- (2) The trust deed may reflect the provisions of any other superannuation schemes, whether established by or under an Act, and may apply different provisions and

benefits to different persons, according to the entitlements of the persons under existing State public sector superannuation schemes.

- (3) Further arrangements may be made for the incorporation of a body to be the trustee of the proposed trust deed scheme.
- (4) The trust deed must include provisions to ensure that a right that a contributor to, or a member of, the scheme it establishes has immediately before the deed takes effect is not removed or restricted. The rules included in the deed may, however, confer additional rights on a contributor or member.
- (5) The trust deed must be consistent with the requirements of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth for a regulated fund within the meaning of that Act and any trustee must satisfy the requirements of that Act for a trustee.
- (6) Before approving the preparation of a trust deed under this section, the Minister must consult with Unions NSW.
- (7) A trust deed approved under this section having effect immediately before the commencement of Part 4 of Schedule 3 to the *Rural Fires Act 1997* and that relates to employees associated with or involved in local government activities is taken, subject to the regulations, to extend to any such employee who is a transferred officer within the meaning of that Part.

**Note—**

The employees concerned are certain fire control officers, deputy fire control officers and designated fire control officers who were employed by local government authorities before being transferred under the *Rural Fires Act 1997* to the Department of Rural Fire Services.

- (8) In this section:

**local government councillor** means a councillor within the meaning of the *Local Government Act 1993*.

**127A Transfers to successor funds**

- (1) The Minister may, at the request of STC, approve the transfer of part of the benefits of all or some members of an STC scheme to a successor fund.
- (2) The Minister must not approve the transfer of a part of the benefit of a member of an STC scheme if that part consists of or includes a defined benefit interest within the meaning of the *Superannuation Industry (Supervision) Regulations 1994* of the Commonwealth.
- (3) The Minister must not approve a transfer unless the Minister is satisfied that the transfer complies with the requirements of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth and any regulations or other instruments under that

Act that would apply to the transfer to a successor fund if the STC scheme was not an exempt public sector superannuation scheme under that Act.

- (4) Without limiting subsection (3), the trust deed of any successor fund must include provisions to ensure that a right that a contributor to, or a member of, the STC scheme had immediately before the transfer to the successor fund is not removed or restricted. The rules included in the deed may, however, confer additional rights on a contributor or member.
- (5) Regulations may be made for or with respect to the following matters, in relation to a transfer to a successor fund:
  - (a) the transfer of benefits of members of, or contributors to, an STC scheme from that scheme to the successor fund,
  - (b) the transfer of assets and liabilities of an STC scheme, in respect of transferred benefits of members or contributors or former members or contributors, to the successor fund,
  - (c) the payment of benefits transferred to the successor fund,
  - (d) the funds and reserves to be established in respect of the successor fund,
  - (e) the preservation or deferral of benefits transferred to the successor fund,
  - (f) the entitlements, rights and obligations of a member of, or contributor to, an STC scheme whose benefit is transferred to the successor fund,
  - (g) the deeming of employers to be no longer employers under an STC scheme where all the benefits of the relevant employees are transferred from the STC scheme to the successor fund.

#### **128 Provisions consequent on establishment of additional superannuation schemes**

- (1) Regulations may be made for or with respect to the following matters, in relation to the establishment of a superannuation scheme by a trust deed as referred to in section 127:
  - (a) the transfer of members of, or contributors to, an STC scheme from that scheme to the new superannuation scheme,
  - (b) the rights of persons who are eligible to become members of the new superannuation scheme to remain as members of, or contributors to, an STC scheme,
  - (c) the transfer of assets and liabilities of an STC scheme, in respect of transferred members or contributors or former members or contributors, to the new superannuation scheme,

- (d) the payment of pensions and other benefits in respect of former members of, or former contributors to, an STC scheme under the new superannuation scheme,
  - (e) the funds and reserves to be established in respect of the new superannuation scheme,
  - (f) the preservation or deferral of benefits of persons transferring to the new superannuation scheme,
  - (g) the entitlements, rights and obligations of a member of, or contributor to, an STC scheme who joins the new superannuation scheme,
  - (h) the provision of services in relation to the new superannuation scheme by SAC (or its successors),
  - (i) the deeming of employers to be no longer employers under an STC scheme where all the relevant employees are transferred from the STC scheme to the new superannuation scheme.
- (2) A regulation made under this section has effect despite any provision of an Act under which an STC scheme is constituted.

**128A Mobility between public sector schemes and EISS and LGSS**

- (1) In this section:

***electricity industry superannuation scheme*** means the scheme established under a trust deed entered into by the Treasurer and Energy Industries Superannuation Scheme Pty Ltd, as trustee.

***local government superannuation scheme*** means the scheme established under a trust deed entered into by the Treasurer and LGSS Pty Ltd, as trustee.

***transfer option*** means a right conferred by subsection (2) or (3).

- (2) An employee who:

- (a) is a member of or contributor to an STC scheme by reason of employment with a prescribed public sector employer, and
- (b) subsequently transfers employment to an employer that is responsible for the payment of benefits in respect of the electricity industry superannuation scheme or the local government superannuation scheme, and
- (c) meets the eligibility requirements of regulations made under subsection (4),

has a right to transfer from the STC scheme to the electricity industry superannuation scheme or the local government superannuation scheme, as the case may be.

- (3) An employee who:
- (a) in accordance with regulations made under section 128 or 128B, or by the exercise of an option under this Act or any Act establishing an STC scheme, has transferred from an STC scheme to the electricity industry superannuation scheme or the local government superannuation scheme, and
  - (b) subsequently transfers employment from an employer that is responsible for the payment of benefits in respect of either of those schemes to a prescribed public sector employer, and
  - (c) meets the eligibility requirements of regulations made under subsection (4),  
has a right to transfer from either the electricity superannuation industry scheme or the local government superannuation scheme to an STC scheme of which the employee was previously a member or to which the employee previously contributed.
- (4) Regulations may be made for or with respect to eligibility to exercise a transfer option, and for or with respect to:
- (a) prescribing public sector employers for the purposes of subsections (2) (a) and (3) (b), and
  - (b) defining, for the purposes of subsections (2) (b) and (3) (b), the circumstances in which a transfer of employment is taken to have occurred, and
  - (c) prescribing or providing for the determination of:
    - (i) the manner and form in which, and the time within which, a transfer option may be exercised, and
    - (ii) the terms and conditions on which membership of the scheme to which a person transfers under a transfer option is available, and
  - (d) the transfer of assets and liabilities (relating to the person concerned) of the scheme from which a person is transferred under a transfer option to the scheme to which the person is so transferred, and
  - (e) the rights and obligations of a person exercising a transfer option, and of any associated beneficiaries, in respect of the person's membership of or contributions to the scheme from which the person is transferred under the option, and in particular:
    - (i) the preservation or deferral of a benefit in that scheme, and
    - (ii) the calculation of any benefit so preserved or deferred, and
    - (iii) the payment of any such benefit to the scheme to which the person is transferred, and

- (f) providing for the resolution, by a prescribed authority or person, of all or any prescribed class of disputes concerning the entitlements or obligations of a person exercising a transfer option or any associated beneficiary and arising under the scheme from which the person is transferred under the option, and
  - (g) liability for payment of employer contributions, benefits, insurance premiums or other employer superannuation liabilities payable during any period, or in respect of any period, during which a transfer option may be exercised (whether or not that option is exercised).
- (5) Regulations made for the purposes of subsection (4) (e) that make provision for or with respect to preserving or deferring a benefit in the scheme from which a person exercising a transfer option is transferred may provide for the payment of such a benefit in spite of any minimum qualifying period of membership or of making contributions, or other limitation prescribed by that scheme, that would otherwise prevent or restrict the preservation or deferral of benefits in it.
- (6) Regulations made under this section with respect to a transfer option may confer the option on an employee whose transfer of employment (as referred to in subsections (2) (b) and (3) (b)) took place before the regulation took effect.
- (7) This section has effect despite any provision of an Act under which an STC scheme is constituted or of the trust deeds constituting the electricity industry and local government superannuation schemes.

**128B Provisions consequent on extension of superannuation schemes to additional persons**

- (1) Regulations may be made for or with respect to the following matters, in relation to the extension of the application of a superannuation scheme established under a trust deed approved by the Minister under section 127 (the **trust deed scheme**) to additional persons:
- (a) the transfer of any such persons who are members or former members of, or contributors or former contributors to, an STC scheme from that scheme to the trust deed scheme,
  - (b) the rights of the persons (if any) to remain as members of, or contributors to, an STC scheme,
  - (c) the transfer of assets and liabilities of an STC scheme, in respect of any such persons who are transferred members or contributors or former members or contributors, to the trust deed scheme,
  - (d) the payment of pensions and other benefits in respect of any such persons who are former members of, or former contributors to, an STC scheme under the trust deed scheme,

- (e) the preservation or deferral of benefits of persons transferring to the trust deed scheme,
- (f) the entitlements, rights and obligations of any such persons who are members or former members of, or contributors or former contributors to, an STC scheme,
- (g) liability for payment of employer contributions, benefits, insurance premiums or other employer superannuation liabilities payable during any period, or in respect of any period, during which a transfer option may be exercised (whether or not that option is exercised).

(2) A regulation made under this section has effect despite any provision of an Act under which an STC scheme is constituted.

### **128C Conversion of FSS Trustee Corporation into proprietary company**

Schedule 2A has effect.

### **129 Regulations**

- (1) 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.
- (2) In particular, the regulations may make provision for or with respect to:
  - (a) the administration of the funds and accounts maintained under this Act and the Acts under which the STC schemes are established,
  - (b) the procedure of the STC board.

### **129A Prudential standards or reporting and auditing requirements**

- (1) The Minister may, by order published in the Gazette, declare that prudential standards, or reporting and auditing requirements, specified or described in the order are standards or requirements that apply to STC in the exercise of any principal function of STC described in the order.
- (2) Before making an order under this section, the Minister is to consult STC on the proposed standards or requirements.
- (3) An order under this section takes effect on the day specified in the order.
- (4) STC, and any person carrying out a principal function on behalf of STC, must comply with any standard or requirement applied to STC under this section.

### **130 Repeals**

The following Acts are repealed:

*Superannuation Administration Act 1991 No 96*

*Superannuation Administration Amendment Act 1995 No 29.*

**131 Savings and transitional provisions**

Schedule 3 has effect.

**132 (Repealed)**

**133 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

**Schedule 1 (Repealed)**

**Schedule 2 Provisions relating to STC Board**

(Section 69)

**Part 1 Definitions**

**1 Definitions**

In this Schedule:

**Chairperson** means the Chairperson of the Board.

**Board** means the STC Board.

**member** means a member of the Board, including the Chairperson.

**Part 2 Members**

**2 Terms of office of members**

Subject to this Schedule, a member holds office for such period (not exceeding 4 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

**3 Remuneration**

A member is entitled to be paid such remuneration (including travelling and subsistence



allowances) as the Minister may from time to time determine in respect of the member.

#### **4 Deputies**

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.
- (2) In the absence of a member, the member's deputy:
  - (a) may, if available, act in the place of a member, and
  - (b) while so acting, has all the functions of the member and is taken to be a member.
- (3) The deputy of a member who is the Chairperson does not (because of this clause) have the member's functions as Chairperson.
- (4) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

#### **5 Full-time member**

- (1) The Board may determine additional functions to be performed by the person holding the office of full-time employee representative member.
- (2) The full-time employee representative member is to report to the Board in respect of the performance of the additional functions.

#### **6 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or
  - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Board for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or

(h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or

(i) becomes a disqualified person within the meaning of Part 15 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

(2) The Minister may remove a member from office at any time for any or no reason and without notice.

## **7 Filling of vacancy in office of member**

(1) If the office of any member becomes vacant, the Minister must arrange for a suitably qualified person to be appointed to fill the vacancy in accordance with this Act within 60 days after the date on which the vacancy occurred.

(2) Subclause (1) does not apply if the term of office of the member concerned was due to expire within 60 days after the vacancy occurred.

## **8 Disclosure of pecuniary interests**

(1) If:

(a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a member at a meeting of the Board that the member:

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee (if any) determined by the Board.

- (4) After a member has disclosed the nature of any interest in any matter, the member must not, unless the Board otherwise determines:
  - (a) be present during any deliberation of the Board with respect to the matter, or
  - (b) take part in any decision of the Board with respect to the matter.
- (5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Board for the purpose of making the determination, or
  - (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board.
- (7) This clause does not apply to or in respect of an interest of a member in a matter or thing which arises merely because the member is a contributor to a superannuation scheme.

## **9 Effect of certain other Acts**

- (1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.
- (3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

## **Part 3 Procedure**

### **10 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

## **11 Quorum**

The quorum for a meeting of the Board is 6 members, of whom at least one must be an employer representative and at least one must be an employee representative.

## **12 Presiding member**

(1) A meeting of the Board is to be presided over by:

(a) the Chairperson, or

(b) in the absence of the Chairperson, a member elected by the members present at the meeting.

(2) The presiding member has a deliberative vote.

## **13 Voting**

A decision supported by two-thirds of the members of the Board is the decision of the Board.

## **14 Transaction of business otherwise than at ordinary meetings**

(1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members for the time being. A resolution approved in writing by a two-thirds majority of those members is taken to be a decision of the Board.

(2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of:

(a) the approval of a resolution under subclause (1), or

(b) a meeting held in accordance with subclause (2),

the members have the same voting rights as they have at an ordinary meeting of the Board.

(4) Papers may be circulated among members for the purposes of subclause (1) by fax or other transmission of the information in the papers concerned.

## **15 First meeting**

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

## **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.

**Editorial note—**

For the order under this clause see Gazette No 49 of 7.4.2006, p 2032.

## **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 3 Savings and transitional provisions**

(Section 131)

### **Part 1 Preliminary**

#### **1 Savings and transitional regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts:

*Superannuation (Axiom Funds Management Corporation) Act 1996*

*Superannuation Legislation Amendment (Miscellaneous) Act 2001* (but only to the extent that it amends this Act)

*Superannuation Administration Amendment Act 2004*

*Superannuation Legislation Amendment Act 2005*, but only to the extent to which it amends this Act

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

*Superannuation Administration Amendment (Trust Deed Schemes) Act 2006*

*Superannuation Legislation Amendment Act 2007*

any other Act that amends this Act

- (2) Any such savings or transitional provision may, if the regulations so provide, take

effect on the date of assent to this Act or the *Superannuation (Axiom Funds Management Corporation) Act 1996* or a later date.

- (3) To the extent to which any such savings or transitional 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 or an 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 or an 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 the enactment of this Act and the Superannuation (Axiom Funds Management Corporation) Act 1996**

### **2 Definitions**

In this Part:

**AFMC** means the Axiom Funds Management Corporation established by the *Superannuation (Axiom Funds Management Corporation) Act 1996*.

**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.

**business undertaking** of a body means all the assets, rights and liabilities of the body.

**Corporation** means the State Superannuation Investment and Management Corporation constituted by the *Superannuation Administration Act 1991*.

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

**PSES Board** means the Public Sector Executives Superannuation Board constituted by the *Public Sector Executives Superannuation Act 1989*.

**SAA** means the Superannuation Administration Authority formerly established by this Act, and dissolved by the *Superannuation Administration Authority Corporatisation Act 1999*.

**SAS Board** means the State Authorities Superannuation Board continued by the *Superannuation Administration Act 1991*.

**State tax** means application or registration fees, stamp duty or any other tax, duty, fee or charge imposed by any Act or law of the State.

**the 1991 Act** means the *Superannuation Administration Act 1991*.

**transferred employee** means a member of staff of the SAS Board, the PSES Board or the Corporation transferred by order under clause 16.

### **3 State Authorities Superannuation Board**

- (1) A person who, immediately before the repeal of the 1991 Act, held office as a trustee of the SAS Board:
  - (a) ceases to hold that office, and
  - (b) is eligible (if otherwise qualified) to be appointed as a member of the STC Board or the FTC Board under this Act.
- (2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office.

### **4 References to State Authorities Superannuation Board**

On and from the repeal of the 1991 Act, a reference in any Act (other than this Act) or in any instrument made under any Act or in any other instrument of any kind to the State Authorities Superannuation Board is to be read:

- (a) as a reference to STC, if the reference is to the Board in its capacity as trustee of, or in relation to any of its functions relating to, any of the STC funds or the STC schemes, and
- (b) as a reference to FTC, if the reference is to the Board in its capacity as trustee of, or in relation to any of its functions relating to, the First State Superannuation Scheme or the First State Superannuation Fund established under the *First State Superannuation Act 1992*.

### **5 State Superannuation Investment and Management Corporation**

- (1) A person who, immediately before the repeal of the 1991 Act, held office as a director of the Board of the Corporation:
  - (a) ceases to hold that office, and
  - (b) is eligible (if otherwise qualified) to be appointed as a member of the STC Board or the FTC Board under this Act or the AFMC Board under the *Superannuation (Axiom Funds Management Corporation) Act 1996*.
- (2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office.
- (3) A person who holds office as the Managing Director of the Corporation and who so ceases to hold office is not entitled to any remuneration or compensation because of

the loss of that office under the *Public Sector Management Act 1988*.

## **6 References to State Superannuation Investment and Management Corporation**

On and from the repeal of the 1991 Act, a reference in any Act (other than this Act) or in any instrument made under any Act or in any other instrument of any kind to the State Superannuation Investment and Management Corporation is to be read:

- (a) except as provided by paragraph (c), as a reference to STC or FTC, if the reference to the Corporation relates to any of its functions relating to the investment of any of the STC or FTC funds, respectively, or related functions, or
- (b) except as provided by paragraph (c), as a reference to SAA, if the reference relates to any of its functions relating to the administration of the STC Schemes, the Public Sector Executives Superannuation Scheme established under the *Public Sector Executives Superannuation Act 1989* or the First State Superannuation Scheme established under the *First State Superannuation Act 1992*, or
- (c) as a reference to AFMC, if the reference to the Corporation relates to any of its functions relating to any assets, rights or liabilities of the Corporation transferred to AFMC by clause 11.

## **7 Public Sector Executives Superannuation Board**

- (1) A person who, immediately before the repeal of Part 2 of the *Public Sector Executives Superannuation Act 1989* by this Act, held office as a member of the PSES Board:
  - (a) ceases to hold that office, and
  - (b) is eligible (if otherwise qualified) to be appointed as a member of the FTC Board or the STC Board under this Act.
- (2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office.

## **8 References to Public Sector Executives Superannuation Board**

On and from the repeal of Part 2 of the *Public Sector Executives Superannuation Act 1989* by this Act, a reference in any Act (other than this Act) or in any instrument made under any Act or in any other instrument of any kind to the Public Sector Executives Superannuation Board is to be read as a reference to FTC.

## **9 Trustees' role**

- (1) For the avoidance of doubt, it is declared that STC and its predecessors have always held the STC funds in trust for the persons entitled to receive benefits under the STC schemes.
- (2) For the avoidance of doubt, it is declared that FTC and its predecessors have always



held the FTC funds in trust for the persons entitled to receive benefits under the FTC schemes.

#### **10 Assets of SAS Board and PSES Board**

- (1) Any assets, rights or liabilities that are part of the business undertaking of the SAS Board or the PSES Board may be transferred to STC, FTC, AFMC or SAA, as directed by the Minister by order in writing.
- (2) An order under this section may be made before, on or after the commencement of any provision of this Act or the *Superannuation (Axiom Funds Management Corporation) Act 1996*.
- (3) An order may specify the consideration on which the order is made and the value or values at which the assets, rights or liabilities are transferred.

#### **11 Assets of the Corporation**

- (1) Any assets, rights or liabilities that are part of the business undertaking of the Corporation are to be transferred to STC, FTC, AFMC or SAA, as directed by the Minister by order in writing.
- (2) An order under this section may be made before, on or after the commencement of any provision of this Act or the *Superannuation (Axiom Funds Management Corporation) Act 1996*.
- (3) An order may specify the consideration on which the order is made and the value or values at which the assets, rights or liabilities are transferred.

#### **12 Vesting of undertaking**

- (1) When any part of the business undertaking of the SAS Board, the PSES Board or the Corporation is transferred by an order made under clause 10 or 11, the following provisions have effect (subject to the order directing the transfer):
  - (a) the assets of the SAS Board, the PSES Board or the Corporation comprised in that part of the undertaking vest in the transferee by force of this clause and without the need for any conveyance, transfer, assignment or assurance,
  - (b) the rights and liabilities of the SAS Board, the PSES Board or the Corporation comprised in that part of the undertaking become by force of this clause the rights and liabilities of the transferee,
  - (c) all proceedings relating to that part of the undertaking commenced before the transfer by or against the SAS Board, the PSES Board or the Corporation and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,

- (d) anything done or omitted to be done in relation to that part of the undertaking before the transfer by, to or in respect of the SAS Board, the PSES Board or the Corporation is (to the extent that it has any force or effect) taken to have been done or omitted to be done by, to or in respect of the transferee,
  - (e) a reference in any other Act, in any instrument, made under any Act or in any document of any kind to the SAS Board, the PSES Board or the Corporation is (to the extent that it relates to that part of the undertaking but subject to the regulations) to be read as, or as including, a reference to the transferee.
- (2) The operation of this clause is not to be regarded:
- (a) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (b) 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.
- (3) The operation of this section is not to be regarded as an event of default under any contract or other instrument.
- (4) No attornment to the transferee by a lessee from the SAS Board, the PSES Board or the Corporation is required.
- (5) Any instrument executed only for:
- (a) a purpose ancillary to or consequential on the operation of this clause, or
  - (b) the purpose of giving effect to this clause,
- is not chargeable with State tax.

### **13 Delegations**

- (1) A delegation effected by the SAS Board of a function related to the STC schemes or STC funds, and in force immediately before the repeal of the 1991 Act, is taken to have been effected under this Act by STC (but only if STC could have lawfully made the delegation under this Act).
- (2) A delegation effected by the SAS Board of a function related to the FTC schemes or FTC funds, and in force immediately before the repeal of the 1991 Act, is taken to have been effected under this Act by FTC (but only if FTC could have lawfully made the delegation under this Act).
- (3) A delegation effected by the PSES Board of a function related to the Public Sector Executives Superannuation Scheme established under the *Public Sector Executives Superannuation Act 1989*, and in force immediately before the repeal of Part 2 of the

*Public Sector Executives Superannuation Act 1989*, is taken to have been effected under this Act by FTC (but only if FTC could have lawfully made the delegation under this Act).

- (4) A delegation continued by this clause may be revoked or amended in the same way as any delegation made under this Act.

#### **14 Annual reports and other matters of trustee**

- (1) If, before the commencement of this clause, the SAS Board, or the PSES Board, has not complied with a requirement made by or under an Act relating to an annual report or a statement of accounts, being a report or statement required to be made in respect of a period which expired before that day, the relevant trustee must comply with the requirement despite the repeal.
- (2) The relevant trustee is STC, in relation to a report or statement relating to an STC fund or scheme, or FTC, in relation to a report or statement relating to an FTC fund or scheme.
- (3) The first annual report and statement of accounts of STC and FTC after the commencement of the relevant provisions of this Act must deal with any matters relating to the SAS Board or the PSES Board (other than matters dealt with in the report referred to in subclause (1)) that would have been required to be included in an annual report or statement of accounts of the SAS Board or the PSES Board had the former Act and provisions relating to the PSES Board contained in the *Public Sector Executives Superannuation Act 1989* not been repealed.

#### **15 Annual reports and other matters of Corporation**

- (1) If, before the repeal of the 1991 Act, the Corporation has not complied with a requirement made by or under an Act relating to an annual report or a statement of accounts, being a report or statement required to be made in respect of a period which expired before that day, SAA must comply with the requirement despite the repeal.
- (2) The first annual report and statement of accounts of SAA after the commencement of the relevant provisions of this Act must deal with any matters relating to the Corporation (other than matters dealt with in the report referred to in subclause (1)) that would have been required to be included in an annual report or statement of accounts of the Corporation had the former Act not been repealed.

#### **16 Transfer of staff from repealed bodies**

- (1) The Minister may, by order in writing, direct that a member of staff of the SAS Board is to be taken to be an employee of FTC or STC by virtue of this clause.
- (2) The Minister may, by order in writing, direct that a member of staff of the PSES Board

is to be taken to be an employee of FTC or STC by virtue of this clause.

- (3) The Minister may, by order in writing, direct that a member of staff of the Corporation is to be taken to be an employee of SAA or AFMC by virtue of this clause.
- (4) In this section, a reference to a member of staff includes a reference to an employee of another Government agency whose services are being made use of by virtue of the 1991 Act or the *Public Sector Executives Superannuation Act 1989*.

#### **17 Conditions of employment of transferred employees**

- (1) Except as otherwise provided by this Act or the regulations, the terms and conditions of employment of a transferred employee (including conditions as to remuneration and duration of employment) are to be the same as they were immediately before the commencement of the relevant order under clause 16 and are to continue to have effect.
- (2) Neither the contract of employment nor the period of employment of each transferred employee is taken to have been broken by the operation of this Act for the purposes of any law, award or agreement relating to the employment of that employee.
- (3) The transfer of a transferred employee does not affect any right to leave of absence (including long service leave) accrued before the repeal of the 1991 Act.
- (4) The terms and conditions of employment referred to in subclause (1) may be varied but only by the means by which they could be varied immediately before the commencement of this clause.

#### **18 Superannuation—employer's liability**

- (1) If, before the repeal of the 1991 Act:
  - (a) a person died or retired or was retrenched, and
  - (b) at the date of death, retirement or retrenchment:
    - (i) the person was an employee of the SAS Board, the PSES Board or the Corporation, or
    - (ii) the SAS Board, the PSES Board or the Corporation was, for the purposes of any superannuation scheme, the employer of the person,

then, for the purposes of the Act by or under which the scheme is established, the relevant body is, on and after the day on which the 1991 Act is repealed, taken to be the employer in the service of whom the person was employed at the date of death, retirement or retrenchment for the purposes of any provision in that Act under which payments may be required to be made by the employer of that person in respect of that scheme.

- (2) For the purposes of this section, the relevant body:
  - (a) in relation to a person whose employer was the SAS Board is STC, and
  - (b) in relation to a person whose employer was the Corporation is SAA, and
  - (c) in relation to a person whose employer was the PSES Board is FTC.

## **19 Appeals**

- (1) An appeal pending immediately before the repeal of the 1991 Act under any provision of that Act may be dealt with and determined as if that Act had not been repealed.
- (2) (Repealed)

## **20 Contracts**

- (1) Any contract for the performance of services entered into with the SAS Board by another person or body (other than the Corporation), and in force immediately before the repeal of the 1991 Act and relating to the STC schemes, becomes, on the repeal of that Act, a contract for the performance of services entered into with STC.
- (2) Any contract for the performance of services entered into with the SAS Board or the PSES Board by another person or body (other than the Corporation), and in force immediately before the repeal of the 1991 Act and relating to the FTC schemes, becomes, on the commencement of this subclause, a contract for the performance of services entered into with FTC.
- (3) Any contract for the performance of services entered into with the Corporation by another person or body (other than the SAS Board or the PSES Board), and in force immediately before the repeal of the 1991 Act and relating to the investment of the FTC or STC funds or related matters, becomes, on the repeal of that Act, a contract for the performance of services entered into with STC, in relation to STC funds or related matters, or FTC, in relation to FTC funds or related matters.
- (4) Any contract for the performance of services entered into with the Corporation by another person or body (other than the SAS Board or the PSES Board), and in force immediately before the repeal of the 1991 Act and relating to the scheme administration of the FTC or STC schemes or related matters, becomes, on the repeal of that Act, a contract for the performance of services entered into with SAA.
- (5) Despite subclauses (3) and (4), a contract for the performance of services entered into with the Corporation by another person or body (other than the SAS Board or the PSES Board), and in force immediately before the repeal of the 1991 Act and relating to an asset, right or liability of the Corporation transferred to AFMC under clause 11, becomes, on the transfer, to the extent that it so relates, a contract entered into with AFMC.

- (6) Any contract for the performance of services entered into with the Corporation by the SAS Board or the PSES Board, and in force immediately before the repeal of the 1991 Act and relating to the scheme administration of the FTC or STC schemes or related matters, becomes, on the repeal of that Act, a contract for the performance of services entered into with SAA by FTC or STC, respectively.

## **21 Effect of organisational changes**

- (1) This section applies to the following:
- (a) the repeal of the 1991 Act, the amendment of the *Public Sector Executives Superannuation Act 1989* by this Act and the operation of this Schedule, and
  - (b) the establishment of STC, FTC, SAA and AFMC, and
  - (c) any agreement or other arrangement entered into for purposes connected with a matter referred to in paragraph (a) or (b).
- (2) None of the matters or things referred to in subclause (1) are to be regarded:
- (a) as a breach of a contract or of an arrangement, or
  - (b) as giving rise to any right or remedy by a party to a contract or other arrangement, or
  - (c) as a breach of confidence or a civil wrong.

## **22 Amalgamated funds**

For the avoidance of doubt, it is declared that for any period during which superannuation funds were treated as one fund under:

- (a) section 20 of the 1991 Act before its amendment by the *Superannuation Administration Amendment Act 1995*, or
- (b) section 19 of the *Superannuation Administration Act 1987* before its repeal by the 1991 Act,

those funds were part of an amalgamated fund.

## **23 State Super Financial Services Limited**

For the purposes of this Act, State Super Financial Services Limited is taken to be a company established by STC and STC is taken to have power to establish such a company.

## **24 Union representation**

- (1) This clause applies to the following trade unions:
- (a) The Federated Municipal and Shire Council Employees' Union of Australia, New

South Wales Division,

(b) The Public Service Association of New South Wales.

(2) Each trade union to which this clause applies:

(a) may have employees of SAA as members, and

(b) may represent the interests of employees of SAA in industrial matters,

whether or not any such power or authority is conferred by the rules of the union or any Act or law.

### **Part 3 Provisions consequent on the enactment of the [Superannuation Legislation Amendment Act 2005](#)**

#### **25 Definition**

In this Part:

**the 2005 Act** means the [Superannuation Legislation Amendment Act 2005](#).

#### **26 Delegations**

- (1) The amendments made by the 2005 Act to sections 4, 22, 32, 35, 40, 67, 77, 80 and 88 apply to a dispute that occurred but has not been determined before the commencement of those amendments.
- (2) The amendments made by the 2005 Act to those sections do not apply to a dispute determined before the commencement of those amendments.

#### **27 Disputes determined by FTC**

A dispute under the Acts under which the FTC schemes are established or constituted that was determined by a committee on behalf of FTC before the commencement of the amendments made by the 2005 Act to sections 4, 22, 32, 35 and 40 is taken to have been determined by FTC.

#### **28 Disputes determined by STC**

A dispute under the Acts under which the STC schemes are established or constituted that was determined by a committee on behalf of STC before the commencement of the amendments made by the 2005 Act to sections 4, 67, 77, 80 and 88 is taken to have been determined by STC.

### **Part 4 Provisions consequent on the enactment of the [Superannuation](#)**

## Administration Amendment (Trust Deed Schemes) Act 2006

### 29 Validations

- (1) Any approval given or purported to be given by the Minister under section 127 (1A) of this Act as in force before the commencement of the 2006 amending Act that would have been validly given under that subsection, had the amendments made by the 2006 amending Act been in force when it was given, is validated and is taken to have always been validly given.
- (2) Accordingly, any trust deed the extension of the application of which was approved as referred to in subclause (1) and which would have been validly extended, had the amendments made by the 2006 amending Act been in force when the trust deed was extended, is taken to have always been validly extended.
- (3) In this clause:

**the 2006 amending Act** means the *Superannuation Administration Amendment (Trust Deed Schemes) Act 2006*.

## Part 5 Provisions consequent on the enactment of the Superannuation Legislation Amendment Act 2007

### 30 Indemnification agreements entered into before commencement

- (1) Section 80A, as inserted by the *Superannuation Legislation Amendment Act 2007*, does not prevent STC from indemnifying a person who is or has been an officer of STC against a liability incurred as an officer of STC, without the approval of the Minister, if the indemnity is provided pursuant to a deed or other written agreement entered into by STC before the commencement of section 80A.
- (2) In this clause:

**officer of STC** means the following:

- (a) a member of the STC Board,
- (b) the chief executive officer of STC.

## Schedule 4 (Repealed)