

# Superannuation (Axiom Funds Management Corporation) Act 1996 No 40

[1996-40]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **See also**
  - [Statute Law \(Miscellaneous Provisions\) Bill 2021](#)
  - [Treasury Legislation Amendment \(Miscellaneous\) Bill 2022](#)

### Authorisation

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# Superannuation (Axiom Funds Management Corporation) Act 1996 No 40



New South Wales

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# Superannuation (Axiom Funds Management Corporation) Act 1996 No 40



New South Wales

An Act to establish the Axiom Funds Management Corporation and to provide for its functions; to convert the Corporation to a public company to be known as Axiom Funds Management Limited, and to provide for the future sale of that company; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Superannuation (Axiom Funds Management Corporation) 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 Axiom Funds Management Corporation to provide superannuation investment management services and related services for State public sector superannuation schemes and other superannuation schemes,
- (b) to convert the Axiom Funds Management Corporation to a company limited by shares to be known as Axiom Funds Management Limited,
- (c) to enable the sale of that company and the payment of any proceeds to appropriate State public sector superannuation funds.

#### Note—

The *Superannuation Administration Act 1996* establishes the administrative framework for State public sector superannuation schemes and confers functions on AFMC.

### 4 Definitions

In this Act:

**AFMC** means the Axiom Funds Management Corporation established by this Act.

**AFML** means the company known as Axiom Funds Management Limited established by this Act.

**approved buyer** has the meaning set out in section 58.

**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.

**conversion** means the conversion of AFMC into a public company on the commencement of Division 3 of Part 3.

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

**FTC** means the FSS Trustee Corporation established by the [Superannuation Administration Act 1996](#).

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

- (a) [First State Superannuation Act 1992](#),
- (b) [Public Sector Executives Superannuation Act 1989](#),
- (c) any other Act declared under section 5 of the [Superannuation Administration Act 1996](#) to be an Act for the purposes of the definition of **FTC fund** or **FTC scheme** in section 4 of that Act.

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

**instrument** means an instrument (other than this Act) which creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed, registered or stamped in accordance with any law), and includes any judgment, order or process of a court.

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

**share** means a share in the share capital of a body corporate.

**STC** means the SAS Trustee Corporation continued by the [Superannuation Administration Act 1996](#).

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

**the State of New South Wales** includes the Crown in right of New South Wales and the Government of New South Wales.

## 5 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

### 6-37 (Repealed)

## Part 3 Conversion of AFMC to company (AFML)

### Introductory note—

This Part provides for the conversion of AFMC from a statutory corporation to a company under the *Corporations Law* to be known as Axiom Funds Management Limited (AFML). Part 4 provides for the circumstances of and the mechanism for a sale of AFMC (that is, its privatisation).

## Division 1 Preliminary

### 38 Object of Part

The object of this Part is to convert AFMC from a statutory body to a company under the *Corporations Law*.

### **39 Definition**

In this Part, a reference to **AFMC** is a reference to the body corporate that, immediately before the conversion, exists because of Part 2 (that name being changed on conversion to Axiom Funds Management Limited).

## **Division 2 Creation of capital structure and other steps prior to conversion to public company**

### **40 Share capital of AFML**

- (1) As from the commencement of this Division, AFMC is to have a share capital.
- (2) The nominal share capital is to be the minimum amount that, under the *Corporations Law*, may be the share capital (made up of shares of \$1 each) of a company registered as a public company limited by shares.
- (3) The share capital is to be divided into shares of \$1 each.
- (4) The share capital may be divided into classes of shares.
- (5) Rights may be attached to shares included in a class of shares.
- (6) Anything done under subsection (4) or (5) is to be done by the Minister by order in writing.
- (7) As from the conversion, this section has effect subject to the *Corporations Law* and to the memorandum and articles of AFML.

### **41 Issue of shares in AFML**

- (1) As soon as practicable after the commencement of this Division, AFMC is required to apply the requisite amount of capital in paying up, in full, shares in AFMC.
- (2) The requisite amount of capital is such amount as the Treasurer determines by order in writing. The Treasurer is required to consult with the AFMC Board before making such an order.
- (3) The issue of those shares discharges in full any obligation of AFMC existing before the conversion to repay the capital of AFMC to the State of New South Wales.
- (4) The shares so issued are taken to have been issued for valuable consideration other than cash, being the discharge effected by subsection (3).
- (5) The State of New South Wales is not a member of AFMC at any time before the conversion merely because the State holds shares in AFML.



## **42 Steps to be taken by AFMC before conversion**

- (1) AFMC must, before the conversion:
  - (a) apply to the Australian Securities Commission under section 133 of the *Corporations Law* to be registered as a company limited by shares under Division 3 of Part 2.2 of the *Corporations Law* (Registering non-companies as companies), and
  - (b) apply to that Commission under section 374 of the *Corporations Law* for the reservation of the name “Axiom Funds Management Limited”.
- (2) AFMC is required to lodge with the application for registration as a company:
  - (a) the proposed memorandum and articles of association of AFML, and
  - (b) subject to any order in writing of the Treasurer, the other documents and information required by section 136 of the *Corporations Law* to accompany the application.
- (3) The proposed memorandum:
  - (a) is to specify that the State of New South Wales is to be the sole subscriber to the memorandum and is to take up the number of shares in the capital of AFMC issued under this Division, and
  - (b) is to be signed by the Treasurer on behalf of the State of New South Wales.
- (4) The proposed articles of association:
  - (a) are to provide that the first directors of AFML after the conversion are to be appointed by the Treasurer, and
  - (b) are to be signed by the Treasurer on behalf of the State of New South Wales.
- (5) AFMC is entitled to make the applications, and to lodge the documents, referred to in this section.

## **43 Contents of memorandum and articles**

The memorandum and articles of association of AFML must contain provisions that comply with the requirements of the *State Owned Corporations Act 1989* for the memorandum and articles of association of statutory SOCs contained in section 20Q (4) of, and clauses 2 and 3 (2) of Part 2 of Schedule 6 to, that Act.

## **44 Company name**

The name “Axiom Funds Management Limited” is taken to have been reserved under section 374 of the *Corporations Law* immediately after the making of the application to reserve that name.

## Division 3 Conversion of AFMC to AFML

### 45 AFMC taken to be registered under *Corporations Law* as public company

- (1) On the commencement of this Division:
  - (a) the application for registration as a company referred to in section 42 is taken to have been granted, and
  - (b) AFMC is taken to have been registered under section 137 of the *Corporations Law*:
    - (i) by the name “Axiom Funds Management Limited”, and
    - (ii) as a public company, and a company limited by shares, within the meaning of the *Corporations Law*, and
  - (c) the name “Axiom Funds Management Limited” is taken to have been registered in respect of AFML under section 374 (5) of the *Corporations Law*.
- (2) The date of commencement of AFML’s registration as a company under Division 3 of Part 2.2 of the *Corporations Law* is taken to be the commencement of this Division.
- (3) For the purposes of Division 3 of Part 2.2 of the *Corporations Law*, AFML is taken to have been, immediately before the commencement of this Division, and to be on that commencement, a corporation within the meaning of the *Corporations Law*.

### 46 New name of AFMC

- (1) On the conversion, AFMC’s name is, by force of this subsection, changed to “Axiom Funds Management Limited”.
- (2) Section 382 (4) of the *Corporations Law* applies in relation to the change of name made by subsection (1) as if:
  - (a) AFMC were a company, within the meaning of the *Corporations Law*, when the change was made, and
  - (b) the change was made under the *Corporations Law*.
- (3) This section has effect despite anything in the *Corporations Law*, but nothing in this section prevents:
  - (a) AFML from later changing its name under section 382 of the *Corporations Law*, or
  - (b) the cancellation, under Part 4.2 of the *Corporations Law*, of the registration of a name.
- (4) AFML is not entitled to use in connection with its business a name which suggests that it is associated with the State of New South Wales. This subsection does not apply during any period to which Division 4 applies.

#### **47 Memorandum and articles of AFML to have effect**

- (1) As from the conversion, the proposed memorandum and articles of association lodged under section 42:
  - (a) are respectively the memorandum and articles of association of AFML, and
  - (b) bind AFML and its members accordingly.
- (2) As from the conversion, the *Corporations Law* applies in relation to AFML's memorandum and articles of association as if they had been registered as such under the *Corporations Law*.

#### **48 Membership of AFML**

- (1) The State of New South Wales, as the holder of shares in AFML at the conversion, becomes (by force of this subsection) a member of AFML at the conversion.
- (2) The State of New South Wales is, in relation to membership of AFML, entitled to the same rights, privileges and benefits, and is subject to the same duties, liabilities and obligations, as if it had become a member of AFML under its memorandum and articles of association.

#### **49 Treasurer may act for State as shareholder**

The Treasurer may act for or on behalf of the State of New South Wales in connection with:

- (a) the rights, privileges and benefits, and
- (b) the duties, liabilities and obligations,

of the State as the holder of shares in AFML which were issued to the State under Division 2.

#### **50 Continuity of AFMC and construction of references to AFMC**

- (1) Without limiting any other provision of this Act or the *Corporations Law*, Axiom Funds Management Limited is a continuation of, and the same legal entity as, Axiom Funds Management Corporation (as it existed before the conversion).
- (2) After the conversion, a reference in any other Act or in any instrument made under any Act or in any other document of any kind to Axiom Funds Management Corporation or AFMC is to be read as (or including) a reference to Axiom Funds Management Limited.
- (3) Subsection (2) is to be read subject to section 68 (the provision enabling the making of savings and transitional regulations).

## **51 Continuity of contracts and arrangements**

- (1) Without limiting any other provision of this Act or the regulations, AFML is, on and after the conversion, entitled to the benefit of, and taken to be a party to, any contract or arrangement entered into by AFMC with FTC, STC or any other person and having force immediately before the conversion.
- (2) Section 52 does not affect the operation or continuity of any contract or arrangement referred to in subsection (1) and does not prevent AFML from entering into a contract or an arrangement with FTC, STC or any other trustee under the [Superannuation Administration Act 1996](#).

### **Note—**

This provision ensures that AFML continues to be entitled to the benefit of contracts or arrangements entered into by AFMC under which AFMC provided superannuation scheme investment services.

## **52 Consequential amendments and repeal**

- (1) Schedule 2 has effect.
- (2) Part 2 is repealed.

### **Note—**

Part 2 sets up AFMC as a statutory corporation and is no longer relevant after the conversion to AFML.

## **Division 4 Management of AFML after conversion and before sale**

### **53 When Division applies**

This Division applies during any period after the conversion when the issued shares in AFML are held by the State of New South Wales.

### **54 Ministerial control of AFML**

- (1) The board of directors of AFML is, in the exercise of its functions, subject to the control and direction of the Treasurer.
- (2) Neither the enactment of this section nor the exercise of the Treasurer's powers under this section constitutes the Treasurer as a director of AFML or a person who participates in the management of AFML.
- (3) A director of AFML is not personally liable in any civil or criminal proceedings (including proceedings for a breach of any duty under the [Corporations Law](#)) for anything done or omitted for the purpose only of complying with a direction of the Treasurer under this section.

### **55 Status of AFML**

- (1) AFML is an agency through which the State of New South Wales carries out the

activity of providing superannuation investment management services for State public sector superannuation schemes and other superannuation schemes and for that purpose it is a public authority of the State.

(2) However, AFML:

- (a) is not, and does not represent, the State of New South Wales except by express agreement with the Treasurer, and
- (b) is not exempt from any rate, tax, duty or other impost imposed by or under any law of the State of New South Wales merely because it is a company in which the State holds shares, and
- (c) cannot render the State of New South Wales liable for any debts, liabilities or obligations of AFML,

unless this Act or any other Act or law otherwise expressly provides.

#### **56 Application of certain provisions of [State Owned Corporations Act 1989](#) to AFML**

The following provisions of the [State Owned Corporations Act 1989](#) apply to AFML as if it were a State owned corporation (with or without any modification prescribed by the regulations):

- (a) such of the provisions of Part 4 (Accountability) as are prescribed by the regulations,
- (b) section 20R (Memorandum and articles of subsidiaries) but only in relation to the provisions contained in clauses 2 and 3 (2) of Part 2 of Schedule 7 to that Act,
- (c) section 36 (Application of other Acts),
- (d) any other provision prescribed by the regulations.

### **Part 4 Sale of AFML to private sector**

#### **Division 1 Sale process**

##### **57 Authorisation of sale of AFML**

AFML may be sold to an approved buyer in accordance with this Part.

##### **58 Approved buyers**

For the purposes of this Act, an approved buyer is a person approved as an approved buyer for the purposes of this Act by the Governor-in-Council.

##### **59 Negotiations and agreements for sale of AFML**

- (1) The Premier and the Treasurer (or either of them) are authorised to negotiate, enter into and carry out on behalf of the State an agreement for the sale of the shares in

AFML and the business of AFML and any other associated transactions.

- (2) The Treasurer is authorised to transfer the shares held by the State of New South Wales to an approved buyer in accordance with the terms of the agreement entered into under this section and to enter into and carry out agreements for the transfer of shares to the approved buyer.
- (3) The agreement for sale must provide for the repayment to Treasury Corporation of money loaned by Treasury Corporation to AFML and repayable by AFML as at the sale.

## **60 Application of legislation**

- (1) On and from a day to be appointed by proclamation for the purposes of this section, Division 4 of Part 3 of this Act does not apply to AFML. This section has effect subject to any express provisions of this Act or the regulations.

### **Note—**

Division 4 of Part 3 contains special provisions for the management of AFML while it is owned by the State of New South Wales.

### **Editorial note—**

Day appointed for the purposes of this section: 23.5.1997—see Gazette No 55 of 23.5.1997, p 3021.

- (2) Schedule 3 has effect.

## **61 Amendment of memorandum and articles of association**

- (1) The Treasurer is authorised to take steps before the appointed day under section 60 to make alterations and additions to the memorandum and articles of association of AFML, being alterations and additions contemplated by the agreement made under section 59, whether or not some or all of them are or may be inconsistent with the requirements of this Act or the *State Owned Corporations Act 1989*, or both.
- (2) However, any such inconsistent alterations or additions do not take effect before the appointed day.
- (3) Despite section 172 of the *Corporations Law*, subsection (6) of that section does not apply in relation to any alteration or addition referred to in subsection (1) of this section.

## **62 No government guarantees**

The obligations of AFML are not guaranteed by the State of New South Wales.

## **Division 2 Results of sale**

### **63 Proceeds of sale**

- (1) Any proceeds received for the sale of AFML must be paid to STC as trustee for the STC

schemes, for payment into an STC fund or funds to be paid and apportioned among the funds and reserves as determined by the Treasurer after consulting STC.

- (2) There are to be deducted from these amounts before payment into the STC fund or funds such amount as the Treasurer approves to meet the expenses reasonably incurred in connection with the sale of AFML and repayments to be made as provided for by section 59 (3).

#### **64 Staff**

- (1) On the sale of AFML, each member of staff of AFML continues to be a member of staff of AFML (despite the change of ownership) on the same terms and conditions of employment as applied to the member of staff immediately before the sale and those terms and conditions are to continue to have effect until varied either by agreement or otherwise in accordance with law.
- (2) In subsection (1), a reference to terms and conditions of employment includes (but is not limited to) any right under a contract of employment to additional payments in the nature of incentives or bonus payments.
- (3) Neither the contract of employment nor the period of employment of each member of the staff concerned 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 member of staff.
- (4) Without limiting this section, this Division does not affect any accrued rights that the member of staff concerned had immediately before the sale in relation to any kind of leave.

#### **65 Obligations during period following completion**

Neither the validity nor the enforceability of any clause of an agreement under Division 1 is affected by any law (whether written or unwritten) relating to the alienability of property or restraint of trade.

### **Part 5 Miscellaneous**

#### **66 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.

#### **67 Proceedings for offences**

Proceedings for an offence against this Act are to be dealt with summarily by the Local Court.

## **68 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 procedure of the AFMC Board,
  - (b) provisions of a savings or transitional nature consequent on the enactment of this Act.
- (3) Any such savings or transitional provisions may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (4) 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, AFML, the approved buyer 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, AFML, the approved buyer or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **69 Savings and transitional provisions**

Schedule 4 has effect.

## **70 Protection of contractual and other obligations**

- (1) This section applies to the following:
  - (a) the operation of this Act,
  - (b) the sale of AFML as authorised by this Act,
  - (c) an agreement, a guarantee or other arrangement or transaction, entered into or carried out under this Act for purposes connected with this Act,
  - (d) a disclosure of information made for the purposes of the sale or proposed sale of AFML (including a disclosure in any memorandum of information given to persons expressing an interest in the sale or a disclosure in response to an inquiry made by a prospective purchaser).
- (2) None of the matters or things referred to in subsection (1) are to be regarded as a breach of confidence or otherwise as a civil wrong or as giving rise to a breach or an



offence against a provision of an Act that prohibits or restricts the disclosure of information.

- (3) None of the matters or things referred to in subsection (1) are to be regarded:
- (a) as a breach of contract or another instrument or as requiring any act to be done under an instrument, or
  - (b) as giving rise to any right or remedy by a party to an instrument, or as causing or permitting the termination of an instrument, or
  - (c) as an event of default under an instrument, or
  - (d) as a contravention of section 205 (1) (a) of the *Corporations Law*.
- (4) Subsections (2) and (3) do not affect, and a reference in subsection (3) to an instrument does not include, an agreement, a guarantee or other arrangement or transaction, entered into or carried out under this Act for purposes connected with this Act.
- (5) A reference in subsection (3) to an instrument does not include an Act.
- (6) Subsection (3) (d) has effect despite section 205 (1) (a) of the *Corporations Law*.

## **71 Exemption from tax for conversion documents and other documents**

- (1) In this section:

**exempt matter** means:

- (a) the issue of shares in AFML under Part 3 and the disposal of those shares by the State, or
- (b) the application by AFML under this Act for registration as a company or for the reservation of its name, or
- (c) any other matter related to the conversion of AFMC into a public company under this Act.

**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.

- (2) State tax is not payable in relation to:

- (a) an exempt matter, or
- (b) anything done because of, or for a purpose connected with or arising out of, an exempt matter.

## 72 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 on 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 Provisions relating to AFMC Board

(Sections 17, 19)

### Part 1 Definitions

#### 1 Definitions

In this Schedule:

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

**Board** means the AFMC Board.

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

### Part 2 Members

#### 2 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.

#### 3 Terms of office of members

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise

qualified) for re-appointment.

#### **4 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.

#### **5 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) is 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.

#### **6 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 Minister or 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.

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

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **8 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of 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**

### **9 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.

### **10 Quorum**

The quorum for a meeting of the Board is 4 members.

### **11 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 and, in the event of an equality of votes, has a second or casting vote.

### **12 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

### **13 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 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.

### **14 First meeting**

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

## **Part 4 Chief executive officer of AFMC**

### **15 Term of office**

Subject to this Part, the chief executive officer holds office for such period (not exceeding 5 years) as may be specified in the chief executive officer's instrument of appointment.

### **16 Conditions of employment**

The Board may, with the approval of the Minister, fix the remuneration (including travelling and subsistence allowances) and conditions of employment of the chief executive officer in so far as they are not fixed by or under any other Act or law.

### **17 [Public Sector Management Act 1988](#) not to apply**

The [Public Sector Management Act 1988](#) (Part 8 included) does not apply to the chief executive officer.

### **18 Performance agreements**

The Board may require the chief executive officer to enter into performance agreements.

## **19 Acting chief executive officer**

- (1) The Board may, from time to time, appoint a person to act in the office of chief executive officer during the illness or absence of the chief executive officer. The person, while so acting, has all the functions of the chief executive officer and is taken to be the chief executive officer.
- (2) The Board may remove a person from the office to which the person was appointed under this clause at any time for any or no reason and without notice.
- (3) A person while acting in the office of chief executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Board may from time to time determine.
- (4) For the purposes of this clause, a vacancy in the office of the chief executive officer is regarded as an absence from office of the chief executive officer.

## **Schedule 2 Consequential amendments to other Acts**

(Section 52)

### **2.1 First State Superannuation Act 1992 No 100**

#### **Schedule 1 Employers**

Omit "Axiom Funds Management Corporation" from Part 1.

Insert instead "Axiom Funds Management Limited".

### **2.2 Government and Related Employees Appeal Tribunal Act 1980 No 39**

#### **Schedule 4 Employing authorities**

Omit "Axiom Funds Management Corporation".

Insert instead "Axiom Funds Management Limited".

### **2.3 Public Authorities (Financial Arrangements) Act 1987 No 33**

#### **Schedule 1 Authorities**

Omit "Axiom Funds Management Corporation".

Insert instead "Axiom Funds Management Limited".

## **2.4 Public Finance and Audit Act 1983 No 152**

### **Schedule 2 Statutory bodies**

Omit “Axiom Funds Management Corporation”.

Insert instead “Axiom Funds Management Limited”.

## **2.5 State Authorities Non-contributory Superannuation Act 1987 No 212**

### **Schedule 1 Employers**

Omit “Axiom Funds Management Corporation” from Part 1.

Insert instead “Axiom Funds Management Limited”.

## **2.6 State Authorities Superannuation Act 1987 No 211**

### **Schedule 1 Employers**

Omit “Axiom Funds Management Corporation” from Part 1.

Insert instead “Axiom Funds Management Limited”.

## **2.7 Superannuation Act 1916 No 28**

### **Schedule 3 List of employers**

Omit “Axiom Funds Management Corporation” from Part 1.

Insert instead “Axiom Funds Management Limited”.

## **Schedule 3 Further consequential amendments to other Acts**

(Section 60)

## **3.1 First State Superannuation Act 1992 No 100**

### **Schedule 1 Employers**

Omit “Axiom Funds Management Limited” from Part 1.

## **3.2 Government and Related Employees Appeal Tribunal Act 1980 No 39**

### **Schedule 4 Employing authorities**

Omit “Axiom Funds Management Limited”.



### **3.3 Public Authorities (Financial Arrangements) Act 1987 No 33**

#### **Schedule 1 Authorities**

Omit “Axiom Funds Management Limited”.

### **3.4 Public Finance and Audit Act 1983 No 152**

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### **3.6 State Authorities Superannuation Act 1987 No 211**

#### **Schedule 1 Employers**

Omit “Axiom Funds Management Limited” from Part 1.

### **3.7 Superannuation Act 1916 No 28**

#### **Schedule 3 List of employers**

Omit “Axiom Funds Management Limited” from Part 1.

#### **Schedule 4 Savings and transitional provisions**

(Section 69)

##### **1 Members of AFMC Board**

- (1) A person who, immediately before the conversion of AFMC to AFML, held office as a member of the AFMC Board:
  - (a) ceases to hold that office, and
  - (b) is eligible (if otherwise qualified) to be appointed to the AFML Board.
- (2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office.

##### **2 Application of certain provisions of the [Corporations Law](#)**

- (1) While the State of New South Wales continues to hold all the shares in AFML (being the shares issued to the State under Part 3), sections 186 and 461 (d) of the

*Corporations Law* do not apply in relation to AFML, and section 249 (7) of the *Corporations Law* applies in relation to AFML as if:

- (a) the State of New South Wales were a holding company (within the meaning of section 249 (7) of the *Corporations Law*) of AFML, and
  - (b) the Treasurer were a representative of the State authorised under section 249 (3) of the *Corporations Law*.
- (2) Sections 139 (2) and (3) and 151 (5) of the *Corporations Law* do not apply in relation to AFML.
- (3) For the purposes of Division 2 of Part 5.6 of the *Corporations Law* (Contributories on winding up):
- (a) the State of New South Wales is not (in relation to any period before the conversion) a past member of AFML, and
  - (b) a person is not a past member of AFML merely because he or she was a member of the AFMC Board, or acted as such, before the conversion.
- (4) For the purposes of the *Corporations Law*, accounts and records kept under Part 3 of the *Public Finance and Audit Act 1983* are, after the conversion, taken to be accounting records kept by AFML under a provision of a previous law of the State of New South Wales, being a provision corresponding to section 289 of the *Corporations Law*.
- (5) For the purposes of the *Corporations Law*, a report and financial statements that were prepared under Part 3 of the *Public Finance and Audit Act 1983* in relation to a period and furnished to the Minister on a particular day are, after the conversion, taken to be a profit and loss account of AFML that was:
- (a) made out in relation to that period, and
  - (b) laid before the body at an annual general meeting of the body held on that day.

### **3 Audit**

- (1) As from the conversion, the functions of the Auditor-General under the *Public Finance and Audit Act 1983* are no longer exercisable in respect of AFML, except in respect of whole financial years before the conversion.
- (2) AFML is not required to prepare accounts as at the date of conversion if the conversion occurs during a financial year.

### **4 Superannuation under State public sector schemes**

- (1) This clause applies to a member of staff of AFML who is, immediately before the day appointed for the purpose of section 60, a contributor under an FTC scheme or an STC

scheme.

- (2) Contributors to whom this clause applies cease to be contributors on the day referred to in subclause (1). They are taken to have elected on that day to preserve their superannuation benefits in accordance with the relevant statutory provisions.
- (3) This clause does not affect the provisions of any other Act or regulation relating to the rights of contributors.