

FIRST PRINT

SUPERANNUATION ADMINISTRATION BILL 1991

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are:

- (a) to continue the State Authorities Superannuation Board and confer on it responsibility for the administration of superannuation schemes established under:
- the Police Regulation (Superannuation) Act 1906;
 - the Superannuation Act 1916;
 - the Local Government and Other Authorities (Superannuation) Act 1927;
 - the Transport Employees Retirement Benefits Act 1967;
 - the New South Wales Retirement Benefits Act 1972;
 - the Public Authorities Superannuation Act 1985;
 - the State Public Service Superannuation Act 1985;
 - the State Authorities Superannuation Act 1987;
 - the State Authorities Non-contributory Superannuation Act 1987; and
 - any other Act declared by order of the Governor to be an associated Act for the purposes of the proposed legislation; and
- (b) to constitute the State Superannuation Investment and Management Corporation for the purpose of enabling it to undertake, on behalf of the Board, the day-to-day responsibility for the administration of those superannuation schemes and to invest the various funds established under those schemes and to enable it to undertake, with the concurrence of the Minister and the Treasurer, the administration or management of certain other business undertakings.

The main purpose of the Bill is to ensure that the arrangements for the administration of those superannuation schemes comply with the requirements prescribed by the Occupational Superannuation Standards Act 1987 of the Commonwealth and the regulations under that Act.

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PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

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

Clause 3 defines certain expressions for the purposes of the proposed Act. Among the expressions defined are "associated Acts", "associated superannuation fund", "associated superannuation scheme", "benefit", "director", "superannuation scheme" and "trustee". (An associated Act is one of the Acts specified in the preamble to this Note.)

PART 2—THE STATE AUTHORITIES SUPERANNUATION BOARD**Division 1—Constitution and functions of the Board**

Clause 4 continues the existence of the State Authorities Superannuation Board as a statutory body.

Clause 5 provides that the Board is to consist of 9 trustees appointed by the Governor-in-Council, including 4 to represent the interests of employers and 4 to represent the interests of employees. The other trustee, who is to be the chairperson of the Board, is to be a person who has significant knowledge of, and experience in, the conduct of superannuation schemes, financial management or some other field of commerce. The clause also lays down a procedure for nominating the trustees who are to represent the interests of employees and will give effect to Schedule 1 (Provisions relating to trustees of the Board) and Schedule 2 (Provisions relating to the calling and holding of meetings of the Board). Provision is made so as to allow one of the trustees appointed to represent the interests of employees to be engaged on a full-time basis. The clause enables the trustee who is chairperson of the Board to be the chairperson of the directors of the Corporation. Two other trustees may also be directors, but only during the first year of operation of the proposed Act.

Clause 6 specifies the general functions of the Board. The Board is to be responsible for administering the various superannuation schemes established under the associated Acts ("associated superannuation schemes") and for generally supervising the investment and management of the funds established under those schemes ("associated superannuation funds"). The Board is to be a trustee for the purposes of the Trustee Act 1925 and is to hold the assets of those schemes in trust for the persons entitled to receive superannuation or retirement benefits under the associated Acts. The clause will require the Board to have regard to the interests of those persons when exercising its functions. The Board will also be required to comply with the requirements of the Occupational Superannuation Standards Act 1987 of the Commonwealth.

Clause 7 provides that, when the Board is exercising its functions, it is to have regard to any statement setting out the Government's policy goals or objectives with respect to the superannuation arrangements under the proposed Act and the associated Acts.

Clause 8 will empower the Governor-in-Council, by regulation, to vest in the Board the administration of any superannuation scheme established otherwise than under an associated Act.

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Clause 9 will enable the Board to appoint an investment manager or some other competent person to carry out on behalf of the Board any one or more of the Board's functions with respect to a superannuation scheme established under an associated Act. However, the Board will only be able to exercise this power if it is satisfied that to do so would be in the interests of persons entitled to benefits under the scheme and then only with the consent of the Minister.

Clause 10 will allow the Board to enter into a contract or arrangement with any person to provide for the insurance of members of associated superannuation schemes for the purpose of paying additional death or disability benefits to or in respect of them, or for the management of a scheme providing for the payment of such additional benefits.

Clause 11 will enable the Board to appoint staff.

Clause 12 will enable the Board to appoint agents to act for it.

Clause 13 will enable the Board to engage consultants (such as investment advisers) to assist it.

Clause 14 will enable the Board to establish committees to assist it.

Clause 15 will empower the Board to delegate its functions (other than the power of delegation) to a trustee, to a committee that comprises or includes trustees or to the Corporation.

Clause 16 will allow the Board to compromise and settle claims made against it.

Division 2—Financial provisions relating to the Board

Clause 17 states that "contributor", "employee" and "employer" have in Division 2 of Part 2 of the proposed Act the same meanings as they have for the purposes of the superannuation schemes administered by the Board.

Clause 18 provides for the financial year of the Board.

Clause 19 makes provision for the financial accommodation of the Board and for investment of funds administered by it.

Clause 20 will allow the Board to pool for investment purposes any of the funds administered by it.

Clause 21 will require the Board to continue to maintain the State Authorities Superannuation Administration Account (currently known as the State Authorities Superannuation Management Account).

Clause 22 will require the Board to charge its administration costs in relation to the various superannuation schemes that it administers against the Administration Account. The clause also specifies how those costs are to be funded.

Clause 23 makes special provision for the recovery of administration costs in respect of benefits that have been preserved under various superannuation schemes by persons who ceased to be contributors to those schemes before reaching the early retirement age.

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Clause 24 will continue to require the Board to make contributions to the costs of maintaining and operating the New South Wales Superannuation Office. With the exception of contributions referable to services directly provided to the Board by that Office, the Board will be able to recoup those contributions from employers who are required to contribute to superannuation funds administered by the Board.

Clause 25 provides for the maintenance of accounts and records of the Board.

PART 3—STATE SUPERANNUATION INVESTMENT AND MANAGEMENT CORPORATION

Division 1—Constitution and functions of the Corporation

Clause 26 constitutes the State Superannuation Investment and Management Corporation as a body corporate. The affairs of the Corporation are to be administered by a board of directors as provided by proposed section 27. The Corporation is to be subject to the control and direction of the Minister. However, a direction of the Minister is to be void to the extent that it is inconsistent with a direction of the Board, a contract entered into by the Corporation or a duty, responsibility or obligation imposed by or under the proposed Act or any of the associated Acts.

Clause 27 provides that the board of directors of the Corporation is to consist of 7 directors, including a full-time managing director, a full-time or part-time director (as determined by the Minister) and 5 part-time directors. The directors are to be persons who have experience in, and knowledge of, financial management or some other relevant commercial activity. One of the part-time directors is to be the chairperson of the Corporation.

Clause 28 sets out the functions of the Corporation's managing director.

Clause 29 specifies the functions of the Corporation with respect to the associated superannuation schemes. Subject to the general direction of the Board and the terms of any contract or arrangement entered into under proposed section 9 or 10, the Corporation is to be responsible for the administration of those schemes on behalf of the Board and the investment and management of the associated superannuation funds.

Clause 30 will enable the Corporation, with the concurrence of the Minister and the Treasurer, to enter into agreements or arrangements under which it will undertake the administration or management of certain business undertakings.

Clause 31 will enable the Corporation to appoint staff.

Clause 32 will enable the Corporation to appoint agents.

Clause 33 will enable the Corporation to engage consultants to assist it.

Clause 34 will enable the Corporation to establish committees to assist it.

Clause 35 will empower the Corporation to delegate its functions. However, the Corporation will be allowed to delegate its functions with respect to the administration of an associated superannuation scheme only with the consent of the Board.

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Division 2—Financial provisions relating to the Corporation

Clause 36 provides for the financial year of the Corporation.

Clause 37 will require the Corporation to present to the Minister an annual budget showing estimates of its revenue and expenditure.

Clause 38 makes provision for the financial accommodation of the Corporation and for the investment of funds managed by it.

Clause 39 will allow the Corporation to pool for investment purposes any of the funds that it manages.

Clause 40 will require the Corporation to exercise its functions in accordance with prudent commercial principles and sets out other financial objectives for the Corporation. The clause will empower the Treasurer, in relation to a financial year of the Corporation, to assess an amount to be paid by the Corporation to the Board from any profits for that year derived from the exercise of its functions under proposed section 30 or from accumulated reserves so derived. In addition, the Corporation will also be required to pay to the Board an amount equivalent to the amount of tax that the Corporation would have been required to pay to the Commonwealth Commissioner of Taxation if the Corporation had been a company.

Clause 41 provides that the proceeds from any sale of the Corporation's business undertaking are to be paid to the Board in its capacity as trustee.

Clause 42 provides for the maintenance of accounts and records of the Corporation.

PART 4—MISCELLANEOUS

Clause 43 will continue to empower the Board to resolve disputes arising under enactments under which certain specified superannuation schemes are established.

Clause 44 will continue to confer a right of appeal (to the Industrial Commission) on a person aggrieved by a determination of the Board under proposed section 43.

Clause 45 will allow trustees of the Board or directors of the board of the Corporation and members of staff of the Corporation to hold office in companies.

Clause 46 will protect trustees of the Board, directors of the Corporation, members of the Corporation's staff and agents of, or consultants to, the Board and the Corporation from liability in respect of any alleged conflict of interest, or alleged improper use of information, in the exercise of their functions under or in connection with the proposed Act. The clause further provides for the immunity of those persons from liability for acts or omissions done or omitted in good faith in the performance of those functions, and cures any invalidity that would otherwise affect decisions of the Board or the Corporation in certain circumstances.

Clause 47 provides for the method of service of documents on the Board or the Corporation.

Clause 48 will permit the recovery as a debt of money due to the Board or the Corporation.

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Clause 49 provides that, in legal proceedings regarding certain matters pertaining to the Board or the Corporation, it will not normally be necessary to provide proof of the constitution of the Board or the Corporation or of certain other matters relating to the appointment of trustees or directors, resolutions or quorums at meetings.

Clause 50 deals with coverage of the Corporation's staff by particular trade unions.

Clause 51 enables the Governor-in-Council to make regulations in aid of the proposed Act.

Clause 52 provides for the proposed Act to bind the Crown.

Clause 53 repeals the Superannuation Administration Act 1987, together with 3 amending Acts. The clause also repeals the Superannuation Administration (Staff) Transitional Regulation 1988, which is now spent.

Clause 54 gives effect to Schedule 5, which contains savings and transitional provisions and other provisions of a consequential nature.

Clause 55 gives effect to Schedule 6, which contains consequential amendments to certain other enactments.

Schedule 1 contains provisions relating to the trustees of the Board. The Schedule includes special provisions designed to ensure compliance with the standards prescribed by the Occupational Superannuation Standards Act 1987 of the Commonwealth and the regulations under that Act.

Schedule 2 contains provisions relating to the calling and holding of meetings of the Board. This Schedule also includes special provisions designed to ensure compliance with those standards.

Schedule 3 contains provisions relating to the directors of the board of directors of the Corporation.

Schedule 4 contains provisions relating to the calling and holding of meetings of the board of directors of the Corporation.

Schedule 5 contains appropriate savings and transitional provisions and other provisions consequential on the enactment of the proposed Act.

Schedule 6 sets out the amendments referred to in clause 55.

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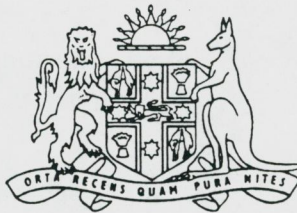
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SUPERANNUATION ADMINISTRATION BILL 1991

NEW SOUTH WALES



No. , 1991

A BILL FOR

An Act to continue the State Authorities Superannuation Board; to provide for the Board to administer certain superannuation schemes and to be trustee for the persons entitled to receive benefits under those superannuation schemes; to constitute the State Superannuation Investment and Management Corporation and to prescribe the functions of the Corporation with respect to those superannuation schemes and other matters; and to provide for ancillary matters.

The Legislature of New South Wales enacts:**PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Superannuation Administration Act 1991.

Commencement

2. (1) Subject to this section, this Act commences on a day or days to be appointed by proclamation.

(2) Section 1 and this section commence on the date of assent to this Act.

(3) For the purpose only of enabling the Board and the board of directors of the Corporation to be constituted in accordance with this Act on or after (but not before) the commencement of the relevant provisions of this Act, appointments may be made under this Act, and any other act, matter or thing may be done, before that commencement as if the whole of this Act had commenced on the date of assent.

(4) No appointment as a trustee or director takes effect before the commencement of the relevant provisions of this Act.

Definitions

3. (1) In this Act:

“**Administration Account**” means the State Authorities Superannuation Administration Account maintained under section 21;

“**Administrative Office**” has the same meaning as in section 3 (1) of the Public Sector Management Act 1988;

“**associated Acts**” means 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;

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- (i) State Authorities Non-contributory Superannuation Act 1987;
- (j) any other Act declared under subsection (3) to be an associated Act for the purposes of this Act;

“associated superannuation fund” means a superannuation fund established or constituted under an associated Act;

“associated superannuation scheme” means a superannuation scheme established under an associated Act;

“benefit” means a pension or lump sum retirement or superannuation benefit;

“Board” means the State Authorities Superannuation Board continued by this Act;

“Corporation” means the State Superannuation Investment and Management Corporation constituted by this Act;

“director” means a director of the board of the Corporation;

“local authority” means the council of a city, municipality or shire;

“public authority” means a person or body constituted or established by an Act for a public purpose;

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

“trustee” means a trustee of the Board.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) The Governor may, by order published in the Gazette, declare to be an associated Act any Act which establishes a superannuation scheme under which employees of the Crown or of a public or local authority are entitled to receive superannuation or retirement benefits.

PART 2—THE STATE AUTHORITIES SUPERANNUATION BOARD

Division 1—Constitution and functions of the Board

The Board (cf. Act No. 210, 1987, s. 4)

4. The corporation constituted by the Superannuation Administration Act 1987 with the corporate name of State Authorities Superannuation Board is continued by this Act.

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Composition and procedure of the Board (cf. Act No. 210, 1987, s. 4)

5. (1) The Board is to consist of 9 trustees appointed by the Governor.

(2) Of the trustees:

- (a) one is to be appointed as the chairperson of the Board; and
- (b) four are to be appointed to represent the interests of employers; and
- (c) four are to be appointed to represent the interests of employees.

(3) All of the trustees are to be appointed on a part-time basis, except that, if the Minister so recommends, one of the trustees referred to in subsection (2) (c) may be appointed on a full-time basis with the title "full-time employee trustee".

(4) A person holding office as full-time employee trustee is, except as permitted by the Board, required to devote the whole of his or her time to looking after the interests of members and beneficiaries of the associated superannuation schemes.

(5) To be eligible for appointment as chairperson of the Board a person must:

- (a) have significant knowledge of, and experience in, the conduct of superannuation schemes, financial management or some other relevant field of commerce; and
- (b) be independent of employers and employees and their respective interests.

(6) One of the trustees referred to in subsection (2) (b) is to be appointed on the recommendation of the Treasurer and the other trustees referred to in subsection (2) are to be appointed on the recommendation of the Minister.

(7) The Minister must not make a recommendation for the appointment of a person as chairperson of the Board without having consulted the Labor Council of New South Wales and sought the endorsement of the Council with respect to the recommendation.

(8) A director is eligible to hold office as a trustee only in so far as this section provides.

(9) The chairperson of the board of directors is eligible to hold office as a trustee if appointed as chairperson of the Board.

(10) One of the part-time directors is eligible to hold office as a trustee who represents the interests of employers and another of those directors is eligible to hold office as a trustee who represents the interests of employees. This subsection expires 12 months from the date on which this section commences.

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(11) Whenever it is necessary to appoint a trustee or trustees referred to in subsection (2) (c):

- (a) the Minister must, by notice in writing, invite the Labor Council of New South Wales to nominate a panel of persons from which the trustee is or the trustees are to be chosen; and
- (b) the Council may nominate a panel in response to the invitation.

(12) If a panel is not nominated within the period or in the manner specified by the Minister in a notice referred to in subsection (11), the Minister may recommend the appointment of the necessary number of trustees representing the interests of employees without recourse to such a panel, and any person appointed in consequence of that recommendation is to be regarded as having been chosen from a properly nominated panel.

(13) Without limiting what may be included in a notice under subsection (11), the notice must specify, as part of the manner of nomination, the minimum number or maximum number (or both) of persons who may be included in the panel.

(14) The maximum number referred to in subsection (13) is 2 more than the number of trustees that, on the particular occasion, are to be appointed as trustees to represent the interests of employees.

(15) Schedule 1 has effect with respect to the trustees.

(16) Schedule 2 has effect with respect to the calling and holding of meetings of the Board.

General functions of the Board (cf. Act No. 210, 1987, ss. 14, 15A)

6. (1) The functions of the Board are:

- (a) to administer the associated superannuation schemes; and
- (b) to supervise the investment and management of the associated superannuation funds; and
- (c) to ensure that benefits payable to the persons entitled to receive benefits under those schemes are paid in accordance with the relevant provisions of the associated Acts; and
- (d) to ensure that other payments required by the associated Acts are made; and
- (e) to administer any superannuation scheme the administration of which is transferred to it in accordance with regulations made under section 8.

(2) The Board has such other functions as are conferred or imposed on the Board by or under this or any other Act, including the associated Acts.

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(3) The Board is a trustee for the purposes of the Trustee Act 1925 and is required to hold in trust for the persons entitled to receive benefits under the associated Acts all assets held by, and all contributions and other money paid or payable to, the Board under this Act and the associated Acts.

(4) The Board must ensure that the assets of the associated superannuation funds are used:

- (a) to pay benefits to or in respect of the persons entitled to receive benefits under the associated superannuation schemes; and
- (b) to pay the costs and expenses of administering those schemes and investing and managing those funds.

(5) The Board has power in New South Wales and elsewhere to do all things necessary or convenient to be done for, or in connection with, the exercise of the functions of the Board and, in particular, may:

- (a) form or establish, or participate in the formation or establishment of, any company whose objects include the establishment of superannuation schemes for the benefit of employees of the Crown or of a public or local authority or for associated objects; and
- (b) subscribe for, invest in or otherwise acquire, and hold or dispose of, shares or debentures of such a company; and
- (c) take appropriate action to control or to enhance or protect the value of any investment made from the associated superannuation funds or to enhance or protect the return on any such investment.

(6) In exercising its functions, the Board must:

- (a) have regard to the interests of the persons entitled to receive benefits under the associated Acts; and
- (b) comply with the requirements of the Occupational Superannuation Standards Act 1987 of the Commonwealth in so far as those requirements are applicable to those schemes.

Board to have regard to certain Government policy statements

7. (1) The Minister may, from time to time, give to the Board a statement in writing specifying the Government's policy goals or objectives with respect to the exercise by the Board of its functions under this Act and the associated Acts.

(2) The Minister is required to lay before each House of Parliament, within 14 sitting days after giving a statement under this section, a copy of the statement.

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(3) If a House of Parliament is not sitting when the Minister seeks to comply with subsection (2), the Minister is required to present a copy of the relevant statement to the Clerk of the House.

(4) 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.

(5) The Board must, when exercising its functions under this Act or under any of the associated Acts, have regard to the contents of a statement given to it under this section if:

- (a) a copy of the statement has been laid or is taken to have been laid before each House of Parliament as provided by this section; and
- (b) the statement is not inconsistent with the provisions of this Act or any of the associated Acts.

Transfer of responsibility for superannuation schemes to the Board
(cf. Act No. 210, 1987, s. 15)

8. The Governor may make regulations for or with respect to the transfer to the Board of responsibility for the administration of any superannuation scheme that is established by or under an Act or any superannuation scheme that makes provision for employees of the Crown or of a public or local authority.

Board may appoint investment managers etc.

9. (1) The Board may, subject to subsection (4), enter into contracts or arrangements with any person:

- (a) under which the person undertakes to carry out on behalf of the Board any one or more of the Board's functions with respect to the administration of an associated superannuation scheme or any other functions of the Board under this or any other Act; or
- (b) for the performance of services.

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(2) The power of the Board under this section to enter into a contract or an arrangement does not extend to conferring on any other person the power of the Board under an associated Act to appoint an actuary or actuaries to conduct an investigation into the state or sufficiency of any fund established under that Act.

(3) A person who enters into a contract or arrangement with the Board under this section has, while acting in accordance with the terms of the contract or arrangement, those functions of the Board specified in the contract or arrangement.

(4) The Board may enter into a contract or an arrangement with a person under this section with respect to the exercise of a function of the Board by another person only if the Board is satisfied that the contract or arrangement is in the interests of the persons entitled to receive benefits under the associated Act or Acts concerned, and then only with the consent of the Minister.

Board may make arrangements etc. for the provision of additional benefits

10. (1) The Board may also enter into a contract or arrangement 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 associated superannuation schemes for the purpose of paying additional death or disability 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 additional benefits to or in respect of any such members.

(2) The Board may enter into a contract or arrangement with a person under this section with respect to the exercise of a function of the Board by another person only if the Board is satisfied that the contract or arrangement is in the interests of the persons entitled to receive benefits under the associated Act or Acts concerned, and then only with the consent of the Minister.

(3) A contract or arrangement entered into under this section may be entered into as part of a contract or arrangement entered into under section 9.

(4) A person who enters into a contract or arrangement with the Board under this section has, while acting in accordance with the terms of that contract or arrangement, those functions of the Board that are specified in the contract or arrangement.

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Staff of the Board (cf. Act No. 210, 1987, s. 9)

11. (1) The Board may, with the approval of the Minister or the public or local authority concerned, arrange for the use of the services of any staff (whether by secondment or otherwise) or facilities of a Government Department, an Administrative Office or a public or local authority.

(2) For the purposes of this Act, a person whose services are made use of under subsection (1) is to be regarded as an employee of the Board.

Board may employ agents (cf. Act No. 210, 1987, s. 10)

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

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

Board may engage consultants etc. (cf. Act No. 210, 1987, s. 11)

13. (1) The Board may engage as consultants (such as investment advisers) persons who have appropriate qualifications and experience.

(2) The engagement of a person under subsection (1) is, where appropriate, subject to sections 9 and 10 so far as those sections are relevant.

Committees of the Board (cf. Act No. 210, 1987, s. 12)

14. (1) The Board may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that none of the members of a committee is a trustee.

(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.

Delegation by the Board (cf. Act No. 210, 1987, s. 13)

15. The Board may delegate to:

(a) a trustee; or

(b) a committee that is comprised of or includes trustees; or

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(c) the Corporation,
any of its functions, other than this power of delegation.

Board may compromise or settle claims (cf. Act No. 210, 1987, s. 25)

16. (1) The Board may compromise or otherwise settle any claim made against it.

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

(3) To the extent that an amount payable by the Board following a compromise or settlement is not a benefit under the relevant associated superannuation scheme, the amount is payable from whichever associated superannuation fund or funds that the Board considers appropriate.

(4) The Board may make such inquiries and investigations with respect to a claim made against it as it thinks fit.

(5) The Board may request a person who has made a claim against it to provide the Board with an authority to obtain from a third person any information or evidence that is relevant to the subject-matter of the claim.

(6) The Board is not obliged to continue to process the claim if the claimant does not comply with a request of the Board under subsection (5).

Division 2—Financial provisions relating to the Board

Definitions (cf. Act No. 210, 1987, s. 16)

17. In this Division, “contributor”, “employee” and “employer” have the same meanings as they have in the associated Acts for the purposes of the associated superannuation schemes.

Financial year of the Board (cf. Act No. 210, 1987, s. 17)

18. The financial year of the Board is the year ending on 31 March, but the Treasurer may determine a different financial year under section 4 (1A) of the Public Finance and Audit Act 1983.

Financial accommodation and investment by the Board (cf. Act No. 210, 1987, s. 18)

19. The Board may:

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

under and subject to the Public Authorities (Financial Arrangements) Act 1987.

Board may pool funds (cf. Act No. 210, 1987, s. 19)

20. The Board may, for the purposes of any provisions of the Public Authorities (Financial Arrangements) Act 1987 relating to investment and for any related purposes, treat as one fund all or any 2 or more of the associated superannuation funds.

Board to maintain Administration Account (cf. Act No. 210, 1987, s. 21)

21. The Board must maintain an account called the State Authorities Superannuation Administration Account.

Administration costs of the Board generally (cf. Act No. 210, 1987, s. 22)

22. (1) The Board must charge administration costs that it incurs (including the remuneration or allowances of the trustees and any expense incurred by the New South Wales Superannuation Office in providing services directly to the Board) against the Administration Account.

(2) The administration costs that the Board incurs in relation to the administration of the Police Superannuation Fund, as determined by the Board, are to be paid from that Fund to the Administration Account.

(3) The administration costs that the Board incurs in relation to the administration of the State Authorities Non-contributory Superannuation Scheme, as determined by the Board, are to be paid to the Administration Account as provided by subsection (4):

- (a) by each employer; or
- (b) where employees are employed by a group of employers, by each group of employers.

(4) The amount that each employer or group of employers is required to pay under subsection (3) is an amount calculated in accordance with the following formula:

$$A_1 = B \times \frac{E}{C}$$

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where:

A_1 represents the amount to be determined;

B represents the administration costs as determined by the Board in administering the State Authorities Non-contributory Superannuation Scheme;

C represents the number of employees who are members of that Scheme during a specified period determined by the Board at a specified time;

E represents the number of employees who, being members of that Scheme, are employed by the employer or group of employers during that period.

(5) After calculating in accordance with subsection (4) the amount payable by an employer or group of employers, the Board must debit the appropriate account, fund or reserve relating to that employer or group.

(6) The following persons and groups are required to pay to the Administration Account the administration costs referred to in subsection (1), other than those referred to in subsections (2) and (3):

(a) each contributor to an associated superannuation scheme;

(b) if a group of contributors contributes to such a scheme, each contributor belonging to the group;

(c) the employer of any such contributor or group of contributors;

(d) if any such contributor or group of contributors is employed by a group of employers, each such group of employers.

(7) The proportion of administration costs payable by a contributor, or by a contributor belonging to a group of contributors, under subsection (6) is an amount calculated in accordance with the following formula:

$$A_2 = \frac{B}{C} \times D$$

where:

A_2 represents the amount to be determined;

B represents the administration costs involved in administering the associated superannuation scheme concerned, as determined by the Board;

C represents the number of contributors to that scheme during a specified period determined by the Board at a specified time;

D represents a factor (less than 1) determined by the Board in relation to those contributors.

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(8) The proportion of administration costs payable by an employer, or by a group of employers, under subsection (6) is an amount calculated in accordance with the following formula:

$$A_3 = \frac{B}{C} \times (1 - D) \times E$$

where:

- A₃ represents the amount to be determined;
- B represents the administration costs involved in managing the associated superannuation scheme concerned, as determined by the Board;
- C represents the number of contributors to that scheme during a specified period determined by the Board at a specified time;
- D represents a factor (less than 1) determined by the Board in relation to those contributors;
- E represents the number of contributors to that scheme who are employed by the employer or group of employers during that period.

(9) After calculating the amount payable by a contributor or by an employer or group of employers under subsection (6), the Board may debit the appropriate account, fund or reserve relating to:

- (a) the contributor or, if the contributor belongs to a group of contributors, that group; or
- (b) the employer or group of employers,

as the case requires.

(10) If the Board receives:

- (a) from a person with whom it has entered into a contract or arrangement under section 9 or 10; or
- (b) from the Corporation under section 29 (4),

a bill of costs relating to the work performed under that contract or arrangement, those costs, when approved by the Board, form part of the administration costs of the Board.

Administration costs of the Board regarding preserved benefits (cf. Act No. 210, 1987, s. 23)

23. (1) In this section, “**preserved benefit**” means:

- (a) in relation to a contributor under an associated superannuation scheme—a benefit for which the contributor has made an election:
 - (i) to take the benefit provided by section 9B of the Police Regulation (Superannuation) Act 1906; or

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- (ii) to take the benefit of Division 3A of Part 4 of the Superannuation Act 1916; or
 - (iii) to make provision for a benefit provided by section 32 of the Public Authorities Superannuation Act 1985; or
 - (iv) to make provision for a benefit provided by section 34 of the State Public Service Superannuation Act 1985; or
 - (v) to make provision for a benefit provided by section 43 of the State Authorities Superannuation Act 1987; or
- (b) in relation to an employee referred to in the State Authorities Non-contributory Superannuation Act 1987—a benefit which is required to be preserved under that Act.
- (2) Administrative charges are payable from time to time in relation to a preserved benefit.
- (3) The Board is to determine administrative charges from time to time for the purposes of this section.
- (4) The Board must debit an administrative charge to the relevant contributor's account under any associated Act or to the amount that is the subject of the preserved benefit.
- (5) The Board must transfer an amount so debited to the Administration Account.

Board to make contribution to costs of the New South Wales Superannuation Office (cf. Act No. 210, 1987, s. 23A)

24. (1) The Board is, as and when directed by the Minister, required to make contributions of specified amounts towards the expense incurred in maintaining and operating the New South Wales Superannuation Office, including the costs of the Board relating to the payment of the contributions.

(2) The contributions referred to in subsection (1) (other than those referable to expenses directly incurred by the New South Wales Superannuation Office in providing services to the Board) are to be met by employers and, where the contributors or employees concerned are employed by groups of employers, by those groups of employers.

(3) In relation to the associated superannuation schemes, each employer or group of employers is required, for the purposes of subsection (2), to pay an amount calculated in accordance with the following formula:

$$A = \frac{B}{C} \times (D - E)$$

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where:

- A represents the amount of the liability of the employer or group of employers under this section;
- B represents the number of persons employed by the employer or group of employers who are contributors to or members of the associated superannuation schemes during a specified period as determined by the Board at a specified date;
- C represents the total number of contributors to or members of the associated superannuation schemes during that period;
- D represents the total expense incurred in maintaining and operating the New South Wales Superannuation Office for the relevant period, including the costs of the Board relating to the payment of the amount;
- E represents such proportion of the total expense incurred in maintaining and operating the New South Wales Superannuation Office (including any expense incurred by that Office in providing services directly to the Board) for the relevant period as does not relate to the administration of associated superannuation schemes.

(4) After calculating the amount payable by an employer or group of employers under subsection (3), the Board must debit the appropriate account, fund or reserve relating to that employer or group.

Accounts and records of the Board (cf. Act No. 210, 1987, s. 24)

25. The Board may maintain its accounts and other records 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.

**PART 3—STATE SUPERANNUATION INVESTMENT AND
MANAGEMENT CORPORATION**

Division 1—Constitution and functions of the Corporation

The Corporation

26. (1) There is established by this Act a corporation with the corporate name of the State Superannuation Investment and Management Corporation.

(2) The affairs of the Corporation are to be administered by a board of directors constituted as provided by section 27.

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(3) Any act, matter or thing done in the name of, or on behalf of the Corporation by the board of directors of the Corporation or with the authority of that board is to be taken to have been done by the Corporation.

(4) The Corporation is, in the exercise of its functions (except in relation to the contents of a report or recommendation that it may make to the Minister), subject to the control and direction of the Minister.

(5) However, the Minister must not give to the Corporation a direction that is inconsistent with:

- (a) any direction given to the Corporation by the Board (being a direction that is properly within the functions of the Board to give); or
- (b) any contract that the Corporation has lawfully entered into; or
- (c) any duty, obligation or responsibility imposed on the Corporation by or under this Act or any of the associated Acts.

(6) Any direction given by the Minister in contravention of subsection (5) is void to the extent of the inconsistency.

(7) Any direction given by the Minister that becomes inconsistent with any direction subsequently given to the Corporation by the Board (being a direction that is properly within the functions of the Board to give) is void to the extent of the inconsistency.

Composition and procedure of the board of directors of the Corporation

27. (1) The board of directors of the Corporation is to consist of 7 directors appointed by the Governor on the recommendation of the Minister.

(2) Of the directors:

- (a) one is to be appointed as managing director of the Corporation; and
- (b) one is to be appointed either as a full-time director or as a part-time director, as specified in his or her instrument of appointment; and
- (c) the remainder are to be appointed as part-time directors.

(3) A person is not eligible for appointment as a director unless he or she has experience in, and knowledge of, financial management or some other relevant commercial activity.

(4) One of the part-time directors is, in the document by which he or she is appointed as a director or in some other document signed by the Governor, to be appointed as the chairperson of the board of directors of the Corporation.

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(5) The Minister must not make a recommendation:

(a) for the appointment of a part-time director (including a part-time director referred to in subsection (2) (b)); or

(b) for the appointment of the chairperson of the board of directors, without having consulted the Labor Council of New South Wales and sought the endorsement of the Council with respect to the recommendation.

(6) A trustee is eligible to hold office as a director only in so far as section 5 provides.

(7) Schedule 3 has effect with respect to the board of directors of the Corporation.

(8) Schedule 4 has effect with respect to the calling and holding of meetings of the board of directors of the Corporation.

Functions of managing director of the Corporation

28. The managing director of the Corporation:

(a) is responsible, as the chief executive officer of the Corporation, for the management of the affairs of the Corporation subject to and in accordance with any directions of the Corporation's board of directors; and

(b) has such other functions as are conferred or imposed on the managing director by or under this or any other Act.

Functions of the Corporation relating to associated superannuation schemes

29. (1) The Corporation has the following functions with respect to the associated superannuation schemes:

(a) subject to the general direction of the Board and to the terms of any contract or arrangement entered into under section 9 or 10, to administer those schemes on behalf of the Board;

(b) to invest and manage the associated superannuation funds in accordance with the directions of the Board.

(2) The Corporation has such other functions with respect to the associated superannuation schemes as are conferred or imposed on it by or under this or any other Act.

(3) The Corporation has power in New South Wales and elsewhere to do all things necessary or convenient to be done for, or in connection with, the exercise of its functions under this section.

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(4) As consideration for doing the things referred to in subsection (1), the Corporation may charge the Board an amount not exceeding what is sufficient to cover:

- (a) the costs that the Corporation has actually incurred in doing those things; and
- (b) any fees or expenses that the Board has agreed to pay to the Corporation for doing those things.

Functions of the Corporation with respect to certain business undertakings

30. (1) The Corporation also has the following functions:

- (a) with the concurrence of both the Minister and the Treasurer, to enter into agreements or arrangements to undertake the whole or a part of the administration or management (or both) of any business undertaking;
- (b) to carry out those agreements or arrangements.

(2) As consideration for entering into an agreement or arrangement to undertake the administration or management of a business undertaking in accordance with this section, the Corporation must charge the person that owns or is responsible for carrying on the undertaking an amount sufficient to cover:

- (a) the costs that the Corporation has actually incurred in administering or managing the undertaking; and
- (b) any other fees or expenses that the person has agreed to pay to the Corporation for administering or managing the undertaking; and
- (c) an appropriate margin of profit.

(3) If a person referred to in subsection (2) does not pay a charge imposed under that subsection as and when required by the Corporation, the Corporation is entitled to recover the charge by making appropriate deductions from any assets that the Corporation is holding in relation to the business undertaking concerned.

(4) Subsection (3) does not prevent the Corporation from recovering a charge imposed under subsection (2) by any other means prescribed by law.

(5) The Corporation may establish and maintain such accounts and reserves as, in the opinion of the Corporation, are necessary or convenient for the administration or management of a business undertaking administered or managed by the Corporation in accordance with this section.

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(6) For the purposes of this section, the Corporation has power to do, in New South Wales or elsewhere, all things necessary or convenient to be done for or in connection with the administration or management of any business undertaking that it has agreed or arranged to administer or manage in accordance with this section.

(7) Without limiting subsection (6), the powers of the Corporation under that subsection include powers:

- (a) to form or establish, or participate in the formation or establishment of, one or more companies; and
- (b) to subscribe for or otherwise acquire, and to hold or dispose of, shares or debentures of a company.

(8) In this section, “**business undertaking**” includes any venture or activity undertaken or carried on by the Crown or by a public or local authority, but does not include the activity involved in operating an associated superannuation scheme.

Staff of the Corporation

31. (1) The Corporation may appoint and employ such employees as may be necessary to enable the Corporation to exercise its functions.

(2) The Corporation may fix the salaries, wages, allowances and conditions of employment of any such employees in so far as they are not fixed by or under another Act or law.

(3) The Corporation may, with the approval of the Minister, arrange for the use of the services of any staff (whether by secondment or otherwise) or facilities of a Government Department, an Administrative Office, or a public or local authority.

(4) For the purposes of this Act, a person whose services are made use of under subsection (3) is to be regarded as an employee of the Corporation.

(5) Without limiting subsections (1) and (3), such staff as may be necessary to enable the Corporation to exercise its functions may be employed under Part 2 of the Public Sector Management Act 1988.

Corporation may employ agents

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

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

(3) The Corporation must obtain the approval of the Board before employing an agent under this section to transact any business or to do any act in connection with the exercise of the functions conferred on the Corporation by section 29.

(4) The Board may give a general or specific approval for the purpose of subsection (3) and may at any time, by notice to the Corporation in writing, withdraw such an approval.

Corporation may engage consultants

33. Subject to any direction of the Board referred to in section 29, the Corporation may engage persons having suitable qualifications and experience as consultants to the Corporation.

Committees of the Corporation

34. (1) The Corporation may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that none of the members of a committee is a director.

(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 Corporation or (subject to any determination of the Corporation) by the committee.

Delegation by the Corporation

35. (1) In relation to the exercise of its functions under section 29, the Corporation may, with the approval of the Board, delegate to:

- (a) a director; or
- (b) a committee comprised of directors or of employees of the Corporation (or both); or
- (c) an employee of the Corporation; or
- (d) a person whose services the Corporation makes use of under this Act,

any of those functions, other than this power of delegation.

(2) In relation to the exercise of its other functions, the Corporation may delegate to any person or group of persons any of those functions, other than this power of delegation.

Division 2—Financial provisions relating to the Corporation**Financial year of the Corporation**

36. The financial year of the Corporation is the year ending on 31 March, but the Treasurer may determine a different financial year under section 4 (1A) of the Public Finance and Audit Act 1983.

Corporation to prepare annual budget

37. The Corporation must:

- (a) as soon as practicable after the commencement of this section, present to the Minister a budget showing estimates of its revenue and expenditure for the balance of the financial year concerned; and
- (b) not later than 3 months before the end of each subsequent financial year, present to the Minister a budget showing estimates of its revenue and expenditure for the forthcoming financial year.

Financial accommodation and investment by the Corporation

38. The Corporation 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.

Corporation may pool funds

39. The Corporation may, for the purposes of any provisions of the Public Authorities (Financial Arrangements) Act 1987 relating to investment and for any related purposes, treat as one fund all or any 2 or more of the funds that it is responsible for administering or managing.

Financial objectives of the Corporation

40. (1) The Corporation must:

- (a) exercise its functions in accordance with prudent commercial principles; and
- (b) endeavour to ensure that, except in relation to its functions with respect to the management of funds established under the associated Acts, the revenue derived from its operations in each financial year of the Corporation exceeds its expenditure for that year.

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(2) In relation to any financial year of the Corporation, the Treasurer may, after consultation with the Corporation, assess an amount to be paid by way of dividend from the profits (if any) derived in that year from the exercise by the Corporation of its functions under section 30, or from the accumulated reserves of the Corporation derived from the exercise of those functions, and notify the Corporation in writing of the assessment.

(3) In relation to the exercise by the Corporation of its functions under section 30, the Corporation must, at such times after the end of each financial year of the Corporation and in such instalments as the Treasurer specifies, pay to the Board for payment exclusively to the associated superannuation funds:

- (a) an amount equivalent to the amount that the Corporation would have been liable to pay for that year under the Income Tax Assessment Act 1936 of the Commonwealth if the Corporation were a company within the meaning of that Act; and
- (b) any amount assessed for that year and notified to the Corporation under subsection (2).

(4) Amounts paid under subsection (3) are to be treated as income derived from the investment of the associated superannuation funds and are to be distributed among the associated superannuation funds in such proportions as the Board considers appropriate.

(5) The Treasurer may, by notice in writing given to the Corporation, advise, in relation to any specified financial year, that it need not make the payment required by subsection (3) or that it is required to make only a specified proportion of that payment.

Proceeds from sale of Corporation's business undertaking to be paid to the Board

41. If the business undertaking of the Corporation is sold, the proceeds of sale are to be paid to the Board in its capacity as trustee.

Accounts and records of the Corporation

42. The Corporation may maintain its accounts and other records 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.

PART 4—MISCELLANEOUS**Board to determine certain disputes** (cf. Act No. 210, 1987, s. 26)

43. (1) This section applies to a dispute under this Act (Part 3 excepted) or under any of the following Acts:

Superannuation Act 1916;

Local Government and Other Authorities (Superannuation) Act 1927;

Transport Employees Retirement Benefits Act 1967;

Police Association Employees (Superannuation) Act 1969;

New South Wales Retirement Benefits Act 1972;

Public Authorities Superannuation Act 1985;

State Public Service Superannuation Act 1985;

State Authorities Superannuation Act 1987;

State Authorities Non-contributory Superannuation Act 1987.

(2) This section also applies to a dispute under the Police Regulation (Superannuation) Act 1906 in relation to any matter, other than a matter relating to or arising from a question of whether or not a member of the Police Service or a former member of the Police Service was hurt on duty.

(3) The Board is required to determine any dispute to which this section applies.

(4) The Board may, in determining such a dispute, 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.

(5) The Board may request a person who has a dispute with the Board to provide the Board with an authority to obtain from a third person any information or evidence that is relevant to the subject-matter of the dispute.

(6) If such a person does not comply with a request of the Board under subsection (5), the Board is not obliged to proceed to determine the dispute concerned.

Appeals from determinations of the Board under sec. 43 (cf. Act No. 210, 1987, s. 27)

44. (1) A person aggrieved by a determination of the Board under section 43 may appeal against the determination to the Industrial Court.

(2) Such an appeal is not valid unless it is made within 6 months after the date of the determination or within such further period as the Industrial Court allows.

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(3) If this section commences before the Industrial Court is established, the references in this section to that Court are to be read as references to the Industrial Commission of New South Wales.

Trustee, director or employee may be director etc. of company (cf. Act No. 210, 1987, s. 29)

45. (1) If the Board so approves, a person who holds office as a trustee may also hold office as an officer of a company.

(2) If the Board so approves, a consultant to the Board may hold office as an officer of a company.

(3) If property is vested in the Board and a company has been formed to manage the property (whether with or without other property), the Board may take such action (for example, as regards shareholding) as may be necessary to qualify it to nominate a person for appointment as an officer of the company.

(4) If the Corporation so approves, a person who holds office as a director, or as an employee of the Corporation, may also hold office as an officer of a company.

(5) If the Corporation so approves, a consultant to the Corporation may also hold office as an officer of a company.

(6) If property is vested in the Corporation and a company has been formed to manage the property (whether with or without other property), the Corporation may take such action (for example, as regards shareholding) as may be necessary to qualify it to nominate a person for appointment as an officer of the company.

(7) In this section, “**officer of a company**” means a director or other person concerned in the management of the company.

Certain persons not to be liable for certain acts etc. (cf. Act No. 210, 1987, s. 30)

46. (1) In this section, “**prescribed person**” means:

- (a) a person who is or acts as a trustee or director; or
- (b) a person who is or acts as a member of the staff of the Board or the Corporation; or
- (c) a person who is an agent of or consultant to the Board or the Corporation and who is for the time being nominated by the Board or the Corporation as being within this section.

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(2) A decision made, or any act or thing done or omitted to be done, by:

- (a) the Board or the Corporation or a prescribed person in the exercise of any function conferred or imposed on the Board or the Corporation or the prescribed person by this Act or any associated Act; or
- (b) a prescribed person in the exercise of any function directly or indirectly connected with the official duties of the prescribed person,

may not be called in question on any of the grounds mentioned in subsection (3).

(3) The grounds are as follows:

- (a) an alleged conflict of interest because the Board, the Corporation or a prescribed person is involved in administering different Acts or different superannuation schemes;
- (b) that knowledge gained by the Board, the Corporation or a prescribed person for the purpose of one such Act or scheme is or may be relevant to the exercise of a function under another such Act or scheme.

(4) No decision made, or act or thing done or omitted to be done, by:

- (a) the Board, the Corporation, a prescribed person, or any other person acting under the direction of the Board or the Corporation, in good faith for the purpose of giving effect to this or any other Act; or
- (b) a prescribed person, or any other person acting under the direction of the Board or the Corporation, in good faith in the exercise of any function directly or indirectly connected with the official duties of the prescribed person or other person so acting,

subjects the prescribed person or other person so acting personally to any action, liability, claim or demand.

(5) A decision made, or any act or thing done or omitted to be done, by the Board or the Corporation in the exercise of a function conferred on it by this Act or any associated Act is not invalidated or prejudiced merely because of a vacancy in the office of a trustee or director.

(6) The Board or the Corporation may make or revoke the nomination for the purposes of this section of a person who is an agent of or a consultant to the Board or the Corporation.

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(7) The protection provided by this section in relation to a decision made, or an act or thing done or omitted, while a person is a prescribed person continues in relation to the person even though the person ceases to be a prescribed person.

Service of documents (cf. Act No. 210, 1987, s. 31)

47. (1) A document may be served on the Board or the Corporation by leaving it at, or by sending it by post to:

- (a) the office of the Board or the Corporation; or
- (b) if the Board or Corporation 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 the Board or the Corporation in any other manner.

Recovery of charges etc. by the Board or the Corporation (cf. Act No. 210, 1987, s. 32)

48. (1) Any charge, fee or money due to the Board or the Corporation may be recovered by the Board or the Corporation as a debt in a court of competent jurisdiction.

(2) Without limiting subsection (1), the Board or the Corporation may recover any money owing to it under this or any other Act, together with interest on the money as provided by subsection (3), as a debt in a court of competent jurisdiction.

(3) Interest at a rate from time to time determined by the Board or the Corporation is payable on any amount referred to in subsection (2) calculated from the date on which the amount became due for payment until the date on which the amount is recovered under that subsection or is otherwise paid.

Proof of certain matters not required (cf. Act No. 210, 1987, s. 33)

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

- (a) the constitution of the Board or the board of directors of the Corporation; or
- (b) any resolution of the Board or the board of directors of the Corporation; or
- (c) the appointment of, or the holding of office by, any trustee or director; or

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- (d) the presence or nature of a quorum at any meeting of the Board or the board of directors of the Corporation.

Union representation (cf. Act No. 210, 1987, s. 34)

50. (1) This section 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 section applies:

- (a) may have employees of the Corporation as members; and
- (b) may represent the interests of employees of the Corporation in industrial matters,

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

Regulations (cf. Act No. 210, 1987, s. 35)

51. (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 use and custody of the seal of the Board or the Corporation; and
- (b) the procedure of the Board or the board of directors of the Corporation; and
- (c) the administration of the funds and accounts maintained under this Act and the associated Acts; and
- (d) the functions of companies established in accordance with the powers conferred by sections 6 and 30.

Act to bind the Crown

52. This Act binds the Crown, not only in right of New South Wales, but also, so far as the legislative powers of Parliament permit, the Crown in all its other capacities.

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Repeals

53. (1) The following Acts are repealed:

- (a) the Superannuation Administration Act 1987;
- (b) the Superannuation Administration (Amendment) Act 1988;
- (c) the Superannuation Administration (Amendment) Act 1989;
- (d) the Superannuation Administration (Amendment) Act 1990.

(2) The Superannuation Administration (Staff) Transitional Regulation 1988 is repealed.

Savings, transitional and other provisions

54. Schedule 5 has effect.

Consequential amendments to other Acts

55. Each Act specified in Schedule 6 is amended as set out in that Schedule.

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SCHEDULE 1—PROVISIONS RELATING TO TRUSTEES OF THE BOARD

(Sec. 5 (15))

Chairperson of the Board

1. (1) The Governor may at any time remove a person from the office of chairperson of the Board.
- (2) A person who ceases to be chairperson of the Board also ceases to be a trustee.
- (3) A person who is chairperson of the Board vacates the office of chairperson if:
 - (a) the Governor removes that person from that office; or
 - (b) the person resigns that office by notice in writing addressed to the Governor or the Minister; or
 - (c) the person ceases to be a trustee.

Acting trustees

2. (1) The Minister may, from time to time, appoint a person to act in the office of a trustee during the illness or absence of the trustee, and the person, while so acting, has all the functions of the trustee and is to be regarded as a trustee.
- (2) The Minister must not make:
 - (a) an appointment under subclause (1) in relation to a trustee who represents the interests of employees without first consulting the Labor Council of New South Wales and obtaining the Council's approval of the appointment; or
 - (b) an appointment under that subclause in relation to the chairperson of the Board without first consulting the Council and seeking the Council's endorsement of the appointment.
- (3) The Minister may remove a person from an office to which the person was appointed under this clause.
- (4) A person while acting in the office of trustee 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 person.
- (5) For the purposes of this clause, a vacancy in the office of trustee is to be regarded as an absence from that office.

Terms of office of trustees

3. Subject to this Act, a trustee holds office for such period, not exceeding 5 years, as may be specified in the trustee's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment as the occasion arises.

Remuneration of trustees

4. A trustee 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 trustee.

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SCHEDULE 1—PROVISIONS RELATING TO TRUSTEES OF THE BOARD—
continued
Vacancy in office of trustee

5. (1) The office of trustee becomes vacant if the trustee:

- (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 Governor under this clause; or
- (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the trustee personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the trustee is excused by the Minister 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 penal servitude or 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) has failed to comply with a requirement of clause 7 of this Schedule or with a direction under clause 6 (3) of Schedule 2.

(2) The Governor may remove a part-time trustee from office at any time.

Filling of vacancy in office of trustee

6. (1) If the office of any trustee 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 trustee concerned was due to expire within 60 days after the vacancy occurred.

Trustees to disclose pecuniary interests

7. (1) If:

- (a) a trustee has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board; or
- (b) the interest appears to give rise to a conflict with the proper performance of the trustee's duties in relation to the consideration of the matter,

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

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SCHEDULE 1—PROVISIONS RELATING TO TRUSTEES OF THE BOARD—
continued

- (2) A disclosure by a trustee at a meeting of the Board that the trustee:
- (a) is a director, 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 or thing 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) The Board must cause particulars of any disclosure made under this clause to be recorded in a book kept for the purpose and must ensure that that book is kept open at all reasonable hours to inspection by any person.

(4) After a trustee has disclosed the nature of an interest in any matter or thing, the trustee 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 purpose of making a determination by the Board under subclause (4), a trustee 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 other trustees for the purpose of making the determination; or
- (b) take part in the making by the other trustees 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 trustee (being the provision of goods or services to the trustee by the Board) if the goods or services are, or are to be, available to members of the public on the same terms and conditions as those on which the goods or services are provided to the trustee.

(8) This clause does not apply to or in respect of an interest of a trustee in a matter or thing which arises merely because the trustee is a contributor to an associated superannuation scheme.

(9) A reference in this clause to a meeting of the Board includes a reference to a meeting of a committee of the Board.

Effect of certain other Acts on the status of trustees

8. (1) Part 2 of the Public Sector Management Act 1988 does not apply to the appointment of a trustee.

(2) If by or under any other 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

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SCHEDULE 1—PROVISIONS RELATING TO TRUSTEES OF THE BOARD—
continued

- (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 trustee or from accepting and retaining any remuneration payable to the person under this Act as a trustee.
- (3) The office of a trustee is not, for the purposes of any Act, an office or place of profit under the Crown.

SCHEDULE 2—PROVISIONS RELATING TO THE CALLING AND
HOLDING OF MEETINGS OF THE BOARD

(Sec. 5 (16))

General procedure of the Board

1. 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.

Quorum for meetings of the Board

2. The quorum for a meeting of the Board is 6 trustees.

Presiding trustee at meetings of the Board

3. A meeting of the Board is to be presided over by the chairperson of the Board or, in the absence of the chairperson, by a trustee chosen to preside at the meeting by the trustees present at the meeting.

Voting at meetings of the Board

4. (1) A decision of the Board is not effective unless it is supported by the votes of not fewer than 6 of the trustees cast at a meeting of the Board at which a quorum is present.
- (2) The chairperson of the Board has a deliberative vote only.

Minutes to be kept of meetings of the Board

5. The Board must cause full and accurate minutes to be kept of each meeting of the Board.

Conflicts of interest

6. (1) If:
- (a) a person holds office both as a trustee and as a director; and

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SCHEDULE 2—PROVISIONS RELATING TO THE CALLING AND HOLDING
OF MEETINGS OF THE BOARD—*continued*

- (b) in the course of the Board's proceedings it appears to the chairperson of the Board that, in relation to any matter that the Board is considering, the interests of that person in his or her capacity as a director conflict with his or her duties as a trustee,

the chairperson must direct that the person not participate in, or be present during, that part of the proceedings during which the matter is being considered by the Board.

(2) The chairperson of the Board may give a direction under subclause (1) on his or her own initiative or on the motion of another trustee.

(3) A trustee must comply with a direction given to him or her under subclause (1).

SCHEDULE 3—PROVISIONS RELATING TO THE BOARD OF
DIRECTORS OF THE CORPORATION

(Sec. 27 (7))

Definitions

1. In this Schedule:
 - “board” means the board of directors of the Corporation;
 - “full-time director” includes the managing director.

Employment of full-time directors

2. The employment of a full-time director is subject to Part 2A of the Public Sector Management Act 1988, but is not subject to Part 2 of that Act.

Chairperson of the board of the Corporation

3. (1) The Governor may at any time remove a person from office as chairperson of the board.

(2) The removal of a person from office under subclause (1) does not of itself affect the person's appointment as a director.

(3) A person who is the chairperson of the board vacates office as chairperson if:

- (a) the Governor removes the person from that office; or
- (b) the person resigns from that office by instrument in writing addressed to the Minister; or
- (c) the person ceases to be a part-time director.

Acting directors

4. (1) The Minister may, from time to time, appoint a person to act in the office of a director during the illness or absence of the director, and the person, while so acting, has all the functions of the director and is to be regarded as a director.

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**SCHEDULE 3—PROVISIONS RELATING TO THE BOARD OF DIRECTORS
OF THE CORPORATION—*continued***

(2) The Minister must not make an appointment under subclause (1) in relation to a part-time director referred to in section 27 (2) without first consulting the Labor Council of New South Wales and seeking the Council's endorsement of that appointment.

(3) The Minister may remove a person from an office to which the person was appointed under this clause.

(4) A person while acting in the office of director 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 person.

(5) For the purposes of this clause, a vacancy in the office of director is to be regarded as an absence from that office.

Terms of office of directors

5. Subject to this Act, a part-time director holds office for such period, not exceeding 5 years, as may be specified in the director's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment as the occasion arises.

Remuneration of directors

6. A part-time director 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 director.

Vacancy in office of part-time director

7. (1) The office of a part-time director becomes vacant if the director:

- (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 Governor under this clause; or
- (e) is absent from 4 consecutive meetings of the board of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the director is excused by the Minister 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 penal servitude or 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

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SCHEDULE 3—PROVISIONS RELATING TO THE BOARD OF DIRECTORS
OF THE CORPORATION—*continued*

- (i) has failed to comply with a requirement of clause 9 of this Schedule.
- (2) The Governor may remove a part-time director from office at any time.

Filling of vacancy in office of director

8. (1) If the office of any director 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 director concerned was due to expire within 60 days after the vacancy occurred.

Directors to disclose pecuniary interests

9. (1) If:

- (a) a director has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the board; or
- (b) the interest appears to give rise to a conflict with the proper performance of the director's duties in relation to the consideration of the matter,

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

(2) A disclosure by a director at a meeting of the board that the director:

- (a) is a director, 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 or thing 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) The board must cause particulars of any disclosure made under this clause to be recorded in a book kept for the purpose and must ensure that that book is kept open at all reasonable hours to inspection by any person.

(4) After a director has disclosed the nature of an interest in any matter or thing, the director 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 purpose of making a determination by the board under subclause (4), a director 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 other directors for the purpose of making the determination; or
- (b) take part in the making by the other directors of the determination.

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**SCHEDULE 3—PROVISIONS RELATING TO THE BOARD OF DIRECTORS
OF THE CORPORATION—*continued***

(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 director (being the provision of goods or services to the director by the board) if the goods or services are, or are to be, available to members of the public on the same terms and conditions as those on which the goods or services are provided to the director.

(8) This clause does not apply to or in respect of an interest of a director in a matter or thing which arises merely because the director is a contributor to an associated superannuation scheme.

(9) A reference in this clause to a meeting of the board includes a reference to a meeting of a committee of the board.

Effect of certain other Acts on the status of directors

10. (1) Part 2 of the Public Sector Management Act 1988 does not apply to the appointment of a part-time director.

(2) If by or under any other 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 part-time director or from accepting and retaining any remuneration payable to the person under this Act as such a director.

(3) The office of part-time director is not, for the purposes of any Act, an office or place of profit under the Crown.

**SCHEDULE 4—PROVISIONS RELATING TO THE CALLING AND
HOLDING OF MEETINGS OF THE BOARD OF DIRECTORS OF THE
CORPORATION**

(Sec. 27 (8))

Definition

1. In this Schedule, “board” means the board of directors of the Corporation.

General procedure of the board of directors of the corporation

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

Quorum at meetings of the board of directors of the Corporation

3. The quorum for a meeting of the board is 4 directors.

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SCHEDULE 4—PROVISIONS RELATING TO THE CALLING AND HOLDING
OF MEETINGS OF THE BOARD OF DIRECTORS OF THE CORPORATION—
continued

Presiding director at meetings of the board of directors of the Corporation

4. A meeting of the board is to be presided over by the chairperson of the board or, in the absence of the chairperson, by a director chosen to preside at the meeting by the directors present at the meeting.

Voting at meetings of the board of directors of the Corporation

5. (1) 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.

(2) The chairperson of the board has a deliberative vote only.

Minutes to be kept of meetings of the board of directors of the Corporation

6. The board must cause full and accurate minutes to be kept of each meeting of the board.

First meeting of the board of directors of the Corporation

7. The Minister must call the first meeting of the board in such manner as the Minister thinks fit.

SCHEDULE 5—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 54)

PART 1—GENERAL**Definitions**

1. (1) In this Schedule:

“former Act” means the Superannuation Administration Act 1987;

“transferred employee” means a person who, in accordance with clause 9 of this Schedule, becomes an employee of the Corporation.

(2) In this Schedule, a reference to the repeal of the former Act is, if different days are appointed for the repeal of different provisions of that Act, a reference to the repeal of the relevant provision or provisions of that Act.

Savings and transitional regulations

2. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to this Act or a later date.

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SCHEDULE 5—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

(3) To the extent to which a provision referred to in subclause (1) takes effect from 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**

Termination of office of certain full-time members of Board

3. (1) A person who, immediately before the commencement of section 5, held office as a member of the Board on a full-time basis ceases to hold that office on that commencement.

(2) A person who so ceases to hold office as a member of the Board is not entitled to any remuneration or compensation because of the loss of that office, except as provided by Part 2A of the Public Sector Management Act 1988. For the purposes of that Part of that Act, the person is taken to have been removed from office under section 42Q of that Act.

Termination of office of certain part-time members of the Board

4. (1) A person who, immediately before the commencement of section 5, held office as a part-time member of the Board ceases to hold that office on that commencement.

(2) A person who so ceases to hold office as a member of the Board is not entitled to any remuneration or compensation because of the loss of that office.

Board's role as trustee for persons entitled to receive benefits

5. For the avoidance of doubt, it is declared that the Board and its predecessors have always held the associated superannuation funds in trust for the persons entitled to receive benefits under the associated Acts.

Annual reports etc.

6. (1) If, before the repeal of the former Act, the 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 Board must comply with the requirement despite that repeal.

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SCHEDULE 5—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

(2) The first annual report and statement of accounts of the Board after the commencement of the relevant provisions of this Act must deal with any matters relating to the 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 Board had the former Act not been repealed.

Delegations

7. A delegation effected by the Board and in force immediately before the repeal of the former Act is to be taken to have been effected under this Act (but only if the Board could have lawfully made the delegation under this Act).

Administration Account

8. (1) The State Authorities Superannuation Management Account established under section 21 of the former Act becomes, on the repeal of that section, the State Authorities Superannuation Administration Account referred to in section 21 of this Act.

(2) Any payments that had been approved by the Board before the repeal of the former Act and not paid before that repeal are payable from the Administration Account maintained under section 21 of this Act.

Transfer of staff

9. Any member of the staff of the Board employed under subsection (1) of section 9 of the former Act immediately before the repeal of that section becomes, on the repeal of that section, an employee of the Corporation employed under section 31 (1) of this Act.

Conditions of employment of transferred staff

10. (1) Except as otherwise provided by this Schedule 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 repeal of section 9 of the former Act, and are to continue to have effect until varied either by agreement or otherwise in accordance with law.

(2) The provisions of clause 35 (Long service leave—preserved arrangement) and clause 45 (Sick leave—payment for untaken sick leave) of Industrial Agreement No. 7720 of 9 March 1987 continue, in relation to a transferred employee to whom they applied immediately before the repeal of the former Act, to regulate the matters which they regulate, until more favourable provision is made in relation to those matters by a variation referred to in subclause (1).

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SCHEDULE 5—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
*continued***Previous service and accrued leave**

11. (1) Service of a transferred employee with the Board is to be treated as service with the Corporation for the purpose of any Act or of any regulation, by-law or other statutory instrument or of the terms and conditions of any staff agreement or of any industrial award or agreement.

(2) The transfer of a transferred employee to the service of the Corporation does not affect any right to leave of absence (including long service leave) accrued before the repeal of the former Act.

(3) The Board is liable to meet the cost of providing to a transferred employee any long service leave that had accrued to that employee before the repeal of the former Act.

Superannuation—employer's liability

12. If, before the repeal of the former 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 Board; or

(ii) the Board was, for the purposes of any superannuation scheme, the employer of the person,

then, for the purposes of the Act by or under which that scheme is established, the Corporation is, on and after the day on which the former Act was repealed, to be 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.

Appeals

13. An appeal pending before the Industrial Commission immediately before the repeal of the former Act under any provision of that Act may be dealt with and determined as if that Act had not been repealed.

Transfer of certain assets of the Board to the Corporation

14. (1) As soon as practicable after the repeal of the former Act, the Board must make available to the Corporation (whether by transfer, lease, loan or otherwise) assets of the Board to enable the Corporation to carry out its functions under section 29.

(2) The assets referred to in subclause (1) are to be such as agreed on by the Board and the Corporation and are to be made available on such terms and conditions as may be so agreed.

(3) The Board and the Corporation may also enter into an agreement as to the transfer to the Corporation of any of the Board's liabilities.

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SCHEDULE 5—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

Contracts

15. (1) Any contract for the performance of services entered into with the Board and in force immediately before the repeal of the former Act becomes, on the repeal of that Act, a contract for the performance of services entered into with the Corporation.

(2) Any other contract (other than a contract of employment) entered into with the Board and in force immediately before the repeal of the former Act continues, on the repeal of that Act, as a contract entered into with the Board.

Approved Deposit Fund

16. (1) The approved deposit fund established under section 20 of the former Act and called State Super ADF is continued by this Act.

(2) State Super Financial Services Limited is authorised to continue to maintain and operate the fund referred to in subclause (1).

(3) For the purposes of this Act, State Super Financial Services Limited is to be taken to be a company established by the Board under the power conferred on it by section 6 (5).

(4) The Superannuation Administration (Approved Deposit Fund) Regulation 1990 continues in force as if it had been made under this Act and as if this Act had been in force when it was made.

SCHEDULE 6—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

(Sec. 55)

Coal and Oil Shale Mine Workers (Superannuation) Act 1941 No. 45

Section 3 (Special provisions as to calculation of periods of employment):

From section 3 (6) (k) (iii), omit "and managed".

Freedom of Information Act 1989 No. 5

Schedule 2 (Exempt Bodies and Offices):

After "The State Authorities Superannuation Board—investment function.", insert:

The State Superannuation Investment and Management Corporation—investment functions.

Government and Related Employees Appeal Tribunal Act 1980 No. 39

Schedule 4 (Employing Authorities):

Insert in alphabetical order:

State Superannuation Investment and Management Corporation.

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SCHEDULE 6—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS—
continued

Local Government and Other Authorities (Superannuation) Act 1927 No. 35

(1) Section 3 (Definitions):

(a) Omit the definition of "Board", insert instead:

"Board" means the State Authorities Superannuation Board referred to in section 4 of the Superannuation Administration Act 1991.

(b) Before the definition of "Approved", insert:

"Administration Account" means the State Authorities Superannuation Administration Account maintained under the Superannuation Administration Act 1991.

(c) Omit the definition of "Management Account".

(2) Sections 16A (Board may receive commissions etc.), 17 (Expenses of administration) and 17P (Contingent account):

Omit "Management Account" wherever occurring, insert instead "Administration Account".

Police Association Employees (Superannuation) Act 1969 No. 33

Section 2 (Definitions):

From section 2 (1), omit the definition of "Board", insert instead:

"Board" means the State Authorities Superannuation Board referred to in section 4 of the Superannuation Administration Act 1991;

Police Regulation (Superannuation) Act 1906 No. 28

Section 3 (Police Superannuation Fund):

Omit section 3 (3) (c), insert instead:

(c) the administration costs relating to the Fund referred to in section 22 of the Superannuation Administration Act 1991; and

Public Authorities (Financial Arrangements) Act 1987 No. 33

Schedule 1 (Authorities):

Insert in alphabetical order:

State Superannuation Investment and Management Corporation.

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SCHEDULE 6—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS—
continued

Public Authorities Superannuation Act 1985 No. 41

Section 5 (Definitions):

- (a) Omit the definition of "Board" from section 5 (1), insert instead:
"Board" means the State Authorities Superannuation Board referred to in section 4 of the Superannuation Administration Act 1991;
- (b) From section 5 (1), omit the definition of "Management Account".

Public Finance and Audit Act 1983 No. 152

Schedule 2 (Statutory Bodies):

Insert in alphabetical order:

State Superannuation Investment and Management Corporation.

Public Sector Management Act 1988 No. 33

(1) Schedule 3 (Declared Authorities):

After the item relating to the State Rail Authority of New South Wales, insert:

State Superannuation Investment and Management Corporation.

(2) Schedule 3A (Chief Executive Positions):

- (a) From Part 3 (Heads of Public Authorities), omit "President of the State Authorities Superannuation Board".
- (b) In Part 3, insert in alphabetical order:
Managing director of the State Superannuation Investment and Management Corporation.

(3) Schedule 3B (Senior Executive Positions):

- (a) From Part 1 (Positions (other than statutory positions)), omit the matter relating to the State Authorities Superannuation Board.
- (b) In Part 1, after the matter relating to the State Rail Authority, insert:
State Superannuation Investment and Management Corporation
Secretary and Director, Corporate Services
Director, Information Technology and Chief Accountant
Director, Internal Audit
Director, Superannuation Administration Division
Director, Policy and Research
Director, Superannuation Legal Services
Director, Superannuation Accounting

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SCHEDULE 6—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS—
continued

Director, Marketing and Advisory

Manager, Information Services

Manager, Corporate Accounting

- (c) From Part 2 (Statutory positions), omit:

Full-time member of the State Authorities Superannuation Board

Vice-President of the State Authorities Superannuation Board

- (d) In Part 2, after “Deputy General Manager of the Motor Accidents Authority”, insert:

Any full-time director of the State Superannuation Investment and Management Corporation (other than the managing director of the Corporation)

State Authorities Non-contributory Superannuation Act 1987 No. 212

- (1) Section 3 (Definitions):

From section 3 (1), omit the definition of “Board”, insert instead:

“**Board**” means the State Authorities Superannuation Board referred to in section 4 of the Superannuation Administration Act 1991;

- (2) Section 9 (Funds etc.):

From section 9 (3) (a), omit “State Authorities Superannuation Management Account established under the Superannuation Administration Act 1987 management costs calculated in accordance with that Act”, insert instead “State Authorities Superannuation Administration Account maintained under the Superannuation Administration Act 1991 administration costs incurred by the Board”.

- (3) Section 10 (Reserves for employers):

From section 10 (4) (b), omit “management costs calculated in accordance with the Superannuation Administration Act 1987”, insert instead “administration costs incurred by the Board under the Superannuation Administration Act 1991”.

- (4) Section 20 (Application of payments):

Omit “managed”, insert instead “administered”.

- (5) Section 24 (Benefit to be preserved):

From section 24 (3) (d), omit “managed”, insert instead “administered”.

- (6) Section 25 (Preservation of benefit):

- (a) From section 25 (1), omit “Superannuation Administration Act 1987”, insert instead “Superannuation Administration Act 1991”.

- (b) From section 25 (1), omit “managed”, insert instead “administered”.

Superannuation Administration 1991

SCHEDULE 6—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS—
continued

(7) Schedule 1 (Employers):

From Part 1 (The Crown and other employers), omit "State Authorities Superannuation Board", insert instead "State Superannuation Investment and Management Corporation".

State Authorities Superannuation Act 1987 No. 211

(1) Section 3 (Definitions):

- (a) In section 3 (1) after the definition of "additional benefit levy", insert:
"Administration Account" means the State Authorities Superannuation Administration Account maintained under the Superannuation Administration Act 1991;
- (b) From section 3 (1), omit the definition of "Board", insert instead:
"Board" means the State Authorities Superannuation Board referred to in section 4 of the Superannuation Administration Act 1991;
- (c) From section 3 (1), omit the definition of "Management Account".

(2) Section 11 (Establishment of the Fund):

- (a) From section 11 (1), omit "manage", insert instead "administer".
- (b) From section 11 (4) (a), omit "Management Account—management costs calculated in accordance with the Superannuation Administration Act 1987", insert instead "Administration Account—administration costs incurred by the Board under the Superannuation Administration Act 1991".

(3) Section 12 (Contributors' accounts):

Omit section 12 (3) (c), insert instead:

- (c) administration costs incurred by the Board under the Superannuation Administration Act 1991 in relation to the contributor.

(4) Section 14 (Reserves for employers):

Omit section 14 (4) (b), insert instead:

- (b) administration costs incurred by the Board under the Superannuation Administration Act 1991 in relation to the employer or an employer to whom the reserve relates.

(5) Section 15 (Other accounts and reserves):

Omit "management of the Fund and the administration of", insert instead "administration of the Fund and".

Superannuation Administration 1991

SCHEDULE 6—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS—
continued

(6) Schedule 1 (Employers):

From Part 1 (The Crown and other employers), omit "State Authorities Superannuation Board", insert instead "State Superannuation Investment and Management Corporation".

State Public Service Superannuation Act 1985 No. 45

Section 5 (Definitions):

- (a) From section 5 (1), omit the definition of "Board", insert instead:

"Board" means the State Authorities Superannuation Board referred to in section 4 of the Superannuation Administration Act 1991;
- (b) From section 5 (1), omit the definitions of "elected member", "full-time elected member" and "part-time elected member".
- (c) In section 5 (1), from the definition of "Fund", omit "managed", insert instead "administered".

Superannuation Act 1916 No. 28

(1) Section 3 (Definitions):

From section 3 (1), omit the definition of "Board", insert instead:

"Board" means the State Authorities Superannuation Board referred to in section 4 of the Superannuation Administration Act 1991.

(2) Section 4 (Reconstitution of the Fund):

Omit section 4 (4) (a), insert instead:

- (a) the administration costs incurred by the Board in relation to the administration of the Fund; and

(3) Section 6 (Contributors' reserve):

Omit section 6 (2) (b), insert instead:

- (b) administration costs incurred by the Board under the Superannuation Administration Act 1991 in relation to contributors; and

(4) Section 7 (Employer reserves):

Omit section 7 (2) (b), insert instead:

- (b) administration costs incurred by the Board under the Superannuation Administration Act 1991 in relation to the employer or an employer to whom the reserve relates; and

Superannuation Administration 1991

SCHEDULE 6—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS—
continued

(5) Schedule 3 (List of Employers):

From Part 1 of Schedule 3 (The Crown and other employers), omit “State Authorities Superannuation Board”, insert instead “State Superannuation Investment and Management Corporation”.

Transport Employees Retirement Benefits Act 1967 No. 96

Section 3 (Definitions):

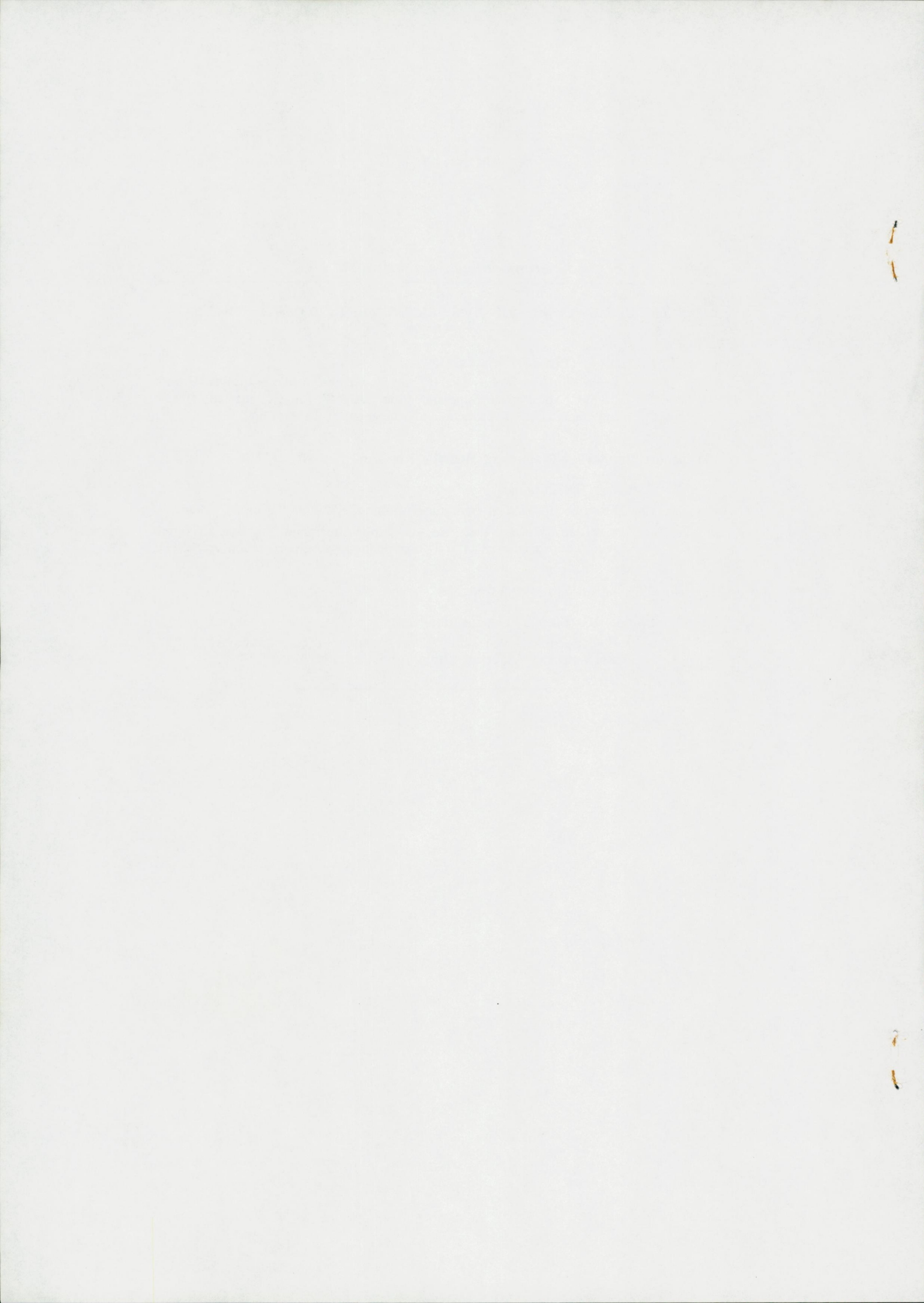
From section 3 (1), omit the definition of “Board”, insert instead:

“Board” means the State Authorities Superannuation Board referred to in section 4 of the Superannuation Administration Act 1991;

Treasury Corporation Act 1983 No. 75

Section 4C (Staff of Corporation etc.):

From section 4C (3), omit “Superannuation Administration Act 1987”, insert instead “Superannuation Administration Act 1991”.



LEGISLATIVE COUNCIL
SUPERANNUATION ADMINISTRATION BILL 1991

SECOND READING SPEECH

Mr President

The Bill before the House addresses the reconstitution of the State Authorities Superannuation Board.

The Government has been considering for some time the introduction of a new management structure for public sector superannuation administration and has had ongoing discussions with the Labor Council to this end. The recent media publicity given to the Board decision to realise a substantial decrease in market value of property investment, resulting in the disappointing earnings performance of the Board for the year ending 31 March 1991, has been a catalyst in finalising these negotiations and proceeding with these proposed amendments at this time. They are also timely in view of the terms of office of the current Board Members, being due to expire on 31 March 1992. There are, of course, considerably more important objectives to be achieved by this legislation.

The new arrangements will bring the structure of the New South Wales public sector superannuation administration into accord with the essential responsibilities it is expected to serve.

The Board, as presently constituted, is the outcome of a series of amalgamations of four previous statutory superannuation boards and funds, culminating in 1987 legislation which produced the State Authorities Superannuation Scheme. This scheme was introduced to provide universal coverage for all New South Wales public sector employees.

The State Authorities Superannuation Board of today is one of the largest superannuation and funds management organisations in Australia, managing schemes that cover over 400,000 State employees and commands assets of over \$10 billion.

For some time the Government has been concerned over the potential incompatibility of the Board's organisational structure with its aim of serving the proper interests for which it was established. The Board currently combines the functions of trustee and management. There is significant potential for confusion of focus and conflict in the duties and goals of each function.

The need to clearly differentiate these roles and responsibilities has been acknowledged by the Labor Council of New South Wales.

The true role of the Board would have been considered by most to have been that of husbanding and protecting the interests of the Scheme's contributors and members. Yet, there is a legal view that casts doubt on whether the role of the Board can be seen as that of Trustee whose prime duty is always to act in the interests of contributors and members of

the schemes it manages.

Again, with a monopolistic, closely integrated structure such as the present Board, which is a large independent authority having multiple functions, there is a danger that the original purpose for which the organisation was set up - in this case the serving of the interests of members and contributors - can become obscured or less focused and can be potentially subordinated to the self-interest of the organisation.

Mr President, the Minister for Industrial Relations is not inferring that this in fact has happened. But the way has been left open for it to happen and this legislation will change the structure to ensure that it will not happen. This Bill seeks to put this matter beyond question, by re-emphasising the trustee role of the Board and by separating the Board from the corporate organisation which undertakes scheme administration and investment management, on behalf of the

Board on a contractual basis. With this new structure, the potential for confusion of functions and duties is removed, because the focus of the new Corporation has been converted, at a stroke, from doing its tasks for their own sake to satisfying the needs of its client.

An allied concern of the Government has been that the superannuation administrative structure itself did not provide an exposure to competition, and therefore could lead to inefficiency. Again this is not to say that the Board is inefficient. Apart from the disappointing investment return during the last financial year, which I have already mentioned and which to a large extent resulted from the recession we had to have, I hasten to remind Members of the outstanding investment record of the Board over the years.

The Government's concern was that the structure itself was not right, and this had to be the case whilst ever the Trustee

Board remained effectively the captive of the scheme administration and fund investment activities undertaken on behalf of that Board. The proposed structure will allow the Trustee Board to review its contractual relationship with the Corporation at any time and will allow the corporate organisation to compete on the open market for its share of the corporate dollar, thus putting it in a better position, by having to cope with the vagaries of the market place, to meet the challenges of today's very tough superannuation and commercial environment.

A further concern with the present structure of the Board relates to the Commonwealth regulatory legislation and taxation.

Following remarks made by the Minister in the other place when introducing the Superannuation Legislation (Amendment) Bill 1991 on 17 October 1991, Members will be

aware of the imposition of Commonwealth Occupational Superannuation Standards on public sector schemes, and their exposure to taxation. These standards highlight the inappropriateness of the conglomerate structure of the State Authorities Superannuation Board in one further area. A key element of the Commonwealth standards is called the 'sole purpose test'. Under the sole purpose test a superannuation fund must be set up for the sole purpose of providing benefits for the members and their dependents.

Views vary as to whether the Board can adequately satisfy this test, but the many investments of the Board involve it directly in business management activities which could be seen as a breach of the 'sole purpose test'. Moreover, should it become necessary to form subsidiary companies to enable the board to avoid breaching the sole purpose test, this would expose the Board to the onerous burdens of company directorship and the corporations law.

The Labor Council agrees that the widening of the Board's horizons is highly desirable but in doing this it would be palliative to remove this burden and cast it upon another structure specifically designed to carry it. The Government, too, would prefer to provide a structure which would put the matter of compliance with the OSSA requirements beyond doubt. Under the proposals, a new Investment and Management Corporation, like the Commonwealth Funds Management Corporation, would be free of the suffocating stultifying OSSA blanket, and able to concentrate on the activities of producing the best and most cost effective scheme management and investment outcomes.

Mr President, having now explained the special purposes of this legislation, I would like to say something of the genesis of its philosophy, and the important contribution made by many people to its development.

The input to the changes being introduced today has been representative of all interested parties. The broad parameters for reform were established following recommendations of the Cabinet Office which took account of Consultants' reports to the Office of Strategic Planning and input from the Treasury, the New South Wales Superannuation Office and the State Authorities Superannuation Board. Following agreement between the Minister for Industrial Relations and the Premier in mid 1990, terms of reference were set for a Working Party to prepare detailed submissions to go to Cabinet. The legislation before the House is based on those submissions.

During the preparation of the legislation and subsequently, there have been negotiations with the Labor Council of New South Wales which have continued over a considerable time. These negotiations have been fruitful and have led to a number of amendments to the legislation to address specific concerns of the public sector unions.

The major concerns of the unions and the Labor Council with the concept of the reconstitution of the Board, have been related to the disbursement of profits and the transfer of the assets of the Board, on the formation of a separate corporate structure. After protracted negotiations, the Government, in the interests of securing passage of the Bill, has agreed with regard to the profits to be made by the Corporation, that it is appropriate for those profits to be paid into the funds under management of the Corporation and treated as earnings on investment. The Government has also agreed that the transfer of the assets from the Board to the new Corporation will be on terms and conditions that the Board itself agrees upon with the Corporation.

A similar concern of the Labor Council was the distribution of proceeds from the sale of the Corporation should this take place sometime in the future. Whilst this remains as a remote possibility for the Government and one that is not envisaged,



the legislation states that the proceeds from any such sale are to be paid to the Board in its trustee capacity. I should point out that legislation will in any case be needed for this exercise, however remote, because of the application of the State Owned Corporations Act 1989.

These three matters represent significant changes to the original draft of the Bill made following negotiations with the Labor Council of New South Wales. The decision to allow the profits of a statutory corporation to be directed to the various public sector funds administered by the Board rather than to Treasury, represents a major concession by the Government.

It should therefore be clear to Honourable Members that the Government is indeed genuine in its motives for the proposed changes to the structure of the Board, and has the best interests of those 400,000 public employees in mind, in introducing the legislation before the House.

Having covered these preliminary issues, I turn to the legislation itself.

The Government's objectives, to overcome the structural problems of the State Authorities Superannuation Board that the Minister in the other place has identified, are essentially threefold:

- to separate the trustee role from the scheme management and investment roles, and thus remove the potential for conflict;
- to unequivocally restate the trustee responsibility for providing for the benefits of scheme members and contributors; and
- to establish a separate facility for superannuation management and investment on a competitive and

commercially oriented footing.

Mr President, the legislation before the House addresses the first objective by doing two things which essentially underlie the whole of this reorganisation. First, the Board is to be reconstituted from 1 April 1992 unambiguously as a Trustee Board with the full duties and powers of trustees to act in the interests of members and beneficiaries of the schemes.

Secondly, there is to be established as a separate organisation operating at arms length from the Trustee Board, a statutory corporation providing a commercial service (in terms of treasury classification). It will be known as the State Superannuation Investment and Management Corporation, having initially as its principal function the responsibility, under contract from the Trustee Board, of investing and managing the major public sector superannuation funds in New South Wales.

The linchpin to the whole of the new structure is the Trustee Board, or more correctly, the reconstitution of the present Board. It will continue to have over-riding responsibilities for New South Wales public sector superannuation schemes on trust for the ultimate beneficiaries, the members of, and contributors to, those schemes. It will continue to have the legal identity, control of fund assets, and all other responsibilities of the present State Authorities Superannuation Board. Its powers will be governed by the Trustee Act 1925, and by the provisions of its own establishing statute (the Superannuation Administration Act 1991), and the other statutes governing New South Wales public sector superannuation schemes.

The second objective will be achieved by the Trustee Board setting broad directions for administration and investment to be performed initially by the investment and management corporation with which it will contract. The Trustee Board will

have power to contract for all or part of the administration and/or investment functions to be carried out by some other organisation (subject to the Minister for Industrial Relations agreeing to a recommendation to that effect). Before such contracting out can occur, however, the Board will have to justify such a recommendation on the basis of this being in the best interests of scheme members and contributors.

The new Board will be required to have regard in its decision making processes to matters of Government policy brought to its attention by the Minister for Industrial Relations, and at the same time it will also have to abide by the normal fiduciary duties of trustees.

The Trustee Board will have access to sufficient resources to enable it to carry out its duties, including access to the full resources of the Corporation as required. In order to preserve the arms length relationship with the Corporation, the Trustee

Board will also have access to the resources of the Government generally, and in particular, the facilities of existing specialist agencies which will provide the new Board with policy support, training and secretariat functions, including performance monitoring of contractors, and liaison with the Government. The Board will also be free to engage external consultants as required.

The structural changes to the State Authorities Superannuation Board directly affect its complement. At present there are ten Board Members, five representing employers and five representing employees. Of the five employer representatives, four are appointed on my recommendation, three on a full-time basis, being the President and two Vice Presidents, and one is appointed on the nomination of the Treasurer, being a person with investment expertise. The five employee representatives are appointed from a panel nominated by the Labor Council, one

being full-time, and the rest part-time.

The new Trustee Board will be nine persons consisting of an independent chairperson, four employer representatives and four employee representatives. All of the Trustees will be part-time excepting that, at the discretion of the Minister for Industrial Relations, one employee representative may be appointed on a full-time basis. Such an appointee would devote all his or her time to the interests of the members and beneficiaries. The independent Chairperson is to be a person having significant knowledge, and experience in superannuation, financial management or related fields. One of the employer representatives is to be a person recommended by the Treasurer. The employee representatives are to be recommended from a panel nominated by the Labor Council of New South Wales.

As can be seen, Mr President, there will be equal employee



and employer representation, to maintain compliance with the Commonwealth Occupational Superannuation Standards.

Any decision of the Trustee Board requires the support of a two thirds majority vote of members, that is six members.

The third objective of the legislation is achieved by the setting up of a separate facility for scheme management and funds investment at arms length from the Trustee Board. The reason for doing this is to have a separate organisation that can focus on achieving the best management outcomes, and the best investment outcomes without being constrained by the trustee and OSSA responsibilities. To do this, the legislation establishes the State Superannuation Investment and Management Corporation to carry out those functions in accordance with the directions of the State Authorities Superannuation Board, and later on behalf of such other organisations which may seek to tap its specialist administration and investment skills.

It will have power to manage public sector superannuation schemes and invest their funds. It will also have power to undertake other financial management, investment, and other business activities approved by the Minister for Industrial Relations and the Treasurer. Profits from such activities, as I have already mentioned, will be payable to the Trustee Board and be treated as earnings on investments. In respect of its public sector superannuation business, charges will be made against the Trustee Board purely on a cost recovery basis, for otherwise the making of a profit at the expense of scheme members would be seen as an unfair tax on their entitlements.

Provision for powers to undertake business other than public sector superannuation is considered highly desirable for two reasons. Firstly, to safeguard the viability of the new Corporation in the event that the Trustee Board is permitted to contract out elsewhere significant elements of administration or investment, and secondly, to make available to all sectors

of the Government the very considerable store of skills in funds management and investment that will be available in the new organisation.

It is proposed that the new Investment and Management Corporation will acquire all the operational assets of the present State Authorities Superannuation Board - valued in dollar terms at approximately \$14.2 million. Future asset acquisitions will be funded from charges. It is envisaged that all of the personnel currently employed by the State Authorities Superannuation Board will be directly transferred to the new Corporation with full preservation and continuity of employee entitlements, at their current basis of remuneration and career structure.

A Board of Management of the Corporation will be appointed on the nomination of the Minister for Industrial Relations, to manage the Investment and Management Corporation. The

Board will consist of seven members and will be recommended on the basis of their expertise in the superannuation and commercial fields. There will be a full time Managing Director and an independent part-time Chairperson and five part-time Directors. At the discretion of the Minister for Industrial Relations, two of the part-time Directors may also be one of the employee and one of the employer representatives on the Trustee Board. The Minister in the other place has reached agreement with the Labor Council that these discretionary appointments will be made by him for a period of 12 months from the commencement of the Act. Additionally, the Minister in the Legislative Assembly agreed to accept an amendment that removed provisions limiting such cross-appointments to 12 months only. The effect of the amendment is to empower the Minister to extend such cross-appointments if seen fit.



In appointing the Members and the Chairperson, the Bill requires that the Minister responsible consult with the Labor Council and seek its endorsement to the persons nominated.

Mr President, there are a number of significant financial issues arising from the proposed reorganisation which this legislation will address. I have already mentioned the fact that fairly substantial operating assets will be made available to the new Corporation together with operational personnel. The basis of acquisition of these assets will be the subject of agreement between the Corporation and the Trustee Board. Apart from the operational advantages of this restructure, it also transpires that these changes will result in a more favourable taxation treatment of management expenses for the Trustee Board.

The final matter that should be addressed in this explanation of the proposed legislation is the way in which the costs of



the new structure will be funded. The costs of the State Authorities Superannuation Board are currently met by levies on employee and employer accounts. It is proposed that this system will not change, except that the Investment and Management Corporation's costs will of course be met by direct charge to the Trustee Board which in turn will levy employer and employee accounts. The Investment and Management Corporation (just as other statutory corporations and departments in the Industrial Relations Portfolio now do) will be required to submit annual budgets to the Minister for Industrial Relations.

With regard to costs, Mr President, there is initially expected to be a neutral cost outcome from these proposed amendments, as the staff currently employed by the Board will be transferred to the new Corporation and the salaries and support costs of the current Executive Members of the Board will be offset by the salaries and support costs of the

Corporation. However, in the longer term, the Minister in the other place expects that the separation of focus and responsibilities occurring via the arms length contractual relationship established in the new proposals will lead to substantial cost effectiveness and performance enhancement.

Mr President, this important legislation is singular in its simplicity and the way in which it removes at a stroke the problems or potential problems besetting the present organisational structure. The trustee functions are separated from the functions of management and investment. The seat of responsibility and authority is firmly and unequivocally confirmed in the Trustee Board, that is, the reconstituted State Authorities Superannuation Board. The trustee role of the Board, and the interests of members and contributors are unequivocally confirmed. And by no means the least of what is achieved is that the investment and management expertise of the old structure is released from the restrictions that now

beset superannuation funds, and placed in a position where it can compete on a wider base, and make its expertise available for the benefit of the whole public sector if not the private sector as well. The proposals represent yet another example of the Government's commitment to micro-economic reform in the interests of the people of New South Wales.

I commend the Bill.



SECOND PRINT

SUPERANNUATION ADMINISTRATION BILL 1991

NEW SOUTH WALES



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This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Legislative Assembly

Clerk of the Legislative Assembly.

NEW SOUTH WALES



Act No. , 1991

An Act to continue the State Authorities Superannuation Board; to provide for the Board to administer certain superannuation schemes and to be trustee for the persons entitled to receive benefits under those superannuation schemes; to constitute the State Superannuation Investment and Management Corporation and to prescribe the functions of the Corporation with respect to those superannuation schemes and other matters; and to provide for ancillary matters.

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The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Superannuation Administration Act 1991.

Commencement

2. (1) Subject to this section, this Act commences on a day or days to be appointed by proclamation.

(2) Section 1 and this section commence on the date of assent to this Act.

(3) For the purpose only of enabling the Board and the board of directors of the Corporation to be constituted in accordance with this Act on or after (but not before) the commencement of the relevant provisions of this Act, appointments may be made under this Act, and any other act, matter or thing may be done, before that commencement as if the whole of this Act had commenced on the date of assent.

(4) No appointment as a trustee or director takes effect before the commencement of the relevant provisions of this Act.

Definitions

3. (1) In this Act:

“**Administration Account**” means the State Authorities Superannuation Administration Account maintained under section 21;

“**Administrative Office**” has the same meaning as in section 3 (1) of the Public Sector Management Act 1988;

“**associated Acts**” means 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;

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- (i) State Authorities Non-contributory Superannuation Act 1987;
- (j) any other Act declared under subsection (3) to be an associated Act for the purposes of this Act;

“associated superannuation fund” means a superannuation fund established or constituted under an associated Act;

“associated superannuation scheme” means a superannuation scheme established under an associated Act;

“benefit” means a pension or lump sum retirement or superannuation benefit;

“Board” means the State Authorities Superannuation Board continued by this Act;

“Corporation” means the State Superannuation Investment and Management Corporation constituted by this Act;

“director” means a director of the board of the Corporation;

“local authority” means the council of a city, municipality or shire;

“public authority” means a person or body constituted or established by an Act for a public purpose;

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

“trustee” means a trustee of the Board.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) The Governor may, by order published in the Gazette, declare to be an associated Act any Act which establishes a superannuation scheme under which employees of the Crown or of a public or local authority are entitled to receive superannuation or retirement benefits.

PART 2—THE STATE AUTHORITIES SUPERANNUATION BOARD

Division 1—Constitution and functions of the Board

The Board (cf. Act No. 210, 1987, s. 4)

4. The corporation constituted by the Superannuation Administration Act 1987 with the corporate name of State Authorities Superannuation Board is continued by this Act.

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Composition and procedure of the Board (cf. Act No. 210, 1987, s. 4)

5. (1) The Board is to consist of 9 trustees appointed by the Governor.

(2) Of the trustees:

- (a) one is to be appointed as the chairperson of the Board; and
- (b) four are to be appointed to represent the interests of employers; and
- (c) four are to be appointed to represent the interests of employees.

(3) All of the trustees are to be appointed on a part-time basis, except that, if the Minister so recommends, one of the trustees referred to in subsection (2) (c) may be appointed on a full-time basis with the title "full-time employee trustee".

(4) A person holding office as full-time employee trustee is, except as permitted by the Board, required to devote the whole of his or her time to looking after the interests of members and beneficiaries of the associated superannuation schemes.

(5) To be eligible for appointment as chairperson of the Board a person must:

- (a) have significant knowledge of, and experience in, the conduct of superannuation schemes, financial management or some other relevant field of commerce; and
- (b) be independent of employers and employees and their respective interests.

(6) One of the trustees referred to in subsection (2) (b) is to be appointed on the recommendation of the Treasurer and the other trustees referred to in subsection (2) are to be appointed on the recommendation of the Minister.

(7) The Minister must not make a recommendation for the appointment of a person as chairperson of the Board without having consulted the Labor Council of New South Wales and sought the endorsement of the Council with respect to the recommendation.

(8) A director is eligible to hold office as a trustee only in so far as this section provides.

(9) The chairperson of the board of directors is eligible to hold office as a trustee if appointed as chairperson of the Board.

(10) One of the part-time directors is eligible to hold office as a trustee who represents the interests of employers and another of those directors is eligible to hold office as a trustee who represents the interests of employees.

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(11) Whenever it is necessary to appoint a trustee or trustees referred to in subsection (2) (c):

- (a) the Minister must, by notice in writing, invite the Labor Council of New South Wales to nominate a panel of persons from which the trustee is or the trustees are to be chosen; and
- (b) the Council may nominate a panel in response to the invitation.

(12) If a panel is not nominated within the period or in the manner specified by the Minister in a notice referred to in subsection (11), the Minister may recommend the appointment of the necessary number of trustees representing the interests of employees without recourse to such a panel, and any person appointed in consequence of that recommendation is to be regarded as having been chosen from a properly nominated panel.

(13) Without limiting what may be included in a notice under subsection (11), the notice must specify, as part of the manner of nomination, the minimum number or maximum number (or both) of persons who may be included in the panel.

(14) The maximum number referred to in subsection (13) is 2 more than the number of trustees that, on the particular occasion, are to be appointed as trustees to represent the interests of employees.

(15) Schedule 1 has effect with respect to the trustees.

(16) Schedule 2 has effect with respect to the calling and holding of meetings of the Board.

General functions of the Board (cf. Act No. 210, 1987, ss. 14, 15A)

6. (1) The functions of the Board are:

- (a) to administer the associated superannuation schemes; and
- (b) to supervise the investment and management of the associated superannuation funds; and
- (c) to ensure that benefits payable to the persons entitled to receive benefits under those schemes are paid in accordance with the relevant provisions of the associated Acts; and
- (d) to ensure that other payments required by the associated Acts are made; and
- (e) to administer any superannuation scheme the administration of which is transferred to it in accordance with regulations made under section 8.

(2) The Board has such other functions as are conferred or imposed on the Board by or under this or any other Act, including the associated Acts.

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(3) The Board is a trustee for the purposes of the Trustee Act 1925 and is required to hold in trust for the persons entitled to receive benefits under the associated Acts all assets held by, and all contributions and other money paid or payable to, the Board under this Act and the associated Acts.

(4) The Board must ensure that the assets of the associated superannuation funds are used:

- (a) to pay benefits to or in respect of the persons entitled to receive benefits under the associated superannuation schemes; and
- (b) to pay the costs and expenses of administering those schemes and investing and managing those funds.

(5) The Board has power in New South Wales and elsewhere to do all things necessary or convenient to be done for, or in connection with, the exercise of the functions of the Board and, in particular, may:

- (a) form or establish, or participate in the formation or establishment of, any company whose objects include the establishment of superannuation schemes for the benefit of employees of the Crown or of a public or local authority or for associated objects; and
- (b) subscribe for, invest in or otherwise acquire, and hold or dispose of, shares or debentures of such a company; and
- (c) take appropriate action to control or to enhance or protect the value of any investment made from the associated superannuation funds or to enhance or protect the return on any such investment.

(6) In exercising its functions, the Board must:

- (a) have regard to the interests of the persons entitled to receive benefits under the associated Acts; and
- (b) comply with the requirements of the Occupational Superannuation Standards Act 1987 of the Commonwealth in so far as those requirements are applicable to those schemes.

Board to have regard to certain Government policy statements

7. (1) The Minister may, from time to time, give to the Board a statement in writing specifying the Government's policy goals or objectives with respect to the exercise by the Board of its functions under this Act and the associated Acts.

(2) The Minister is required to lay before each House of Parliament, within 14 sitting days after giving a statement under this section, a copy of the statement.

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(3) If a House of Parliament is not sitting when the Minister seeks to comply with subsection (2), the Minister is required to present a copy of the relevant statement to the Clerk of the House.

(4) 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.

(5) The Board must, when exercising its functions under this Act or under any of the associated Acts, have regard to the contents of a statement given to it under this section if:

- (a) a copy of the statement has been laid or is taken to have been laid before each House of Parliament as provided by this section; and
- (b) the statement is not inconsistent with the provisions of this Act or any of the associated Acts.

Transfer of responsibility for superannuation schemes to the Board
(cf. Act No. 210, 1987, s. 15)

8. The Governor may make regulations for or with respect to the transfer to the Board of responsibility for the administration of any superannuation scheme that is established by or under an Act or any superannuation scheme that makes provision for employees of the Crown or of a public or local authority.

Board may appoint investment managers etc.

9. (1) The Board may, subject to subsection (4), enter into contracts or arrangements with any person:

- (a) under which the person undertakes to carry out on behalf of the Board any one or more of the Board's functions with respect to the administration of an associated superannuation scheme or any other functions of the Board under this or any other Act; or
- (b) for the performance of services.

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(2) The power of the Board under this section to enter into a contract or an arrangement does not extend to conferring on any other person the power of the Board under an associated Act to appoint an actuary or actuaries to conduct an investigation into the state or sufficiency of any fund established under that Act.

(3) A person who enters into a contract or arrangement with the Board under this section has, while acting in accordance with the terms of the contract or arrangement, those functions of the Board specified in the contract or arrangement.

(4) The Board may enter into a contract or an arrangement with a person under this section with respect to the exercise of a function of the Board by another person only if the Board is satisfied that the contract or arrangement is in the interests of the persons entitled to receive benefits under the associated Act or Acts concerned, and then only with the consent of the Minister.

Board may make arrangements etc. for the provision of additional benefits

10. (1) The Board may also enter into a contract or arrangement 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 associated superannuation schemes for the purpose of paying additional death or disability 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 additional benefits to or in respect of any such members.

(2) The Board may enter into a contract or arrangement with a person under this section with respect to the exercise of a function of the Board by another person only if the Board is satisfied that the contract or arrangement is in the interests of the persons entitled to receive benefits under the associated Act or Acts concerned, and then only with the consent of the Minister.

(3) A contract or arrangement entered into under this section may be entered into as part of a contract or arrangement entered into under section 9.

(4) A person who enters into a contract or arrangement with the Board under this section has, while acting in accordance with the terms of that contract or arrangement, those functions of the Board that are specified in the contract or arrangement.

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Staff of the Board (cf. Act No. 210, 1987, s. 9)

11. (1) The Board may, with the approval of the Minister or the public or local authority concerned, arrange for the use of the services of any staff (whether by secondment or otherwise) or facilities of a Government Department, an Administrative Office or a public or local authority.

(2) For the purposes of this Act, a person whose services are made use of under subsection (1) is to be regarded as an employee of the Board.

Board may employ agents (cf. Act No. 210, 1987, s. 10)

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

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

Board may engage consultants etc. (cf. Act No. 210, 1987, s. 11)

13. (1) The Board may engage as consultants (such as investment advisers) persons who have appropriate qualifications and experience.

(2) The engagement of a person under subsection (1) is, where appropriate, subject to sections 9 and 10 so far as those sections are relevant.

Committees of the Board (cf. Act No. 210, 1987, s. 12)

14. (1) The Board may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that none of the members of a committee is a trustee.

(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.

Delegation by the Board (cf. Act No. 210, 1987, s. 13)

15. The Board may delegate to:

- (a) a trustee; or
- (b) a committee that is comprised of or includes trustees; or

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(c) the Corporation,
any of its functions, other than this power of delegation.

Board may compromise or settle claims (cf. Act No. 210, 1987, s. 25)

16. (1) The Board may compromise or otherwise settle any claim made against it.

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

(3) To the extent that an amount payable by the Board following a compromise or settlement is not a benefit under the relevant associated superannuation scheme, the amount is payable from whichever associated superannuation fund or funds that the Board considers appropriate.

(4) The Board may make such inquiries and investigations with respect to a claim made against it as it thinks fit.

(5) The Board may request a person who has made a claim against it to provide the Board with an authority to obtain from a third person any information or evidence that is relevant to the subject-matter of the claim.

(6) The Board is not obliged to continue to process the claim if the claimant does not comply with a request of the Board under subsection (5).

Division 2—Financial provisions relating to the Board**Definitions** (cf. Act No. 210, 1987, s. 16)

17. In this Division, “contributor”, “employee” and “employer” have the same meanings as they have in the associated Acts for the purposes of the associated superannuation schemes.

Financial year of the Board (cf. Act No. 210, 1987, s. 17)

18. The financial year of the Board is the year ending on 31 March, but the Treasurer may determine a different financial year under section 4 (1A) of the Public Finance and Audit Act 1983.

Financial accommodation and investment by the Board (cf. Act No. 210, 1987, s. 18)

19. The Board may:

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

under and subject to the Public Authorities (Financial Arrangements) Act 1987.

Board may pool funds (cf. Act No. 210, 1987, s. 19)

20. The Board may, for the purposes of any provisions of the Public Authorities (Financial Arrangements) Act 1987 relating to investment and for any related purposes, treat as one fund all or any 2 or more of the associated superannuation funds.

Board to maintain Administration Account (cf. Act No. 210, 1987, s. 21)

21. The Board must maintain an account called the State Authorities Superannuation Administration Account.

Administration costs of the Board generally (cf. Act No. 210, 1987, s. 22)

22. (1) The Board must charge administration costs that it incurs (including the remuneration or allowances of the trustees and any expense incurred by the New South Wales Superannuation Office in providing services directly to the Board) against the Administration Account.

(2) The administration costs that the Board incurs in relation to the administration of the Police Superannuation Fund, as determined by the Board, are to be paid from that Fund to the Administration Account.

(3) The administration costs that the Board incurs in relation to the administration of the State Authorities Non-contributory Superannuation Scheme, as determined by the Board, are to be paid to the Administration Account as provided by subsection (4):

- (a) by each employer; or
- (b) where employees are employed by a group of employers, by each group of employers.

(4) The amount that each employer or group of employers is required to pay under subsection (3) is an amount calculated in accordance with the following formula:

$$A_1 = B \times \frac{E}{C}$$

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where:

A₁ represents the amount to be determined;

B represents the administration costs as determined by the Board in administering the State Authorities Non-contributory Superannuation Scheme;

C represents the number of employees who are members of that Scheme during a specified period determined by the Board at a specified time;

E represents the number of employees who, being members of that Scheme, are employed by the employer or group of employers during that period.

(5) After calculating in accordance with subsection (4) the amount payable by an employer or group of employers, the Board must debit the appropriate account, fund or reserve relating to that employer or group.

(6) The following persons and groups are required to pay to the Administration Account the administration costs referred to in subsection (1), other than those referred to in subsections (2) and (3):

(a) each contributor to an associated superannuation scheme;

(b) if a group of contributors contributes to such a scheme, each contributor belonging to the group;

(c) the employer of any such contributor or group of contributors;

(d) if any such contributor or group of contributors is employed by a group of employers, each such group of employers.

(7) The proportion of administration costs payable by a contributor, or by a contributor belonging to a group of contributors, under subsection (6) is an amount calculated in accordance with the following formula:

$$A_2 = \frac{B}{C} \times D$$

where:

A₂ represents the amount to be determined;

B represents the administration costs involved in administering the associated superannuation scheme concerned, as determined by the Board;

C represents the number of contributors to that scheme during a specified period determined by the Board at a specified time;

D represents a factor (less than 1) determined by the Board in relation to those contributors.

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(8) The proportion of administration costs payable by an employer, or by a group of employers, under subsection (6) is an amount calculated in accordance with the following formula:

$$A_3 = \frac{B}{C} \times (1 - D) \times E$$

where:

- A₃ represents the amount to be determined;
- B represents the administration costs involved in managing the associated superannuation scheme concerned, as determined by the Board;
- C represents the number of contributors to that scheme during a specified period determined by the Board at a specified time;
- D represents a factor (less than 1) determined by the Board in relation to those contributors;
- E represents the number of contributors to that scheme who are employed by the employer or group of employers during that period.

(9) After calculating the amount payable by a contributor or by an employer or group of employers under subsection (6), the Board may debit the appropriate account, fund or reserve relating to:

- (a) the contributor or, if the contributor belongs to a group of contributors, that group; or
- (b) the employer or group of employers,

as the case requires.

(10) If the Board receives:

- (a) from a person with whom it has entered into a contract or arrangement under section 9 or 10; or
- (b) from the Corporation under section 29 (4),

a bill of costs relating to the work performed under that contract or arrangement, those costs, when approved by the Board, form part of the administration costs of the Board.

Administration costs of the Board regarding preserved benefits (cf. Act No. 210, 1987, s. 23)

23. (1) In this section, “**preserved benefit**” means:

- (a) in relation to a contributor under an associated superannuation scheme—a benefit for which the contributor has made an election:
 - (i) to take the benefit provided by section 9B of the Police Regulation (Superannuation) Act 1906; or

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- (ii) to take the benefit of Division 3A of Part 4 of the Superannuation Act 1916; or
 - (iii) to make provision for a benefit provided by section 32 of the Public Authorities Superannuation Act 1985; or
 - (iv) to make provision for a benefit provided by section 34 of the State Public Service Superannuation Act 1985; or
 - (v) to make provision for a benefit provided by section 43 of the State Authorities Superannuation Act 1987; or
- (b) in relation to an employee referred to in the State Authorities Non-contributory Superannuation Act 1987—a benefit which is required to be preserved under that Act.
- (2) Administrative charges are payable from time to time in relation to a preserved benefit.
- (3) The Board is to determine administrative charges from time to time for the purposes of this section.
- (4) The Board must debit an administrative charge to the relevant contributor's account under any associated Act or to the amount that is the subject of the preserved benefit.
- (5) The Board must transfer an amount so debited to the Administration Account.

Board to make contribution to costs of the New South Wales Superannuation Office (cf. Act No. 210, 1987, s. 23A)

24. (1) The Board is, as and when directed by the Minister, required to make contributions of specified amounts towards the expense incurred in maintaining and operating the New South Wales Superannuation Office, including the costs of the Board relating to the payment of the contributions.

(2) The contributions referred to in subsection (1) (other than those referable to expenses directly incurred by the New South Wales Superannuation Office in providing services to the Board) are to be met by employers and, where the contributors or employees concerned are employed by groups of employers, by those groups of employers.

(3) In relation to the associated superannuation schemes, each employer or group of employers is required, for the purposes of subsection (2), to pay an amount calculated in accordance with the following formula:

$$A = \frac{B}{C} \times (D - E)$$

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where:

- A represents the amount of the liability of the employer or group of employers under this section;
 - B represents the number of persons employed by the employer or group of employers who are contributors to or members of the associated superannuation schemes during a specified period as determined by the Board at a specified date;
 - C represents the total number of contributors to or members of the associated superannuation schemes during that period;
 - D represents the total expense incurred in maintaining and operating the New South Wales Superannuation Office for the relevant period, including the costs of the Board relating to the payment of the amount;
 - E represents such proportion of the total expense incurred in maintaining and operating the New South Wales Superannuation Office (including any expense incurred by that Office in providing services directly to the Board) for the relevant period as does not relate to the administration of associated superannuation schemes.
- (4) After calculating the amount payable by an employer or group of employers under subsection (3), the Board must debit the appropriate account, fund or reserve relating to that employer or group.

Accounts and records of the Board (cf. Act No. 210, 1987, s. 24)

25. The Board may maintain its accounts and other records 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.

PART 3—STATE SUPERANNUATION INVESTMENT AND MANAGEMENT CORPORATION

Division 1—Constitution and functions of the Corporation

The Corporation

26. (1) There is established by this Act a corporation with the corporate name of the State Superannuation Investment and Management Corporation.

(2) The affairs of the Corporation are to be administered by a board of directors constituted as provided by section 27.

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(3) Any act, matter or thing done in the name of, or on behalf of the Corporation by the board of directors of the Corporation or with the authority of that board is to be taken to have been done by the Corporation.

(4) The Corporation is, in the exercise of its functions (except in relation to the contents of a report or recommendation that it may make to the Minister), subject to the control and direction of the Minister.

(5) However, the Minister must not give to the Corporation a direction that is inconsistent with:

- (a) any direction given to the Corporation by the Board (being a direction that is properly within the functions of the Board to give); or
- (b) any contract that the Corporation has lawfully entered into; or
- (c) any duty, obligation or responsibility imposed on the Corporation by or under this Act or any of the associated Acts.

(6) Any direction given by the Minister in contravention of subsection (5) is void to the extent of the inconsistency.

(7) Any direction given by the Minister that becomes inconsistent with any direction subsequently given to the Corporation by the Board (being a direction that is properly within the functions of the Board to give) is void to the extent of the inconsistency.

Composition and procedure of the board of directors of the Corporation

27. (1) The board of directors of the Corporation is to consist of 7 directors appointed by the Governor on the recommendation of the Minister.

(2) Of the directors:

- (a) one is to be appointed as managing director of the Corporation; and
- (b) one is to be appointed either as a full-time director or as a part-time director, as specified in his or her instrument of appointment; and
- (c) the remainder are to be appointed as part-time directors.

(3) A person is not eligible for appointment as a director unless he or she has experience in, and knowledge of, financial management or some other relevant commercial activity.

(4) One of the part-time directors is, in the document by which he or she is appointed as a director or in some other document signed by the Governor, to be appointed as the chairperson of the board of directors of the Corporation.

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- (5) The Minister must not make a recommendation:
- (a) for the appointment of a part-time director (including a part-time director referred to in subsection (2) (b)); or
 - (b) for the appointment of the chairperson of the board of directors, without having consulted the Labor Council of New South Wales and sought the endorsement of the Council with respect to the recommendation.
- (6) A trustee is eligible to hold office as a director only in so far as section 5 provides.
- (7) Schedule 3 has effect with respect to the board of directors of the Corporation.
- (8) Schedule 4 has effect with respect to the calling and holding of meetings of the board of directors of the Corporation.

Functions of managing director of the Corporation

28. The managing director of the Corporation:
- (a) is responsible, as the chief executive officer of the Corporation, for the management of the affairs of the Corporation subject to and in accordance with any directions of the Corporation's board of directors; and
 - (b) has such other functions as are conferred or imposed on the managing director by or under this or any other Act.

Functions of the Corporation relating to associated superannuation schemes

29. (1) The Corporation has the following functions with respect to the associated superannuation schemes:
- (a) subject to the general direction of the Board and to the terms of any contract or arrangement entered into under section 9 or 10, to administer those schemes on behalf of the Board;
 - (b) to invest and manage the associated superannuation funds in accordance with the directions of the Board.
- (2) The Corporation has such other functions with respect to the associated superannuation schemes as are conferred or imposed on it by or under this or any other Act.
- (3) The Corporation has power in New South Wales and elsewhere to do all things necessary or convenient to be done for, or in connection with, the exercise of its functions under this section.

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(4) As consideration for doing the things referred to in subsection (1), the Corporation may charge the Board an amount not exceeding what is sufficient to cover:

- (a) the costs that the Corporation has actually incurred in doing those things; and
- (b) any fees or expenses that the Board has agreed to pay to the Corporation for doing those things.

Functions of the Corporation with respect to certain business undertakings

30. (1) The Corporation also has the following functions:

- (a) with the concurrence of both the Minister and the Treasurer, to enter into agreements or arrangements to undertake the whole or a part of the administration or management (or both) of any business undertaking;
- (b) to carry out those agreements or arrangements.

(2) As consideration for entering into an agreement or arrangement to undertake the administration or management of a business undertaking in accordance with this section, the Corporation must charge the person that owns or is responsible for carrying on the undertaking an amount sufficient to cover:

- (a) the costs that the Corporation has actually incurred in administering or managing the undertaking; and
- (b) any other fees or expenses that the person has agreed to pay to the Corporation for administering or managing the undertaking; and
- (c) an appropriate margin of profit.

(3) If a person referred to in subsection (2) does not pay a charge imposed under that subsection as and when required by the Corporation, the Corporation is entitled to recover the charge by making appropriate deductions from any assets that the Corporation is holding in relation to the business undertaking concerned.

(4) Subsection (3) does not prevent the Corporation from recovering a charge imposed under subsection (2) by any other means prescribed by law.

(5) The Corporation may establish and maintain such accounts and reserves as, in the opinion of the Corporation, are necessary or convenient for the administration or management of a business undertaking administered or managed by the Corporation in accordance with this section.

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(6) For the purposes of this section, the Corporation has power to do, in New South Wales or elsewhere, all things necessary or convenient to be done for or in connection with the administration or management of any business undertaking that it has agreed or arranged to administer or manage in accordance with this section.

(7) Without limiting subsection (6), the powers of the Corporation under that subsection include powers:

- (a) to form or establish, or participate in the formation or establishment of, one or more companies; and
- (b) to subscribe for or otherwise acquire, and to hold or dispose of, shares or debentures of a company.

(8) In this section, “**business undertaking**” includes any venture or activity undertaken or carried on by the Crown or by a public or local authority, but does not include the activity involved in operating an associated superannuation scheme.

Staff of the Corporation

31. (1) The Corporation may appoint and employ such employees as may be necessary to enable the Corporation to exercise its functions.

(2) The Corporation may fix the salaries, wages, allowances and conditions of employment of any such employees in so far as they are not fixed by or under another Act or law.

(3) The Corporation may, with the approval of the Minister, arrange for the use of the services of any staff (whether by secondment or otherwise) or facilities of a Government Department, an Administrative Office, or a public or local authority.

(4) For the purposes of this Act, a person whose services are made use of under subsection (3) is to be regarded as an employee of the Corporation.

(5) Without limiting subsections (1) and (3), such staff as may be necessary to enable the Corporation to exercise its functions may be employed under Part 2 of the Public Sector Management Act 1988.

Corporation may employ agents

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

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

(3) The Corporation must obtain the approval of the Board before employing an agent under this section to transact any business or to do any act in connection with the exercise of the functions conferred on the Corporation by section 29.

(4) The Board may give a general or specific approval for the purpose of subsection (3) and may at any time, by notice to the Corporation in writing, withdraw such an approval.

Corporation may engage consultants

33. Subject to any direction of the Board referred to in section 29, the Corporation may engage persons having suitable qualifications and experience as consultants to the Corporation.

Committees of the Corporation

34. (1) The Corporation may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that none of the members of a committee is a director.

(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 Corporation or (subject to any determination of the Corporation) by the committee.

Delegation by the Corporation

35. (1) In relation to the exercise of its functions under section 29, the Corporation may, with the approval of the Board, delegate to:

- (a) a director; or
- (b) a committee comprised of directors or of employees of the Corporation (or both); or
- (c) an employee of the Corporation; or
- (d) a person whose services the Corporation makes use of under this Act,

any of those functions, other than this power of delegation.

(2) In relation to the exercise of its other functions, the Corporation may delegate to any person or group of persons any of those functions, other than this power of delegation.

Division 2—Financial provisions relating to the Corporation**Financial year of the Corporation**

36. The financial year of the Corporation is the year ending on 31 March, but the Treasurer may determine a different financial year under section 4 (1A) of the Public Finance and Audit Act 1983.

Corporation to prepare annual budget

37. The Corporation must:

- (a) as soon as practicable after the commencement of this section, present to the Minister a budget showing estimates of its revenue and expenditure for the balance of the financial year concerned; and
- (b) not later than 3 months before the end of each subsequent financial year, present to the Minister a budget showing estimates of its revenue and expenditure for the forthcoming financial year.

Financial accommodation and investment by the Corporation

38. The Corporation 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.

Corporation may pool funds

39. The Corporation may, for the purposes of any provisions of the Public Authorities (Financial Arrangements) Act 1987 relating to investment and for any related purposes, treat as one fund all or any 2 or more of the funds that it is responsible for administering or managing.

Financial objectives of the Corporation

40. (1) The Corporation must:

- (a) exercise its functions in accordance with prudent commercial principles; and
- (b) endeavour to ensure that, except in relation to its functions with respect to the management of funds established under the associated Acts, the revenue derived from its operations in each financial year of the Corporation exceeds its expenditure for that year.

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(2) In relation to any financial year of the Corporation, the Treasurer may, after consultation with the Corporation, assess an amount to be paid by way of dividend from the profits (if any) derived in that year from the exercise by the Corporation of its functions under section 30, or from the accumulated reserves of the Corporation derived from the exercise of those functions, and notify the Corporation in writing of the assessment.

(3) In relation to the exercise by the Corporation of its functions under section 30, the Corporation must, at such times after the end of each financial year of the Corporation and in such instalments as the Treasurer specifies, pay to the Board for payment exclusively to the associated superannuation funds:

- (a) an amount equivalent to the amount that the Corporation would have been liable to pay for that year under the Income Tax Assessment Act 1936 of the Commonwealth if the Corporation were a company within the meaning of that Act; and
- (b) any amount assessed for that year and notified to the Corporation under subsection (2).

(4) Amounts paid under subsection (3) are to be treated as income derived from the investment of the associated superannuation funds and are to be distributed among the associated superannuation funds in such proportions as the Board considers appropriate.

(5) The Treasurer may, by notice in writing given to the Corporation, advise, in relation to any specified financial year, that it need not make the payment required by subsection (3) or that it is required to make only a specified proportion of that payment.

Proceeds from sale of Corporation's business undertaking to be paid to the Board

41. If the business undertaking of the Corporation is sold, the proceeds of sale are to be paid to the Board in its capacity as trustee.

Accounts and records of the Corporation

42. The Corporation may maintain its accounts and other records 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.

PART 4—MISCELLANEOUS**Board to determine certain disputes** (cf. Act No. 210, 1987, s. 26)

43. (1) This section applies to a dispute under this Act (Part 3 excepted) or under any of the following Acts:

Superannuation Act 1916;
Local Government and Other Authorities (Superannuation) Act 1927;
Transport Employees Retirement Benefits Act 1967;
Police Association Employees (Superannuation) Act 1969;
New South Wales Retirement Benefits Act 1972;
Public Authorities Superannuation Act 1985;
State Public Service Superannuation Act 1985;
State Authorities Superannuation Act 1987;
State Authorities Non-contributory Superannuation Act 1987.

(2) This section also applies to a dispute under the Police Regulation (Superannuation) Act 1906 in relation to any matter, other than a matter relating to or arising from a question of whether or not a member of the Police Service or a former member of the Police Service was hurt on duty.

(3) The Board is required to determine any dispute to which this section applies.

(4) The Board may, in determining such a dispute, 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.

(5) The Board may request a person who has a dispute with the Board to provide the Board with an authority to obtain from a third person any information or evidence that is relevant to the subject-matter of the dispute.

(6) If such a person does not comply with a request of the Board under subsection (5), the Board is not obliged to proceed to determine the dispute concerned.

Appeals from determinations of the Board under sec. 43 (cf. Act No. 210, 1987, s. 27)

44. (1) A person aggrieved by a determination of the Board under section 43 may appeal against the determination to the Industrial Court.

(2) Such an appeal is not valid unless it is made within 6 months after the date of the determination or within such further period as the Industrial Court allows.

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(3) If this section commences before the Industrial Court is established, the references in this section to that Court are to be read as references to the Industrial Commission of New South Wales.

Trustee, director or employee may be director etc. of company (cf. Act No. 210, 1987, s. 29)

45. (1) If the Board so approves, a person who holds office as a trustee may also hold office as an officer of a company.

(2) If the Board so approves, a consultant to the Board may hold office as an officer of a company.

(3) If property is vested in the Board and a company has been formed to manage the property (whether with or without other property), the Board may take such action (for example, as regards shareholding) as may be necessary to qualify it to nominate a person for appointment as an officer of the company.

(4) If the Corporation so approves, a person who holds office as a director, or as an employee of the Corporation, may also hold office as an officer of a company.

(5) If the Corporation so approves, a consultant to the Corporation may also hold office as an officer of a company.

(6) If property is vested in the Corporation and a company has been formed to manage the property (whether with or without other property), the Corporation may take such action (for example, as regards shareholding) as may be necessary to qualify it to nominate a person for appointment as an officer of the company.

(7) In this section, "officer of a company" means a director or other person concerned in the management of the company.

Certain persons not to be liable for certain acts etc. (cf. Act No. 210, 1987, s. 30)

46. (1) In this section, "prescribed person" means:

- (a) a person who is or acts as a trustee or director; or
- (b) a person who is or acts as a member of the staff of the Board or the Corporation; or
- (c) a person who is an agent of or consultant to the Board or the Corporation and who is for the time being nominated by the Board or the Corporation as being within this section.

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(2) A decision made, or any act or thing done or omitted to be done, by:

- (a) the Board or the Corporation or a prescribed person in the exercise of any function conferred or imposed on the Board or the Corporation or the prescribed person by this Act or any associated Act; or
- (b) a prescribed person in the exercise of any function directly or indirectly connected with the official duties of the prescribed person,

may not be called in question on any of the grounds mentioned in subsection (3).

(3) The grounds are as follows:

- (a) an alleged conflict of interest because the Board, the Corporation or a prescribed person is involved in administering different Acts or different superannuation schemes;
- (b) that knowledge gained by the Board, the Corporation or a prescribed person for the purpose of one such Act or scheme is or may be relevant to the exercise of a function under another such Act or scheme.

(4) No decision made, or act or thing done or omitted to be done, by:

- (a) the Board, the Corporation, a prescribed person, or any other person acting under the direction of the Board or the Corporation, in good faith for the purpose of giving effect to this or any other Act; or
- (b) a prescribed person, or any other person acting under the direction of the Board or the Corporation, in good faith in the exercise of any function directly or indirectly connected with the official duties of the prescribed person or other person so acting,

subjects the prescribed person or other person so acting personally to any action, liability, claim or demand.

(5) A decision made, or any act or thing done or omitted to be done, by the Board or the Corporation in the exercise of a function conferred on it by this Act or any associated Act is not invalidated or prejudiced merely because of a vacancy in the office of a trustee or director.

(6) The Board or the Corporation may make or revoke the nomination for the purposes of this section of a person who is an agent of or a consultant to the Board or the Corporation.

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(7) The protection provided by this section in relation to a decision made, or an act or thing done or omitted, while a person is a prescribed person continues in relation to the person even though the person ceases to be a prescribed person.

Service of documents (cf. Act No. 210, 1987, s. 31)

47. (1) A document may be served on the Board or the Corporation by leaving it at, or by sending it by post to:

- (a) the office of the Board or the Corporation; or
- (b) if the Board or Corporation 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 the Board or the Corporation in any other manner.

Recovery of charges etc. by the Board or the Corporation (cf. Act No. 210, 1987, s. 32)

48. (1) Any charge, fee or money due to the Board or the Corporation may be recovered by the Board or the Corporation as a debt in a court of competent jurisdiction.

(2) Without limiting subsection (1), the Board or the Corporation may recover any money owing to it under this or any other Act, together with interest on the money as provided by subsection (3), as a debt in a court of competent jurisdiction.

(3) Interest at a rate from time to time determined by the Board or the Corporation is payable on any amount referred to in subsection (2) calculated from the date on which the amount became due for payment until the date on which the amount is recovered under that subsection or is otherwise paid.

Proof of certain matters not required (cf. Act No. 210, 1987, s. 33)

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

- (a) the constitution of the Board or the board of directors of the Corporation; or
- (b) any resolution of the Board or the board of directors of the Corporation; or
- (c) the appointment of, or the holding of office by, any trustee or director; or

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- (d) the presence or nature of a quorum at any meeting of the Board or the board of directors of the Corporation.

Union representation (cf. Act No. 210, 1987, s. 34)

50. (1) This section 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 section applies:

- (a) may have employees of the Corporation as members; and
- (b) may represent the interests of employees of the Corporation in industrial matters,

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

Regulations (cf. Act No. 210, 1987, s. 35)

51. (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 use and custody of the seal of the Board or the Corporation; and
- (b) the procedure of the Board or the board of directors of the Corporation; and
- (c) the administration of the funds and accounts maintained under this Act and the associated Acts; and
- (d) the functions of companies established in accordance with the powers conferred by sections 6 and 30.

Act to bind the Crown

52. This Act binds the Crown, not only in right of New South Wales, but also, so far as the legislative powers of Parliament permit, the Crown in all its other capacities.

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Repeals

53. (1) The following Acts are repealed:

- (a) the Superannuation Administration Act 1987;
- (b) the Superannuation Administration (Amendment) Act 1988;
- (c) the Superannuation Administration (Amendment) Act 1989;
- (d) the Superannuation Administration (Amendment) Act 1990.

(2) The Superannuation Administration (Staff) Transitional Regulation 1988 is repealed.

Savings, transitional and other provisions

54. Schedule 5 has effect.

Consequential amendments to other Acts

55. Each Act specified in Schedule 6 is amended as set out in that Schedule.

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SCHEDULE 1—PROVISIONS RELATING TO TRUSTEES OF THE BOARD

(Sec. 5 (15))

Chairperson of the Board

1. (1) The Governor may at any time remove a person from the office of chairperson of the Board.
- (2) A person who ceases to be chairperson of the Board also ceases to be a trustee.
- (3) A person who is chairperson of the Board vacates the office of chairperson if:
 - (a) the Governor removes that person from that office; or
 - (b) the person resigns that office by notice in writing addressed to the Governor or the Minister; or
 - (c) the person ceases to be a trustee.

Acting trustees

2. (1) The Minister may, from time to time, appoint a person to act in the office of a trustee during the illness or absence of the trustee, and the person, while so acting, has all the functions of the trustee and is to be regarded as a trustee.
- (2) The Minister must not make:
 - (a) an appointment under subclause (1) in relation to a trustee who represents the interests of employees without first consulting the Labor Council of New South Wales and obtaining the Council's approval of the appointment; or
 - (b) an appointment under that subclause in relation to the chairperson of the Board without first consulting the Council and seeking the Council's endorsement of the appointment.
- (3) The Minister may remove a person from an office to which the person was appointed under this clause.
- (4) A person while acting in the office of trustee 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 person.
- (5) For the purposes of this clause, a vacancy in the office of trustee is to be regarded as an absence from that office.

Terms of office of trustees

3. Subject to this Act, a trustee holds office for such period, not exceeding 5 years, as may be specified in the trustee's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment as the occasion arises.

Remuneration of trustees

4. A trustee 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 trustee.

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 SCHEDULE 1—PROVISIONS RELATING TO TRUSTEES OF THE BOARD—
continued
Vacancy in office of trustee

5. (1) The office of trustee becomes vacant if the trustee:
- (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 Governor under this clause; or
 - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the trustee personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the trustee is excused by the Minister 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 penal servitude or 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) has failed to comply with a requirement of clause 7 of this Schedule or with a direction under clause 6 (3) of Schedule 2.
- (2) The Governor may remove a part-time trustee from office at any time.

Filling of vacancy in office of trustee

6. (1) If the office of any trustee 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 trustee concerned was due to expire within 60 days after the vacancy occurred.

Trustees to disclose pecuniary interests

7. (1) If:
- (a) a trustee has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board; or
 - (b) the interest appears to give rise to a conflict with the proper performance of the trustee's duties in relation to the consideration of the matter,

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

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SCHEDULE 1—PROVISIONS RELATING TO TRUSTEES OF THE BOARD—
continued

- (2) A disclosure by a trustee at a meeting of the Board that the trustee:
- (a) is a director, 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 or thing 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) The Board must cause particulars of any disclosure made under this clause to be recorded in a book kept for the purpose and must ensure that that book is kept open at all reasonable hours to inspection by any person.

(4) After a trustee has disclosed the nature of an interest in any matter or thing, the trustee 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 purpose of making a determination by the Board under subclause (4), a trustee 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 other trustees for the purpose of making the determination; or
- (b) take part in the making by the other trustees 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 trustee (being the provision of goods or services to the trustee by the Board) if the goods or services are, or are to be, available to members of the public on the same terms and conditions as those on which the goods or services are provided to the trustee.

(8) This clause does not apply to or in respect of an interest of a trustee in a matter or thing which arises merely because the trustee is a contributor to an associated superannuation scheme.

(9) A reference in this clause to a meeting of the Board includes a reference to a meeting of a committee of the Board.

Effect of certain other Acts on the status of trustees

8. (1) Part 2 of the Public Sector Management Act 1988 does not apply to the appointment of a trustee.

(2) If by or under any other 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

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**SCHEDULE 1—PROVISIONS RELATING TO TRUSTEES OF THE BOARD—
*continued***

- (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 trustee or from accepting and retaining any remuneration payable to the person under this Act as a trustee.

- (3) The office of a trustee is not, for the purposes of any Act, an office or place of profit under the Crown.

**SCHEDULE 2—PROVISIONS RELATING TO THE CALLING AND
HOLDING OF MEETINGS OF THE BOARD**

(Sec. 5 (16))

General procedure of the Board

1. 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.

Quorum for meetings of the Board

2. The quorum for a meeting of the Board is 6 trustees.

Presiding trustee at meetings of the Board

3. A meeting of the Board is to be presided over by the chairperson of the Board or, in the absence of the chairperson, by a trustee chosen to preside at the meeting by the trustees present at the meeting.

Voting at meetings of the Board

4. (1) A decision of the Board is not effective unless it is supported by the votes of not fewer than 6 of the trustees cast at a meeting of the Board at which a quorum is present.

- (2) The chairperson of the Board has a deliberative vote only.

Minutes to be kept of meetings of the Board

5. The Board must cause full and accurate minutes to be kept of each meeting of the Board.

Conflicts of interest

6. (1) If:

- (a) a person holds office both as a trustee and as a director; and

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SCHEDULE 2—PROVISIONS RELATING TO THE CALLING AND HOLDING
OF MEETINGS OF THE BOARD—*continued*

- (b) in the course of the Board's proceedings it appears to the chairperson of the Board that, in relation to any matter that the Board is considering, the interests of that person in his or her capacity as a director conflict with his or her duties as a trustee,

the chairperson must direct that the person not participate in, or be present during, that part of the proceedings during which the matter is being considered by the Board.

- (2) The chairperson of the Board may give a direction under subclause (1) on his or her own initiative or on the motion of another trustee.

- (3) A trustee must comply with a direction given to him or her under subclause (1).

SCHEDULE 3—PROVISIONS RELATING TO THE BOARD OF
DIRECTORS OF THE CORPORATION

(Sec. 27 (7))

Definitions

1. In this Schedule:

“board” means the board of directors of the Corporation;

“full-time director” includes the managing director.

Employment of full-time directors

2. The employment of a full-time director is subject to Part 2A of the Public Sector Management Act 1988, but is not subject to Part 2 of that Act.

Chairperson of the board of the Corporation

3. (1) The Governor may at any time remove a person from office as chairperson of the board.

(2) The removal of a person from office under subclause (1) does not of itself affect the person's appointment as a director.

- (3) A person who is the chairperson of the board vacates office as chairperson if:

(a) the Governor removes the person from that office; or

(b) the person resigns from that office by instrument in writing addressed to the Minister; or

(c) the person ceases to be a part-time director.

Acting directors

4. (1) The Minister may, from time to time, appoint a person to act in the office of a director during the illness or absence of the director, and the person, while so acting, has all the functions of the director and is to be regarded as a director.

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SCHEDULE 3—PROVISIONS RELATING TO THE BOARD OF DIRECTORS
OF THE CORPORATION—*continued*

(2) The Minister must not make an appointment under subclause (1) in relation to a part-time director referred to in section 27 (2) without first consulting the Labor Council of New South Wales and seeking the Council's endorsement of that appointment.

(3) The Minister may remove a person from an office to which the person was appointed under this clause.

(4) A person while acting in the office of director 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 person.

(5) For the purposes of this clause, a vacancy in the office of director is to be regarded as an absence from that office.

Terms of office of directors

5. Subject to this Act, a part-time director holds office for such period, not exceeding 5 years, as may be specified in the director's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment as the occasion arises.

Remuneration of directors

6. A part-time director 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 director.

Vacancy in office of part-time director

7. (1) The office of a part-time director becomes vacant if the director:

- (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 Governor under this clause; or
- (e) is absent from 4 consecutive meetings of the board of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the director is excused by the Minister 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 penal servitude or 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

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**SCHEDULE 3—PROVISIONS RELATING TO THE BOARD OF DIRECTORS
OF THE CORPORATION—*continued***

- (i) has failed to comply with a requirement of clause 9 of this Schedule.
- (2) The Governor may remove a part-time director from office at any time.

Filling of vacancy in office of director

8. (1) If the office of any director 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 director concerned was due to expire within 60 days after the vacancy occurred.

Directors to disclose pecuniary interests

9. (1) If:

- (a) a director has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the board; or
- (b) the interest appears to give rise to a conflict with the proper performance of the director's duties in relation to the consideration of the matter,

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

(2) A disclosure by a director at a meeting of the board that the director:

- (a) is a director, 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 or thing 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) The board must cause particulars of any disclosure made under this clause to be recorded in a book kept for the purpose and must ensure that that book is kept open at all reasonable hours to inspection by any person.

(4) After a director has disclosed the nature of an interest in any matter or thing, the director 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 purpose of making a determination by the board under subclause (4), a director 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 other directors for the purpose of making the determination; or
- (b) take part in the making by the other directors of the determination.

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**SCHEDULE 3—PROVISIONS RELATING TO THE BOARD OF DIRECTORS
OF THE CORPORATION—*continued***

(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 director (being the provision of goods or services to the director by the board) if the goods or services are, or are to be, available to members of the public on the same terms and conditions as those on which the goods or services are provided to the director.

(8) This clause does not apply to or in respect of an interest of a director in a matter or thing which arises merely because the director is a contributor to an associated superannuation scheme.

(9) A reference in this clause to a meeting of the board includes a reference to a meeting of a committee of the board.

Effect of certain other Acts on the status of directors

10. (1) Part 2 of the Public Sector Management Act 1988 does not apply to the appointment of a part-time director.

(2) If by or under any other 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 part-time director or from accepting and retaining any remuneration payable to the person under this Act as such a director.

(3) The office of part-time director is not, for the purposes of any Act, an office or place of profit under the Crown.

**SCHEDULE 4—PROVISIONS RELATING TO THE CALLING AND
HOLDING OF MEETINGS OF THE BOARD OF DIRECTORS OF THE
CORPORATION**

(Sec. 27 (8))

Definition

1. In this Schedule, “board” means the board of directors of the Corporation.

General procedure of the board of directors of the corporation

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

Quorum at meetings of the board of directors of the Corporation

3. The quorum for a meeting of the board is 4 directors.

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SCHEDULE 4—PROVISIONS RELATING TO THE CALLING AND HOLDING
OF MEETINGS OF THE BOARD OF DIRECTORS OF THE CORPORATION—
continued

Presiding director at meetings of the board of directors of the Corporation

4. A meeting of the board is to be presided over by the chairperson of the board or, in the absence of the chairperson, by a director chosen to preside at the meeting by the directors present at the meeting.

Voting at meetings of the board of directors of the Corporation

5. (1) 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.

(2) The chairperson of the board has a deliberative vote only.

Minutes to be kept of meetings of the board of directors of the Corporation

6. The board must cause full and accurate minutes to be kept of each meeting of the board.

First meeting of the board of directors of the Corporation

7. The Minister must call the first meeting of the board in such manner as the Minister thinks fit.

SCHEDULE 5—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 54)

PART 1—GENERAL

Definitions

1. (1) In this Schedule:

“former Act” means the Superannuation Administration Act 1987;

“transferred employee” means a person who, in accordance with clause 9 of this Schedule, becomes an employee of the Corporation.

(2) In this Schedule, a reference to the repeal of the former Act is, if different days are appointed for the repeal of different provisions of that Act, a reference to the repeal of the relevant provision or provisions of that Act.

Savings and transitional regulations

2. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to this Act or a later date.

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SCHEDULE 5—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

(3) To the extent to which a provision referred to in subclause (1) takes effect from 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 CONSEQUENTIAL ON THE
ENACTMENT OF THIS ACT**

Termination of office of certain full-time members of Board

3. (1) A person who, immediately before the commencement of section 5, held office as a member of the Board on a full-time basis ceases to hold that office on that commencement.

(2) A person who so ceases to hold office as a member of the Board is not entitled to any remuneration or compensation because of the loss of that office, except as provided by Part 2A of the Public Sector Management Act 1988. For the purposes of that Part of that Act, the person is taken to have been removed from office under section 42Q of that Act.

Termination of office of certain part-time members of the Board

4. (1) A person who, immediately before the commencement of section 5, held office as a part-time member of the Board ceases to hold that office on that commencement.

(2) A person who so ceases to hold office as a member of the Board is not entitled to any remuneration or compensation because of the loss of that office.

Board's role as trustee for persons entitled to receive benefits

5. For the avoidance of doubt, it is declared that the Board and its predecessors have always held the associated superannuation funds in trust for the persons entitled to receive benefits under the associated Acts.

Annual reports etc.

6. (1) If, before the repeal of the former Act, the 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 Board must comply with the requirement despite that repeal.

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SCHEDULE 5—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

(2) The first annual report and statement of accounts of the Board after the commencement of the relevant provisions of this Act must deal with any matters relating to the 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 Board had the former Act not been repealed.

Delegations

7. A delegation effected by the Board and in force immediately before the repeal of the former Act is to be taken to have been effected under this Act (but only if the Board could have lawfully made the delegation under this Act).

Administration Account

8. (1) The State Authorities Superannuation Management Account established under section 21 of the former Act becomes, on the repeal of that section, the State Authorities Superannuation Administration Account referred to in section 21 of this Act.

(2) Any payments that had been approved by the Board before the repeal of the former Act and not paid before that repeal are payable from the Administration Account maintained under section 21 of this Act.

Transfer of staff

9. Any member of the staff of the Board employed under subsection (1) of section 9 of the former Act immediately before the repeal of that section becomes, on the repeal of that section, an employee of the Corporation employed under section 31 (1) of this Act.

Conditions of employment of transferred staff

10. (1) Except as otherwise provided by this Schedule 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 repeal of section 9 of the former Act, and are to continue to have effect until varied either by agreement or otherwise in accordance with law.

(2) The provisions of clause 35 (Long service leave—preserved arrangement) and clause 45 (Sick leave—payment for untaken sick leave) of Industrial Agreement No. 7720 of 9 March 1987 continue, in relation to a transferred employee to whom they applied immediately before the repeal of the former Act, to regulate the matters which they regulate, until more favourable provision is made in relation to those matters by a variation referred to in subclause (1).

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 SCHEDULE 5—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued
Previous service and accrued leave

11. (1) Service of a transferred employee with the Board is to be treated as service with the Corporation for the purpose of any Act or of any regulation, by-law or other statutory instrument or of the terms and conditions of any staff agreement or of any industrial award or agreement.

(2) The transfer of a transferred employee to the service of the Corporation does not affect any right to leave of absence (including long service leave) accrued before the repeal of the former Act.

(3) The Board is liable to meet the cost of providing to a transferred employee any long service leave that had accrued to that employee before the repeal of the former Act.

Superannuation—employer's liability

12. If, before the repeal of the former 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 Board; or
 - (ii) the Board was, for the purposes of any superannuation scheme, the employer of the person,

then, for the purposes of the Act by or under which that scheme is established, the Corporation is, on and after the day on which the former Act was repealed, to be 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.

Appeals

13. An appeal pending before the Industrial Commission immediately before the repeal of the former Act under any provision of that Act may be dealt with and determined as if that Act had not been repealed.

Transfer of certain assets of the Board to the Corporation

14. (1) As soon as practicable after the repeal of the former Act, the Board must make available to the Corporation (whether by transfer, lease, loan or otherwise) assets of the Board to enable the Corporation to carry out its functions under section 29.

(2) The assets referred to in subclause (1) are to be such as agreed on by the Board and the Corporation and are to be made available on such terms and conditions as may be so agreed.

(3) The Board and the Corporation may also enter into an agreement as to the transfer to the Corporation of any of the Board's liabilities.

Superannuation Administration 1991

SCHEDULE 5—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

Contracts

15. (1) Any contract for the performance of services entered into with the Board and in force immediately before the repeal of the former Act becomes, on the repeal of that Act, a contract for the performance of services entered into with the Corporation.

(2) Any other contract (other than a contract of employment) entered into with the Board and in force immediately before the repeal of the former Act continues, on the repeal of that Act, as a contract entered into with the Board.

Approved Deposit Fund

16. (1) The approved deposit fund established under section 20 of the former Act and called State Super ADF is continued by this Act.

(2) State Super Financial Services Limited is authorised to continue to maintain and operate the fund referred to in subclause (1).

(3) For the purposes of this Act, State Super Financial Services Limited is to be taken to be a company established by the Board under the power conferred on it by section 6 (5).

(4) The Superannuation Administration (Approved Deposit Fund) Regulation 1990 continues in force as if it had been made under this Act and as if this Act had been in force when it was made.

SCHEDULE 6—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

(Sec. 55)

Coal and Oil Shale Mine Workers (Superannuation) Act 1941 No. 45

Section 3 (Special provisions as to calculation of periods of employment):

From section 3 (6) (k) (iii), omit "and managed".

Freedom of Information Act 1989 No. 5

Schedule 2 (Exempt Bodies and Offices):

After "The State Authorities Superannuation Board—investment function.", insert:

The State Superannuation Investment and Management Corporation—investment functions.

Government and Related Employees Appeal Tribunal Act 1980 No. 39

Schedule 4 (Employing Authorities):

Insert in alphabetical order:

State Superannuation Investment and Management Corporation.

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SCHEDULE 6—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS—
continued

Local Government and Other Authorities (Superannuation) Act 1927 No. 35

(1) Section 3 (Definitions):

(a) Omit the definition of "Board", insert instead:

"Board" means the State Authorities Superannuation Board referred to in section 4 of the Superannuation Administration Act 1991.

(b) Before the definition of "Approved", insert:

"Administration Account" means the State Authorities Superannuation Administration Account maintained under the Superannuation Administration Act 1991.

(c) Omit the definition of "Management Account".

(2) Sections 16A (Board may receive commissions etc.), 17 (Expenses of administration) and 17P (Contingent account):

Omit "Management Account" wherever occurring, insert instead "Administration Account".

Police Association Employees (Superannuation) Act 1969 No. 33

Section 2 (Definitions):

From section 2 (1), omit the definition of "Board", insert instead:

"Board" means the State Authorities Superannuation Board referred to in section 4 of the Superannuation Administration Act 1991;

Police Regulation (Superannuation) Act 1906 No. 28

Section 3 (Police Superannuation Fund):

Omit section 3 (3) (c), insert instead:

(c) the administration costs relating to the Fund referred to in section 22 of the Superannuation Administration Act 1991; and

Public Authorities (Financial Arrangements) Act 1987 No. 33

Schedule 1 (Authorities):

Insert in alphabetical order:

State Superannuation Investment and Management Corporation.

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SCHEDULE 6—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS—
continued

Public Authorities Superannuation Act 1985 No. 41

Section 5 (Definitions):

- (a) Omit the definition of "Board" from section 5 (1), insert instead:
"Board" means the State Authorities Superannuation Board referred to in section 4 of the Superannuation Administration Act 1991;
- (b) From section 5 (1), omit the definition of "Management Account".

Public Finance and Audit Act 1983 No. 152

Schedule 2 (Statutory Bodies):

Insert in alphabetical order:

State Superannuation Investment and Management Corporation.

Public Sector Management Act 1988 No. 33

(1) Schedule 3 (Declared Authorities):

After the item relating to the State Rail Authority of New South Wales, insert:

State Superannuation Investment and Management Corporation.

(2) Schedule 3A (Chief Executive Positions):

- (a) From Part 3 (Heads of Public Authorities), omit "President of the State Authorities Superannuation Board".
- (b) In Part 3, insert in alphabetical order:
Managing director of the State Superannuation Investment and Management Corporation.

(3) Schedule 3B (Senior Executive Positions):

- (a) From Part 1 (Positions (other than statutory positions)), omit the matter relating to the State Authorities Superannuation Board.
- (b) In Part 1, after the matter relating to the State Rail Authority, insert:
State Superannuation Investment and Management Corporation
Secretary and Director, Corporate Services
Director, Information Technology and Chief Accountant
Director, Internal Audit
Director, Superannuation Administration Division
Director, Policy and Research
Director, Superannuation Legal Services
Director, Superannuation Accounting

Superannuation Administration 1991

SCHEDULE 6—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS—
continued

Director, Marketing and Advisory
Manager, Information Services
Manager, Corporate Accounting

- (c) From Part 2 (Statutory positions), omit:

Full-time member of the State Authorities Superannuation Board
Vice-President of the State Authorities Superannuation Board

- (d) In Part 2, after “Deputy General Manager of the Motor Accidents Authority”, insert:

Any full-time director of the State Superannuation Investment and Management Corporation (other than the managing director of the Corporation)

State Authorities Non-contributory Superannuation Act 1987 No. 212

- (1) Section 3 (Definitions):

From section 3 (1), omit the definition of “Board”, insert instead:

“Board” means the State Authorities Superannuation Board referred to in section 4 of the Superannuation Administration Act 1991;

- (2) Section 9 (Funds etc.):

From section 9 (3) (a), omit “State Authorities Superannuation Management Account established under the Superannuation Administration Act 1987 management costs calculated in accordance with that Act”, insert instead “State Authorities Superannuation Administration Account maintained under the Superannuation Administration Act 1991 administration costs incurred by the Board”.

- (3) Section 10 (Reserves for employers):

From section 10 (4) (b), omit “management costs calculated in accordance with the Superannuation Administration Act 1987”, insert instead “administration costs incurred by the Board under the Superannuation Administration Act 1991”.

- (4) Section 20 (Application of payments):

Omit “managed”, insert instead “administered”.

- (5) Section 24 (Benefit to be preserved):

From section 24 (3) (d), omit “managed”, insert instead “administered”.

- (6) Section 25 (Preservation of benefit):

(a) From section 25 (1), omit “Superannuation Administration Act 1987”, insert instead “Superannuation Administration Act 1991”.

(b) From section 25 (1), omit “managed”, insert instead “administered”.

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SCHEDULE 6—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS—
continued

(7) Schedule 1 (Employers):

From Part 1 (The Crown and other employers), omit "State Authorities Superannuation Board", insert instead "State Superannuation Investment and Management Corporation".

State Authorities Superannuation Act 1987 No. 211

(1) Section 3 (Definitions):

(a) In section 3 (1) after the definition of "additional benefit levy", insert:

"Administration Account" means the State Authorities Superannuation Administration Account maintained under the Superannuation Administration Act 1991;

(b) From section 3 (1), omit the definition of "Board", insert instead:

"Board" means the State Authorities Superannuation Board referred to in section 4 of the Superannuation Administration Act 1991;

(c) From section 3 (1), omit the definition of "Management Account".

(2) Section 11 (Establishment of the Fund):

(a) From section 11 (1), omit "manage", insert instead "administer".

(b) From section 11 (4) (a), omit "Management Account—management costs calculated in accordance with the Superannuation Administration Act 1987", insert instead "Administration Account—administration costs incurred by the Board under the Superannuation Administration Act 1991".

(3) Section 12 (Contributors' accounts):

Omit section 12 (3) (c), insert instead:

(c) administration costs incurred by the Board under the Superannuation Administration Act 1991 in relation to the contributor.

(4) Section 14 (Reserves for employers):

Omit section 14 (4) (b), insert instead:

(b) administration costs incurred by the Board under the Superannuation Administration Act 1991 in relation to the employer or an employer to whom the reserve relates.

(5) Section 15 (Other accounts and reserves):

Omit "management of the Fund and the administration of", insert instead "administration of the Fund and".

Superannuation Administration 1991

SCHEDULE 6—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS—
continued

(6) Schedule 1 (Employers):

From Part 1 (The Crown and other employers), omit “State Authorities Superannuation Board”, insert instead “State Superannuation Investment and Management Corporation”.

State Public Service Superannuation Act 1985 No. 45

Section 5 (Definitions):

- (a) From section 5 (1), omit the definition of “Board”, insert instead:
 “Board” means the State Authorities Superannuation Board referred to in section 4 of the Superannuation Administration Act 1991;
- (b) From section 5 (1), omit the definitions of “elected member”, “full-time elected member” and “part-time elected member”.
- (c) In section 5 (1), from the definition of “Fund”, omit “managed”, insert instead “administered”.

Superannuation Act 1916 No. 28

(1) Section 3 (Definitions):

From section 3 (1), omit the definition of “Board”, insert instead:

“Board” means the State Authorities Superannuation Board referred to in section 4 of the Superannuation Administration Act 1991.

(2) Section 4 (Reconstitution of the Fund):

Omit section 4 (4) (a), insert instead:

- (a) the administration costs incurred by the Board in relation to the administration of the Fund; and

(3) Section 6 (Contributors’ reserve):

Omit section 6 (2) (b), insert instead:

- (b) administration costs incurred by the Board under the Superannuation Administration Act 1991 in relation to contributors; and

(4) Section 7 (Employer reserves):

Omit section 7 (2) (b), insert instead:

- (b) administration costs incurred by the Board under the Superannuation Administration Act 1991 in relation to the employer or an employer to whom the reserve relates; and

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SCHEDULE 6—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS—
continued

(5) Schedule 3 (List of Employers):

From Part 1 of Schedule 3 (The Crown and other employers), omit “State Authorities Superannuation Board”, insert instead “State Superannuation Investment and Management Corporation”.

Transport Employees Retirement Benefits Act 1967 No. 96

Section 3 (Definitions):

From section 3 (1), omit the definition of “Board”, insert instead:

“Board” means the State Authorities Superannuation Board referred to in section 4 of the Superannuation Administration Act 1991;

Treasury Corporation Act 1983 No. 75

Section 4C (Staff of Corporation etc.):

From section 4C (3), omit “Superannuation Administration Act 1987”, insert instead “Superannuation Administration Act 1991”.

SUPERANNUATION ADMINISTRATION ACT 1991 No. 96

NEW SOUTH WALES



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SUPERANNUATION ADMINISTRATION ACT 1991 No. 96

Date of last reprint: not yet reprinted

Amendments not included in current print

Made by	Provisions affected
Superannuation Legislation (Amendment) Act 1992 No. 35	s. 19
First State Superannuation Act 1992 No. 100	ss. 3; 10–11; 15; 23; 30; 35; 43
Superannuation Legislation (Miscellaneous Amendments) Act 1993 No. 42	ss. 6; 9; 29; 35
Statute Law (Miscellaneous Provisions) Act (No. 2) 1993 No. 108	ss. 6; 29
Superannuation Legislation (Further Amendment) Act 1993 No. 111	ss. 22; 23; 23A; 23B; 23C; 23D; 46A; Sch. 5, Pt. 3

AMENDMENTS ARE SHOWN IRRESPECTIVE OF WHETHER THEY ARE IN FORCE AT THE DATE OF ISSUE OF THIS SHEET. FOR FURTHER INFORMATION ABOUT THE EXACT STATUS OF LEGISLATION ETC. PLEASE CONSULT THE MONTHLY ACTS TABLES OR CONTACT THE LEGISLATION INFORMATION SERVICE AT THE PARLIAMENTARY COUNSEL'S OFFICE ON (02) 228 7139.



SUPERANNUATION ADMINISTRATION ACT 1991 No. 96

NEW SOUTH WALES



Act No. 96, 1991

An Act to continue the State Authorities Superannuation Board; to provide for the Board to administer certain superannuation schemes and to be trustee for the persons entitled to receive benefits under those superannuation schemes; to constitute the State Superannuation Investment and Management Corporation and to prescribe the functions of the Corporation with respect to those superannuation schemes and other matters; and to provide for ancillary matters. [Assented to 17 December 1991]

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Superannuation Administration Act 1991.

Commencement

2. (1) Subject to this section, this Act commences on a day or days to be appointed by proclamation.

(2) Section 1 and this section commence on the date of assent to this Act.

(3) For the purpose only of enabling the Board and the board of directors of the Corporation to be constituted in accordance with this Act on or after (but not before) the commencement of the relevant provisions of this Act, appointments may be made under this Act, and any other act, matter or thing may be done, before that commencement as if the whole of this Act had commenced on the date of assent.

(4) No appointment as a trustee or director takes effect before the commencement of the relevant provisions of this Act.

Definitions

3. (1) In this Act:

“**Administration Account**” means the State Authorities Superannuation Administration Account maintained under section 21;

“**Administrative Office**” has the same meaning as in section 3 (1) of the Public Sector Management Act 1988;

“**associated Acts**” means 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;

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- (i) State Authorities Non-contributory Superannuation Act 1987;
 - (j) any other Act declared under subsection (3) to be an associated Act for the purposes of this Act;
- “associated superannuation fund”** means a superannuation fund established or constituted under an associated Act;
- “associated superannuation scheme”** means a superannuation scheme established under an associated Act;
- “benefit”** means a pension or lump sum retirement or superannuation benefit;
- “Board”** means the State Authorities Superannuation Board continued by this Act;
- “Corporation”** means the State Superannuation Investment and Management Corporation constituted by this Act;
- “director”** means a director of the board of the Corporation;
- “local authority”** means the council of a city, municipality or shire;
- “public authority”** means a person or body constituted or established by an Act for a public purpose;
- “superannuation scheme”** means a scheme, fund or arrangement (whether or not established by an Act) under which any benefits are provided;
- “trustee”** means a trustee of the Board.
- (2) In this Act:
- (a) a reference to a function includes a reference to a power, authority and duty; and
 - (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
- (3) The Governor may, by order published in the Gazette, declare to be an associated Act any Act which establishes a superannuation scheme under which employees of the Crown or of a public or local authority are entitled to receive superannuation or retirement benefits.

PART 2—THE STATE AUTHORITIES SUPERANNUATION BOARD

Division 1—Constitution and functions of the Board

The Board (cf. Act No. 210, 1987, s. 4)

4. The corporation constituted by the Superannuation Administration Act 1987 with the corporate name of State Authorities Superannuation Board is continued by this Act.

Composition and procedure of the Board (cf. Act No. 210, 1987, s. 4)

5. (1) The Board is to consist of 9 trustees appointed by the Governor.

(2) Of the trustees:

- (a) one is to be appointed as the chairperson of the Board; and
- (b) four are to be appointed to represent the interests of employers; and
- (c) four are to be appointed to represent the interests of employees.

(3) All of the trustees are to be appointed on a part-time basis, except that, if the Minister so recommends, one of the trustees referred to in subsection (2) (c) may be appointed on a full-time basis with the title "full-time employee trustee".

(4) A person holding office as full-time employee trustee is, except as permitted by the Board, required to devote the whole of his or her time to looking after the interests of members and beneficiaries of the associated superannuation schemes.

(5) To be eligible for appointment as chairperson of the Board a person must:

- (a) have significant knowledge of, and experience in, the conduct of superannuation schemes, financial management or some other relevant field of commerce; and
- (b) be independent of employers and employees and their respective interests.

(6) One of the trustees referred to in subsection (2) (b) is to be appointed on the recommendation of the Treasurer and the other trustees referred to in subsection (2) are to be appointed on the recommendation of the Minister.

(7) The Minister must not make a recommendation for the appointment of a person as chairperson of the Board without having consulted the Labor Council of New South Wales and sought the endorsement of the Council with respect to the recommendation.

(8) A director is eligible to hold office as a trustee only in so far as this section provides.

(9) The chairperson of the board of directors is eligible to hold office as a trustee if appointed as chairperson of the Board.

(10) One of the part-time directors is eligible to hold office as a trustee who represents the interests of employers and another of those directors is eligible to hold office as a trustee who represents the interests of employees.

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(11) Whenever it is necessary to appoint a trustee or trustees referred to in subsection (2) (c):

- (a) the Minister must, by notice in writing, invite the Labor Council of New South Wales to nominate a panel of persons from which the trustee is or the trustees are to be chosen; and
- (b) the Council may nominate a panel in response to the invitation.

(12) If a panel is not nominated within the period or in the manner specified by the Minister in a notice referred to in subsection (11), the Minister may recommend the appointment of the necessary number of trustees representing the interests of employees without recourse to such a panel, and any person appointed in consequence of that recommendation is to be regarded as having been chosen from a properly nominated panel.

(13) Without limiting what may be included in a notice under subsection (11), the notice must specify, as part of the manner of nomination, the minimum number or maximum number (or both) of persons who may be included in the panel.

(14) The maximum number referred to in subsection (13) is 2 more than the number of trustees that, on the particular occasion, are to be appointed as trustees to represent the interests of employees.

(15) Schedule 1 has effect with respect to the trustees.

(16) Schedule 2 has effect with respect to the calling and holding of meetings of the Board.

General functions of the Board (cf. Act No. 210, 1987, ss. 14, 15A)

6. (1) The functions of the Board are:

- (a) to administer the associated superannuation schemes; and
- (b) to supervise the investment and management of the associated superannuation funds; and
- (c) to ensure that benefits payable to the persons entitled to receive benefits under those schemes are paid in accordance with the relevant provisions of the associated Acts; and
- (d) to ensure that other payments required by the associated Acts are made; and
- (e) to administer any superannuation scheme the administration of which is transferred to it in accordance with regulations made under section 8.

(2) The Board has such other functions as are conferred or imposed on the Board by or under this or any other Act, including the associated Acts.

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(3) The Board is a trustee for the purposes of the Trustee Act 1925 and is required to hold in trust for the persons entitled to receive benefits under the associated Acts all assets held by, and all contributions and other money paid or payable to, the Board under this Act and the associated Acts.

(4) The Board must ensure that the assets of the associated superannuation funds are used:

- (a) to pay benefits to or in respect of the persons entitled to receive benefits under the associated superannuation schemes; and
- (b) to pay the costs and expenses of administering those schemes and investing and managing those funds.

(5) The Board has power in New South Wales and elsewhere to do all things necessary or convenient to be done for, or in connection with, the exercise of the functions of the Board and, in particular, may:

- (a) form or establish, or participate in the formation or establishment of, any company whose objects include the establishment of superannuation schemes for the benefit of employees of the Crown or of a public or local authority or for associated objects; and
- (b) subscribe for, invest in or otherwise acquire, and hold or dispose of, shares or debentures of such a company; and
- (c) take appropriate action to control or to enhance or protect the value of any investment made from the associated superannuation funds or to enhance or protect the return on any such investment.

(6) In exercising its functions, the Board must:

- (a) have regard to the interests of the persons entitled to receive benefits under the associated Acts; and
- (b) comply with the requirements of the Occupational Superannuation Standards Act 1987 of the Commonwealth in so far as those requirements are applicable to those schemes.

Board to have regard to certain Government policy statements

7. (1) The Minister may, from time to time, give to the Board a statement in writing specifying the Government's policy goals or objectives with respect to the exercise by the Board of its functions under this Act and the associated Acts.

(2) The Minister is required to lay before each House of Parliament, within 14 sitting days after giving a statement under this section, a copy of the statement.

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(3) If a House of Parliament is not sitting when the Minister seeks to comply with subsection (2), the Minister is required to present a copy of the relevant statement to the Clerk of the House.

(4) 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.

(5) The Board must, when exercising its functions under this Act or under any of the associated Acts, have regard to the contents of a statement given to it under this section if:

- (a) a copy of the statement has been laid or is taken to have been laid before each House of Parliament as provided by this section; and
- (b) the statement is not inconsistent with the provisions of this Act or any of the associated Acts.

Transfer of responsibility for superannuation schemes to the Board
(cf. Act No. 210, 1987, s. 15)

8. The Governor may make regulations for or with respect to the transfer to the Board of responsibility for the administration of any superannuation scheme that is established by or under an Act or any superannuation scheme that makes provision for employees of the Crown or of a public or local authority.

Board may appoint investment managers etc.

9. (1) The Board may, subject to subsection (4), enter into contracts or arrangements with any person:

- (a) under which the person undertakes to carry out on behalf of the Board any one or more of the Board's functions with respect to the administration of an associated superannuation scheme or any other functions of the Board under this or any other Act; or
- (b) for the performance of services.

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(2) The power of the Board under this section to enter into a contract or an arrangement does not extend to conferring on any other person the power of the Board under an associated Act to appoint an actuary or actuaries to conduct an investigation into the state or sufficiency of any fund established under that Act.

(3) A person who enters into a contract or arrangement with the Board under this section has, while acting in accordance with the terms of the contract or arrangement, those functions of the Board specified in the contract or arrangement.

(4) The Board may enter into a contract or an arrangement with a person under this section with respect to the exercise of a function of the Board by another person only if the Board is satisfied that the contract or arrangement is in the interests of the persons entitled to receive benefits under the associated Act or Acts concerned, and then only with the consent of the Minister.

Board may make arrangements etc. for the provision of additional benefits

10. (1) The Board may also enter into a contract or arrangement 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 associated superannuation schemes for the purpose of paying additional death or disability 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 additional benefits to or in respect of any such members.

(2) The Board may enter into a contract or arrangement with a person under this section with respect to the exercise of a function of the Board by another person only if the Board is satisfied that the contract or arrangement is in the interests of the persons entitled to receive benefits under the associated Act or Acts concerned, and then only with the consent of the Minister.

(3) A contract or arrangement entered into under this section may be entered into as part of a contract or arrangement entered into under section 9.

(4) A person who enters into a contract or arrangement with the Board under this section has, while acting in accordance with the terms of that contract or arrangement, those functions of the Board that are specified in the contract or arrangement.

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Staff of the Board (cf. Act No. 210, 1987, s. 9)

11. (1) The Board may, with the approval of the Minister or the public or local authority concerned, arrange for the use of the services of any staff (whether by secondment or otherwise) or facilities of a Government Department, an Administrative Office or a public or local authority.

(2) For the purposes of this Act, a person whose services are made use of under subsection (1) is to be regarded as an employee of the Board.

Board may employ agents (cf. Act No. 210, 1987, s. 10)

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

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

Board may engage consultants etc. (cf. Act No. 210, 1987, s. 11)

13. (1) The Board may engage as consultants (such as investment advisers) persons who have appropriate qualifications and experience.

(2) The engagement of a person under subsection (1) is, where appropriate, subject to sections 9 and 10 so far as those sections are relevant.

Committees of the Board (cf. Act No. 210, 1987, s. 12)

14. (1) The Board may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that none of the members of a committee is a trustee.

(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.

Delegation by the Board (cf. Act No. 210, 1987, s. 13)

15. The Board may delegate to:

(a) a trustee; or

(b) a committee that is comprised of or includes trustees; or

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(c) the Corporation,
any of its functions, other than this power of delegation.

Board may compromise or settle claims (cf. Act No. 210, 1987, s. 25)

16. (1) The Board may compromise or otherwise settle any claim made against it.

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

(3) To the extent that an amount payable by the Board following a compromise or settlement is not a benefit under the relevant associated superannuation scheme, the amount is payable from whichever associated superannuation fund or funds that the Board considers appropriate.

(4) The Board may make such inquiries and investigations with respect to a claim made against it as it thinks fit.

(5) The Board may request a person who has made a claim against it to provide the Board with an authority to obtain from a third person any information or evidence that is relevant to the subject-matter of the claim.

(6) The Board is not obliged to continue to process the claim if the claimant does not comply with a request of the Board under subsection (5).

Division 2—Financial provisions relating to the Board**Definitions** (cf. Act No. 210, 1987, s. 16)

17. In this Division, “contributor”, “employee” and “employer” have the same meanings as they have in the associated Acts for the purposes of the associated superannuation schemes.

Financial year of the Board (cf. Act No. 210, 1987, s. 17)

18. The financial year of the Board is the year ending on 31 March, but the Treasurer may determine a different financial year under section 4 (1A) of the Public Finance and Audit Act 1983.

Financial accommodation and investment by the Board (cf. Act No. 210, 1987, s. 18)

19. The Board may:

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

under and subject to the Public Authorities (Financial Arrangements) Act 1987.

Board may pool funds (cf. Act No. 210, 1987, s. 19)

20. The Board may, for the purposes of any provisions of the Public Authorities (Financial Arrangements) Act 1987 relating to investment and for any related purposes, treat as one fund all or any 2 or more of the associated superannuation funds.

Board to maintain Administration Account (cf. Act No. 210, 1987, s. 21)

21. The Board must maintain an account called the State Authorities Superannuation Administration Account.

Administration costs of the Board generally (cf. Act No. 210, 1987, s. 22)

22. (1) The Board must charge administration costs that it incurs (including the remuneration or allowances of the trustees and any expense incurred by the New South Wales Superannuation Office in providing services directly to the Board) against the Administration Account.

(2) The administration costs that the Board incurs in relation to the administration of the Police Superannuation Fund, as determined by the Board, are to be paid from that Fund to the Administration Account.

(3) The administration costs that the Board incurs in relation to the administration of the State Authorities Non-contributory Superannuation Scheme, as determined by the Board, are to be paid to the Administration Account as provided by subsection (4):

- (a) by each employer; or
- (b) where employees are employed by a group of employers, by each group of employers.

(4) The amount that each employer or group of employers is required to pay under subsection (3) is an amount calculated in accordance with the following formula:

$$A_1 = B \times \frac{E}{C}$$

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where:

- A₁ represents the amount to be determined;
- B represents the administration costs as determined by the Board in administering the State Authorities Non-contributory Superannuation Scheme;
- C represents the number of employees who are members of that Scheme during a specified period determined by the Board at a specified time;
- E represents the number of employees who, being members of that Scheme, are employed by the employer or group of employers during that period.

(5) After calculating in accordance with subsection (4) the amount payable by an employer or group of employers, the Board must debit the appropriate account, fund or reserve relating to that employer or group.

(6) The following persons and groups are required to pay to the Administration Account the administration costs referred to in subsection (1), other than those referred to in subsections (2) and (3):

- (a) each contributor to an associated superannuation scheme;
- (b) if a group of contributors contributes to such a scheme, each contributor belonging to the group;
- (c) the employer of any such contributor or group of contributors;
- (d) if any such contributor or group of contributors is employed by a group of employers, each such group of employers.

(7) The proportion of administration costs payable by a contributor, or by a contributor belonging to a group of contributors, under subsection (6) is an amount calculated in accordance with the following formula:

$$A_2 = \frac{B}{C} \times D$$

where:

- A₂ represents the amount to be determined;
- B represents the administration costs involved in administering the associated superannuation scheme concerned, as determined by the Board;
- C represents the number of contributors to that scheme during a specified period determined by the Board at a specified time;
- D represents a factor (less than 1) determined by the Board in relation to those contributors.

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(8) The proportion of administration costs payable by an employer, or by a group of employers, under subsection (6) is an amount calculated in accordance with the following formula:

$$A_3 = \frac{B}{C} \times (1 - D) \times E$$

where:

- A₃ represents the amount to be determined;
- B represents the administration costs involved in managing the associated superannuation scheme concerned, as determined by the Board;
- C represents the number of contributors to that scheme during a specified period determined by the Board at a specified time;
- D represents a factor (less than 1) determined by the Board in relation to those contributors;
- E represents the number of contributors to that scheme who are employed by the employer or group of employers during that period.

(9) After calculating the amount payable by a contributor or by an employer or group of employers under subsection (6), the Board may debit the appropriate account, fund or reserve relating to:

- (a) the contributor or, if the contributor belongs to a group of contributors, that group; or
- (b) the employer or group of employers,

as the case requires.

(10) If the Board receives:

- (a) from a person with whom it has entered into a contract or arrangement under section 9 or 10; or
- (b) from the Corporation under section 29 (4),

a bill of costs relating to the work performed under that contract or arrangement, those costs, when approved by the Board, form part of the administration costs of the Board.

Administration costs of the Board regarding preserved benefits (cf. Act No. 210, 1987, s. 23)

23. (1) In this section, “**preserved benefit**” means:

- (a) in relation to a contributor under an associated superannuation scheme—a benefit for which the contributor has made an election:
 - (i) to take the benefit provided by section 9B of the Police Regulation (Superannuation) Act 1906; or

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- (ii) to take the benefit of Division 3A of Part 4 of the Superannuation Act 1916; or
 - (iii) to make provision for a benefit provided by section 32 of the Public Authorities Superannuation Act 1985; or
 - (iv) to make provision for a benefit provided by section 34 of the State Public Service Superannuation Act 1985; or
 - (v) to make provision for a benefit provided by section 43 of the State Authorities Superannuation Act 1987; or
- (b) in relation to an employee referred to in the State Authorities Non-contributory Superannuation Act 1987—a benefit which is required to be preserved under that Act.
- (2) Administrative charges are payable from time to time in relation to a preserved benefit.
- (3) The Board is to determine administrative charges from time to time for the purposes of this section.
- (4) The Board must debit an administrative charge to the relevant contributor's account under any associated Act or to the amount that is the subject of the preserved benefit.
- (5) The Board must transfer an amount so debited to the Administration Account.

Board to make contribution to costs of the New South Wales Superannuation Office (cf. Act No. 210, 1987, s. 23A)

24. (1) The Board is, as and when directed by the Minister, required to make contributions of specified amounts towards the expense incurred in maintaining and operating the New South Wales Superannuation Office, including the costs of the Board relating to the payment of the contributions.

(2) The contributions referred to in subsection (1) (other than those referable to expenses directly incurred by the New South Wales Superannuation Office in providing services to the Board) are to be met by employers and, where the contributors or employees concerned are employed by groups of employers, by those groups of employers.

(3) In relation to the associated superannuation schemes, each employer or group of employers is required, for the purposes of subsection (2), to pay an amount calculated in accordance with the following formula:

$$A = \frac{B}{C} \times (D - E)$$

where:

- A represents the amount of the liability of the employer or group of employers under this section;
- B represents the number of persons employed by the employer or group of employers who are contributors to or members of the associated superannuation schemes during a specified period as determined by the Board at a specified date;
- C represents the total number of contributors to or members of the associated superannuation schemes during that period;
- D represents the total expense incurred in maintaining and operating the New South Wales Superannuation Office for the relevant period, including the costs of the Board relating to the payment of the amount;
- E represents such proportion of the total expense incurred in maintaining and operating the New South Wales Superannuation Office (including any expense incurred by that Office in providing services directly to the Board) for the relevant period as does not relate to the administration of associated superannuation schemes.

(4) After calculating the amount payable by an employer or group of employers under subsection (3), the Board must debit the appropriate account, fund or reserve relating to that employer or group.

Accounts and records of the Board (cf. Act No. 210, 1987, s. 24)

25. The Board may maintain its accounts and other records 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.

PART 3—STATE SUPERANNUATION INVESTMENT AND MANAGEMENT CORPORATION

Division 1—Constitution and functions of the Corporation

The Corporation

26. (1) There is established by this Act a corporation with the corporate name of the State Superannuation Investment and Management Corporation.

(2) The affairs of the Corporation are to be administered by a board of directors constituted as provided by section 27.

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(3) Any act, matter or thing done in the name of, or on behalf of the Corporation by the board of directors of the Corporation or with the authority of that board is to be taken to have been done by the Corporation.

(4) The Corporation is, in the exercise of its functions (except in relation to the contents of a report or recommendation that it may make to the Minister), subject to the control and direction of the Minister.

(5) However, the Minister must not give to the Corporation a direction that is inconsistent with:

- (a) any direction given to the Corporation by the Board (being a direction that is properly within the functions of the Board to give); or
- (b) any contract that the Corporation has lawfully entered into; or
- (c) any duty, obligation or responsibility imposed on the Corporation by or under this Act or any of the associated Acts.

(6) Any direction given by the Minister in contravention of subsection (5) is void to the extent of the inconsistency.

(7) Any direction given by the Minister that becomes inconsistent with any direction subsequently given to the Corporation by the Board (being a direction that is properly within the functions of the Board to give) is void to the extent of the inconsistency.

Composition and procedure of the board of directors of the Corporation

27. (1) The board of directors of the Corporation is to consist of 7 directors appointed by the Governor on the recommendation of the Minister.

(2) Of the directors:

- (a) one is to be appointed as managing director of the Corporation; and
- (b) one is to be appointed either as a full-time director or as a part-time director, as specified in his or her instrument of appointment; and
- (c) the remainder are to be appointed as part-time directors.

(3) A person is not eligible for appointment as a director unless he or she has experience in, and knowledge of, financial management or some other relevant commercial activity.

(4) One of the part-time directors is, in the document by which he or she is appointed as a director or in some other document signed by the Governor, to be appointed as the chairperson of the board of directors of the Corporation.

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(5) The Minister must not make a recommendation:

(a) for the appointment of a part-time director (including a part-time director referred to in subsection (2) (b)); or

(b) for the appointment of the chairperson of the board of directors, without having consulted the Labor Council of New South Wales and sought the endorsement of the Council with respect to the recommendation.

(6) A trustee is eligible to hold office as a director only in so far as section 5 provides.

(7) Schedule 3 has effect with respect to the board of directors of the Corporation.

(8) Schedule 4 has effect with respect to the calling and holding of meetings of the board of directors of the Corporation.

Functions of managing director of the Corporation

28. The managing director of the Corporation:

(a) is responsible, as the chief executive officer of the Corporation, for the management of the affairs of the Corporation subject to and in accordance with any directions of the Corporation's board of directors; and

(b) has such other functions as are conferred or imposed on the managing director by or under this or any other Act.

Functions of the Corporation relating to associated superannuation schemes

29. (1) The Corporation has the following functions with respect to the associated superannuation schemes:

(a) subject to the general direction of the Board and to the terms of any contract or arrangement entered into under section 9 or 10, to administer those schemes on behalf of the Board;

(b) to invest and manage the associated superannuation funds in accordance with the directions of the Board.

(2) The Corporation has such other functions with respect to the associated superannuation schemes as are conferred or imposed on it by or under this or any other Act.

(3) The Corporation has power in New South Wales and elsewhere to do all things necessary or convenient to be done for, or in connection with, the exercise of its functions under this section.

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(4) As consideration for doing the things referred to in subsection (1), the Corporation may charge the Board an amount not exceeding what is sufficient to cover:

- (a) the costs that the Corporation has actually incurred in doing those things; and
- (b) any fees or expenses that the Board has agreed to pay to the Corporation for doing those things.

Functions of the Corporation with respect to certain business undertakings

30. (1) The Corporation also has the following functions:

- (a) with the concurrence of both the Minister and the Treasurer, to enter into agreements or arrangements to undertake the whole or a part of the administration or management (or both) of any business undertaking;
- (b) to carry out those agreements or arrangements.

(2) As consideration for entering into an agreement or arrangement to undertake the administration or management of a business undertaking in accordance with this section, the Corporation must charge the person that owns or is responsible for carrying on the undertaking an amount sufficient to cover:

- (a) the costs that the Corporation has actually incurred in administering or managing the undertaking; and
- (b) any other fees or expenses that the person has agreed to pay to the Corporation for administering or managing the undertaking; and
- (c) an appropriate margin of profit.

(3) If a person referred to in subsection (2) does not pay a charge imposed under that subsection as and when required by the Corporation, the Corporation is entitled to recover the charge by making appropriate deductions from any assets that the Corporation is holding in relation to the business undertaking concerned.

(4) Subsection (3) does not prevent the Corporation from recovering a charge imposed under subsection (2) by any other means prescribed by law.

(5) The Corporation may establish and maintain such accounts and reserves as, in the opinion of the Corporation, are necessary or convenient for the administration or management of a business undertaking administered or managed by the Corporation in accordance with this section.

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(6) For the purposes of this section, the Corporation has power to do, in New South Wales or elsewhere, all things necessary or convenient to be done for or in connection with the administration or management of any business undertaking that it has agreed or arranged to administer or manage in accordance with this section.

(7) Without limiting subsection (6), the powers of the Corporation under that subsection include powers:

- (a) to form or establish, or participate in the formation or establishment of, one or more companies; and
- (b) to subscribe for or otherwise acquire, and to hold or dispose of, shares or debentures of a company.

(8) In this section, “**business undertaking**” includes any venture or activity undertaken or carried on by the Crown or by a public or local authority, but does not include the activity involved in operating an associated superannuation scheme.

Staff of the Corporation

31. (1) The Corporation may appoint and employ such employees as may be necessary to enable the Corporation to exercise its functions.

(2) The Corporation may fix the salaries, wages, allowances and conditions of employment of any such employees in so far as they are not fixed by or under another Act or law.

(3) The Corporation may, with the approval of the Minister, arrange for the use of the services of any staff (whether by secondment or otherwise) or facilities of a Government Department, an Administrative Office, or a public or local authority.

(4) For the purposes of this Act, a person whose services are made use of under subsection (3) is to be regarded as an employee of the Corporation.

(5) Without limiting subsections (1) and (3), such staff as may be necessary to enable the Corporation to exercise its functions may be employed under Part 2 of the Public Sector Management Act 1988.

Corporation may employ agents

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

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

(3) The Corporation must obtain the approval of the Board before employing an agent under this section to transact any business or to do any act in connection with the exercise of the functions conferred on the Corporation by section 29.

(4) The Board may give a general or specific approval for the purpose of subsection (3) and may at any time, by notice to the Corporation in writing, withdraw such an approval.

Corporation may engage consultants

33. Subject to any direction of the Board referred to in section 29, the Corporation may engage persons having suitable qualifications and experience as consultants to the Corporation.

Committees of the Corporation

34. (1) The Corporation may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that none of the members of a committee is a director.

(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 Corporation or (subject to any determination of the Corporation) by the committee.

Delegation by the Corporation

35. (1) In relation to the exercise of its functions under section 29, the Corporation may, with the approval of the Board, delegate to:

- (a) a director; or
- (b) a committee comprised of directors or of employees of the Corporation (or both); or
- (c) an employee of the Corporation; or
- (d) a person whose services the Corporation makes use of under this Act,

any of those functions, other than this power of delegation.

(2) In relation to the exercise of its other functions, the Corporation may delegate to any person or group of persons any of those functions, other than this power of delegation.

Division 2—Financial provisions relating to the Corporation**Financial year of the Corporation**

36. The financial year of the Corporation is the year ending on 31 March, but the Treasurer may determine a different financial year under section 4 (1A) of the Public Finance and Audit Act 1983.

Corporation to prepare annual budget

37. The Corporation must:

- (a) as soon as practicable after the commencement of this section, present to the Minister a budget showing estimates of its revenue and expenditure for the balance of the financial year concerned; and
- (b) not later than 3 months before the end of each subsequent financial year, present to the Minister a budget showing estimates of its revenue and expenditure for the forthcoming financial year.

Financial accommodation and investment by the Corporation

38. The Corporation 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.

Corporation may pool funds

39. The Corporation may, for the purposes of any provisions of the Public Authorities (Financial Arrangements) Act 1987 relating to investment and for any related purposes, treat as one fund all or any 2 or more of the funds that it is responsible for administering or managing.

Financial objectives of the Corporation

40. (1) The Corporation must:

- (a) exercise its functions in accordance with prudent commercial principles; and
- (b) endeavour to ensure that, except in relation to its functions with respect to the management of funds established under the associated Acts, the revenue derived from its operations in each financial year of the Corporation exceeds its expenditure for that year.

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(2) In relation to any financial year of the Corporation, the Treasurer may, after consultation with the Corporation, assess an amount to be paid by way of dividend from the profits (if any) derived in that year from the exercise by the Corporation of its functions under section 30, or from the accumulated reserves of the Corporation derived from the exercise of those functions, and notify the Corporation in writing of the assessment.

(3) In relation to the exercise by the Corporation of its functions under section 30, the Corporation must, at such times after the end of each financial year of the Corporation and in such instalments as the Treasurer specifies, pay to the Board for payment exclusively to the associated superannuation funds:

- (a) an amount equivalent to the amount that the Corporation would have been liable to pay for that year under the Income Tax Assessment Act 1936 of the Commonwealth if the Corporation were a company within the meaning of that Act; and
- (b) any amount assessed for that year and notified to the Corporation under subsection (2).

(4) Amounts paid under subsection (3) are to be treated as income derived from the investment of the associated superannuation funds and are to be distributed among the associated superannuation funds in such proportions as the Board considers appropriate.

(5) The Treasurer may, by notice in writing given to the Corporation, advise, in relation to any specified financial year, that it need not make the payment required by subsection (3) or that it is required to make only a specified proportion of that payment.

Proceeds from sale of Corporation's business undertaking to be paid to the Board

41. If the business undertaking of the Corporation is sold, the proceeds of sale are to be paid to the Board in its capacity as trustee.

Accounts and records of the Corporation

42. The Corporation may maintain its accounts and other records 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.

PART 4—MISCELLANEOUS**Board to determine certain disputes** (cf. Act No. 210, 1987, s. 26)

43. (1) This section applies to a dispute under this Act (Part 3 excepted) or under any of the following Acts:

- Superannuation Act 1916;
- Local Government and Other Authorities (Superannuation) Act 1927;
- Transport Employees Retirement Benefits Act 1967;
- Police Association Employees (Superannuation) Act 1969;
- New South Wales Retirement Benefits Act 1972;
- Public Authorities Superannuation Act 1985;
- State Public Service Superannuation Act 1985;
- State Authorities Superannuation Act 1987;
- State Authorities Non-contributory Superannuation Act 1987.

(2) This section also applies to a dispute under the Police Regulation (Superannuation) Act 1906 in relation to any matter, other than a matter relating to or arising from a question of whether or not a member of the Police Service or a former member of the Police Service was hurt on duty.

(3) The Board is required to determine any dispute to which this section applies.

(4) The Board may, in determining such a dispute, 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.

(5) The Board may request a person who has a dispute with the Board to provide the Board with an authority to obtain from a third person any information or evidence that is relevant to the subject-matter of the dispute.

(6) If such a person does not comply with a request of the Board under subsection (5), the Board is not obliged to proceed to determine the dispute concerned.

Appeals from determinations of the Board under sec. 43 (cf. Act No. 210, 1987, s. 27)

44. (1) A person aggrieved by a determination of the Board under section 43 may appeal against the determination to the Industrial Court.

(2) Such an appeal is not valid unless it is made within 6 months after the date of the determination or within such further period as the Industrial Court allows.

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(3) If this section commences before the Industrial Court is established, the references in this section to that Court are to be read as references to the Industrial Commission of New South Wales.

Trustee, director or employee may be director etc. of company (cf. Act No. 210, 1987, s. 29)

45. (1) If the Board so approves, a person who holds office as a trustee may also hold office as an officer of a company.

(2) If the Board so approves, a consultant to the Board may hold office as an officer of a company.

(3) If property is vested in the Board and a company has been formed to manage the property (whether with or without other property), the Board may take such action (for example, as regards shareholding) as may be necessary to qualify it to nominate a person for appointment as an officer of the company.

(4) If the Corporation so approves, a person who holds office as a director, or as an employee of the Corporation, may also hold office as an officer of a company.

(5) If the Corporation so approves, a consultant to the Corporation may also hold office as an officer of a company.

(6) If property is vested in the Corporation and a company has been formed to manage the property (whether with or without other property), the Corporation may take such action (for example, as regards shareholding) as may be necessary to qualify it to nominate a person for appointment as an officer of the company.

(7) In this section, "**officer of a company**" means a director or other person concerned in the management of the company.

Certain persons not to be liable for certain acts etc. (cf. Act No. 210, 1987, s. 30)

46. (1) In this section, "**prescribed person**" means:

- (a) a person who is or acts as a trustee or director; or
- (b) a person who is or acts as a member of the staff of the Board or the Corporation; or
- (c) a person who is an agent of or consultant to the Board or the Corporation and who is for the time being nominated by the Board or the Corporation as being within this section.

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(2) A decision made, or any act or thing done or omitted to be done, by:

- (a) the Board or the Corporation or a prescribed person in the exercise of any function conferred or imposed on the Board or the Corporation or the prescribed person by this Act or any associated Act; or
- (b) a prescribed person in the exercise of any function directly or indirectly connected with the official duties of the prescribed person,

may not be called in question on any of the grounds mentioned in subsection (3).

(3) The grounds are as follows:

- (a) an alleged conflict of interest because the Board, the Corporation or a prescribed person is involved in administering different Acts or different superannuation schemes;
- (b) that knowledge gained by the Board, the Corporation or a prescribed person for the purpose of one such Act or scheme is or may be relevant to the exercise of a function under another such Act or scheme.

(4) No decision made, or act or thing done or omitted to be done, by:

- (a) the Board, the Corporation, a prescribed person, or any other person acting under the direction of the Board or the Corporation, in good faith for the purpose of giving effect to this or any other Act; or
- (b) a prescribed person, or any other person acting under the direction of the Board or the Corporation, in good faith in the exercise of any function directly or indirectly connected with the official duties of the prescribed person or other person so acting,

subjects the prescribed person or other person so acting personally to any action, liability, claim or demand.

(5) A decision made, or any act or thing done or omitted to be done, by the Board or the Corporation in the exercise of a function conferred on it by this Act or any associated Act is not invalidated or prejudiced merely because of a vacancy in the office of a trustee or director.

(6) The Board or the Corporation may make or revoke the nomination for the purposes of this section of a person who is an agent of or a consultant to the Board or the Corporation.

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(7) The protection provided by this section in relation to a decision made, or an act or thing done or omitted, while a person is a prescribed person continues in relation to the person even though the person ceases to be a prescribed person.

Service of documents (cf. Act No. 210, 1987, s. 31)

47. (1) A document may be served on the Board or the Corporation by leaving it at, or by sending it by post to:

- (a) the office of the Board or the Corporation; or
- (b) if the Board or Corporation 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 the Board or the Corporation in any other manner.

Recovery of charges etc. by the Board or the Corporation (cf. Act No. 210, 1987, s. 32)

48. (1) Any charge, fee or money due to the Board or the Corporation may be recovered by the Board or the Corporation as a debt in a court of competent jurisdiction.

(2) Without limiting subsection (1), the Board or the Corporation may recover any money owing to it under this or any other Act, together with interest on the money as provided by subsection (3), as a debt in a court of competent jurisdiction.

(3) Interest at a rate from time to time determined by the Board or the Corporation is payable on any amount referred to in subsection (2) calculated from the date on which the amount became due for payment until the date on which the amount is recovered under that subsection or is otherwise paid.

Proof of certain matters not required (cf. Act No. 210, 1987, s. 33)

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

- (a) the constitution of the Board or the board of directors of the Corporation; or
- (b) any resolution of the Board or the board of directors of the Corporation; or
- (c) the appointment of, or the holding of office by, any trustee or director; or

- (d) the presence or nature of a quorum at any meeting of the Board or the board of directors of the Corporation.

Union representation (cf. Act No. 210, 1987, s. 34)

50. (1) This section 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 section applies:

(a) may have employees of the Corporation as members; and

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

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

Regulations (cf. Act No. 210, 1987, s. 35)

51. (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 use and custody of the seal of the Board or the Corporation; and

(b) the procedure of the Board or the board of directors of the Corporation; and

(c) the administration of the funds and accounts maintained under this Act and the associated Acts; and

(d) the functions of companies established in accordance with the powers conferred by sections 6 and 30.

Act to bind the Crown

52. This Act binds the Crown, not only in right of New South Wales, but also, so far as the legislative powers of Parliament permit, the Crown in all its other capacities.

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Repeals

53. (1) The following Acts are repealed:

- (a) the Superannuation Administration Act 1987;
- (b) the Superannuation Administration (Amendment) Act 1988;
- (c) the Superannuation Administration (Amendment) Act 1989;
- (d) the Superannuation Administration (Amendment) Act 1990.

(2) The Superannuation Administration (Staff) Transitional Regulation 1988 is repealed.

Savings, transitional and other provisions

54. Schedule 5 has effect.

Consequential amendments to other Acts

55. Each Act specified in Schedule 6 is amended as set out in that Schedule.

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SCHEDULE 1—PROVISIONS RELATING TO TRUSTEES OF THE BOARD

(Sec. 5 (15))

Chairperson of the Board

1. (1) The Governor may at any time remove a person from the office of chairperson of the Board.

(2) A person who ceases to be chairperson of the Board also ceases to be a trustee.

(3) A person who is chairperson of the Board vacates the office of chairperson if:

- (a) the Governor removes that person from that office; or
- (b) the person resigns that office by notice in writing addressed to the Governor or the Minister; or
- (c) the person ceases to be a trustee.

Acting trustees

2. (1) The Minister may, from time to time, appoint a person to act in the office of a trustee during the illness or absence of the trustee, and the person, while so acting, has all the functions of the trustee and is to be regarded as a trustee.

(2) The Minister must not make:

- (a) an appointment under subclause (1) in relation to a trustee who represents the interests of employees without first consulting the Labor Council of New South Wales and obtaining the Council's approval of the appointment; or
- (b) an appointment under that subclause in relation to the chairperson of the Board without first consulting the Council and seeking the Council's endorsement of the appointment.

(3) The Minister may remove a person from an office to which the person was appointed under this clause.

(4) A person while acting in the office of trustee 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 person.

(5) For the purposes of this clause, a vacancy in the office of trustee is to be regarded as an absence from that office.

Terms of office of trustees

3. Subject to this Act, a trustee holds office for such period, not exceeding 5 years, as may be specified in the trustee's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment as the occasion arises.

Remuneration of trustees

4. A trustee 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 trustee.

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 SCHEDULE 1—PROVISIONS RELATING TO TRUSTEES OF THE BOARD—
continued
Vacancy in office of trustee

5. (1) The office of trustee becomes vacant if the trustee:
- (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 Governor under this clause; or
 - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the trustee personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the trustee is excused by the Minister 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 penal servitude or 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) has failed to comply with a requirement of clause 7 of this Schedule or with a direction under clause 6 (3) of Schedule 2.
- (2) The Governor may remove a part-time trustee from office at any time.

Filling of vacancy in office of trustee

6. (1) If the office of any trustee 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 trustee concerned was due to expire within 60 days after the vacancy occurred.

Trustees to disclose pecuniary interests

7. (1) If:

- (a) a trustee has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board; or
- (b) the interest appears to give rise to a conflict with the proper performance of the trustee's duties in relation to the consideration of the matter,

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

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 SCHEDULE 1—PROVISIONS RELATING TO TRUSTEES OF THE BOARD—
continued

- (2) A disclosure by a trustee at a meeting of the Board that the trustee:
- (a) is a director, 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 or thing 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) The Board must cause particulars of any disclosure made under this clause to be recorded in a book kept for the purpose and must ensure that that book is kept open at all reasonable hours to inspection by any person.

(4) After a trustee has disclosed the nature of an interest in any matter or thing, the trustee 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 purpose of making a determination by the Board under subclause (4), a trustee 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 other trustees for the purpose of making the determination; or
- (b) take part in the making by the other trustees 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 trustee (being the provision of goods or services to the trustee by the Board) if the goods or services are, or are to be, available to members of the public on the same terms and conditions as those on which the goods or services are provided to the trustee.

(8) This clause does not apply to or in respect of an interest of a trustee in a matter or thing which arises merely because the trustee is a contributor to an associated superannuation scheme.

(9) A reference in this clause to a meeting of the Board includes a reference to a meeting of a committee of the Board.

Effect of certain other Acts on the status of trustees

8. (1) Part 2 of the Public Sector Management Act 1988 does not apply to the appointment of a trustee.

(2) If by or under any other 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

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SCHEDULE 1—PROVISIONS RELATING TO TRUSTEES OF THE BOARD—
continued

- (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 trustee or from accepting and retaining any remuneration payable to the person under this Act as a trustee.

- (3) The office of a trustee is not, for the purposes of any Act, an office or place of profit under the Crown.

SCHEDULE 2—PROVISIONS RELATING TO THE CALLING AND
HOLDING OF MEETINGS OF THE BOARD

(Sec. 5 (16))

General procedure of the Board

1. 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.

Quorum for meetings of the Board

2. The quorum for a meeting of the Board is 6 trustees.

Presiding trustee at meetings of the Board

3. A meeting of the Board is to be presided over by the chairperson of the Board or, in the absence of the chairperson, by a trustee chosen to preside at the meeting by the trustees present at the meeting.

Voting at meetings of the Board

4. (1) A decision of the Board is not effective unless it is supported by the votes of not fewer than 6 of the trustees cast at a meeting of the Board at which a quorum is present.

- (2) The chairperson of the Board has a deliberative vote only.

Minutes to be kept of meetings of the Board

5. The Board must cause full and accurate minutes to be kept of each meeting of the Board.

Conflicts of interest

6. (1) If:

(a) a person holds office both as a trustee and as a director; and

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SCHEDULE 2—PROVISIONS RELATING TO THE CALLING AND HOLDING
OF MEETINGS OF THE BOARD—*continued*

- (b) in the course of the Board's proceedings it appears to the chairperson of the Board that, in relation to any matter that the Board is considering, the interests of that person in his or her capacity as a director conflict with his or her duties as a trustee,

the chairperson must direct that the person not participate in, or be present during, that part of the proceedings during which the matter is being considered by the Board.

(2) The chairperson of the Board may give a direction under subclause (1) on his or her own initiative or on the motion of another trustee.

(3) A trustee must comply with a direction given to him or her under subclause (1).

SCHEDULE 3—PROVISIONS RELATING TO THE BOARD OF
DIRECTORS OF THE CORPORATION

(Sec. 27 (7))

Definitions

1. In this Schedule:

“board” means the board of directors of the Corporation;

“full-time director” includes the managing director.

Employment of full-time directors

2. The employment of a full-time director is subject to Part 2A of the Public Sector Management Act 1988, but is not subject to Part 2 of that Act.

Chairperson of the board of the Corporation

3. (1) The Governor may at any time remove a person from office as chairperson of the board.

(2) The removal of a person from office under subclause (1) does not of itself affect the person's appointment as a director.

(3) A person who is the chairperson of the board vacates office as chairperson if:

(a) the Governor removes the person from that office; or

(b) the person resigns from that office by instrument in writing addressed to the Minister; or

(c) the person ceases to be a part-time director.

Acting directors

4. (1) The Minister may, from time to time, appoint a person to act in the office of a director during the illness or absence of the director, and the person, while so acting, has all the functions of the director and is to be regarded as a director.

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SCHEDULE 3—PROVISIONS RELATING TO THE BOARD OF DIRECTORS
OF THE CORPORATION—*continued*

(2) The Minister must not make an appointment under subclause (1) in relation to a part-time director referred to in section 27 (2) without first consulting the Labor Council of New South Wales and seeking the Council's endorsement of that appointment.

(3) The Minister may remove a person from an office to which the person was appointed under this clause.

(4) A person while acting in the office of director 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 person.

(5) For the purposes of this clause, a vacancy in the office of director is to be regarded as an absence from that office.

Terms of office of directors

5. Subject to this Act, a part-time director holds office for such period, not exceeding 5 years, as may be specified in the director's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment as the occasion arises.

Remuneration of directors

6. A part-time director 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 director.

Vacancy in office of part-time director

7. (1) The office of a part-time director becomes vacant if the director:

- (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 Governor under this clause; or
- (e) is absent from 4 consecutive meetings of the board of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the director is excused by the Minister 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 penal servitude or 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

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 SCHEDULE 3—PROVISIONS RELATING TO THE BOARD OF DIRECTORS
 OF THE CORPORATION—*continued*

- (i) has failed to comply with a requirement of clause 9 of this Schedule.
- (2) The Governor may remove a part-time director from office at any time.

Filling of vacancy in office of director

8. (1) If the office of any director 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 director concerned was due to expire within 60 days after the vacancy occurred.

Directors to disclose pecuniary interests

9. (1) If:

- (a) a director has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the board; or
- (b) the interest appears to give rise to a conflict with the proper performance of the director's duties in relation to the consideration of the matter,

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

(2) A disclosure by a director at a meeting of the board that the director:

- (a) is a director, 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 or thing 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) The board must cause particulars of any disclosure made under this clause to be recorded in a book kept for the purpose and must ensure that that book is kept open at all reasonable hours to inspection by any person.

(4) After a director has disclosed the nature of an interest in any matter or thing, the director 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 purpose of making a determination by the board under subclause (4), a director 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 other directors for the purpose of making the determination; or
- (b) take part in the making by the other directors of the determination.

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SCHEDULE 3—PROVISIONS RELATING TO THE BOARD OF DIRECTORS
OF THE CORPORATION—*continued*

(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 director (being the provision of goods or services to the director by the board) if the goods or services are, or are to be, available to members of the public on the same terms and conditions as those on which the goods or services are provided to the director.

(8) This clause does not apply to or in respect of an interest of a director in a matter or thing which arises merely because the director is a contributor to an associated superannuation scheme.

(9) A reference in this clause to a meeting of the board includes a reference to a meeting of a committee of the board.

Effect of certain other Acts on the status of directors

10. (1) Part 2 of the Public Sector Management Act 1988 does not apply to the appointment of a part-time director.

(2) If by or under any other 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 part-time director or from accepting and retaining any remuneration payable to the person under this Act as such a director.

(3) The office of part-time director is not, for the purposes of any Act, an office or place of profit under the Crown.

SCHEDULE 4—PROVISIONS RELATING TO THE CALLING AND
HOLDING OF MEETINGS OF THE BOARD OF DIRECTORS OF THE
CORPORATION

(Sec. 27 (8))

Definition

1. In this Schedule, "board" means the board of directors of the Corporation.

General procedure of the board of directors of the corporation

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

Quorum at meetings of the board of directors of the Corporation

3. The quorum for a meeting of the board is 4 directors.

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SCHEDULE 4—PROVISIONS RELATING TO THE CALLING AND HOLDING
OF MEETINGS OF THE BOARD OF DIRECTORS OF THE CORPORATION—
continued

Presiding director at meetings of the board of directors of the Corporation

4. A meeting of the board is to be presided over by the chairperson of the board or, in the absence of the chairperson, by a director chosen to preside at the meeting by the directors present at the meeting.

Voting at meetings of the board of directors of the Corporation

5. (1) 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.

(2) The chairperson of the board has a deliberative vote only.

Minutes to be kept of meetings of the board of directors of the Corporation

6. The board must cause full and accurate minutes to be kept of each meeting of the board.

First meeting of the board of directors of the Corporation

7. The Minister must call the first meeting of the board in such manner as the Minister thinks fit.

SCHEDULE 5—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 54)

PART 1—GENERAL

Definitions

1. (1) In this Schedule:

“former Act” means the Superannuation Administration Act 1987;

“transferred employee” means a person who, in accordance with clause 9 of this Schedule, becomes an employee of the Corporation.

(2) In this Schedule, a reference to the repeal of the former Act is, if different days are appointed for the repeal of different provisions of that Act, a reference to the repeal of the relevant provision or provisions of that Act.

Savings and transitional regulations

2. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to this Act or a later date.

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SCHEDULE 5—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

(3) To the extent to which a provision referred to in subclause (1) takes effect from 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 CONSEQUENTIAL ON THE
ENACTMENT OF THIS ACT**

Termination of office of certain full-time members of Board

3. (1) A person who, immediately before the commencement of section 5, held office as a member of the Board on a full-time basis ceases to hold that office on that commencement.

(2) A person who so ceases to hold office as a member of the Board is not entitled to any remuneration or compensation because of the loss of that office, except as provided by Part 2A of the Public Sector Management Act 1988. For the purposes of that Part of that Act, the person is taken to have been removed from office under section 42Q of that Act.

Termination of office of certain part-time members of the Board

4. (1) A person who, immediately before the commencement of section 5, held office as a part-time member of the Board ceases to hold that office on that commencement.

(2) A person who so ceases to hold office as a member of the Board is not entitled to any remuneration or compensation because of the loss of that office.

Board's role as trustee for persons entitled to receive benefits

5. For the avoidance of doubt, it is declared that the Board and its predecessors have always held the associated superannuation funds in trust for the persons entitled to receive benefits under the associated Acts.

Annual reports etc.

6. (1) If, before the repeal of the former Act, the 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 Board must comply with the requirement despite that repeal.

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SCHEDULE 5—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

(2) The first annual report and statement of accounts of the Board after the commencement of the relevant provisions of this Act must deal with any matters relating to the 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 Board had the former Act not been repealed.

Delegations

7. A delegation effected by the Board and in force immediately before the repeal of the former Act is to be taken to have been effected under this Act (but only if the Board could have lawfully made the delegation under this Act).

Administration Account

8. (1) The State Authorities Superannuation Management Account established under section 21 of the former Act becomes, on the repeal of that section, the State Authorities Superannuation Administration Account referred to in section 21 of this Act.

(2) Any payments that had been approved by the Board before the repeal of the former Act and not paid before that repeal are payable from the Administration Account maintained under section 21 of this Act.

Transfer of staff

9. Any member of the staff of the Board employed under subsection (1) of section 9 of the former Act immediately before the repeal of that section becomes, on the repeal of that section, an employee of the Corporation employed under section 31 (1) of this Act.

Conditions of employment of transferred staff

10. (1) Except as otherwise provided by this Schedule 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 repeal of section 9 of the former Act, and are to continue to have effect until varied either by agreement or otherwise in accordance with law.

(2) The provisions of clause 35 (Long service leave—preserved arrangement) and clause 45 (Sick leave—payment for untaken sick leave) of Industrial Agreement No. 7720 of 9 March 1987 continue, in relation to a transferred employee to whom they applied immediately before the repeal of the former Act, to regulate the matters which they regulate, until more favourable provision is made in relation to those matters by a variation referred to in subclause (1).

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 SCHEDULE 5—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued
Previous service and accrued leave

11. (1) Service of a transferred employee with the Board is to be treated as service with the Corporation for the purpose of any Act or of any regulation, by-law or other statutory instrument or of the terms and conditions of any staff agreement or of any industrial award or agreement.

(2) The transfer of a transferred employee to the service of the Corporation does not affect any right to leave of absence (including long service leave) accrued before the repeal of the former Act.

(3) The Board is liable to meet the cost of providing to a transferred employee any long service leave that had accrued to that employee before the repeal of the former Act.

Superannuation—employer's liability

12. If, before the repeal of the former 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 Board; or
 - (ii) the Board was, for the purposes of any superannuation scheme, the employer of the person,

then, for the purposes of the Act by or under which that scheme is established, the Corporation is, on and after the day on which the former Act was repealed, to be 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.

Appeals

13. An appeal pending before the Industrial Commission immediately before the repeal of the former Act under any provision of that Act may be dealt with and determined as if that Act had not been repealed.

Transfer of certain assets of the Board to the Corporation

14. (1) As soon as practicable after the repeal of the former Act, the Board must make available to the Corporation (whether by transfer, lease, loan or otherwise) assets of the Board to enable the Corporation to carry out its functions under section 29.

(2) The assets referred to in subclause (1) are to be such as agreed on by the Board and the Corporation and are to be made available on such terms and conditions as may be so agreed.

(3) The Board and the Corporation may also enter into an agreement as to the transfer to the Corporation of any of the Board's liabilities.

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SCHEDULE 5—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued
Contracts

15. (1) Any contract for the performance of services entered into with the Board and in force immediately before the repeal of the former Act becomes, on the repeal of that Act, a contract for the performance of services entered into with the Corporation.

(2) Any other contract (other than a contract of employment) entered into with the Board and in force immediately before the repeal of the former Act continues, on the repeal of that Act, as a contract entered into with the Board.

Approved Deposit Fund

16. (1) The approved deposit fund established under section 20 of the former Act and called State Super ADF is continued by this Act.

(2) State Super Financial Services Limited is authorised to continue to maintain and operate the fund referred to in subclause (1).

(3) For the purposes of this Act, State Super Financial Services Limited is to be taken to be a company established by the Board under the power conferred on it by section 6 (5).

(4) The Superannuation Administration (Approved Deposit Fund) Regulation 1990 continues in force as if it had been made under this Act and as if this Act had been in force when it was made.

SCHEDULE 6—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

(Sec. 55)

Coal and Oil Shale Mine Workers (Superannuation) Act 1941 No. 45

Section 3 (Special provisions as to calculation of periods of employment):

From section 3 (6) (k) (iii), omit "and managed".

Freedom of Information Act 1989 No. 5

Schedule 2 (Exempt Bodies and Offices):

After "The State Authorities Superannuation Board—investment function.", insert:

The State Superannuation Investment and Management Corporation—investment functions.

Government and Related Employees Appeal Tribunal Act 1980 No. 39

Schedule 4 (Employing Authorities):

Insert in alphabetical order:

State Superannuation Investment and Management Corporation.

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SCHEDULE 6—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS—
continued

Local Government and Other Authorities (Superannuation) Act 1927 No. 35

(1) Section 3 (Definitions):

(a) Omit the definition of "Board", insert instead:

"Board" means the State Authorities Superannuation Board referred to in section 4 of the Superannuation Administration Act 1991.

(b) Before the definition of "Approved", insert:

"Administration Account" means the State Authorities Superannuation Administration Account maintained under the Superannuation Administration Act 1991.

(c) Omit the definition of "Management Account".

(2) Sections 16A (Board may receive commissions etc.), 17 (Expenses of administration) and 17P (Contingent account):

Omit "Management Account" wherever occurring, insert instead "Administration Account".

Police Association Employees (Superannuation) Act 1969 No. 33

Section 2 (Definitions):

From section 2 (1), omit the definition of "Board", insert instead:

"Board" means the State Authorities Superannuation Board referred to in section 4 of the Superannuation Administration Act 1991;

Police Regulation (Superannuation) Act 1906 No. 28

Section 3 (Police Superannuation Fund):

Omit section 3 (3) (c), insert instead:

(c) the administration costs relating to the Fund referred to in section 22 of the Superannuation Administration Act 1991; and

Public Authorities (Financial Arrangements) Act 1987 No. 33

Schedule 1 (Authorities):

Insert in alphabetical order:

State Superannuation Investment and Management Corporation.

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SCHEDULE 6—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS—
continued

Public Authorities Superannuation Act 1985 No. 41

Section 5 (Definitions):

- (a) Omit the definition of "Board" from section 5 (1), insert instead:
"Board" means the State Authorities Superannuation Board referred to in section 4 of the Superannuation Administration Act 1991;
- (b) From section 5 (1), omit the definition of "Management Account".

Public Finance and Audit Act 1983 No. 152

Schedule 2 (Statutory Bodies):

Insert in alphabetical order:

State Superannuation Investment and Management Corporation.

Public Sector Management Act 1988 No. 33

(1) Schedule 3 (Declared Authorities):

After the item relating to the State Rail Authority of New South Wales, insert:

State Superannuation Investment and Management Corporation.

(2) Schedule 3A (Chief Executive Positions):

- (a) From Part 3 (Heads of Public Authorities), omit "President of the State Authorities Superannuation Board".

- (b) In Part 3, insert in alphabetical order:

Managing director of the State Superannuation Investment and Management Corporation.

(3) Schedule 3B (Senior Executive Positions):

- (a) From Part 1 (Positions (other than statutory positions)), omit the matter relating to the State Authorities Superannuation Board.

- (b) In Part 1, after the matter relating to the State Rail Authority, insert:

State Superannuation Investment and Management Corporation

Secretary and Director, Corporate Services

Director, Information Technology and Chief Accountant

Director, Internal Audit

Director, Superannuation Administration Division

Director, Policy and Research

Director, Superannuation Legal Services

Director, Superannuation Accounting

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SCHEDULE 6—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS—
continued

Director, Marketing and Advisory
Manager, Information Services
Manager, Corporate Accounting

- (c) From Part 2 (Statutory positions), omit:
Full-time member of the State Authorities Superannuation Board
Vice-President of the State Authorities Superannuation Board
- (d) In Part 2, after "Deputy General Manager of the Motor Accidents Authority", insert:
Any full-time director of the State Superannuation Investment and Management Corporation (other than the managing director of the Corporation)

State Authorities Non-contributory Superannuation Act 1987 No. 212

(1) Section 3 (Definitions):

From section 3 (1), omit the definition of "Board", insert instead:

"Board" means the State Authorities Superannuation Board referred to in section 4 of the Superannuation Administration Act 1991;

(2) Section 9 (Funds etc.):

From section 9 (3) (a), omit "State Authorities Superannuation Management Account established under the Superannuation Administration Act 1987 management costs calculated in accordance with that Act", insert instead "State Authorities Superannuation Administration Account maintained under the Superannuation Administration Act 1991 administration costs incurred by the Board".

(3) Section 10 (Reserves for employers):

From section 10 (4) (b), omit "management costs calculated in accordance with the Superannuation Administration Act 1987", insert instead "administration costs incurred by the Board under the Superannuation Administration Act 1991".

(4) Section 20 (Application of payments):

Omit "managed", insert instead "administered".

(5) Section 24 (Benefit to be preserved):

From section 24 (3) (d), omit "managed", insert instead "administered".

(6) Section 25 (Preservation of benefit):

- (a) From section 25 (1), omit "Superannuation Administration Act 1987", insert instead "Superannuation Administration Act 1991".
- (b) From section 25 (1), omit "managed", insert instead "administered".

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SCHEDULE 6—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS—
continued

(7) Schedule 1 (Employers):

From Part 1 (The Crown and other employers), omit "State Authorities Superannuation Board", insert instead "State Superannuation Investment and Management Corporation".

State Authorities Superannuation Act 1987 No. 211

(1) Section 3 (Definitions):

- (a) In section 3 (1) after the definition of "additional benefit levy", insert:
 "Administration Account" means the State Authorities Superannuation Administration Account maintained under the Superannuation Administration Act 1991;
- (b) From section 3 (1), omit the definition of "Board", insert instead:
 "Board" means the State Authorities Superannuation Board referred to in section 4 of the Superannuation Administration Act 1991;
- (c) From section 3 (1), omit the definition of "Management Account".

(2) Section 11 (Establishment of the Fund):

- (a) From section 11 (1), omit "manage", insert instead "administer".
- (b) From section 11 (4) (a), omit "Management Account—management costs calculated in accordance with the Superannuation Administration Act 1987", insert instead "Administration Account—administration costs incurred by the Board under the Superannuation Administration Act 1991".

(3) Section 12 (Contributors' accounts):

Omit section 12 (3) (c), insert instead:

- (c) administration costs incurred by the Board under the Superannuation Administration Act 1991 in relation to the contributor.

(4) Section 14 (Reserves for employers):

Omit section 14 (4) (b), insert instead:

- (b) administration costs incurred by the Board under the Superannuation Administration Act 1991 in relation to the employer or an employer to whom the reserve relates.

(5) Section 15 (Other accounts and reserves):

Omit "management of the Fund and the administration of", insert instead "administration of the Fund and".

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SCHEDULE 6—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS—
continued

(6) Schedule 1 (Employers):

From Part 1 (The Crown and other employers), omit “State Authorities Superannuation Board”, insert instead “State Superannuation Investment and Management Corporation”.

State Public Service Superannuation Act 1985 No. 45

Section 5 (Definitions):

- (a) From section 5 (1), omit the definition of “Board”, insert instead:
 “Board” means the State Authorities Superannuation Board referred to in section 4 of the Superannuation Administration Act 1991;
- (b) From section 5 (1), omit the definitions of “elected member”, “full-time elected member” and “part-time elected member”.
- (c) In section 5 (1), from the definition of “Fund”, omit “managed”, insert instead “administered”.

Superannuation Act 1916 No. 28

(1) Section 3 (Definitions):

From section 3 (1), omit the definition of “Board”, insert instead:

“Board” means the State Authorities Superannuation Board referred to in section 4 of the Superannuation Administration Act 1991.

(2) Section 4 (Reconstitution of the Fund):

Omit section 4 (4) (a), insert instead:

- (a) the administration costs incurred by the Board in relation to the administration of the Fund; and

(3) Section 6 (Contributors’ reserve):

Omit section 6 (2) (b), insert instead:

- (b) administration costs incurred by the Board under the Superannuation Administration Act 1991 in relation to contributors; and

(4) Section 7 (Employer reserves):

Omit section 7 (2) (b), insert instead:

- (b) administration costs incurred by the Board under the Superannuation Administration Act 1991 in relation to the employer or an employer to whom the reserve relates; and

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SCHEDULE 6—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS—
continued

(5) Schedule 3 (List of Employers):

From Part 1 of Schedule 3 (The Crown and other employers), omit “State Authorities Superannuation Board”, insert instead “State Superannuation Investment and Management Corporation”.

Transport Employees Retirement Benefits Act 1967 No. 96

Section 3 (Definitions):

From section 3 (1), omit the definition of “Board”, insert instead:

“Board” means the State Authorities Superannuation Board referred to in section 4 of the Superannuation Administration Act 1991;

Treasury Corporation Act 1983 No. 75

Section 4C (Staff of Corporation etc.):

From section 4C (3), omit “Superannuation Administration Act 1987”, insert instead “Superannuation Administration Act 1991”.

[Minister's second reading speech made in—
Legislative Assembly on 4 December 1991
Legislative Council on 11 December 1991]

