



New South Wales

# **Superannuation (Axiom Funds Management Corporation) Bill 1996**

## **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Superannuation Administration Bill 1996*.

## **Overview of Bill**

The objects of this Bill are to:

- (a) establish the Axiom Funds Management Corporation (AFMC) to provide superannuation investment management services to State public sector superannuation schemes and other superannuation schemes, and
  - (b) provide for the conversion of that body to a company and provide for its sale.
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## Outline of provisions

### **Part 1 Preliminary**

**Clause 1** sets out the name (also called the short title) of the proposed Act.

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

**Clause 3** sets out the objects of the proposed Act, which are to establish the AFMC to provide superannuation investment management services for State public sector superannuation schemes and other schemes and to provide for the conversion of that corporation to a company and to provide for its sale.

**Clause 4** defines words and expressions used in the proposed Act.

**Clause 5** provides that introductory notes to Parts or Divisions and other notes in the text do not form part of the proposed Act.

### **Part 2 Axiom Funds Management Corporation (AFMC)**

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

**Clause 6** constitutes AFMC.

**Clause 7** sets out the principal functions of AFMC, including the provision of superannuation investment management services for State public sector superannuation schemes and other approved schemes, providing for the custody of assets and securities of superannuation schemes and entering into contracts or arrangements for those purposes and other related businesses.

**Clause 8** sets out what is comprised in superannuation investment management services, including acting as investment manager and advising on investments and other related strategies.

**Clause 9** requires AFMC to enter into contracts or arrangements with the SAS Trustee Corporation (STC) to provide superannuation investment management services for the STC schemes for a fixed period from a date to be specified by the Minister. The period and date are to be determined under the proposed *Superannuation Administration Act 1996*. STC is to be the trustee for the primarily defined benefits style State public sector superannuation schemes. Further contracts or arrangements may be entered into after the first contract or arrangement ends.

**Clause 10** confers on AFMC power to enter into a contract or arrangement with the FSS Trustee Corporation (FTC), the trustee for the accumulation style State public sector superannuation schemes, to provide superannuation investment management services for the FTC funds or part of them.



**Clause 11** enables AFMC to enter into contracts or arrangements for the purpose of providing custodial services for superannuation schemes.

**Clause 12** enables AFMC to enter into contracts or arrangements for the purposes of administering or managing businesses related to its principal functions.

**Clause 13** requires AFMC to charge on a commercial basis for services provided.

**Clause 14** requires AFMC to have regard to written Government policy statements when exercising its functions.

**Clause 15** sets out a procedure for laying Government policy statements given under proposed section 14 before each House of Parliament.

**Clause 16** confers on AFMC powers to do all things necessary or convenient for, or in connection with, the exercise of its functions and also gives it the same legal capacity, powers and authority as a company under the *Corporations Law*.

## **Division 2      Management of AFMC**

**Clause 17** establishes the AFMC Board. It is to have 6 part-time members appointed by the Minister, and the chief executive officer of AFMC as a member. Members must have specified relevant experience and the Minister may not appoint a part-time member without consulting the Labor Council of New South Wales.

**Clause 18** gives the AFMC Board the functions of determining the policies of AFMC and managing and controlling the affairs of AFMC.

**Clause 19** provides for the appointment of a chief executive officer of AFMC and confers on the chief executive officer the function of exercising the day-to-day management of AFMC. The chief executive officer will be subject to the control and direction of the AFMC Board.

**Clause 20** provides for the employment of AFMC staff.

**Clause 21** enables AFMC to appoint agents.

**Clause 22** gives AFMC the power to delegate its functions.

**Clause 23** enables the AFMC Board to establish committees to give advice and assistance to the Board in connection with any particular matter or function of the Board.

**Clause 24** requires AFMC to prepare a statement of corporate intent for each financial year and sets out the matters it is to contain.

**Clause 25** requires the annual report of AFMC to include departures from performance targets in the statement of corporate intent and the reasons for the departures.

**Clause 26** exempts an AFMC Board member, or a person acting under the direction of AFMC or the Board, from liability for an act or omission done or omitted in good faith for the purpose of executing the proposed Act or any other Act.

### **Division 3      Financial provisions**

**Clause 27** requires AFMC to maintain an AFMC Account.

**Clause 28** enables AFMC to obtain financial accommodation, effect financial adjustments and make investments under the *Public Authorities (Financial Arrangements) Act 1987*.

**Clause 29** makes the year commencing 1 July the financial year of AFMC.

### **Division 4      Miscellaneous provisions relating to AFMC**

**Clause 30** enables the Minister to request information from time to time from AFMC.

**Clause 31** provides for the manner and form of accounts and other records relating to AFMC.

**Clause 32** provides for the manner in which documents may be served on AFMC.

**Clause 33** removes the need to prove (unless evidence to the contrary is given) matters relating to the constitution and resolutions of AFMC and appointments of AFMC Board members and their meetings.

**Clause 34** enables AFMC to recover money owed to it as a debt in a court of competent jurisdiction.

**Clause 35** requires the proceeds of any sale of the business undertaking of AFMC to be paid to STC in its capacity as trustee of the STC funds for payment into employer reserves.

**Clause 36** enables AFMC to publish procedures or guidelines with respect to disclosure of conflicts of interest and arrangements with consultants.

**Clause 37** provides for the keeping and use of the seal of AFMC.



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

### **Division 1 Preliminary**

**Clause 38** sets out the object of the Part, which is to convert AFMC from a statutory body to a company under the *Corporations Law*.

**Clause 39** defines *AFMC* for the purposes of the Part.

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

**Clause 40** gives AFMC a share capital divided into shares of \$1 each and provides that it may be divided into classes of shares and that shares may have rights attached to them.

**Clause 41** requires AFMC to pay up its shares to the amount determined by the Treasurer by order in writing.

**Clause 42** sets out the steps AFMC must take to prepare for conversion to a company, including applying for registration under the *Corporations Law* and lodging its proposed memorandum and articles of association specifying the State as the sole subscriber to the memorandum.

**Clause 43** requires the memorandum and articles of association to contain certain provisions applicable to those of statutory State owned corporations under the *State Owned Corporations Act 1989*.

**Clause 44** reserves the name "Axiom Funds Management Limited" under the *Corporations Law*.

### **Division 3 Conversion of AFMC to AFML**

**Clause 45** provides that AFMC is taken to be registered under the *Corporations Law* under the name "Axiom Funds Management Limited" as a public company limited by shares as from the commencement of the proposed Division.

**Clause 46** provides for the change of name of AFMC.

**Clause 47** gives effect to the memorandum and articles of Axiom Funds Management Limited (AFML) as if they had been registered under the *Corporations Law*.

**Clause 48** makes the State of New South Wales a member of AFML as at its conversion.

**Clause 49** empowers the Treasurer to act for or on behalf of the State of New South Wales in the State's capacity as shareholder.

**Clause 50** provides that AFML is a continuation of, and the same legal entity as, AFMC and provides that references to AFMC are to be read as references to AFML.



**Clause 51** continues existing contracts or arrangements entered into by AFMC.

**Clause 52** gives effect to amendments of Acts consequential on the conversion of AFMC to AFML and repeals Part 2 (which establishes AFMC).

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

**Clause 53** applies the proposed Division to any period after the conversion of AFMC when the shares in AFML are held by the State of New South Wales.

**Clause 54** makes the board of directors of AFML subject to the direction and control of the Treasurer and removes liability for actions done under the direction of the Treasurer.

**Clause 55** makes AFML a public authority of the State but provides that it is not, and does not, represent the State of New South Wales and is not exempt from any rate, tax, duty or other impost. AFML cannot render the State liable for any debts, liabilities or obligations.

**Clause 56** applies certain provisions of the *State Owned Corporations Act 1989* to AFML.

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

#### **Division 1      Sale process**

**Clause 57** authorises AFML to be sold to an approved buyer in accordance with the proposed Part.

**Clause 58** provides for the approval of a person by the Governor-in-Council as an approved buyer.

**Clause 59** authorises the Premier and the Treasurer to negotiate, enter into and carry out an agreement for the sale of shares in AFML. The proposed section also authorises the Treasurer to transfer shares in AFML to an approved buyer. The sale agreement is to provide for the repayment to Treasury Corporation of any money loaned by that Corporation to AFML.

**Clause 60** provides that proposed Division 4 of Part 3 (which relates to the interim period after conversion and before the sale of AFML) does not apply to AFML as from a day to be appointed by proclamation and gives effect to Schedule 2, which contains amendments to other Acts consequential on the sale.

**Clause 61** enables the Treasurer to make necessary amendments to the memorandum and articles of association of AFML before the sale takes effect.

**Clause 62** provides that the obligations of AFML are not guaranteed by the State of New South Wales.

## **Division 2 Results of sale**

**Clause 63** requires the proceeds of the sale of AFML to be paid to STC as trustee for the STC schemes for payment into STC funds. Amounts to meet the expenses of the sale are to be deducted from the proceeds.

**Clause 64** provides that the staff of AFML are to be continued to be employed by AFML, on the same terms and conditions, after the sale.

**Clause 65** provides that the validity and the enforceability of a sale agreement are not affected by any law relating to the enforceability of property or restraint of trade.

## **Part 5 Miscellaneous**

**Clause 66** provides that the proposed Act binds the Crown.

**Clause 67** provides that offences under the proposed Act are to be dealt with summarily by a Local Court.

**Clause 68** sets out the power to make regulations under the proposed Act.

**Clause 69** is a formal provision giving effect to Schedule 4 which contains savings and transitional provisions.

**Clause 70** provides that matters relating to the sale of AFMC, including the operation of the proposed Act, the sale, associated agreements and documents and disclosures of information, are not to be regarded as civil wrongs, as giving rise to other actions, as breaches of contract, or as events of default, as giving rise to any right or remedy or as a contravention of section 205 of the *Corporations Law*.

**Clause 71** exempts from State tax the issue of shares in AFML, applications for registration as a company under the proposed Act and any other matter related to the conversion of AFMC to a company.

**Clause 72** provides for the review of the proposed Act by the Minister 5 years after the date of assent to the proposed Act.

## **Schedule 1 Provisions relating to AFMC Board**

### **Part 1 Definitions**

Part 1 defines expressions used in the Schedule.

## **Part 2     Members**

Part 2 contains provisions relating to the appointment and conditions and vacation of office of members.

## **Part 3     Procedure**

Part 3 contains provisions relating to the procedure of the Board.

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

Part 4 contains provisions relating to the conditions of employment of the chief executive officer.

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

The Schedule contains amendments to other Acts consequential on the conversion of AFMC. Other amendments consequential on the enactment of the proposed Act are also contained in the proposed *Superannuation Administration Act 1996*.

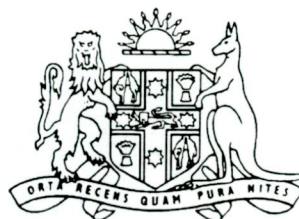
## **Schedule 3     Further consequential amendments to other Acts**

The Schedule contains further amendments to other Acts consequential on the sale of AFML.

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

The Schedule contains savings and transitional provisions consequent on the enactment of the proposed Act.





New South Wales

# Superannuation (Axiom Funds Management Corporation) Bill 1996

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New South Wales

## **Superannuation (Axiom Funds Management Corporation) Bill 1996**

No. , 1996

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### **A Bill for**

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

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The Legislature of New South Wales enacts:

## Part 1        Preliminary

### 1    Name of Act

This Act is the *Superannuation (Axiom Funds Management Corporation) Act 1996*.

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### 2    Commencement

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

### 3    Objects of Act

The objects of this Act are as follows:

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

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

### 4    Definitions

In this Act:

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

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

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

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

**business undertaking** of a body means all the assets, rights and liabilities of the body. 5

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

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

**FTC** means the FSS Trustee Corporation established by the *Superannuation Administration Act 1996*. 10

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

- (a) *First State Superannuation Act 1992*, 15
- (b) *Public Sector Executives Superannuation Act 1989*,
- (c) any other Act declared under section 5 of the *Superannuation Administration Act 1996* to be an Act for the purposes of the definition of **FTC fund** or **FTC scheme** in section 4 of that Act. 20

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

**instrument** means an instrument (other than this Act) which creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed, registered or stamped in accordance with any law), and includes any judgment, order or process of a court. 25

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

**SAA** means the Superannuation Administration Authority of New South Wales established by the *Superannuation Administration Act 1996*. 30

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

**STC** means the SAS Trustee Corporation continued by the *Superannuation Administration Act 1996*.

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

- (a) *Police Regulation (Superannuation) Act 1906,*
- (b) *Superannuation Act 1916,* 5
- (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,* 10
- (g) *State Public Service Superannuation Act 1985,*
- (h) *State Authorities Superannuation Act 1987,*
- (i) *State Authorities Non-contributory Superannuation Act 1987.*

**superannuation fund** means a fund established under a superannuation scheme. 15

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

**the State of New South Wales** includes the Crown in right of New South Wales and the Government of New South Wales. 20

## 5 Notes in text

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

## **Part 2      Axiom Funds Management Corporation               (AFMC)**

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

#### **6   Establishment of AFMC**

- (1) There is constituted by this Act a body corporate with the corporate name of the Axiom Funds Management Corporation. 5
- (2) AFMC is, for the purposes of any Act, a statutory body representing the Crown.

#### **7   Principal functions of AFMC**

- (1) The principal functions of AFMC are: 10
- (a) to provide superannuation investment management services for State public sector superannuation schemes on behalf of trustees, and
  - (b) to provide superannuation investment management services for other superannuation schemes (including non-public sector schemes) on behalf of trustees, and 15
  - (c) to provide custodial services for the assets and securities of superannuation schemes for which services are provided on behalf of trustees, and
  - (d) to enter into contracts or arrangements with the trustees of such schemes for the purposes of carrying out its functions, and 20
  - (e) with the concurrence of both the Minister and the Treasurer, to enter into contracts or arrangements to undertake the whole or a part of the administration or management (or both) of a business related to its functions. 25
- (2) AFMC has such other functions as may be conferred or imposed on it by or under this or any other Act.

#### **8   Superannuation investment management services**

The superannuation investment management services that may be provided by AFMC include (but are not limited to) the following: 30

- (a) acting as investment manager for superannuation funds or part of any such fund,



- (b) advising on investments and investment strategies and other related strategies for superannuation funds or part of any such fund.

## **9 Provision of services to STC schemes**

- (1) AFMC must enter into a contract or an arrangement with STC under which AFMC (or its successors) undertakes to carry out the function of providing superannuation investment management services for the STC schemes for a fixed period commencing on a specified date, as determined by the Minister under section 60 of the *Superannuation Administration Act 1996*. 5  
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- (2) Any such contract or arrangement may provide for the circumstances in which it may be terminated before that period expires. Any such termination of the contract has no effect unless it is approved in writing by the Minister.
- (3) At the end of the contract or arrangement referred to in subsection (1), AFMC (or its successors) may enter into a contract or an arrangement with STC under which AFMC (or its successors) undertakes to carry out the functions of providing superannuation investment management services for an STC scheme on behalf of STC. 15  
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**Note.** STC is the trustee for the STC superannuation schemes (that is, those State public sector schemes that are closed to new members). STC is required under the *Superannuation Administration Act 1996* to enter into such a contract or an arrangement with AFMC.

## **10 Provision of services to other schemes** 25

- (1) AFMC (or its successors) may enter into a contract or an arrangement with FTC under which AFMC (or its successors) undertakes to carry out the function of providing superannuation investment management services for a superannuation fund or part of a fund under an FTC scheme, on behalf of FTC. 30
- (2) AFMC (or its successors) may enter into a contract or an arrangement with trustees of other schemes under which AFMC (or its successors) undertakes to carry out the function of providing superannuation investment management services on behalf of the trustee of the scheme concerned. 35



**Note.** FTC is the trustee for the FTC superannuation schemes (that is, those State public sector schemes that are open to new members). FTC is empowered under the *Superannuation Administration Act 1996* to enter into such a contract or an arrangement with AFMC.

- 11 Custodial services** 5
- AFMC (or its successors) may enter into a contract or an arrangement with another person under which AFMC (or its successors) undertakes to carry out the function of providing custodial services for a superannuation fund on behalf of the trustee. 10
- 12 Related businesses**
- (1) AFMC (or its successors) may enter into a contract or an arrangement with another person to undertake the whole or a part of the administration or management (or both) of a business related to AFMC's functions. 15
- (2) AFMC may establish and maintain such accounts and reserves as, in the opinion of AFMC, are necessary or convenient for the administration or management of a business administered or managed by AFMC in accordance with this section.
- 13 Consideration for provision of services** 20
- As consideration for entering into a contract or an arrangement under this Part to provide services, AFMC must charge the trustee of the scheme concerned or other responsible person or other person with whom the contract or arrangement is entered into a fee or charge calculated on a commercial basis to include a margin of profit. 25
- 14 AFMC to have regard to Government policy**
- In exercising its functions, AFMC must have regard to any statement in writing of the policy of the Government on any matter that is relevant to the functions of AFMC given by the Minister to AFMC. 30
- 15 Government policy statements to be laid before Parliament**
- (1) The Minister is required to lay before each House of Parliament, within 14 sitting days after giving a statement under section 14, a copy of the statement. 35

- (2) If a House of Parliament is not sitting when the Minister seeks to comply with this section, the Minister is required to present a copy of the relevant statement to the Clerk of the House.
- (3) A copy of a statement presented to the Clerk of a House of Parliament under this section: 5
  - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
  - (b) is required to be printed by authority of the Clerk, and
  - (c) if printed by the authority of that Clerk, is, for all purposes, taken to be a document published by order or under the authority of that House, and 10
  - (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.

**16 Powers of AFMC** 15

- (1) Without limiting any other function conferred or imposed on it, AFMC may do all things necessary or convenient to be done for, or in connection with, the exercise of AFMC's functions.
- (2) AFMC has, for the purpose of pursuing its functions (both within and outside the State), the same legal capacity, powers and authorities as a company under the *Corporations Law*. 20

**Division 2 Management of AFMC**

**17 AFMC Board**

- (1) AFMC is to have a Board consisting of 6 part-time members, and the chief executive officer of AFMC, appointed by the Minister. 25
- (2) One of the part-time members is to be appointed as Chairperson of AFMC.
- (3) To be eligible for appointment as a member of the AFMC Board a person must have knowledge of, and experience in, the conduct of superannuation schemes, investments, the securities industry, financial management or public administration or a related field. 30
- (4) The Minister must not appoint a part-time member of the AFMC Board without having consulted the Labor Council of New South Wales.

- (5) Parts 1–3 of Schedule 1 have effect with respect to the members and procedures of the Board.

## **18 Functions of AFMC Board**

- (1) The AFMC Board has the following functions:
- (a) to determine the policies of AFMC, and 5
  - (b) to manage and control the affairs of AFMC.
- (2) Any act, matter or thing done in the name of, or on behalf of, AFMC by the AFMC Board is taken to have been done by AFMC.

## **19 Chief executive officer of AFMC**

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- (1) The Minister, on the recommendation of the AFMC Board, is to appoint a person as chief executive officer of AFMC.
- (2) The chief executive officer has the function of exercising the day-to-day management of AFMC and has such other functions as may be conferred or imposed by or under this Act. 15
- (3) The chief executive officer is subject to the control and direction of the AFMC Board.
- (4) Part 4 of Schedule 1 has effect with respect to the chief executive officer.

## **20 Staff of AFMC**

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- (1) AFMC may employ such staff as it requires to exercise its functions.
- (2) AFMC may fix the salary, wages and other conditions of its staff in so far as they are not fixed by or under any other Act or law.
- (3) AFMC may engage consultants for the purposes of getting expert advice. 25

## **21 Agents**

AFMC may employ and pay an agent to transact any business or do any act (including paying or receiving money) that AFMC is authorised or required to transact or do in the exercise of its functions. 30



## 22 Delegation of functions

- (1) AFMC may delegate to an authorised person any of its functions, other than this power of delegation.
- (2) In this section, *authorised person* means a member of the AFMC Board, the chief executive officer of AFMC, a member of staff of AFMC, a member of a committee established by the AFMC Board that is comprised of or includes members of the Board or any other person of a class prescribed by the regulations. 5

## 23 Committees

- (1) The AFMC Board may establish committees to give advice and assistance to the Board in connection with any particular matter or function of the Board. 10
- (2) It does not matter that some or all of the members of any committee are not members of the Board.
- (3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Board or (subject to any determination by the Board) by the committee. 15

## 24 Statement of corporate intent

- (1) AFMC is required to prepare and deliver to the Minister, not later than one month after the beginning of each financial year of AFMC, a statement of corporate intent. 20
- (2) A statement of corporate intent must specify:
  - (a) the objectives of AFMC, and
  - (b) the main undertakings of AFMC, and 25
  - (c) the nature and scope of the activities to be undertaken, and
  - (d) the accounting policies to be applied in the accounts of AFMC, and
  - (e) the performance targets and other measures by which the performance of AFMC may be judged in relation to its stated objectives, and 30
  - (f) such other information as may be required by the Minister to be included.

## 25 Annual reports

The annual report of AFMC is to include a section that:

- (a) identifies any actual departures from the performance targets (including financial targets) set out in the statement of corporate intent for the period to which the report relates, and 5
- (b) sets out the reasons for each of the departures from the performance targets.

**Note.** The AFMC is required to prepare annual reports under the *Annual Reports (Statutory Bodies) Act 1984* and audited financial statements under the *Public Finance and Audit Act 1983*. 10

## 26 Personal liability

A matter or thing done or omitted to be done by AFMC, the AFMC Board, a member of the Board or any person acting under the direction of AFMC or the Board does not, if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act, subject the member or a person so acting personally to any action, liability, claim or demand. 15

## Division 3 Financial provisions

### 27 AFMC to maintain administration account 20

- (1) AFMC must maintain an account called the AFMC Account.
- (2) There is payable into the Account all money received by AFMC (other than money received from superannuation funds for investment purposes), including interest received in respect of investment of money of the Account and all money directed to be paid into the Account by this or any other Act. 25
- (3) There is payable from the Account all payments made on account of AFMC or otherwise required to meet the expenditure incurred in relation to the functions of AFMC, including the remuneration (including allowances) of the chief executive officer and staff of AFMC, and all money directed to be paid from the Account by this or any other Act. 30
- (4) All money payable into the Account is to be paid into an account with a bank, building society or credit union in New South Wales. 35

- (5) The profit from the operations of AFMC is to be paid from the Account into an STC fund or funds as agreed with STC.

## **28 Borrowing and investment powers**

- (1) AFMC may:
- (a) obtain financial accommodation, and 5
  - (b) effect financial adjustments, and
  - (c) make investments,
- under and subject to the *Public Authorities (Financial Arrangements) Act 1987*.
- (2) Subsection (1) does not apply in respect of money belonging to a superannuation fund. 10

## **29 Financial year of AFMC**

- (1) The financial year of AFMC is the year commencing on 1 July.
- (2) A different financial year may be determined by the Treasurer under section 4 (1A) of the *Public Finance and Audit Act 1983*. 15

## **Division 4 Miscellaneous provisions relating to AFMC**

### **30 Provision of information to Minister**

- (1) AFMC must furnish to the Minister such information relating to the general administration and operation of AFMC and any public sector superannuation schemes for which AFMC provides services as the Minister may from time to time require. 20
- (2) Despite subsection (1), AFMC must not furnish information relating to an individual member of a superannuation scheme, except with the member's consent.

### **31 Accounts and records of AFMC** 25

- (1) AFMC, or any person with whom AFMC makes a contract or an arrangement, may maintain accounts and other records relating to its functions in or on any medium, or combination of media, capable of recording information and may, from time to time, vary the manner or form in which those accounts or other records are maintained. 30



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

### **32 Service of documents**

- (1) A document may be served on AFMC by leaving it at, or by sending it by post to: 5
- (a) the office of AFMC, or
  - (b) if it has more than one office, any one of its offices.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on AFMC in any other manner. 10

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

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

- (a) the constitution of the AFMC Board, or
- (b) any resolution of the AFMC Board, or 15
- (c) the appointment of, or the holding of office by, any member of the AFMC Board, or
- (d) the presence or nature of a quorum at any meeting of the AFMC Board.

### **34 Recovery of amounts payable to AFMC** 20

- (1) Any charge, fee or money due to AFMC may be recovered by AFMC as a debt in a court of competent jurisdiction.
- (2) Without limiting subsection (1), AFMC may recover any money owing to it under this or any other Act, together with interest on the money, as a debt in a court of competent jurisdiction. 25
- (3) Interest at a rate from time to time determined by AFMC is payable on any amount of money owing to it under this or any other Act calculated from the date on which the amount became due for payment until the date on which the amount is recovered or is otherwise paid. 30

**35   Proceeds from sale of AFMC's business undertaking to be paid to STC**

If the business undertaking of AFMC is sold, the proceeds of the sale are to be paid to STC in its capacity as trustee of the STC funds, for payment into employer reserves of an STC fund or funds and is to be paid and apportioned among those funds and reserves as determined by STC with the concurrence of the Treasurer. 5

**36   AFMC to publish procedures or guidelines with respect to conflicts of interest** 10

AFMC may publish procedures or guidelines with respect to:

- (a) the disclosure of conflicts of interest associated with the exercise of AFMC's functions, including for example the disclosure of conflicts of interest that may or may not preclude participation by individuals or bodies in contracts or arrangements with AFMC, and 15
- (b) the exclusion of or participation by consultants to AFMC in other commercial arrangements involving AFMC, and
- (c) other related matters.

**37   Seal of AFMC** 20

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

- (a) in the presence of the chief executive officer or a member of staff of AFMC authorised in that behalf by the chief executive officer, and 25
- (b) with an attestation by the signature of the chief executive officer or that member of staff of the fact of the affixing of the seal.

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

### Introductory note.

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

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## Division 1 Preliminary

### 38 Object of Part

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

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### 39 Definition

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

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

### 40 Share capital of AFML

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

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

- (1) As soon as practicable after the commencement of this Division, AFMC is required to apply the requisite amount of capital in paying up, in full, shares in AFMC.
- (2) The requisite amount of capital is such amount as the Treasurer determines by order in writing. The Treasurer is required to consult with the AFMC Board before making such an order. 5
- (3) The issue of those shares discharges in full any obligation of AFMC existing before the conversion to repay the capital of AFMC to the State of New South Wales. 10
- (4) The shares so issued are taken to have been issued for valuable consideration other than cash, being the discharge effected by subsection (3).
- (5) The State of New South Wales is not a member of AFMC at any time before the conversion merely because the State holds shares in AFML. 15

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

- (1) AFMC must, before the conversion:
  - (a) apply to the Australian Securities Commission under section 133 of the *Corporations Law* to be registered as a company limited by shares under Division 3 of Part 2.2 of the *Corporations Law* (Registering non-companies as companies), and 20
  - (b) apply to that Commission under section 374 of the *Corporations Law* for the reservation of the name "Axiom Funds Management Limited". 25
- (2) AFMC is required to lodge with the application for registration as a company:
  - (a) the proposed memorandum and articles of association of AFML, and 30
  - (b) subject to any order in writing of the Treasurer, the other documents and information required by section 136 of the *Corporations Law* to accompany the application.

- (3) The proposed memorandum:
- (a) is to specify that the State of New South Wales is to be the sole subscriber to the memorandum and is to take up the number of shares in the capital of AFMC issued under this Division, and 5
  - (b) is to be signed by the Treasurer on behalf of the State of New South Wales.
- (4) The proposed articles of association:
- (a) are to provide that the first directors of AFML after the conversion are to be appointed by the Treasurer, and 10
  - (b) are to be signed by the Treasurer on behalf of the State of New South Wales.
- (5) AFMC is entitled to make the applications, and to lodge the documents, referred to in this section.

**43 Contents of memorandum and articles 15**

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

**44 Company name**

The name "Axiom Funds Management Limited" is taken to have been reserved under section 374 of the *Corporations Law* immediately after the making of the application to reserve that name. 25

**Division 3 Conversion of AFMC to AFML**

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

- (1) On the commencement of this Division:
- (a) the application for registration as a company referred to in section 42 is taken to have been granted, and 30

- (b) AFMC is taken to have been registered under section 137 of the *Corporations Law*:
  - (i) by the name "Axiom Funds Management Limited", and
  - (ii) as a public company, and a company limited by shares, within the meaning of the *Corporations Law*, and 5
- (c) the name "Axiom Funds Management Limited" is taken to have been registered in respect of AFML under section 374 (5) of the *Corporations Law*. 10
- (2) The date of commencement of AFML's registration as a company under Division 3 of Part 2.2 of the *Corporations Law* is taken to be the commencement of this Division.
- (3) For the purposes of Division 3 of Part 2.2 of the *Corporations Law*, AFML is taken to have been, immediately before the commencement of this Division, and to be on that commencement, a corporation within the meaning of the *Corporations Law*. 15

**46 New name of AFMC**

- (1) On the conversion, AFMC's name is, by force of this subsection, changed to "Axiom Funds Management Limited". 20
- (2) Section 382 (4) of the *Corporations Law* applies in relation to the change of name made by subsection (1) as if:
  - (a) AFMC were a company, within the meaning of the *Corporations Law*, when the change was made, and 25
  - (b) the change was made under the *Corporations Law*.
- (3) This section has effect despite anything in the *Corporations Law*, but nothing in this section prevents:
  - (a) AFML from later changing its name under section 382 of the *Corporations Law*, or 30
  - (b) the cancellation, under Part 4.2 of the *Corporations Law*, of the registration of a name.
- (4) AFML is not entitled to use in connection with its business a name which suggests that it is associated with the State of New South Wales. This subsection does not apply during any period to which Division 4 applies. 35



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

- (1) As from the conversion, the proposed memorandum and articles of association lodged under section 42:
  - (a) are respectively the memorandum and articles of association of AFML, and 5
  - (b) bind AFML and its members accordingly.
- (2) As from the conversion, the *Corporations Law* applies in relation to AFML's memorandum and articles of association as if they had been registered as such under the *Corporations Law*.

**48 Membership of AFML** 10

- (1) The State of New South Wales, as the holder of shares in AFML at the conversion, becomes (by force of this subsection) a member of AFML at the conversion.
- (2) The State of New South Wales is, in relation to membership of AFML, entitled to the same rights, privileges and benefits, and is subject to the same duties, liabilities and obligations, as if it had become a member of AFML under its memorandum and articles of association. 15

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

The Treasurer may act for or on behalf of the State of New South Wales in connection with: 20

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

of the State as the holder of shares in AFML which were issued to the State under Division 2. 25

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

- (1) Without limiting any other provision of this Act or the *Corporations Law*, Axiom Funds Management Limited is a continuation of, and the same legal entity as, Axiom Funds Management Corporation (as it existed before the conversion). 30

- (2) After the conversion, a reference in any other Act or in any instrument made under any Act or in any other document of any kind to Axiom Funds Management Corporation or AFMC is to be read as (or including) a reference to Axiom Funds Management Limited. 5
- (3) Subsection (2) is to be read subject to section 68 (the provision enabling the making of savings and transitional regulations).

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

- (1) Without limiting any other provision of this Act or the regulations, AFML is, on and after the conversion, entitled to the benefit of, and taken to be a party to, any contract or arrangement entered into by AFMC with FTC, STC or any other person and having force immediately before the conversion. 10
- (2) Section 52 does not affect the operation or continuity of any contract or arrangement referred to in subsection (1) and does not prevent AFML from entering into a contract or an arrangement with FTC, STC or any other trustee under the *Superannuation Administration Act 1996*. 15
- Note.** This provision ensures that AFML continues to be entitled to the benefit of contracts or arrangements entered into by AFMC under which AFMC provided superannuation scheme investment services. 20

#### **52 Consequential amendments and repeal**

- (1) Schedule 2 has effect.
- (2) Part 2 is repealed.
- Note.** Part 2 sets up AFMC as a statutory corporation and is no longer relevant after the conversion to AFML. 25

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

#### **53 When Division applies**

This Division applies during any period after the conversion when the issued shares in AFML are held by the State of New South Wales. 30

**54 Ministerial control of AFML**

- (1) The board of directors of AFML is, in the exercise of its functions, subject to the control and direction of the Treasurer.
- (2) Neither the enactment of this section nor the exercise of the Treasurer's powers under this section constitutes the Treasurer as a director of AFML or a person who participates in the management of AFML. 5
- (3) A director of AFML is not personally liable in any civil or criminal proceedings (including proceedings for a breach of any duty under the *Corporations Law*) for anything done or omitted for the purpose only of complying with a direction of the Treasurer under this section. 10

**55 Status of AFML**

- (1) AFML is an agency through which the State of New South Wales carries out the activity of providing superannuation investment management services for State public sector superannuation schemes and other superannuation schemes and for that purpose it is a public authority of the State. 15
- (2) However, AFML:
  - (a) is not, and does not represent, the State of New South Wales except by express agreement with the Treasurer, and 20
  - (b) is not exempt from any rate, tax, duty or other impost imposed by or under any law of the State of New South Wales merely because it is a company in which the State holds shares, and 25
  - (c) cannot render the State of New South Wales liable for any debts, liabilities or obligations of AFML, unless this Act or any other Act or law otherwise expressly provides.

**56 Application of certain provisions of State Owned Corporations Act 1989 to AFML 30**

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

- (a) such of the provisions of Part 4 (Accountability) as are prescribed by the regulations, 35



Clause 56      Superannuation (Axiom Funds Management Corporation) Bill 1996

Part 3      Conversion of AFMC to company (AFML)  
Division 4

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

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## Part 4 Sale of AFML to private sector

### Division 1 Sale process

#### 57 Authorisation of sale of AFML

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

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#### 58 Approved buyers

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

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

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(1) The Premier and the Treasurer (or either of them) are authorised to negotiate, enter into and carry out on behalf of the State an agreement for the sale of the shares in AFML and the business of AFML and any other associated transactions.

(2) The Treasurer is authorised to transfer the shares held by the State of New South Wales to an approved buyer in accordance with the terms of the agreement entered into under this section and to enter into and carry out agreements for the transfer of shares to the approved buyer.

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(3) The agreement for sale must provide for the repayment to Treasury Corporation of money loaned by Treasury Corporation to AFML and repayable by AFML as at the sale.

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#### 60 Application of legislation

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

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

(2) Schedule 3 has effect.

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

- (1) The Treasurer is authorised to take steps before the appointed day under section 60 to make alterations and additions to the memorandum and articles of association of AFML, being alterations and additions contemplated by the agreement made under section 59, whether or not some or all of them are or may be inconsistent with the requirements of this Act or the *State Owned Corporations Act 1989*, or both. 5
- (2) However, any such inconsistent alterations or additions do not take effect before the appointed day. 10
- (3) Despite section 172 of the *Corporations Law*, subsection (6) of that section does not apply in relation to any alteration or addition referred to in subsection (1) of this section.

**62 No government guarantees**

The obligations of AFML are not guaranteed by the State of New South Wales. 15

**Division 2 Results of sale**

**63 Proceeds of sale**

- (1) Any proceeds received for the sale of AFML must be paid to STC as trustee for the STC schemes, for payment into an STC fund or funds to be paid and apportioned among the funds and reserves as determined by the Treasurer after consulting STC. 20
- (2) There are to be deducted from these amounts before payment into the STC fund or funds such amount as the Treasurer approves to meet the expenses reasonably incurred in connection with the sale of AFML and repayments to be made as provided for by section 59 (3). 25

**64 Staff**

- (1) On the sale of AFML, each member of staff of AFML continues to be a member of staff of AFML (despite the change of ownership) on the same terms and conditions of employment as applied to the member of staff immediately before the sale and those terms and conditions are to continue to have effect until varied either by agreement or otherwise in accordance with law. 30



- (2) In subsection (1), a reference to terms and conditions of employment includes (but is not limited to) any right under a contract of employment to additional payments in the nature of incentives or bonus payments.
- (3) Neither the contract of employment nor the period of employment of each member of the staff concerned is taken to have been broken by the operation of this Act for the purposes of any law, award or agreement relating to the employment of that member of staff. 5
- (4) Without limiting this section, this Division does not affect any accrued rights that the member of staff concerned had immediately before the sale in relation to any kind of leave. 10

**65 Obligations during period following completion**

Neither the validity nor the enforceability of any clause of an agreement under Division 1 is affected by any law (whether written or unwritten) relating to the enforceability of property or restraint of trade. 15

## **Part 5      Miscellaneous**

### **66   Act binds Crown**

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

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### **67   Proceedings for offences**

Proceedings for an offence against this Act are to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

### **68   Regulations**

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- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to:
  - (a) the procedure of the AFMC Board,
  - (b) provisions of a savings or transitional nature consequent on the enactment of this Act.
- (3) Any such savings or transitional provisions may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (4) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State, AFML, the approved buyer or an authority of the State), the rights of that person existing before the date of its publication, or

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- (b) to impose liabilities on any person (other than the State, AFML, the approved buyer or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **69 Savings and transitional provisions**

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Schedule 4 has effect.

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

- (1) This section applies to the following:

- (a) the operation of this Act,
- (b) the sale of AFML as authorised by this Act, 10
- (c) an agreement, a guarantee or other arrangement or transaction, entered into or carried out under this Act for purposes connected with this Act,
- (d) a disclosure of information made for the purposes of the sale or proposed sale of AFML (including a disclosure in any memorandum of information given to persons expressing an interest in the sale or a disclosure in response to an inquiry made by a prospective purchaser). 15

- (2) None of the matters or things referred to in subsection (1) are to be regarded as a breach of confidence or otherwise as a civil wrong or as giving rise to a breach or an offence against a provision of an Act that prohibits or restricts the disclosure of information. 20

- (3) None of the matters or things referred to in subsection (1) are to be regarded: 25

- (a) as a breach of contract or another instrument or as requiring any act to be done under an instrument, or
- (b) as giving rise to any right or remedy by a party to an instrument, or as causing or permitting the termination of an instrument, or 30
- (c) as an event of default under an instrument, or
- (d) as a contravention of section 205 (1) (a) of the *Corporations Law*.



- (4) Subsections (2) and (3) do not affect, and a reference in subsection (3) to an instrument does not include, an agreement, a guarantee or other arrangement or transaction, entered into or carried out under this Act for purposes connected with this Act.
- (5) A reference in subsection (3) to an instrument does not include an Act. 5
- (6) Subsection (3) (d) has effect despite section 205 (1) (a) of the *Corporations Law*.

**71 Exemption from tax for conversion documents and other documents** 10

- (1) In this section:

*exempt matter* means:

- (a) the issue of shares in AFML under Part 3 and the disposal of those shares by the State, or
- (b) the application by AFML under this Act for registration as a company or for the reservation of its name, or 15
- (c) any other matter related to the conversion of AFMC into a public company under this Act.

*State tax* means application or registration fees, stamp duty or any other tax, duty, fee or charge imposed by any Act or law of the State. 20

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

- (a) an exempt matter, or
- (b) anything done because of, or for a purpose connected with or arising out of, an exempt matter. 25

**72 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act. 30
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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## Schedule 1 Provisions relating to AFMC Board

(Sections 17, 19)

### Part 1 Definitions

#### 1 Definitions

In this Schedule:

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*Chairperson* means the Chairperson of the Board.

*Board* means the AFMC Board.

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

### Part 2 Members

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#### 2 Deputies

(1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.

(2) In the absence of a member, the member's deputy:

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(a) may, if available, act in the place of a member, and

(b) while so acting, has all the functions of the member and is taken to be a member.

(3) The deputy of a member who is the Chairperson does not (because of this clause) have the member's functions as Chairperson.

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(4) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

#### 3 Terms of office of members

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

#### 4 Remuneration

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

#### 5 Vacancy in office of member

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(1) The office of a member becomes vacant if the member:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or 10
- (d) is removed from office by the Minister under this clause, or
- (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Board for having been absent from those meetings, or 15
- (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 20
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable, or 25
- (i) is a disqualified person within the meaning of Part 15 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth. 30

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



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## 6 Disclosure of pecuniary interests

- (1) If:
- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and 5
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
- the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board. 10
- (2) A disclosure by a member at a meeting of the Board that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or 15
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1). 20
- (3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee (if any) determined by the Board. 25
- (4) After a member has disclosed the nature of any interest in any matter, the member must not, unless the Minister or the Board otherwise determines: 30
- (a) be present during any deliberation of the Board with respect to the matter, or
  - (b) take part in any decision of the Board with respect to the matter.

- (5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Board for the purpose of making the determination, or 5
- (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board.
- (7) This clause does not apply to or in respect of an interest of a member in a matter or thing which arises merely because the member is a contributor to a superannuation scheme. 10

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

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy. 15

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

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or 20
- (b) prohibiting the person from engaging in employment outside the duties of that office,
- the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member. 25
- (3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown. 30

---

## **Part 3 Procedure**

### **9 General procedure**

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

5

### **10 Quorum**

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

### **11 Presiding member**

- (1) A meeting of the Board is to be presided over by:
  - (a) the Chairperson, or
  - (b) in the absence of the Chairperson, a member elected by the members present at the meeting.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

10

### **12 Voting**

15

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

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

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members for the time being. A resolution approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

20

25



- (3) For the purposes of:
- (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),
- the members have the same voting rights as they have at an ordinary meeting of the Board. 5
- (4) Papers may be circulated among members for the purposes of subclause (1) by fax or other transmission of the information in the papers concerned.

**14 First meeting**

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit. 10

**Part 4 Chief executive officer of AFMC**

**15 Term of office**

Subject to this Part, the chief executive officer holds office for such period (not exceeding 5 years) as may be specified in the chief executive officer's instrument of appointment. 15

**16 Conditions of employment**

The Board may, with the approval of the Minister, fix the remuneration (including travelling and subsistence allowances) and conditions of employment of the chief executive officer in so far as they are not fixed by or under any other Act or law. 20

**17 Public Sector Management Act 1988 not to apply**

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

**18 Performance agreements**

25

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

**19 Acting chief executive officer**

- (1) The Board may, from time to time, appoint a person to act in the office of chief executive officer during the illness or absence of the chief executive officer. The person, while so acting, has all the functions of the chief executive officer and is taken to be the chief executive officer. 30

- 
- (2) The Board may remove a person from the office to which the person was appointed under this clause at any time for any or no reason and without notice.
- (3) A person while acting in the office of chief executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Board may from time to time determine. 5
- (4) For the purposes of this clause, a vacancy in the office of the chief executive officer is regarded as an absence from office of the chief executive officer. 10

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

(Section 52)

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

#### **Schedule 1 Employers**

5

Omit "Axiom Funds Management Corporation" from Part 1.  
Insert instead "Axiom Funds Management Limited".

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

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

10

Omit "Axiom Funds Management Corporation".  
Insert instead "Axiom Funds Management Limited".

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

#### **Schedule 1 Authorities**

15

Omit "Axiom Funds Management Corporation".  
Insert instead "Axiom Funds Management Limited".

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

#### **Schedule 2 Statutory bodies**

Omit "Axiom Funds Management Corporation".  
Insert instead "Axiom Funds Management Limited".

20



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

**Schedule 1 Employers**

Omit "Axiom Funds Management Corporation" from Part 1.  
Insert instead "Axiom Funds Management Limited".

5

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

**Schedule 1 Employers**

Omit "Axiom Funds Management Corporation" from Part 1.  
Insert instead "Axiom Funds Management Limited".

**2.7 Superannuation Act 1916 No 28**

10

**Schedule 3 List of employers**

Omit "Axiom Funds Management Corporation" from Part 1.  
Insert instead "Axiom Funds Management Limited".

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

(Section 60)

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

##### **Schedule 1 Employers**

5

Omit "Axiom Funds Management Limited" from Part 1.

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

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

Omit "Axiom Funds Management Limited".

10

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

##### **Schedule 1 Authorities**

Omit "Axiom Funds Management Limited".

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

15

##### **Schedule 2 Statutory bodies**

Omit "Axiom Funds Management Limited".

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

##### **Schedule 1 Employers**

20

Omit "Axiom Funds Management Limited" from Part 1.

Superannuation (Axiom Funds Management Corporation) Bill 1996

Further consequential amendments to other Acts

Schedule 3

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

**Schedule 1 Employers**

Omit "Axiom Funds Management Limited" from Part 1.

**3.7 Superannuation Act 1916 No 28**

**Schedule 3 List of employers**

5

Omit "Axiom Funds Management Limited" from Part 1.



---

## Schedule 4 Savings and transitional provisions

(Section 69)

### 1 Members of AFMC Board

- (1) A person who, immediately before the conversion of AFMC to AFML, held office as a member of the AFMC Board: 5
  - (a) ceases to hold that office, and
  - (b) is eligible (if otherwise qualified) to be appointed to the AFML Board.
- (2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office. 10

### 2 Application of certain provisions of the Corporations Law

- (1) While the State of New South Wales continues to hold all the shares in AFML (being the shares issued to the State under Part 3), sections 186 and 461 (d) of the *Corporations Law* do not apply in relation to AFML, and section 249 (7) of the *Corporations Law* applies in relation to AFML as if: 15
  - (a) the State of New South Wales were a holding company (within the meaning of section 249 (7) of the *Corporations Law*) of AFML, and
  - (b) the Treasurer were a representative of the State authorised under section 249 (3) of the *Corporations Law*. 20
- (2) Sections 139 (2) and (3) and 151 (5) of the *Corporations Law* do not apply in relation to AFML.
- (3) For the purposes of Division 2 of Part 5.6 of the *Corporations Law* (Contributories on winding up): 25
  - (a) the State of New South Wales is not (in relation to any period before the conversion) a past member of AFML, and

- 
- (b) a person is not a past member of AFML merely because he or she was a member of the AFMC Board, or acted as such, before the conversion.
- (4) For the purposes of the *Corporations Law*, accounts and records kept under Part 3 of the *Public Finance and Audit Act 1983* are, after the conversion, taken to be accounting records kept by AFML under a provision of a previous law of the State of New South Wales, being a provision corresponding to section 289 of the *Corporations Law*. 5
- (5) For the purposes of the *Corporations Law*, a report and financial statements that were prepared under Part 3 of the *Public Finance and Audit Act 1983* in relation to a period and furnished to the Minister on a particular day are, after the conversion, taken to be a profit and loss account of AFML that was: 10
- (a) made out in relation to that period, and 15
- (b) laid before the body at an annual general meeting of the body held on that day.

### 3 Audit

- (1) As from the conversion, the functions of the Auditor-General under the *Public Finance and Audit Act 1983* are no longer exercisable in respect of AFML, except in respect of whole financial years before the conversion. 20
- (2) AFML is not required to prepare accounts as at the date of conversion if the conversion occurs during a financial year.

### 4 Superannuation under State public sector schemes 25

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

Superannuation (Axiom Funds Management Corporation) Bill 1996

Schedule 4 Savings and transitional provisions

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- (2) Contributors to whom this clause applies cease to be contributors on the day referred to in subclause (1). They are taken to have elected on that day to preserve their superannuation benefits in accordance with the relevant statutory provisions.
- (3) This clause does not affect the provisions of any other Act or regulation relating to the rights of contributors. 5





New South Wales

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

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New South Wales

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

Act No 40, 1996

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An Act to establish the Axiom Funds Management Corporation and to provide for its functions; to convert the Corporation to a public company to be known as Axiom Funds Management Limited, and to provide for the future sale of that company; and for other purposes. [Assented to 25 June 1996.]

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**The Legislature of New South Wales enacts:**

## **Part 1      Preliminary**

### **1    Name of Act**

This Act is the *Superannuation (Axiom Funds Management Corporation) Act 1996*.

### **2    Commencement**

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

### **3    Objects of Act**

The objects of this Act are as follows:

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

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

### **4    Definitions**

In this Act:

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

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

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



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

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

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

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

**FTC** means the FSS Trustee Corporation established by the *Superannuation Administration Act 1996*.

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

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

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

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

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

**SAA** means the Superannuation Administration Authority of New South Wales established by the *Superannuation Administration Act 1996*.

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

**STC** means the SAS Trustee Corporation continued by the *Superannuation Administration Act 1996*.

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

- (a) *Police Regulation (Superannuation) Act 1906*,
- (b) *Superannuation Act 1916*,
- (c) *Local Government and Other Authorities (Superannuation) Act 1927*,
- (d) *Transport Employees Retirement Benefits Act 1967*,
- (e) *New South Wales Retirement Benefits Act 1972*,
- (f) *Public Authorities Superannuation Act 1985*,
- (g) *State Public Service Superannuation Act 1985*,
- (h) *State Authorities Superannuation Act 1987*,
- (i) *State Authorities Non-contributory Superannuation Act 1987*.

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

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

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

## **5 Notes in text**

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

## **Part 2      Axiom Funds Management Corporation (AFMC)**

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

#### **6   Establishment of AFMC**

- (1) There is constituted by this Act a body corporate with the corporate name of the Axiom Funds Management Corporation.
- (2) AFMC is, for the purposes of any Act, a statutory body representing the Crown.

#### **7   Principal functions of AFMC**

- (1) The principal functions of AFMC are:
  - (a) to provide superannuation investment management services for State public sector superannuation schemes on behalf of trustees, and
  - (b) to provide superannuation investment management services for other superannuation schemes (including non-public sector schemes) on behalf of trustees, and
  - (c) to provide custodial services for the assets and securities of superannuation schemes for which services are provided on behalf of trustees, and
  - (d) to enter into contracts or arrangements with the trustees of such schemes for the purposes of carrying out its functions, and
  - (e) with the concurrence of both the Minister and the Treasurer, to enter into contracts or arrangements to undertake the whole or a part of the administration or management (or both) of a business related to its functions.
- (2) AFMC has such other functions as may be conferred or imposed on it by or under this or any other Act.

#### **8   Superannuation investment management services**

The superannuation investment management services that may be provided by AFMC include (but are not limited to) the following:

- (a) acting as investment manager for superannuation funds or part of any such fund,



- (b) advising on investments and investment strategies and other related strategies for superannuation funds or part of any such fund.

## **9 Provision of services to STC schemes**

- (1) AFMC must enter into a contract or an arrangement with STC under which AFMC (or its successors) undertakes to carry out the function of providing superannuation investment management services for the STC schemes for a fixed period commencing on a specified date, as determined by the Minister under section 60 of the *Superannuation Administration Act 1996*.
- (2) Any such contract or arrangement may provide for the circumstances in which it may be terminated before that period expires. Any such termination of the contract has no effect unless it is approved in writing by the Minister.
- (3) At the end of the contract or arrangement referred to in subsection (1), AFMC (or its successors) may enter into a contract or an arrangement with STC under which AFMC (or its successors) undertakes to carry out the functions of providing superannuation investment management services for an STC scheme on behalf of STC.

**Note.** STC is the trustee for the STC superannuation schemes (that is, those State public sector schemes that are closed to new members). STC is required under the *Superannuation Administration Act 1996* to enter into such a contract or an arrangement with AFMC.

## **10 Provision of services to other schemes**

- (1) AFMC (or its successors) may enter into a contract or an arrangement with FTC under which AFMC (or its successors) undertakes to carry out the function of providing superannuation investment management services for a superannuation fund or part of a fund under an FTC scheme, on behalf of FTC.
- (2) AFMC (or its successors) may enter into a contract or an arrangement with trustees of other schemes under which AFMC (or its successors) undertakes to carry out the function of providing superannuation investment management services on behalf of the trustee of the scheme concerned.

**Note.** FTC is the trustee for the FTC superannuation schemes (that is, those State public sector schemes that are open to new members). FTC is empowered under the *Superannuation Administration Act 1996* to enter into such a contract or an arrangement with AFMC.

## **11 Custodial services**

AFMC (or its successors) may enter into a contract or an arrangement with another person under which AFMC (or its successors) undertakes to carry out the function of providing custodial services for a superannuation fund on behalf of the trustee.

## **12 Related businesses**

- (1) AFMC (or its successors) may enter into a contract or an arrangement with another person to undertake the whole or a part of the administration or management (or both) of a business related to AFMC's functions.
- (2) AFMC may establish and maintain such accounts and reserves as, in the opinion of AFMC, are necessary or convenient for the administration or management of a business administered or managed by AFMC in accordance with this section.

## **13 Consideration for provision of services**

As consideration for entering into a contract or an arrangement under this Part to provide services, AFMC must charge the trustee of the scheme concerned or other responsible person or other person with whom the contract or arrangement is entered into a fee or charge calculated on a commercial basis to include a margin of profit.

## **14 AFMC to have regard to Government policy**

In exercising its functions, AFMC must have regard to any statement in writing of the policy of the Government on any matter that is relevant to the functions of AFMC given by the Minister to AFMC.

## **15 Government policy statements to be laid before Parliament**

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

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

## **16 Powers of AFMC**

- (1) Without limiting any other function conferred or imposed on it, AFMC may do all things necessary or convenient to be done for, or in connection with, the exercise of AFMC's functions.
- (2) AFMC has, for the purpose of pursuing its functions (both within and outside the State), the same legal capacity, powers and authorities as a company under the *Corporations Law*.

## **Division 2 Management of AFMC**

### **17 AFMC Board**

- (1) AFMC is to have a Board consisting of 6 part-time members, and the chief executive officer of AFMC, appointed by the Minister.
- (2) One of the part-time members is to be appointed as Chairperson of AFMC.
- (3) To be eligible for appointment as a member of the AFMC Board a person must have knowledge of, and experience in, the conduct of superannuation schemes, investments, the securities industry, financial management or public administration or a related field.
- (4) The Minister must not appoint a part-time member of the AFMC Board without having consulted the Labor Council of New South Wales.



- (5) Parts 1–3 of Schedule 1 have effect with respect to the members and procedures of the Board.

## **18 Functions of AFMC Board**

- (1) The AFMC Board has the following functions:
  - (a) to determine the policies of AFMC, and
  - (b) to manage and control the affairs of AFMC.
- (2) Any act, matter or thing done in the name of, or on behalf of, AFMC by the AFMC Board is taken to have been done by AFMC.

## **19 Chief executive officer of AFMC**

- (1) The Minister, on the recommendation of the AFMC Board, is to appoint a person as chief executive officer of AFMC.
- (2) The chief executive officer has the function of exercising the day-to-day management of AFMC and has such other functions as may be conferred or imposed by or under this Act.
- (3) The chief executive officer is subject to the control and direction of the AFMC Board.
- (4) Part 4 of Schedule 1 has effect with respect to the chief executive officer.

## **20 Staff of AFMC**

- (1) AFMC may employ such staff as it requires to exercise its functions.
- (2) AFMC may fix the salary, wages and other conditions of its staff in so far as they are not fixed by or under any other Act or law.
- (3) AFMC may engage consultants for the purposes of getting expert advice.

## **21 Agents**

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

## **22 Delegation of functions**

- (1) AFMC may delegate to an authorised person any of its functions, other than this power of delegation.
- (2) In this section, *authorised person* means a member of the AFMC Board, the chief executive officer of AFMC, a member of staff of AFMC, a member of a committee established by the AFMC Board that is comprised of or includes members of the Board or any other person of a class prescribed by the regulations.

## **23 Committees**

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

## **24 Statement of corporate intent**

- (1) AFMC is required to prepare and deliver to the Minister, not later than one month after the beginning of each financial year of AFMC, a statement of corporate intent.
- (2) A statement of corporate intent must specify:
  - (a) the objectives of AFMC, and
  - (b) the main undertakings of AFMC, and
  - (c) the nature and scope of the activities to be undertaken, and
  - (d) the accounting policies to be applied in the accounts of AFMC, and
  - (e) the performance targets and other measures by which the performance of AFMC may be judged in relation to its stated objectives, and
  - (f) such other information as may be required by the Minister to be included.

## 25 Annual reports

The annual report of AFMC is to include a section that:

- (a) identifies any actual departures from the performance targets (including financial targets) set out in the statement of corporate intent for the period to which the report relates, and
- (b) sets out the reasons for each of the departures from the performance targets.

**Note.** The AFMC is required to prepare annual reports under the *Annual Reports (Statutory Bodies) Act 1984* and audited financial statements under the *Public Finance and Audit Act 1983*.

## 26 Personal liability

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

## Division 3 Financial provisions

### 27 AFMC to maintain administration account

- (1) AFMC must maintain an account called the AFMC Account.
- (2) There is payable into the Account all money received by AFMC (other than money received from superannuation funds for investment purposes), including interest received in respect of investment of money of the Account and all money directed to be paid into the Account by this or any other Act.
- (3) There is payable from the Account all payments made on account of AFMC or otherwise required to meet the expenditure incurred in relation to the functions of AFMC, including the remuneration (including allowances) of the chief executive officer and staff of AFMC, and all money directed to be paid from the Account by this or any other Act.
- (4) All money payable into the Account is to be paid into an account with a bank, building society or credit union in New South Wales.



- (5) The profit from the operations of AFMC is to be paid from the Account into an STC fund or funds as agreed with STC.

## **28 Borrowing and investment powers**

- (1) AFMC may:
- (a) obtain financial accommodation, and
  - (b) effect financial adjustments, and
  - (c) make investments,
- under and subject to the *Public Authorities (Financial Arrangements) Act 1987*.
- (2) Subsection (1) does not apply in respect of money belonging to a superannuation fund.

## **29 Financial year of AFMC**

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

## **Division 4 Miscellaneous provisions relating to AFMC**

### **30 Provision of information to Minister**

- (1) AFMC must furnish to the Minister such information relating to the general administration and operation of AFMC and any public sector superannuation schemes for which AFMC provides services as the Minister may from time to time require.
- (2) Despite subsection (1), AFMC must not furnish information relating to an individual member of a superannuation scheme, except with the member's consent.

### **31 Accounts and records of AFMC**

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

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

### **32 Service of documents**

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

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

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

- (a) the constitution of the AFMC Board, or
- (b) any resolution of the AFMC Board, or
- (c) the appointment of, or the holding of office by, any member of the AFMC Board, or
- (d) the presence or nature of a quorum at any meeting of the AFMC Board.

### **34 Recovery of amounts payable to AFMC**

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

**35   Proceeds from sale of AFMC's business undertaking to be paid to STC**

If the business undertaking of AFMC is sold, the proceeds of the sale are to be paid to STC in its capacity as trustee of the STC funds, for payment into an STC fund or funds to be paid and apportioned among the funds and reserves as determined by the Treasurer after consulting STC.

**36   AFMC to publish procedures or guidelines with respect to conflicts of interest**

AFMC may publish procedures or guidelines with respect to:

- (a)   the disclosure of conflicts of interest associated with the exercise of AFMC's functions, including for example the disclosure of conflicts of interest that may or may not preclude participation by individuals or bodies in contracts or arrangements with AFMC, and
- (b)   the exclusion of or participation by consultants to AFMC in other commercial arrangements involving AFMC, and
- (c)   other related matters.

**37   Seal of AFMC**

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

- (a)   in the presence of the chief executive officer or a member of staff of AFMC authorised in that behalf by the chief executive officer, and
- (b)   with an attestation by the signature of the chief executive officer or that member of staff of the fact of the affixing of the seal.



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

### **Introductory note.**

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

### **Division 1 Preliminary**

#### **38 Object of Part**

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

#### **39 Definition**

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

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

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

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

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

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

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

- (1) AFMC must, before the conversion:
  - (a) apply to the Australian Securities Commission under section 133 of the *Corporations Law* to be registered as a company limited by shares under Division 3 of Part 2.2 of the *Corporations Law* (Registering non-companies as companies), and
  - (b) apply to that Commission under section 374 of the *Corporations Law* for the reservation of the name "Axiom Funds Management Limited".
- (2) AFMC is required to lodge with the application for registration as a company:
  - (a) the proposed memorandum and articles of association of AFML, and
  - (b) subject to any order in writing of the Treasurer, the other documents and information required by section 136 of the *Corporations Law* to accompany the application.

- (3) The proposed memorandum:
  - (a) is to specify that the State of New South Wales is to be the sole subscriber to the memorandum and is to take up the number of shares in the capital of AFMC issued under this Division, and
  - (b) is to be signed by the Treasurer on behalf of the State of New South Wales.
- (4) The proposed articles of association:
  - (a) are to provide that the first directors of AFML after the conversion are to be appointed by the Treasurer, and
  - (b) are to be signed by the Treasurer on behalf of the State of New South Wales.
- (5) AFMC is entitled to make the applications, and to lodge the documents, referred to in this section.

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

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

#### **44 Company name**

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

### **Division 3 Conversion of AFMC to AFML**

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

- (1) On the commencement of this Division:
  - (a) the application for registration as a company referred to in section 42 is taken to have been granted, and



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

#### **46 New name of AFMC**

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

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

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

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

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

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

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

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

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

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

- (1) Without limiting any other provision of this Act or the *Corporations Law*, Axiom Funds Management Limited is a continuation of, and the same legal entity as, Axiom Funds Management Corporation (as it existed before the conversion).

- (2) After the conversion, a reference in any other Act or in any instrument made under any Act or in any other document of any kind to Axiom Funds Management Corporation or AFMC is to be read as (or including) a reference to Axiom Funds Management Limited.
- (3) Subsection (2) is to be read subject to section 68 (the provision enabling the making of savings and transitional regulations).

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

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

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

## **52 Consequential amendments and repeal**

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

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

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

### **53 When Division applies**

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



**54 Ministerial control of AFML**

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

**55 Status of AFML**

- (1) AFML is an agency through which the State of New South Wales carries out the activity of providing superannuation investment management services for State public sector superannuation schemes and other superannuation schemes and for that purpose it is a public authority of the State.
- (2) However, AFML:
  - (a) is not, and does not represent, the State of New South Wales except by express agreement with the Treasurer, and
  - (b) is not exempt from any rate, tax, duty or other impost imposed by or under any law of the State of New South Wales merely because it is a company in which the State holds shares, and
  - (c) cannot render the State of New South Wales liable for any debts, liabilities or obligations of AFML,unless this Act or any other Act or law otherwise expressly provides.

**56 Application of certain provisions of State Owned Corporations Act 1989 to AFML**

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

- (a) such of the provisions of Part 4 (Accountability) as are prescribed by the regulations,

Section 56            Superannuation (Axiom Funds Management Corporation) Act 1996 No 40

Part 3                Conversion of AFMC to company (AFML)

Division 4

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

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

### **Division 1   Sale process**

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

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

#### **58    Approved buyers**

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

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

- (1) The Premier and the Treasurer (or either of them) are authorised to negotiate, enter into and carry out on behalf of the State an agreement for the sale of the shares in AFML and the business of AFML and any other associated transactions.
- (2) The Treasurer is authorised to transfer the shares held by the State of New South Wales to an approved buyer in accordance with the terms of the agreement entered into under this section and to enter into and carry out agreements for the transfer of shares to the approved buyer.
- (3) The agreement for sale must provide for the repayment to Treasury Corporation of money loaned by Treasury Corporation to AFMC and repayable by AFML as at the sale.

#### **60    Application of legislation**

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

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

- (2) Schedule 3 has effect.



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

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

## **62 No government guarantees**

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

## **Division 2 Results of sale**

### **63 Proceeds of sale**

- (1) Any proceeds received for the sale of AFML must be paid to STC as trustee for the STC schemes, for payment into an STC fund or funds to be paid and apportioned among the funds and reserves as determined by the Treasurer after consulting STC.
- (2) There are to be deducted from these amounts before payment into the STC fund or funds such amount as the Treasurer approves to meet the expenses reasonably incurred in connection with the sale of AFML and repayments to be made as provided for by section 59 (3).

### **64 Staff**

- (1) On the sale of AFML, each member of staff of AFML continues to be a member of staff of AFML (despite the change of ownership) on the same terms and conditions of employment as applied to the member of staff immediately before the sale and those terms and conditions are to continue to have effect until varied either by agreement or otherwise in accordance with law.

- (2) In subsection (1), a reference to terms and conditions of employment includes (but is not limited to) any right under a contract of employment to additional payments in the nature of incentives or bonus payments.
- (3) Neither the contract of employment nor the period of employment of each member of the staff concerned is taken to have been broken by the operation of this Act for the purposes of any law, award or agreement relating to the employment of that member of staff.
- (4) Without limiting this section, this Division does not affect any accrued rights that the member of staff concerned had immediately before the sale in relation to any kind of leave.

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

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

## **Part 5      Miscellaneous**

### **66    Act binds Crown**

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

### **67    Proceedings for offences**

Proceedings for an offence against this Act are to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

### **68    Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to:
  - (a) the procedure of the AFMC Board,
  - (b) provisions of a savings or transitional nature consequent on the enactment of this Act.
- (3) Any such savings or transitional provisions may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (4) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State, AFML, the approved buyer or an authority of the State), the rights of that person existing before the date of its publication, or



- (b) to impose liabilities on any person (other than the State, AFML, the approved buyer or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **69 Savings and transitional provisions**

Schedule 4 has effect.

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

- (1) This section applies to the following:
  - (a) the operation of this Act,
  - (b) the sale of AFML as authorised by this Act,
  - (c) an agreement, a guarantee or other arrangement or transaction, entered into or carried out under this Act for purposes connected with this Act,
  - (d) a disclosure of information made for the purposes of the sale or proposed sale of AFML (including a disclosure in any memorandum of information given to persons expressing an interest in the sale or a disclosure in response to an inquiry made by a prospective purchaser).
- (2) None of the matters or things referred to in subsection (1) are to be regarded as a breach of confidence or otherwise as a civil wrong or as giving rise to a breach or an offence against a provision of an Act that prohibits or restricts the disclosure of information.
- (3) None of the matters or things referred to in subsection (1) are to be regarded:
  - (a) as a breach of contract or another instrument or as requiring any act to be done under an instrument, or
  - (b) as giving rise to any right or remedy by a party to an instrument, or as causing or permitting the termination of an instrument, or
  - (c) as an event of default under an instrument, or
  - (d) as a contravention of section 205 (1) (a) of the *Corporations Law*.

- (4) Subsections (2) and (3) do not affect, and a reference in subsection (3) to an instrument does not include, an agreement, a guarantee or other arrangement or transaction, entered into or carried out under this Act for purposes connected with this Act.
- (5) A reference in subsection (3) to an instrument does not include an Act.
- (6) Subsection (3) (d) has effect despite section 205 (1) (a) of the *Corporations Law*.

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

- (1) In this section:

***exempt matter*** means:

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

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

- (2) State tax is not payable in relation to:
  - (a) an exempt matter, or
  - (b) anything done because of, or for a purpose connected with or arising out of, an exempt matter.

## **72 Review of Act**

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

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## Schedule 1 Provisions relating to AFMC Board

(Sections 17, 19)

### Part 1 Definitions

#### 1 Definitions

In this Schedule:

*Chairperson* means the Chairperson of the Board.

*Board* means the AFMC Board.

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

### Part 2 Members

#### 2 Deputies

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

#### 3 Terms of office of members

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



#### **4 Remuneration**

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

#### **5 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or
  - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Board for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable, or
  - (i) is a disqualified person within the meaning of Part 15 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.
- (2) The Minister may remove a member from office at any time for any or no reason and without notice.

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## **6 Disclosure of pecuniary interests**

(1) If:

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

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

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

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

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

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

(4) After a member has disclosed the nature of any interest in any matter, the member must not, unless the Minister or the Board otherwise determines:

- (a) be present during any deliberation of the Board with respect to the matter, or
- (b) take part in any decision of the Board with respect to the matter.

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

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

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

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

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.
- (3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.



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## **Part 3 Procedure**

### **9 General procedure**

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

### **10 Quorum**

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

### **11 Presiding member**

- (1) A meeting of the Board is to be presided over by:
  - (a) the Chairperson, or
  - (b) in the absence of the Chairperson, a member elected by the members present at the meeting.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **12 Voting**

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

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

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members for the time being. A resolution approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the members have the same voting rights as they have at an ordinary meeting of the Board.
- (4) Papers may be circulated among members for the purposes of subclause (1) by fax or other transmission of the information in the papers concerned.

#### **14 First meeting**

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

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

#### **15 Term of office**

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

#### **16 Conditions of employment**

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

#### **17 Public Sector Management Act 1988 not to apply**

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

#### **18 Performance agreements**

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

#### **19 Acting chief executive officer**

- (1) The Board may, from time to time, appoint a person to act in the office of chief executive officer during the illness or absence of the chief executive officer. The person, while so acting, has all the functions of the chief executive officer and is taken to be the chief executive officer.

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



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

(Section 52)

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

#### **Schedule 1 Employers**

Omit "Axiom Funds Management Corporation" from Part 1.  
Insert instead "Axiom Funds Management Limited".

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

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

Omit "Axiom Funds Management Corporation".  
Insert instead "Axiom Funds Management Limited".

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

#### **Schedule 1 Authorities**

Omit "Axiom Funds Management Corporation".  
Insert instead "Axiom Funds Management Limited".

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

#### **Schedule 2 Statutory bodies**

Omit "Axiom Funds Management Corporation".  
Insert instead "Axiom Funds Management Limited".

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

**Schedule 1 Employers**

Omit "Axiom Funds Management Corporation" from Part 1.  
Insert instead "Axiom Funds Management Limited".

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

**Schedule 1 Employers**

Omit "Axiom Funds Management Corporation" from Part 1.  
Insert instead "Axiom Funds Management Limited".

**2.7 Superannuation Act 1916 No 28**

**Schedule 3 List of employers**

Omit "Axiom Funds Management Corporation" from Part 1.  
Insert instead "Axiom Funds Management Limited".

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

(Section 60)

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

#### **Schedule 1 Employers**

Omit "Axiom Funds Management Limited" from Part 1.

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

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

Omit "Axiom Funds Management Limited".

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

#### **Schedule 1 Authorities**

Omit "Axiom Funds Management Limited".

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

#### **Schedule 2 Statutory bodies**

Omit "Axiom Funds Management Limited".

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

#### **Schedule 1 Employers**

Omit "Axiom Funds Management Limited" from Part 1.



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

**Schedule 1 Employers**

Omit "Axiom Funds Management Limited" from Part 1.

**3.7 Superannuation Act 1916 No 28**

**Schedule 3 List of employers**

Omit "Axiom Funds Management Limited" from Part 1.

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

(Section 69)

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

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

### **2 Application of certain provisions of the Corporations Law**

- (1) While the State of New South Wales continues to hold all the shares in AFML (being the shares issued to the State under Part 3), sections 186 and 461 (d) of the *Corporations Law* do not apply in relation to AFML, and section 249 (7) of the *Corporations Law* applies in relation to AFML as if:
  - (a) the State of New South Wales were a holding company (within the meaning of section 249 (7) of the *Corporations Law*) of AFML, and
  - (b) the Treasurer were a representative of the State authorised under section 249 (3) of the *Corporations Law*.
- (2) Sections 139 (2) and (3) and 151 (5) of the *Corporations Law* do not apply in relation to AFML.
- (3) For the purposes of Division 2 of Part 5.6 of the *Corporations Law* (Contributories on winding up):
  - (a) the State of New South Wales is not (in relation to any period before the conversion) a past member of AFML, and

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

### **3 Audit**

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

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

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



Schedule 4      Savings and transitional provisions

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

[Minister's second reading speech made in—  
Legislative Assembly on 12 June 1996  
Legislative Council on 20 June 1996]

BY AUTHORITY