

South Australia

Superannuation Funds Management Corporation of South Australia Act 1995

An Act relating to the Superannuation Funds Management Corporation of South Australia;
and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Superannuation Funds Management Corporation of South Australia Act 1995*.

3—Interpretation

- (1) In this Act, unless the contrary intention appears—

approved authority means a public authority to which an approval has been granted by the Minister under section 5A(3);

associate—see subsection (2);

beneficiary includes a person who is an object of a discretionary trust;

the board means the board of directors of the Corporation;

chief executive officer means the person for the time being appointed to, or acting in, the office of chief executive officer under Part 4;

contributor means a person who is—

- (a) a contributor within the meaning of the *Superannuation Act 1988* or the *Police Superannuation Act 1990*; or
- (b) a member of the Southern State Superannuation Scheme;

the Corporation means the Superannuation Funds Management Corporation of South Australia continued in existence by this Act;

director means a person appointed as a member of the board of the Corporation;

eligible superannuation fund means a superannuation fund that is not a public sector superannuation fund but consists of money contributed by the Crown to provide a group of its employees with superannuation benefits;

executive means the chief executive officer or any other employee of the Corporation who is concerned or takes part in the management of the Corporation;

the funds means—

- (a) the public sector superannuation funds; and
- (b) the nominated funds of each approved authority; and
- (c) the funds (if any) established by the Corporation for the purposes of Schedule 3 of the *Superannuation Act 1988*;

liability includes a contingent liability;

nominated funds means funds of an approved authority nominated by the Minister and transferred to the Corporation in accordance with an approval under section 5A(3);

prescribed interest has the same meaning as in the *Corporations Law*;

prescribed public authority means a public authority that has been declared by regulation to be a prescribed public authority for the purposes of this definition;

Note—

A regulation made for the purposes of this definition cannot come into operation until the time for disallowance of the regulation has passed—see subsection (6).

public authority means—

- (a) a government department;
- (b) a Minister;
- (c) a statutory authority—
 - (i) that is an agency or instrumentality of the Crown; or
 - (ii) the accounts of which the Auditor-General is required by law to audit,

and includes any body or person responsible for the management of an eligible superannuation fund and any other body or person brought within the ambit of this definition by the regulations;

public sector superannuation funds means—

- (a) the Police Superannuation Fund; and

- (b) the South Australian Superannuation Fund; and
- (c) the Southern State Superannuation Fund; and
- (caa) the Southern State Superannuation (Employers) Fund; and
- (ca) the Parliamentary Superannuation Fund; and
- (d) contributions to be made by an employer pursuant to an arrangement under section 5 of the *Superannuation Act 1988* where the arrangement requires that the contributions be invested and managed by the Corporation; and
- (e) a fund in relation to which a determination by the Minister under subsection (3) is in force; and
- (f) the money belonging to public sector superannuation beneficiaries invested with the Corporation by the South Australian Superannuation Board under section 47B of the *Southern State Superannuation Act 1994*;

record includes—

- (a) information stored or recorded by a computer or any other means; and
- (b) a computer tape or disk or any other device on or by which information is stored or recorded;

relative in relation to a person, means—

- (a) the spouse or a parent or remoter linear ancestor; or
- (b) a son, daughter or remoter issue; or
- (c) a brother or sister,

of the person;

relevant interest has the same meaning as in the *Corporations Law*;

remuneration in relation to an office or employment, includes any benefit of pecuniary value attaching to the office or employment;

spouse includes a putative spouse (whether or not a declaration of the relationship has been made under the *Family Relationships Act 1975*);

the superannuation boards means—

- (a) the Police Superannuation Board; and
- (b) the South Australian Superannuation Board.

(2) For the purposes of this Act, a person is an associate of another person if—

- (a) the other person is a relative of the person or of the person's spouse; or
- (b) the other person—
 - (i) is a body corporate; and
 - (ii) the person or a relative of the person or of the person's spouse has, or two or more such persons together have, a relevant interest or relevant interests in shares in the body corporate the nominal value of which is not less than 10 per cent of the nominal value of the issued share capital of the body corporate; or

- (c) the other person is a trustee of a trust of which the person, a relative of the person or of the person's spouse or a body corporate referred to in paragraph (b) is a beneficiary; or
 - (d) the person is declared by the regulations to be an associate of the other person.
- (3) The Minister may determine a superannuation fund held by the Minister or, where the Minister is not the Treasurer, by the Treasurer to be a public sector superannuation fund for the purposes of this Act.
 - (4) A fund referred to in subsection (3) must consist of money contributed by the Crown to provide a group of its employees with superannuation benefits.
 - (5) The Minister may revoke a determination under subsection (3) at any time.
 - (6) A regulation made under this Act declaring a public authority to be a *prescribed public authority* for the purposes of the definition of that term cannot come into operation until the time for disallowance of the regulation has passed.

Note—

For definition of divisional penalties (and divisional expiation fees) see Appendix.

Part 2—Superannuation Funds Management Corporation of South Australia

4—Continuation in existence of Corporation

- (1) The South Australian Superannuation Fund Investment Trust continues in existence under the name *Superannuation Funds Management Corporation of South Australia*.
- (2) The Corporation—
 - (a) is a body corporate; and
 - (b) has perpetual succession and a common seal; and
 - (c) can sue and be sued in its corporate name; and
 - (d) has the functions and powers assigned or conferred by or under this or any other Act.
- (3) The Corporation is an instrumentality of the Crown.

5—Functions of the Corporation

The functions of the Corporation are—

- (a) to invest and manage—
 - (i) the public sector superannuation funds; and
 - (ii) the nominated funds of approved authorities,pursuant to strategies formulated by the Corporation;
- (ab) to invest and manage other funds (if any) established by the Corporation for the purposes of the operation of any Act pursuant to strategies formulated by the Corporation;

- (b) such other functions as are assigned to the Corporation by this or any other Act.

5A—Investment and management of public funds

- (1) A prescribed public authority may apply to the Minister for approval to transfer certain of its funds to the Corporation for the purpose of investment and management of those funds on behalf of the authority.
- (2) The Minister may determine the form and the manner in which an application is made under subsection (1).
- (3) On receipt of an application under subsection (1), the Minister may—
 - (a) grant an approval to the applicant for transfer to the Corporation of such of the applicant's funds referred to in the application as are nominated by the Minister for the purposes of this section; or
 - (b) refuse the application.
- (4) The Minister must give written notice of a decision under subsection (3) to the applicant and the Corporation.
- (5) The Corporation must invest and manage the funds of a public authority transferred to the Corporation following an approval by the Minister under subsection (3).
- (6) The Corporation must, at the request of a public authority, transfer back to the public authority any funds of the public authority held by the Corporation pursuant to an approval under this section.

6—Powers of the Corporation

- (1) Subject to subsection (2), the Corporation has all the powers of a natural person as well as the powers conferred on it by this or any other Act.
- (2) The Corporation cannot borrow money or obtain any other form of financial accommodation unless authorised to do so by the regulations or by the Minister.

7—Object of the Corporation in performing its functions

The object of the Corporation in performing its functions is to achieve the highest return possible on investment of the funds while having proper regard for—

- (a) the need to maintain the risks relating to investment at an acceptable level; and
- (b) the need for liquidity in the funds; and
- (c) such other matters as are prescribed by regulation.

8—Common seal and execution of documents

- (1) The common seal of the Corporation must not be affixed to a document except in pursuance of a decision of the board, and the affixing of the seal must be attested by the signatures of two directors.

- (2) The Corporation may, by instrument under its common seal, authorise a director, the chief executive officer, any other employee of the Corporation (whether nominated by name or by office or title) or any other person to execute documents on behalf of the Corporation subject to conditions and limitations (if any) specified in the instrument of authority.
- (3) Without limiting subsection (2), an authority may be given so as to authorise two or more persons to execute documents jointly on behalf of the Corporation.
- (4) A document is duly executed by the Corporation if—
 - (a) the common seal of the Corporation is affixed to the document in accordance with this section; or
 - (b) the document is signed on behalf of the Corporation by a person or persons in accordance with an authority conferred under this section.

Part 3—The board of directors

9—Establishment of the board

- (1) A board of directors is established as the governing body of the Corporation.
- (2) The board consists of at least five but not more than seven members of whom—
 - (a) one will be elected by the contributors; and
 - (b) one will be appointed by the Governor on the nomination of the South Australian Government Superannuation Federation; and
 - (c) three, four or five will be appointed by the Governor on the nomination of the Minister.
- (3) Each of the directors elected or appointed under subsection (2) must—
 - (a) have obtained a degree, diploma or other qualification with an emphasis on law, accountancy, economics, commerce, mathematics, statistics, investment or financial management from an institution of tertiary education; or
 - (b) have had at least five years experience in—
 - (i) the investment and management of superannuation funds or other substantial sums of money; or
 - (ii) business management; or
 - (iii) financial management in the banking sector; or
 - (iv) asset management; or
 - (v) auditing; or
 - (vi) any other area that is relevant to the performance by the Authority of its functions,or at least five years experience in two or more of those areas.
- (4) The director appointed on the nomination of the South Australian Government Superannuation Federation must have been selected by the Minister from a panel of three persons nominated by the Federation.
- (5) The panel must have included at least one man and one woman.

- (6) If the office of the director elected by the contributors or the director nominated by the South Australian Government Superannuation Federation becomes vacant, a person must, subject to section 10(5), be elected or appointed under this section to the vacant office.
- (7) If, upon the office of a director becoming vacant (not being a director referred to in subsection (6)), the number of directors falls below five, a person must be appointed under this section to the vacant office.

10—Conditions of membership

- (1) A director appointed by the Governor will be appointed for a term, not exceeding three years, specified in the instrument of appointment and will, at the expiration of a term of appointment, be eligible for reappointment.
- (2) Subject to this section, a director elected by the contributors will be elected for a term of three years and will, at the expiration of a term of office, be eligible for re-election.
- (3) The first person elected by the contributors will be elected for a term that expires when the terms of office of the elected members of the South Australian Superannuation Board who hold office at the commencement of this Act expire.
- (4) A person elected, or appointed under subsection (5), to fill a casual vacancy in the office of the elected member will be elected or appointed for the balance of the term of his or her predecessor.
- (5) If the office of the member elected by the contributors becomes vacant and the balance of the term of the office is 12 months or less, the Governor may appoint to the vacant office a person nominated by the Public Service Association of South Australia Incorporated, the South Australian Institute of Teachers and the Police Association of South Australia.
- (6) The Governor may remove a director from office—
 - (a) for misconduct; or
 - (b) for failure or incapacity to carry out the duties of his or her office satisfactorily; or
 - (c) without limiting paragraph (b)—for non-compliance by the director with a duty imposed by this Act.
- (7) The office of a director becomes vacant if the director—
 - (a) dies; or
 - (b) completes a term of office and is not reappointed or re-elected; or
 - (c) resigns by written notice to the Minister; or
 - (d) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
 - (e) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
 - (f) is removed from office under subsection (6).

11—Vacancies or defects in appointment of directors

An act of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment or election of a director.

12—Remuneration

- (1) A director is entitled to be paid such remuneration, allowances and expenses as may be determined by the Governor.
- (2) Except with the approval of the Minister, a director is not entitled to any further remuneration in connection with—
 - (a) membership of the board of the Corporation; or
 - (b) any appointment made by or at the direction of the board.
- (3) Subsection (2) does not apply to remuneration payable to a chief executive officer of the Corporation who is also a director.

13—Board proceedings

- (1) If the board consists of five members or less, a quorum of the board consists of three members.
- (2) If the board consists of six or seven members, a quorum of the board consists of four members.
- (3) One of the directors will be appointed by the Minister to preside at meetings of the board and that director will preside at each meeting of the board at which he or she is present.
- (4) If the presiding director is absent from a meeting of the board, a director chosen by the directors present at the meeting will preside at the meeting.
- (5) A decision carried by a majority of the votes cast by directors at a meeting is a decision of the board.
- (6) Each director present at a meeting of the board has one vote on any question arising for decision and, if the votes are equal, the director presiding at the meeting may exercise a casting vote.
- (7) A conference by telephone or other electronic means between directors will, for the purposes of this section, be taken to be a meeting of the board at which the participating directors are present if—
 - (a) notice of the conference is given to all directors in the manner determined by the board for that purpose; and
 - (b) each participating director is capable of communicating with every other participating director during the conference.
- (8) A proposed resolution of the board becomes a valid decision of the board despite the fact that it is not voted on at a meeting of the board if—
 - (a) notice of the proposed resolution is given to all directors in accordance with procedures determined by the board; and
 - (b) a majority of the directors express their concurrence in the proposed resolution by letter, telex, facsimile transmission or other written communication setting out the terms of the resolution.

- (9) The board must cause accurate minutes to be kept of its proceedings.
- (10) Subject to this Act, the board may determine its own procedures.

14—Directors' duties of care etc

- (1) A director must at all times exercise a reasonable degree of care and diligence in the performance of his or her functions, and (without limiting the effect of the foregoing) for that purpose—
 - (a) must take reasonable steps to inform himself or herself about the Corporation and its activities and the circumstances in which it operates; and
 - (b) must take reasonable steps through the processes of the board to obtain sufficient information and advice about all matters to be decided by the board or pursuant to a delegation to enable him or her to make conscientious and informed decisions; and
 - (c) must exercise an active discretion with respect to all matters to be decided by the board or pursuant to a delegation.
- (2) A director is not bound to give continuous attention to the affairs of the Corporation but is required to exercise reasonable diligence in attendance at and preparation for board meetings.
- (3) In determining the degree of care and diligence required to be exercised by a director, regard must be had to the skills, knowledge or acumen possessed by the director and to the degree of risk involved in any particular circumstances.
- (4) If a director of the Corporation is culpably negligent in the performance of his or her functions, the director is guilty of an offence.
Penalty: Division 4 fine.
- (5) A director is not culpably negligent for the purposes of subsection (4) unless the court is satisfied the director's conduct fell sufficiently short of the standards required under this Act of the director to warrant the imposition of a criminal sanction.

15—Directors' duties of honesty

- (1) A director must at all times act honestly in the performance of the functions of his or her office, whether within or outside the State.
Penalty: Division 4 fine or division 4 imprisonment, or both.
- (2) A director or former director must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as such a director to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the Corporation.
Penalty: Division 4 fine or division 4 imprisonment, or both.
- (3) A director must not, whether within or outside the State, make improper use of his or her position as a director to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the Corporation.
Penalty: Division 4 fine or division 4 imprisonment, or both.

16—Transactions with directors or associates of directors

- (1) Neither a director nor an associate of a director may, without the approval of the Minister, be directly or indirectly involved in a transaction with the Corporation.
- (2) A person will be treated as being indirectly involved in a transaction for the purposes of subsection (1)—
 - (a) if the person initiates, promotes or takes any part in negotiations or steps leading to the making of the transaction with a view to that person or an associate of that person gaining some financial or other benefit (whether immediately or at a time after the making of the transaction); and
 - (b) despite the fact that neither person nor an agent, nominee or trustee of that person becomes a party to the transaction.
- (3) Subsection (1) does not apply to transactions of a prescribed class.
- (4) If a transaction is made with the Corporation in contravention of subsection (1), the transaction is liable to be avoided by the Corporation.
- (5) A transaction may not be avoided under subsection (4) if a person has acquired an interest in property the subject of the transaction in good faith for valuable consideration and without notice of the contravention.
- (6) A director must not counsel, procure, induce or be in any way (whether by act or omission or directly or indirectly) knowingly concerned in, or party to, a contravention of subsection (1).

Penalty:

If an intention to deceive or defraud is proved—Division 4 fine or division 4 imprisonment, or both.

In any other case—Division 6 fine.

17—Conflict of interest

- (1) A director who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the board—
 - (a) must, as soon as reasonably practicable, disclose to the board full and accurate details of the interest; and
 - (b) must not take part in any discussion by the board relating to the matter; and
 - (c) must not vote in relation to that matter; and
 - (d) must be absent from the meeting room when any such discussion or voting is taking place.
- Penalty: Division 4 fine.
- (2) If a director makes a disclosure of interest and complies with the other requirements of subsection (1) in respect of a proposed contract—
 - (a) the contract is not liable to be avoided by the Corporation; and
 - (b) the director is not liable to account to the Corporation for profits derived from the contract.

- (3) If a director fails to make a disclosure of interest or fails to comply with any other requirement of subsection (1) in respect of a proposed contract, the contract is liable to be avoided by the Corporation.
- (4) A contract may not be avoided under subsection (3) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.
- (5) Where a director has or acquires a personal or pecuniary interest, or is or becomes the holder of an office, such that it is reasonably foreseeable that a conflict might arise with his or her duties as a director of the Corporation, the director must, as soon as reasonably practicable, disclose full and accurate details of the interest or office to the board.
Penalty: Division 4 fine.
- (6) A disclosure under this section must be recorded in the minutes of the board and reported to the Minister.
- (7) If, in the opinion of the Minister, a particular interest or office of a director is of such significance that the holding of the interest or office is not consistent with the proper discharge of the duties of the director, the Minister may require the director either to divest himself or herself of the interest or office or to resign from the board (and non-compliance with the requirement constitutes misconduct which is a ground for removal of the director from the board).
- (8) Without limiting the effect of this section, a director will be taken to have an interest in a matter for the purposes of this section if an associate of the director has an interest in the matter.
- (9) This section does not apply in relation to a matter in which a director has an interest while the director remains unaware that he or she has an interest in the matter, but in any proceedings against the director the burden will lie on the director to prove that he or she was not, at the material time, aware of his or her interest.

18—Civil liability if director or former director contravenes this Part

- (1) If a director or former director is convicted of an offence for a contravention of this Part (other than an offence consisting of culpable negligence), the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay to the Corporation—
 - (a) if the court is satisfied that the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
 - (b) if the court is satisfied that the Corporation suffered loss or damage as a result of the contravention—compensation for the loss or damage.
- (2) If a director or former director is guilty of a contravention of this Part for which a criminal penalty is fixed (other than a contravention consisting of culpable negligence), the Corporation or the Minister may (whether or not proceedings have been brought for the offence) recover from the person by action in a court of competent jurisdiction—
 - (a) if the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and

- (b) if the Corporation suffered loss or damage as a result of the contravention—compensation for the loss or damage.

Part 4—Chief executive officer

19—Chief executive officer

- (1) The Governor must appoint a person nominated by the board to be the chief executive officer of the Corporation.
- (2) The board may nominate one of their number or any other suitable person.
- (3) The chief executive officer will be appointed for a term, not exceeding five years, specified in the instrument of appointment and will, at the expiration of the term of appointment, be eligible for reappointment.
- (4) The Governor may remove the chief executive officer from office—
 - (a) for misconduct; or
 - (b) for failure or incapacity to carry out the duties of his or her office satisfactorily; or
 - (c) without limiting paragraph (b)—for non-compliance by the chief executive officer with a duty imposed by this Act.
- (5) The office of the chief executive officer becomes vacant if he or she—
 - (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice to the Minister; or
 - (d) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
 - (e) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
 - (f) in the case of a chief executive officer who is also a director—ceases to be a director; or
 - (g) is removed from office under subsection (4).
- (6) The chief executive officer is entitled to be paid such remuneration, allowances and expenses as the board determines.
- (7) The chief executive officer is an employee of the Corporation and is responsible to the board for the day to day management of the Corporation.

Part 5—Performance by the Corporation of its functions

20—Performance plan

- (1) The Corporation must prepare a draft plan for each financial year in respect of the investment and management of the public sector superannuation funds for that year.

- (2) The plan must set out—
 - (a) a target for the rate of return on investment and management of the public sector superannuation funds; and
 - (b) strategies for the achievement of that target; and
 - (c) the anticipated operating costs to be incurred by the Corporation during the financial year; and
 - (d) the factors that, in the opinion of the Corporation, will affect or influence the investment and management of the public sector superannuation funds during the year; and
 - (e) such other matters as the Corporation thinks should be included in the plan.
- (3) The draft plan must be prepared and copies must be submitted to the Minister and the superannuation boards before the commencement of the financial year to which it relates.
- (4) The Corporation must have regard to any comments made by the Minister or a superannuation board in relation to the draft plan and may, if it thinks that it is necessary or desirable to do so, amend the plan as a result of the comments.
- (5) The Corporation must provide the Minister and the superannuation boards with a copy of the final plan.

20A—Performance plan in relation to approved authority

- (1) The Corporation must prepare separate draft plans in respect of the investment and management of the nominated funds of each approved authority for each financial year.
- (2) The plan for an approved authority must set out—
 - (a) a target for the rate of return on investment and management of the nominated funds of the approved authority; and
 - (b) strategies for the achievement of that target; and
 - (c) the anticipated operating costs to be incurred by the Corporation during the financial year in relation to the investment and management of the nominated funds of the approved authority; and
 - (d) the factors that, in the opinion of the Corporation, will affect or influence the investment and management of the nominated funds of the approved authority during the year; and
 - (e) such other matters as the Corporation thinks should be included in the plan.
- (3) The draft plan must be prepared and copies submitted to the Minister and the approved authority to which the plan relates—
 - (a) if the plan is the initial plan in relation to the approved authority—as soon as practicable after the plan has been prepared;
 - (b) in any other case—before the commencement of the financial year to which the plan relates.

- (4) The Corporation must have regard to any comments made by the Minister or the approved authority in relation to the draft plan and, if it thinks necessary or desirable to do so, amend the plan as a result of the comments.
- (5) However, if the approved authority requests an amendment to the plan, the Corporation must amend the plan in accordance with the request unless the Corporation considers, after consulting with the approved authority, that the amendment should not be made.
- (6) If the Corporation considers that a requested amendment should not be made, it must provide the approved authority with written advice of the Corporation's reasons for not amending the plan in accordance with the request.
- (7) The Corporation must provide a copy of the final plan to the Minister and the approved authority to which the plan relates.

20B—Other performance plans

- (1) The Corporation must prepare a separate plan in respect of the investment and management of any fund established by the Corporation for the purposes of Schedule 3 of the *Superannuation Act 1988*.
- (2) The Corporation must consult with the trustee of the relevant superannuation scheme when preparing a plan under this section, or any amendment to such a plan.
- (3) This section operates subject to the provisions of Schedule 3 of the *Superannuation Act 1988*.

21—Direction of Minister

- (1) In the performance of its functions, the Corporation is subject to the direction and control of the Minister.
- (2) A Ministerial direction under this section—
 - (a) must be—
 - (i) communicated to the Corporation in writing; and
 - (ii) included in the annual report of the Corporation; and
 - (iii) published in the Gazette within 7 days after the direction is given; and
 - (b) must not include a direction to the Corporation in relation to an investment decision, dealing with property or the exercise of a voting right.

22—Provision of information and records to Minister

- (1) The Corporation must, at the request in writing of the Minister, furnish the Minister with such information or records in the possession or control of the Corporation as the Minister may require.
- (2) The information or records must be furnished in such manner and form as the Minister requires.
- (3) Where a record in the possession or control of the Corporation is furnished to the Minister under this section, the Minister may make, retain and deal with copies of the record as the Minister thinks fit.

- (4) Where the Corporation considers that any information or record furnished under this section contains matters that should be treated for any reason as confidential, the Corporation may advise the Minister of that opinion giving the reason for the opinion, and the Minister may, subject to subsection (5), act on that advice as the Minister thinks fit.
- (5) Where the Minister is satisfied on the basis of the Corporation's advice under subsection (4) that the Corporation owes a duty of confidence in respect of a matter, the Minister must ensure the observance of that duty in respect of the matter, but this subsection does not prevent the Minister from disclosing the matter as required in the proper performance of ministerial functions or duties.

23—Notification of disclosure to Minister of matter subject to duty of confidence

Where the Corporation discloses to the Minister in pursuance of this Act a matter in respect of which the Corporation owes a duty of confidence, the Corporation must give notice in writing of the disclosure to the person to whom the duty is owed.

24—No breach of duty to report matter to Minister

A director does not commit any breach of duty by reporting a matter relating to the affairs of the Corporation to the Minister.

25—Administration of section 3(3) funds

- (1) If the Minister determines a superannuation fund to be a public sector superannuation fund under section 3(3), the Treasurer must transfer the fund to the Corporation.
- (2) If the Minister revokes a determination referred to in subsection (1), the Corporation must transfer the fund back to the Treasurer.

Part 6—Accounting records and audit

26—Accounts

- (1) The Corporation must keep proper accounts of its financial affairs and must prepare financial statements in respect of each financial year.
- (2) The Corporation must keep proper accounts of receipts and payments in relation to—
 - (a) each of the public sector superannuation funds; and
 - (b) the nominated funds of each approved authority,and must prepare separate financial statements in a form approved by the Minister in respect of each fund or authority in respect of each financial year.
- (3) In the case of the South Australian Superannuation Fund and the Police Superannuation Fund the accounts and financial statements must distinguish between the two divisions of those funds and the investments in which the money from each of the divisions of those funds has been invested.
- (3a) The Corporation must also keep proper accounts of receipts and payments in relation to each fund established by the Corporation for the purposes of Schedule 3 of the *Superannuation Act 1988* and must prepare separate financial statements in a form approved by the Minister in respect of each fund in respect of each financial year.

- (4) The accounts and financial statements must comply with the applicable instructions (if any) of the Treasurer issued under the *Public Finance and Audit Act 1987* and any other written instructions given to the Corporation by the Treasurer.

27—Internal audits and audit committee

- (1) The Corporation must establish and maintain effective internal auditing of its operations and the funds.
- (2) The Corporation must establish an audit committee.
- (3) The audit committee will comprise—
 - (a) the board of directors, or such members of the board, as the board may from time to time determine; and
 - (b) such other person or persons as the board may from time to time appoint.
- (4) The functions of the audit committee include—
 - (a) the reviewing of annual financial statements prior to their approval by the board to ensure that the statements provide a true and fair view of the state of affairs of the Corporation and the funds; and
 - (b) assisting external auditors on all matters concerning the conduct and outcome of annual audits of the Corporation and the funds; and
 - (c) regularly reviewing the adequacy of the accounting, internal auditing, reporting and other financial management systems and practices of the Corporation.

28—External audit

The Auditor-General may at any time, and must in respect of each financial year, audit the accounts and financial statements of the Corporation and the funds.

Part 7—Reports

29—Progress reports in relation to performance plan

- (1) Within 1 month after 31 December in each financial year the Corporation must prepare and give to the Minister—
 - (a) a report on its progress in achieving the target for the rate of return on investment and management of the public sector superannuation funds set out in the relevant performance plan for that year; and
 - (b) separate reports in relation to each approved authority on its progress in achieving the target for the rate of return on investment and management of the nominated funds of the approved authority set out in the performance plan for the authority for that year.
- (2) Within 1 month after the end of each financial year the Corporation must prepare and give to the Minister—
 - (a) a report on the extent to which it has achieved the target for the rate of return on investment and management of the public sector superannuation funds set out in the relevant performance plan for that year; and

- (b) separate reports in relation to each approved authority on the extent to which it has achieved the target for the rate of return on investment and management of the nominated funds of the approved authority set out in the performance plan for the authority for that year.
- (3) The Corporation must give a copy of each report prepared under subsections (1)(a) and (2)(a) to each of the superannuation boards.
- (4) The Corporation must give a copy of each report prepared in respect of an approved authority under subsections (1)(b) and (2)(b) to the approved authority to which the report relates.
- (5) If, during a financial year, the Corporation is of the opinion that the target in relation to the public sector superannuation funds or the nominated funds of an approved authority for that year is not achievable or a strategy set out in a performance plan should be modified or abandoned because a factor affecting or influencing the investment or management of the public sector superannuation funds or the nominated funds of an approved authority has changed or a new factor has arisen, the Corporation must prepare a report in relation to the matter.
- (6) A report under subsection (5) must—
 - (a) describe the factor concerned; and
 - (b) explain why the target is not achievable or the strategy should be modified or abandoned; and
 - (c) be prepared and given to—
 - (i) the Minister; and
 - (ii) if the report relates to the public sector superannuation funds—each of the superannuation boards; and
 - (iii) if the report relates to an approved authority—the relevant approved authority,as soon as practicable after the Corporation forms its opinion on those matters.

30—Annual reports

- (1) The Corporation must, on or before 30 September in each year, prepare and give to the Minister a report on the performance of its function during the preceding financial year.
- (2) The report must—
 - (a) include each performance plan for the financial year and the Corporation's reports under section 29 for that year; and
 - (c) include the audited accounts and financial statements of the Corporation and the funds; and
 - (d) include a copy of the valuations of the funds made as at the end of the relevant financial year; and
 - (e) set out the Corporation's views as to the factors that will affect or influence the investment and management of the funds in the current year; and

- (f) set out any disclosure made during the preceding financial year by a director of an interest in a matter decided or under consideration by the board of the Corporation; and
 - (g) include the prescribed information relating to the remuneration of the chief executive officer and other executives of the Corporation; and
 - (h) include any other information required by or under the provisions of this or any other Act.
- (3) The Corporation must give a copy of the report to each of the superannuation boards and each approved authority.
 - (4) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after his or her receipt of the report.

Part 8—Miscellaneous

31—Staff of the Corporation

- (1) The Corporation may appoint such employees as it thinks necessary or desirable on terms and conditions fixed by the Corporation.
- (2) The Corporation may, with the approval of the responsible Minister, use the services of persons employed in the Public Service or otherwise employed by the Crown.

32—Immunity for directors and employees

- (1) Except as otherwise provided by this Act, a director or employee of the Corporation incurs no civil liability for an honest act or omission in the performance or discharge, or purported performance or discharge, of functions or duties as such a director or employee.
- (2) A liability that would, but for subsection (1), lie against a director or employee of the Corporation lies instead against the Corporation.

33—Delegation

- (1) The board may delegate any of its powers or functions (excluding this power of delegation) to—
 - (a) one or more of the directors; or
 - (b) to a committee comprised, or partly comprised, of directors; or
 - (c) to the chief executive officer of the Corporation; or
 - (d) to any other employee of the Corporation; or
 - (e) to any other person.
- (2) A delegation—
 - (a) may be made subject to conditions and limitations specified in the instrument of delegation; and
 - (b) is revocable at will and does not derogate from the power of the board to act in any matter.

- (3) A delegate must not act in any matter pursuant to the delegation in which the delegate has a direct or indirect pecuniary or personal interest.
Penalty: Division 4 fine.
- (4) If a delegate makes a contract in contravention of subsection (3), the contract is liable to be avoided by the Corporation or by the Minister.
- (5) A contract may not be avoided under subsection (4) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.
- (6) If a person is convicted of an offence for a contravention of subsection (3) the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay to the Corporation—
- (a) if the court is satisfied that the person or any other person made a profit as a result of the contravention—an amount equal to the profit;
 - (b) if the court is satisfied that the Corporation suffered loss or damage as a result of the contravention—compensation for the loss or damage.
- (7) If a person is guilty of a contravention of subsection (3), the Corporation or the Minister may (whether or not proceedings have been brought for the offence) recover from the person by action in a court of competent jurisdiction—
- (a) if the person or any other person made a profit as a result of the contravention—an amount equal to the profit;
 - (b) if the Corporation suffered loss or damage as a result of the contravention—compensation for the loss or damage.
- (8) Without limiting the effect of subsection (3), a person will be taken to have an interest in a matter for the purposes of subsection (3) if an associate of the person has an interest in the matter.
- (9) Subsection (3) does not apply in relation to a matter in which a person has an interest if the person is unaware that he or she has an interest in the matter, but, in any proceedings against the person, the burden will lie on the person to prove that he or she was not, at the material time, aware of his or her interest.
- (10) A contravention of subsection (3) by a person who is a director of the Corporation constitutes a ground for removal of the director from the board.

34—Transactions with executives or associates of executives

- (1) Neither an executive of the Corporation nor an associate of an executive may, without the approval of the Minister, be directly or indirectly involved in a transaction with the Corporation.
- (2) A person will be treated as being indirectly involved in a transaction for the purposes of subsection (1)—
- (a) if the person initiates, promotes or takes any part in negotiations or steps leading to the making of the transaction with a view to that person or an associate of that person gaining some financial or other benefit (whether immediately or at a time after the making of the transaction); and

- (b) despite the fact that neither that person nor an agent, nominee or trustee of that person becomes a party to the transaction.
- (3) Subsection (1) does not apply—
 - (a) to the employment of a person under a contract of service with the Corporation or to a transaction that is ancillary or incidental to such employment; or
 - (b) to transactions of a prescribed class.
- (4) If a transaction is made with the Corporation in contravention of subsection (1), the transaction is liable to be avoided by the Corporation.
- (5) A transaction may not be avoided under subsection (4) if a person has acquired an interest in property the subject of the transaction in good faith for valuable consideration and without notice of the contravention.
- (6) An executive of the Corporation must not counsel, procure, induce or be in any way (whether by act or omission or directly or indirectly) knowingly concerned in, or party to, a contravention of subsection (1).

Penalty:

If an intention to deceive or defraud is proved—Division 4 fine or division 4 imprisonment, or both.

In any other case—Division 6 fine.

- (7) If a person is convicted of an offence for a contravention of subsection (6), the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay to the Corporation—
 - (a) if the court is satisfied that the person or any other person made a profit as a result of the contravention—an amount equal to the profit;
 - (b) if the court is satisfied that the Corporation suffered loss or damage as a result of the contravention—compensation for the loss or damage.
- (8) If a person is guilty of a contravention of subsection (6), the Corporation or the Minister may (whether or not proceedings have been brought for the offence) recover from the person by action in a court of competent jurisdiction—
 - (a) if the person or any other person made a profit as a result of the contravention—an amount equal to the profit;
 - (b) if the Corporation suffered loss or damage as a result of the contravention—compensation for the loss or damage.

35—Validity of transactions of Corporation

- (1) Subject to subsection (2), a transaction to which the Corporation is a party or apparently a party (whether made or apparently made under the Corporation's common seal or by a person with authority to bind the Corporation) is not invalid because of—
 - (a) any deficiency of power on the part of the Corporation; or
 - (b) any procedural irregularity on the part of the board or any director, employee or agent of the Corporation; or

- (c) any procedural irregularity affecting the appointment of a director, employee or agent of the Corporation.
- (2) This section does not validate a transaction in favour of a party—
 - (a) who enters into the transaction with actual knowledge of the deficiency or irregularity; or
 - (b) who has a connection or relationship with the Corporation such that the person ought to know of the deficiency or irregularity.

36—Power to investigate Corporation's operations

- (1) The Minister may appoint—
 - (a) the Auditor-General; or
 - (b) some other suitable person,to make an investigation and report under this section.
- (2) An investigator so appointed—
 - (a) must investigate such matters relating to the operations and financial position of the Corporation as are determined by the Minister, which matters may include—
 - (i) any possible conflict of interest or breach of duty or other unlawful, corrupt or improper activity on the part of a director or employee of the Corporation; or
 - (ii) any possible failure to exercise reasonable care and diligence on the part of a director or employee of the Corporation;
 - (b) may investigate a matter of a kind referred to in subparagraph (i) or (ii) that the investigator has not been required by the Minister to investigate if, in his or her opinion, the matter should be investigated and it is practicable to do so.
- (3) The investigator must—
 - (a) report to the Minister on the results of an investigation or investigations under subsection (2) and advise the Minister whether, in his or her opinion, any matter should be the subject of further action; and
 - (b) where, in the case of a matter referred to in subsection (2)(b), the investigator decided not to investigate or complete investigation of the matter—report on the matter to the Minister and advise whether, in his or her opinion, the matter should be the subject of any or further investigation or other action.
- (4) The investigator must comply with any directions of the Minister as to the manner in which the investigation is to be conducted and the manner in which the results of the investigation are to be reported, including any direction requiring reports to be presented to a specified person or body in addition to the Minister.
- (5) Subject to any directions of the Minister, the investigator may, if he or she sees fit to do so in connection with the investigation, make public statements as to the nature and conduct of the investigation and may invite and receive information or submissions as to any matter relevant to the investigation from such persons as he or she thinks fit.

- (6) The investigator must, when presenting to the Minister any report that the investigator considers need not remain confidential, also present copies of the report to the President of the Legislative Council and the Speaker of the House of Assembly who must in turn, not later than the first sitting day after receipt of the reports, lay them before their respective Houses.
- (7) For the purposes of an investigation under this section, the investigator and authorised persons¹ have the same powers as the Auditor-General and authorised officers have under Division 3 of Part 3 of the *Public Finance and Audit Act 1987* for an audit or examination under that Act, and the provisions of that Division (including section 34(2) and (3)) apply in relation to the investigation and the exercise of those powers as if the investigator or authorised person were the Auditor-General or an authorised officer exercising those powers under that Division.
- (8) Without limiting the effect of any other provisions of this section, a magistrate may, on application by the investigator—
- (a) if satisfied that there are reasonable grounds to believe that a person has information, or possession or control of records, relevant to the investigation, issue a summons requiring the person to appear before the investigator and answer questions or produce the records;
 - (b) if satisfied that a person has been served with such a summons and paid or tendered a reasonable sum for the person's expenses but has failed (without reasonable excuse) to appear or produce records in obedience to the summons, issue a warrant directed to all members of the police force for the person to be apprehended and brought before the investigator.
- (9) The grounds of an application for a summons or warrant must be verified by affidavit.
- (10) A person who—
- (a) is served with a summons under this section and paid or tendered a reasonable sum for the person's expenses; but
 - (b) fails (without reasonable excuse) to obey the summons,
- is guilty of an offence.
Penalty: Division 6 fine or division 6 imprisonment.
- (11) An investigator or authorised person incurs no civil or criminal liability for an honest act or omission in the exercise or purported exercise of a power conferred by this section.
- (12) A person incurs no civil or criminal liability for anything done honestly in compliance or purported compliance with a requirement of an investigator or authorised person under this section.
- (13) In this section—
- authorised person** in relation to an investigation under this section, means a person authorised by the investigator to exercise the powers conferred by this section for the purposes of the investigation.

Note—

- 1 See subsection (13).

37—Tax and other liabilities of Corporation

- (1) Except as otherwise determined by the Treasurer, the Corporation is liable, in respect of the period that commenced on 1 July 1995 and ended on the expiration of the day before the commencement day, to the following taxes and duty as would have applied if the Corporation had not been an instrumentality of the Crown:
 - (a) land tax under the *Land Tax Act 1936*; and
 - (b) pay-roll tax under the *Pay-roll Tax Act 1971*; and
 - (c) stamp duty under the *Stamp Duties Act 1923* on an instrument involving the transfer of an estate or interest in real property.
- (2) Except as otherwise determined by the Treasurer, the Corporation is liable, in respect of the financial year that commenced on 1 July 1995 and each succeeding financial year, to water and sewerage rates as would apply if the Corporation were not an instrumentality of the Crown (but for the financial years 1995/1996 and 1996/1997 that liability is limited to water and sewerage rates in respect of land of the Corporation that was held or occupied on the day the rates became payable under a lease by a person or body other than the Crown or an instrumentality of the Crown).
- (3) Except as otherwise determined by the Treasurer, the Corporation is liable, in respect of the financial year that commenced on 1 July 1995 and each succeeding financial year, to local government rates in respect of land of the Corporation that was held or occupied on the day the rates became payable under a lease by a person or body other than the Crown or an instrumentality of the Crown as would apply if the Corporation were not an instrumentality of the Crown.
- (4) Except as otherwise determined by the Treasurer, the Corporation is liable, as from the commencement day, to all such rates (other than local government, water and sewerage rates), duties, taxes and imposts and has all such other liabilities and duties as would apply under the law of the State if it were not an instrumentality of the Crown.
- (5) The Corporation is liable to pay to the Treasurer, for the credit of the Consolidated Account, in circumstances and in respect of periods determined by the Treasurer, such amounts as the Treasurer from time to time determines to be equivalent to—
 - (a) wholesale sales tax that the Corporation would be liable to pay under the law of the Commonwealth in those circumstances and in respect of those periods if it were not an instrumentality of the Crown; and
 - (b) local government rates (excluding those referred to in subsection (3)) that the Corporation would be liable to pay in those circumstances and in respect of those periods if it were not an instrumentality of the Crown.
- (6) Amounts payable under subsection (5) must be paid by the Corporation at the times and in the manner determined by the Treasurer.
- (7) Nothing in this section prevents the Corporation and the lessee or other person in occupation of land of the Corporation from agreeing that the lessee or other person will be responsible for payment of rates, taxes or other imposts in relation to the land.

(8) In this section—

commencement day means the day on which the *Superannuation Funds Management Corporation of South Australia (Liability to Taxes, etc.) Amendment Act 1996* comes into operation;

local government rates means rates under the *Local Government Act 1934*;

sewerage rates means sewerage rates under the *Sewerage Act 1929*;

water rates means water rates under the *Waterworks Act 1932*.

38—Proceedings for offences

- (1) A complaint for an offence against this Act may not be made except with the consent of the Director of Public Prosecutions.
- (2) Notwithstanding any other Act, proceedings for a summary offence against this Act may be brought within the period of three years after the date on which the offence is alleged to have been committed or, with the consent of the Director of Public Prosecutions, at any later time.
- (3) A document purporting to be a consent of the Director of Public Prosecutions given under this section is, in the absence of proof to the contrary, proof of the consent.

39—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act or are necessary or expedient for the purposes of this Act.
- (2) Without limiting subsection (1), the regulations may—
 - (a) prohibit the investment of the public sector superannuation funds, or the nominated funds of an approved authority, in forms of investment prescribed by the regulations unless authorised by the Minister;
 - (b) set out the procedures for the election by the contributors of a member of the board;
 - (c) prescribe fees payable to the Corporation in relation to an application under this Act or in relation to anything to be done by the Corporation under this Act.

Schedule 1—Transitional provision

- 1 The offices of the members of the South Australian Superannuation Fund Investment Trust are vacated on the commencement of this Act.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation amended by principal Act

The *Superannuation Funds Management Corporation of South Australia Act 1995* amended the following:

Parliamentary Committees Act 1991

Police Superannuation Act 1990

Southern State Superannuation Act 1994

Superannuation Act 1988

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1995	38	<i>Superannuation Funds Management Corporation of South Australia Act 1995</i>	27.4.1995	1.7.1995 (<i>Gazette</i> 25.5.1995 p2199)
1996	77	<i>Superannuation Funds Management Corporation of South Australia (Liability to Taxes, etc.) Amendment Act 1996</i>	21.11.1996	21.11.1996
1998	66	<i>Southern State Superannuation (Merger of Schemes) Amendment Act 1998</i>	10.9.1998	1.7.1998: s 2
1999	8	<i>Parliamentary Superannuation (Establishment of Fund) Amendment Act 1999</i>	18.3.1999	1.7.1998: s 2
2005	44	<i>Superannuation Funds Management Corporation of South Australia (Miscellaneous) Amendment Act 2005</i>	22.9.2005	13.10.2005 (<i>Gazette</i> 13.10.2005 p3699)
2006	5	<i>Superannuation (Administered Schemes) Amendment Act 2006</i>	23.6.2006	Sch 1 (cll 1—4)—23.6.2006
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 84 (s 210)—1.6.2007 (<i>Gazette</i> 26.4.2007 p1352)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	13.10.2005
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>13.10.2005</i>
s 3		
s 3(1)		
approved authority	inserted by 44/2005 s 4(1)	13.10.2005
eligible superannuation fund	inserted by 44/2005 s 4(2)	13.10.2005
the funds	amended by 44/2005 s 4(3)	13.10.2005
	substituted by 5/2006 Sch 1 cl 1	23.6.2006
nominated funds	inserted by 44/2005 s 4(4)	13.10.2005
prescribed public authority	inserted by 44/2005 s 4(5)	13.10.2005
public authority	inserted by 44/2005 s 4(5)	13.10.2005
public sector superannuation funds	amended by 66/1998 s 33	1.7.1998
	amended by 8/1999 s 10	1.7.1998
	amended by 44/2005 s 4(6)	13.10.2005
s 3(6)	inserted by 44/2005 s 4(7)	13.10.2005
Pt 2		
s 5	amended by 44/2005 s 5	13.10.2005
	amended by 5/2006 Sch 1 cl 2	23.6.2006
s 5A	inserted by 44/2005 s 6	13.10.2005
s 7	amended by 44/2005 s 7	13.10.2005
Pt 5		
s 20		
s 20(2)	amended by 44/2005 s 8(1), (2)	13.10.2005
s 20(6)	<i>deleted by 44/2005 s 8(3)</i>	<i>13.10.2005</i>
s 20A	inserted by 44/2005 s 9	13.10.2005
s 20B	inserted by 5/2006 Sch 1 cl 3	23.6.2006
s 21	substituted by 44/2005 s 10	13.10.2005
Pt 6		
s 26		
s 26(2)	substituted by 44/2005 s 11	13.10.2005
s 26(3a)	inserted by 5/2006 Sch 1 cl 4	23.6.2006
s 27		

s 27(1)	amended by 44/2005 s 12(1)	13.10.2005
s 27(4)	amended by 44/2005 s 12(2)	13.10.2005
s 28	amended by 44/2005 s 13	13.10.2005
Pt 7		
s 29	substituted by 44/2005 s 14	13.10.2005
s 30		
s 30(2)	amended by 44/2005 s 15(1), (3)—(5) (b) deleted by 44/2005 s 15(2)	13.10.2005 13.10.2005
s 30(3)	amended by 44/2005 s 15(6)	13.10.2005
Pt 8		
s 37	substituted by 77/1996 s 2	21.11.1996
s 39		
s 39(2)	amended by 44/2005 s 16(1), (2)	13.10.2005
Sch 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	13.10.2005

Transitional etc provisions associated with Act or amendments

Superannuation (Administered Schemes) Amendment Act 2006, Sch 1

5—Interpretation

In this Part—

principal Act means the *Superannuation Act 1988*.

6—Transitional provision

Subsections (2) and (3) of section 56 of the principal Act (as enacted by this Act) do not apply with respect to a matter where the relevant time limit expired, or the procedural step was required to be taken, before the commencement of this clause unless the South Australian Superannuation Board is satisfied, on application by a person seeking to obtain the benefit of this clause, that the failure to comply with the time limit or procedural step was attributable to a person's physical or mental disability at the relevant time.

Historical versions

Reprint No 1—21.11.1996

Reprint No 2—10.9.1998

Reprint No 3—18.3.1999

13.10.2005

Appendix—Divisional penalties and expiation fees

At the date of publication of this version divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	—	\$500	\$100
10	—	\$200	\$75
11	—	\$100	\$50
12	—	\$50	\$25

Note: This appendix is provided for convenience of reference only.