

House of Assembly—No 112

As laid on the table and read a first time, 2 April 2008

South Australia

**Local Government (Superannuation Scheme)
Amendment Bill 2008**

A BILL FOR

An Act to amend the *Local Government Act 1999*.

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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 *Local Government (Superannuation Scheme) Amendment Act 2008*.

5 2—Commencement

- (1) Subject to subsection (2), this Act will come into operation on the day on which it is assented to by the Governor.
- (2) Section 4 will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

- 10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Local Government Act 1999*

4—Amendment of Schedule 1—Provisions relating to organisations that provide services to the local government sector

Schedule 1, Part 2—delete Part 2 and substitute:

Part 2—Local Government Superannuation Scheme

3—Local Government Superannuation Scheme

- (1) The scheme known as the *Local Government Superannuation Scheme* continues in existence.
- (2) Subclause (1) applies subject to the operation of Schedule 1 of the *Local Government (Superannuation Scheme) Amendment Act 2008*.
- (3) This Act and the *Local Government (Superannuation Scheme) Amendment Act 2008* are to be read together as if the 2 Acts formed a single Act, and a contribution by an employer for the benefit of an employee who is a member of the Local Government Superannuation Scheme will therefore be a contribution under this Act.
- (4) This Part will expire on a day to be fixed by proclamation.

Schedule 1—Transitional provisions

1—Interpretation

In this Schedule—

asset includes—

- (a) a present, contingent or future legal or equitable estate or interest in real or personal property; or
- (b) a present, contingent or future right, power, privilege or immunity;

Board means the Local Government Superannuation Board;

company means the company to be established by the Board in accordance with clause 4;

council means a council constituted under the relevant Act;

liability includes a present, contingent or future liability or obligation;

new scheme means the Local Government Superannuation Scheme continued in existence under a trust deed pursuant to this Schedule;

old scheme means the Local Government Superannuation Scheme under the relevant Act before the relevant day;

participating employer—a council or other authority or body is a participating employer for the purposes of the Local Government Superannuation Scheme if employees or former employees of the council, authority or body are members of the scheme;

5 *relevant Act* means the *Local Government Act 1999*;

relevant day means the day on which section 4 of this Act comes into operation;

trust deed means the trust deed to be prepared by the Board in accordance with clause 3.

2—Continuation of Local Government Superannuation Scheme

10 (1) The scheme known as the *Local Government Superannuation Scheme* is to continue in existence under a trust deed.

15 (2) A council or other authority or body that is a participating employer for the purposes of the old scheme immediately before the relevant day is to be a participating employer for the purposes of the new scheme and will be taken to be a signatory to the trust deed.

(3) A council or other authority or body that is within the ambit of subclause (2) must remain as a participating employer for the purposes of the new scheme for a period of at least 3 years following the commencement of the trust deed.

(4) Subclause (3) does not derogate—

20 (a) from the operation of clause 5(5); or

(b) from the operation of any other provision of this Schedule or of the trust deed.

3—Making and commencement of trust deed

(1) A trust deed is to be prepared by the Board for the purposes of continuing the Local Government Superannuation Scheme.

25 (2) The trust deed will commence on a day specified by the Treasurer by notice in the Gazette.

(3) The Treasurer may not issue a notice under subclause (2) until he or she is satisfied—

(a) that a company has been established in accordance with the requirements specified in clause 4; and

30 (b) that the trust deed meets the requirements specified in clause 5.

4—Establishment of company

(1) The Board is to establish a company to administer the new scheme in accordance with the trust deed.

35 (2) The members of the Board at the time of the dissolution of the Board are to be members of the board of directors of the company on the relevant day.

(3) A vacancy in the membership of the board of directors on the relevant day because of a vacancy in the Board's membership is to be filled in accordance with the constitution of the company (and subsequent vacancies will also be filled in accordance with the constitution of the company).

- (4) A legal obligation of the Board at the time of the dissolution of the Board becomes, by force of this subclause, a legal obligation of the company (unless otherwise excluded by the Treasurer by notice in the Gazette).
- (5) To avoid doubt, subclause (4) includes the obligation to manage financial records and accounts, to prepare financial statements and to arrange any audit associated with the activities of the Board and the operations of the old scheme before the dissolution of the Board under this Schedule.

5—Requirements for new scheme and trust deed

- (1) Subject to this clause, the terms, conditions, benefit structure and membership of the old scheme immediately before the relevant day are to be continued under the trust deed in relation to the new scheme unless and until varied in accordance with the terms of the trust deed.
- (2) For the purposes of subclause (1), an amendment to the old scheme made by regulation under clause 3 of Schedule 1 Part 2 of the relevant Act that has not come into operation before the relevant day will be taken to have come into operation immediately before that day.
- (3) The trust deed is to provide that the trustee for the new scheme will be the company.
- (4) The company is to continue to hold office as trustee unless and until another company is appointed to that role in accordance with the terms of the trust deed.
- (5) A participating employer is to be required under the trust deed to continue making the required employer contributions in relation to an employee who is a member of the new scheme for as long as the employer continues to be liable in relation to the member.

6—Dissolution of Local Government Superannuation Board

The Board is dissolved by force of this clause on the relevant day.

7—Transfer of assets and liabilities

- (1) On the commencement of the trust deed, the assets and liabilities of the old scheme are transferred to the company for the purposes of the new scheme.
- (2) The transfer of assets and liabilities under this clause operates by force of this clause and despite the provisions of any other law.

8—Stamp duty

- (1) No stamp duty is payable under a law of this State in respect of any transfer of assets or liabilities connected with, or arising out of, the operation of this Schedule.
- (2) No person has an obligation under the *Stamp Duties Act 1923* to lodge a statement or return relating to a matter referred to in subclause (1), or to include in a statement or return a record or information relating to such a matter.

9—Revocation of regulations

On the relevant day, all regulations made under clause 3 of Schedule 1 Part 2 of the relevant Act are revoked.

10—Saving provision

Nothing done under this Schedule—

- (a) constitutes a breach of, or default under, an Act or other law; or
- 5 (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
- (c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom or in any other way); or
- (d) constitutes a civil or criminal wrong; or
- 10 (e) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or
- (f) releases a surety or other obligee wholly or in part from an obligation.

11—Application of Schedule

15 It is the intention of the Parliament that this Schedule apply within the State and outside the State to the full extent of the extra-territorial legislative capacity of the Parliament.

12—Other provisions

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- 20 (2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.
- (3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
- 25 (a) decreasing the person's rights; or
- (b) imposing liabilities on the person.
- (4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule, apply to any amendment effected by this Act.