

Legislative Council—No 26A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 24 May 2005

South Australia

**Superannuation Funds Management Corporation
of South Australia (Miscellaneous) Amendment
Bill 2004**

A BILL FOR

An Act to amend the *Superannuation Funds Management Corporation of South Australia Act 1995*.

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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 (Miscellaneous) Amendment Act 2004*.

5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

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 *Superannuation Funds Management Corporation of South Australia Act 1995*

4—Amendment of section 3—Interpretation

- (1) Section 3(1)—before the definition of *associate* insert:

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

- (2) Section 3(1)—after the definition of *director* insert:

10 *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;

- (3) Section 3(1), definition of *the funds*—after "superannuation funds" insert:

and the nominated funds of each approved authority

- (4) Section 3(1)—after the definition of *liability* insert:

15 *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);

- (5) Section 3(1)—after the definition of *prescribed interest* insert:

20 *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).

25 *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,

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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;

- 35 (6) Section 3(1), definition of *public sector superannuation funds*—after paragraph (c) insert:

(caa) the Southern State Superannuation (Employers) Fund; and

(7) Section 3—after subsection (5) insert:

- (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.

5—Amendment of section 5—Functions of the corporation

Section 5(a)—delete paragraph (a) and substitute:

- (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;

6—Insertion of section 5A

After section 5 insert:

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.

7—Amendment of section 7—Object of the corporation in performing its functions

Section 7—delete "public sector superannuation"

8—Amendment of section 20—Performance plan

(1) Section 20(2)(a)—after "management of the" insert:

public sector superannuation

(2) Section 20(2)(d)—after "management of the" insert:

public sector superannuation

(3) Section 20(6)—delete subsection (6)

9—Insertion of section 20A

After section 20 insert:

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.

5 (7) The Corporation must provide a copy of the final plan to the Minister and the approved authority to which the plan relates.

10—Substitution of section 21

Section 21—delete the section and substitute:

21—Direction of Minister

10 (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

15 (ii) included in the annual report of the Corporation; and

(iii) published in the Gazette within 7 days after the direction is given; and

20 (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.

11—Amendment of section 26—Accounts

Section 26(2)—delete subsection (2) and substitute:

25 (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,

30 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.

12—Amendment of section 27—Internal audits and audit committee

(1) Section 27(1)—delete "public sector superannuation"

(2) Section 27(4)(a)—delete "public sector superannuation"

13—Amendment of section 28—External audit

35 Section 28—delete "public sector superannuation"

14—Substitution of section 29

Section 29—delete the section and substitute:

29—Progress reports in relation to performance plan

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- (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
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- (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.
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- (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
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- (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.
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- (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.
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- (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.
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- (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
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- (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.

15—Amendment of section 30—Annual reports

- (1) Section 30(2)(a)—delete "the performance" and substitute:
each performance
- (2) Section 30(2)(b)—delete paragraph (b)
- (3) Section 30(2)(c)—delete "public sector superannuation"
- (4) Section 30(2)(d)—delete "public sector superannuation"
- (5) Section 30(2)(e)—delete "public sector superannuation"
- (6) Section 30(3)—after "superannuation boards" insert:
and each approved authority

16—Amendment of section 39—Regulations

- (1) Section 39(2)(a)—after "superannuation funds" insert:
, or the nominated funds of an approved authority,
- (2) Section 39(2)—after paragraph (b) insert:
 - (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.