

South Australia

Superannuation (Administered Schemes) Amendment Act 2006

An Act to amend the *Superannuation Act 1988* and to make related amendments to 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 (Administered Schemes) Amendment Act 2006*.

2—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 Act 1988*

3—Amendment of section 4—Interpretation

- (1) Section 4(1), definition of *contributor*—after "that person under this Act" insert:
(but does not include a person as a member of an administered scheme under Schedule 3)
- (2) Section 4(1), definition of *pensioner*—after "under suspension" insert:
but not including a person as a member of an administered scheme under Schedule 3
- (3) Section 4(1), definition of *the Scheme*—after "previous enactment" insert:
(but does not include any administered scheme under Schedule 3)

4—Amendment of section 20B—Payment of benefits

Section 20B—after subsection (3) insert:

- (4) This section does not apply in relation to an administered scheme under Schedule 3.

5—Amendment of section 43AB—Purpose of Part

Section 43AB—after "separated" insert:

(other than with respect to interests arising under an administered scheme under Schedule 3)

6—Amendment of section 55—Confidentiality

(1) Section 55(1)—after "must not divulge" insert:

information of a personal or private nature, or

(2) Section 55(1)—after "any person under this Act" insert:

(including under an administered scheme under Schedule 3)

(3) Section 55(1)(c)—after "person's" insert:

employer or

(4) Section 55(1)(d)—after "this Act" insert:

or, if relevant, an administered scheme under Schedule 3

(5) Section 55(1)—after paragraph (e) insert:

or

(f) if relevant, as may be allowed under the rules of an administered scheme under Schedule 3.

(6) Section 55(2)—delete subsection (2) and substitute:

(2) This section does not prevent the disclosure of statistical or other information related to a class or classes of persons (rather than to an individual).

7—Amendment of section 56—Resolution of difficulties

(1) Section 56—after "particular circumstances" insert:

or the provisions of this Act do not address particular circumstances that have arisen

(2) Section 56—after "the doubt or difficulty" insert:

or to address the circumstances (but only insofar as the Board determines it to be fair and reasonable in the circumstances)

(3) Section 56—delete "this Act will apply subject to a direction given by the Board under this section" and substitute:

any such direction will have effect according to its terms

(4) Section 56—after its present contents (as amended by this section and designated as subsection (1)) insert:

(2) If, in the opinion of the Board—

(a) a time limit under this Act should be extended in particular circumstances; or

- (b) a procedural step under this Act should be waived in particular circumstances,
- the Board may extend the time limit (even if it has already expired) or waive compliance with the procedural step.
- (3) In determining whether to take action under subsection (2), the Board should have regard to—
- (a) in a case under subsection (2)(a)—
- (i) the length of delay that has occurred; and
 - (ii) the explanation for the delay; and
 - (iii) any hardship that will occur if the time limit is not extended; and
 - (iv) the extent to which it will cause any unfairness if the time limit is not extended; and
 - (v) any other relevant factor;
- (b) in a case under subsection (2)(b)—
- (i) the conduct of the person who would benefit from the action; and
 - (ii) any hardship that will occur if the procedural step is not waived; and
 - (iii) the extent to which it will cause any unfairness if the procedural step is not waived; and
 - (iv) any other relevant factor.
- (4) Subsections (2) and (3) do not derogate from any other provision of this Act or the regulations that makes specific provision for the extension of time.

8—Amendment of section 59—Regulations

Section 59(1a)—after paragraph (c) insert:

- (d) without limiting a preceding paragraph, provide that a specified provision of this Act does not apply in prescribed circumstances, subject to any condition to which the regulation is expressed to be subject.

9—Amendment of Schedule 1A—Provisions relating to other public sector superannuation schemes

Schedule 1A, clause 1(2)—delete subclause (2) and substitute:

- (2) The Governor must not make a regulation under subclause (1) unless the majority of the group of employees affected by the regulation and their employer have given their consent to the proposed regulations.

10—Insertion of Schedule 3

After Schedule 2 insert:

Schedule 3—Administered schemes

Part 1—Interpretation

1—Interpretation

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

director of a body corporate means a person who is a member of the governing body of the body corporate;

rules, in relation to a superannuation scheme, means any rules contained in a trust instrument or other document governing the establishment or operation of the superannuation scheme (subject to any provision made by this Schedule);

special resolution means—

- (a) in relation to the directors of a body corporate—a resolution passed by at least two-thirds of the votes cast by the directors of the body corporate voting with respect to the matter;
- (b) in relation to the trustees of a superannuation scheme—a resolution passed by at least two-thirds of the votes cast by the trustees of the superannuation scheme voting with respect to the matter;

superannuation scheme means a scheme (whether established within the private sector or the public sector) that—

- (a) is established for the purposes of providing superannuation or retirement benefits (and may provide for other benefits such as invalidity or death benefits); and
- (b) provides for an indefinitely continuing fund,

other than a scheme established under another part of this Act, or under another Act;

Super SA means the agency or body designated from time to time for the purposes of this Schedule by the Minister by notice in the Gazette as being the entity primarily involved in assisting in the administration of public sector superannuation schemes within the State;

trustee, in relation to a superannuation scheme, means—

- (a) if there is a trustee (within the ordinary meaning of that expression) of the superannuation scheme—the trustee; or
- (b) in any other case—the person who administers the superannuation scheme under the rules of the scheme.

- (2) For the purposes of this Schedule, an *administered scheme* is a superannuation scheme that is within the ambit of a declaration under clause 2.
- (3) For the purposes of this Schedule, a *superannuation fund* is a pool of assets accumulated for the purposes of a superannuation scheme.
- (4) A reference in this Schedule to *rate of return* is a reference to a positive or a negative rate of return.

Part 2—Management of schemes

2—Application of Schedule to schemes

- (1) The Minister may, by notice in the Gazette, declare that this Schedule applies to or in relation to a superannuation scheme in 1 or more of the following respects:
 - (a) that the superannuation scheme and its associated superannuation fund will be a scheme and fund established under this Act;
 - (b) that the superannuation scheme will be administered by Super SA;
 - (c) that the superannuation fund will be invested and managed by the Superannuation Funds Management Corporation of South Australia;
 - (d) that the superannuation scheme and its associated superannuation fund will have the Board as its trustee.
- (2) The Minister may not make a declaration under subclause (1) unless—
 - (a) the superannuation scheme is a qualifying scheme; and
 - (b) the Minister is acting on the basis of an application made by the trustee of the scheme.
- (3) The following provisions apply in connection with the operation of paragraph (a) of subclause (2):
 - (a) a superannuation scheme is a *qualifying scheme* if the operations of the employer of the members of the scheme are wholly or substantially funded by money provided by—
 - (i) the Government of the State; or
 - (ii) an agency or instrumentality of the Crown; or
 - (iii) some other public authority prescribed by the regulations for the purposes of this paragraph; and

- (b) once a declaration has been made under subclause (1) in relation to a superannuation scheme, it is irrelevant if the scheme ceases to be a qualifying scheme (and the Minister may, if due application has been made, make a further declaration under subclause (1) on the basis that paragraph (a) of subclause (2) no longer applies).
- (4) The following provisions apply in connection with the operation of paragraph (b) of subclause (2):
 - (a) an application under that paragraph must be made in a manner and form determined by the Minister and be accompanied by such information as the Minister thinks fit; and
 - (b) —
 - (i) if the trustee of the superannuation scheme is a body corporate with 3 or more directors—an application under that paragraph must be made pursuant to a special resolution of the directors of the body corporate;
 - (ii) if the superannuation scheme has 3 or more trustees—an application under that paragraph must be made pursuant to a special resolution of the trustees.
- (5) A declaration under subclause (1)—
 - (a) will have effect according to its terms; and
 - (b) will take effect on a day fixed by the Minister by notice in the Gazette (either as part of the declaration or by a separate notice published at a later time).
- (6) If a declaration is made under subclause (1)(a), the declaration will have the effect of establishing a new scheme in place of the scheme and fund to which the declaration relates—
 - (a) with the same assets, subject to any provision as to their administration or management under subclause (1)(b) or (c) and to the operation of any other provision of this Schedule and subject to future variations; and
 - (b) with the same trustee or trustees, subject to the operation of a declaration under subclause (1)(d) and subject to future changes in arrangements made in accordance with any relevant provision in the trust deed for the scheme; and
 - (c) with the same members and benefits, subject to the operation of any other provision of this Schedule or the trust deed or rules of the scheme and subject to future changes in membership or variations to that trust deed or rules; and
 - (d) with a trust deed and rules applying (from time to time) under clause 3.

- (7) If a declaration is made under subclause (1)(d), the Board will, if the Minister so determines—
 - (a) indemnify a trustee of the superannuation scheme holding office before the declaration against any liabilities that the trustee was indemnified against before the making of the declaration;
 - (b) be subrogated to the rights of a trustee of the superannuation scheme holding office before the declaration.

3—Arrangements as to trust deed and rules

- (1) Each administered scheme is to have—
 - (a) a trust deed; and
 - (b) a set of rules.
- (2) The trust deed and the rules will be contained in instruments recognised by the Minister by notice in the Gazette.
- (3) The Minister must not publish a notice under subclause (2) unless the Minister—
 - (a) is acting on the basis of an application made by the trustee of the relevant superannuation scheme; and
 - (b) is satisfied that the trust deed and rules of the administered scheme confer on members of the scheme equivalent rights to the rights that members had under the original fund in respect of benefits.
- (4) A trust deed or rules may be varied in accordance with the terms of the trust deed or rules and subclauses (2) and (3) will apply to any variation in the same manner as they applied to the original trust deed or rules (as the case requires).
- (5) For the purposes of subclause (3), if the application is made—
 - (a) by a body corporate that has 3 or more directors—the application must be made pursuant to a special resolution of the directors of the body corporate;
 - (b) by the trustees of a superannuation scheme that has 3 or more trustees—the application must be made pursuant to a special resolution of the trustees.

4—Arrangements as to assets

- (1) Where a declaration has been made under clause 2, the trustee of the relevant superannuation scheme may, by instrument in writing, transfer any assets of the scheme to the Superannuation Funds Management Corporation of South Australia so that those assets may be invested and managed under this Schedule.
- (2) Any monetary asset received under subclause (1) must be paid into a fund established for the purposes of the administered scheme under Part 3.

- (3) Super SA or the Superannuation Funds Management Corporation of South Australia may also receive and hold records and other information that have been created or obtained in connection with the operation of an administered scheme.

Part 3—Establishment of funds and contribution accounts

Division 1—Establishment of funds

5—Establishment of funds

- (1) The Superannuation Funds Management Corporation of South Australia must establish a fund for the purposes of an administered scheme that is the subject of a declaration under clause 2(1)(c).
- (2) The assets of a fund established under this clause must be held for the benefit of the relevant superannuation scheme and the beneficiaries of that scheme, and will not belong to the Crown.
- (3) A fund established under this clause will be subject to the management of the Corporation.
- (4) Subject to the following subclauses, a fund established under this clause will be invested by the Corporation and accordingly the Corporation may enter into transactions affecting the fund—
 - (a) for the purposes of investment; or
 - (b) for purposes incidental, ancillary or otherwise related to investment.
- (5) The Corporation must consult with the trustee of the relevant superannuation scheme to determine the risk/return objectives and strategic asset allocation policies to be adopted with respect to the management and investment of the fund.
- (6) Subject to subclause (7), the trustee of the scheme will be ultimately responsible for setting the risk/return objectives and the Corporation will be ultimately responsible for determining the strategic asset allocation policies.
- (7) If a disagreement arises between the trustee and the Corporation with respect to the investment of the fund, the matter must be referred to the Treasurer and a decision of the Treasurer will determine the matter (and will have effect according to its terms).
- (8) If a fund is established under this clause then, subject to any other arrangements under the rules of the relevant superannuation scheme, or approved by the trustee of the relevant superannuation scheme—
 - (a) Super SA must pay into the fund all contributions received for the purposes of the relevant superannuation scheme; and
 - (b) all interest and accretions arising from the investment of the fund must be paid into the fund; and

- (c) all benefits under the relevant superannuation scheme must be paid from the fund.
- (9) The Corporation will also pay from a fund established under this clause—
 - (a) administrative costs and other expenses related to the management and investment of the fund by the Corporation; and
 - (b) if relevant, administrative charges payable under clause 11; and
 - (c) any other amount payable in connection with the management or operation of the relevant superannuation scheme determined to be payable from the fund pursuant to the rules of the scheme or a determination of the trustee of the scheme.
- (10) The Corporation must determine the value of a fund established under this clause as at the end of each financial year.

6—Division of funds into distinct parts

- (1) The Superannuation Funds Management Corporation of South Australia must, at the request of the trustee of the administered scheme—
 - (a) divide a fund established for the purposes of an administered scheme into 2 or more distinct divisions; and
 - (b) further divide a distinct division into subdivisions.
- (2) Different divisions or subdivisions of a fund may be invested in different ways (and different rates of return may apply to different divisions or subdivisions).

Division 2—Contribution accounts

7—Contribution accounts

- (1) Super SA may, for the purposes of an administered scheme (insofar as may be relevant), establish and maintain contribution accounts—
 - (a) in the names of the members of the scheme;
 - (b) in the name of the employer of the members of the scheme.
- (2) Super SA may—
 - (a) credit and debit contribution accounts in accordance with the terms of the relevant superannuation scheme or otherwise to reflect the operation of this Schedule;
 - (b) provide for rates of return to be reflected in contribution accounts on the basis of a determination of the trustee of the scheme after taking into account the relevant rates of return that apply to the investment of a fund established under Division 1.

Part 4—Miscellaneous

8—Insurance arrangements

- (1) Super SA may, with the approval of the Minister, establish (and maintain) arrangements that provide members of one or more administered schemes with death, disability or other forms of insurance.
- (2) The terms and conditions of insurance established under this clause (including as to any premiums to be paid by members of administered schemes or, if it is so determined, by the employer of the members of the scheme) may be—
 - (a) included in the rules of an administered scheme; or
 - (b) prescribed by regulations made for the purposes of this provision.
- (3) Super SA may, in establishing and maintaining insurance under this clause—
 - (a) establish a pool of funds or other assets that relate to more than 1 administered scheme;
 - (b) invest any funds or other assets as it thinks fit;
 - (c) enter into insurance or re-insurance arrangements with other entities;
 - (d) establish arrangements, provide or offer benefits, or set premiums or other terms or conditions, that vary between different administered schemes, or different classes of members of administered schemes;
 - (e) undertake any activity through the Minister (as a body corporate), the Board, the Superannuation Funds Management Corporation of South Australia, or any other entity determined by Super SA after consultation with the Minister;
 - (f) take such other action that is necessary or expedient for the purposes of providing insurance under this clause.
- (4) Any funds or other assets relating to insurance arrangements established under this clause may be held separately from any funds or other assets administered under Part 2 and Part 3.

9—Accounts and audit

- (1) Super SA must, in respect of each financial year for which it is the manager of an administered scheme, in respect of each administered scheme—
 - (a) maintain proper accounts of amounts paid to Super SA for the purposes of the scheme; and
 - (b) maintain proper accounts of payments to, on behalf of, or in respect of, members of the scheme; and

- (c) maintain proper accounts of any other associated receipts or payments; and
 - (d) prepare financial statements in relation to those receipts and payments.
- (2) Subject to subclause (3), the Auditor-General must, on an annual basis, audit—
 - (a) the accounts and financial statements referred to in subclause (1); and
 - (b) any other accounts or financial statements of an administered scheme.
- (3) The Auditor-General may, as the Auditor-General thinks fit, appoint or authorise another person to conduct an audit on behalf of, or instead of, the Auditor-General.
- (4) The Auditor-General may, at any other time, audit the accounts and financial statements of Super SA under this Schedule, or of an administered scheme within the scope of this Schedule.

10—Reports

- (1) Super SA must, in conjunction with each annual report of the Board under this Act, provide a report on the operation of this Schedule in relation to any administered scheme that is within the ambit of a declaration under clause 2(1)(b) during the financial year to which the annual report relates.
- (2) A report under subclause (1) must include—
 - (a) a copy of any accounts or financial statements that are required to be audited under this Schedule in respect of each relevant scheme for the financial year; and
 - (b) if a fund has been in existence under Part 3 Division 1 in respect of any part of the relevant financial year—a copy of the audited accounts and financial statements for that fund provided by the Superannuation Funds Management Corporation of South Australia.
- (3) In addition, the trustee of an administered scheme that is within the ambit of a declaration that does not extend beyond clause 2(1)(a) must, on or before 31 October in each year, furnish to the Minister the trustee's annual report for the scheme for the financial year ending on 30 June in that year.
- (4) The Minister must, within 6 sitting days after receiving a report under this clause, have copies of the report laid before both Houses of Parliament.
- (5) Super SA must also report in accordance with any requirements imposed on Super SA under the rules of an administered scheme, or under the regulations.

11—Fees

- (1) The Minister may establish and impose an administrative charge in connection with Super SA acting as manager of an administered scheme under this Schedule.
- (2) The Board may, after consultation with the Minister, establish and impose an administrative charge in connection with the Board acting as trustee of an administered scheme under this Schedule.
- (3) The Minister or the Board may, in connection with the operation of subclause (1) or (2)—
 - (a) fix different charges with respect to different funds or different circumstances;
 - (b) recover any charge imposed under this clause from any fund of an administered scheme or, if the trust deed of the administered scheme so provides, from any employer of any members of an administered scheme;
 - (c) arrange for any contribution account to be debited to reflect any charge imposed under this clause;
 - (d) vary a charge from time to time.

12—Cessation of scheme

- (1) The Minister may, by notice in the Gazette, revoke a declaration relating to an administered scheme under this Schedule.
- (2) The Minister may, by notice in the Gazette, transfer any assets of the relevant fund in order to give effect to the change in circumstances.

13—Stamp duty

- (1) No stamp duty is payable under a law of this State in respect of any transfer of assets 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.

14—Transitional provisions

- (1) The Governor may, by regulation, make provisions of a saving or transitional nature in relation to a declaration of the Minister under this Schedule.
- (2) A regulation made under subclause (1) may—
 - (a) modify the provisions of this Schedule in their application to a particular scheme;
 - (b) operate prospectively or retrospectively from a date specified in the regulation.

Schedule 1—Related amendments and transitional provision

Part 1—Amendment of *Superannuation Funds Management Corporation of South Australia Act 1995*

1—Amendment of section 3—Interpretation

Section 3(1), definition of *the funds*—delete the definition and substitute:

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*;

2—Amendment of section 5—Functions of the Corporation

Section 5—after paragraph (a) insert:

- (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;

3—Insertion of section 20B

After section 20A insert:

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*.

4—Amendment of section 26—Accounts

Section 26—after subsection (3) insert:

- (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.

Part 2—Transitional provision

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.