

South Australia

Public Corporations (Southern Select Super Corporation) Regulations 2012

under the *Public Corporations Act 1993*

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Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Public Corporations (Southern Select Super Corporation) Regulations 2012*.

2—Commencement

These regulations will come into operation on 1 December 2012.

3—Interpretation

In these regulations, unless the contrary intention appears—

Act means the *Public Corporations Act 1993*;

board means the board of directors established as the governing body of the subsidiary under regulation 6;

director means a person appointed or holding office as a member of the board under regulation 7 or 8;

fund means the fund into which amounts received from or on behalf of members of Super SA Select are to be paid as required under regulation 13(e);

Minister means the Minister for Finance;

subsidiary means Southern Select Super Corporation established under regulation 5;

Super SA Select means the superannuation fund of that name established under a trust deed and for which the subsidiary is trustee.

Part 2—Application of Act to Minister

4—Application of Act to Minister

The following provisions of the Act apply to the Minister:

- (a) Part 1 (Preliminary);
- (b) section 24 (Formation of subsidiary by regulation);
- (c) section 25 (Dissolution of subsidiary established by regulation);
- (d) Schedule (Provisions applicable to subsidiaries).

Part 3—Southern Select Super Corporation

Division 1—Southern Select Super Corporation established as subsidiary of Minister

5—Establishment of subsidiary (section 24 of Act)

- (1) Southern Select Super Corporation is established as a subsidiary of the Minister.
- (2) The subsidiary—
 - (a) is a body corporate; and
 - (b) has perpetual succession and a common seal; and
 - (c) is capable of suing and being sued in its corporate name.

6—Establishment of board

- (1) A board of directors is established as the governing body of the subsidiary.
- (2) Anything done by the board in the administration of the subsidiary's affairs is binding on the subsidiary.

7—Constitution of board on establishment

- (1) Until 30 November 2015, the board will consist of 5 members appointed by the Minister, 1 of whom is to be designated in his or her instrument of appointment as presiding member of the board.
- (2) When the office of a member appointed under subregulation (1) becomes vacant, the Minister must appoint a person to fill the vacant office.
- (3) The Minister may appoint a deputy to a member of the board appointed under subregulation (1) and the deputy may, in the absence or during a temporary vacancy in the office of that member, act as a member of the board.
- (4) Subject to subregulation (5), a member of the board appointed under this regulation will be appointed until 30 November 2015.
- (5) A member appointed under this regulation to fill a casual vacancy will be appointed or elected for the balance of the term of his or her predecessor.

- (6) The office of a member of the board appointed under this regulation becomes vacant if the member—
- (a) dies; or
 - (b) resigns by written notice to the Minister; or
 - (c) is removed from office by the Minister on the ground of—
 - (i) mental or physical incapacity to carry out official duties satisfactorily; or
 - (ii) neglect of duty; or
 - (iii) misconduct.

8—Constitution of board from 1 December 2015

- (1) On and from 1 December 2015, the board will consist of the following members:
- (a) a presiding member appointed by the Governor;
 - (b) 2 members appointed on election by the members of Super SA Select in accordance with Schedule 1;
 - (c) 2 members appointed by the Governor on the Minister's nomination.
- (2) A person who is employed in duties connected with the *Superannuation Act 1988*, the *Southern State Superannuation Act 2009* or the administration of Super SA Select is not eligible to be elected as a member of the board.
- (3) The Governor may appoint a deputy to a member of the board appointed or elected under subregulation (1) and the deputy may, in the absence or during a temporary vacancy in the office of that member, act as a member of the board.
- (4) Subject to subregulation (5), a member of the board appointed or elected under this regulation will be appointed or elected for a term not exceeding 3 years.
- (5) A member appointed or elected under this regulation to fill a casual vacancy will be appointed or elected for the balance of the term of his or her predecessor.
- (6) The office of a member of the board appointed or elected under this regulation becomes vacant if the member—
- (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) is removed from office by the Governor on the ground of—
 - (i) mental or physical incapacity to carry out official duties satisfactorily; or
 - (ii) neglect of duty; or
 - (iii) misconduct.
- (7) If the office of an elected member 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 and the Australian Education Union (SA Branch).

9—Procedures at meetings of board

- (1) A meeting of the board will be chaired by the presiding member or, in his or her absence, by a member chosen by those present.
- (2) Subject to subregulation (3), the board may act despite vacancies in its membership.
- (3) Three members constitute a quorum for a meeting of the board.
- (4) A decision in which a majority of the members present at a meeting concur is a decision of the board.
- (5) A conference by telephone or other electronic means between members of the board will, for the purposes of this regulation, be taken to be a meeting of the board at which the participating members are present if—
 - (a) notice of the conference is given to all members in the manner determined by the board for that purpose; and
 - (b) each participating member is capable of communicating with every other participating member during the conference.
- (6) 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 members in accordance with procedures determined by the board; and
 - (b) a majority of the members express concurrence in the proposed resolution by letter, telegram, telex, fax, email or other written communication setting out the terms of the resolution.
- (7) Subject to these regulations, the board may determine its own procedures.
- (8) The board must keep minutes of its proceedings.

10—Staff of subsidiary

- (1) The subsidiary may, with the Minister's approval, appoint staff to assist it in carrying out its responsibilities.
- (2) A person appointed under subregulation (1) is not a Public Service employee.
- (3) The subsidiary may, with the approval of a Minister responsible for a particular administrative unit of the Public Service, make use of the staff or facilities of that administrative unit.

11—Confidentiality

- (1) A member or former member of the board, or a person employed or formerly employed in the administration of Super SA Select, must not divulge information of a personal or private nature, or information as to the entitlements or benefits of a person under Super SA Select except—
 - (a) as required by or under an Act of the State or the Commonwealth; or
 - (b) to, or with the consent of, the person; or
 - (c) to the person's employer; or
 - (d) to any other person for purposes related to the administration of Super SA Select; or

- (e) as may be required by a court; or
 - (f) if relevant, as may be allowed under the trust deed or rules of Super SA Select.
- (2) A member or former member of the board, or a person employed or formerly employed in the administration of Super SA Select, must not divulge information if to do so is inconsistent with a requirement imposed on the trustee of an eligible superannuation plan under Part VIII B of the *Family Law Act 1975* of the Commonwealth.
- (3) If a member of the board contravenes subregulation (1) or (2), the contravention may be regarded as misconduct for the purposes of regulation 7(6) or 8(6).
- (4) This regulation does not prevent the disclosure of statistical or other information related to a class or classes of persons (rather than to an individual).

12—Disclosure

- (1) If the subsidiary discloses to the Minister or the Treasurer pursuant to the Act or these regulations a matter in respect of which the subsidiary owes a duty of confidence, the subsidiary must give notice in writing of the disclosure to the person to whom the duty is owed.
- (2) A director of the subsidiary does not commit any breach of duty by reporting a matter relating to the affairs of the subsidiary to the Minister or the Treasurer.

Division 2—Functions

13—Functions of subsidiary

The subsidiary's functions are limited to the following:

- (a) to act as the trustee of Super SA Select;
- (b) to administer the trust deed and rules of Super SA Select;
- (c) to receive payments from, or on behalf of, members of Super SA Select;
- (d) to maintain accounts for members of Super SA Select;
- (e) to pay amounts received from or on behalf of members of Super SA Select into a fund to be maintained by the board and to make payments from the fund as required under the trust deed or rules of Super SA Select or under an Act of the State or the Commonwealth (including under Part VIII B of the *Family Law Act 1975* of the Commonwealth);
- (f) to formulate strategies for the investment and management of the fund;
- (g) to ensure that members of Super SA Select receive benefits and other payments to which they are entitled under Super SA Select;
- (h) to carry out other functions conferred on the subsidiary by the Minister;
- (i) to do anything necessary or expedient to be done for the purposes of a function referred to in a preceding paragraph.

14—The fund

- (1) The subsidiary is responsible for the management and investment of the fund.

- (2) The subsidiary must prepare an investment policy statement for the purposes of the fund and must, in connection with the statement, set the risk/return objectives and asset allocation policies to be adopted with respect to the management and investment of the fund.
- (3) In setting the risk/return objectives and asset allocation policies to be adopted with respect to the management and investment of the fund, the subsidiary must consult with the Superannuation Funds Management Corporation of South Australia.
- (4) The Superannuation Funds Management Corporation of South Australia is to implement the subsidiary's investment policy statement and strategies as agent for the subsidiary.

15—Charter

- (1) The Minister and the Treasurer must prepare a charter for the subsidiary after consultation with the subsidiary.
- (2) The charter must address—
 - (a) the nature and scope of the subsidiary's operations; and
 - (b) the subsidiary's obligations to report on its operations; and
 - (c) the form and contents of the subsidiary's accounts and financial statements; and
 - (d) any accounting, internal auditing or financial systems or practices to be established or observed by the subsidiary; and
 - (e) the acquisition or disposal of capital or assets or the borrowing or lending of money.
- (3) The charter may—
 - (a) limit or otherwise regulate the functions or powers of the subsidiary; and
 - (b) deal with any other matter not specifically referred to in subregulation (2).
- (4) The Minister must, after consultation with the subsidiary, review the charter at the end of each financial year.
- (5) The Minister and the Treasurer may, after consultation with the subsidiary, amend the charter at any time.
- (6) The charter, or an amendment to the charter, comes into force and is binding on the subsidiary on a day specified in the charter or amendment (but without affecting any contractual obligations previously incurred by the subsidiary).
- (7) On the charter or an amendment to the charter coming into force, the Minister must, within 12 sitting days, have copies of the charter, or the charter in its amended form, laid before both Houses of Parliament.

16—Other subsidiary companies

- (1) The subsidiary must not, without the approval of the Treasurer—
 - (a) form a subsidiary company; or

- (b) acquire, or enter into any arrangement under which it will at a future time or would on the happening of some contingency hold, relevant interests in shares in a company such that the company becomes a subsidiary of the subsidiary.
- (2) The Treasurer may, as a condition of approval under this regulation, or by direction, require the subsidiary to take steps to include in a subsidiary company's constitution such provisions as the Treasurer considers appropriate—
 - (a) imposing limitations on the nature or scope of the company's operations; or
 - (b) imposing other controls or practices,consistent with those applicable to the subsidiary.

17—Indirect or joint operations

The subsidiary must not, without the approval of the Treasurer, establish a trust scheme or a partnership or other scheme or arrangement for sharing of profits or joint venture with another person or undertake any operations or transactions pursuant to such a scheme or arrangement.

Division 3—Financial and related matters

18—Internal audit

- (1) The subsidiary must, unless exempted by the Treasurer, maintain effective internal auditing of its operations.
- (2) The subsidiary must, unless exempted by the Treasurer, have an audit committee.
- (3) The audit committee will comprise—
 - (a) a member of the board of the subsidiary, 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, but may not include the chief executive (if any) of the subsidiary.
- (4) The functions of the audit committee include—
 - (a) reviewing annual financial statements to ensure that they provide a true and fair view of the state of affairs of the subsidiary; and
 - (b) liaising with external auditors; and
 - (c) reviewing the adequacy of the accounting, internal auditing, reporting and other financial management systems and practices of the subsidiary on a regular basis.

19—Loans, borrowings etc require approval

- (1) The subsidiary must not lend or advance to a person any money, securities or property without the approval of the Treasurer.
- (2) The subsidiary must not undertake commercial borrowings without the prior written approval of the Treasurer.

20—Provision of information

- (1) The subsidiary must, at the request in writing of the Minister or the Treasurer, furnish such information or records in the possession or control of the subsidiary as the Minister or the Treasurer may require in such manner and form as the Minister or the Treasurer may require.
- (2) If a record in the possession or control of the subsidiary is furnished to the Minister or the Treasurer under this regulation, the person to whom it is furnished may make, retain and deal with copies of the record as he or she thinks fit.
- (3) If the board considers that information or a record furnished under this regulation contains matters that should be treated as confidential, the board may advise the person to whom it is furnished of that opinion giving the reason for the opinion and the Minister or the Treasurer may, subject to subregulation (4), act on that advice as the Minister or the Treasurer thinks fit.
- (4) If the Minister or the Treasurer is satisfied on the basis of the board's advice under subregulation (3) that the subsidiary owes a duty of confidence in respect of a matter, the Minister or the Treasurer must ensure the observance of that duty in respect of the matter, but this subregulation does not prevent a disclosure as required in the proper performance of ministerial functions or duties.
- (5) The subsidiary must—
 - (a) notify the Minister if a request is made by the Treasurer under this regulation; and
 - (b) notify the Treasurer if a request is made by the Minister under this regulation.

21—Common seal and execution of documents

- (1) The common seal of the subsidiary must not be affixed to a document except in accordance with a decision of the board, and the affixing of the seal must be attested by the signatures of 2 directors.
- (2) The board may, by instrument under the common seal of the subsidiary, authorise a director, an employee of the subsidiary (whether nominated by name or by office or title) or any other person to execute documents on behalf of the subsidiary subject to limitations (if any) specified in the instrument of authority.
- (3) Without limiting subregulation (2), an authority may be given so as to authorise 2 or more persons to execute documents jointly on behalf of the subsidiary.
- (4) A document is duly executed by the subsidiary if—
 - (a) the common seal of the subsidiary is affixed to the document in accordance with this regulation; or
 - (b) the document is signed on behalf of the subsidiary by a person or persons in accordance with authority conferred under this regulation.

22—Report on operation of Southern Select Super

- (1) The subsidiary must, within 4 months after the end of each financial year, deliver a report to the Minister on the operation of Southern Select Super during that financial year.

- (2) The report must include a copy of any financial statements prepared by the board in relation to receipts of members' contributions and employer contributions, and relating to payments to, on behalf of, or in relation to, members.
- (3) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after receipt of the report.

23—Annual report

- (1) The subsidiary must, within 3 months after the end of each financial year, deliver to the Minister a report on the financial operations of the subsidiary during that financial year.
- (2) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after receipt of the report.

Schedule 1—Election of members of board

1—Interpretation

In this Schedule—

hour of nomination means the hour by which nominations must be received by the Electoral Commissioner;

voter means a person who is, by virtue of clause 4, eligible to vote at an election.

2—Election of members

The election of members of the board must be conducted by the Electoral Commissioner in accordance with this Schedule.

3—Timetable for elections

- (1) The Electoral Commissioner must publish in a daily newspaper circulating throughout the State a notice setting out the timetable for each election held under this Schedule.
- (2) The notice must—
 - (a) fix the date (not being less than 14 days from publication of the notice) and the hour by which nominations must be received by the Electoral Commissioner; and
 - (b) fix the date on or before which the Commissioner will post ballot papers to voters or give ballot papers to employers for distribution to voters; and
 - (c) fix the date (not being less than 21 days nor more than 28 days after the date fixed under paragraph (b)) and the hour by which completed ballot papers must be returned to the Electoral Commissioner.
- (3) The Electoral Commissioner must determine the timetable in consultation with the board.

4—Persons eligible to vote

- (1) A person who was a member of Super SA Select on the last business day before the 7 day period immediately preceding the day on which notice was published under clause 3 is eligible to vote at the election unless his or her whereabouts are unknown to the subsidiary.

- (2) The board must within 7 days after the notice was published give the Electoral Commissioner a list of the voters who are eligible to vote at the election.
- (3) In this clause—
business day means any day other than a Saturday, Sunday or other public holiday.

5—Nominations

A nomination for election must be—

- (a) in a form approved by the Electoral Commissioner; and
- (b) signed by at least 3 voters; and
- (c) received by the Electoral Commissioner at or before the hour of nomination.

6—Election without ballot

- (1) If the number of persons nominated is the same as or less than the number of vacancies to be filled by election, the Electoral Commissioner must, by notice in a daily newspaper circulating throughout the State and in the Gazette—
 - (a) declare that the vacancy or vacancies has or have been filled by the person or persons nominated; and
 - (b) in relation to each elected person—specify the day on which the person's term of office commences and the length of the term for which the person has been elected.
- (2) If the number of persons nominated is greater than the number of vacancies to be filled the following clauses apply.

7—Ballot papers

- (1) The Electoral Commissioner must provide each voter with a ballot paper and an envelope addressed to the Commissioner for the purpose of returning the ballot paper after completion.
- (2) The names of the candidates must appear on the ballot papers in a vertical list in an order determined by the Electoral Commissioner by lot.
- (3) If ballot papers are not printed on watermarked paper they must be initialled by the Electoral Commissioner or by a person authorised for that purpose by the Commissioner.
- (4) The Electoral Commissioner may provide a voter with a ballot paper and envelope—
 - (a) by posting the ballot paper and envelope to the voter at his or her last known address; or
 - (b) by giving the ballot paper and envelope to the voter's employer to give to the voter.

8—Electoral material to be provided with ballot papers

- (1) Subject to this clause, the Electoral Commissioner must, at the request of a candidate, include with ballot papers provided to voters material provided by the candidate promoting the candidate's election.

- (2) Promotional material must be provided to the Commissioner at or before the hour of nomination.
- (3) The material must not include more than 200 words nor more than 1 photograph and may be printed by the Commissioner in such form as he or she thinks fit for the purpose of posting or distributing to voters.

9—Voting

- (1) A voter who wishes to vote must—
 - (a) indicate on the ballot paper the candidate to whom the voter gives his or her first preference and the voter may indicate the order of his or her preference for the other candidates; and
 - (b) place the ballot paper in the envelope provided, seal the envelope and sign it; and
 - (c) return the envelope to the Electoral Commissioner.
- (2) A voter's preference for candidates must be indicated by consecutive numbers (commencing with the number "1") placed in the squares opposite the names of the candidates on the ballot paper.

10—Duplication and late return of ballot papers

- (1) If more than 1 ballot paper is returned under the name of the same voter all, except the first to be returned, will be rejected or, if the Electoral Commissioner does not know which was returned first, all, except the first to be recorded against the name of the voter, will be rejected.
- (2) If more than 1 ballot paper is returned in an envelope none of the ballot papers returned in that envelope will be counted.
- (3) A ballot paper returned to the Electoral Commissioner after the close of the poll will not be counted.

11—Counting of votes

The following provisions apply to the counting of votes:

- (a) after counting first preferences the candidate with the fewest first preferences must be excluded and if more candidates remain than the number of vacancies to be filled each ballot paper counted to the excluded candidate must be counted to the candidate (if any) next in order of the voter's preference;
- (b) this process must be continued until the number of candidates remaining is equal to the number of vacancies to be filled;
- (c) if 2 candidates have an equal number of votes and 1 of them must be excluded the Electoral Commissioner must determine the question by lot.

12—Scrutineers

- (1) Subject to subclause (2), the Electoral Commissioner may permit such scrutineers as he or she thinks fit to be present at the counting of votes.
- (2) A candidate in the election cannot be a scrutineer.

13—Declaration of election

When the number of candidates remaining is equal to the number of vacancies to be filled, the Electoral Commissioner must, by notice in a daily newspaper circulating throughout the State and in the Gazette—

- (a) declare that the candidate or candidates has or have been elected to fill the vacancy or vacancies; and
- (b) in relation to each elected person—specify the day on which the person's term of office commences and the length of the term for which the person has been elected.

Schedule 2—Loan from South Australian Superannuation Board

1—Loan to establish fund

If a loan is or has been made by the South Australian Superannuation Board to the Minister for the purpose of establishing, or assisting in the establishment of, the fund, the subsidiary must ensure compliance with the terms of repayment of the loan as set out in this Schedule.

2—Payment of interest on loan

- (1) Subject to subclause (4), interest is payable on the loan annually at the end of each financial year.
- (2) The interest will be calculated on a quarterly basis by reference to the outstanding balance of the loan at the end of the quarter at a rate equivalent to the average daily deposit rate for that quarter.
- (3) If the fund has a net surplus at the end of a financial year, the interest payable in respect of that year must be paid on or before 31 July of the following financial year.
- (4) If the fund does not have a net surplus at the end of a financial year, the interest payable in respect of that year will be capitalised into the principal amount owing.
- (5) In this clause—

average daily deposit rate means the average daily deposit rate issued by the Treasury on a quarterly basis.

3—Repayment of principal

- (1) For each financial year, an amount of the principal of the loan equal to 20% or more of the net surplus of the fund for that year must be repaid.
- (2) However, if the amount of the fund attributable to member administration fees at the end of the financial year does not exceed the cost of the administration of the fund (other than investment management charges), there is no requirement for a payment to be made in respect of that year.

Legislative history

Notes

- 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.

Principal regulations

Year	No	Reference	Commencement
2012	240	<i>Gazette 29.11.2012 p5247</i>	1.12.2012: r 2