

2000

**THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

TERRITORY SUPERANNUATION PROVISION PROTECTION BILL 2000

EXPLANATORY MEMORANDUM

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**GARY HUMPHRIES, MLA
TREASURER**

TERRITORY SUPERANNUATION PROVISION PROTECTION BILL 2000

OUTLINE

The object of this Bill is to ensure that appropriations and moneys held for the management of the Territory's superannuation liabilities may only be expended in connection with the management of the superannuation liabilities of the Territory, Territory authorities and Territory owned corporations.

The Bill provides for:

- ◆ the establishment of a superannuation department;
- ◆ the establishment of superannuation banking account(s);
- ◆ superannuation appropriations and investments; and
- ◆ the protection of funds held in the account(s) by restricting expenditure from the account(s).

The Bill protects superannuation funds by restricting payments from the account to:

- ◆ expenditure in connection with the management of the superannuation liabilities of the Territory, Territory authorities and Territory owned corporations; or
- ◆ for the investment of assets held against the account.

This will allow for expenditures to cover such things as:

- ◆ emerging CSS and PSS benefits costs to the Commonwealth;
- ◆ administrative fees to ComSuper for the administration of the CSS and the PSS;
- ◆ investments;
- ◆ actuarial and the administrative costs of managing the account and the investments;
and
- ◆ Members' entitlements under the superannuation scheme for the Members of the Legislative Assembly.

A superannuation department will be established as a department under the *Financial Management Act 1996* for all the purposes of that Act, unless otherwise provided for in the *Territory Superannuation Provision Protection Bill 2000*.

In addition to providing for the protection of funds dedicated to meeting the superannuation liabilities of the Territory the Bill provides for "other purposes" being several consequential amendments to the *Financial Management Act 1996*.

This Bill does not prohibit ACT departments, Territory authorities or Territory owned corporations from making payments for superannuation directly to external superannuation funds.

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Clause 1 cites the Name of Act as the *Territory Superannuation Provision Protection Bill 2000*.

Clause 2 provides for the Act to commence on 1 July 2000.

Clause 3 states that the object of the act is to ensure that funds dedicated to meeting the superannuation liabilities of the Territory will remain dedicated to that purpose.

Clause 4 refers to the Dictionary of definitions which defines certain words and expressions used in this Act including **signpost definitions** which are defined in the *Financial Management Act 1996*.

Clause 5 states that notes within the Act are not part of the Act.

Clause 6 states that the Treasurer must establish and keep a department that complies with the definition of 'department' in section 3 of the *Financial Management Act 1996*. This will require the Treasurer to issue guidelines under section 67 of the *Financial Management Act 1996* that will establish a superannuation department for the purposes of the *Financial Management Act 1996*.

Clause 7 requires the Chief Executive of the superannuation department to open and keep open one or more departmental banking accounts for the management of superannuation liabilities. This section requires that at least one superannuation banking account is kept open at all times.

Clause 8 defines the Territory banking account as the source of money appropriated for superannuation. It provides that money appropriated by a superannuation appropriation may only be paid to a superannuation banking account. It does not prohibit interest or employer contributions being received into a superannuation banking account from other sources.

Clause 9 defines the purposes for which money may be paid from the superannuation banking account as:

- (a) to meet the liabilities of the Territory to provide superannuation benefits in relation to staff and members of the Legislative Assembly;
- (b) to meet the superannuation liabilities of the Territory, a Territory authority or Territory owned corporations for its officers or employees;
- (c) to pay fees owing to a body that manages a superannuation scheme which an officer or employee of the Territory is a member;
- (d) to pay actuarial fees, administrative cost and expenses incurred by the superannuation department;
- (e) to transfer funds to another superannuation banking account; or
- (f) for investment in accordance with section 11.

Clause 10 allows for the closure of a superannuation banking account provided that any money to the credit of the account is paid into another superannuation banking account.

Clause 11 provides for the investment of superannuation funds.

Subsection (1) states that funds not needed to meet the payments from the superannuation banking accounts defined in paragraphs 9 (a) to (e) may be invested in the following ways:

- (a) on deposit with an authorised deposit-taking institution; or
- (b) in Territory, State or Commonwealth securities; or
- (c) any prescribed investment.

Prescribed investments will be specified by disallowable guidelines issued by the Treasurer, under section 15 of this Act.

Subsection (2) provides that there may be transfers between the Territory banking account and the superannuation banking accounts to facilitate investment without need for appropriation.

Subsection (3) provides that any interest received by the Territory for the investment of funds from a superannuation banking account can only be paid

into a superannuation banking account. This clause does not prohibit the re-investment of interest or the retention of a management fee by external funds managers.

Subsection (4) allows for the deduction of investment management fees from the interest received by the superannuation department where the investment is made or managed by another department.

Subsection (5) allows for interest to be paid into a superannuation banking account directly from an external investor or through the Territory banking account.

Clause 12 relates to the interest earned on superannuation moneys.

Subsection (1) states a superannuation appropriation is taken to be both the amount stated in the appropriation and any interest earned on the investment of a superannuation appropriation. The definition of superannuation appropriation provides for the inclusion of appropriations made to the Superannuation Provision Unit and the Superannuation and Insurance Provision Unit prior to the commencement of this Act.

Subsection (2) requires that interest earnings can only be paid out for the same purposes as a superannuation appropriation.

Subsection (3) allows for the deductions of management fees from the interest received by the superannuation department where the investment is made or managed by another department.

Clause 13 states that any amount paid by a Territory authority or Territory owned corporation as part of an arrangement for the management of their superannuation liabilities and any interest earned on that amount are appropriated for the specific purpose of making payment to meet superannuation liabilities of the Territory. The arrangements with Territory authorities and Territory Owned Corporations for the payment of employer

contributions result in their superannuation liabilities being assumed by the Territory, and are therefore covered by this provision.

Clause 14 requires that, on repayment, moneys that have been invested under section 38 of the *Financial Management Act 1996* or remains invested on the commencement of this Act on 1 July 2000 and the interest that has been earned on this money must be paid into a superannuation banking account. This allows current investments to be maintained without the need to return them to the superannuation provision account on 30 June 2000. Investments existing on that date will continue under current arrangements. On expiration and return to the Territory, the investments and any interest earned must be paid into a superannuation banking account. This does not prohibit reinvestment.

Clause 15 states that the Treasurer may issue superannuation management guidelines which will prescribe matters under this Act and that such guidelines will be disallowable instruments for the purposes of the *Subordinate Laws Act 1989*.

Clause 16 is a transitional provision that requires the money standing to the credit of the superannuation provision account to be paid into one or more superannuation banking accounts. This section requires that this transfer take place within 7 days of the commencement of the *Territory Superannuation Provision Protection Act 2000* and contains a sunset clause for the transfers of 1 August 2000.

Clause 17 refers to the inclusion of a Schedule of amendments to the *Financial Management Act 1996*, which occurs as a consequence of this Act.

The Schedule to this Act is "Amendments of *Financial Management Act 1996*"

The schedule amends the *Financial Management Act 1996*, to ensure the effective operation of the Act.

Section 2 is to be repealed and replaced with a reference stating that the *Financial Management Act 1996* is subject to the *Territory Superannuation Provision Protection Act 2000*. This means that the *Territory Superannuation Provision Protection Act 2000*.

Act 2000 takes precedence over the *Financial Management Act 1996* when interpreting potential conflicts between the two Acts.

Section 3 is re-named as 'Definitions'. New definitions are included in the *Financial Management Act 1996* referring to definitions in the *Territory Superannuation Provision Protection Bill 2000*. Subsection 3(2) of the *Financial Management Act 1996* is omitted and replaced by section 3A.

Subsection 3(2) is replaced by section 3A which has a similar effect to the previous subsection 3(2) and allows for the Treasurer to declare that specific bodies are not classified as Territory authorities for the purposes of the *Financial Management Act 1996*. Such declarations must be published in the Gazette.

Section 14 of the *Financial Management Act 1996* is amended to provide that superannuation appropriations are not subject to the transfer of funds between appropriations. This will ensure that all funds appropriated to the department may only be spent for the purposes of superannuation and may not transferred to other departments.

Section 16 of the *Financial Management Act 1996* is amended to provide that superannuation appropriations may not be transferred as part of the transfer of functions between departments. This will ensure that all funds appropriated to the department may only be spent for the purposes of superannuation and may not transferred to other departments.

Section 37(1) of the *Financial Management Act 1996* is amended to allow the transfer of money from the Territory banking account to a superannuation banking account for the purposes of investment under subsection 10(2) of the *Territory Superannuation Provision Protection Bill 2000*, without the need for warrant. This is achieved by the insertion of subsection 3. The amendment also moves the current reference to subsection 38(2) of the *Financial Management Act 1996* to subsection 3 for consistency.

Section 38 of *Financial Management Act 1996* contains several minor changes. These consequential amendments are required as the investment of superannuation funds will no longer be subject to section 38, as it is provided for in the *Territory Superannuation Provision Protection Bill 2000*.

Dictionary

In addition to the signpost definitions which refer the reader to definitions in section 3 of the *Financial Management Act 1996* there are additional definitions for interest, superannuation appropriation, superannuation banking account, superannuation department, superannuation provision account and Financial Management Act for the purposes of the *Territory Superannuation Provision Protection Bill 2000*.