



PREM114D03458

18 August 2014

Hon Tom Koutsantonis
Minister for Finance
GPO Box 2264
ADELAIDE SA 5001

Dear Minister

**Reform of South Australian Boards and Committees
South Australian Superannuation Board**

As you are aware, I recently received a letter from the Premier regarding his decision to reform South Australian government boards and committees. I have been asked as the Presiding Member of the South Australian Superannuation Board (Board) to make a submission as to whether the Board has an essential functional purpose, or whether it should be abolished and replaced by an alternative structure.

By way of background, the Board is a statutory trustee established under the *Superannuation Act 1988* for the purpose of administering the following superannuation schemes:

- Southern State Superannuation Scheme (continued in existence under the *Southern State Superannuation Act 2009*) (Triple S Scheme).
- State Superannuation Scheme (established under the *Superannuation Act 1988*).
- SA Ambulance Superannuation Scheme (established as "administered scheme" under the *Superannuation Act 1988* and governed by separate trust deed and rules).

The Parliament has delegated full powers to the Board in that it is responsible to the Minister for Finance for all aspects of administration (other than investments, the responsibility for which is charged to Funds SA). The Crown Solicitor's Office has previously advised that this responsibility to the Minister does not entail an obligation on the Board to follow directions of the Minister, but rather, involves being answerable to the Minister in an accountability sense. This is necessary under Commonwealth superannuation law, which prohibits trustees from being subject to directions from third parties.

The Board is commercially focused and operates to deliver competitive superannuation benefits to members, notwithstanding that membership in the schemes that it governs is effectively mandated by legislation. In doing so, it carries out a number of essential functions, including strategic direction, administration (through a service provider relationship with Treasury and Finance), review and decision, reporting and fiduciary control.

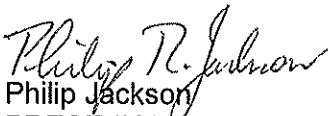
The current arrangements have served members well. The Triple S Scheme is currently rated as "Best Workplace Value Choice Product" in Australia by leading financial information

services company, Rainmaker Group. Rainmakers' assessment was based on performance, insurance, administration, communications, costs and investment performance.

Further to discussion with Department of Treasury and Finance officials, I believe there is a strong argument that the Board should continue to exist in its current form to ensure the independence of decisions in the governance of the Schemes in accordance with Commonwealth superannuation laws. The Board also operates efficiently and cost effectively and there is no duplication in the functions performed by another entity. It is also important to note that any alternative structure would still require a representative board, the composition of which would be costly due to the need to replace the collective knowledge and experience of the current Board. As requested, further criteria relevant to retaining the Board in its current form are set out in the template below.

In conclusion, in reviewing the need for the Board and its operation I believe it operates independently, in the best interests of members and in compliance with required legislation and regulations. The Board is actively engaged in all aspects of its duties and responsibilities and there is no evident benefit or improvement to be had in abolishing or merging the Board.

Yours sincerely



Philip Jackson

PRESIDING MEMBER, SUPER SA BOARD

Section of report	Comment
Board/Committee name	South Australian Superannuation Board (Board)
Minister	Minister Koutsantonis
Portfolio	Minister for Finance
Who is coordinating advice to the minister?	Super SA
How is the board or committee constituted?	Legislation
What is the function of the board or committee?	Decision Making
Board or committee funding	External Government Funded
Minister's interim recommendation	Exempt
If recommended to be exempt, provide justification	<p>Criteria 1: Is the operation of the entity truly commercial in nature:</p> <p>Yes, the Board is commercially focused operating to deliver competitive super benefits to members.</p> <p>(i) has there been a full delegation of powers</p> <p>Yes, the Board is responsible to the Minister for all aspects of administration (other than investments). The Crown Solicitor's Office has previously advised that this does not entail an obligation on the Board to follow directions of the Minister, but rather, involves being answerable to the Minister in an accountability sense. This is necessary under Commonwealth superannuation law, which prohibits trustees from being subject to directions from third parties.</p> <p>(ii) does the entity meet the standard definition of a public non-financial corporation or a public financial corporation?</p> <p>No – the Board is not referenced as one of these bodies in the 2014-15 State Budget, Budget Paper 3.</p> <p>Criteria 2: Is there are case for direct community or sectoral representation through a board</p> <p>As per the <i>Superannuation Act 1988</i>, two board members of the Super SA Board are already appointed through a formal election process by the Super SA membership to represent their interests as members of the scheme. This is common practice in the superannuation industry. While there are no requirements under the Act with respect to the qualifications of the members of the Board, Cabinet takes these issues into consideration when appointing non-member elected members. In fact the members of the Board have extensive qualifications and experience in the superannuation and/or financial fields, which is necessary to satisfy Commonwealth prudential standards on the "fitness and propriety" of superannuation trustees. For these reasons, the Board's collective experience in the administration of the schemes is crucial and thus superior to other options.</p> <p>It is important to note that in terms of community engagement, the Board already oversees an excellent customer engagement strategy. Super SA has a shop front, regularly conducts workplace seminars and holds</p>

Section of report	Comment
	<p>an annual open day for members. Super SA also subscribes to the <i>FEAL Net Promoter Score</i> – an annual survey of around 500 members to provide feedback on Super SA's performance.</p> <p>Criteria 3: Will the abolition of the board have a negative impact on business or community confidence</p> <p>Yes, this would have a negative impact on member confidence in the administration of the superannuation schemes of which their membership is compulsory. That is, a superannuation fund is a trust structure by which the trustee (ie the Board) holds property on trust for the beneficiaries (members). The members effectively turn over their rights and proprietary interest in their superannuation to the trustee, separating ownership of the funds and control from its equitable ownership. As part of a superannuation trust, employers have an obligation to contribute to the relevant superannuation fund in accordance with Commonwealth legislation and the legislation governing the state schemes. Members also have a right to appeal to the trustee, including the Board, in the event that they are dissatisfied with the original decisions of the trustee/Board.</p> <p>Having regard to the fundamental structure of a superannuation trust, if the Board is abolished and its trustee obligations are delegated to state government departments/employees:</p> <ol style="list-style-type: none"> 1. the necessary independence between the trustee and the employer will be lost, and the current transparency, impartiality and accountability between the stakeholders will become blurred, if not non-existent; 2. the employer could have a conflict of interest, in that it will be the same body charged with both administering the fund, and making financial contributions to it; and 3. members will no longer have an independent appeal mechanism, in that they will effectively be required to appeal to the employer body, who as stated above, could have a conflict of interest between its various roles. <p>It is anticipated that this would impact significantly on member confidence in terms of the administration of the fund.</p> <p>Criteria 4: Is there a significant legal or financial advantage in retaining the Board</p> <p>There are both significant legal and financial advantages in retaining the Board. In terms of legal requirements:</p> <ol style="list-style-type: none"> 1. The Board has a legislated mandated responsibility to administer the government's superannuation schemes and therefore there is a justified on-going need for its continuation. 2. The State is subject to obligations under the Heads of Government Agreement between the Commonwealth and the States/Territories. The Commonwealth recognises pursuant to this document that circumstances surrounding public sector schemes warrant exemption from strict/technical compliance with Commonwealth superannuation legislation, and in return, the States and Territories agree that relevant schemes will "conform with the principles of the Commonwealth's retirement incomes policy to the best of their endeavours". This includes an obligation to comply with trustee governance arrangements consistent with Commonwealth superannuation legislation. 3. Trustees of superannuation funds must act in accordance with the

Section of report	Comment
	<p>legislation/trust deed governing the fund, complex Commonwealth superannuation and corporation laws, stringent Commonwealth Prudential Standards (including "fit and proper person" requirements) and other legislation impacting on the conduct of the fund and trustee (such as tax legislation, family law etc). This includes the requirement to exercise a reasonable degree of care and diligence that a superannuation entity director would exercise in the corporate trustee's circumstances.</p> <p>4. Trustees of superannuation funds must act in the best interests of members in accordance with the general law concerning trusts and trustees, including the requirement to act in the best interests of beneficiaries and avoid conflicts of interest.</p> <p>These points indicate that there are significant obligations on superannuation trustees which are specific in nature, which do not fall into the realm of expertise and experience of persons outside the Board's structure (eg government employees).</p> <p>In terms of financial obligations, there would be significant cost implications of dissolving the Board and entrusting these trustee duties to government employees or other third parties suitably qualified to carry out the role of superannuation trustee. The current costs in administering the Board are borne by members via their membership fees and not from general Government appropriation. That is, the 2014-15 Budget allocated to administering the Board and the South Australian Superannuation Board of \$157,280 plus the salary costs of a Board Support Officer (\$107,356 for salary and on costs) is fully recovered from membership fees. Currently only four of the five Board members (plus one deputy) are remunerated at a total cost of \$123,000. The Board also promotes efficiency and there is no duplication in the functions performed by another entity.</p>
<p>Implementation status: Will the recommended outcome be achieved by 30 October?</p>	<p>Green: On track for 30 October 2014</p>
<p>Future or alternative arrangements</p>	<p>The current activities of, and requirement for, the Board should continue in its existing form, to ensure industry standards of member representation, compliance with Commonwealth superannuation laws and regulations, and independent consideration of the administration of all Super SA Schemes.</p>

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