



# Commonwealth Funds Management Limited Act 1990

No. 13 of 1991

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# **Commonwealth Funds Management Limited Act 1990**

**No. 13 of 1991**

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**An Act relating to the constitution of the Superannuation  
Fund Investment Trust as a public company providing  
investment services on a commercial basis to the public  
and private sector, and for related purposes**

*[Assented to 21 January 1991]*

**BE IT ENACTED** by the Queen, and the Senate and the House of  
Representatives of the Commonwealth of Australia, as follows:

## **PART 1—PRELIMINARY**

### **Short title**

**1.** This Act may be cited as the *Commonwealth Funds Management Limited Act 1990*.

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**Commencement**

2. (1) Part 1 and section 48 commence on the day on which this Act receives the Royal Assent.

(2) Subject to subsection (3), Parts 2, 4 and 5 commence on a day to be fixed by Proclamation.

(3) If the provisions referred to in subsection (2) do not commence under that subsection before 1 March 1991, they commence on that day.

(4) Subject to subsection (5), Parts 3, 6, 7, 8 (other than section 48), 9 (other than subsection 50 (2) and section 55) and 10 commence on a day to be fixed by Proclamation.

(5) If the provisions referred to in subsection (4) do not commence under that subsection before 1 July 1991, they commence on that day.

(6) Subsection 50 (2) and section 55 commence immediately after the commencement of Part 3.

**Interpretation**

3. (1) In this Act, unless the contrary intention appears:

“**articles**” means articles of association;

“**Australian Capital Territory**” includes the Jervis Bay Territory;

“**authorised person**” means:

(a) the Minister; or

(b) the holder of an authorising office;

“**authorising office**” means an office, in the Department, which is declared in writing by the Minister to be an authorising office for the purposes of this definition;

“**Company**” means the body corporate established, and known as the Superannuation Fund Investment Trust, under Part III of the *Superannuation Act 1976* as in force immediately before the commencement of this section;

“**employment**”, in relation to a staff member, means employment by, or service with, the Company;

“**group company**” means:

(a) the Company; or

(b) a wholly-owned subsidiary of the Company;

“**liability**” includes a debt or obligation;

“**memorandum**” means memorandum of association;

“**operate**”, in relation to a name, has the meaning given by section 4;

“**protected body**” means a group company that is a trading corporation, or a financial corporation, within the meaning of paragraph 51 (20) of the Constitution;

“**protected business name**” means:

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- (a) “CFM”; or
- (b) “Commonwealth Funds Management”; or
- (c) any other name prescribed for the purposes of this definition;

**“protected company name”** means any of the following names:

- (a) “Commonwealth Funds Management Limited”; or
- (b) any other name prescribed for the purposes of this definition;

**“protected name”** means a protected business name or a protected company name;

**“protection time”**, in relation to a protected name, means:

- (a) in the case of a name prescribed for the purposes of the definition of “protected business name” or “protected company name”—the time immediately before the name first became so prescribed; or
- (b) in any other case—the time immediately before the commencement of this section;

**“registered”**, in relation to a name, includes reserved;

**“share”**, in relation to a body corporate, means a share in the share capital of the body corporate;

**“staff member”** means a person who, immediately before the transition, is:

- (a) the Chief Executive Officer of the Company; or
- (b) an officer or employee of the Company;

**“subsidiary”** has the meaning given by subsection (2);

**“transition”** means the commencement of Part 3;

**“wholly-owned subsidiary”**, in relation to the Company, means a body corporate:

- (a) that is a subsidiary of the Company; and
- (b) none of whose members is a person other than:
  - (i) the Company; or
  - (ii) a body corporate that is, under any other application or applications of this definition, a wholly-owned subsidiary of the Company; or
  - (iii) a nominee of the Company or of a body of a kind referred to in subparagraph (ii); and
- (c) no share in which is beneficially owned by a person other than:
  - (i) the Company; or
  - (ii) a body of a kind referred to in subparagraph (b) (ii).

(2) For the purposes of this Act, the question whether a body corporate is a subsidiary of another body corporate shall be determined in the same way as the question whether a corporation is a subsidiary of another corporation is determined under the *Companies Act 1981*.

**Operating under a name**

4. A reference in this Act to a protected body operating in a State or Territory under a particular name includes a reference to the body engaging in conduct that, for the purposes of a law in force in the State or Territory, constitutes:

- (a) in any case—using the name in the State or Territory; or
- (b) if the name is the body's name—establishing a place of business or carrying on business under the name in the State or Territory; or
- (c) if paragraph (b) does not apply—carrying on business under the name in the State or Territory.

**Operation of Act**

5. (1) This Act applies both within and outside Australia.

(2) Without limiting the generality of subsection (1), this Act extends to all external Territories.

**Modification of Act—references to *Companies Act 1981***

6. If the *Companies Act 1981* ceases to operate because of the coming into force of another law that contains provisions corresponding to the provisions of that Act, the regulations may:

- (a) subject to paragraph (b), modify a provision of this Act that includes a reference to the *Companies Act 1981* by omitting that reference and substituting a reference to the other law or a provision of the other law; and
- (b) modify a provision of this Act that includes a reference to a provision of the *Companies Act 1981* by omitting that reference and substituting a reference to a corresponding provision of the other law.

**PART 2—CREATION OF CAPITAL STRUCTURE AND OTHER  
STEPS PRIOR TO CONVERSION OF COMPANY INTO  
PUBLIC COMPANY**

**Share capital of Company**

7. (1) As from the commencement of this Part, the Company is to have a share capital divided into shares of \$1 each.

(2) The amount of the share capital is equal to the amount paid to the Company under subsection 8 (2).

(3) As from the transition, this section has effect subject to the *Companies Act 1981*.

**Issue of shares in Company**

8. (1) In this section:

“**minimum share capital**” means the minimum amount that, under the *Companies Act 1981*, may be the share capital (made up of shares of

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\$1 each) of a company registered as a public company limited by shares.

(2) On the commencement of this Part, an amount equal to the minimum share capital is payable to the Company out of the Consolidated Revenue Fund, which is appropriated accordingly.

(3) As soon as it is practicable for the Company to do so, the Company must apply that amount in paying up, in full, shares in the Company.

(4) As soon as practicable after complying with subsection (3), the Company must issue the shares paid up under that subsection:

- (a) to the Commonwealth; or
- (b) to nominees of the Commonwealth;

as the Minister directs in writing.

(5) A person is not a member of the Company at any time before the transition merely because the person holds shares in the Company.

**New name of Company**

9. (1) On the day immediately before the transition, the Company's name is, by force of this subsection, changed to "Commonwealth Funds Management Limited".

(2) Subsection 65 (5) of the *Companies Act 1981* applies in relation to the change of name made by subsection (1) as if:

- (a) the Company were a company, within the meaning of that Act, when the change was made; and
- (b) the change were made under that Act.

(3) This section has effect in spite of anything in the *Companies Act 1981*, but nothing in this section prevents:

- (a) the Company from later changing its name under section 65 of that Act; or
- (b) the cancellation, under Division 2 of Part III of that Act, of the registration of a name.

**Company to apply to be registered as company etc.**

10. (1) The Company must, on the day immediately before the transition:

- (a) apply to the National Companies and Securities Commission under subsection 85 (1) of the *Companies Act 1981* to be registered as a company limited by shares within the meaning of that Act; and
- (b) apply to the National Companies and Securities Commission under subsection 55 (1) of the *Companies Act 1981* for the reservation of the name "Commonwealth Funds Management Limited"; and



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(c) lodge with the National Companies and Securities Commission a proposed memorandum, and proposed articles, for the Company.

(2) Subject to the regulations, the application mentioned in paragraph (1) (a) must be accompanied by the documents required by subsection 85 (4) of the *Companies Act 1981* to accompany such an application.

(3) The applications mentioned in paragraphs (1) (a) and (b) must be made to the National Companies and Securities Commission by delivering them to the office of the Corporate Affairs Commission for the Australian Capital Territory, and the documents mentioned in paragraph (1) (c) and subsection (2) must be lodged with the National Companies and Securities Commission by lodging them at that office.

(4) The Company is taken to be entitled:

- (a) to make the applications referred to in paragraphs (1) (a) and (b); and
- (b) to lodge the documents mentioned in paragraph (1) (c) and subsection (2).

(5) The National Companies and Securities Commission is taken:

- (a) to have been required to reserve the name “Commonwealth Funds Management Limited” under subsection 55 (2) of the *Companies Act 1981*; and
- (b) to have so reserved that name immediately after the making of the application mentioned in paragraph (1) (b).

### **PART 3—CONVERSION OF COMPANY INTO A PUBLIC COMPANY**

#### **Effect of Part—summary**

**11.** After the commencement of this Part:

- (a) the Company is a company registered under the *Companies Act 1981*; and
- (b) the Company’s name is “Commonwealth Funds Management Limited”; and
- (c) the Company is a public company, and a company limited by shares, within the meaning of that Act; and
- (d) that Act applies, subject to this Act, in relation to the Company.

#### **Company taken to be registered under Companies Act**

**12. (1)** The National Companies and Securities Commission is taken:

- (a) to have been required to grant the application mentioned in paragraph 10 (1) (a) and to register the Company as a company under subsection 86 (2) of the *Companies Act 1981*; and

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- (b) to have granted the application at the commencement of this Part; and
- (c) to have so registered the Company, at the commencement of this Part:
  - (i) by the name “Commonwealth Funds Management Limited”; and
  - (ii) in accordance with subsections 86 (3) and (4) of the *Companies Act 1981*, as a public company, and as a company limited by shares, within the meaning of that Act; and
- (d) to have registered the name “Commonwealth Funds Management Limited” in relation to the Company at the commencement of this Part, under subsection 55 (4) of the *Companies Act 1981*.

(2) The date of commencement of the Company’s registration as a company under Division 4 of Part III of the *Companies Act 1981* is taken to be the day of commencement of this Part.

(3) For the purposes of Division 4 of Part III of the *Companies Act 1981*, the Company is taken to have been on the day before the commencement of this Part, and to be at that commencement, a corporation within the meaning of that Act.

#### **Memorandum and Articles of Company**

13. (1) As from the commencement of this Part, the proposed memorandum, and the proposed articles, lodged under paragraph 10 (1) (c):

- (a) are respectively the memorandum, and the articles, of the Company; and
- (b) bind the Company and its members accordingly.

(2) As from the commencement of this Part, the *Companies Act 1981* applies in relation to the Company’s memorandum and articles as if they had been registered as such under that Act.

#### **Membership of Company**

14. (1) A person who immediately before the commencement of this Part was, or was acting as, a member of the Company, ceases at that commencement to be, or to act as, such a member.

(2) Each person who holds shares in the Company at the commencement of this Part becomes, by force of this subsection, a member of the Company at that commencement.

(3) A person referred to in subsection (2) is, as a member of the Company, entitled to the same rights, privileges and benefits, and subject to the same duties, liabilities and obligations, as if the person

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had become a member of the Company under its memorandum and articles.

**Application of certain provisions of Companies Act**

15. (1) Where all the shares in the Company are beneficially owned by the Commonwealth, subsection 82 (1) and paragraph 364 (1) (d) of the *Companies Act 1981* do not apply in relation to the Company and subsection 244 (6) of that Act applies as if:

- (a) the Commonwealth were a holding company, within the meaning of that subsection, of the Company; and
- (b) the Commonwealth held the whole of the issued shares in the Company; and
- (c) the Minister were a representative of the Commonwealth authorised under subsection 244 (3) of that Act.

(2) Paragraph 86 (6) (b) and subsections 87 (4) and 90 (5) of the *Companies Act 1981* do not apply in relation to the Company.

(3) For the purposes of section 360 of the *Companies Act 1981*, a person is not a past member of the Company merely because he or she was a member of the Company, or acted as a member of the Company, before the commencement of this Part.

**Accounting records**

16. For the purposes of the *Companies Act 1981*, accounts and records kept, before the commencement of this section, under section 44 of the *Superannuation Act 1976* are taken to be accounting records kept by the Company under a provision of a previous law of the Australian Capital Territory, being a provision corresponding to section 267 of the *Companies Act 1981*.

**Accounts**

17. (1) This section has effect for the purposes of:

- (a) the *Companies Act 1981*; and
- (b) the *Companies (Transitional Provisions) Act 1981* as it applies in relation to, and in relation to persons and matters associated with, the Company because of subsection 90 (6) of the *Companies Act 1981*.

(2) A report and financial statements that before the commencement of this section:

- (a) were prepared under section 161 of the *Superannuation Act 1976* in relation to a period; and
- (b) were furnished to the Minister under subsection 162 (1) of that Act on a particular day;

are taken to be a profit and loss account of the Company that was:

- (c) made out in relation to that period; and

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- (d) laid before the Company at an annual general meeting of the Company held on that day.
- (3) A report and financial statements:
  - (a) prepared under section 44 in relation to the concluding period (within the meaning of that section); and
  - (b) given to the Minister under that section on a particular day;are taken to be a profit and loss account of the Company that was:
  - (c) made out in relation to that period; and
  - (d) laid before the Company at an annual general meeting of the Company held on that day.

**Operation of section 25B of Acts Interpretation Act**

18. Nothing in this Act or in the *Companies Act 1981* affects, or is affected by, section 25B of the *Acts Interpretation Act 1901* as that section applies in relation to the Company.

**PART 4—USE OF CERTAIN NAMES**

**Protected body may operate under protected company name**

19. In spite of anything to the contrary in any law of a State or Territory, a protected body whose name is a protected company name may operate under the name in that State or Territory even if the name is not registered in relation to the body under that law or any other law of the State or Territory.

**Protected body may operate under protected business name**

20. (1) In spite of anything to the contrary in any law of a State or Territory, a protected body may operate under a protected business name in that State or Territory even if the name is not registered in relation to the body under that law or any other law of the State or Territory.

(2) Nothing in this section permits more than one body to operate under the same name at the same time in the same State or Territory.

**Other persons not to use protected names**

21. (1) Except with the consent in writing of the Company, a person other than a protected body must not:

- (a) use in relation to a business, trade, profession or occupation;  
or
- (b) use as the name, or as part of the name, of any firm, body corporate, institution, premises, vehicle, ship or craft (including aircraft); or
- (c) apply, as a trade mark or otherwise, to goods imported, manufactured, produced, sold, offered for sale or let for hire;  
or

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(d) use in relation to:

- (i) goods or services; or
- (ii) the promotion, by any means, of the supply or use of goods or services;

a protected name, or a name so closely resembling a protected name as to be likely to be mistaken for it.

Penalty: \$3,000.

(2) Nothing in subsection (1) limits anything else in that subsection.

### **Exceptions for pre-existing rights**

22. (1) Nothing in section 21, so far as it applies in relation to a particular protected name, affects rights conferred by law on a person in relation to:

(a) a trade mark that is registered under the *Trade Marks Act 1955*;  
or

(b) a design that is registered under the *Designs Act 1906*;  
and was so registered at the protection time in relation to the name.

(2) Nothing in section 21, so far as it applies in relation to a particular protected name, affects the use, or rights conferred by law relating to the use, of a name (in this subsection called the “**relevant name**”) by a person in a particular manner if, at the protection time in relation to the protected name, the person:

(a) was using the relevant name in good faith in that manner; or

(b) would have been entitled to prevent another person from passing off, by means of the use of the relevant name or a similar name, goods or services as the goods or services of the first-mentioned person.

### **Use of other names by protected bodies**

23. This Part does not prevent a protected body from operating in a State or Territory under a name other than a protected name.

### **Effect on State and Territory laws**

24. This Part does not prevent a protected body from registering a name under a law of a State or Territory.

## **PART 5—TAXATION MATTERS**

### **Interpretation**

25. In this Part:

“**exempt matter**” means:

(a) an issue of shares under subsection 8 (4); or

(b) the change of name made by subsection 9 (1); or

(c) the reservation of name made by subsection 10 (5); or

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- (d) the Company's registration as a public company by force of this Act; or
- (e) a transfer of assets or liabilities under section 36; or
- (f) the operation of this Act; or
- (g) giving effect to a matter referred to in another paragraph of this definition or otherwise giving effect to this Act;

**“tax”** includes:

- (a) sales tax; and
- (b) tax imposed by the *Debits Tax Act 1982*; and
- (c) fees payable under the *Companies (Fees) Act 1981*; and
- (d) stamp duty; and
- (e) any other tax, fee, duty, levy or charge;

but does not include income tax imposed as such by a law of the Commonwealth.

**Exemptions relating to exempt matters**

**26.** Tax under a law of the Commonwealth or a State or Territory is not payable in relation to:

- (a) an exempt matter; or
- (b) anything done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, an exempt matter.

**Authorised person may certify in relation to exemptions**

**27. (1)** An authorised person may, by signed writing, certify that:

- (a) a specified matter or thing is an exempt matter; or
- (b) a specified thing was done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, a specified exempt matter.

**(2)** For all purposes and in all proceedings, a certificate under subsection (1) is conclusive evidence of the matters certified unless the contrary is established.

**Company taken to have had share capital for purposes of Income Tax Assessment Act**

**28.** For the purposes of the *Income Tax Assessment Act 1936*, the Company is taken to have had, at all times before it complied with subsection 8 (4) of this Act, a share capital all the issued shares in which were, at all such times, beneficially owned by the Commonwealth.

**PART 6—STAFF MATTERS**

**Employment of staff members continues after transition**

29. Subject to this Part, each staff member continues, at and after the transition, to be employed by the Company on the terms and conditions on which he or she was employed by the Company immediately before the transition.

**Act not to affect certain matters relating to staff members**

30. (1) This section has effect for the purposes of the application, at any time at or after the transition, of a law, award, determination or agreement in relation to the employment of a staff member.

(2) Neither his or her contract of employment, nor his or her period of employment, is taken to have been broken by the operation of this Act.

(3) Without limiting section 29 or subsection (2) of this section, this Act does not affect any accrued rights that the staff member had immediately before the transition in relation to any kind of leave.

(4) Where:

(a) if the staff member had, immediately before the transition, ceased to be employed by the Company, it would have been necessary to take into account a period during which the staff member was employed by the Company or any other person to determine:

(i) an amount payable to the staff member; or

(ii) a benefit to which the staff member would have been entitled;

because of his or her so ceasing; and

(b) but for this subsection, some or all of that period would not have to be taken into account as a period during which the staff member was employed by the Company;

the Company must treat the whole of the first-mentioned period as a period during which the staff member was employed by it.

**Effect of sections 29 and 30**

31. Sections 29 and 30 are enacted only for the avoidance of doubt and, in particular, do not limit subsection 65 (5) or 87 (2) of the *Companies Act 1981*.

**Variation of terms and conditions of employment**

32. (1) Nothing in this Part prevents the terms and conditions of a staff member's employment after the transition from being varied:

(a) in accordance with those terms and conditions; or

(b) by or under a law, award, determination or agreement.

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(2) In this section:

“vary”, in relation to terms and conditions, includes vary by way of:

- (a) omitting any of those terms and conditions; or
- (b) adding to those terms and conditions; or
- (c) substituting new terms or conditions for any of those terms and conditions.

**Application of Part IV of Public Service Act**

33. For the purposes of the application of Part IV of the *Public Service Act 1922* in relation to a staff member, the Company is taken to be, at and after the transition, a Commonwealth authority for the purposes of that Part.

**Preservation of rights of entry of certain staff members into the Australian Public Service**

34. Where, at the commencement of this section, a staff member is, under section 44B of the *Superannuation Act 1976*, entitled, in the circumstances specified in that section, to apply for appointment to any vacant office in a Department, then, in spite of the repeal (by subsection 55 (1) of this Act) of that section:

- (a) the staff member retains that entitlement for so long after that commencement as he or she continues to be employed by the Company; and
- (b) if, upon application made for appointment to such an office, the staff member is appointed to that office, that section applies in relation to the appointment as if this Act had not been enacted.

**PART 7—TRANSFER OF ASSETS AND LIABILITIES**

**Interpretation**

35. In this Part:

“Board” means the Commonwealth Superannuation Board of Trustees No. 2 established under section 27A of the *Superannuation Act*;

“Fund” means the Commonwealth Superannuation Fund No. 2 established under section 40 of the *Superannuation Act*;

“investment assets of the Fund” means any assets (other than assets referred to in paragraph 36 (a)) arising out of, or otherwise connected with, the exercise by the Company of its powers under the *Superannuation Act* to invest the money of the Fund;

“Superannuation Act” means the *Superannuation Act 1976*.

**Transfer of assets etc.**

36. On the commencement of this Part:

- (a) any assets bought with the money of the Fund for the purposes



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of enabling the Company to perform its duties under paragraph 29A (2) (d) of the Superannuation Act, being assets held by the Company immediately before that commencement, become assets of the Company; and

- (b) any liability relating to any assets referred to in paragraph (a) and existing immediately before that commencement becomes a liability of the Company; and
- (c) any investment assets of the Fund held, immediately before that commencement, by the Company in its capacity as manager of the Fund cease to be so held by the Company and are held by the Board as manager of the Fund; and
- (d) the Board becomes responsible for the repayment of any liability relating to assets referred to in paragraph (c) and existing immediately before that commencement.

**Payment by Company**

**37. (1)** As soon as practicable after the commencement of this Part, the Company must pay to the Board an amount equal to the difference between:

- (a) the value, as determined by the Minister, of the assets that become assets of the Company under paragraph 36 (a); and
- (b) the amount, as determined by the Minister, of the liabilities that become liabilities of the Company under paragraph 36 (b).

**(2)** Any money paid to the Board under subsection (1) is money standing to the credit of the Fund and is to be dealt with by the Board accordingly.

**Payment to Company—long service leave credits of staff members**

**38. (1)** As soon as practicable after the commencement of this Part, the Minister must determine in writing the amount that should be paid out of the Fund in respect of the long service leave credits of staff members immediately before the transition.

**(2)** In making a determination under subsection (1), the Minister is to have regard to:

- (a) the total of the amounts that would be payable to staff members in respect of long service leave if, immediately before the transition, each staff member were eligible to be granted, and were granted, long service leave for a period equal to the period of his or her long service leave credit at that time; and
- (b) any other relevant consideration.

**(3)** A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**(4)** As soon as it is practicable to do so, the Board must pay to the Company out of money standing to the credit of the Fund the amount determined by the Minister under subsection (1).

## **PART 8—MISCELLANEOUS**

### **Company not a public authority etc.**

**39.** The Company, as it exists after the transition, is taken for the purposes of a law of the Commonwealth or a State or Territory:

- (a) not to have been incorporated or established for a public purpose or for a purpose of the Commonwealth; and
- (b) not to be a public authority or an instrumentality or agency of the Crown;

except so far as express provision is made by a law of the Commonwealth, State or Territory, as the case may be.

### **Judicial notice of Company's seal**

**40. (1)** All courts, judges and persons acting judicially must take judicial notice of the imprint of the seal of the Company appearing on a document and are to presume that it was duly affixed.

**(2)** Subsection (1) applies only in relation to an imprint that was affixed, or appears to have been affixed, before the transition.

### **Compensation for acquisition of property**

**41. (1)** Where, but for this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms, there is payable to the person by the Company such reasonable amount of compensation as is agreed on between the person and the Company or, failing agreement, as is determined by a court of competent jurisdiction.

**(2)** Any damages or compensation recovered or other remedy given in proceedings that are instituted otherwise than under this section must be taken into account in assessing compensation payable in proceedings that are instituted under this section and that arise out of the same event or transaction.

**(3)** In this section:

“**acquisition of property**” and “**just terms**” have the same meanings as in paragraph 51 (31) of the Constitution.

### **Lands Acquisition Act**

**42. (1)** The *Lands Acquisition Act 1989* does not apply in relation to the acquisition of land, or an interest in land, by the Company.

**(2)** In subsection (1):

“**interest**” in relation to land, means:

- (a) a legal or equitable estate or interest in the land; or
- (b) a right, power or privilege over, or in relation to, the land.

**Additional powers and functions under State or Territory laws**

**43. (1)** It is the intention of the Parliament that the Company should have such additional powers and functions as are conferred on it by or under a law of a State or Territory.

(2) Subsection (1) has effect subject to the regulations.

**Report relating to period immediately preceding transition**

**44. (1)** In this section:

**“concluding period”** means the period commencing on 1 July 1990 and ending immediately before the transition;

**“Fund”** has the same meaning as in Part 7;

**“relevant industrial organisation”** means an organisation:

- (a) a substantial number of whose members are eligible employees within the meaning of the *Superannuation Act 1976*; and
- (b) whose principal purpose is to protect and promote the interest of its members in matters concerning their employment.

(2) The Company must, as soon as practicable after 30 June 1991, prepare and give to the Minister:

- (a) a report on its management of the Fund, and the provision of other services under the *Superannuation Act 1976*, during the concluding period; and
- (b) financial statements in respect of that period.

(3) The financial statements referred to in paragraph (2) (b) must be in a form approved by the Minister.

(4) Before furnishing the financial statements to the Minister, the Company must submit them to the Auditor-General, who must report to the Minister:

- (a) whether the statements are based on proper accounts and records; and
- (b) whether the statements are in agreement with the accounts and records and show fairly the financial transactions and the state of the Fund; and
- (c) whether the receipt of money into the Fund, and the payment of money out of the Fund and the investment of money standing to the credit of the Fund, during the concluding period have been in accordance with the *Superannuation Act 1976*; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported.

(5) The Commissioner for Superannuation must furnish to the Company such information as he or she possesses and is necessary for the purpose of enabling the Company to prepare the financial statements referred to in paragraph (2) (b) in so far as they relate to the management of the Fund by the Company.

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(6) If the Company does not give, under subsection (2), a report and financial statements in respect of the concluding period before the end of 31 December 1991, the Company must, not later than 14 days after that date, give to the Minister an interim report and interim financial statements in respect of that period.

(7) The financial statements given to the Minister under subsection (6) must be in the form approved by the Minister for the purposes of paragraph (2) (b) but need not be accompanied by a report of the Auditor-General under subsection (4).

(8) Where the Company gives a report and financial statements to the Minister under subsection (2) or (6), the Minister must:

- (a) cause a copy of the report and a copy of the financial statements to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister; and
- (b) give a copy of a report and a copy of the financial statements to the Australian Council of Trade Unions and, upon request made by a relevant industrial organisation, to the relevant industrial organisation.

(9) A report given by the Company in respect of the concluding period must include particulars of:

- (a) any statement of policy given during that year by the Minister under subsection 29A (6) of the *Superannuation Act 1976*; and
- (b) the consideration given by the Company to that policy; and
- (c) the action (if any) taken by the Company as a result of that consideration.

#### **Annual return**

45. (1) Where the Company lodges an annual return under section 263 of the *Companies Act 1981* or a corresponding provision of another law, the Company must, as soon as practicable after doing so, give to the Minister a copy of the return together with a copy of each document (if any) lodged with the return.

(2) The Minister must cause a copy of the return and of each document (if any) to be laid before each House of the Parliament within 15 sitting days of that House after their receipt.

#### **Guarantee by the Commonwealth**

46. (1) The Commonwealth guarantees:

- (a) the repayment by the Company of the money initially borrowed by the Company for the purpose of carrying out any of its objects; and
- (b) the payment by the Company of any interest (including any interest on that interest) due on that money.

(2) In subsection (1):

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**“money initially borrowed by the Company” means:**

- (a) if paragraph (b) does not apply—money borrowed by the Company after the commencement of this section and before 1 July 1995; or
- (b) if the total amount of money borrowed by the Company after the commencement of this section and before 1 July 1995 exceeds \$20,000,000—the first \$20,000,000 borrowed by the Company.

**Shares of Company not to be transferred**

47. A person holding shares in the Company may not transfer any of those shares to a person other than:

- (a) the Commonwealth; or
- (b) a body corporate established for a public purpose by a law of the Commonwealth; or
- (c) a Minister.

**Regulations**

48. (1) The Governor-General may make regulations not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A name is not to be prescribed for the purposes of the definition of “protected business name” or “protected company name” in section 3 later than 6 months after the day on which Part 3 commences.

**PART 9—AMENDMENTS OF THE SUPERANNUATION  
ACT 1976**

**Principal Act**

49. In this Part, “Principal Act” means the *Superannuation Act 1976*<sup>1</sup>.

**Interpretation**

50. (1) Section 3 of the Principal Act is amended:

- (a) by inserting in the definition of “Board” in subsection (1) “of Trustees No. 2” after “Board” (second occurring);
- (b) by inserting in subsection (1) the following definition:  
“ ‘disallowable instrument’ means a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

(2) Section 3 of the Principal Act is amended by omitting from subsection (1) the definitions of “Chairperson”, “Chief Executive Officer”, “Trust” and “Investment Trust”.

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**Heading to Part IIA**

51. The heading to Part IIA of the Principal Act is amended by adding at the end “OF TRUSTEES NO. 2”.

**Establishment of Board**

52. Section 27A of the Principal Act is amended by adding at the end “of Trustees No. 2”.

**Functions**

53. Section 27C of the Principal Act is amended:

(a) by inserting immediately before paragraph (a) the following paragraph:

“(aa) to manage and invest the Fund so as to maximise the return earned on the Fund, having regard to:

(i) the need to make provision for payments out of the Fund under this Act; and

(ii) the need for equity among eligible employees; and

(iii) the need to exercise reasonable care and prudence in order to maintain the integrity of the Fund;”;

(b) by adding at the end the following subsections:

“(2) It is the duty of the Board, in the exercise of its functions under paragraph (1) (aa):

(a) to establish from time to time:

(i) policies for the investment of money standing to the credit of the Fund; and

(ii) the strategies to be adopted to achieve those policies; and

(b) to ensure that the decisions and operations of the Board are directed towards achieving the objective referred to in paragraph (1) (aa); and

(c) to ensure that the Board has, or has access to, the skills, facilities and resources required to achieve the objective referred to in paragraph (1) (aa); and

(d) to take reasonable steps, consistently with the objective referred to in paragraph (1) (aa) and subject to subsection (4), to inform eligible employees about the management and investment of the Fund; and

(e) to liaise with relevant industrial organisations concerning the interests of eligible employees and, subject to subsection (4), to inform those organisations about the management and investment of the Fund; and

(f) to ensure that the Board conducts its operations in an efficient manner; and

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(g) to ensure that the Board complies with its obligations under this Act and its other legal obligations.

“(3) Without limiting the generality of paragraph (2) (a), the Board must develop and maintain plans and procedures for the implementation of its investment strategies.

“(4) The Board must, in performing its duties under paragraphs (2) (d) and (e), have regard to the need to protect information the disclosure of which could adversely affect the financial position or the commercial or other operations of the Board.

“(5) Without limiting the generality of paragraph (2) (d), the Board must, at least once in each financial year, publish to eligible employees a summary that contains information of the kind referred to in that paragraph.

“(6) If the Minister at any time gives to the Chairperson of the Board a statement of the policy of the Commonwealth Government on any matter that is relevant to the performance of the functions of the Board, together with a request that the Board consider that policy in the performance of its functions, the Board must ensure that consideration is given to that policy.

“(7) Where the Minister gives a statement to the Chairperson of the Board under subsection (6), the Minister must cause a copy of the statement to be laid before each House of the Parliament within 15 sitting days of that House after the giving of the statement to the Chairperson.

“(8) The reference in paragraph (2) (e) to relevant industrial organisations is a reference to relevant industrial organisations the objectives of which extend to representing the interests of their members in relation to the terms and conditions of employment of those members.”.

### **Heading to Part III**

54. The heading to Part III of the Principal Act is omitted and the following heading is substituted:

**“PART III—THE COMMONWEALTH SUPERANNUATION  
FUND NO. 2”.**

### **Repeal of certain provisions of Part III**

55. (1) Divisions 1, 2A, 2C and 3 of Part III of the Principal Act are repealed.

(2) The headings to Divisions 2 and 2B of Part III of the Principal Act are omitted.

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**Fund to be managed by Board**

56. Section 41 of the Principal Act is amended:

- (a) by omitting subsections (3) and (4) and substituting the following subsection:

“(3) The Board may not borrow money otherwise than in accordance with standards prescribed by regulations under the *Occupational Superannuation Standards Act 1987*.”;

- (b) by omitting from subsection (8) “Trust’s” and “29A” and substituting “Board’s” and “27C” respectively.

**Investment of Fund**

57. Section 42 of the Principal Act is amended:

- (a) by inserting after subsection (2) the following subsections:

“(3) Subject to subsection (4), the Board may invest the money only through an investment manager or managers.

“(4) In respect of the period commencing on the commencement of this subsection and ending on 30 June 1995, Commonwealth Funds Management Limited is, by force of this subsection, the investment manager of any money of the Fund that the Board is required to invest and, during that period, the Board may not engage any other investment manager to invest any money of the Fund.

“(4A) The Board must ensure that Commonwealth Funds Management Limited and any investment manager engaged by the Board:

- (a) operates within the investment powers of the Board and the investment strategy and policy determined for the time being by the Board; and
- (b) reports to the Board on the state of the Board’s investments and the investment market at such times and in such manner as the Board determines.”;
- (b) by inserting in subsection (5) “(other than the *Income Tax Assessment Act 1936*) or a law of” after “Commonwealth”;
- (c) by inserting in subsection (5A) “(other than the *Income Tax Assessment Act 1936*)” after “Commonwealth” (first occurring).

**Repeal of section 43**

58. Section 43 of the Principal Act is repealed.

**Accounts and records**

59. Section 44 of the Principal Act is amended by omitting from subsection (1) “its operations” and substituting “the Fund”.



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**Annual report of Board**

**60. (1)** Section 161 of the Principal Act is amended:

(a) by omitting subsection (1) and substituting the following subsections:

“(1) The Board must, as soon as practicable after the end of each financial year, prepare and give to the Minister:

(a) a report on the performance of its functions during that year; and

(b) financial statements in respect of its management of the Fund during that year.

“(1A) The financial statements referred to in paragraph (1) (b) must be in a form approved by the Minister.”;

(b) by omitting from subsection (2) “Commissioner” and substituting “Minister”;

(c) by omitting from subsection (3) all words after “(1)”;

(d) by omitting from subsection (4) “Commissioner” and substituting “Minister”;

(e) by omitting from subsection (7) “29A (6)” and substituting “27C (6)”.

(2) If the transition occurs on 1 July 1991, section 161 of the Principal Act has effect in relation to the financial year ending on 30 June 1991 as if:

(a) paragraph (1) (b) and subsection (5) were omitted; and

(b) subsections (4) and (6) did not include any reference to financial statements.

**61.** Section 161A of the Principal Act is repealed and the following section is substituted:

**Annual report of Commissioner**

“161A. The Commissioner must, as soon as practicable after the end of each financial year, prepare and give to the Minister a report on the general administration and operation of this Act (other than subsection 7 (2) and Parts III and IVA) and of the superseded Act during that year.”.

**Annual reports etc. to be tabled in Parliament**

**62.** Section 162 of the Principal Act is amended:

(a) by omitting subsection (1);

(b) by inserting in subsection (2) “under section 161A” after “report” (first occurring);

(c) by omitting from subsection (2) “Trust to the Commissioner in pursuance of” and substituting “Board under”.

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**Minister may request the supply of information**

63. Section 163 of the Principal Act is amended by omitting subsection (2).

**Further amendments**

64. The Principal Act is further amended by omitting from the following provisions, namely, subsections 41 (1), (2) and (7), 42 (1), (2), (5) and (5A), 44 (1), (2), (2A) and (3), 160 (1) and 161 (2), (3), (4), (6) and (7), section 189, section 237 (definitions of “investment assets of the Fund” and “investment liabilities of the Fund”), sections 240, 248 and 249, “Trust” (wherever occurring) and substituting “Board”.

**PART 10—AMENDMENTS OF THE SUPERANNUATION  
ACT 1990**

**Principal Act**

65. In this Part, “Principal Act” means the *Superannuation Act 1990*.

**Interpretation**

66. Section 3 of the Principal Act is amended by omitting the definition of “Trust”.

67. After section 3 of the Principal Act the following section is inserted in Part 1:

**Application of Act**

“3A. This Act applies both within and outside Australia.”.

**Repeal of Part 8**

68. Part 8 of the Principal Act is repealed.

69. Before section 34 of the Principal Act the following section is inserted in Part 9:

**Investment manager**

“33. (1) In respect of the period commencing on the commencement of this section and ending on 30 June 1995, Commonwealth Funds Management Limited is, by force of this section, the investment manager of any money standing from time to time to the credit of the Fund that is, under the Trust Deed, available for investment.

“(2) During that period, the Board may not engage any other investment manager to invest any money of the Fund.”.

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**NOTES**

1. No. 31, 1976, as amended. For previous amendments, see No. 51, 1976; No. 80, 1977; Nos. 17, 134, 169 and 170, 1978; Nos. 52 and 155, 1979; No. 177, 1980; No. 92, 1981; No. 92, 1983; Nos. 63 and 165, 1984; Nos. 80, 93, 151 and 153, 1986; No. 141, 1987; Nos. 38 and 130, 1988; Nos. 71, 97 and 125, 1989; and No. 40, 1990.
2. No. 38, 1990.

*[Minister's second reading speech made in—  
House of Representatives on 17 October 1990  
Senate on 14 November 1990]*