

Serial 195  
Superannuation Amendment Bill 2012  
Ms Lawrie

A Bill for an Act to amend the *Superannuation Act* and make consequential amendments to other laws

NORTHERN TERRITORY OF AUSTRALIA  
SUPERANNUATION AMENDMENT ACT 2012

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Act No. [ ] of 2012

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# NORTHERN TERRITORY OF AUSTRALIA

Act No. [ ] of 2012

An Act to amend the *Superannuation Act* and make consequential amendments to other laws

[Assented to [ ] 2012]  
[Second reading [ ] 2012]

The Legislative Assembly of the Northern Territory enacts as follows:

## Part 1 Preliminary matters

### 1 Short title

This Act may be cited as the *Superannuation Amendment Act 2012*.

## Part 2 Amendment of Superannuation Act

### 2 Act amended

This Part amends the *Superannuation Act*.

### 3 Section 3 amended

- (1) Section 3(1), definitions *Board* and *Chair*  
*omit*

## (2) Section 3(1)

*insert (in alphabetical order)*

***appointed Board member*** means a Trustee Board member appointed under section 8C(1)(b).

***Under Treasurer*** means the Chief Executive Officer of the Agency administering the *Financial Management Act*.

(3) Section 3(1), definition ***Trustee Board***

*omit*

established by section 11

*insert*

continued by section 8A

**4 Part 2, Division 1A inserted**

After section 8

*insert*

**Division 1A Superannuation Trustee Board****Subdivision 1 Establishment, functions and powers of Trustee Board****8A Superannuation Trustee Board**

- (1) The Superannuation Trustee Board, established by section 11 as in force before the commencement of section 4 of the *Superannuation Amendment Act 2012*, is continued.
- (2) The Trustee Board:
  - (a) is a body corporate; and
  - (b) has a common seal; and
  - (c) may acquire, hold and dispose of real and personal property and sue and be sued.
- (3) All courts, judges and persons acting judicially must take judicial notice of the common seal of the Trustee Board affixed to a document and assume it was duly affixed.

**8B Functions and powers of Trustee Board**

- (1) The functions of the Trustee Board are as follows:
  - (a) to hold the Fund as trustee for the members of the NTGPAS Scheme;
  - (b) to direct the Commissioner in managing and investing the Fund on the Board's behalf;
  - (c) to exercise powers and perform functions under the *Legislative Assembly Members' Superannuation Fund Act*;
  - (d) with the approval of the Minister, to exercise powers and perform functions in relation to any other superannuation fund or scheme;
  - (e) to exercise any other functions conferred on the Trustee Board under this or any other Act.
- (2) The Trustee Board has the powers necessary to perform its functions.
- (3) Without limiting the directions that may be given under subsection (1)(b), the Trustee Board may direct the Commissioner to do either or both of the following:
  - (a) to engage managers, financial advisers, legal advisers, actuaries and other experts in relation to the management or investment of the Fund;
  - (b) subject to the regulations, to invest the Fund in the investments or types of investments as the Trustee Board thinks fit.
- (4) In giving a direction to the Commissioner under subsection (1)(b), the Trustee Board must have regard to the need:
  - (a) to make provisions for payments under the NTGPAS Scheme out of the Fund; and
  - (b) for equity among eligible employees; and
  - (c) to ensure the sound management of the assets of the Fund; and
  - (d) to exercise reasonable care and prudence in order to maintain the integrity of the Fund; and

- (e) to determine, authorise or approve policies, programs and strategies for the investment of the Fund that are consistent with the need to ensure an adequate spread of investments and provide for investor choice.

## **Subdivision 2 Membership of Trustee Board**

### **8C Membership of Trustee Board**

- (1) The Trustee Board consists of:
  - (a) the Under Treasurer; and
  - (b) the following appointed by the Minister:
    - (i) a chairperson;
    - (ii) a deputy chairperson;
    - (iii) 6 persons nominated as mentioned in subsection (3).
- (2) The chairperson and deputy chairperson are to be selected by the Minister after consultation with Unions NT.
- (3) Of the 6 persons appointed under subsection (1)(b)(iii):
  - (a) 2 must be nominated by the Under Treasurer; and
  - (b) 2 must be:
    - (i) members of a union the membership of which is predominantly persons working in the public sector; and
    - (ii) nominated by Unions NT; and
  - (c) one must be nominated by the Commissioner of Police; and
  - (d) one must be:
    - (i) a member of the Police Association; and
    - (ii) nominated by the Police Association.
- (4) A person is not eligible to be appointed under subsection (1)(b) unless he or she is a resident of the Territory.

**8D Review of Trustee Board membership structure**

- (1) The Minister must carry out a review of section 8C:
  - (a) not more than 5 years after the commencement of the *Superannuation Amendment Act 2012*; and
  - (b) then at intervals of not more than 3 years.
- (2) The purpose of the review is to determine whether the constitution of the Trustee Board remains appropriate having regard to the desirability of maintaining:
  - (a) an appropriate balance of representation on the Trustee Board for members of each of the schemes having regard to:
    - (i) the number of members contributing to, or receiving benefits from, each scheme; and
    - (ii) the value of the assets under the management of the Trustee Board for the members of each scheme; and
  - (b) equal representation on the Trustee Board for members of the schemes and the employers of those members.
- (3) In carrying out the review, the Minister must:
  - (a) obtain, and take into account, the advice of an actuary on the matters mentioned in subsection (2); and
  - (b) consult with each of the following:
    - (i) the Under Treasurer;
    - (ii) Unions NT;
    - (iii) the Commissioner of Police;
    - (iv) the Police Association.
- (4) If, after carrying out the review, the Minister considers the constitution of the Trustee Board is no longer appropriate, the Minister must take all reasonable steps to cause section 8C to be amended as soon as practicable to ensure appropriate representation on the Trustee Board.
- (5) In this section:

***scheme*** means any of the following:

  - (a) NTGPAS Scheme;



- (b) any other superannuation scheme in relation to which the Trustee Board exercises powers or performs functions.

#### **8E Failure to nominate**

- (1) This section applies if:
  - (a) the Commissioner, in writing, requests a nominator to nominate a person for appointment to fill a vacancy on the Trustee Board; and
  - (b) the nominator does not, within 28 days after the request is made, nominate a person who:
    - (i) is a resident of the Territory; and
    - (ii) for a nomination under section 8C(3)(b) or (d) – is eligible for nomination under section 8C(3)(b)(i) or (d)(i).
- (2) The Minister may appoint a person selected by the Minister to fill the vacancy.
- (3) A person appointed under subsection (2):
  - (a) must be a resident of the Territory; but
  - (b) need not be eligible for nomination under section 8C(3)(b)(i) or (d)(i).
- (4) A person appointed under subsection (2) is taken to have been nominated by the nominator under section 8C(3)(b), (c) or (d) (as appropriate).
- (5) In this section:  
*nominator* means any of the following:
  - (a) Unions NT;
  - (b) the Commissioner of Police;
  - (c) the Police Association.

#### **8F Term of office**

- (1) An appointed Board member holds office for 5 years, unless before then he or she vacates office under section 8J.
- (2) An appointed Board member may be reappointed.

**8G Leave of absence**

- (1) The Minister may grant the chairperson or deputy chairperson of the Trustee Board leave of absence on conditions determined by the Minister.
- (2) The Trustee Board may grant any other appointed Board member leave of absence on conditions determined by the Board.

**8H Deputy chairperson**

The deputy chairperson of the Trustee Board must act in the office of chairperson if:

- (a) the chairperson is unable to exercise the powers or perform the functions of the office; or
- (b) the office of chairperson is vacant.

**8J Vacation of office by appointed Board member**

A person ceases to hold office as an appointed Board member if either of the following occurs:

- (a) the person resigns by written notice given to the Minister;
- (b) the person's appointment is terminated by the Minister under section 8K.

**8K Termination of appointment of appointed Board member**

- (1) The Minister may terminate the appointment of a person as an appointed Board member if satisfied that:
  - (a) the person has engaged in misbehaviour that makes it inappropriate for the person to remain a Board member; or
  - (b) by reason of physical or mental incapacity the person is unable to properly perform the duties of a member of the Board; or
  - (c) the person has failed to comply with section 8S.
- (2) The Minister must terminate the appointment of a person as an appointed Board member if any of the following applies:
  - (a) the person is absent from 3 consecutive Board meetings without leave given under section 8G;
  - (b) the person ceases to be a resident of the Territory;

- (c) the person is convicted of an offence against a law of the Territory, the Commonwealth, a State or another Territory, and is sentenced to imprisonment for not less than 3 months;
  - (d) the person:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with creditors or makes an assignment of the person's remuneration for their benefit.
- (3) A termination must be made in writing given to the person.

### **Subdivision 3 Procedures of Trustee Board**

#### **8L Procedure of Trustee Board**

Subject to this Act, the Trustee Board is to determine its own procedures.

#### **8M Meetings of Trustee Board**

- (1) The chairperson of the Trustee Board may convene a meeting of the Trustee Board at any time.
- (2) The chairperson must convene a meeting of the Trustee Board when requested by another Trustee Board member to do so.
- (3) A meeting convened under subsection (2) must be held on, or as soon as practicable after, the meeting date requested by the Trustee Board member (which must be at least 7 days after the request is made).

#### **8N Quorum**

The quorum for a meeting of the Trustee Board is 5 Trustee Board members of whom:

- (a) one must be the chairperson or deputy chairperson; and
- (b) one must have been nominated under section 8C(3)(a) or (c); and
- (c) one must have been nominated under section 8C(3)(b) or (d).

**8P Presiding at meeting of Trustee Board**

A meeting of the Trustee Board is to be presided over by the chairperson or, in his or her absence, the deputy chairperson.

**8Q Voting at meeting of Trustee Board**

- (1) A decision at a meeting of the Trustee Board is to be determined by the majority vote of Trustee Board members present and voting.
- (2) If there is an equality of votes, the person presiding at the meeting has a casting vote.

**8R Records of meetings**

The Trustee Board must keep accurate records of its meetings.

**8S Disclosure of personal interest**

- (1) This section applies if a Trustee Board member has a material personal interest in a matter that relates to:
  - (a) the Fund or any other fund of which the Board is a trustee; or
  - (b) a superannuation fund or scheme in relation to which the Board exercises powers or performs functions; or
  - (c) the activities of the Board.
- (2) The Trustee Board member must:
  - (a) give written notice of the member's interest to all other Trustee Board members as soon as practicable after becoming aware of the interest; and
  - (b) table a copy of the notice at the next Board meeting.
- (3) The Trustee Board member need not give notice of an interest if the interest:
  - (a) arises from the member's membership of the NTGPAS Scheme or a superannuation scheme mentioned in subsection (1)(b); or
  - (b) is an interest shared in common with at least 25 other people.
- (4) The notice required by subsection (2) must give details of:
  - (a) the nature and extent of the interest; and

- (b) how the interest relates to the matters mentioned in subsection (1).
- (5) The giving of a notice under subsection (2) must be recorded in the minutes of the meeting at which it is made.

#### **8T Effect of personal interest**

A Trustee Board member who has a material personal interest in a matter that is required to be disclosed under section 8S:

- (a) must not take part in any deliberation or decision of the Trustee Board about the matter; and
- (b) must be disregarded for the purpose of constituting the quorum of the Trustee Board for the deliberation or decision.

### **Subdivision 4 General matters**

#### **8U Validity of acts or decisions of Trustee Board**

An act or decision of the Trustee Board is not invalid by reason only of:

- (a) a defect in relation to the appointment of an appointed Board member; or
- (b) a vacancy in the office of an appointed Board member.

#### **8V Protection from liability**

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as an appointed Board member.
- (2) In addition, the person is not civilly or criminally liable for an act done or omitted to be done by the Board in the exercise of a power or performance of a function under this Act.
- (3) Subsections (1) and (2) do not affect any liability the Territory would, apart from those subsections, have for the act or omission.
- (4) In this section:

*exercise*, of a power, includes the purported exercise of the power.

*performance*, of a function, includes the purported performance of the function.

**8W Trustee Board members not subject to direction**

A Trustee Board member is not subject to the direction of anyone in relation to the way in which the Board member exercises his or her powers or performs his or her functions as a Board member.

**5 Part 2, Division 3 repealed**

Part 2, Division 3

*repeal*

**6 Part 2, Division 4 heading omitted**

Part 2, Division 4, heading

*omit*

**7 Section 13 repealed**

Section 13

*repeal*

**8 Part 7 inserted**

After section 60

*insert*

**Part 7 Transitional matters for Superannuation Amendment Act 2012**

**61 Definitions**

In this Part:

***3-member Board*** means the Trustee Board as established under old section 11.

***9-member Board*** means the Trustee Board as continued under section 8A.

***commencement*** means the commencement of section 4 of the *Superannuation Amendment Act 2012*.

***old section***, means the section as in force immediately before commencement.

*police scheme trust deed*, means the trust deed dated 15 June 1984 between the Territory and Otto Kenneth Alder, Arthur Alexander Grant and Michael John Palmer establishing the Northern Territory Police Supplementary Benefit Scheme.

## **62 Membership of Trustee Board**

- (1) The person who was the Chair of the 3-member Board under old section 11A(1)(a) immediately before commencement:
  - (a) becomes, on commencement, the chairperson of the 9-member Board under section 8C(1)(b)(i); and
  - (b) holds that office for the remainder of his or her term of appointment to the 3-member Board.
- (2) The person who was the Acting Chair under old section 16(2) immediately before commencement:
  - (a) becomes, on commencement, the deputy chairperson of the 9-member Board under section 8C(1)(b)(ii); and
  - (b) holds that office until the expiry of 5 years from the date of his or her appointment under old section 16(2).
- (3) The person who was a member of the 3-member Board under old section 11A(1)(b) immediately before commencement having been nominated by Unions NT under old section 11A(2)(b):
  - (a) becomes, on commencement, a member of the 9-member Board under section 8C(1)(b)(iii); and
  - (b) is taken to have been nominated by Unions NT under section 8C(3)(b)(ii); and
  - (c) holds that office for the remainder of his or her term of appointment to the 3-member Board.
- (4) The person who was, immediately before commencement, the alternate member under old section 15(1) for the member mentioned in subsection (3):
  - (a) becomes, on commencement, a member of the 9-member Board under section 8C(1)(b)(iii); and
  - (b) is taken to have been nominated by Unions NT under section 8C(3)(b)(ii); and
  - (c) holds that office until the expiry of 5 years from the date on which he or she was appointed under old section 15(1).

- (5) The person who was a member of the 3-member Board under old section 11A(1)(b) immediately before commencement and who was not the Chair or the member mentioned in subsection (3):
- (a) becomes, on commencement, a member of the 9-member Board under section 8C(1)(b)(iii); and
  - (b) is taken to have been nominated by the Under Treasurer under section 8C(3)(a); and
  - (c) holds that office for the remainder of his or her term of appointment to the 3-member Board.
- (6) The person who was, immediately before commencement, the alternate member under old section 15(1) for the member mentioned in subsection (5):
- (a) becomes, on commencement, a member of the 9-member Board under section 8C(1)(b)(iii); and
  - (b) is taken to have been nominated by the Under Treasurer under section 8C(3)(a); and
  - (c) holds that office until the expiry of 5 years from the date on which he or she was appointed under old section 15(1).
- (7) The person who was, immediately before commencement, the trustee nominated under clause 4(2) of the police scheme trust deed by the Police Association to represent the members:
- (a) becomes, on commencement, a member of the 9-member Board under section 8C(1)(b)(iii); and
  - (b) is taken to have been nominated by the Police Association under section 8C(3)(d)(ii); and
  - (c) holds that office for the remainder of his or her term of appointment as trustee under clause 4 of the police scheme trust deed.
- (8) The person who was, immediately before the commencement, the trustee nominated under clause 4(2) of the police scheme trust deed by the Commissioner of Police to represent the police:
- (a) becomes, on commencement, a member of the 9-member Board under section 8C(1)(b)(iii); and
  - (b) is taken to have been nominated by the Commissioner of Police under section 8C(3)(c); and



- (c) holds that office for 5 years from the commencement.
- (9) The reference in section 8F(1) to a term of office of 5 years does not apply in relation to the terms of office mentioned in this section.

**63 Continuation of all matters related to Trustee Board**

If a thing is in effect in relation to the 3-member Board immediately before commencement, on commencement it becomes a thing with the same effect in relation to the 9-member Board.

**9 Act further amended**

Schedule 1 has effect.

**Part 3 Amendment of other laws**

**10 Other laws amended**

Schedule 2 amends the laws mentioned in it.

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**Schedule 1 Superannuation Act further amended**

section 9

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
section 14, heading, at the end		<b>of Review Board</b>
section 14(1)(a) and (2)(a)	Minister	Commissioner
sections 14(1)(a) and (2)(a), 15(1), (2) and (4), 16(1), (2), (3) and (4), 17(1), 22(1), (3) and (5) and 25	a Board	the Review Board
section 15(3), after "a member"		of the Review Board
section 17(2)	an Acting ends:	the Acting of the Review Board ends:
section 18	a member	the Chair or Acting Chair or a member or alternate member of the Review Board
section 19, heading	<b>of members</b>	<b>from Review Board</b>
section 19	A member	The Chair or Acting Chair or a member or alternate member of the Review Board
section 20(1)	a member	a person as the Chair or Acting Chair or a member or alternate member of the Review Board

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section 20(2)	a member if the member	a person as the Chair or Acting Chair or a member or alternate member of the Review Board if the person
section 20(2)(c)	or the Board	
section 21(1)	A member	The Chair or another member of the Review Board
section 21(2)	the member	the Chair or other member
after section 21(2)		(3) This section applies in relation to a person who is the Acting Chair or an alternate member of the Review Board in relation to a matter before the Board while the person is acting as the Chair or a member of the Board.
section 22, heading, after "of"		<b>Review</b>
section 22(1), and (2) after "a member"		of the Board
section 22(5)(a), after "members"		of the Board
section 22(6)	A Board	The Review Board
section 23, heading, after "of"		<b>Review</b>
section 23	Board shall not be	Review Board is not
section 23(a), after "member"		of the Board

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section 24	against a member	against the Chair or Acting Chair or a member or alternate member of the Review Board
	as a member	as, or acting as, the Chair or a member of the Review Board
section 25, heading	<b>Boards</b>	<b>Review Board</b>

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**Schedule 2 Other laws amended**

section 10

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
<b><i>Legislative Assembly Members' Superannuation Fund Act</i></b>		
section 3, definition <b><i>Trustee Board</i></b>	established by section 11	continued under section 8A
<b><i>Superannuation Regulations</i></b>		
regulation 6(2), (4)(a) and (5), before "Board"		Trustee
regulation 6(6), definition <b><i>common seal</i></b>	Board mentioned in section 11(2)(b)	Trustee Board mentioned in section 8A(2)(b)