

Karen Raffan

Director, Brand and Member Engagement SuperSA

Dear Karen,

At its meeting held on November 25, 2024, the Executive Committee of PS Superannuants (the Association) compared and discussed the two Super SA Board documents listed immediately below. A copy of each is attached to this e-mail.

1. *Terms of Reference and Charter of Obligations and Responsibilities*
2. *Charter 2024-25*

The first document listed was approved on 7 December 2022 and was accessible on the Super SA website until recently. Now it has now been replaced by the second document listed. The first document appears to set out the approach that the Board had to meeting its responsibilities to stakeholders up until the time it was replaced by the second document. What concerns members of our Executive Committee is the fact that the second document is quite different from the first.

One important difference is that *Charter 2024-25* does not set out details of the Board composition and decision-making rules. The Association regards this as important because the Board has a majority of government/employer-nominated members, and decisions of the Board only require a simple majority of Board members in favor. Most comparable superannuation boards have equal numbers of member-nominated and employer-nominated representatives, with decisions requiring at least two thirds of Board members in favor.

Another difference is that *Terms of Reference and Charter of Obligations and Responsibilities* contained, on its pages 3 and 4 a section headed 'Individual Board Member Obligations'. These obligations include the following:

- To act honestly in all matters concerning the schemes
- To take the same care, skill and diligence as an ordinary prudent person would take in dealing with the property of another for whom that person felt a moral obligation
- To ensure all duties and powers are performed and exercised in the best interests of scheme members and/or their dependants

Nothing resembling these three requirements is present in the second-listed document. It does have on its page 3, a paragraph headed 'Stakeholder Relations', which refers to the Board having the intention to act in the best interests of members. But this does not give an indication of what guarantees there are to ensure that the member interest is not overridden by the employer interest. On this matter of conflict of interest there is a reference, in the *Terms of Reference and Charter of Obligations and Responsibilities* document on its page 2, to the Board having adopted a *Conflict of Interest Policy SUP76*.

Neither of the documents *Terms of Reference and Charter of Obligations and Responsibilities* nor *Charter 2024-25* refers to the *Heads of Government Agreement on Superannuation*. This agreement allows State Governments to operate superannuation schemes without being directly subject to APRA regulation, or the provisions of the Federal Government's *Superannuation Industry (Supervision) Act, 1993* (SIS/the SIS Act). When this is the case the

State Scheme is classified as an *Exempt Public Sector Superannuation* Scheme (EPSSS). The Association understands that, in exchange for this flexibility, all states, including South Australia have undertaken to run their schemes in close alignment with the SIS Act. This Act, in its Section 52, sets out a list of covenants that are legally binding on Board members of an APRA-regulated superannuation fund. These covenants include three that are similar to the three obligations listed above, and that were present in the document *Terms of Reference and Charter of Obligations and Responsibilities* but are not included in *Charter 2024-25*. We believe that these obligations should be included in any Super SA Board charter.

The third difference between these two accounts of Board obligations, causing concern to the Association's committee, is the following statement on page 1 of *Charter 2024-25*

The Charter is reviewed by the Board annually, however the Charter can be amended by the Board at any time.

We believe that such an arrangement means that the stakeholders cannot have confidence that the present charter is binding on the Board's deliberations. Our Executive Committee is strongly of the view that all substantial changes to the Board Charter being considered should be made known to stakeholders, and time given for comment, before the decision to change is made.

The concerns set out above have resulted in the Executive Committee instructing me to request that it be provided with copies of two documents and some items of information. These are all identified below.

Documents

- The current *Heads of Government Agreement on Superannuation*
- The *Conflict of Interest Policy SUP76*

Items of information

- The date on which the Board adopted *Charter 2024-25*.
- The date on which the document *Charter 2024-25* was posted on the Super SA website.
- Which of the entities currently listed as stakeholders on the Super SA website's Governance page were consulted by the Board in connection with the replacement of its *Terms of Reference and Charter of Obligations and Responsibilities* by *Charter 2024-25*?
- Is the *Conflict of Interest Policy SUP76* referred to in *Terms of Reference and Charter of Obligations and Responsibilities* still being observed by the Board?

These documents and items of information are being sought to assist the Association in protecting the interests of State Pension Scheme members.

Yours sincerely,

Barry Grear AO, Secretary