

Mr Barry J Grear AO
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Dear Mr Grear

Thank you for your letter dated 17 December 2024, in relation to the South Australian Superannuation Board's (Board) "*Terms of Reference and Charter of Obligations and Responsibilities*" (2023/24 Charter) and the Board's subsequent "*Charter 2024-25*" (2024/25 Charter).

You have noted that the 2024/25 Charter omits certain information found in the 2023/24 Charter, including information regarding Board composition and decision making, individual Board member obligations and conflicts of interest. You also express concerns that the 2024/25 Charter does not reference the Heads of Government Agreement (HOGA).

At the outset, I note that the Board's Charter serves to simply highlight the nature and scope of its obligations and responsibilities under the governing legislation. There is no legal obligation for the Board to maintain a Charter, but it does so as a matter of good practice.

Responses to your specific comments on the content of the 2024/25 Charter are set out below.

Board composition and decision making

The composition of the Board and decision making powers are expressly set out in Part 2, Division 1 of the *Superannuation Act 1988* (Super Act). As such, the removal of this information from the Charter does not diminish or negate these statutory requirements and they remain fully enforceable under the Super Act. There is therefore no need to replicate this in the 2024/25 Charter.

The Super Act provides that 3 (out of 5) Board members constitute a quorum and that a decision in which the majority of members present at the meeting concur is a decision of the Board. This has been effective for the Board and there is no need to deviate from this (noting also that a two third majority is impractical for a 5 member board).

Individual Board member obligations

The Charter previously noted information on individual Board member obligations, including that each Board member is to:

- honestly in all matters concerning the schemes
- 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
- ensure all duties and powers are performed and exercised in the best interests of scheme members and/or their dependants

The first two obligations are imposed by sections 4 and 5 of the *Public Sector (Honesty and Accountability) Act 1995* (PSHA Act). This Act continues to impose these requirements independently of whether or not they are reproduced in the Charter. The compliance obligations with this legislation by the Board (and other important governance authorities) is nevertheless expressly referred to on page 2 of the 2024/25 Charter under “Governance oversight”.

With respect to the final obligation listed above, the “best interest duty” does not strictly apply to the Board, given the schemes it administers are prescribed in Commonwealth legislation as exempt public sector super schemes (EPSSS). However, the 2024/25 Charter clearly acknowledges under “Stakeholder Relations” that members are the major stakeholder and the Board will ensure that they are at the forefront of its decision making and to act in their best interests. Further, it also notes under “Member Outcomes” that the Board maintains a focus on member outcomes in line with the *Australian Prudential Regulation Authority (APRA) Prudential Standard SPS515 – Strategic Planning and Outcomes* which expressly refers to the best interest duty.

Board Policy SUP 76 Conflict of interest

This policy outlines the obligations of the Board and the Super SA Office to manage and disclose conflicts of interest, with reference to the obligations under the PSHA Act, the *Code of Ethics for the South Australian Public Sector* and *APRA Prudential Standard SPS 521 – Conflicts of Interest* (which continue to apply regardless of not being stated in the Charter). The fact that this Board Policy is not expressly stated in the 2024/25 Charter does not derogate from its force, which is still an active policy authorised by the Board.

HOGA and Commonwealth legislation

The HOGA sets out an obligation of the states and territories to conform with the principles of the Commonwealth’s retirement incomes policy to the best of their endeavours, when administering their EPSSSs. The HOGA does not impose a general requirement for states and territories to operate in close alignment with the SIS Act, noting the recognition that EPSSSs are subject to their own stringent controls in various areas. The main elements of the Commonwealth’s retirement incomes policy that are set out in the annexure to the HOGA are indicative of the covenants under section 52 of the SIS Act (eg. sole purpose test, preservation, security of benefits and trustee governance).

While the HOGA is not expressly referenced in the 2024/25 Charter (noting it is simply an intergovernmental, principle-based agreement), the state government's commitment to the HOGA is acknowledged in the Super SA Board's Annual Reports tabled in Parliament. It is noted also that the Commonwealth recognises in the HOGA that there are substantial differences between private and public sector schemes, which are subject to "substantial prudential controls imposed by the States".

Charter review

I confirm the 2024/25 Charter was effective from 26 June 2024 and uploaded to the Super SA website on 25 September 2024. Given the 2024/25 Charter is not itself an authority (but a document by the Board that collates and summarises the nature and scope of its powers and responsibilities granted to it by the governing legislation), its review is an internal matter and not an exercise for which the Board sought consultation with external stakeholders. The same approach will apply for future reviews of the Charter, noting any new versions will be uploaded on the Super SA website.

You have also requested a number of documents to assist the Association in protecting the interests of State scheme members. I would like to provide assurance that given the entitlements of State Pension scheme members are fully enshrined in legislation, members and their beneficiaries can have confidence that their entitlements are protected. As requested, I attach a copy of the current Board Policy: SUP 76 Conflict of Interest. However, given the HOGA was created by the Commonwealth in 2014 as an agreement signed by the former Federal Assistant Treasurer and the then South Australian Premier, Super SA is not authorised to release it. Should you wish to obtain a copy, we suggest you contact the Federal Treasurer.

I thank you for your interest in this matter and trust that this information is of assistance. If you have any further questions, please contact Super SA by telephone on 8214 7800 or email at supersa@sa.gov.au.

Yours sincerely



Karen Raffin
DIRECTOR, BRAND AND MEMBER ENGAGEMENT