

TASMANIA

**RETIREMENT BENEFITS (STATE FIRE
COMMISSION SUPERANNUATION SCHEME)
BILL 2005**

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**RETIREMENT BENEFITS (STATE FIRE
COMMISSION SUPERANNUATION SCHEME)
BILL 2005**

*(Brought in by the Minister for Finance, the Honourable
James Glennister Cox)*

A BILL FOR

An Act to provide for the continuation and management of the funds of the State Fire Commission Superannuation Scheme as a subfund of the Retirement Benefits Fund, to validate the former administration of that scheme and to repeal the *State Fire Commission Superannuation Scheme Act 1994*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Retirement Benefits (State Fire Commission Superannuation Scheme) Act 2005*.

2. Commencement

- (1) Sections 7, 8, 12 and 15 and Schedules 1 and 3 commence on a day to be fixed by proclamation.

- (2) The remaining provisions of this Act commence on the day on which this Act receives the Royal Assent.

3. Interpretation

In this Act, unless the contrary intention appears –

“accumulation benefit component” means the part of the former superannuation scheme that, immediately before the second commencement day, is the total of all Accumulated Credits provided for under the former trust deed;

“Accumulation Scheme” means the Tasmanian Accumulation Scheme established under section 7 of the *Public Sector Superannuation Reform Act 1999*;

“Actuary” means the Actuary appointed under regulations in force under the *Retirement Benefits Act 1993*;

“commencement day” means the day on which this Act receives the Royal Assent;

“Commission” means the State Fire Commission;

“complying superannuation scheme” means the Accumulation Scheme or a superannuation scheme that is a complying superannuation fund for the purposes of the SIS Act;

“continued scheme” means the part of the former superannuation scheme that is continued by the Trust Deed;

“defined benefit component” means the part of the former superannuation scheme that, immediately before the second commencement day, is not the accumulation benefit component;

“Fire Service member” means a person appointed or employed under the *State Service Act 2000* to perform functions for the purposes of the *Fire Service Act 1979*;

“former Act” means the *State Fire Commission Superannuation Scheme Act 1994*;

“former superannuation scheme” means the State Fire Commission Superannuation Scheme as administered by the former trustee immediately before the commencement day;

“former trust deed” means the Deed of Trust executed by the Commission on 17 January 1995 in respect of the State Fire Commission Superannuation Scheme and includes that Deed as amended or substituted from time to time;

“former trustee” means the State Fire Commission Superannuation Scheme Pty Ltd (ACN 067 921 760) in its capacity as trustee of the former superannuation scheme;

“RBF Board” means the Retirement Benefits Fund Board;

“second commencement day” means the day fixed under section 2(1);

“SIS Act” means the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;

“TAS Trust Deed” means the Trust Deed referred to in section 7 of the *Public Sector Superannuation Reform Act 1999* and includes that Deed as amended or substituted from time to time;

“Trust Deed” means the Trust Deed executed and in force under section 4 and includes that Deed as amended or substituted from time to time.

**PART 2 – STATE FIRE COMMISSION
SUPERANNUATION SCHEME**

4. Creation of Trust Deed

- (1) The RBF Board must prepare and submit to the Minister for approval a draft of a trust deed to continue the defined benefit component of the former superannuation scheme for persons who, immediately before the second commencement day, were contributing to, or required to contribute to, the former superannuation scheme.
- (2) The draft trust deed is to be prepared and submitted to the Minister –
 - (a) as soon as practicable after the commencement day; and
 - (b) after both the RBF Board and the former trustee have agreed that the requirements of the SIS Act relating to successor funds will be met on the commencement of the Trust Deed.
- (3) The Minister may approve or disapprove of the draft.
- (4) The Minister must not approve of the draft unless he or she is satisfied that –
 - (a) the Commission and the United Firefighters' Union of Australia (Tasmanian Branch) have been consulted in respect of the draft; and
 - (b) the draft complies with, and is consistent with, this Act and the SIS Act; and

- (c) the draft is consistent with the requirements of the SIS Act relating to successor funds.
- (5) The Minister must notify the Commission and the RBF Board, in writing, of his or her approval or disapproval of a draft submitted under subsection (1) and, in the event of disapproval, the RBF Board must prepare and submit to the Minister a revised draft in accordance with this section and any requests made by the Minister.
- (6) If the Minister approves of a draft, the notice of that approval provided to the RBF Board must specify the day on which the Trust Deed is to take effect.
- (7) After the Minister approves of the draft –
 - (a) the Minister and the RBF Board must execute the Trust Deed; and
 - (b) the Minister must cause to be published in the *Gazette* notice of –
 - (i) the Minister's approval, stating the day on which the Trust Deed is to take effect; and
 - (ii) the execution of the Trust Deed; and
 - (iii) the second commencement day.
- (8) The Trust Deed takes effect on the day specified under subsection (6).
- (9) The Trust Deed is binding on the Commission.

5. Contents of Trust Deed

The Trust Deed is to provide –

- (a) for the continuation of the defined benefit component of the former superannuation scheme to be administered by the RBF Board in accordance with this Act and the requirements of the SIS Act; and
- (b) that a Fire Service member appointed or employed on or after 1 July 2005 is not entitled to become a member of the continued scheme; and
- (c) that lump sums are to be the only retirement benefit options provided by the continued scheme; and
- (d) for the amounts, manner and timing of payment of contributions to the continued scheme; and
- (e) for appeals against decisions, determinations and orders of the RBF Board in the course of its administration of the continued scheme; and
- (f) that the only authorised payments from the continued scheme to the RBF Board or the Commission are for –
 - (i) expenses incurred in the administration of the continued scheme; or
 - (ii) a refund of overpaid contributions; or

- (iii) such payments as are permitted by the SIS Act; and
- (g) that the Commission is to pay to the RBF Board such additional amounts as the Minister, on the recommendation of the Actuary, may direct so as to enable the RBF Board to meet its liabilities under this Act.

6. Amendment or revocation and substitution of Trust Deed

- (1) The RBF Board may, in accordance with the Trust Deed, prepare and submit to the Minister for approval a draft of a deed to amend or to revoke and substitute the Trust Deed.
- (2) The Minister may approve or disapprove of the draft.
- (3) The Minister must not approve of the draft unless he or she is satisfied that –
 - (a) the Commission and the United Firefighters' Union of Australia (Tasmanian Branch) have been consulted in respect of the draft; and
 - (b) the draft complies with, and is consistent with, this Act and the SIS Act.
- (4) The Minister must notify the Commission and the RBF Board, in writing, of his or her approval or disapproval of the draft and, in the event of disapproval, the RBF Board must prepare and submit to the Minister a revised draft in

accordance with this section and any requests made by the Minister.

- (5) If the Minister approves of the draft, the notice of approval must specify the day on which the amendment to, or the revocation and substitution of, the Trust Deed is to take effect.
- (6) Where, following the consultation referred to in subsection (3)(a), the Minister resolves to approve of the draft –
 - (a) the Minister and the RBF Board must execute the deed to amend, or to revoke and substitute, the Trust Deed; and
 - (b) the Minister must cause to be published in the *Gazette* notice of –
 - (i) the amendment to, or revocation and substitution of, the Trust Deed; and
 - (ii) the date when the amended or substituted Trust Deed takes effect.
- (7) The Trust Deed must not be amended or substituted so as to authorise any payment from the continued scheme to the RBF Board or the Commission other than –
 - (a) an expense incurred in the administration of that scheme; or
 - (b) a refund of overpaid contributions; or
 - (c) such payments as are permitted by the SIS Act.

7. Former superannuation scheme fund

- (1) The former superannuation scheme, as existing immediately before the second commencement day, forms part of the superannuation scheme referred to in section 5 of the *Retirement Benefits Act 1993*.
- (2) The continued scheme –
 - (a) forms part of the Retirement Benefits Fund continued by section 11 of the *Retirement Benefits Act 1993*; and
 - (b) is to be administered by the RBF Board as a subfund of the Retirement Benefits Fund.
- (3) The accumulation benefit component –
 - (a) is to be transferred to the Accumulation Scheme; and
 - (b) forms part of the Retirement Benefits Fund continued by section 11 of the *Retirement Benefits Act 1993*; and
 - (c) is to be administered by the RBF Board in accordance with the TAS Trust Deed.

8. Guarantee by Minister

The Minister administering the *Fire Service Act 1979*, on behalf of the State, must guarantee the payment of all contributions required to be made to the RBF Board by the Commission if the Commission fails to make the contributions required under the Trust Deed within 28 days after demand by the RBF Board.

9. Saving for former superannuation scheme

- (1) The former trustee is taken to have been validly appointed as trustee of the former superannuation scheme.
- (2) No action or other proceeding may be brought in respect of any failure by the Commission or any other person to comply with the former Act.
- (3) The former trust deed is taken to be valid and to have always been valid.
- (4) No act or omission by the Commission or the former trustee in reliance or purported reliance on the former trust deed is to be taken as unlawful or as having been unlawful by reason of a failure by any person to comply with the former Act.

PART 3 – MISCELLANEOUS AND SUPPLEMENTAL**10. Annual reports**

- (1) A report by the Commission under section 107G of the *Fire Service Act 1979* is to include a certification by the Commission that, if it is the case, the Commission has met its obligations under the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth in respect of any member who is, or becomes, a member of a complying superannuation scheme to which the Commission contributes.
- (2) The Commission is to include in its annual report any other prescribed information relating to superannuation schemes in cases where persons appointed or employed under the *State Service Act 2000* are performing functions for the purposes of the *Fire Service Act 1979*.

11. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the Governor may make regulations that contain provisions of a savings or transitional nature consequent on the enactment of this Act or the establishment, amendment or substitution of the Trust Deed, including, but not limited to, the transfer of assets and liabilities.

- (3) A regulation referred to in subsection (1) may take effect on and from the commencement day, the second commencement day or a later date.
- (4) Regulations made under this section –
 - (a) may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations; and
 - (b) may authorise any matter to be from time to time determined, applied or regulated by the RBF Board.

12. Transitional and savings provisions

The transitional and savings provisions specified in Schedule 1 have effect.

13. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Finance; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Treasury and Finance.

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14. Consequential Amendments

The legislation specified in Schedule 2 is amended as specified in that Schedule.

15. Act repealed

The Act specified in Schedule 3 is repealed.

**SCHEDULE 1 – TRANSITIONAL AND SAVINGS
PROVISIONS**

Section 12

1. Transfer of property of former trustee, &c.**(1) On the second commencement day –**

- (a) any estate or interest in land and any money, investments or other property of the former trustee are transferred to, and vest in, the RBF Board; and
- (b) all obligations and liabilities of the former trustee that are subsisting immediately before that day become obligations and liabilities of the RBF Board.

(2) On and after the second commencement day –

- (a) any debt, money or claim, whether liquidated or unliquidated, that, immediately before that day, was payable to, or recoverable by, the former trustee is to be a debt, money or a claim payable to, or recoverable by, the RBF Board, as the case may be; and
- (b) any debt due from or money payable by, or any claim, whether liquidated or unliquidated, enforceable against, the former trustee immediately before that day becomes a debt due from, money payable by or a claim enforceable against the RBF Board.

2. Construction of instruments

- (1) This clause applies to an instrument which was in force immediately before the second commencement day and in which there is a reference to the former trustee.
- (2) An instrument to which this clause applies has effect on and from the second commencement day as if –
 - (a) the reference to the former trustee were a reference to the RBF Board; or
 - (b) if the case so requires, the reference to the former trustee included a reference to the RBF Board –

unless the context or subject matter of the instrument otherwise indicates or requires.

3. Continuation of proceedings

- (1) Any legal or other proceedings that might, immediately before the second commencement day, have been continued or instituted by, or against, the former trustee may, on and after that day, be continued or instituted by, or against, the RBF Board.
- (2) A judgment or order of a court obtained in legal proceedings by or against the former trustee may be enforced by or, as the case may be, against the RBF Board.

4. Powers of RBF Board in respect of matters arising under clauses 2 and 3

On and after the second commencement day, the RBF Board may –

- (a) in addition to pursuing any other remedies or exercising any other powers that may be available to it, pursue the same remedies for the payment or recovery of debts, money and claims referred to in clause 1(2) that are payable to, or recoverable by, the former trustee and for the prosecution of proceedings referred to in clause 3 as the former trustee might have done but for the enactment of this Act; and
- (b) enforce and realise any security or charge existing immediately before the second commencement day in favour of the former trustee and exercise any powers conferred by that security or charge as if it were a security or charge in favour of the RBF Board.

5. Savings for determinations and decisions of former trustee

Any determination or decision made in the administration of the former superannuation scheme affecting the rights of a Fire Service member that was in force immediately before the second commencement day continues to have effect notwithstanding the repeal effected by section 15 unless the determination or decision is

varied or rescinded by the RBF Board acting in accordance with the Trust Deed.

6. Contracts and agreements

Any contract, agreement, arrangement or undertaking entered into by the former trustee, if not executed, discharged or otherwise terminated before the second commencement day, is taken to be a contract, agreement, arrangement or undertaking entered into by the RBF Board.

7. Statement of accounts and annual report

- (1) Notwithstanding the repeal effected by section 15, it is the duty of the former trustee to prepare and submit to the Minister, as soon as practicable after the second commencement day, a statement of accounts and a further report, containing such particulars as the Minister may direct, relating to any period determined by the Minister and, for the purposes of this clause, the RBF Board must –
 - (a) allow the former trustee to have access to all relevant documents and records; and
 - (b) pay from the relevant subfund all reasonable costs incurred by the former trustee.
- (2) In this clause, a reference to the Minister includes a reference to the Minister who administered the former Act.

SCHEDULE 2 – CONSEQUENTIAL AMENDMENTS

Section 14

Public Sector Superannuation Reform Act 1999**1.** Section 3(1) is amended as follows:

- (a) by omitting “Act;” from paragraph (d) of the definition of “Agency” and substituting “Act; or”;
- (b) by inserting the following paragraph after paragraph (d) in the definition of “Agency”:
 - (e) the State Fire Commission;
- (c) by omitting “State;” from paragraph (e) of the definition of “Agency manager” and substituting “State; or”;
- (d) by inserting the following paragraph after paragraph (e) in the definition of “Agency manager”:
 - (f) the Chief Officer of the State Fire Commission;
- (e) by omitting the definition of “employee” and substituting the following definitions:

“employee” means a person, other than a person who is excluded from the application of the Principal Regulations, who is employed in any position or capacity –

- (a) as a State Service officer or State Service employee; or
- (b) by a prescribed authority; or
- (c) by a State-owned company; or
- (d) by another body or person carrying on an industry or undertaking for or on behalf of the State –

and includes –

- (e) a police officer, trainee and junior constable as defined in the *Police Service Act 2003*; and
- (f) a Fire Service member who is first appointed or employed on or after 1 July 2005; and
- (g) a Fire Service member appointed before 1 July 2005 who is not a member of the superannuation scheme continued by the trust deed in force under section 4 of the *Retirement Benefits (State Fire Commission Superannuation Scheme) Act 2005*;

“Fire Service member” means a person appointed or employed under the *State Service Act 2000* to perform functions for the purposes of the *Fire Service Act 1979*;

Retirement Benefits Act 1993

1. Section 12 is amended by omitting subsection (1) and substituting the following subsection:

- (1) The Board may, by an instrument of delegation under its common seal, delegate to the chairperson, a member or officer of the Board, including the chief executive officer, or a person or organisation that, under the regulations, is engaged on contract or employed by the Board any power or duty of the Board under –

- (a) this Act; or

- (b) any other Act; or

- (c) any instrument having effect under this Act or any other Act –

other than this power of delegation.

2. Section 27A(2)(b) is amended by omitting “or the Trust Deed” and substituting “, any other Act or any instrument having effect under this Act or any other Act”.

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SCHEDULE 3 – ACT REPEALED

Section 15

State Fire Commission Superannuation Scheme Act 1994 (No. 75 of 1994)