

TASMANIA

**PUBLIC SECTOR SUPERANNUATION REFORM
BILL 2016**

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PUBLIC SECTOR SUPERANNUATION REFORM BILL 2016

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
5 April 2016

*(Brought in by the Treasurer, the Honourable Peter Carl
Gutwein)*

A BILL FOR

An Act to reform the administration of public sector superannuation, to repeal certain enactments relating to public sector superannuation, and for related purposes

Be it enacted by Her 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 *Public Sector Superannuation Reform Act 2016*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

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3. Interpretation

(1) In this Act –

Actuary means the person or organisation appointed to be the Actuary under section 50;

Agency means –

- (a) a State Service Agency; and
- (b) a statutory authority, or other organisation, that is not a State Service Agency and that is prescribed in regulations for the purposes of this paragraph; and
- (c) a State-owned company; and
- (d) a body or person carrying on an industry or undertaking for or on behalf of the State, unless the body or person is, under the regulations, exempt from the application of this Act; and
- (e) a House of Parliament; and
- (f) a seconding employer; and
- (g) the Office of the Governor; and
- (h) the Legislature-General; and
- (i) the State Fire Commission; and
- (j) Ambulance Tasmania;

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Agency manager means, in relation to an Agency that is –

- (a) a State Service Agency – the Head of the State Service Agency; or
- (b) a Government Business Enterprise – a chief executive officer within the meaning of the *Government Business Enterprises Act 1995*; or
- (c) a statutory authority, or other organisation, that is not a State Service Agency and that is prescribed for the purposes of the definition of *Agency* – the controlling authority of the statutory authority or organisation; or
- (d) a State-owned company – a chief executive officer, by whatever name called, of the State-owned company; or
- (e) a body or person carrying on an industry or undertaking for or on behalf of the State – the controlling authority of the body or person; or
- (f) a House of Parliament – the Speaker of the House of Assembly in Tasmania and the

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President of the Legislative Council in Tasmania; or

- (g) a seconding employer – a chief executive officer, by whatever name called, of the seconding employer; or
- (h) the Office of the Governor – the Official Secretary; or
- (i) the Legislature-General – the Speaker of the House of Assembly in Tasmania and the President of the Legislative Council in Tasmania; or
- (j) the State Fire Commission – the Chief Officer of the State Fire Commission; or
- (k) Ambulance Tasmania – the Commission of Ambulance Services;

Ambulance member means a person appointed or employed under the *State Service Act 2000* to perform functions for the purposes of the *Ambulance Service Act 1982*;

Board means the Retirement Benefits Fund Board continued in existence by section 7 of the *Retirement Benefits Act 1993*;

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chairperson of the Commission means the person appointed to be the chairperson of the Commission under section 7(3);

Commission means the Commission established under section 6;

complying superannuation scheme means a superannuation scheme that is a complying superannuation fund for the purposes of the SIS Act;

contributory scheme means the superannuation arrangements to which the regulations relate;

default fund means a superannuation fund that is nominated under section 20(1) to be a default fund;

employee means a person who is employed in any position or capacity as a State Service officer or State Service employee or by an Agency and includes –

- (a) a police officer, trainee and junior constable as defined in the *Police Service Act 2003*; and
- (b) a Fire Service member who is first appointed or employed on or after 1 July 2005; and
- (c) a Fire Service member appointed before 1 July 2005 who is not a member of the superannuation scheme continued by the Trust

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Deed in force under section 4 of the *Retirement Benefits (State Fire Commission Superannuation Scheme) Act 2005*; and

- (d) an Ambulance member who is first appointed or employed on or after 30 June 2006; and
- (e) an Ambulance member appointed before 30 June 2006 who is not a member of the superannuation scheme continued by the Trust Deed in force under section 4 of the *Retirement Benefits (Tasmanian Ambulance Service Superannuation Scheme) Act 2006*; and
- (f) a member of a board; and
- (g) a person who holds an office under a provision of an Act that specifies that the holder of the office is an employee for the purposes of this Act;

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*;

functions includes duties;

Fund means the Retirement Benefits Fund continued in existence under section 27

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and includes all money received by the Commission and all subfunds, accounts, investments, policies of insurance and other assets in which that money is from time to time invested;

Government Business Enterprise means a Government Business Enterprise within the meaning of the *Government Business Enterprises Act 1995*;

House of Parliament means either the House of Assembly or the Legislative Council;

initial default fund means the first superannuation fund that is nominated under section 20(1) to be a default fund;

Investment 12 Account member means –

- (a) a person who is declared under subsection (2) to be an Investment 12 Account member; and
- (b) a person who is within a class of persons declared under subsection (2) to be Investment 12 Account members;

member of a board means a member of a board of a statutory authority or State-owned company and includes –

- (a) in relation to a statutory authority – any chief executive officer, by whatever name called,

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chairperson, president, director, deputy, member, or alternate, substitute or acting member, of the board, or the governing body, of the statutory authority; and

- (b) in relation to a State-owned company – a director of the State-owned company –

but does not include a chief executive officer, by whatever name called, of a statutory authority or State-owned company who, under the terms of his or her employment, is required to act as a member of the board of that statutory authority or State-owned company;

member of the Commission means a member of the Commission under section 7;

regulations means regulations made under this Act;

RSA means a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997* of the Commonwealth;

salary, in relation to an employee, has the meaning it has in section 4;

seconding employer means –

- (a) an agency or authority of the Commonwealth or of another State or a Territory; or

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- (b) a private sector employer,
whether incorporated or not –

which employs an employee in
accordance with a secondment
agreement;

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

statutory authority means a body or authority,
whether incorporated or not, which is –

- (a) established or constituted by or
under an Act; or
- (b) established or constituted under
the royal prerogative –

if the body or authority, or the governing
body of the body or authority, wholly or
partly comprises a person or persons
appointed by the Governor, a Minister or
another statutory authority, and includes
the governing body of any such statutory
authority;

successor fund has the meaning it has in
regulation 1.03(1) of the *Superannuation
Industry (Supervision) Regulations 1994*
of the Commonwealth;

superannuation fund means a regulated
superannuation fund within the meaning
of the SIS Act;

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Superannuation Guarantee Act means the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth, as amended from time to time,

Tasmanian Accumulation Scheme means the Tasmanian Accumulation Scheme established by the Trust Deed;

transfer assets means the assets of the Fund that are determined by the Actuary under section 22(1) to be the transfer assets;

transfer date means the date that is specified, in the notice under section 20(1) in relation to the initial default fund, as the date on which the notice takes effect;

transferring members means all persons who are members of the Tasmanian Accumulation Scheme immediately before the transfer date, other than any Investment 12 Account member;

Trust Deed means the Trust Deed, approved under section 7 of the *Public Sector Superannuation Reform Act 1999*, as amended from time to time.

- (2) The Board may, before the transfer date, do either or both of the following:
- (a) declare a member to be an Investment 12 Account member;

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- (b) declare a class of members to be Investment 12 Account members.
- (3) A reference in this Act to an Agency in which an employee is employed is –
 - (a) if the employee holds an office under a provision of an Act, or regulations, that specifies that the holder of the office is an employee for the purposes of this Act – to be taken to be a reference to the Agency responsible for the administration of the Act, or the part of the Act, in which the provision appears or under which the provision is made; or
 - (b) if the employee is, by virtue of paragraph (f) of the definition of *employee* in subsection (1), an employee for the purposes of this Act because he or she is a member of a board – to be taken to be a reference to the Agency responsible for the administration of the Act, or the part of the Act, in or under which the board is established.

4. Meaning of *salary*

- (1) A reference in this Act to salary, in relation to an employee, is to be taken as a reference to the salary or other discretionary benefits that are paid or payable to the employee, including –
 - (a) overtime; and

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- (b) allowances; and
- (c) bonuses in respect of work; and
- (d) lump sum payments in respect of accrued recreation leave or accrued long service leave on termination of employment; and
- (e) any other payments made on the termination of employment –

as determined by the Agency in which the employee is employed, having regard to the employee's awards and conditions of employment.

- (2) However, a reference to salary in this Act is not to be taken as including –
 - (a) any reimbursement of expenses in respect of travelling or other work-related expenses; or
 - (b) dividends; or
 - (c) benefits, or other payments, subject to fringe benefits tax under the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth; or
 - (d) any electorate or other allowance paid or payable, to a person who is a member of a House of Parliament, in accordance with Schedule 2 to the *Parliamentary Salaries, Superannuation and Allowances Act 2012*.

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5. Act binds Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

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Part 2 – Superannuation Commission

PART 2 – SUPERANNUATION COMMISSION

Division 1 – Superannuation Commission

6. Superannuation Commission

- (1) The Superannuation Commission is established.
- (2) The Commission –
 - (a) is –
 - (i) a body corporate with perpetual succession and has a seal; or
 - (ii) if a notice under subsection (5)(a) declaring that the Commission is a corporation sole is in force – a corporation sole; and
 - (b) may sue and be sued in its corporate name; and
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may do all other things that a body corporate may do and that are necessary or convenient to be done in relation to the performance or exercise of the functions or powers of the Commission under this or any other Act.
- (3) The seal, if any, is to be kept and used as authorised by the Commission.

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- (4) All courts and persons acting judicially must take judicial notice of the imprint of the seal on a document and presume that the document was duly sealed by the Commission.
- (5) The Minister may, by notice –
 - (a) declare that the Commission is a corporation sole; or
 - (b) revoke a notice under paragraph (a).
- (6) A notice under subsection (5) –
 - (a) is not a rule for the purposes of the *Subordinate Legislation Act 1992*; but
 - (b) is a rule for the purposes of the *Rules Publication Act 1953*.

7. Membership of Commission

- (1) The Commission consists of the person, or persons, appointed by the Treasurer under subsection (2).
- (2) The Treasurer may appoint up to 3 persons to be members of the Commission.
- (3) The Treasurer is to appoint a member of the Commission as the chairperson of the Commission.
- (4) Schedule 1 has effect in relation to the membership of the Commission.

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Part 2 – Superannuation Commission

- (5) Schedule 2 has effect in relation to meetings of the Commission.
- (6) If a notice under section 6(5)(a) is in force –
 - (a) a reference in this Act to the chairperson of the Commission is to be taken to be a reference to the single member of the Commission; and
 - (b) Schedule 2 ceases to apply in relation to the Commission; and
 - (c) any decision or action of the Commission as a body corporate, and any reference in a document or proceeding to the Commission as a body corporate, is to be taken to have been made or performed by, or to be a reference to, the Commission as a corporation sole.
- (7) If a notice under section 6(5)(a) is revoked by a notice under section 6(5)(b), any decision or action of the Commission as a corporation sole, and any reference in a document or proceeding to the Commission as a corporation sole, is to be taken to have been made or performed by, or to be a reference to, the Commission as a body corporate.

8. Acting member of Commission

- (1) For the purposes of this section, a member of the Commission is absent if –
 - (a) he or she is absent from duty; or

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- (b) he or she is disqualified under section 13(2) from taking part in a consideration of, or the making of a decision in relation to, any matter or any other proceeding of the Commission in relation to the matter; or
- (c) he or she is otherwise incapable of performing the functions of the office of member of the Commission; or
- (d) section 13(6) applies.
- (2) The Treasurer may appoint a person to act as a member of the Commission during any particular, or every, period during which the member of the Commission is absent.
- (3) Except if section 7(6)(a) applies in relation to a person, the appointment of a person under subsection (2) to act in the office of the member of the Commission who is its chairperson is not an appointment to act in the office of chairperson.
- (4) The appointment of a person under subsection (2) is subject to, and has effect in accordance with, the terms and conditions (including remuneration and allowances) specified in the person's instrument of appointment.
- (5) If a vacancy, within the meaning of clause 5 of Schedule 1, occurs in the office of a member of the Commission while a person appointed under subsection (2) is acting in the office of that member, that person may continue to act in the

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office of that member until the first of the following happens:

- (a) the period of 6 months commencing on the day on which the vacancy occurs ends;
 - (b) the Treasurer appoints a person to that vacant office under section 7(2) or clause 6 of Schedule 1;
 - (c) the office in which the person is acting is vacated on the grounds specified in clause 5(2)(f) of Schedule 1.
- (6) Anything done by or in relation to a person purporting to act as a member of the Commission is not invalid merely because –
- (a) there is a defect or irregularity in relation to the appointment of that person; or
 - (b) the occasion or the appointment of that person has not arisen; or
 - (c) the appointment of that person has ceased to have effect; or
 - (d) the occasion for that person to act as a member of the Commission has not arisen or has ceased.

Division 2 – Functions and powers

9. Functions and powers of Commission

- (1) The Commission has the functions conferred on it by or under this Act, the regulations and any other Act.
- (2) The Commission has the powers necessary, desirable, or convenient, to perform its functions.

10. Duties of Commission

In the administration of this Act, the Commission –

- (a) must not disclose information, the disclosure of which might adversely affect the financial position, or the commercial or other operations, of the Commission; and
- (b) must, after the transfer date, exercise a fiduciary responsibility over all the assets, investments and property of the Commission and the Fund; and
- (c) must have regard to the superannuation and employment policies of the Government; and
- (d) must take possession of all money, and other property, vested in the Commission under this Act.

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Part 2 – Superannuation Commission

11. Investment strategies of Commission

- (1) The Commission is, in determining the investment strategy in relation to the Fund, to have regard to any guidelines, in relation to investments, issued by the Treasurer.
- (2) The Commission is to inform the Treasurer of the proposed investment strategy in relation to the Fund that the Commission proposes to make.
- (3) The Commission is not subject to the direction of any Minister or other person in relation to any decision to be made by the Commission in relation to the investment strategy of the Fund or any particular investment of the Fund.

12. Delegation

The Commission may delegate to a member of staff of the Commission, or a person or organisation engaged on contract under this Act, any of the Commission's functions or powers –

- (a) under this or any other Act; or
- (b) any instrument having effect under this or any other Act –

other than this power of delegation.

Division 3 – Miscellaneous

13. Disclosure of interest

- (1) If a person appointed to, or acting in, the office of a member of the Commission has a direct or indirect interest (pecuniary or otherwise) in a matter that is about to be considered by the person in his or her capacity as a member of the Commission, the person must disclose the nature of the interest to the Treasurer as soon as practicable after the relevant facts come to the person's knowledge.
- (2) Unless the Treasurer otherwise determines, a person who has made a disclosure under subsection (1) in relation to a matter must not –
 - (a) be present during any consideration of, or the making of a decision in relation to, the matter under this Act or any other Act or during any other proceeding in relation to the matter under this Act or any other Act; or
 - (b) take part in any consideration of, or the making of a decision in relation to, the matter.
- (3) For the purpose of making a decision under subsection (2), the member of the Commission to whom the decision relates must not –
 - (a) be present during any deliberation of the Commission for the purpose of making the decision; or

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- (b) take part in making the decision.
- (4) Subsection (1) does not apply in respect of an interest that consists only of the receipt of a service that –
 - (a) is also available to members of the public; and
 - (b) is made available on the same terms as apply to members of the public.
- (5) A contravention of subsection (1) does not invalidate any act, proceeding or decision of the Commission.
- (6) If the Commission is a corporation sole and subsection (2) applies in relation to a matter, the Treasurer must appoint under section 8(2) another person to act in the office of the member of the Commission in relation to the matter.

14. Staff of Commission

- (1) The Commission may arrange, with the Secretary of the Department, for State Service officers and State Service employees employed in the Department to be made available to enable the Commission to perform and exercise its functions and powers.
- (2) On the written request of the Commission, the Secretary of the Department may arrange, with another Head of a State Service Agency, for State Service officers and State Service employees employed in that Agency to be made

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available to the Commission for the purpose of enabling the Commission to perform and exercise the Commission's functions and powers.

- (3) State Service officers and State Service employees made available under subsection (1) or (2) may serve the Commission in conjunction with State Service employment.
- (4) All expenses associated with the use by the Commission of the services of a person referred to in subsection (1) or (2) are to be met as determined by the Treasurer.

15. Commission may engage administrators, consultants &c.

- (1) The Commission may engage, or terminate the engagement of, any administrators, advisers, agents, contractors, consultants, or other persons or organisations, in relation to the performance or exercise of the Commission's functions or powers or otherwise in the administration of this Act.
- (2) The Commission may pay fees to, or otherwise remunerate, any administrators, advisers, agents, contractors, consultants, or other persons or organisations, engaged under subsection (1).

16. Judicial notice

All courts and persons acting judicially must take judicial notice of –

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- (a) the official signature of a person who is or has been a member of the Commission; and
- (b) the fact that the person holds or has held the office of a member of the Commission.

17. Liability of Commission

The Commission is not liable for any loss suffered by a person because of –

- (a) an election made by the person under the regulations; or
- (b) an investment decision made by or on behalf of the Commission; or
- (c) an investment choice exercised by the person; or
- (d) an election by the person to become a member of a complying superannuation scheme.

**PART 3 – TRANSITIONAL ROLE OF BOARD AND
COMMISSION**

18. Composition of Board in transitional period

On and from the day on which this section commences until the day on which the *Retirement Benefits Act 1993* is repealed –

- (a) the chairperson of the Commission is to be taken to be a member of the Board but sections 9 and 9A of that Act, and Schedule 1 to that Act, do not apply in relation to the chairperson as a member of the Board; and
- (b) the Board is to be taken to consist of the following members:
 - (i) subject to paragraph (c), the 7 members of whom the Board consists under section 8 of that Act;
 - (ii) the chairperson of the Commission; and
- (c) the Minister, by notice to the Board, may determine that any vacancy in the Board is not required to be filled and, if such a determination is made, the number of members of the Board referred to in paragraph (b)(i) is reduced accordingly; and

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Part 3 – Transitional Role of Board and Commission

- (d) the Minister may, by notice to a member of the Board, extend the term of the member's appointment to the Board and, if such a notice is issued in relation to a member, Schedule 1 to the *Retirement Benefits Regulations 2005* does not apply in relation to the member; and
- (e) this section applies despite any inconsistency with a provision of the *Retirement Benefits Act 1993* or the *Retirement Benefits Regulations 2005*.

19. Functions of Board and Commission in transitional period

- (1) On and from the commencement of this section until the day on which the *Retirement Benefits Act 1993* is repealed, the functions of the Board include taking the action that may be necessary, or that the Board is directed by the Minister to take, in preparation for, or in order to effect, a transfer in compliance with a direction under section 22.
- (2) The Minister may issue to the Board any direction the Minister thinks is required in preparation for, or in order to effect, a transfer in compliance with a direction under section 22.
- (3) The Board must comply with a direction given to it under subsection (2).
- (4) If a direction is given under subsection (2) to the Board, a member of the Board (including the chairperson of the Commission) or an officer,

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employee, or agent, of the Board is indemnified by the Crown against any liability incurred by him or her in relation to –

- (a) an action taken by him or her in relation to the direction; or
- (b) a failure by him or her to take an action in relation to the direction –

if he or she took the action in good faith, or failed in good faith to take the action, in the belief that taking the action, or failing to take the action, was necessary or convenient to implement the direction.

- (5) The chairperson of the Commission must, as soon as practicable after the day on which the *Retirement Benefits Act 1993* is repealed, prepare and submit to the Minister –
 - (a) a statement of accounts in relation to the Fund in respect of so much of the financial year in which that day occurs as occurs before the day; and
 - (b) an annual report in relation to the performance of the Board and the Fund during so much of the financial year in which that day occurs as occurs before the day.

PART 4 – DEFAULT FUNDS

Division 1 – Nomination of default funds

20. Default fund

- (1) The Minister, by notice in the *Gazette*, may nominate a superannuation fund to be a default fund on and from the date on which the notice takes effect.
- (2) The Minister, as soon as practicable after the commencement of this section, must issue a notice under subsection (1).
- (3) The Minister may issue more than one notice under subsection (1).
- (4) The Minister may only nominate under subsection (1) a superannuation fund to be a default fund (other than the initial default fund) with the approval in writing of the Tasmanian Trades and Labor Council.
- (5) A notice under subsection (1) takes effect on a date, on or after the date on which the notice appears in the *Gazette*, that is specified in the notice as the date on which the notice is to take effect.
- (6) The Minister may only nominate under subsection (1) a superannuation fund to be a default fund that will be the initial default fund if the Minister is satisfied that the fund will be a successor fund in relation to a transfer of

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members to the superannuation fund from the Tasmanian Accumulation Scheme.

- (7) A notice under subsection (1) may include any provision necessary or convenient for consistency with the SIS Act.
- (8) The Minister may enter into a contract, agreement, or arrangement, with a superannuation fund, under which –
 - (a) the Crown is required to nominate the superannuation fund to be a default fund in a notice under subsection (1); or
 - (b) the Crown agrees, for a period specified in the contract, agreement or arrangement, not to nominate, in a notice under subsection (1), another superannuation fund to be a default fund.

21. Employer contributions to be made to default fund if no chosen fund elected by employee

- (1) For the purposes of this section, a person is a relevant employee in relation to a default fund if –
 - (a) where the fund is the initial default fund, the person is –
 - (i) a transferring member; or
 - (ii) an employee appointed or employed after the transfer date and before the date, if any, on

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which another superannuation fund becomes a default fund; or

- (b) where the fund is not the initial default fund – the person is an employee appointed or employed after the date on which the fund becomes a default fund and before the date, if any, on which the fund ceases to be a default fund.
- (2) If a person who is a relevant employee in relation to a default fund has not elected a chosen fund, within the meaning of the Superannuation Guarantee Act, the Agency manager of the Agency in which the employee is employed must –
- (a) make, on behalf of the Agency, employer superannuation contributions, in respect of that employee, to that default fund; and
 - (b) make those contributions in the manner required by the governing rules of that default fund.
- (3) The rate of employer superannuation contributions to the default fund in respect of a relevant employee is to be calculated –
- (a) by reference to the salary of the relevant employee; and
 - (b) in accordance with the relevant “charge percentage” specified in section 19 of the Superannuation Guarantee Act.

Division 2 – Transfer of assets and members to initial default fund

22. Transfer to initial default fund of existing members and related assets

- (1) The Actuary must, by notice to the Minister and the Board, determine the transfer assets, being the amount of the assets of the Fund that the Actuary considers represents –
 - (a) the benefits of the transferring members immediately before the transfer date; and
 - (b) the proportion, of the reserves of the Fund, that relates to the Tasmanian Accumulation Scheme.
- (2) The Minister may, in writing, direct the Board to transfer to the initial default fund, with effect from the transfer date –
 - (a) all transferring members; and
 - (b) the transfer assets.
- (3) If the Board is given a direction under subsection (2), the Board must –
 - (a) transfer to the initial default fund, with effect from the transfer date, all transferring members; and
 - (b) transfer to the initial default fund, with effect from the transfer date, the transfer assets; and

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- (c) do all things necessary to effect the transfers.

23. Effect of transfer

- (1) This section applies, on and from the transfer date, if transferring members and transfer assets are transferred under section 22 to the initial default fund.
- (2) A reference, in any other Act, any instrument made under any other Act, any contract, agreement, arrangement or undertaking, or any document of any kind, including a document to which a transfer under section 22 relates, to –
- (a) the Board; or
 - (b) any predecessor of the Board –
- to the extent to which the reference relates to the rights or liabilities, before the transfer date, of the transferring members, or the transfer assets, is taken to be, or include, a reference to the Commission.
- (3) Any legal, or other, proceedings that –
- (a) relate to the Tasmanian Accumulation Scheme; and
 - (b) are commenced, before the transfer date, by or against the Board or a predecessor of the Board –

are taken to be proceedings commenced by or against the Commission.

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- (4) Any legal, or other, proceedings that –
- (a) relate to the Tasmanian Accumulation Scheme; and
 - (b) could have been commenced, before the transfer date, by or against the Board or a predecessor of the Board –
- may be commenced by or against the Commission.
- (5) A judgement or order of a court, or other tribunal, that is, before the transfer date, obtained by or against the Board or a predecessor of the Board may be enforced by or against the Commission.
- (6) Any document, relating to legal or other proceedings, that has been, before the transfer date, served on or by the Board, or a predecessor of the Board, is taken, where appropriate, to have been served on or by the Commission.

24. Part not to be taken to prevent choice of fund

Nothing in this Part is to be taken to prevent an employee or a transferring member from electing to become a member of an RSA or another complying superannuation scheme.

PART 5 – CONTRIBUTORY SCHEME

***Division 1 – Commission to administer and manage Fund
and contributory scheme***

25. Functions of Commission after transfer date

On and from the transfer date, the Commission has the following functions:

- (a) to administer and manage the Fund in accordance with this Act and any other applicable law of the State or the Commonwealth, for the purpose of providing benefits on retirement to members of the contributory scheme, and their beneficiaries or representatives, in accordance with this Act and the regulations;
- (b) to provide the Minister with timely and accurate advice as to the operation of the contributory scheme.

26. Transfer of property of Board records &c.

(1) In this section –

assets means the assets of the Fund after all transfers under section 22(3) from the Fund of assets have taken effect;

former contributory scheme means the superannuation arrangements established or continued under –

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- (a) the *Retirement Benefits Act 1970*, the *Retirement Benefits Act 1982* or the *Retirement Benefits Act 1993*; and
 - (b) the former regulations in respect of contributors, as defined in those Acts and the former regulations; and
 - (c) the former regulations in respect of existing contributors, as defined in those Acts and the former regulations.
- (2) On and from the transfer date –
- (a) the assets of the Fund vest in the Commission by virtue of this section and without the need for any further conveyance, transfer, assignment or assurance; and
 - (b) the rights or liabilities of the Board in relation to the assets become by virtue of this section the rights or liabilities of the Commission; and
 - (c) a reference in any other Act, in any instrument made under any other Act, in any contract, agreement, arrangement or undertaking, or in any document of any kind, to –
 - (i) the Board; or
 - (ii) any predecessor of the Board –

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to the extent to which the reference relates to the assets, or the rights or liabilities, of the Board in relation to the former contributory scheme, is taken to be, or include, a reference to the Commission; and

- (d) any legal, or other, proceedings that –
 - (i) relate to the former contributory scheme or to assets, rights or liabilities that are, after the transfer date, assets, rights or liabilities of the Commission or the Fund; and
 - (ii) are commenced, before the transfer date, by or against the Board or a predecessor of the Board; and
 - (iii) are pending immediately before the transfer date –

are taken to be proceedings pending by or against the Commission; and

- (e) any legal, or other, proceedings that –
 - (i) relate to the former contributory scheme or to assets, rights or liabilities that are, after the transfer date, assets, rights or liabilities of the Commission or the Fund; and

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- (ii) could have been commenced, before the transfer date, by or against the Board or a predecessor of the Board –

may be commenced by or against the Commission; and

- (f) a judgement or order of a court, or other tribunal, that –

- (i) relates to the assets, rights or liabilities of the Board or the Fund in relation to the former contributory scheme; and

- (ii) is obtained before the transfer date by or against the Board or a predecessor of the Board –

may be enforced by or against the Commission; and

- (g) any document, relating to legal, or other, proceedings, that –

- (i) relates to the assets, rights or liabilities of the Board or the Fund in relation to the former contributory scheme; and

- (ii) has been served on or by the Board, or a predecessor of the Board, before the transfer date –

is taken, where appropriate, to have been served on or by the Commission; and

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- (h) any act, matter or thing done, or omitted to be done, before the transfer date –
 - (i) in relation to the assets, rights or liabilities of the Board or the Fund in relation to the former contributory scheme; and
 - (ii) by, to or in respect of the Board or a predecessor of the Board –

is (to the extent to which that act, matter or thing has any force or effect) taken to have been done, or omitted, by, to or in respect of the Commission.

Division 2 – Fund

27. Continuation of Retirement Benefits Fund

- (1) The Fund continued in existence under section 11 of the *Retirement Benefits Act 1993* continues in existence, after the repeal of that Act, under the same name.
- (2) All contributions, payments, amounts, money and income payable under the regulations are to be paid into the Fund.
- (3) The Commission must pay out of the Fund all amounts prescribed by the regulations or as otherwise required by law.
- (4) The Commission and the Fund are liable to taxation imposed by or under any law of the State.

28. Power to establish subfunds

- (1) The Commission may establish and maintain within the Fund the subfunds that, in the opinion of the Commission, are necessary or convenient for the administration of this Act.
- (2) The Commission must ensure that, in respect of each subfund established and maintained within the Fund –
 - (a) there are separately identifiable assets and beneficiaries; and
 - (b) each beneficiary of that subfund has an interest only in the assets of that subfund and not in the other assets of the Fund; and
 - (c) there is no transfer of assets, benefits or money between that subfund and another subfund unless there is a transfer of a corresponding beneficial interest; and
 - (d) the insurance and administration costs levied on that subfund are attributable only to that subfund.
- (3) Without limiting subsection (1), the Commission may establish separate asset portfolios for each subfund, comprising assets of the Fund allocated by the Commission, all of which are to be invested for the purposes of the Fund.
- (4) For the purpose of investment and allocating the investment earnings of the Fund or for related purposes, the Commission –

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- (a) may treat 2 or more subfunds as one subfund; and
- (b) may treat one or more subfunds as being invested as part of one or more asset portfolios; and
- (c) must, if so required, determine the parts of each subfund which are to be treated as being invested in one or more asset portfolios.

29. Actuarial investigation of Fund

The Actuary must undertake the investigations into the state and sufficiency of the Fund at the times, and on the conditions, that are prescribed in the regulations.

Division 3 – Contributory scheme

30. Closure under *Public Sector Superannuation Reform Act 1999* of contributory scheme remains in effect

- (1) The contributory scheme does not apply to an employee appointed or engaged on or after 15 May 1999.
- (2) A person who –
 - (a) was employed in a permanent part-time capacity in an Agency before 1 July 1994; and
 - (b) has been continuously employed in an Agency since that date; and

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- (c) has not previously elected to contribute to a contributory scheme established by any regulations that were in force under the *Retirement Benefits Act 1993* –

may elect, in writing to the Commission, to contribute to the contributory scheme, within the meaning of this Act, on and from the commencement of the first full pay period occurring after the election is received by the Commission.

- (3) A person who –

- (a) was a married female employee and was employed in an Agency before 1 July 1982; and
- (b) has been continuously employed in an Agency since that date; and
- (c) is not contributing to the contributory scheme –

may elect, in writing to the Commission, to contribute to the contributory scheme on and from the commencement of the first full pay period occurring after the election is received by the Commission.

- (4) If a person –

- (a) was a permanent employee immediately before 1 April 1987; and
- (b) did not contribute to a contributory scheme established by any regulations

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that were in force under the *Retirement Benefits Act 1993*, because he or she was not permitted to contribute on medical grounds; and

- (c) has been continuously employed in an Agency since that date –

he or she may elect, by notice in writing to the Commission, to contribute to the contributory scheme, within the meaning of this Act, on and from the commencement of the first full pay period occurring after the election is received by the Commission.

- (5) Subsection (1) does not apply to a person if –

- (a) the Commission has certified under the regulations that a break in service does not affect the continuity of the person’s service; or
- (b) before the day on which this section commences, the Board has certified, under any regulations that were in force under the *Retirement Benefits Act 1993*, that a break in service does not affect the continuity of the person’s service.

31. Members of boards not entitled to be members of contributory scheme

- (1) A person who is, or has been, a member of a board is not, by virtue of that office, entitled to be a member of the contributory scheme and is

taken to have had no such entitlement by virtue of that office at any relevant time.

- (2) If a person who is contributing to the contributory scheme is, or has been, a member of a board, his or her contributions to that scheme and benefit entitlements under that scheme are to be determined without regard to any remuneration paid or payable as a member of that board.

32. Membership of contributory scheme by reason of 2 or more positions or capacities

- (1) This section applies to a person who makes contributions to the contributory scheme by virtue of employment in 2 or more positions or capacities in one or more Agencies, if the employment in at least one, but not all, of those positions or capacities qualifies him or her to be a member of that scheme.
- (2) If, before the commencement of the *Retirement Benefits (Miscellaneous Amendments) Act 2001*, an account had been established in the non-contributory scheme, or the accumulation scheme, (each within the meaning of the *Retirement Benefits Act 1993*) for a person to whom this section applies, that account is taken to have been validly established.
- (3) The contributions of a person to whom this section applies and benefit entitlements under the contributory scheme are to be determined without regard to any employment that does not qualify the person to contribute to that scheme.

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33. Application of Commonwealth superannuation principles

The Commission must, in relation to the contributory scheme, comply with the principles outlined in the Heads of Government Agreement made on 28 May 1996 between the Commonwealth and Tasmania, as amended from time to time, as if those principles were included in this Act.

PART 6 – CONTINUATION OF CERTAIN SCHEMES

Division 1 – Tasmanian Ambulance Service Superannuation Scheme

34. Interpretation

In this Division –

accumulation benefit component means the part of the former superannuation scheme that, immediately before the day on which this Division commences, was the total of all Accumulation Credits provided for under the former trust deed;

Ambulance Service means the Ambulance Service as defined in the *Ambulance Service Act 1982*;

continued scheme means the part of the former superannuation scheme that is continued by the TASS Trust Deed and, immediately before the transfer date, was being administered by the Board;

defined benefit component means the part of the former superannuation scheme remaining immediately before 30 June 2006 after excluding the total of all Accumulated Credits provided for under the former trust deed;

former superannuation scheme means the Tasmanian Ambulance Service Superannuation Scheme as administered

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by Tasmanian Ambulance Superannuation Pty Ltd (ACN 074 500 119) in its capacity as the trustee of that scheme immediately before 30 June 2006;

former trust deed means the Deed of Trust executed by the Director of Ambulance Services on 26 June 1996 in respect of the Tasmanian Ambulance Service Superannuation Scheme and includes that deed as amended or substituted from time to time;

Tasmanian Ambulance Service Superannuation Scheme means the Ambulance Service Superannuation Scheme established by the Ambulance Commission of Tasmania under the *Ambulance Act 1959*;

TASS Trust Deed means the Trust Deed for the Tasmanian Ambulance Service Superannuation Scheme dated 30 June 2006 which was executed and in force immediately before the transfer date under section 4 of the *Retirement Benefits (Tasmanian Ambulance Service Superannuation Scheme) Act 2006* and includes that deed as amended or substituted from time to time.

35. TASS Trust Deed continues in force and remains binding

The TASS Trust Deed must –

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- (a) continue to provide the defined benefit component of the former superannuation scheme for persons who, immediately before 30 June 2006, were contributing to or required to contribute to, or were deemed to be contributing to, the former superannuation scheme; and
- (b) remain binding on the Ambulance Service.

36. Contents of TASS Trust Deed

The TASS Trust Deed must provide –

- (a) for the continuation of the defined benefit component of the former superannuation scheme and for it to be administered by the Commission in accordance with this Act and the requirements of the SIS Act; and
- (b) that an Ambulance member appointed or employed on or after 30 June 2006 is not entitled to become a member of the continued scheme; and
- (c) that all benefits provided by the continued scheme, other than temporary incapacity benefits, are to be paid as lump sums; and
- (d) for the amounts, manner and timing of payment of contributions to the continued scheme; and

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- (e) for appeals against decisions, determinations and orders of the Commission in the course of the Commission's administration of the continued scheme; and
- (f) that the only authorised payments from the continued scheme to the Commission or the Ambulance Service are –
 - (i) for refunds of overpaid contributions; or
 - (ii) payments permitted by the SIS Act; and
- (g) that the Ambulance Service is to pay to the Commission such additional amounts as the Minister, on the recommendation of the Actuary, may direct so as to enable the Commission to meet the Commission's liabilities under this Act.

37. Amendment or revocation and substitution of TASS Trust Deed

- (1) The Commission may, in accordance with the TASS Trust Deed, prepare and submit to the Minister for approval a draft of a deed to amend, or to revoke and substitute, the TASS Trust Deed.
- (2) The Minister may approve, or refuse to approve, the draft.

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- (3) The Minister must not approve the draft unless he or she is satisfied that –
- (a) the Ambulance Service and the Health Services Union of Australia – Tasmanian No. 1 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 Ambulance Service and the Commission, in writing, that the Minister has approved, or refused to approve, the draft.
- (5) If the Minister notifies under subsection (4) the Commission, in writing, that the Minister has refused to approve the draft, the Commission must prepare and submit to the Minister a revised draft in accordance with this section and any requests made by the Minister.
- (6) A notice under subsection (4) of the approval of the draft must specify the day on which the amendment to, or the revocation and substitution of, the TASS Trust Deed, that is specified in the approval, is to take effect.
- (7) If, after the consultation referred to in subsection (3)(a), the Minister resolves to approve the draft –
- (a) the Minister and the Commission must execute the deed to amend, or to revoke and substitute, the TASS Trust Deed; and

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- (b) the Minister must cause to be published in the *Gazette* notice of –
 - (i) the amendment to, or revocation and substitution of, the TASS Trust Deed; and
 - (ii) the day on which the amended or substituted TASS Trust Deed takes effect.
- (8) The TASS Trust Deed must not be amended or substituted so as to authorise any payment from the continued scheme to the Commission or the Ambulance Service other than –
 - (a) for refunds of overpaid contributions; or
 - (b) payments permitted by the SIS Act.

38. Continued scheme

The continued scheme –

- (a) forms part of the Fund continued by section 27 of this Act; and
- (b) is to be administered by the Commission as a subfund of the Fund.

39. Transitional matters in relation to continued scheme

On and from the transfer date –

- (a) a reference in any other Act, in any instrument made under any other Act, in

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any contract, agreement, arrangement or undertaking, or in any document of any kind, to –

- (i) the Board; or
- (ii) any predecessor of the Board –

to the extent to which the reference relates to the assets, or the rights or liabilities, of the Board in relation to the continued scheme, is taken to be, or include, a reference to the Commission; and

(b) any legal, or other, proceedings that –

- (i) relate to the continued scheme or to assets, rights or liabilities that are, after the transfer date, assets, rights or liabilities of the Commission or the Fund; and
- (ii) are commenced, before the transfer date, by or against the Board or a predecessor of the Board; and
- (iii) are pending immediately before the transfer date –

are taken to be proceedings pending by or against the Commission; and

(c) any legal, or other, proceedings that –

- (i) relate to the continued scheme or to assets, rights or liabilities that

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are, after the transfer date, assets, rights or liabilities of the Commission or the Fund; and

- (ii) could have been commenced, before the transfer date, by or against the Board or a predecessor of the Board –

may be commenced by or against the Commission; and

- (d) a judgement or order of a court, or other tribunal, that –

- (i) relates to the assets, rights or liabilities of the Board or the Fund in relation to the continued scheme; and

- (ii) is obtained before the transfer date by or against the Board or a predecessor of the Board –

may be enforced by or against the Commission; and

- (e) any document, relating to legal, or other, proceedings, that –

- (i) relates to the assets, rights or liabilities of the Board or the Fund in relation to the continued scheme; and

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- (ii) has been served on or by the Board, or a predecessor of the Board, before the transfer date –

is taken, where appropriate, to have been served on or by the Commission; and

- (f) any act, matter or thing done, or omitted to be done, before the transfer date –

- (i) in relation to the assets, rights or liabilities of the Board or the Fund in relation to the continued scheme; and

- (ii) by, to or in respect of the Board or a predecessor of the Board –

is (to the extent to which that act, matter or thing has any force or effect) taken to have been done, or omitted, by, to or in respect of the Commission.

40. Certain determinations, &c., to continue to have effect

A determination or decision that –

- (a) was made by the trustee or the Board in the administration of the former superannuation scheme or the continued scheme; and
- (b) affects the rights of an Ambulance member; and

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(c) was in force immediately before the day
on which this Division commences –

continues to have effect unless or until the
determination or decision is varied or rescinded
by the Commission, acting in accordance with
the TASS Trust Deed.

41. Guarantee by Minister

The Minister administering the *Ambulance
Service Act 1982* must guarantee, on behalf of
the State, the payment of all contributions
required to be made to the Commission by the
Ambulance Service if the Ambulance Service
fails to make the contributions required under
the TASS Trust Deed within 28 days after the
Commission demands the contributions be made.

Division 2 – State Fire Commission Superannuation Scheme

42. Interpretation

In this Division –

accumulation benefit component means the
part of the former superannuation scheme
that, immediately before the date on
which this Division commences, was the
total of all Accumulated Credits provided
for under the former trust deed;

continued scheme means the part of the
former superannuation scheme that is
continued by the Trust Deed and,

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immediately before the transfer date, was being administered by the Board;

defined benefit component means the part of the former superannuation scheme that, immediately before 1 May 2006, was not the accumulation benefit component;

former superannuation scheme means the State Fire Commission Superannuation Scheme as administered by the former trustee immediately before 24 June 2005;

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;

State Fire Commission means the State Fire Commission as defined in the *Fire Service Act 1979*;

Trust Deed means the Trust Deed dated 26 April 2006 which was executed and in force immediately before the transfer date under section 4 of the *Retirement Benefits (State Fire Commission Superannuation Scheme) Act 2005* and

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includes that Deed as amended or substituted from time to time.

43. Trust Deed continues in force and remains binding

The Trust Deed must –

- (a) continue to provide the defined benefit component of the former superannuation scheme for persons who, immediately before 1 May 2006, were contributing to or required to contribute to, or were deemed to be contributing to, the former superannuation scheme; and
- (b) remain binding on the State Fire Commission.

44. Contents of Trust Deed

The Trust Deed must provide –

- (a) for the continuation of the defined benefit component of the former superannuation scheme and for it to be administered by the Commission 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 all benefits provided by the continued scheme, other than temporary

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- incapacity benefits, are to be paid as lump sums; 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 Commission in the course of the Commission's administration of the continued scheme; and
 - (f) that the only authorised payments from the continued scheme to the Commission or the State Fire Commission are –
 - (i) for refunds of overpaid contributions; or
 - (ii) payments permitted by the SIS Act; and
 - (g) that the State Fire Commission is to pay to the Commission such additional amounts as the Minister, on the recommendation of the Actuary, may direct so as to enable the Commission to meet the Commission's liabilities under this Act.

45. Amendment or revocation and substitution of Trust Deed

- (1) The Commission may, in accordance with the Trust Deed, prepare and submit to the Minister

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for approval a draft of a deed to amend, or to revoke and substitute, the Trust Deed.

- (2) The Minister may approve, or refuse to approve, the draft.
- (3) The Minister must not approve the draft unless he or she is satisfied that –
 - (a) the State Fire 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 State Fire Commission, in writing, that the Minister has approved, or refused to approve, the draft.
- (5) If the Minister notifies under subsection (4) the Commission, in writing, that the Minister has refused to approve the draft, the Commission must prepare and submit to the Minister a revised draft in accordance with this section and any requests made by the Minister.
- (6) A notice under subsection (4) of the approval of the draft must specify the day on which the amendment to, or the revocation and substitution of, the Trust Deed, that is specified in the approval, is to take effect.

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- (7) If, after the consultation referred to in subsection (3)(a), the Minister resolves to approve the draft –
- (a) the Minister and the Commission 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 day on which the amended or substituted Trust Deed takes effect.
- (8) The Trust Deed must not be amended or substituted so as to authorise any payment from the continued scheme to the Commission or the State Fire Commission other than for –
- (a) refunds of overpaid contributions; or
 - (b) payments permitted by the SIS Act.

46. Continued scheme

The continued scheme –

- (a) forms part of the Fund continued by section 27 of this Act; and
- (b) is to be administered by the Commission as a subfund of the Fund.

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47. Transitional matters in relation to continued scheme

On and from the transfer date –

(a) a reference in any other Act, in any instrument made under any other Act, in any contract, agreement, arrangement or undertaking, or in any document of any kind, to –

(i) the Board; or

(ii) any predecessor of the Board –

to the extent to which the reference relates to the assets, or the rights or liabilities, of the Board in relation to the continued scheme, is taken to be, or include, a reference to the Commission; and

(b) any legal, or other, proceedings that –

(i) relate to the continued scheme or to assets, rights or liabilities that are, after the transfer date, assets, rights or liabilities of the Commission or the Fund; and

(ii) are commenced, before the transfer date, by or against the Board or a predecessor of the Board; and

(iii) are pending immediately before the transfer date –

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are taken to be proceedings pending by or against the Commission; and

(c) any legal, or other, proceedings that –

(i) relate to the continued scheme or to assets, rights or liabilities that are, after the transfer date, assets, rights or liabilities of the Commission or the Fund; and

(ii) could have been commenced, before the transfer date, by or against the Board or a predecessor of the Board –

may be commenced by or against the Commission; and

(d) a judgement or order of a court, or other tribunal, that –

(i) relates to the assets, rights or liabilities of the Board or the Fund in relation to the continued scheme; and

(ii) is obtained before the transfer date by or against the Board or a predecessor of the Board –

may be enforced by or against the Commission; and

(e) any document, relating to legal, or other, proceedings, that –

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- (i) relates to the assets, rights or liabilities of the Board or the Fund in relation to the continued scheme; and
- (ii) has been served on or by the Board, or a predecessor of the Board, before the transfer date –

is taken, where appropriate, to have been served on or by the Commission; and
- (f) any act, matter or thing done, or omitted to be done, before the transfer date –
 - (i) in relation to the assets, rights or liabilities of the Board or the Fund in relation to the continued scheme; and
 - (ii) by, to or in respect of the Board or a predecessor of the Board –

is (to the extent to which that act, matter or thing has any force or effect) taken to have been done, or omitted, by, to or in respect of the Commission.

48. Certain determinations, &c., to continue to have effect

A determination or decision that –

- (a) was made by the former trustee or the Board in the administration of the former superannuation scheme or the continued scheme; and

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(b) affects the rights of a Fire Service member; and

(c) was in force immediately before the day on which this Division commences –

continues to have effect unless or until the determination or decision is varied or rescinded by the Commission, acting in accordance with the Trust Deed.

49. Guarantee by Minister

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

PART 7 – MISCELLANEOUS

50. Actuary

- (1) The Minister may appoint a person or organisation as the Actuary for the purposes of this Act and the regulations.
- (2) A person or organisation appointed as the Actuary holds office, subject to this Act, for the period, and on the terms and conditions, specified in the instrument of appointment.
- (3) A person may only be appointed under subsection (1) if he or she is a Fellow of the Institute of Actuaries (Australia), the Institute of Actuaries (London) or the Institute of Actuaries (Edinburgh).
- (4) An organisation may only be appointed under subsection (1) if the organisation employs a person who is a Fellow of the Institute of Actuaries (Australia), the Institute of Actuaries (London) or the Institute of Actuaries (Edinburgh).
- (5) A person or organisation who or that is appointed as the Actuary ceases to be the Actuary if the person or organisation ceases to be a person or organisation who or that may be appointed under subsection (1).
- (6) The Minister may, by notice to a person or organisation, revoke the appointment of the person or organisation as the Actuary.

51. Employer contributions to chosen fund

(1) In this section –

chosen fund has the same meaning as in the Superannuation Guarantee Act.

(2) If an employee has elected a chosen fund, the Agency manager in relation to the Agency must, on being satisfied, after making reasonable enquiries as to whether the chosen fund is a complying superannuation scheme –

(a) make, on behalf of the Agency, employer superannuation contributions, in respect of that employee, to that chosen fund; and

(b) make those contributions in the manner required by the governing rules of that chosen fund.

(3) The rate of employer superannuation contributions to the chosen fund in respect of a relevant employee is to be calculated –

(a) by reference to the salary of the relevant employee; and

(b) in accordance with the relevant “charge percentage” specified in section 19 of the Superannuation Guarantee Act.

52. Certain references in industrial awards

(1) Any reference in an award, within the meaning of the *Industrial Relations Act 1984*, to the

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is to be taken to be a reference to this Act.

- (2) Any reference, in the Tasmanian Fire Fighters Industry Employees Award 2010, to the RBF Tasmanian Accumulation Scheme is to be taken, in relation to an employee, to be a reference to –
- (a) unless paragraph (b) applies in relation to the employee, the default fund in relation to which the employee is, for the purposes of section 21, a relevant employee; or
 - (b) if the employee has elected a chosen fund, within the meaning of the Superannuation Guarantee Act, that fund.

53. Transitional provisions in relation to certain RBF employees

Schedule 3 has effect.

54. Appropriation and Minister's guarantee

- (1) In this section –

Agency means –

- (a) an Agency within the meaning of the *State Service Act 2000*; or
- (b) the controlling authority of any industry or undertaking carried on by or on behalf of the State; or

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- (c) where the services of a statutory authority are transferred to another person or organisation – the person or organisation responsible for payment of contributions to the Fund in respect of contributors.
- (2) A contribution that is required under the regulations to be paid by the Minister is to be paid by the Minister out of the Consolidated Fund without further appropriation than this section.
- (3) A contribution referred to in subsection (2) is to be paid at the times, and in the manner, that is prescribed in the regulations.
- (4) The regulations may provide for a guarantee to be given by the Minister with respect to –
 - (a) the payment of pensions and lump sum benefits under this Act in relation to the contributory scheme; and
 - (b) the payment to the Fund of contributions, in relation to the contributory scheme, required to be made by an Agency or statutory authority; and
 - (c) the payment to a default fund of contributions, in relation to the default fund, required to be made by an Agency or statutory authority in accordance with this Act or the governing rules of the fund.

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55. Annual reports

- (1) If an Agency is required to produce an annual report, that report is to include a certification by the relevant Agency manager that, if it is the case, the Agency has met its obligations under the Superannuation Guarantee Act, in respect of any employee, employed in the Agency, who is or becomes a member of a complying superannuation scheme or an RSA to which the Agency contributes, other than the contributory scheme.
- (2) An Agency is to include in its annual report such other information relating to superannuation schemes or RSAs of which its employees are members as may be prescribed in the regulations.

56. Notices are not statutory rules

A notice under this Act is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

57. Regulations generally

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may provide –
 - (a) for the administration of subfunds –
 - (i) for members of Parliament first elected before 1 July 1999 and

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the widows, widowers and children of those members; and

- (ii) any other subfund established by or under this Act; and
- (b) for contributions to the Fund or a subfund to be made by the Minister which may be an appropriation of the Consolidated Fund; and
- (c) for any entitlement of members of Parliament arising from ill-health or physical or mental incapacity to be determined by a committee consisting of the President of the Legislative Council, the Speaker of the House of Assembly and the Secretary of the responsible Department in relation to the *Public Account Act 1986* or his or her nominee; and
- (d) for the procedure to be followed by the committee referred to in paragraph (c); and
- (e) for the procedure to be followed in determining a dispute under this Act; and
- (f) for the conferral of power on the Supreme Court to review any determination under this Act that is adverse to the interests of a person claiming to be entitled to a benefit under this Act and to make any declaration as to that entitlement as the Court considers appropriate.

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- (3) Without limiting the generality of subsection (1), the regulations may –
 - (a) provide that a person aggrieved by a decision of the Commission or of the committee referred to in subsection (2)(c) may, on payment of a prescribed fee, require the Commission, or the committee, respectively, to apply to the Supreme Court for a declaration as to the validity of the decision made by the Commission, or the committee, respectively; and
 - (b) confer power on the Supreme Court in relation to applications referred to in paragraph (a) and for the costs of proceedings in the Supreme Court in relation to such applications.
- (4) The regulations may require any document, information or particulars required by or under the regulations to be provided or given to the Minister or to the Commission to be verified by a statutory declaration.
- (5) Without limiting the generality of subsection (1), the regulations may provide for the preparation and issue by the Commission of any reports or statements that may be necessary or desirable for the Fund to be administered and operated consistently with any relevant Commonwealth law that applies to complying superannuation schemes, including reports or statements that are to be issued to –

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- (a) any relevant Commonwealth authority or agency, for the purpose of providing information in relation to the administration and operation of the Fund; and
 - (b) a member of the Fund, for the purpose of providing information in relation to the member's interest in the Fund and his or her benefit entitlement.
- (6) The regulations 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.
- (7) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Commission.
- (8) The regulations may –
 - (a) provide that a contravention of any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.
- (9) Before proposed regulations are submitted to the Governor –
 - (a) the Minister must be satisfied that the Tasmanian Trades and Labor Council has

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been consulted on the proposed regulations; and

- (b) the Commission must, if appropriate to do so, provide the Minister with a statement as to the likely cost to the State arising from the proposed regulations.

58. Regulations may contain transitional matters

- (1) Without limiting the generality of section 57(1), the regulations may contain provisions of a savings or transitional nature consequent on –
 - (a) the enactment of this Act; or
 - (b) the enactment of the *Retirement Benefits Act 1993*; or
 - (c) the enactment of the *Retirement Benefits (Parliamentary Superannuation Trustee Arrangements and Miscellaneous Amendments) Act 2002*; or
 - (d) the dissolution of the Retirement Benefits Fund Investment Trust as in existence under the *Retirement Benefits Act 1993* on 30 June 1995; or
 - (e) the repeal of the *Retirement Benefits Act 1993* or the *Public Sector Superannuation Reform Act 1999*.
- (2) The provisions, of a savings or transitional nature, that are referred to in subsection (1) may provide that any functions, powers, rights and authorities conferred by, or arising from –

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- (a) the repeal of the *Retirement Benefits Act 1982*; or
- (b) the repeal of the *Retirement Benefits Act 1993*; or
- (c) the repeal of the *Public Sector Superannuation Reform Act 1999*; or
- (d) any other Act amended by the *Retirement Benefits (Parliamentary Superannuation Trustee Arrangements and Miscellaneous Amendments) Act 2002* or by another Act that makes amendments to other Acts consequential on the enactment of this Act; or
- (e) an arrangement or agreement under which services formerly or currently provided by the State are transferred to another person –

are to continue in force with the modifications, if any, that are provided by the regulations.

59. Regulations may provide for cases of relationship breakdown

- (1) Without limiting the generality of section 57(1), the regulations may –
 - (a) provide for any matter necessary or desirable for carrying into effect any law of the State or the Commonwealth relating to the splitting of superannuation

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interests on the breakdown of a relationship; or

- (b) without limitation, provide for abrogating, reducing, assigning or withholding a person's entitlement to a lump sum or pension benefit in order to satisfy the requirements of any law referred to in paragraph (a) or of any other relevant law of the Commonwealth; or
- (c) provide for the imposition of fees payable to the Commission for any such purpose as provided for by the law of the Commonwealth –

and any such regulation may take effect on the day on which that law of the State or the Commonwealth takes effect or on any later day.

- (2) The regulations may also contain provisions for abrogating, reducing, assigning or withholding a person's entitlement to a lump sum or pension benefit, if the Commission is satisfied that the person, or another person, who is or was a contributor, employee, or pensioner, in respect of the contributory scheme was, at the date of his or her death –
 - (a) living apart from his or her spouse or partner in a significant relationship, within the meaning of the *Relationships Act 2003*; and
 - (b) not providing significant financial support for that spouse or partner.

60. Transitional and savings provisions relating to repeal of *Retirement Benefits Act 1993*

- (1) The repeal of the *Retirement Benefits Act 1993* does not affect the validity of –
- (a) any action or decision that was declared, under section 29F of that Act, to be valid; or
 - (b) any payment that was taken, by virtue of section 29G of that Act, to have been validly made; or
 - (c) a decision or determination of the Board that was taken, by virtue of section 29H or 29K of that Act, to have been validly made; or
 - (d) any benefit, paid by the Board, that was taken, by virtue of section 29H of that Act, to have been validly paid.
- (2) An action does not lie against the Crown, the Board, any member of the Board, the chief executive officer of the Board or any other officer of the Board –
- (a) by reason of the operation of section 29B or 29C of the *Retirement Benefits Act 1993*; or
 - (b) in respect of any advice given, or statement made, in good faith by or on behalf of the Board arising from, or for the purposes of, either of those sections.

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- (3) Despite the repeal of Schedule 3 to the *Retirement Benefits Act 1993*, an instrument that was in force immediately before 1 July 1995 and in which there is a reference to the Retirement Benefits Fund Investment Trust continues in effect as if –
- (a) the reference to the Trust were a reference to the Commission; and
 - (b) if the case so requires, the reference included a reference to the Commission –
- unless the context or subject matter of the instrument otherwise indicates or requires.
- (4) Subject to this section, a person who immediately before 1 July 1994 was contributing to the Fund must continue to contribute to the Fund as provided in the regulations.
- (5) If a person to whom subsection (4) applies was contributing to the Fund at a rate that is not the rate applicable to the 40 years' service scheme under the *Retirement Benefits Act 1982*, as in force before it was repealed, that person is taken to have made an election to continue to contribute at that rate.
- (6) In respect of a person to whom subsection (4) applies, contributions are to be deducted from each periodical pay in accordance with the regulations and paid to the Fund.
- (7) If a person to whom subsection (4) relates was, immediately before 1 July 1994, making supplementary contributions in accordance with

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the *Retirement Benefits Act 1982*, as in force before it was repealed, that person is, on and from that date, taken to have made an election to continue to make those supplementary contributions as voluntary contributions.

- (8) The repeals effected by section 32 of the *Retirement Benefits Act 1993* and the repeal of that Act by this Act do not affect –
- (a) the effect of any election, decision, direction, resolution, delegation, certificate, suspension or authorization made or granted by the Board under the *Retirement Benefits Act 1982*, or the *Retirement Benefits Act 1993*, or of any condition attached to any such election, decision, direction, resolution, delegation, certificate, suspension or authorization; or
 - (b) the effect of any decision, resolution or delegation made by the Trust or the Board.

61. Savings in relation to TGIO Reserve Account

- (1) In this section –

former TGIO employee benefits means all of the pensions or other benefits and entitlements to which former TGIO employees are entitled under the regulations;

former TGIO employees means –

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- (a) a person who has ceased to be an employee as mentioned in section 19 of the *Tasmanian Government Insurance Office (Sale) Act 1993*; and
- (b) a person who is, under the regulations, entitled to a pension, or other benefits or entitlements under this Act by reason of his or her former employment under the *Tasmanian Government Insurance Act 1919*; and
- (c) a person who is, under the regulations, entitled to a pension, or other benefits or entitlements under this Act by reason of his or her relationship to a person referred to in paragraph (a) or (b);

TGIO Reserve Account means the account maintained by the Board to fund former TGIO employee benefits.

- (2) Any amount standing to the credit of the TGIO Reserve Account after all liabilities in respect of former TGIO employee benefits have been satisfied is the property of the Crown.
- (3) The Commission may –
 - (a) determine that some of the funds in the TGIO Reserve Account can prudently be transferred to the Crown; or

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- (b) determine that all of the funds in the TGIO Reserve Account can prudently be transferred to the Crown.
- (4) A determination under subsection (3)(a) or (b) may only be made if the Commission, on the written advice of the Actuary, is satisfied that all liabilities in respect of former TGIO employee benefits have been satisfied.
- (5) On making a determination under subsection (3)(a) or (b), the Commission is to advise the Treasurer of the amount that the Commission has determined can prudently be transferred to the Crown.
- (6) On receiving the Commission's advice under subsection (5), the Treasurer, by instrument in writing, may direct the Commission to transfer the amount specified in the advice (or any part of that amount) to the Crown.
- (7) If the Treasurer gives the Commission a direction under subsection (6) –
 - (a) the Commission must comply with the direction as soon as practicable; and
 - (b) the direction constitutes full and sufficient authority for the amount specified in the direction to be withdrawn from the TGIO Reserve Account and paid into the Consolidated Fund; and
 - (c) the Treasurer is to give notice (and particulars) of the direction in the *Gazette*.

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- (8) If subsection (3)(a) applies and the Treasurer's direction is in respect of all of the residual funds in the TGIO Reserve Account, the direction constitutes full and sufficient authority for the Commission to close the TGIO Reserve Account once those funds have been transferred to the Crown.
- (9) If at any time following the closure of the TGIO Reserve Account the Commission incurs any further liability in respect of a benefit paid or payable to a former TGIO employee, the Treasurer is to indemnify the Commission for any costs in respect of the liability so incurred.

62. Administration of Act

Until provision is made for the administration of this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

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

63. Legislation repealed

The legislation specified in Schedule 4 is repealed.

SCHEDULE 1 – MEMBERSHIP OF COMMISSION

Section 7(4)

1. Term of office

A member of the Commission is appointed for the period, of not more than 5 years, that is specified in the member's instrument of appointment and may be reappointed.

2. Holding other office

The holder of an office who is required by the terms by which he or she holds that office to devote the whole of his or her time to the duties of that office is not disqualified from –

- (a) holding that office in conjunction with the office of a member of the Commission; or
- (b) accepting any remuneration payable to a member of the Commission.

3. *State Service Act 2000*

- (1) The *State Service Act 2000* does not apply in relation to a member of the Commission in his or her capacity as such a member.
- (2) A person may hold the office of member of the Commission in conjunction with State Service employment.

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4. Remuneration and conditions of appointment

- (1) A member of the Commission is entitled to be paid the remuneration and allowances that the Treasurer determines.
- (2) A member of the Commission who is a State Service employee or State Service officer is not entitled to remuneration or allowances under this clause except with the approval of the Minister administering the *State Service Act 2000*.
- (3) A member of the Commission holds office on the conditions, in relation to matters not provided for by this Act, that are specified in the member's instrument of appointment.

5. Vacation of office

- (1) A member of the Commission vacates his or her office if he or she –
 - (a) dies; or
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration or estate for their benefit; or
 - (c) resigns his or her office by writing under his or her hand addressed to the Treasurer and the Treasurer accepts the resignation; or

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(d) is removed from office by the Treasurer under subclause (2).

(2) The Treasurer may remove a person from the office of member of the Commission if the Treasurer is satisfied that –

(a) the person is absent from that office –

(i) otherwise than in accordance with the person's instrument of appointment to that office; or

(ii) without the permission of the Treasurer; or

(b) the person is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for a term of 12 months or longer; or

(c) the person misbehaves in office or behaves in a way likely to bring the office into disrepute; or

(d) if the person were to be or remain a member of the Commission, the Commission would not meet the requirements of standards, relating to fitness and propriety, that are applicable to trustees and are prescribed in the relevant prudential standards made under the SIS Act; or

(e) the person is unable to adequately perform the functions of his or her office; or

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- (f) the Commission ought to be a corporation sole.

6. Filling of vacancies

If the office of a member of the Commission becomes vacant, the Treasurer may appoint a person to the vacant office for the remainder of that member's term of office or until the office is vacated.

7. Validation of proceedings

- (1) An act or proceeding of the Commission or of a person acting under any direction of the Commission is not invalidated by reason only that, when the act or proceeding was done, taken or commenced, there was a vacancy in the office of a member of the Commission.
- (2) All acts and proceedings of the Commission or of a person acting under a direction of the Commission are, despite –
- (a) the subsequent discovery of a defect in the appointment of a member of the Commission; or
 - (b) that any other person was disqualified from acting as, or incapable of being, a member of the Commission –

as valid as if the member of the Commission had been duly appointed and was qualified to act as, or capable of being, a member of the

Commission, and as if the Commission had been fully constituted.

8. Presumptions

In any proceedings by or against the Commission, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the Commission; or
- (b) the appointment of any member of the Commission.

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SCHEDULE 2 – MEETINGS OF THE COMMISSION

Section 7(5)

1. Convening of meetings

- (1) Subject to subclause (2), meetings of the Commission are to be held at the times and places determined by the Commission.
- (2) The chairperson of the Commission may convene a meeting at any time.
- (3) If the chairperson of the Commission is absent or otherwise unable to perform the duties of the office –
 - (a) the person acting in the office of chairperson of the Commission, or a person authorised by the Commission to do so, is to convene a meeting in accordance with subclause (2) as if he or she were the chairperson of the Commission; or
 - (b) any other meeting may be convened by –
 - (i) two members of the Commission; or
 - (ii) a person authorised by the Commission to do so.

2. Presiding at meetings

- (1) The chairperson of the Commission is to preside at all meetings of the Commission at which he or she is present.
- (2) If the chairperson is not present at a meeting of the Commission, the member of the Commission elected by the members of the Commission present is to preside.

3. Quorum and voting at meetings

- (1) At a meeting of the Commission, 2 members of the Commission constitute a quorum.
- (2) A meeting of the Commission at which a quorum is present is competent to transact any business of the Commission.
- (3) At a meeting of the Commission –
 - (a) a question is decided by a majority of votes of the members of the Commission present and voting; and
 - (b) the person presiding has a casting vote if there is an equality of votes.

4. Conduct of meetings

- (1) Subject to this Act, the Commission may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.

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- (2) The Commission may permit members of the Commission to participate in a particular meeting or all meetings by –
 - (a) telephone; or
 - (b) video conference; or
 - (c) any other means of communication approved by the Commission.
- (3) A member who participates in a meeting under a permission granted under subclause (2) is present at the meeting.
- (4) The Commission may allow a person to attend a meeting for the purpose of advising or informing it on any matter or for any other reason the Commission considers appropriate.

5. Resolutions without meetings

- (1) If at least 2 members of the Commission sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those terms is taken to have been passed at a meeting of the Commission held on the day on which the document is signed or, if the members do not sign it on the same day, on the day on which the last of the members signs the document.
- (2) If a resolution is taken to have been passed under subclause (1), each member of the Commission is to be –
 - (a) advised immediately of the matter; and

(b) given a copy of the terms of the resolution.

(3) For the purposes of subclause (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members of the Commission, are taken to constitute one document.

6. Minutes

The Commission is to keep minutes of its proceedings.

7. General procedure

Subject to this Act, the Commission may regulate its own proceedings.

8. Presumptions

In any proceedings by or against the Commission, unless evidence is given to the contrary, proof is not required of –

- (a) any resolution of the Commission; and
- (b) the presence of a quorum at any meeting of the Commission.

**SCHEDULE 3 – SAVINGS PROVISIONS IN RELATION
TO CERTAIN RBF EMPLOYEES**

Section 53

1. Interpretation

In this Schedule –

continuous employment has the same meaning as in the *Long Service Leave Act 1976* or the *Long Service Leave (State Employees) Act 1994*, as the case may be;

RBF means the Retirement Benefits Fund Board (ABN 97 724 593 931);

relevant person means a person who –

- (a) immediately before the transfer date, was an employee of RBF; and
- (b) is, after the transfer date, appointed under the *State Service Act 2000* and is made available to enable the Commission to perform and exercise the Commission's functions and powers.

2. Long service leave entitlements

- (1) A relevant person's period of service with RBF is taken to be continuous employment with the State Service –

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- (a) for the purposes of calculating the long service leave which that person will be entitled to, or eligible for, under the *Long Service Leave (State Employees) Act 1994*; and
 - (b) for the purposes of calculating any redundancy payment if the person is made redundant from the State Service.
- (2) If the *Long Service Leave Act 1976* applies to a relevant person, that person may elect in writing, on the day on which that person ceases to be an employee of RBF, to not be paid in accordance with section 12(4) of that Act.
- (3) If the *Long Service Leave (State Employees) Act 1994* applies to a relevant person, that person may elect in writing, on the day on which that person ceases to be an employee of RBF, to not be paid the allowance specified in section 20(2) of that Act.
- (4) On being appointed under the *State Service Act 2000*, a relevant person is entitled, subject to subclause (10), to the amount of long service leave that the person would have been entitled to, or been eligible for, on the day on which the person ceased to be an employee of RBF, if –
 - (a) the person had not ceased to be an employee of RBF; and
 - (b) the person has not received any payment in respect of that long service leave.

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- (5) For the purposes of calculating the long service leave entitlement under the *Long Service Leave (State Employees) Act 1994* of a relevant person, the amount of long service leave to which that person is entitled is to be no more than the combined amount of –
- (a) the long service leave under subclause (4); and
 - (b) the amount of long service leave to which that person is entitled under the *Long Service Leave (State Employees) Act 1994* on and from the date on which that person is appointed under the *State Service Act 2000* but excluding that person's period of service with RBF.
- (6) On appointment under the *State Service Act 2000*, a relevant person who is not entitled to long service leave in accordance with section 8(2)(a)(i) of the *Long Service Leave Act 1976* is entitled to long service leave if the combined period of continuous employment with RBF and continuous employment in the State Service is 10 years.
- (7) For the purposes of calculating the long service leave entitlement of a person referred to in subclause (6), the amount of long service leave to which that person is entitled is to be no more than the combined amount of –
- (a) 0.866 weeks of long service leave for each year of continuous employment with RBF; and

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- (b) 6.5 days of long service leave for each year of continuous employment in the State Service.
- (8) On appointment under the *State Service Act 2000*, a relevant person who is not entitled to long service leave in accordance with section 8(2)(a)(ii) of the *Long Service Leave Act 1976* is entitled to long service leave for the period of that person's continuous employment with RBF.
- (9) Subject to subclause (10), for the purposes of calculating the long service leave entitlement of a person referred to in subclause (8), the amount of long service leave to which that person is entitled is to be no more than the amount of 0.866 weeks of long service leave for each year of continuous employment with RBF.
- (10) If a relevant person has taken or exhausted the long service leave to which that person is entitled as a result of his or her employment with the RBF, the amount of long service leave taken or exhausted by that person is to be deducted from any amount of long service leave to which the person is, or becomes, entitled, or for which that person is, or becomes, eligible, on or after that person's appointment under the *State Service Act 2000*.
- (11) Subclauses (1), (4), (6) and (8) do not apply if the period from the date of the relevant person ceasing to be an employee of RBF to the date of commencement of the person's appointment under the *State Service Act 2000* exceeds 3 months.

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- (12) Subclause (4) does not apply to a relevant person if that person has received payment in respect of his or her full entitlement to long service leave accrued in respect of his or her employment with RBF.

3. Superannuation entitlements

- (1) Nothing in this Act affects the superannuation entitlements of a relevant person that were in existence immediately before the date on which that person ceased to be an employee of RBF.
- (2) Subclause (1) does not apply if the period from the date on which the person ceased to be an employee of RBF to the date of commencement of the person's appointment under the *State Service Act 2000* exceeds 3 months.

SCHEDULE 4 – LEGISLATION REPEALED

Section 63

Retirement Benefits Act 1993 (No. 103 of 1993)

Public Sector Superannuation Reform Act 1999 (No. 19 of 1999)

Retirement Benefits (State Fire Commission Superannuation Scheme) Act 2005 (No. 26 of 2005)

Retirement Benefits (Tasmanian Ambulance Service Superannuation Scheme) Act 2006 (No. 2 of 2006)