

PUBLIC SECTOR SUPERANNUATION (MISCELLANEOUS AMENDMENT) ACT 2009

NOTES ON CLAUSES

- Clause 1 Short title.
- Clause 2 Provides that the amendments commence on the day the Act receives Royal Assent, except for those parts that commence on a day to be proclaimed.
- Clause 3 Clarifies that the amendment of any regulations by this Act does not prevent their further amendment by subsequent regulations.
- Clause 4 Specifies that the *Director of Public Prosecutions Act 1973* is referred to as the Principal Act under Part 2 of the amending Act.
- Clause 5 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed, Section 8B of the Principal Act is amended by removing the reference to the investment account being established under the regulations.
- In practice, all Investment accounts are administered indivisibly and therefore it makes sense to consolidate their administration under the Trust Deed, especially as the contributory scheme is now a closed scheme. This administrative change will also make available to the former contributory scheme Investment account holders the new insurance product offering being developed for TAS members.
- No investment account holder will be adversely impacted by this administrative change as any existing rights and arrangements will be preserved.
- Clause 6 Specifies that the *Governor of Tasmania Act 1982* is referred to as the Principal Act under Part 3 of the amending Act.
- Clause 7 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed, Section 6E of the Principal Act is amended by removing the reference to the investment account being established under the regulations.
- Clause 8 Specifies that the *Judges' Contributory Pensions Act 1968* is referred to as the Principal Act under Part 4 of the amending Act.

- Clause 9 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed, Section 4A of the Principal Act is amended by removing the reference to the investment account being established under the regulations.
- Clause 10 Specifies that the *Parliamentary Salaries, Superannuation and Allowances Act 1973* is referred to as the Principal Act under Part 5 of the amending Act.
- Clause 11 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed, Clause 2(1) of Schedule 3 of the Principal Act is amended by removing the reference to the investment account being established under the regulations.
- Clause 12 Specifies that the *Public Sector Superannuation Reform Act 1999* is referred to as the Principal Act under Part 6 of the amending Act.
- Clauses 13 & 14 Inserts a new definition of salary to align it with the definition of Salary contained in the Trust Deed, which is the basis for Public Sector Employer superannuation contributions. The change therefore reflects current practice.
- Clause 15 Section 6(7) of the Principal Act is amended by omitting the word “wages” in the table as it is no longer referred to in the Principal Act.
- Clause 16 Section 9(1) of the Principal Act is amended by omitting paragraph (ga) for it is no longer relevant as members insurance arrangements will be placed with an external provider.
- Clause 17 Clarifies that the Minister must be satisfied that adequate consultation has occurred with the Tasmanian Trades and Labor Council, rather than the Minister consults directly, regarding any proposed amendments to the Tasmanian Accumulation Scheme Trust Deed. This makes the consultation process consistent with that in the State Fire Commission Superannuation Scheme and Tasmanian Ambulance Service Scheme Trust Deeds.
- Clause 18 Specifies that the *Retirement Benefits (Parliamentary Superannuation) Regulations 2002* is referred to as the Principal Regulations under Part 7 of the amending Act.
- Clause 19 Regulation 14 of the Principal Regulations is amended to ensure that the regulations clearly reflect that interest credited to a members account may be either positive or negative. Interest is a term used within the regulations as a proxy for investment returns, which may include capital gains and losses.

- Clause 20 Regulation 16(2) of the Principal Regulations is amended to ensure that the regulations clearly reflect that interest credited to a members account may be either positive or negative.
- Clause 21 Regulation 52 of the Principal Regulations is amended to ensure that the regulations clearly reflect that interest credited to a members account may be either positive or negative.
- Clause 22 Regulation 54(2) of the Principal Regulations is amended to ensure that the regulations clearly reflect that interest credited to a members account may be either positive or negative.
- Clause 23 Specifies that the *Retirement Benefits (Parliamentary Superannuation) Regulations 2002* is referred to as the Principal Regulations under Part 8 of the amending Act.
- Clause 24 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed; Regulation 44 of the Principal Regulations is amended by removing the reference to the investment account being established under the regulations.
- Clause 25 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed; Regulation 66 of the Principal Regulations is amended by removing the reference to the investment account being established under the regulations.
- Clause 26 Specifies that the *Retirement Benefits Act 1993* is referred to as the Principal Act under Part 9 of the amending Act.
- Clause 27 The definition of “contravene” is removed as it is now defined in the *Acts Interpretation Act 1931* and therefore not required within the Principal Act.
- The definition of “disqualified person” is inserted because it is a key component of the RBF Board’s requirement to meet industry standards and the “fit and proper” provisions of the *Superannuation Industry (Supervision) Act 1993*.
- Clause 28 It is a policy requirement that members of the RBF Fund Board will be assessed for standards of fitness and propriety in a similar manner to those contained in the SIS Act. To align with this requirement, provisions are inserted in Section 8 of the Principal Act prescribing those persons who would be ineligible to be appointed as a member of the RBF Board.

- Clause 29 Section 9(3) of the Principal Act is amended by omitting “must” and substituting “may” to appropriately reflect the independent role of the Governor.
- Clause 30 As a consequence of members of the RBF Fund Board being assessed for fitness and propriety in a similar manner as that contained in the SIS Act. Section 9A is inserted in Part 2 to provide the RBF Board with a process to remove members when it considers the retention of the member may result in the Board failing to meet those industry standards.
- Clause 31 Section 10(3) of the Principal Act is amended by omitting paragraph (d) as amendments to the *Trustee Act 1898* repealed the section referred to under Section 10(3)(d).
- Clause 32 Section 12(1) of the Principal Act is amended by omitting “chairperson” and substituting “President” to reflect the correct title.
- Clause 33 When the *Retirement Benefits Act 1993* was introduced, the current RBF regulation process was to provide Parliamentary scrutiny to the making of the regulations. This was considered necessary at the time as the Act received Royal Assent on 23 December 1993 and the regulations, that were to contain the major operative part of the scheme, were not approved by the Governor until 15 April 1994.
- This process is no longer considered necessary as the regulations are now in place, consultation occurs with the TTLC prior to any regulations being amended and the majority of amendments to the regulations are of an administrative nature. Amendment is made to ensure that the Minister is satisfied that the TTLC has been consulted on the proposed regulations.
- Clause 34 Clarifies that the owner of any surplus funds arising from the superannuation liability provision made for former TGIO employees is the Crown and provides direction to the RBF Board on how to deal with any surplus.
- Clause 35 Schedule 1 to the Principal Act is amended by inserting a new 7(1)(b) that makes reference to a member becoming a ‘disqualified person’ within the meaning of the SIS Act and consequently omitting those paragraphs, which due to the new definition of a ‘disqualified person’, have become redundant.
- Substitutes the existing clause 8 with a new clause that clarifies that a replacement Board member is not limited to the balance of the retiring member’s term, except in the case of an elected member. Due to the costs of holding elections, there will be no change to the existing arrangements for replacing elected board members that limits the replacement Board member’s term to the balance of the elected member’s term of appointment.

- Clause 36 Specifies that the *Retirement Benefits Act 1993* is referred to as the Principal Act under Part 10 of the amending Act.
- Clause 37 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed; Section 5(2) of the Principal Act is no longer required.
- Clause 38 Section 29M is inserted in Part 4 of the Principal Act to enable the transfer of administration for investment accounts to the accumulation scheme under Schedule 4B.
- Clause 39 Schedule 4B is inserted in the Principal Act to provide for transitional provisions relating to the transfer of investment accounts to the accumulation scheme.
- Clause 40 Specifies that the *Retirement Benefits Regulations 2005* is referred to as the Principal Regulations under Part 11 of the amending Act.
- Clause 41 Regulation 9(3) of the Principal Regulations is amended by omitting “, other than an officer of the Board” as this restriction is now captured under clause 28 of the amending act.
- Clause 42 As a consequence of the Australian Securities and Investment Commission enabling the RBF Board to list its annual Member Report on the RBF website as the default method for delivering annual fund information to members; Regulation 19(5) of the Principal Regulations is amended by omitting “distribute to” and substituting “give”.
- Clause 43 As a consequence of the Australian Securities and Investment Commission enabling the RBF Board to list its annual Member Report on the RBF website as the default method for delivering annual fund information to members; Regulation 19A is inserted in Part 3 of the Principal Regulations to clarify the circumstances where the Board may make information available electronically.
- Clause 44 When the option to cease making contributions at age 65 was made available to the typical contributory scheme member, it was not considered at the time that an amalgamated contributor may continue to work beyond the age of 65. There is currently no provision for an amalgamated contributor to receive benefits over the age of 65. To enable the four remaining amalgamated contributors to continue to accrue benefits over the age of 65 this amendment reflects, that for technical reasons, they will need to continue to make contributions.

- Clause 45 Regulation 42(3)(a) of the Principal Regulations is amended by inserting “(and, accordingly, may be either positive or negative interest)” after “regulation 112” to ensure that the regulations clearly reflect that interest credited to a members account may be either positive or negative.
- Clause 46 To make provision for the payment of benefit entitlements to an amalgamated worker who continues to work beyond the age of 65; Regulation 47(2) of the Principal Regulations is amended by omitting “65” and substituting “70”.
- Clause 47 To make provision for the payment of benefit entitlements to an amalgamated worker who continues to work beyond the age of 65; Regulation 48 of the Principal Regulations is amended by omitting from subregulation (4) “65” and substituting “70”.
- To remove any uncertainty that the RBF Board is able to pay redundancy benefits to somebody who is over their preservation age, subregulation (7) is inserted to prescribe that where a contributor is entitled to a benefit calculated under this regulation and has attained his or her preservation age, the Board is to pay the benefit so calculated to that contributor in accordance with regulation 79.
- Clause 48 To remove any uncertainty that the RBF Board is able to pay redundancy benefits to somebody who is over their preservation age, Regulation 49 of the Principal Regulations is amended by inserting subregulation (5). This subregulation prescribes that where a contributor who is entitled to a benefit calculated under this regulation has attained his or her preservation age, the Board is to pay the benefit so calculated to that contributor in accordance with regulation 79.
- Clause 49 To make provision for the payment of benefit entitlements to an amalgamated worker who continues to work beyond the age of 65; Regulation 50(2) of the Principal Regulations is amended by omitting “65” and substituting “70”.
- Clause 50 Makes a minor amendment in subregulation 55(2) to ensure that the regulations clearly reflect that interest credited to a members account may be either positive or negative.
- Clause 51 Omitting subregulation (11) from Regulation 72 and substituting with a new subregulation (11) that, consistent with Commonwealth legislation, provides for the making of more than one application and release of preserved benefits within a twelve month period on compassionate grounds. In the case of financial hardship, such as mortgage foreclosure, it remains limited to one application for release within a 12 month period.

- Clause 52 Regulation 76 of the Principal Regulations is amended by clarifying that the exercise of the Board's powers to recover overdue contributions and payments is discretionary.
- Clause 53 Regulation 82 of the Principal Regulations is amended by omitting subregulation (2) that is no longer relevant and substituting a new subregulation that confirms the current practice where the Board is to obtain from the Australian Statistician a notice specifying the percentage by which the Consumer Price Index for that quarter is greater or less than the Consumer Price Index for the preceding half-year to calculate the half-yearly adjustment to pensions.
- Clause 54 Subregulation 85(5)(a) of the Principal Regulations is amended by omitting the redundant reference to age.
- Clause 55 Regulation 109(2)(b) of the Principal Regulations is amended by inserting "(which, accordingly, may be either positive or negative interest)" after "regulation 112" to ensure that the regulations clearly reflect that interest credited to a members account may be either positive or negative.
- Clause 56 Regulation 112 of the Principal Regulations is amended by inserting subregulation (7) to ensure that the regulations clearly reflect that interest credited to a members account may be either positive or negative.
- Clause 57 Regulation 118(5) of the Principal Regulations is amended by requiring medical reviews to only be conducted for those invalidity pensioners who have not attained their preservation age. Experience has shown that medical reviews conducted on pensioners over their preservation age achieve little in determining a change in eligibility status and are expensive.
- Clause 58 Regulation 122(4)(a) of the Principal Regulations is amended by inserting ", whether positive or negative," after "rates" to ensure that the regulations clearly reflect that interest credited to a members account may be either positive or negative.
- Clause 59 Clause 9(1)(b) of Schedule 3 to the Principal Regulations is amended by clarifying the original policy intent that the early retirement penalty only applied to a permanent employee.
- Clause 60 Specifies that the *Retirement Benefits Regulations 2005* is referred to as the Principal Regulations under Part 12 of the amending Act.
- Clause 61 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed, Regulation 3(1) of the Principal Regulations is amended by removing definitions that are no longer required.

- Clause 62 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed; Regulation 5 of the Principal Regulations is amended by omitting paragraphs no longer required.
- Clause 63 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed, Regulation 10(1) of the Principal Regulations is amended by omitting from both paragraphs (b) and (c) the words “and voluntary contributions.”
- Clause 64 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed, Regulation 21(1)(a) of the Principal Regulations is amended by removing four unnecessary definitions.
- Clause 65 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed, Regulation 25 of the Principal Regulations is amended by omitting subregulation (3) as it is no longer necessary.
- Clause 66 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed, Regulation 54 of the Principal Regulations is amended by omitting the reference to an investment account and substituting “account in the accumulation scheme”.
- Clause 67 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed; Division 1 of Part 6 of the Principal Regulations is rescinded. This Division included regulations 61 to 66 inclusive.
- Clause 68 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed; Subregulation 67(5)(b) of the Principal Regulations is removed as it is no longer relevant.
- Clause 69 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed; Regulations 68 and 69 of the Principal Regulations are rescinded.

- Clause 70 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed; Regulation 72 of the Principal Regulations is amended by omitting the reference to the investment account being established under the regulations.
- Clause 71 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed; Regulation 80(3) of the Principal Regulations is amended by removing paragraphs no longer required and substituting a new paragraph that preserves the rights of those members entitled take a 12 factor pension under an investment account.
- Clause 72 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed; Regulation 83(2) of the Principal Regulations is amended by omitting the reference to an allocated pension.
- Clause 73 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed; Regulation 84(1) of the Principal Regulations is amended by omitting the reference to an allocated pension.
- Clause 74 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed; Regulation 87 of the Principal Regulations is amended by removing the reference to allocated pension.
- Clause 75 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed; Regulation 90 of the Principal Regulations is amended by removing subregulation (2) that refers to an investment account established under the regulations.
- Clause 76 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed; Regulation 91(1) of the Principal Regulations is amended by omitting from paragraph (a) “and additional employer contributions” and by removing paragraphs no longer required.

- Clause 77 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed; Regulation 100 of the Principal Regulations is amended by removing references to an investment account established under the regulations.
- Clause 78 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed; Regulation 113 of the Principal Regulations is rescinded as it is no longer relevant.
- Clause 79 Specifies that the *Retirement Benefits Regulations 2005* is referred to as the Principal Regulations under Part 13 of the amending Act.
- Clause 80 To enable Transition to Retirement to be offered as an option to defined benefit scheme members; Regulation 30(1) of the Principal Regulations is amended by inserting “or regulation 47A” after “regulation” that provides for a person choosing transition to retirement to be exempted from contributing.
- Clause 81 As for clause 80, this amendment removes the obligation of certain employees to contribute to the defined benefits scheme if they elect to transition to retirement.
- Clause 82 To enable Transition to Retirement to be offered as an option to defined benefit scheme members; Regulation 34 of the Principal Regulations is amended by providing that a member who transitions to retirement ceases making contributions to the defined benefit scheme.
- Clause 83 Regulation 47A is inserted in Division 4 of the Principal Regulations detailing the benefit entitlements and conditions where a member elects to take the Transition to Retirement option.

The benefit entitlement would be calculated using a similar formula to that utilised to calculate a benefit for a member who has attained their preservation age and elects to take early retirement.

It should be noted that under subregulations 9,10 and 11 of Regulation 47A, pre-1 July 1994 contributors would lose their option to convert their lump sum to a pension using a divisor of 12. The lump sum benefit of such a contributor is transferred to the accumulation scheme where it is then converted to a market rate pension.

- Clause 84 To enable Transition to Retirement to be offered as an option to defined benefit scheme members; Subregulation 55(1) of the Principal Regulations is amended by inserting a reference to “47A,” after “regulation 47”.
- Clause 85 To enable Transition to Retirement to be offered as an option to defined benefit scheme members; Regulation 107(2)(a) of the Principal Regulations is amended by inserting “47A,” after “regulation 47” to provide for the payment of the employer component of a benefit.
- Clause 86 Specifies that in Part 14 of the amending act the *Solicitor-General Act 1983* is referred to as the Principal Act.
- Clause 87 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed; Section 9B of the Principal Act is amended by removing the reference to the investment account established under the regulations.
- Clause 88 Specifies that in Part 15 of the amending act the *Supreme Court Act 1887* is referred to as the Principal Act.
- Clause 89 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed; Section 8A of the Principal Act is amended by removing the reference to the investment account established under the regulations.
- Clause 90 Specifies that in Part 16 of the amending act the *Supreme Court Act 1959* is referred to as the Principal Act.
- Clause 91 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed; Section 4AA(2)(e) of the Principal Act is amended by removing the reference to the investment account established under the regulations and substituting “account in the person’s name in the accumulation scheme”.
- Clause 92 As a consequence of the Investment Accounts administered under the *Retirement Benefits Regulations 2005* being brought under the administration of the Tasmanian Accumulation Scheme Trust Deed; Section 4AB of the Principal Act is amended by removing the reference to the investment account established under the regulations.

- Clause 93 The regulations listed in Schedule 1 are rescinded as they no longer serve any purpose.
- Clause 94 The notices listed in Schedule 2 are revoked as they no longer serve any purpose.