FACT SHEET

Public Sector Superannuation Reform Amendment Bill 2019

- A strategic review of the former Retirement Benefits Fund was undertaken in 2013 to identify the most appropriate means to provide superannuation services to public sector employees and members of the RBF into the future.
- The Government's reforms to public sector superannuation had a number of key objectives, including to:
  - protect the interests of members;
  - minimise the financial risks to the Government; and
  - ensure the efficient and effective provision of Government superannuation services in the future.
- On 17 June 2016, the *Public Sector Superannuation Reform Act 2016* received Royal Assent. The legislation:
  - provided for a new default fund to be selected for Tasmanian public sector employees;
  - provided for the transfer of Tasmanian Accumulation Scheme accounts from the RBF to Tasplan;
  - created a Superannuation Commission of up to three persons; and
  - provided for the ongoing member administration and investment management services of the defined benefit schemes by the Superannuation Commission.
- In April 2017, the RBF's Tasmanian Accumulation Scheme accounts were transferred to Tasplan, with administration of the defined benefit schemes being managed by the Superannuation Commission.
- There are currently five defined benefit sub-funds:
  - Retirement Benefits Fund Defined Benefit (Contributory) Scheme;
  - State Fire Service Superannuation Scheme;
  - Tasmanian Ambulance Service Superannuation Scheme;
  - Parliamentary Retiring Benefits Fund; and
  - Parliamentary Superannuation Fund.
- Since the commencement of the new operating framework, a number of issues have arisen that are impacting on the efficiency and effectiveness of the new arrangements. The Government proposes to make a number of amendments to the Public Sector Superannuation Reform Act to more effectively support the administration arrangements for public sector superannuation in Tasmania.
- Currently, the Public Sector Superannuation Reform Act provides that the Superannuation Commission must comply with the Heads of Government Agreement in relation to

superannuation. The effect of this drafting is to place a higher obligation on the Commission to comply with the principles of the Agreement than the obligations of the State as a party to the Agreement. This includes reporting and compliance responsibilities to the Australian Prudential Regulation Authority, which are not considered to be relevant in the context of a government guaranteed defined benefit scheme.

- It is noted that the States and Territories are required to conform with the principles of the Heads of Government Agreement to the best of their endeavours and ensure that members' accrued benefits in exempt public sector superannuation schemes are protected.
- The Public Sector Superannuation Reform Amendment Bill will amend the functions and powers of the Superannuation Commission to provide that the Commission must have regard to the Heads of Government Agreement rather than adhere to strict compliance, which is the intent of the Agreement in respect of exempt public sector superannuation schemes.
- The Public Sector Superannuation Reform Act currently provides that the Superannuation Commission must ensure that proper accounts and records of the transactions and affairs of the Commission are kept, as well as any other records that sufficiently explain the financial operations and position of the Commission. It was intended that, as part of the implementation of the structural reforms, Treasury would undertake the accounting functions on behalf of the Commission, including the preparation of financial statements in accordance with the *Audit Act 2008* as the "accountable authority" for the Commission. In order to clarify the roles and responsibilities for audit and reporting, the Public Sector Superannuation Reform Act will be amended to make the Secretary of the Department of Treasury and Finance the accountable authority of the Superannuation Commission for the purpose of financial reporting pursuant to section 14 of the Audit Act.
- The Public Sector Superannuation Reform Act will be amended to facilitate the closure of the Tasmanian Government Insurance Office Reserve Account and to require the employer share of benefits to be met by the Government on an emerging cost basis, consistent with the Retirement Benefits Fund Defined Benefit Scheme.
- The TGIO Reserve Account was established in 1993 following the sale of TGIO. In accordance with the *Tasmanian Government Insurance Office (Sale) Act 1993*, a lump sum amount was paid to the former RBF Board to cover the expected employer share of the liability of all current and former members of the RBF Defined Benefit Scheme who were previously employed by the TGIO. This was paid into a separate TGIO Reserve Account.
- Since 1 April 2017, the TGIO Reserve Account has been maintained separately by the Superannuation Commission in accordance with the Public Sector Superannuation Reform Act and the *Public Sector Superannuation Reform Regulations 2017*.
- Currently, there is only one active former TGIO member with a Compulsory Preservation Account and 12 members with Life Pensions. The balance of the TGIO Reserve Account as at 30 June 2018 was $4.2 million.
- Under the current legislative framework, the State Actuary is required to review the adequacy of the TGIO Reserve Account prior to any surplus being transferred to the Crown. This is a costly exercise and, as there is only one active member, the cost of maintaining the Account in terms of administration fees and charges, outweighs any benefit

from having separate accounts. Further, as the legislation requires the Government to guarantee the payment of pensions, there is no reason that TGIO pensions could not be managed on the same basis as other RBF pensions.

- The Public Sector Superannuation Reform Amendment Bill will facilitate the closure of the TGIO Reserve Account and provide for the balance of the Reserve Account to be transferred to the Public Account. The employer share of benefits would be met by the Government on an emerging cost basis, as with the RBF Defined Benefit Scheme.
- Following the commencement of the new arrangements under the Public Sector Superannuation Reform Act, a number of issues have arisen with some of the definitions in that Act.
- The Public Sector Superannuation Reform Amendment Bill will amend the current definitions of "agency" and "agency manager" to ensure that the definitions capture Government Business Enterprises within the meaning of the *Government Business Enterprises Act 1995.*
- In addition, the definition of "salary" will be amended to correct a drafting anomaly to ensure that it includes only "payments made in lieu of notice on the termination of employment" rather than all payments made on the termination of employment. This is to ensure consistency with Australian Tax Office Ruling SGR/2009/2 that specifies that termination payments in lieu of notice are included as Ordinary Time Earnings.
- The amendment to the definition of salary in section 4(1) of the Act was intended to address this inconsistency by inserting subclause (e) to include "any other payment made on the termination of employment". However, the current drafting in the Public Sector Superannuation Reform Act is broader than intended as it encompasses all other payments that may be payable on the termination of employment, such as Employment Termination Payments, which are specifically excluded from the meaning of Ordinary Time Earnings under the ATO Ruling.
- This amendment will have effect retrospectively from 31 March 2016. As agencies have continued to calculate superannuation based on the advice from the Department of Treasury and Finance, there will be no financial impact as a result of this amendment.
- The Public Sector Superannuation Reform Amendment Bill will also incorporate the Tasmanian Ambulance Service Superannuation Scheme Trust Deed and the State Fire Commission Superannuation Scheme Trust Deed in the Public Sector Superannuation Reform Regulations.
- The Trust Deeds, as currently drafted, duplicate provisions prescribed in the Act and Regulations, and contain a number of drafting errors and anomalies. In addition, each time there is an amendment to the Regulations, the Trust Deeds also require amendment to ensure that they remain consistent.
- As part of the amendments proposed to the Public Sector Superannuation Reform Act to incorporate the Trust Deeds in the Regulations, a provision will be included to provide that Regulations must not be made unless the relevant unions have been consulted on the proposed Regulations. This will include any amendment, revocation or substitution of the provisions. This is consistent with the current requirement regarding amendment to

the Trust Deeds.

- No changes are proposed to the benefits and entitlements under either of these schemes.
- In addition to the amendments to the Public Sector Superannuation Reform Act, the Public Sector Superannuation Reform Regulations will also be amended to:
    - amend the definition of salary to exclude allowances paid in lieu of a motor vehicle, with the effect that such an allowance would, therefore, not be taken into account in determining future superannuation benefits;
    - include terminal illness as a condition of early release, with the Superannuation Commission to determine whether a contributor is suffering from a terminal medical condition in line with the circumstances prescribed in the *Superannuation Industry Supervision Regulations 1994* of the Australian Government;
    - allow the Superannuation Commission to pay an additional lump sum benefit to a contributor who has retired on the grounds of total and permanent incapacity, consistent with the existing provisions for the early release of benefits on compassionate grounds;
    - clarify that the Superannuation Commission must periodically determine whether an interim invalidity pensioner, who has not attained his or her preservation age, is eligible to continue to receive the whole or part of his or her interim invalidity benefit;
    - allow the Superannuation Commission to reduce or suspend an interim invalidity pension in certain circumstances. This amendment will give the Superannuation Commission the discretion to reduce or suspend an interim invalidity pension where an invalidity pensioner is engaged in any business or occupation on his or her own account or is undertaking gainful employment, as well as in the situation where the pensioner has recovered from his or her bodily infirmity, physical incapacity or mental illness, so as to be able to undertake gainful employment;
    - introduce a new "interim surviving partner pension" to allow a surviving partner of a pensioner to be paid an interim pension immediately following the death of the member-partner, where the member-partner had a reversionary life pension;
    - provide greater clarity to the Superannuation Commission and scheme members in the determination of surviving partners, by amending the test for the determination of surviving partner to allow the Commission to determine a person to be a surviving partner in the case where a spouse of a Fund member is not living with the Fund member due to medical or other care reasons;
    - ensure that the Superannuation Commission cannot allow a person to become a contributor to the defined benefit schemes through claiming lost rights by extending the operation of subregulation 101(3), which prevents the Commission from enabling a person who is a not a State Service employee from becoming a contributor, to include current State Service employees;
    - allow the Superannuation Commission to deduct, from a pension payable under the Regulations, bank fees associated with the payment of that pension to an overseas bank account, as well as other associated fees and charges as determined by the

Commission. This will ensure that the higher costs associated with the payment of pensions to overseas bank accounts, as well as any other special arrangements as elected by a member, can be recovered from the pension paid to that member, rather than being paid from the assets of the Fund; and

- incorporate the relevant provisions of the Trust Deeds for the Tasmanian Ambulance and State Fire Commission Superannuation schemes. It is not proposed to change any of the benefit entitlements or the design of either of the schemes.