

## CLAUSE NOTES

### *Public Sector Superannuation Reform Bill 2016*

- PART 1**                    **PRELIMINARY**
- Clause 1**                Short title.
- Clause 2**                This clause provides for the Bill to commence on a day or days to be proclaimed. It is intended that Parts 2 and 3 of the Bill commence following the Bill receiving Royal Assent, with the remaining provisions to commence on the day the Tasmanian Accumulation Scheme is transferred to the new default fund.
- Clause 3**                Interpretation.
- Clause 4**                Defines 'salary' for the purposes of the Bill. This definition is consistent with the definition of salary in the *Public Sector Superannuation Reform Act 1999* and is used to calculate the rate of employee contributions to the contributory scheme and the rate of employer superannuation contributions to the default fund. This definition is a more generous definition of salary than that prescribed in the *Superannuation Guarantee (Administration) Act 1992* of the Australian Government as it includes overtime hours and payments and termination payments in respect of unused annual leave.
- Clause 5**                States that the Act binds the Crown.
- PART 2**                    **SUPERANNUATION COMMISSION**
- Division 1*                *Superannuation Commission*
- Clause 6**                This clause establishes the Superannuation Commission. The Commission may be constituted as a body corporate or as a corporation sole if there is only one member of the Commission.
- This clause provides that the Minister may, by notice, declare that the Commission is a corporation sole. The Minister may also revoke a notice made under this clause, following which the Commission would be constituted of multiple members.
- Clause 7**                Provides that the Commission may consist of up to three persons to be appointed by the Treasurer. The Treasurer is to appoint one person to be chairperson of the Commission. Persons appointed to the Commission will be appointed for an initial term of up to five years and may be reappointed.
- A person appointed as member of the Commission may also be a State Service employee, however, that person is not entitled to remuneration or allowances under the Act without approval of the Premier.
- If there is only one person appointed as a member of the Commission, any references to the chairperson of the Commission are taken to be a reference to the single member of the Commission and the meeting conventions in Schedule 2 do not apply.

- Clause 8** Provides for appointment of a person to be an acting member of the Commission in the event that a member of the Commission is absent from duty, is incapable of performing the required duties or where a member of the Commission, where that member is the sole member of the Commission, has disclosed a conflict of interest.
- Division 2** *Functions and powers*
- Clause 9** This clause gives the Commission the power to do all things necessary to administer the Fund. The Fund will consist of all money received by the Commission, including all subfunds, accounts, investments and other assets that remain following the transfer of the Tasmanian Accumulation Scheme to the new default fund.
- Clause 10** Sets out the duties of the Commission. These duties are consistent with the powers given to the Retirement Benefits Board in the *Retirement Benefits Act 1993*. All money and other property will vest in the Commission, as opposed to the Fund, as the Commission is the legal entity. The regulations outline further functions of the Commission, which replicate the covenants in the *Superannuation Industry (Supervision) Act 1993* of the Australian Government.
- Clause 11** Provides that the Treasurer may issue guidelines to the Commission in relation to investments. The Bill requires the Commission to have regard to the guidelines when developing an investment strategy and he or she must inform the Minister of any proposed strategy. However, the Commission is not subject to a direction of any kind in relation to the investment strategy of the Commission or any investment of the Fund.
- Clause 12** The Commission may delegate any of his or her functions, duties or powers given under the Act, or any other Act, to a member of the staff of the Commission or a person or organisation engaged under contract.
- Division 3** *Miscellaneous*
- Clause 13** Prescribes procedures for a person appointed to, or acting in, the office of a member of the Commission to disclose conflicts of interest to the Minister. If the Commission is constituted of a single member, and that member has disclosed an interest in relation to a matter, the Treasurer must appoint another person to act in place of that member in relation to that matter for which the disclosure of interest relates until such time as a decision is made in relation to the matter.
- Clause 14** This clause allows for State Service employees to be made available to work in the office of the Commission.

**Clause 15** Provides that the Commission may engage any person or organisation to provide administration services and advice in connection with the functions, duties and powers of the Commission under the Act. It is intended that the Government will publicly tender the defined benefit schemes member administration and investment management services. Outsourced member administration would include member services, relationship management, brand identity and any additional services specified in the contract. Outsourced investment management could be achieved by the appointment of an Implemented Consultant, which provides tailored end-to-end solutions for the preferred asset and risk allocation, undertakes performance analysis and reporting, provides advice, manages portfolios and investment manager selection and termination.

**Clause 16** Confirms, in accordance with rules of evidence, that the official signature of a person who is, or has been, a member of the Superannuation Commission is the person who holds, or has held, the office of the Commission and no further evidence is required to establish this fact.

**Clause 17** Provides an indemnity to the Commission for losses suffered by a person as a result of certain actions of the person or the Commission. For the avoidance of doubt, this clause has been expanded from that contained in section 27A of the Retirement Benefits Act to include loss suffered by a person due to an investment choice exercised by that person, investment decisions in respect of the assets of the Fund made by or on behalf of the Commission or any other election made by a person, including an election made by a person to become a member of a complying superannuation scheme.

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

**Clause 18** This clause provides for the existing Retirement Benefits Board to continue in its current form, with the addition of the chairperson of the Commission, for the transitional period until the Tasmanian Accumulation Scheme is transferred (and the Retirement Benefits Act is repealed). It also provides flexibility in respect of length of tenure of board members and size of the board during the transition period.

**Clause 19** This provision provides that the Minister may direct the Board to take any action that is necessary to give effect to the transfer of the Tasmanian Accumulation Scheme from the Retirement Benefits Fund under clause 22. Subclause (4) provides an indemnity by the Crown to the Board, including the chairperson of the Commission, as well as an officer, employee or agent of the Board, against any liability incurred as a result of acting upon a direction given by the Minister, provided that the action was taken in good faith and was necessary to implement the direction.

This clause also requires the chairperson of the Commission to prepare a statement of accounts and an annual report in relation to the performance of the Fund as soon as practical following the repeal of the Retirement Benefits Act. This statement of accounts will identify the remaining assets of the Fund.

## **PART 4**                      **DEFAULT FUNDS**

### *Division 1*                      *Nomination of default funds*

**Clause 20**                      Provides for the nomination of default funds by the Minister by publication of a notice in the *Government Gazette*. Under Clause 20(4) before the Minister can nominate a default fund other than the initial default fund under this clause, the Minister must first obtain written agreement with Unions Tasmania.

The Minister may only nominate a default fund to be the initial default fund, which is the fund that will be the recipient of the transfer assets of the Tasmanian Accumulation Scheme, if the fund satisfies the successor fund transfer test. To be a successor fund, within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*, prior to the transfer, the trustee of the default fund must agree with the Retirement Benefits Fund Board, as trustee of the Retirement Benefits Fund that the fund will confer equivalent member rights to the rights that the member had under the Retirements Benefits Fund in respect of the benefits. In addition, both sets of trustees must agree that the transfer is in the best interest of the members of both funds. As part of this agreement, each trustee agrees to do everything reasonably necessary to give effect to the transfer, including the provision of all necessary information to facilitate the transfer, including the provision of data and documentation relating to the benefit entitlements of each transferring member.

Membership of the default fund in respect of transferring members occurs by virtue of the transfer of accounts and benefits from the Tasmanian Accumulation Scheme.

The Minister may nominate more than one default fund, and it is only the initial default fund that is subject to the successor fund transfer process. Only a fund regulated under the *Superannuation Industry (Supervision) Act* can be nominated as a default fund. This clause allows for the operation of more than one default fund at a time.

This clause also allows the Minister to enter into a contractual agreement with a superannuation fund to be a default fund.

**Clause 21**                      This clause provides for employer superannuation contributions to be paid to the default fund for relevant employees, including transferring members and employees appointed or employed after the transfer date, where fund choice has not been exercised by the employee.

Contributions will be made on behalf of all State Service officers and State Service employees, including employees of Government Business Enterprises and employees of State-owned Companies who are employed under modern awards. Under the *Fair Work Act 2009* of the Australian Government, the terms of modern awards apply subject to any Tasmanian law that provides for superannuation. This clause therefore allows contributions to be made to the default fund, even if the default fund is not specified in the award itself.

The Agency Manager must make employer contributions to the default fund, having reference to the salary of the relevant employee and in accordance with the charge percentage specified in the Superannuation Guarantee (Administration) Act. The charge percentage is currently set at 9.5 per cent of salary.

## **Division 2**

*Transfer of assets and members to initial default fund*

### **Clause 22**

Provides for the Minister to direct the Board to transfer, to the initial default fund, the transfer assets. The Actuary must determine those assets that represent the transfer assets of the Tasmanian Accumulation Scheme, which are to include the benefits of the transferring members and the relevant proportion of reserves.

Once the Board has been provided with a direction from the Minister to transfer the transfer assets, it must transfer, to the initial default fund, all transferring members and the transfer assets. The transfer takes effect from the transfer date, which is the date specified in the notice published in the *Gazette* by the Minister that nominates a superannuation fund to be the initial default fund.

All members of the Tasmanian Accumulation Scheme will transfer to the initial default fund, with the exception of Investment 12 Account members. The Board must identify all Investment 12 Account members immediately prior to the transfer and the Commission will be required to maintain an investment account for these members in the Fund.

Investment 12 Account members are accumulation accounts and arise where members who joined the contributory scheme prior to 30 June 1994 are made redundant prior to attaining their preservation age and opt to preserve their Contributory Scheme benefit in the Fund and retain access to the favourable pension conversion factor of 12.

The regulations prescribe strict rules regarding how Investment 12 accounts must be managed. These accounts are quarantined, with the member not permitted to make additional contributions to the account. The accounts must also only be invested in the default investment option. On or after attaining preservation age, a member has a one-off right to use all, or part, of their Investment 12 account to purchase a fully funded life pension within the contributory scheme, calculated using the pension conversion factor of 12.

The investment 12 accounts are being retained within the Fund because there is only a small number of these accounts, less than 100 and retention of these accounts does not affect the successor fund transfer as the assets involved are minimal. The arrangements for investment 12 account members will continue to be specified in the regulations enacted under the Bill.

Members of the Tasmanian Accumulation Scheme who are currently receiving a pension from the Retirement Benefits Fund, such as RBF Account Based Pensions, will in future be paid by the initial default fund. The governing rules of the initial default fund will provide for the replication of pension benefits as part of the successor fund transfer arrangements.

The Tasmanian Accumulation Scheme Trust Deed will cease to apply upon the transfer of the members and assets of the Tasmanian Accumulation Scheme.

**Clause 23**

This clause provides that from the transfer date, any contract, agreement, arrangement, document or undertaking that refers to the Retirement Benefits Board is taken to be a reference to the Commission. This includes a reference to the Board in a document pertaining to the transfer under clause 22. This is necessary to ensure that the Commission is a party to the transfer deed under which the members and assets of the Tasmanian Accumulation Scheme are transferred to the default fund so that the Commission will become a deemed party to the deed and be able to enforce the deed (as well as the deed being enforced against the Commission). Otherwise, the default fund will be entering into a deed with an entity (the Retirement Benefits Board) which will cease to exist following execution of the Deed (by virtue of the repeal of the Retirement Benefits Act).

Any legal or other proceedings that relate to the Tasmanian Accumulation Scheme and which have commenced, or could have commenced, before the transfer date are taken to be proceedings against the Commission. As the assets of the Tasmanian Accumulation Scheme will have transferred to the default fund, the successor fund transfer deed will likely contain provisions stating that the Trustee of the default fund will indemnify the Retirement Benefits Fund Board (or the Commission as the successor to the Board) against all liabilities arising from the acts or omissions of the Retirement Benefits Fund Board that relate to the transfer assets, subject to certain conditions and limitations. These usually include that the indemnity only applies to the extent that the Retirement Benefits Fund Board would have been entitled to indemnification out of the transfer assets for the liability.

**Clause 24**

This clause specifies that an employee continues to have choice regarding their superannuation fund.

**PART 5**

**CONTRIBUTORY SCHEME**

*Division 1*

*Commission is to administer and manage fund and contributory scheme*

**Clause 25**

This clause prescribes the functions of the Commission after the transfer date. Following the transfer under clause 22, the Superannuation Commission will be responsible for administering and managing the contributory scheme. The Commission is required to comply with any applicable law that applies in respect of the management of the contributory scheme. The contributory scheme is governed by the arrangements provided for in the regulations made under this Bill.

- Clause 26** This clause provides that the Commission, from the transfer date, becomes the legal custodian of all of the assets, liabilities and rights that vest with the Commission as a result of the transfer. Any references to the Retirement Benefits Board in any legislative instrument or document are taken to be references to the Commission following the transfer.
- The Commission also becomes a party to any legal, or other, proceedings that relate to the contributory scheme established under the Retirement Benefits Act.
- Division 2** *Fund*
- Clause 27** This clause states that the Fund continued in existence under the *Retirement Benefits Act 1993* continues in existence. All contributions, payments, amounts, money and income payable under the regulations are to be paid into the Fund. The Commission must pay out of the Fund all amounts prescribed by law or as required under the regulations, such as pensions and benefits.
- This clause also provides that the Commission is liable for any taxation imposed under any State law.
- Clause 28** The Commission has the ability to establish and maintain subfunds that are considered necessary for the ongoing administration of the defined benefits schemes. This clause sets out the requirements that must be met in relation to subfunds.
- Clause 29** This clause provides that the Actuary must undertake its investigations in accordance with the regulations.
- Division 3** *Contributory scheme*
- Clause 30** This clause maintains the contributory scheme as a closed scheme and does not apply to an employee engaged or appointed on or after 15 May 1999. This was first given effect by the Public Sector Superannuation Reform Act. The provisions in 30(2), 30(3) and 30(4) set out the instances under which a person may elect to contribute to the scheme. These provisions are currently prescribed in regulation 29 of the Retirement Benefits Regulations.
- Clause 31** Provides that members of boards are not entitled to become members of the contributory scheme. Also, where a person is a member of the contributory scheme and is, or has been, a member of a board, the member's contributions are to be calculated without reference to any remuneration payable or paid as a member of the board.
- Clause 32** This clause clarifies that, where a person is employed in two or more positions, that person's contributions and benefit entitlements are to be determined without regard to any employment that does not qualify the person to contribute to the scheme.
- Clause 33** This clause provides that the Commission must comply with the principles of the Heads of Government Agreement made on 28 May 1996 as if those principles were contained in the Act.

## **PART 6** CONTINUATION OF CERTAIN SCHEMES

### *Division 1* *Tasmanian Ambulance Service Superannuation Scheme*

- Clause 34** This clause provides interpretation of Division 1 of Part 6 that relates to the Tasmanian Ambulance Service Superannuation Scheme. The inclusion of the provisions currently contained in the *Retirement Benefits (Tasmanian Ambulance Service Superannuation Scheme) Act 2006* avoids duplication and facilitates the administration of the Government's defined benefits schemes within one primary Act.
- Clause 35** Provides that the TASS Scheme Trust Deed must continue to provide the defined benefit component of the former Tasmanian Ambulance Service Superannuation Scheme for persons who, immediately before 30 June 2006, were contributing, or were required to contribute, or were deemed to be contributing to the former Scheme. The TASS Scheme Trust Deed remains binding on the Ambulance Service.
- Clause 36** This clause prescribes the matters that must be provided in the TASS Scheme Trust Deed, including that no new members are entitled to become members of the Scheme.
- Clause 37** Provides the process for amending, revoking or substituting the TASS Scheme Trust Deed, including consultation requirements with the Ambulance Service and the Health Services Union of Australia – Tasmanian Branch No. 1. Any Trust Deed established under the Act must also be consistent with the Act and the Superannuation Industry (Supervision) Act.
- Clause 38** This clause states that the continued scheme, which is continued by the TASS Scheme Trust Deed and, immediately before the transfer date, was being administered by the Retirement Benefits Board, forms part of the Fund that is continued under clause 27, and is to be a subfund of the Fund.
- Clause 39** This clause provides for transitional matters in relation to the transfer of proceedings from the Board to the Commission in relation to the TASS. This clause has the same effect as clause 26, which only applies to the contributory scheme.
- From the transfer date, any contract, agreement, arrangement, document or undertaking that refers to the Retirement Benefits Board is taken to be a reference to the Commission. In addition, any legal or other proceedings that relate to the TASS and which have commenced, or could have commenced, before the transfer date are taken to be proceedings against the Commission.
- Clause 40** Provides that certain determinations or decisions made by the Board or the trustee in the administration of the former scheme or the continued scheme continue to have effect unless or until the determinations or decision is varied or rescinded by the Commission in accordance with the provisions of the Trust Deed.
- Clause 41** Provides for a guarantee from the Minister administering the *Ambulance Service Act 1982* for employer contributions payable by the Tasmanian Ambulance Service.

- Division 2**                      *State Fire Commission Superannuation Scheme*
- Clause 42**                      This clause provides interpretation of Division 2 of Part 6 that relates to the State Fire Commission Superannuation Scheme. The inclusion of the provisions currently contained in the *Retirement Benefits (State Fire Commission Superannuation Scheme) Act 2005* avoids duplication and facilitates the administration of the Government's defined benefits schemes within one primary Act.
- Clause 43**                      Provides that the SFCS Scheme Trust Deed must continue to provide the defined benefit component of the former State Fire Commission Superannuation Scheme for persons who, immediately before 1 May 2006, were contributing, or were required to contribute, or were deemed to be contributing to the former Scheme and remains binding on the State Fire Commission.
- Clause 44**                      This clause prescribes the matters that must be provided in the SFCS Scheme Trust Deed, including that no new members are entitled to become members of the Scheme.
- Clause 45**                      Provides the process for amending, revoking or substituting the SFCS Scheme Trust Deed, including consultation requirements with the State Fire Commission and the United Firefighters' Union of Australia (Tasmanian Branch). Any Trust Deed established under the Act must also be consistent with the Act and the Superannuation Industry (Supervision) Act.
- Clause 46**                      This clause states that the continued scheme, which is continued by the SFCS Scheme Trust Deed and, immediately before the transfer date, was being administered by the Retirement Benefits Board, forms part of the Fund that is continued under clause 27, and is to be a subfund of the Fund.
- Clause 47**                      This clause provides for transitional matters in relation to the transfer of proceedings from the Board to the Commission in relation to the SFCS Scheme. This clause has the same effect of clause 26, which only applies to the contributory scheme.
- From the transfer date, any contract, agreement, arrangement, document or undertaking that refers to the Retirement Benefits Board is taken to be a reference to the Commission. In addition, any legal or other proceedings that relate to the SFCS Scheme and which have commenced, or could have commenced, before the transfer date are taken to be proceedings against the Commission.
- Clause 48**                      Provides that a determination or decision made by the Board or former trustee in the administration of the former scheme or the continued scheme continues to have effect unless or until the determinations or decisions is varied or rescinded by the Commission in accordance with the provisions of the Trust Deed.
- Clause 49**                      Provides for a guarantee from the Minister administering the *Fire Service Act 1979* for employer contributions payable by the State Fire Commission.

**PART 7 MISCELLANEOUS**

- Clause 50** This clause provides for the appointment of the Actuary by the Minister and sets out the qualifications that must be satisfied before an Actuary can be appointed.
- Clause 51** As the definition of 'salary' in the Bill differs from that in the Superannuation Guarantee (Administration) Act, this clause states that employer superannuation contributions, for employees that have chosen a fund, are to be calculated by reference to that employee's salary, as defined in the Bill, and in accordance with the charge percentage specified in the Superannuation Guarantee (Administration) Act. 'Chosen fund' is defined in the Superannuation Guarantee (Administration) Act and includes RSAs. This clause does not exclude the possibility of an employee electing the initial default fund to be the employee's chosen fund.
- Clause 52** This clause deems any references to the Public Sector Superannuation Reform Act in any State award made under the *Industrial Relations Act 1984* to be a reference to the Act.
- This clause also states that any reference to the Tasmanian Accumulation Scheme in the Tasmanian Fire Fighters Industry Employees Award 2010 is taken to be a reference to the default fund or other fund in the case where the employee has elected to choose a superannuation fund.
- Clause 53** Provides that the transitional provisions in Schedule 1 have effect.
- Clause 54** This clause provides that a contribution that is required to be paid under the regulations by the Minister is to be paid out of the Consolidated Fund and is to be paid in the manner prescribed in the regulations.
- Clause 55** Continues the requirement from the Public Sector Superannuation Reform Act that requires an Agency's annual report to include a certificate that it has met its obligations under the Superannuation Guarantee (Administration) Act in respect of an employee who is, or elects to become, a member of a complying superannuation scheme or other regulated fund to which the Agency contributes.
- Clause 56** States that notices under this Act are not statutory rules and, therefore, are not subject to the requirements of the *Rules Publication Act 1953*.
- Clause 57** Sets out the regulation making powers. Before regulations are submitted to the Governor for making, the Minister must first consult with Unions Tasmania and, if appropriate, the Minister must also obtain from the Commission a statement as to the likely cost to the State arising from the proposed regulations.
- Clause 58** Clarifies that the regulations may provide for transitional matters due to the repeal of certain superannuation Acts and regulations.
- Clause 59** Allows the regulations made under this Act to provide for matters related to the splitting of superannuation interests as a result of a relationship breakdown.

**Clause 60** This clause contains transitional and savings provisions required as a result of the repeal of the Retirement Benefits Act.

Actions and decisions of the Retirement Benefits Fund Board that were declared under section 29F of the Retirement Benefits Act are taken to have been validly made. Payments, decisions or determinations, as well as any benefits paid by the Board under sections 29G, 29H and 29K are also taken to be validly made and are not affected by the repeal of the Retirement Benefits Act.

Advice given, or statements made, under sections 29B and 29C of the Retirement Benefits Act are also taken to have been made in good faith by, or on behalf of, the Board. Section 29B provides for arrangements where a contributory scheme member is also a member of a board of a statutory authority or State-owned Company whereby the salary paid to that person as a board member is combined with the salary paid to the person in respect of their substantive position. Similarly, section 29C provides a basis for dealing with accounts where a contributory scheme member performs two or more State Service positions, with each employer paying superannuation contributions to the same contributory scheme membership.

This clause provides savings provisions in relation to any instruments in which there is a reference to the Retirement Benefits Fund Investment Trust.

This clause also continues the transitional and savings provisions in Schedule 8 of the Retirement Benefits Act and continues the operation of contributions made to the Fund by a person who was contributing to the Fund prior to 1 July 1994, despite the repeal of the *Retirement Benefits Act 1982*.

This clause clarifies that the repeal of the 1982 and 1993 Retirement Benefits Acts does not impact any election, decision, direction, resolution, delegation, certificate, suspension or authorisation of the Board made under either Act.

**Clause 61** Provides the savings matters in respect of the TGIO reserve account. Under this clause, the TGIO reserve account will continue to be maintained for the purpose of payment of TGIO employee benefits. These provisions were contained in section 29L of the Retirement Benefits Act.

**Clause 62** States that the Treasurer is responsible for administration of the Act and that the department responsible to the Treasurer in relation to the administration of the Act is the Department of Treasury and Finance.

**Clause 63** Provides that the legislation in Schedule 4 is repealed.

**SCHEDULE 1 MEMBERSHIP OF THE COMMISSION**

**Clause 1** States that a member of the Commission may be appointed for a term of not more than five years. The member may also be reappointed.

**Clause 2** Provides that a member of the Commission who has full time office in another capacity is not disqualified from that office if he or she is a member of the Commission and may accept remuneration as a member of the Commission.

- Clause 3** Provides that the *State Service Act 2000* does not apply to a member of the Commission.
- Clause 4** This clause states that a member of the Commission is entitled to remuneration and allowances as determined by the Treasurer and which are specified in that member's instrument of appointment. A member of the Commission, who is also a State Service employee or State Service officer, is not entitled to remuneration or allowances without the approval of the Premier.
- Clause 5** Sets out the circumstances in which a member of the Commission is deemed to have vacated office and the circumstances under which the Treasurer may remove a member from office.
- Clause 6** Permits the Treasurer to appoint a person to replace a member of the Commission if there is a vacancy.
- Clause 7** Provides that the actions of the Commission are not invalid by virtue of a vacancy in the office of a member of the Commission or the subsequent discovery of a defect in the appointment of a member.
- Clause 8** Provides legal presumptions regarding the constitution of the Commission and the appointment of any member for the purpose of legal proceedings.

**SCHEDULE 2 MEETINGS OF THE COMMISSION**

- Clause 1** Prescribes the arrangements for convening meetings of the Commission.
- Clause 2** States that the chairperson of the Commission is to preside at all meetings of the Commission. If the chairperson is absent at a meeting of the Commission, the remaining members of the Commission must elect a member to preside at the meeting.
- Clause 3** Sets out the quorum and voting requirements at meetings of the Commission. If there is an equality of votes, the presiding member has a casting vote.
- Clause 4** Prescribes the arrangements for the conduct of meetings of the Commission.
- Clause 5** Provides that resolutions agreed by two members are taken to have been agreed at a meeting and that all members are to be informed of such a resolution.
- Clause 6** Requires that the Commission keep minutes of its proceedings.
- Clause 7** Permits the Regulator to regulate its own proceedings.
- Clause 8** Establishes legal presumptions regarding resolutions of the Commission and the presence of a quorum at any meeting of the Commission.

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

- Clause 1** Clause 1 of Schedule 3 prescribes definitions for the purpose of interpreting Schedule 1.

## Clause 2

Clause 2 provides arrangements in respect of long service leave and superannuation entitlements for Retirement Benefits Fund employees who become employed by the Commission under the State Service Act following the wind up of the Retirement Benefits Fund.

Under section 12(4) of the *Long Service Leave Act 1976*, an employee, if their employment is terminated for any reason, is entitled to receive a payment for their long service leave entitlement. Similarly, under section 20(2) of the *Long Service Leave (State Employees) Act 1994*, an employee is entitled to an allowance for the period of long service leave they would have been entitled to before ceasing their employment. The ability for an employee of the Retirement Benefits Fund to elect not to be paid out for their entitlement will allow these employees, whom are appointed to positions in the office of the Commission, to have their long service leave recognised in their employment under the State Service Act.

This clause also provides that persons who are not entitled to, or eligible for, long service with the Retirement Benefits Fund because they have not met the requirement to complete 10 years of continuous employment with the Retirement Benefits Fund are entitled to long service leave once their combined years of service with the Retirement Benefits Fund and the State Service reach 10 years.

The amount of leave is calculated by combining the numbers of weeks of long service leave (determined from the number of years of service with the Retirement Benefits Fund) together with the number of days of long service leave from employment with the State Service.

A Retirement Benefits Fund employee who is not entitled to long service leave due to not reaching the next accrual date for long service leave under the Long Service Leave Act, is to be entitled to that period of long service leave for that person's continuous employment on appointment to the State Service.

The amount of that long service leave is to be no more than what that person would receive under the Long Service Leave Act based on their years of continuous service with the Retirement Benefits Fund.

If a person has taken or exhausted any of their long service leave to which they were entitled with the Retirement Benefits Fund, that amount taken or exhausted must be deducted from the amount the person is entitled to in their position with the State Service.

This clause further provides that access to these provisions only applies if the period between the employee ceasing to be an employee of the Retirement Benefits Fund and commencing employment with the Commission is no longer than three months.

An additional provision has been included to state that if a Retirement Benefits Fund employee has received payment for their long service leave accrued in respect of his or her employment with the Retirement Benefits Fund, that amount of long service leave cannot be recognised as long service leave on their appointment to the State Service.

**Clause 3**

Maintains the superannuation entitlements of a Retirement Benefits Fund employee who takes up a position with the Commission within three months of the employee ceasing to be an employee of the Retirement Benefits Fund.

**SCHEDULE 4**

**LEGISLATION REPEALED**

States that the Retirement Benefits Act, the Public Sector Superannuation Reform Act, the Retirement Benefits (State Fire Commission Superannuation Scheme) Act and the Retirement Benefits (Tasmanian Ambulance Service Superannuation Scheme) Act will be repealed following the commencement of section 63 of the Act.

As a consequence of these repeals, all subordinate legislation, including regulations, made under these Acts will automatically be repealed.