

TASMANIA

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**PUBLIC SECTOR SUPERANNUATION REFORM  
AMENDMENT REGULATIONS 2022**

**STATUTORY RULES 2022, No. 11**

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**PUBLIC SECTOR SUPERANNUATION REFORM  
AMENDMENT REGULATIONS 2022**

I, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council, make the following regulations under the *Public Sector Superannuation Reform Act 2016*.

Dated 21 March 2022.

B. BAKER  
Governor

By Her Excellency's Command,

MICHAEL DARREL JOSEPH FERGUSON  
Minister for Finance

**1. Short title**

These regulations may be cited as the *Public Sector Superannuation Reform Amendment Regulations 2022*.

**2. Commencement**

These regulations take effect on the day on which the *Public Sector Superannuation Reform Amendment Act 2019* commences.

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**3. Principal Regulations**

In these regulations, the *Public Sector Superannuation Reform Regulations 2017\** are referred to as the Principal Regulations.

**4. Regulation 3 amended (Interpretation)**

Regulation 3(1) of the Principal Regulations is amended as follows:

- (a) by inserting the following definition after the definition of *existing contributor*:

*fee unit* means a fee unit within the meaning of the *Fee Units Act 1997*;

- (b) by inserting the following paragraph after paragraph (f) in the definition of *salary*:

(fa) an allowance paid in lieu of being provided with a motor vehicle; or

- (c) by inserting the following definition after the definition of *tax free component*:

*terminal medical condition* has the same meaning as in regulation 6.01A of the SIS Regulations;

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\*S.R. 2017, No. 11

**5. Regulation 12 amended (Accounts and records)**

Regulation 12(2) of the Principal Regulations is amended by omitting paragraphs (d), (e) and (f) and substituting the following paragraph:

- (d) ensure that all liabilities incurred by the Commission are properly authorised.

**6. Regulation 14 amended (Exemption from contributing)**

Regulation 14(1)(b)(ii) of the Principal Regulations is amended by omitting “to an eligible rollover fund chosen by the Commission” and substituting “to the Taxation Commissioner to be dealt with under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* of the Commonwealth”.

**7. Regulation 15 amended (Commission may exempt persons from contributing to Fund)**

Regulation 15(4)(b)(ii) of the Principal Regulations is amended by omitting “to an eligible rollover fund chosen by the Commission” and substituting “to the Taxation Commissioner to be dealt with under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* of the Commonwealth”.

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**8. Regulation 21 amended (Commencement and cessation of contributions)**

Regulation 21(3)(e) of the Principal Regulations is amended by omitting “has attained the age of 65 years and who, having regard to his or her” and substituting “, having regard to his or her age and”.

**9. Regulation 36 amended (Benefit for full benefits contributors on death, terminal medical condition or retirement due to total and permanent incapacity)**

Regulation 36 of the Principal Regulations is amended as follows:

- (a) by inserting the following paragraph after paragraph (a) in subregulation (1):
  - (ab) is determined by the Commission under regulation 96A to have a terminal medical condition and that contributor subsequently retires on the grounds of having a terminal medical condition within 6 months after the date of that determination; or
- (b) by omitting from subregulation (1)(b) “decision” and substituting “determination”;
- (c) by inserting “or a terminal medical condition” after “incapacity” in

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paragraph (a) of the definition of *FAS(3)* in subregulation (1);

(d) by inserting “or a terminal medical condition” after “incapacity” in paragraph (b) of the definition of *FAS(3)* in subregulation (1);

(e) by inserting “or a terminal medical condition” after “incapacity” in paragraph (a) of the definition of *PBMF* in subregulation (1);

(f) by inserting the following subregulation after subregulation (3):

(4) If a contributor to whom this regulation applies retires on the grounds of having a terminal medical condition, the Commission is to pay the benefit calculated under subregulation (1) in accordance with the conditions of release of benefits applicable to regulated superannuation funds under the SIS regulations.

**10. Regulation 37 amended (Benefit for limited benefits contributors on death, terminal medical condition or retirement due to total and permanent incapacity)**

Regulation 37 of the Principal Regulations is amended as follows:

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- (a) by inserting the following paragraph after paragraph (a) in subregulation (1):
  - (ab) is determined by the Commission under regulation 96A to have a terminal medical condition and that contributor subsequently retires on the grounds of having a terminal medical condition within 6 months after the date of that determination; or
- (b) by inserting “or a terminal medical condition” after “incapacity” in paragraph (a) of the definition of *FAS(3)* in subregulation (1);
- (c) by inserting “or a terminal medical condition” after “incapacity” in paragraph (b) of the definition of *FAS(3)* in subregulation (1);
- (d) by inserting “or a terminal medical condition” after “incapacity” in paragraph (a) of the definition of *FAS(1)* in subregulation (1);
- (e) by inserting “or a terminal medical condition” after “incapacity” in paragraph (b) of the definition of *FAS(1)* in subregulation (1);
- (f) by inserting “or a terminal medical condition” after “incapacity” in the definition of *PS* in subregulation (1);

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- (g) by inserting “or a terminal medical condition” after “incapacity” in the definition of *PRC* in subregulation (1);
- (h) by inserting the following subregulation after subregulation (3):
  - (4) If a contributor to whom this regulation applies retires on the grounds of having a terminal medical condition, the Commission is to pay the benefit calculated under subregulation (1) in accordance with the conditions of release of benefits applicable to regulated superannuation funds under the SIS regulations.

**11. Regulation 40 amended (Preservation of contributions)**

Regulation 40(9) of the Principal Regulations is amended by omitting “to an eligible rollover fund chosen by the Commission” and substituting “to the Taxation Commissioner to be dealt with under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* of the Commonwealth”.

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**12. Regulation 41 amended (Payment of preserved benefits)**

Regulation 41(6)(b)(ii) of the Principal Regulations is amended by omitting “to an eligible rollover fund chosen by the Commission” and substituting “to the Taxation Commissioner to be dealt with under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* of the Commonwealth”.

**13. Regulation 44 amended (Interim invalidity pensions)**

Regulation 44(5)(b)(ii) of the Principal Regulations is amended by omitting “to an eligible rollover fund chosen by the Commission” and substituting “to the Taxation Commissioner to be dealt with under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* of the Commonwealth”.

**14. Regulation 48 amended (Establishment of compulsory preservation accounts)**

Regulation 48 of the Principal Regulations is amended as follows:

- (a) by omitting from subregulation (5)(b) “to an eligible rollover fund chosen by the Commission” and substituting “to the Taxation Commissioner to be dealt with under the *Superannuation (Unclaimed*

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*Money and Lost Members) Act 1999 of the Commonwealth”;*

(b) by inserting the following subregulation after subregulation (8):

(9) If the balance of a person’s compulsory preservation account is an amount in relation to which regulated superannuation funds are permitted under the SIS Act to make such a payment in similar circumstances, the Commission may pay all of the amount in the compulsory preservation account to –

(a) an account, in the name of the person, elected by the person; or

(b) if an election is not made under paragraph (a) within a reasonable period determined by the Commission – to the Taxation Commissioner to be dealt with under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* of the Commonwealth.

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**15. Regulation 51 amended (Release of preserved benefits)**

Regulation 51 of the Principal Regulations is amended by omitting subregulation (4) and substituting the following subregulation:

(4) If the Commission has –

(a) determined under regulation 96(8) that a person with an entitlement to a preserved benefit is suffering from total and permanent incapacity; or

(b) determined under regulation 96A that a person with an entitlement to a preserved benefit has a terminal medical condition –

the Commission is to pay that benefit to that person.

**16. Regulation 57 amended (Recovery of overdue contributions and payments)**

Regulation 57 of the Principal Regulations is amended by omitting subregulation (1) and substituting the following subregulations:

(1) If any contributions or other payments that are required under these regulations, or were required under the former regulations, to be made by a contributor are, for any reason, in arrears, the

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Commission may determine an amount of interest that is payable, by the contributor, in relation to the amount in arrears.

(1A) If –

- (a) any contributions or other payments that are required under these regulations, or were required under the former regulations, to be made by a contributor are, for any reason, in arrears; and
- (b) the amount of the arrears, together with any interest that the Commission determines under subregulation (1) is payable on that amount, has not been otherwise paid to the Commission by the contributor –

the amount in arrears, together with the amount of the interest payable on that amount, may be deducted from the contributor's salary in any instalments that the Commission determines, and the Agency by which the contributor is employed must cause the amount to be deducted accordingly and paid to the Commission.

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**17. Regulation 59 amended (Conversion of lump sum benefits to pensions)**

Regulation 59 of the Principal Regulations is amended as follows:

- (a) by omitting from subregulation (3)(b)(ii) “; and” and substituting “; or”;
- (b) by inserting the following subparagraph after subparagraph (ii) in subregulation (3)(b):
  - (iii) been determined by the Commission under regulation 96A(1) to have a terminal medical condition; and
- (c) by omitting from subregulation (6)(b) “\$30 000.” and substituting “\$30 000; and”;
- (d) by inserting the following paragraph after paragraph (b) in subregulation (6):
  - (c) if the Commission approves, an additional lump sum benefit for any one or more of the following:
    - (i) to pay for medical treatment, or medical transport, for the contributor;
    - (ii) to modify the contributor’s principal

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place of residence, or vehicle, to accommodate the special needs of the contributor relating to the person's physical or mental capacities;

(iii) to pay for the palliative care of the contributor;

(iv) to meet expenses for any other purpose that the Commission determines is consistent with the needs of the contributor related to the contributor's retirement.

(e) by omitting subregulation (9);

(f) by omitting from subregulation (12)(b) "to an eligible rollover fund chosen by the Commission" and substituting "to the Taxation Commissioner to be dealt with under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* of the Commonwealth".

**18. Regulation 60 amended (Payment of pensions if lump sum converted)**

Regulation 60(3)(b) of the Principal Regulations is amended by omitting "to an eligible rollover fund chosen by the Commission" and substituting "to the Taxation Commissioner to be

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dealt with under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* of the Commonwealth”.

**19. Regulation 61 amended (Pension conversion factors)**

Regulation 61(4)(e) of the Principal Regulations is amended by omitting “section 90MD” and substituting “section 90XD”.

**20. Regulation 62 amended (Pensions payable to surviving partners)**

Regulation 62 of the Principal Regulations is amended as follows:

- (a) by omitting paragraph (a) from subregulation (1) and substituting the following paragraph:
  - (a) as mentioned in clause 2(3) of Part 4 of Schedule 3, if the pensioner’s pension was calculated –
    - (i) by reference to a factor of 12; or
    - (ii) on the basis that the pension was to revert to the surviving partner of the pensioner; or

(b) by inserting the following subregulation after subregulation (1):

(1A) A surviving partner of a pensioner is not entitled to an amount under subregulation (1) in respect of a period if the person received an amount under regulation 62A(1) in respect of that period.

## **21. Regulation 62A inserted**

After regulation 62 of the Principal Regulations, the following regulation is inserted in Part 6:

### **62A. Provisional surviving partner pension**

(1) A person is entitled to a pension calculated in accordance with regulation 62(2) if the Commission, on the basis of information before the Commission and any further information provided to the Commission in accordance with a requirement under subregulation (6), is satisfied that –

(a) the person was, at the date of a pensioner's death, the spouse of the pensioner and the pensioner was, at the date of the pensioner's death, in receipt of a pension calculated as referred to in regulation 62(1)(a), (b), (c) or (d); and

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- (b) the person is reasonably likely to meet the requirements of regulation 109 for the person to be determined to be the surviving partner of the pensioner.
- (2) The pension payable under subregulation (1) to a person who was, at the date of a pensioner's death, the spouse of the pensioner is payable from the day after the date of death of the pensioner until the earlier of the following:
  - (a) the day on which a pension becomes payable to the person under regulation 62;
  - (b) the day on which the Commission makes a determination under subregulation (3) that the pension is to cease to be payable to the person.
- (3) The Commission may determine that a pension payable under subregulation (1) to a person who was, at the date of a pensioner's death, the spouse of the pensioner is to cease to be payable to the person because the person is not likely to meet the requirements of regulation 109 for the person to be determined to be the surviving partner of the pensioner.

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- (4) The Commission must provide, to a person to whom a determination under subregulation (3) relates, reasons for the making of the determination.
- (5) A pension payable to a person under subregulation (1) is subject to indexation as provided by regulation 63.
- (6) The Commission –
  - (a) may require a person to provide to the Commission information required by the Commission in order for the Commission to be reasonably satisfied of the identity of the person or that the person is a surviving partner of a pensioner; and
  - (b) may refuse to pay a pension to the person until such information is provided to the Commission.
- (7) If the Commission determines under regulation 109 that a person to whom a pension has been paid in accordance with this regulation is not the surviving partner of the pensioner in relation to whom the pension was payable –
  - (a) the Commission may, by notice to the person, require the person to refund to the Fund, by the date specified in the notice, the

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amount of the pension paid under  
this regulation; and

- (b) the amount specified in the notice is a debt due and payable by the person to the Fund.

**22. Regulation 64 amended (Duration of pensions)**

Regulation 64(2) of the Principal Regulations is amended by inserting “, a pension payable under regulation 62A” after “45”.

**23. Regulation 67A inserted**

After regulation 67 of the Principal Regulations, the following regulation is inserted in Part 6:

**67A. Commission may make certain deductions from pensions**

The Commission may deduct from a pension payable to a person –

- (a) the amount of any fees payable to an authorised deposit-taking institution in relation to the payment of the pension to an overseas account; and
- (b) any other costs directly incurred by the Commission in order to pay the pension to the person in accordance with the instructions of the person.

**24. Regulation 69 amended (Calculation of notional taxed contributions)**

Regulation 69 of the Principal Regulations is amended by omitting “Subdivision 292-D” and substituting “Division 292”.

**25. Regulation 71 amended (When benefit entitlements become payable)**

Regulation 71(b) of the Principal Regulations is amended by inserting “, a pension payable under regulation 62A” after “regulation 44”.

**26. Regulation 77 amended (Interpretation of Part 8 )**

Regulation 77 of the Principal Regulations is amended as follows:

- (a) by omitting “section 90MN” from the definition of *flag lifting agreement* and substituting “section 90XN”;
- (b) by omitting “section 90MU(1)” from the definition of *flagging order* and substituting “section 90XU(1)”;
- (c) by omitting “section 90MD” from the definition of *member* and substituting “section 90XD”;
- (d) by omitting “section 90MD” from the definition of *member spouse* and substituting “section 90XD”;

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- (e) by omitting “section 90MD” from the definition of *non-member spouse* and substituting “section 90XD”;
- (f) by omitting “section 90MD” from the definition of *operative time* and substituting “section 90XD”;
- (g) by omitting “section 90ME” from the definition of *splittable payment* and substituting “section 90XE”;
- (h) by omitting “section 90MT(1)” from the definition of *splitting order* and substituting “section 90XT(1)”;
- (i) by omitting “section 90MD” from the definition of *spouse* and substituting “section 90XD”;
- (j) by omitting “section 90MH” from the definition of *superannuation agreement* and substituting “section 90XH and 90XHA”;
- (k) by omitting “section 90MD” from the definition of *superannuation interest* and substituting “section 90XD”.

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**27. Regulation 80 amended (Duty of Commission to give effect to splitting instruments under Family Law Act)**

Regulation 80(3) of the Principal Regulations is amended by inserting “and regulation 80A” after “subregulation (4)”.

**28. Regulation 80A inserted**

After regulation 80 of the Principal Regulations, the following regulation is inserted in Part 8:

**80A. Commission to determine certain policies and procedures in respect of payment splits**

(1) In this regulation –

*payment split* has the meaning given by section 90XD of the Family Law Act;

*relevant benefit* means a benefit –

- (a) in relation to the TASS Scheme within the meaning of Part 13, as defined in that Part; and
- (b) in relation to the SFCS Scheme within the meaning of Part 14, as defined in that Part;

*relevant Commonwealth legislation* includes –

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- (a) the Family Law Act; and
- (b) the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;

*relevant scheme* includes –

- (a) the TASS Scheme within the meaning of Part 13; and
  - (b) the SFCS Scheme within the meaning of Part 14.
- (2) If a payment split is implemented by the Commission in respect of a relevant scheme, the Commission must adjust, vary or reduce the relevant benefit payable, or which may become payable, under the relevant scheme –
- (a) on such basis, and at such time, as the Commission determines; and
  - (b) in such a manner, including by the establishment of a debt account, as the Commission determines; and
  - (c) in accordance with the relevant Commonwealth legislation.

- (3) In order to give effect to the relevant Commonwealth legislation or for any other purpose, the Commission may formulate and give effect to policies and procedures in relation to one or more of the following:
- (a) the timing of the calculation of the value of the interest of a non-member spouse of a person who is a member of a relevant scheme;
  - (b) the manner in which the interest of a member of a relevant scheme is adjusted following a payment split;
  - (c) any other matter that the Commission considers relevant to –
    - (i) a payment split; or
    - (ii) the interests of a member, or a non-member spouse, in relation to a payment split.

**29. Regulation 85 amended (Provision of information by Commission)**

Regulation 85 of the Principal Regulations is amended by omitting “section 90MZB” and substituting “section 90XZB”.

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**30. Regulation 86A inserted**

After regulation 86 of the Principal Regulations, the following regulation is inserted in Part 9:

**86A. Provision of proportion and periods for purposes of section 61(5) of Act**

- (1) For the purposes of section 61(5) of the Act, the proportion of the amount of a benefit paid by the Fund to a former TGIO employee is the employer component of the benefit, as determined under regulation 86.
- (2) For the purposes of section 61(5) of the Act, the prescribed period, in relation to the proportion of the amount of a benefit paid, is within 30 days after the benefit is paid.

**31. Regulation 87 amended (Payments to Fund by Minister)**

Regulation 87(6) of the Principal Regulations is amended by inserting “or regulation 62A” after “regulation 62”.

**32. Regulation 96 amended (Power of Commission to determine invalidity)**

Regulation 96 of the Principal Regulations is amended by omitting subregulation (6) and substituting the following subregulation:

- (6) The Commission must periodically determine whether an interim invalidity pensioner is eligible to continue to receive the whole or part of his or her interim invalidity pension.

**33. Regulation 96A inserted**

After regulation 96 of the Principal Regulations, the following regulation is inserted in Division 2:

**96A. Determination of terminal medical condition**

- (1) The Commission may determine that a contributor has a terminal medical condition.
- (2) In making a determination under subregulation (1), the Commission is to have regard to –
- (a) at least one medical report, in respect of the relevant person's medical condition, prepared during the preceding period of 6 months by a medical practitioner appointed by the contributor; and
  - (b) any medical evidence and reports, prepared by medical practitioners who have been approved by the Commission, that the Commission thinks fit; and

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- (c) any other medical evidence, or other evidence, that the Commission thinks fit.
- (3) The Commission may make a determination under subregulation (1) in relation to a contributor whether or not the Commission has determined invalidity under regulation 96(3) in relation to the contributor.

**34. Regulation 99A inserted**

After regulation 99 of the Principal Regulations, the following regulation is inserted in Division 2:

**99A. Reduction or suspension of interim invalidity pensions in certain cases**

- (1) Subregulation (2) applies in relation to an interim invalidity pension in respect of an interim invalidity pensioner if the pensioner –
  - (a) is engaged in any business or occupation on his or her own account; or
  - (b) is undertaking gainful employment; or
  - (c) has recovered from his or her bodily infirmity, physical incapacity or mental incapacity so

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as to be able to undertake gainful employment in an occupation for which he or she is reasonably qualified by education, training or experience; or

(d) is in receipt of –

(i) regular workers compensation payments under the *Workers Rehabilitation and Compensation Act 1988*; or

(ii) regular weekly payments under Part 7 of the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011* –

and the combined payments of the interim invalidity pension and those workers compensation payments or regular weekly payments exceed the salary received, or taken by the Commission to have been received, by the pensioner in the previous 12 months.

(2) If this subregulation applies in relation to an interim invalidity pension in respect

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of an interim invalidity pensioner, the Commission may –

- (a) suspend the pension payable to that interim invalidity pensioner for the period, or until the occurrence of an event, determined by the Commission; or
  - (b) reduce the amount of that pension to an amount that, in the Commission's opinion, the circumstances of the case warrant, for the period, or until the occurrence of an event, determined by the Commission.
- (3) The Commission –
- (a) may from time to time require an interim invalidity pensioner to provide the Commission with evidence of the pensioner's invalidity or financial circumstances; and
  - (b) may suspend payment of the pensioner's interim invalidity pension while the pensioner fails to provide the evidence to the Commission.
- (4) If –

- (a) payment of an interim invalidity pension has been suspended under subregulation (3); and
- (b) the interim invalidity pensioner subsequently provides the Commission with the required evidence –

the Commission may reinstate payment of the pensioner's interim invalidity pension inclusive of any part of the period of that suspension.

**35. Regulation 101 amended (Power of Commission to reinstate lost rights)**

Regulation 101(3) of the Principal Regulations is amended as follows:

- (a) by omitting from paragraph (c) “approval.” and substituting “approval; or”;
- (b) by inserting the following paragraph after paragraph (c):
  - (d) so as to allow a person who has received payment of a benefit, pension or lump sum to revoke under regulation 115A(1) the election to receive the benefit, pension or lump sum.

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**36. Regulation 105 amended (Right to apply to Supreme Court for declaration as to validity)**

Regulation 105 of the Principal Regulations is amended by inserting before subregulation (1) the following subregulation:

- (1AA) In this regulation, a reference to a final decision under regulation 104 is taken to include a reference to a decision under regulation 99A.

**37. Regulation 109 amended (Determination of surviving partner)**

Regulation 109(1) of the Principal Regulations is amended as follows:

- (a) by inserting the following paragraph after paragraph (b):
- (ba) if there is no person referred to in paragraph (a) or (b), a person was the spouse of the Fund member and, but for a medical reason or because of the care needed to be provided to the person, would have been living with the Fund member; or
- (b) by omitting from paragraph (c) “paragraph (a) or (b)” and substituting “paragraph (a), (b) or (ba)”.

**38. Regulation 115A inserted**

After regulation 115 of the Principal Regulations, the following regulation is inserted in Part 12:

**115A. Revocation of elections made by persons**

(1) If –

(a) a person has made an election under these regulations to –

(i) receive a benefit; or

(ii) receive the whole or part of a benefit as a lump sum or pension; or

(iii) commute all or part of a pension to a lump sum; and

(b) the payment of the benefit, pension or lump sum has not commenced –

the person may, with the approval of the Commission under subregulation (2) and in accordance with the conditions and requirements, if any, of the approval, revoke the election.

(2) The Commission may approve the revocation by a person under subregulation (1) of an election made by

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the person, if the Commission is satisfied that –

- (a) the effect of the election is inconsistent with the intention of the person at the time at which the person made the election; and
  - (b) it would be just and equitable to do so.
- (3) The Commission may, in an approval under subregulation (2), impose conditions and requirements that the Commission thinks fit.

**39. Parts 13 and 14 inserted**

After regulation 118 of the Principal Regulations, the following Parts are inserted:

**PART 13 – TASMANIAN AMBULANCE SERVICE  
SUPERANNUATION SCHEME**

*Division 1 – Preliminary*

**119. Interpretation of Part 13**

- (1) In this Part, unless the contrary intention appears –

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

*award* means –

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- (a) an agreement that is certified, or an award that is made, on or after 1 July 1986; and
- (b) any arrangement which the Ambulance Service and the Board agreed, before the commencement of the Act, is to be treated as an award; and
- (c) any other arrangement which the Ambulance Service and the Commission agree, from time to time, is to be treated as an award;

***benefit*** means any entitlement paid, or authorised to be paid, by the Commission out of the TASS Fund under these regulations to, or in respect of, a member, less the amount, if any, of Commonwealth taxation that is deducted from the entitlement in accordance with law;

***composite salary*** means composite salary or wages (excluding overtime) as defined in the relevant award;

***compulsory contributions*** means –

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(a) contributions the Ambulance Service makes for a member to the TASS Scheme under an award; and

(b) contributions the Ambulance Service makes for a member for the purpose of avoiding any superannuation guarantee charge;

***date of admission***, in relation to a member, means the date on which the member became a member of the former superannuation scheme;

***day worker*** means an employee whose ordinary weekly hours of work are performed within the days Monday to Friday inclusive;

***employee*** means any person in service other than a person who, under section 37 of the Act, is not entitled to be a member of the TASS Scheme;

***employer contributions*** means contributions paid to the TASS Scheme by the Ambulance Service in accordance with regulation 129 and includes

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contributions paid in respect of a member by the Ambulance Service in accordance with regulation 130(6) and any contributions paid by the Ambulance Service under the former superannuation scheme, the TASS Trust Deed or a former trust deed;

*final average salary*, in relation to a member, has the meaning it has in regulation 120;

*former shiftworker* means a member –

- (a) whose employment status has changed from shiftworker to day worker; and
- (b) who elected at the date of the change in the member's employment status to be classified as a former shiftworker for the purposes of the TASS Trust Deed, a former trust deed or these regulations; and
- (c) who had served at least 20 years of service as a shiftworker; and

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- (d) who had attained the age of 55 years at the time of the change in the member's employment status, unless the Ambulance Service and the Commission agree to waive this requirement; and
- (e) who is contributing at the rate of 5% of the member's equivalent composite salary;

***former superannuation scheme*** means the Ambulance Service Superannuation Scheme established, by the Ambulance Commission, of Tasmania under the *Ambulance Act 1959* and administered by the former Trustee before 30 June 2006;

***former trust deed*** means a trust deed, other than the TASS Trust Deed, entered into by the Ambulance Commission for the purposes of the TASS Scheme;

***incapacity*** means permanent incapacity or temporary incapacity;

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***member*** means a person to whom regulation 126 applies and who retains an interest in the TASS Fund in accordance with these regulations;

***member contributions*** means contributions paid in accordance with regulation 130;

***normal retirement date***, in relation to a member, means the day on which the member attains the age of 65 years;

***part-time employment*** means employment for less time per week than the standard time per week which is applicable to the member's occupation by reason of –

- (a) an award; or
- (b) a condition of employment specified by the Ambulance Service (disregarding overtime or similar arrangements);

***permanent incapacity***, in relation to a member –

- (a) means totally and permanently disabled, or suffering total and

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permanent disablement, or any corresponding term as defined in an insurance policy, continued or effected by the Commission, which provides benefits on disablement and is a policy under which the member is insured, and includes any period of absence stipulated in the policy; or

- (b) if there is no such insurance policy in respect of the member, has the meaning determined by the Commission and notified to the members from time to time;

***reorganisation of the Ambulance Service*** includes any amalgamation, merger, reconstruction, arrangement, or takeover, involving the Ambulance Service;

***required payment date***, in relation to a member, means the date at which the member's benefit must be paid, or begin to be paid, under law;

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***retrenchment***, in relation to a member, means the termination by the Ambulance Service of the employment of the member before the normal retirement date for any of the following reasons:

- (a) the work for which the member was engaged has been completed;
- (b) the position for which the member was engaged has ceased to exist and the member's services are no longer required;
- (c) the amount of work to be carried out by the Ambulance Service has diminished and has rendered necessary or expedient a reduction in the number of employees;
- (d) as a result of the reorganisation of the Ambulance Service, or rearrangement of staff for business policy reasons, the member's services have become redundant –

if, in the opinion of the Commission, the Ambulance

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Service has not offered  
comparable alternative  
employment to the member;

*salary* – see regulation 121;

*scheme earning rate* means –

- (a) in respect of contributions made, or taken to be made, before 1 July 1990 – the rate of 10% per annum from 1 July 1987 (or the date on which the contribution was made, if that date is after 1 July 1987) to and including 30 June 1990; and
- (b) in respect of contributions made, or taken to be made, on and from 1 July 1990 (or the date on which the contribution was made, if that date is after 1 July 1990) to and including 30 June 2006 – the rate declared as scheme earning rates under the provisions of the former superannuation scheme; and

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- (c) in respect of contributions made, or taken to be made, on and from 1 July 2006 and before the day on which this Part commences – the rate determined under subclause 8.1.1 of the TASS Trust Deed; and
- (d) in respect of contributions made, or taken to be made, on and from the day on which this Part commences – the rate determined under regulation 145(1);

***service*** means actual employment or appointment (counted in years and complete months) to perform functions for the purposes of the *Ambulance Service Act 1982*, in respect of which the member receives salary and includes any period during which the member suffers a temporary incapacity;

***shiftworker*** means an employee whose ordinary weekly hours of work are performed in accordance with a roster that regularly includes Saturdays, Sundays and public holidays;

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***superannuation guarantee charge***

means a charge or tax imposed on employers for not making certain superannuation contributions or providing certain superannuation benefits;

***TASS Fund*** means the assets and liabilities of the TASS Scheme continued under the Act and administered by the Commission as a subfund of the Fund;

***TASS Scheme*** means the scheme continued under section 36 of the Act;

***TASS Trust Deed*** means the Trust Deed terminated by section 35 of the Act;

***temporary incapacity***, in relation to a member –

- (a) means totally and temporarily disabled, or suffering total and temporary disablement, or any corresponding term as defined in an insurance policy, continued or effected by the Commission, which provides benefits on disablement and is a

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policy under which the member is insured, and includes any period of absence stipulated in the policy; or

- (b) if there is no such insurance policy in respect of the member, has the meaning determined by the Commission and notified to the members from time to time;

***transferring member*** means any person who immediately before 30 June 2006 –

- (a) was contributing to, or required to contribute to, or was taken to be contributing to, the former superannuation scheme; and
  - (b) was an employee.
- (2) In this Part, a reference to a period expressed in years includes, where appropriate, a reference to a period expressed in years together with a fraction of a year that is expressed in days.

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**120. Final average salary**

- (1) Subject to this section, in this Part, the final average salary in relation to a member is the average of the member's salaries on the first day of each July in the period of 3 years ending on the date on which the member leaves service.
- (2) If a member is a former shiftworker, the final average salary in relation to the member is the average of the highest 3 consecutive years of salary of the member before the date on which the member left service.
- (3) If the member joined the service during the period of 3 years ending on the date on which the member leaves service, the member's salary at the date on which the member joined the service is taken, for the purposes of subregulation (1), to have been received by the member before that date.

**121. Salary**

- (1) The definition of salary in regulation 3 does not apply in this Part.
- (2) In this Part, a reference to salary in respect of a member who is not a shiftworker, means the gross annual wage or salary of the member, including –

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- (a) margins for skill; and
- (b) any amount paid for or on behalf of, or the value assessed by the Commission of non-pecuniary benefits received by, the member, if the member has the option of receiving the amount or benefit as annual wage or salary –

but not including overtime and any other payments and allowances.

- (3) In this Part, a reference to salary in respect of a member who is a shiftworker, means the gross annual wage or salary of the member, including –

- (a) shift allowance; and
- (b) margins for skill; and
- (c) any amount paid for or on behalf of, or the value assessed by the Commission of non-pecuniary benefits received by, the member, if the member has the option of receiving the amount or benefit as annual wage or salary –

but not including overtime and any other payments and allowances.

- (4) Despite subregulations (2) and (3) –

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- (a) during any period of absence without wage or salary, the salary of a member for the purposes of these regulations is to be adjusted in accordance with any express provisions in that regard in these regulations; and
- (b) the member's salary is to be taken to continue unaltered throughout any period during which the member suffers a temporary incapacity; and
- (c) in respect of a former shiftworker, salary means, except for the purposes of regulation 140, composite salary; and
- (d) the member's salary may be adjusted by the Commission for all or any purposes of these regulations having regard to regulation 130(6).

**122. Application of regulations to members**

Parts 4, 5 (apart from sections 54, 55, 56, 57 and 58), 6, 7 and 14, and regulations 94 and 101, of these regulations do not apply in relation to a member.

*Division 2 – Operation of Fund*

**123. Operation of the TASS Fund**

- (1) On and from the day on which the TASS Trust Deed is terminated under section 35 of the Act, the Commission must continue to maintain the TASS Fund.
- (2) The TASS Fund consists of the accounts and reserves that the Commission considers to be necessary or convenient for the administration of the TASS Scheme.
- (3) The Commission may cause to be met from the TASS Fund –
  - (a) the administration costs and management charges, in relation to the TASS Scheme, that are determined by the Commission to arise from the performance and exercise of the Commission's functions and powers under these regulations in relation to the administration and management of the TASS Scheme; and
  - (b) benefits payable under these regulations in relation to the TASS Scheme; and

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- (c) expenses associated with the investment of money standing to the credit of the TASS Fund; and
  - (d) amounts in payment of any tax, duty, impost or surcharge liability imposed, under a law of the Commonwealth or the State, on the TASS Fund or in respect of any benefits payable by the Commission from the TASS Fund.
- (4) The Commission must not make any payments from the TASS Fund to the Commission or the Ambulance Service except for –
- (a) expenses incurred in the administration of the TASS Scheme; or
  - (b) a refund of overpaid contributions; or
  - (c) payments that are permitted by the SIS Act.

**124. Taxation provision account**

- (1) The Commission may establish within the TASS Fund a taxation provision account for TASS Fund accounting purposes.

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- (2) If a taxation provision account has been established under subregulation (1), the Commission is to credit to the account any tax deducted from members' accounts and any taxation provision applicable to the TASS Fund's investment earnings.
- (3) If a taxation provision account has been established under subregulation (1), the Commission is to debit to the account all or part of the tax, paid to the Taxation Commissioner in accordance with the *Income Tax Assessment Act 1936* of the Commonwealth and the *Income Tax Assessment Act 1997* of the Commonwealth, that is applicable to the TASS Fund.
- (4) If, at the end of a financial year, the taxation provision account established under subregulation (1) is in surplus or deficit, the Commission must determine whether or not to –
  - (a) distribute the surplus to, or recover the deficit from, members or the TASS Fund; or
  - (b) carry forward the provision to the next financial year.

**125. Investment income reserve account**

- (1) The Commission may establish within the TASS Fund an investment income reserve account.
- (2) If an investment income reserve account is established under subregulation (1), any surplus or deficit investment income in the TASS Fund may be credited to, or debited from, the account and distributed to, or deducted from, members' accounts.
- (3) If, at the end of a financial year, the investment income reserve account established under subregulation (1) is in surplus, the Commission must determine, on the advice of the Actuary, whether or not to distribute all or part of the surplus to members by way of an adjustment to investment returns or by way of transfer to the TASS Fund.
- (4) If, at the end of a financial year, the investment income reserve account established under subregulation (1) is in deficit, the Commission must, on the advice of the Actuary, reduce members' account balance by way of adjustment to investment returns or by way of transfer from the TASS Fund.

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***Division 3 – Membership***

**126. Membership of TASS Scheme**

Each person who is a transferring member is a member of the TASS Scheme and remains a member of the Scheme if he or she maintains a financial interest in the TASS Fund in accordance with these regulations.

**127. Establishment of members' accounts**

- (1) The Commission may establish the accounts, and determine the administrative policy and terms and conditions, that are necessary for the efficient and effective administration of members' accounts.
- (2) Any account for a member that was maintained by the Commission before the commencement of this regulation is taken to be an account established under subregulation (1).
- (3) After members' accounts are established, the Commission –
  - (a) must credit to the accounts, if appropriate –
    - (i) all Ambulance Service superannuation

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- contributions paid on behalf of members; and
  - (ii) all contributions paid by members; and
  - (iii) investment returns in relation to members determined according to the scheme earning rates; and
  - (iv) any other amount that is authorised by these regulations and that the Commission considers appropriate; and
- (b) may debit to the accounts, if appropriate –
- (i) surcharge liability payments, taxation provisions or any other amounts required by the law of the Commonwealth or State in relation to members; and
  - (ii) the cost of providing cover for benefits on the death or incapacity of a member as provided by these regulations; and

- (iii) administration costs and management charges as provided by these regulations; and
- (iv) any other amount authorised by these regulations and considered appropriate by the Commission.

**128. Death and incapacity cover**

- (1) The Commission –
  - (a) may arrange cover for death and incapacity benefits in relation to members; and
  - (b) may receive and give full and effectual receipts, release and discharges in respect of the payment of any moneys under any such cover as may be required from the Commission and which it thinks proper, having regard to the circumstances.
- (2) Any cover for death and incapacity benefits that is arranged by the Commission in relation to members is to be in the name of the Commission and remain under the control of the

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Commission while the cover is subject to these regulations.

(3) Only the Commission –

(a) is entitled to enforce any rights, remedies or contracts in connection with, or incidental to, any cover for death and incapacity benefits that is arranged by the Commission in relation to members; and

(b) is entitled to the full benefits and advantages of such cover –

and no member, or any person claiming through or under a member, has or may claim any right, title or interest in or to any such cover or contract or in respect of moneys payable under the cover or contract.

(4) If the Commission takes out or increases insurance, or seeks to do so, in relation to a member's benefit and the insurer –

(a) does not accept the member on the standard terms; or

(b) restricts the level or scope of insurance claim in relation to a member; or

- (c) for any reason does not pay the whole or any part of a claim in relation to a member –

the Commission must modify the member's benefit as it considers appropriate, if to do so is not contrary to law or the requirements imposed in similar circumstances on regulated superannuation funds by the SIS Act.

***Division 4 – Contributions***

**129. Contributions**

- (1) The Commission must, having regard to the Actuary's recommendations, determine the rate at which the Ambulance Service must contribute to the TASS Scheme in respect of members.
- (2) The Commission may at any time, as it thinks fit, alter the rate at which the Ambulance Service must contribute to the TASS Scheme in respect of members.
- (3) The Ambulance Service must contribute to the TASS Scheme in respect of a member at the rate determined by the Commission, until the member leaves service or receives a benefit under regulation 134(10) or regulation 136(2).
- (4) The Commission may, having regard to the advice of the Actuary, decide that

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contributions are not required from the Ambulance Service.

- (5) The Ambulance Service must contribute to the TASS Scheme the additional amounts, if any, that the Minister, on the recommendation of the Actuary, directs so as to enable the Commission to meet its obligations to the TASS Scheme under these regulations.

**130. Obligations of members to contribute**

- (1) The rate of member contributions is 5%, 6%, 7%, 8%, 9%, 10% or 11% of salary, as selected by the member.
- (2) A member may, with effect from 1 July each year or another date that is agreed by the Commission, change the member's contribution to any of the rates specified in subregulation (1).
- (3) Until the rate of contribution is changed under subregulation (2), a transferring member is taken to be making the same rate of contribution, including no contribution, as he or she was making, or was taken to be making, under the TASS Trust Deed immediately before 30 June 2006.
- (4) A member must contribute to the TASS Scheme at the rate, specified in subregulation (1), selected by that

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member, until the earliest of the dates on which the member –

- (a) leaves service; or
  - (b) reaches the normal retirement date; or
  - (c) reaches the required payment date.
- (5) Despite subregulation (4), no member contributions are payable while a member suffers a temporary incapacity and the member contributions that would, but for this subregulation, otherwise be payable are taken to have been paid by the member.
- (6) A member who is an employee, the Commission and the Ambulance Service may agree that instead of deducting the member's contributions from the member's salary, an amount equal to those contributions, after allowing for contributions tax, and any other tax agreed between the member and the Ambulance Service, is paid to the Commission by the Ambulance Service in respect of the member in lieu of salary.
- (7) Any deductions from a member's salary by the Ambulance Service and paid to the Commission, or amounts paid to the Commission in lieu of a member's salary, which do not comply with

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subregulations (4), (5) or (6), as the case may be, or with the member's instructions, are taken to not be contributions under these regulations and are to be repaid to the member.

- (8) Unless otherwise agreed under subregulation (6), the Ambulance Service is to automatically deduct from the member's salary the regular contributions of a member.

**131. Time and manner of paying contributions**

- (1) Unless otherwise approved by the Commission, the Ambulance Service must cause to be shown as separately identifiable amounts on each payslip of each member the amount of Ambulance Service additional employer contributions made to the TASS Fund on the member's behalf and the amount of member contributions deducted from the member's salary.
- (2) The responsible officer must certify and forward, within 7 days of the relevant payday, a return to the Commission, in the form determined by the Commission, detailing the total amount for that pay period of Ambulance Service superannuation contributions, additional employer contributions and member

contributions paid on behalf of each member.

- (3) Contributions, including additional employer contributions, payable by the Ambulance Service or deducted from the member's salary are to be forwarded to the Commission within 7 days of the relevant payday.

### **132. Temporary absences**

- (1) If a member –
  - (a) takes unpaid leave with the Ambulance Service's consent; or
  - (b) elects, with the consent of the Commission, to suspend or reduce contributions –

then, during that period –

- (c) the member's salary is taken to continue unaltered; and
- (d) the member may contribute amounts approved by the Commission; and
- (e) if the period is in respect of unpaid leave, the Ambulance Service's liability to contribute under regulation 129 in respect of that member ceases except to the extent that the Commission

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- requires in relation to administration costs and management charges in relation to the TASS Scheme; and
- (f) if the period is in respect of an election to suspend or reduce contributions, the Ambulance Service's liability to contribute under regulation 129 in respect of the member ceases except –
- (i) to the extent that the Commission requires in relation to administration costs and management charges in relation to the TASS Scheme; and
  - (ii) for compulsory contributions; and
- (g) the Commission may discontinue or reduce any insurance in relation to the member and make consequential adjustments to benefits as it considers appropriate; and
- (h) the Commission may require the member to provide the evidence of the member's good health that may be necessary to reinstate any insurance; and

- (i) the Commission may, in its discretion, formulate any other terms relating to the calculation of any benefit in relation to the member which may become payable during or after that period.
- (2) The Commission must notify the member of any adjustment or determination made, or terms formulated under, this regulation which affects, or could affect, the member's benefit.

**133. Part-time employment**

- (1) In relation to any period of part-time employment, or any portion of such a period, the Ambulance Service may request the Commission to give effect to any or all of the following provisions:
  - (a) the contributions payable by and in respect of the member during the period of part-time employment may be adjusted as the Commission considers to be reasonable and equitable having regard to –
    - (i) the time per week for which the member is engaged in part-time employment; and

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- (ii) the standard time per week referred to in the definition of *part-time employment*; and
  - (iii) the wishes of the Ambulance Service; and
  - (iv) any relevant provision contained in the law prescribed for regulated superannuation funds in similar circumstances;
- (b) the basis of determining the member's benefit may be adjusted in the manner that the Commission considers reasonable and equitable, having regard to –
  - (i) the extent to which the contributions are adjusted under paragraph (a); and
  - (ii) any other matters referred to in that paragraph;
- (c) the Commission may seek to adjust any insurance in relation to the member as it considers to be appropriate in the circumstances and may require the member subsequently to provide the evidence of good health that may be necessary in connection with the insurance;

- (d) the Commission may vary any adjustment made under this regulation in the event of any material alteration in the circumstances of the part-time employment of the member.
- (2) The Commission must notify the member of any adjustment or determination made under this regulation which affects, or could affect, the member's benefit.

***Division 5 – Benefits***

**134. Benefit payment standards**

- (1) Benefits become payable to or in respect of a member when any of the events specified in this Division occur in relation to the member.
- (2) Benefits payable under this Part may be paid by the Commission only if regulated superannuation funds are permitted by the SIS Act to make such payments in similar circumstances.
- (3) All benefits in respect of a member that are preserved in accordance with this Part or by the Commission under these regulations must be preserved and vested in the member in the accounts that the Commission determines having regard to the member's wishes.

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- (4) A preserved benefit becomes payable when the Commission is either notified, or becomes aware, that the member has satisfied the conditions of release set out in this Part.
- (5) The Commission must notify the member, the member's surviving partner or the member's legal personal representative of the entitlement of the member to a preserved benefit when it becomes payable under this Part, by sending a written notice to the last known address of the member, partner or representative, respectively.
- (6) A person who receives or claims a benefit from the TASS Scheme must produce to the Commission the information, documents and other evidence that the Commission requires the person to produce for the purposes of these regulations.
- (7) If a person fails to produce to the Commission the information, documents and other evidence required by the Commission under subregulation (6), the Commission may withhold or suspend payment of the benefit or refuse to consider the claim until the requirement is met.

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- (8) A benefit payable under this Part (other than a temporary incapacity benefit) must be paid as a lump sum.
- (9) When a lump sum becomes payable under this Part, the lump sum, subject to regulation 153, is to be transferred, after deduction of any tax liability –
  - (a) to an account in the name of the person entitled to the benefit, in a superannuation fund elected by the person; or
  - (b) if an election is not made within a reasonable period, as determined by the Commission, to the Taxation Commissioner to be dealt with under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* of the Commonwealth.
- (10) Except when the member receives a benefit under regulation 140, if a member remains in service but reaches the required payment date, the Commission must pay to or on behalf of that member the benefit under regulation 136(1) or (2).
- (11) At the time that a benefit of a member becomes payable or available for transfer, the Commission may reduce the benefit by any amount owed by the

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member to the TASS Scheme or the Commission, if a regulated superannuation fund would be permitted by the SIS Act to make such a reduction in similar circumstances.

**135. Transfer of benefit to RSA or complying superannuation scheme**

- (1) The Commission must transfer a member's benefit to an RSA or a complying superannuation scheme –
  - (a) if at any time a member so elects;  
or
  - (b) without the consent of the member, if it is otherwise lawful to so transfer a member's benefit without the consent of the member.
- (2) A transfer under this regulation may only occur if regulated superannuation funds are permitted under the SIS Act to make such a transfer in similar circumstances.
- (3) If a member makes an election under this regulation but remains in service, the Commission must determine the appropriate amount to be transferred in the circumstances.
- (4) A transfer of a benefit under this regulation satisfies the member's

entitlement to any benefit in respect of the amount transferred and the Commission may declare that it satisfies the member's entitlement in full.

- (5) The Commission is not responsible for the manner in which the trustee of another fund to which a benefit is transferred under this regulation deals with the benefit.

**136. Retirement benefit**

- (1) A member who leaves service –
- (a) at or after the normal retirement date; or
  - (b) within 10 years before the normal retirement date; or
  - (c) with the consent of the Ambulance Service, at any time, on the grounds of ill-health such that the member is, in the opinion of the Commission, unable to continue employment with the Ambulance Service but is not eligible for a benefit under regulation 139 –

is entitled to a benefit equal to the amount calculated in accordance with the following formula:

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Final average salary x Accrued retirement multiple

where –

*accrued retirement multiple* means the total of the amounts obtained by multiplying the number of years of service as a member during which the member's contribution rate was the percentage set out in the first column of the table below by the corresponding percentage specified in the second column of the table.

<b>Column 1 – Member Contribution Rate</b>	<b>Column 2 – Percentage</b>
1. 4.7%	17.375%
2. 5%	17.75%
3. 6%	19.00%
4. 7%	20.25%
5. 8%	21.50%
6. 9%	22.75%
7. 10%	24.00%
8. 11%	25.25%

(2) The Commission may pay to a member who –

(a) is in service on or after the normal retirement date; and

(b) requests payment –

a benefit equal to the benefit which would have been payable under subregulation (1) had the member retired on the normal retirement date, together with interest from that date at the scheme earning rate.

### **137. Reductions in salary**

If a member's benefit becomes payable to or in respect of a member and the member's salary is less than the highest of the member's previous salaries, the benefit payable in relation to the member may be increased by the amount that the Commission may determine having regard to the advice of the Actuary.

### **138. Death benefit**

(1) Subject to subregulation (2), on the death of a member in service, the Commission must pay –

(a) in respect of a member who has not attained the age of 55 years at the date of his or her death – an

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amount equal to the benefit which would have been payable under regulation 136(1) had the member remained in service until the member attained the age of 55 years and assuming, for the prospective period from the date of the member's death until the day on which the member would have attained the age of 55 years, that the member's contribution rate is 6% and the member's salary remains unchanged over that period; or

- (b) in respect of any other member – an amount equal to the benefit which would have been payable under regulation 136(1) had the member retired on the day of his or her death.
- (2) In respect of a member whose date of admission was on or before 30 June 1994, the benefit payable under subregulation (1) must not be less than the aggregate of the benefit which would have been payable under the SAF Agreement in force at that date and the death benefit under the SAF Agreement at that date.

**139. Permanent incapacity**

A member who leaves service because of permanent incapacity is entitled to a benefit equal to the amount calculated under regulation 138.

**140. Temporary incapacity**

If, before the normal retirement date, a member suffers temporary incapacity and remains in service, at each date on which proceeds of insurance in respect of the member is credited to the scheme there is payable to the member a benefit equal to the amount of the proceeds.

**141. Leaving service**

- (1) Subject to subregulation (2), a member who leaves service in circumstances other than those specified in regulation 136(1), regulation 138 or regulation 139 is entitled to a benefit equal to the amount calculated using the following formula:

Final average salary x Accrued retirement multiple x factor

where –

*accrued retirement multiple* means the amount as set out in regulation 136(1);

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*factor* means the factor determined in accordance with the table to this subregulation, with completed months counted pro rata.

<b>Column 1 – Age of member</b>	<b>Column 2 – Factor</b>
50 or more	1
49	0.980
48	0.961
47	0.942
46	0.924
45	0.906
44	0.888
43	0.871
42	0.853
41	0.837
40	0.820
39	0.804
38	0.788
37	0.773
36	0.758

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<b>Column 1 – Age of member</b>	<b>Column 2 – Factor</b>
35 or less	0.750

- (2) If the member is leaving service as a result of retrenchment, the member is entitled to a benefit under regulation 136(1).

**142. Augmentation**

- (1) The Commission may, with the approval of the Ambulance Service and having regard to the advice of the Actuary, augment any benefit payable from the TASS Scheme.
- (2) Despite subregulation (1), the augmentation of a benefit payable under regulation 141(1) may not exceed the amount calculated by the Actuary as the member's equitable share of the TASS Scheme.
- (3) The Ambulance Service must contribute the additional amount determined by the Commission, having regard to the advice of the Actuary, to be required to provide the augmented benefit.
- (4) If a death benefit becomes payable from the TASS Scheme and the Commission considers that it may be augmented by a tax deduction, the Commission may

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augment the death benefit by the amount of the expected tax deduction.

**143. Minimum benefit**

The benefit payable to or in respect of a member who dies or leaves service for any reason is not to be less than the minimum benefit that is –

- (a) specified in a current benefit certificate issued by the Actuary in accordance with the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth; and
- (b) required by law to be vested in the member as a consequence of the member's participation in the TASS Scheme.

**144. Members whose date of admission is on or before 30 June 1996**

The amount of any benefit payable under regulation 136(1) or regulation 141 to a member whose date of admission is on or before 30 June 1996 must not be less than the aggregate of –

- (a) the amount payable at the date of leaving service as if the equivalent provision of the

governing rules of the former superannuation scheme as at 30 June 1994 were still in effect on the date of leaving service; and

- (b) the amount of the member's benefit on leaving service as at 30 June 1994 under the rules of the Tasmanian Accumulation Scheme at that date, less any tax payable on the transfer of that benefit to the former superannuation scheme together with interest at the scheme earning rate from 30 June 1994 to the date of leaving service; and
- (c) 3% of the member's salary for the period 1 July 1994 to the earlier of 30 June 1996 and the date the member leaves service, less any contributions tax payable on that amount, plus interest at the scheme earning rate to the date of leaving service.

***Division 6 – Financial provisions***

**145. Fixing of scheme earning rate**

- (1) The Commission is to calculate and determine a scheme earning rate (which may be positive or negative) at least annually, having regard to –

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- (a) the earning rates of the TASS Fund; and
  - (b) the Commission's investment strategy and policy; and
  - (c) any allowances for unrealised capital gains or losses; and
  - (d) the cost of administration, investment management, taxation and other expenses the Commission has paid or is likely to pay for the cost of administering or managing the scheme.
- (2) The Commission, at least annually, is to credit (or debit, where appropriate) to a member's account or accounts interest at the scheme earning rate.
- (3) The Commission may, whenever it considers appropriate, calculate and determine an interim earning rate (which may be positive or negative) having regard to the matters referred to in subregulation (1), to be applied –
- (a) to a benefit which becomes payable or to a transfer of a benefit in respect of a member; or
  - (b) for any other purpose –

for the period since 30 June 2006 or the last date at which a scheme earning rate or interim earning rate was determined, whichever is the later.

- (4) The Commission must determine whether the scheme earning rate or interim earning rate is to be applied –
- (a) on daily balances; or
  - (b) on average balances; or
  - (c) on some other basis.

**146. Time and manner of benefit payments**

- (1) The Commission is to use its best endeavours to ensure that a benefit payable under this Part is paid as soon as practicable but in any case not later than 20 working days after the Commission has received a completed payment instruction form for a benefit from a member or the member's legal personal representative.
- (2) The Commission may at its discretion credit interest at a rate determined in accordance with regulation 145 to a benefit which is not paid within this period.

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**147. Taxation of contributions and lump sum benefits**

- (1) For the purposes of taxation of superannuation contributions under the law of the Commonwealth, the Commission is to treat –
  - (a) as concessional contributions all employer contributions; and
  - (b) as concessional contributions all member contributions which have been included in the assessable income of the TASS Fund; and
  - (c) as non-concessional contributions all member contributions which have not been included in the assessable income of the TASS Fund; and
  - (d) as assessable income of the TASS Fund the element untaxed in the fund of roll-over superannuation benefits; and
  - (e) as assessable income of the TASS Fund the element untaxed in the fund of transferred superannuation benefits.
- (2) The Commission, having regard to the law of the Commonwealth, must –

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- (a) establish and maintain policies and administrative procedures with respect to the taxation of superannuation contributions and superannuation benefits; and
- (b) determine, from time to time –
  - (i) the proportion of a superannuation benefit that is to be treated by the Commission as an element untaxed in the fund for the purposes of the *Income Tax Assessment Act 1997* of the Commonwealth; and
  - (ii) the proportion of a superannuation benefit that is to be treated by the Commission as an element taxed in the fund for the purposes of the *Income Tax Assessment Act 1997* of the Commonwealth; and
  - (iii) the proportion of a superannuation benefit that is to be treated by the Commission as the tax free component for the purposes of the *Income*

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*Tax Assessment Act 1997  
of the Commonwealth.*

- (3) The Commission, in accordance with the law of the Commonwealth, must deduct from roll-over superannuation benefits, superannuation contributions and superannuation benefits all amounts required to be paid as taxation under the law of the Commonwealth and remit those amounts to the Taxation Commissioner.
- (4) A benefit payable under these regulations is to be reduced in accordance with regulation 149(12) at the time of payment by the Commission.

**148. Notional taxed contributions**

For the purposes of these regulations, the Commission must calculate for each member the notional taxed contributions for a financial year having regard to Division 292 of the *Income Tax Assessment Act 1997* of the Commonwealth and the *Income Tax Assessment (1997 Act) Regulations 2021* of the Commonwealth.

**149. Establishment of surchargeable contributions debt account**

- (1) The Commission must calculate for each member a notional contributions surcharge amount having regard to –
  - (a) the member’s salary; and
  - (b) either –
    - (i) the notional surchargeable contributions factor provided to the Commission by the Actuary as required by the law of the Commonwealth and these regulations; or
    - (ii) if no such factor has yet been provided, the last such factor that was current for the former superannuation scheme immediately before 30 June 2006.
- (2) The Commission must provide the Taxation Commissioner, as required by the law of the Commonwealth, with particulars of the notional contributions surcharge amount in respect of each member.

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- (3) If a member requests, the Commission is to give to the member a copy of the particulars in relation to that member given to the Taxation Commissioner under subregulation (2), together with details of how the notional contributions surcharge amount was calculated.
- (4) If a member believes that the amount referred to in subregulation (2) is incorrect, the member may by notice in writing to the Commission –
  - (a) request that the calculation of the amount be reviewed; and
  - (b) request the Commission to consider any evidence which the member may submit to it.
- (5) If a surchargeable contributions debt or similar account was established for a member for the purposes of the former superannuation scheme, the TASS Trust Deed or a former trust deed, the account continues to have effect as if it was a surchargeable contributions debt account established by the Commission under this regulation.
- (6) Subject to subregulation (7), on receipt of an assessment notice from the Taxation Commissioner in respect of a member, the Commission must –

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- (a) establish a surchargeable contributions debt account in the name of the member; and
  - (b) debit that account by the amount of any surcharge contributions tax liability specified in the notice of assessment relating to the member; and
  - (c) pay that amount to the Taxation Commissioner.
- (7) On receipt of an assessment notice, or amended assessment notice, from the Taxation Commissioner in respect of a member in circumstances where a surchargeable contributions debt account has already been established for the member, the Commission –
- (a) must not debit the account by the amount of the surcharge contributions tax liability specified in the notice; and
  - (b) must adjust the balance of the account to reflect the change in the member's surcharge contributions tax liability required by the notice by comparison with the last of such notices previously provided by the Taxation Commissioner in respect of the member; and

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- (c) must pay or recover from the Taxation Commissioner the amount by which the surchargeable contributions debt account has been adjusted under paragraph (b).
- (8) If the surchargeable contributions debt account is in debit at the end of a financial year, the Commissioner must, in accordance with the law of the Commonwealth, debit the account with interest.
- (9) A member may make payments to his or her surchargeable contributions debt account to reduce in full or in part the balance of the account, and any such payment is taken not to be a contribution for the purposes of these regulations.
- (10) A payment made under this regulation by the Ambulance Service on behalf of a member as part of the member's remuneration is taken to be a contribution by the Ambulance Service for the purposes of these regulations.
- (11) On receipt of a payment under subregulation (9) or (10) in relation to a member, the Commission must –
  - (a) credit the surchargeable contributions debt account of the member; and

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- (b) take any other action required under the law of the Commonwealth relating to the surcharge contribution tax liability.
- (12) If a lump sum benefit entitlement becomes payable by the Commission to a member whose account, established or maintained under this regulation, is or has been in debit, the Commission must reduce the benefit payable by the extent of –
  - (a) the balance of the member's surchargeable contributions debt account; and
  - (b) any foregone investment earnings and associated amounts.
- (13) The Commission must, at least annually, inform each member of the balance of the member's surchargeable contributions debt account and of any debits or credits, including interest, to that account.

**150. Provision of certain information to and by the Commission**

- (1) The Commission must provide the Actuary with the information in respect of members that is necessary for the purposes of these regulations.

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- (2) The Commission must provide the Taxation Commissioner with the information in respect of members that is required under the law of the Commonwealth.
- (3) The Commission must, at least annually, distribute to each member –
  - (a) a report of its operations during the last financial year; and
  - (b) a statement of the benefit entitlement of the member and the balance of the member's account, detailing the total interest credited or debited, administration costs and management charges, death and incapacity premiums deducted and any surcharge or taxation liabilities deducted from the account or accounts; and
  - (c) a statement of the Commission's current investment strategies and performance.

**151. Ambulance Service to provide Commission with certain information about members**

- (1) The Ambulance Service must provide to the Commission, in the manner and form, if any, that the Commission determines, the information or evidence that the

Commission requires in relation to members who are or were employees of the Service.

- (2) If the Ambulance Service fails to provide under subregulation (1) information or evidence that is relevant to the payment of a benefit to, or in relation to, a member, the Commission may defer the payment of the benefit to, or in relation to, the member until the information or evidence is provided.

## **152. Certificates**

The Commission must obtain from the Actuary all relevant certificates required by the SIS Act to be obtained by regulated superannuation defined benefit funds from actuaries, together with all other certificates required to be obtained by the Commission from the Actuary by law.

### *Division 7 – General provisions*

## **153. Payment on death or permanent incapacity**

- (1) If a member becomes entitled to a permanent incapacity benefit, the Commission must pay the benefit to the member, unless, in the opinion of the Commission, the member is incapable of administering his or her own affairs, in

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which case the Commission must pay the benefit to the member's spouse or legal personal representative.

- (2) Except as provided in subregulation (3), if a lump sum benefit is payable under these regulations on the death of a member, the benefit is to be paid to –
- (a) the surviving partner of the member; or
  - (b) if there is no surviving partner of the member – the person with whom the member was in a caring relationship which was the subject of a deed of relationship, registered under Part 2 of the *Relationships Act 2003*, which was revoked by the death of the member; or
  - (c) if there is no person referred to in paragraph (a) or (b) – the estate of the member, subject to the production of grant of probate or letters of administration; or
  - (d) a person, where applicable, in accordance with regulation 156.
- (3) Despite subregulation (2), a member may, by notice in writing to the Commission –

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- (a) elect that in the event of the member's death all or part of the benefit payable on the member's death is to be paid to the member's estate; or
  - (b) revoke any such election –
- and where the election is in force, subregulation (2) does not apply to any part of the benefit that is subject to the election.
- (4) This regulation does not apply to a person who, at the date of a member's death –
    - (a) was the spouse of the member; and
    - (b) was separated and living apart from the member; and
    - (c) was not, in the opinion of the Commission, receiving significant financial support from the member.
  - (5) If, on the death of a member, a question arises as to who is the surviving partner of the member at the time of the member's death, for the purposes of these regulations the question is to be determined by the Commission having regard to the matters that it considers relevant.

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- (6) If the Commission is unable to determine who is the surviving partner of the member at the time of the member's death after any enquiry it considers appropriate under this regulation, any benefit that would otherwise be payable to the surviving partner of the member is to be paid to the member's legal personal representative.
- (7) When determining a question under subregulation (5), the Commission must not determine more than one person to be the surviving partner of a member.

**154. Making of elections, directions, claims or applications**

- (1) An election, direction, claim or application under this Part –
  - (a) must be in writing signed by the person entitled to make the election, direction, claim or application; and
  - (b) must be in the form determined by the Commission; and
  - (c) subject to subregulation (2), is not valid until it is received by the Commission; and
  - (d) takes effect when it is received by the Commission, except that the

Commission may, if it thinks fit, accept that an election, direction, claim or application lodged with the Ambulance Service takes effect from the day it is so lodged.

(2) If –

- (a) an election, direction, claim or application under this Part is not received by the Commission within the time prescribed for the election, direction, claim or application; and
- (b) the Commission is satisfied that, having regard to all the circumstances of the case, it is desirable that the election, direction, claim or application should be accepted –

the Commission may, subject to the terms and conditions, if any, that it imposes, accept the election, direction, claim or application and deal with it as if it had been received within the time so prescribed.

### **155. Recovery of money owing to Scheme**

- (1) The Commission may recover from a member, beneficiary or other person any money which was paid in excess of the

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member's benefit, together with interest calculated in accordance with this regulation, unless the Commission, having regard to the circumstances of the member, determines otherwise.

- (2) The Commission must recover from the Ambulance Service any payment to the TASS Fund of Ambulance Service superannuation contributions, additional employer contributions, and member contributions, that have not been forwarded to the Commission within 7 days of the relevant payday and those payments attract interest calculated in accordance with this regulation.
- (3) Payments from the Ambulance Service to the TASS Fund of Ambulance Service superannuation contributions, additional employer contributions and member contributions are to be credited to the members' accounts as if they were received on the relevant payday.
- (4) The interest determined under subregulation (2) is the liability of the Ambulance Service and not the member.
- (5) Interest is calculated on a daily basis using the Bloomberg's 90 day Bank Bill Swap Reference Rate, as published in the *Australian Financial Review*, on the day the amount became due for payment, plus 4%.

- (6) Interest is payable on any amount owing to the TASS Fund calculated from the date on which the amount becomes due for payment until the date on which the amount, together with interest if applicable, is fully recovered by, or otherwise paid to, the Commission.
- (7) Any interest paid under this regulation is to be credited to the investment income reserve account established under regulation 125.

**156. Payment without grant of probate**

If, 3 months after the death of a member, a benefit not exceeding \$50 000 is payable under this Part and the Commission has not received –

- (a) a certified copy of the probate of the will, or letters of administration of the estate, of the deceased member; or
- (b) a notice of intention to apply for a grant of probate of the will, or letters of administration of the estate, of the deceased member –

the Commission may, at its discretion, make a payment of the benefit to that member's legal personal representative.

**157. Provision of information to Minister**

The Commission must, on the written request of the Minister, provide to the Minister any information, relating to the TASS Scheme or the TASS Fund, that the Minister may reasonably require.

**158. Arrangements to be made for dealing with inquiries or complaints in relation to TASS Scheme**

- (1) The Commission must take all reasonable steps to ensure there are at all times arrangements in place under which –
  - (a) a member or former member may make an inquiry into, or complaint about, the operation or management of the TASS Scheme in relation to that person; and
  - (b) the legal personal representative of a former member may make an inquiry into, or complaint about, the operation or management of the TASS Scheme in relation to the former member; and
  - (c) without limiting the generality of paragraph (a) or (b), any person may make an inquiry into, or complaint about, a decision of the

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Commission that relates to the payment of a death benefit in accordance with the TASS Scheme if –

- (i) the person has an interest in the death benefit; or
  - (ii) the person claims to be, or is, entitled to a death benefit in relation to a person referred to in this subregulation.
- (2) The Commission is to deal with an inquiry or complaint within 90 days of receiving notice in writing of the inquiry or complaint.
- (3) The Commission may charge a fee in relation to the making of an inquiry or complaint and may waive or reduce the fee if it is satisfied that the applicant's intended use of information that may be obtained by making the inquiry or complaint is of general public interest or benefit.
- (4) The fee that may be charged under subregulation (3) is not to exceed 400 fee units (inclusive of GST).
- (5) If the Commission believes the fee charged under subregulation (3) may exceed 25 fee units (inclusive of GST), the Commission must notify the

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applicant and inquire whether the applicant wishes to proceed with the applicant's inquiry or complaint.

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**PART 14 – STATE FIRE COMMISSION  
SUPERANNUATION SCHEME  
*Division 1 – Preliminary***

**159. Interpretation of Part 14**

(1) In this Part –

*award* means an agreement or award certified or made on or after 1 July 1987 or any other arrangement which the State Fire Commission and the Commission agree should be treated as an award;

*benefit* means any entitlement paid, or authorised to be paid, by the Commission out of the SFCS Fund under these regulations to, or in respect of, a member, less the amount, if any, of Commonwealth taxation that is deducted from the entitlement in accordance with law;

*date of admission*, in relation to a member, means the date on which the member became a member of the former superannuation scheme;

*employee* means a person appointed or employed under the *State Service Act 2000* to perform functions for

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the purposes of the *Fire Service Act 1979*;

***employer contributions*** means contributions paid to the SFCS Scheme by the State Fire Commission in accordance with these regulations and includes contributions paid in respect of a member by the State Fire Commission in accordance with regulation 170(3) or under the former superannuation trust deed, a former SFCS trust deed or the SFCS Trust Deed;

***Fire Brigades Scheme*** means the Fire Brigades Commission of Tasmania Retiring Allowance Death and Disablement Benefit Scheme established under the provisions of the *Fire Brigades Regulations 1965* as in force immediately before 1 October 1973;

***former interest rates*** means the interest rates declared from time to time by the former trustee under the former superannuation trust deed, a former SFCS trust deed or the SFCS Trust Deed;

***former superannuation scheme*** means the State Fire Commission

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Superannuation Scheme as administered by the former trustee immediately before 24 June 2005;

***former SFCS trust deed*** means a trust deed, other than the SFCS Trust Deed, entered into by the State Fire Commission in relation to the SFCS Scheme;

***former superannuation trust deed*** means the deed of trust executed by the State Fire Commission on 17 January 1995 to govern the administration of the former superannuation scheme, as that deed was amended 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;

***Guarantee Act*** means, as the case requires –

- (a) the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth; or

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(b) the *Superannuation Guarantee Charge Act 1992* of the Commonwealth;

***incapacity*** means permanent incapacity or temporary incapacity;

***initial accrual***, in relation to a member, means –

(a) the multiple, of the member's salary, determined by the Actuary at the member's date of admission; and

(b) the multiple, determined from time to time after that date by the Actuary, of any credit, in respect of the member, to the SFCS Scheme that results from an agreement by the member, or by the trustees of a previous plan, to the termination of benefits under the previous plan;

***interest rates*** means the former interest rates and the interest rates determined by the Commission

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from time to time under regulation 185;

***member*** means a person to whom regulation 166 applies and who retains an interest in the SFCS Fund in accordance with these regulations;

***member contributions*** means contributions paid in accordance with regulation 170(1);

***minimum requisite benefit***, in relation to a member, means the minimum benefit required by the SIS Act to be vested in the member;

***normal retirement date***, in relation to a member, means the day on which the member attains the age of 65 years;

***permanent incapacity*** means –

- (a) totally and permanently disabled; or
- (b) suffering total and permanent disablement; or
- (c) any expression of similar import to an expression in paragraph (a) or (b) –

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as defined in any insurance policy continued or effected by the Commission which provides Group Life or similar insurance to the Commission in respect of members and beneficiaries;

*previous plan* means any superannuation plan –

- (a) that was approved by the former trustee; and
- (b) in which a member participated before being accepted as a member of the former superannuation scheme; and
- (c) from which moneys or other assets were credited to the former scheme;

*rate of accrual*, in relation to a member, means –

- (a) the rate determined, at the member's date of admission, by the actuary for the former superannuation scheme or by the Actuary; and
- (b) the rate determined, from time to time after the

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member's date of  
admission, by –

(i) the actuary for the  
former  
superannuation  
scheme; or

(ii) the actuary under  
a former SFCS  
trust deed or the  
SFCS Trust Deed;  
or

(iii) the Actuary –

having regard to the member's  
initial accrual, as the rate  
(expressed as a proportion of the  
member's salary) at which that  
member's normal retirement  
benefit is taken to accrue during  
the period between the member's  
date of admission and the normal  
retirement date;

***redundancy***, in relation to a member,  
means termination of the  
member's employment because –

(a) his or her service, office  
or position is  
unnecessary; or

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- (b) the work for which he or she was engaged is finished; or
- (c) a reduction of employees is necessary because the work to be performed by the employees has decreased; or
- (d) the member is retired under a voluntary redundancy program;

***resignation***, in relation to a member, means the worker has, before attaining the preservation age, ceased to be gainfully employed by the State Fire Commission for any reason other than death, incapacity, retirement or redundancy;

***salary***, in relation to a member – see regulation 160;

***service***, in relation to a member – see regulation 161;

***SFCS Fund*** means the fund, administered as a subfund of the Fund, consisting of the assets and liabilities of the SFCS Scheme;

***SFCS Scheme*** means the part of the former superannuation scheme

that is continued by section 44 of the Act;

***SFCS Trust Deed*** means the trust deed terminated by section 43 of the Act;

***State Fire Commission*** means the State Fire Commission established under section 7 of the *Fire Service Act 1979*;

***Tasmania Fire Service*** has the same meaning as in the *Fire Service Act 1979*;

***temporary incapacity*** means –

- (a) totally but temporarily disabled; or
- (b) suffering total but temporary disablement; or
- (c) any expression, of similar import to an expression in paragraph (a) or (b) –

as defined in any insurance policy continued or effected by the Commission which provides Group Salary Continuance or similar insurance to the Commission in respect of members and beneficiaries;

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***transfer amount*** means, in respect of a transferring member, the amount in respect of that member that is transferred to the SFCS Scheme from the former superannuation scheme;

***transferring member*** means any person –

- (a) who, immediately before 1 May 2006, was a member of the former superannuation scheme; and
  - (b) whose date of admission was before 1 July 2005; and
  - (c) who is not classified as temporary under the Tasmanian Fire Fighting Industry Employees Award.
- (2) In this Part, a reference to a period expressed in years includes, where appropriate, a reference to a period expressed in years together with a fraction of a year that is expressed in days.

**160. Meaning of salary**

- (1) The definition of salary in regulation 3 does not apply in this Part.
- (2) Subject to subregulations (3) and (4), in this Part, a reference to salary in relation to a member, means the gross annual wage or salary paid, or payable, or both, by the State Fire Commission to or on behalf of a member and includes any payments and allowances, other than allowances for rent and overtime work.
- (3) Subject to subregulation (4), a member's salary, in relation to any period of absence without wage or salary, is to be adjusted in accordance with any relevant express provisions in this Part.
- (4) A member's salary is to be taken to continue unaltered throughout any period during which the member suffers a temporary incapacity.

**161. Meaning of service**

- (1) Subject to subregulation (2), in this Part, a reference to service in respect of a member is a reference to the most recent uninterrupted period of continuous employment with the Tasmania Fire Service in respect of which the member receives a salary and includes any period

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during which a benefit is paid to the member under regulation 183(1).

- (2) A member's service is, in respect of any period of absence from employment without salary, to be adjusted in accordance with any relevant provisions of this Part.
- (3) For the purposes of this regulation, a member is to be taken to have ceased employment if –
  - (a) the age and terms of employment of the member preclude the member's continued eligibility for membership of the SFCS Scheme; or
  - (b) having regard to the age of the member, the Commission is satisfied that the benefit in respect of the member may be released and the Commission, at the member's request, has, in its discretion, permitted the release.

**162. Application of regulations to members**

Parts 4, 5 (apart from sections 54, 55, 56, 57 and 58), 6, 7 and 13, and regulations 94 and 101, of these regulations do not apply in relation to a member.

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***Division 2 – Operation of SFCS Fund***

**163. Operation of SFCS Fund**

- (1) On and from the day on which the Trust Deed, within the meaning of section 42 of the Act, is terminated under section 43 of the Act, the Commission must maintain the SFCS Fund.
- (2) The SFCS Fund consists of the accounts and reserves that the Commission considers to be necessary or convenient for the administration of the SFCS Scheme.
- (3) The Commission may cause to be met from the SFCS Fund –
  - (a) the administration costs and management charges, in relation to the SFCS Scheme, that are determined by the Commission to arise from the performance and exercise of the Commission's functions and powers under these regulations in relation to the administration and management of the SFCS Scheme; and
  - (b) benefits payable under these regulations in relation to the SFCS Scheme; and

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- (c) expenses associated with the investment of money standing to the credit of the SFCS Fund; and
  - (d) any audit, insurance or actuarial costs incurred in the administration of the SFCS Scheme in accordance with these regulations.
- (4) The Commission may, where appropriate, cause to be met from the SFCS Fund the payment of any tax, duty, impost or surcharge liability imposed under the law of the Commonwealth or the State on the SFCS Fund or in respect of any benefits payable by the Commission from the SFCS Fund.
- (5) To the extent that a deduction under subregulation (4) is directly attributable to a contribution to the SFCS Scheme, the Commission, on receiving the contribution or at a time that the Commission, in its absolute discretion, considers expedient in the circumstances, may –
  - (a) deduct, or cause to be deducted, from the contribution or relevant member's account, the amount that the Commission considers appropriate to provide for the relevant amount of the duty, tax,

surcharge, impost, fee or charge;  
and

- (b) may retain the amount within the SFCS Fund until the Commission gives effect to subregulation (4).
- (6) The Commission must not make any payments from the SFCS Fund to the Commission or the State Fire Commission except for –
  - (a) expenses incurred in the administration of the SFCS Scheme; or
  - (b) a refund of overpaid contributions; or
  - (c) a payment permitted by the SIS Act.

**164. Taxation provision account**

- (1) The Commission may establish within the SFCS Fund a taxation provision account for SFCS Fund accounting purposes.
- (2) If a taxation provision account has been established under subregulation (1), the Commission is to credit to the account any tax deducted from members' accounts and any taxation provision

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applicable to the SFCS Fund's investment earnings.

- (3) If a taxation provision account has been established under subregulation (1), the Commission is to debit to the account all or part of the tax, paid to the Taxation Commissioner in accordance with the *Income Tax Assessment Act 1936* of the Commonwealth and the *Income Tax Assessment Act 1997* of the Commonwealth, that is applicable to the SFCS Fund.
- (4) If, at the end of a financial year, the taxation provision account established under subregulation (1) is in surplus or deficit, the Commission must determine whether or not to –
  - (a) distribute the surplus to, or recover the deficit from, members or the SFCS Fund by way of adjusting investment returns or a transfer to or from the SFCS Fund; or
  - (b) carry forward the provision to the next financial year.

**165. Investment income reserve account**

- (1) The Commission may establish within the SFCS Fund an investment income reserve account.

- (2) If an investment income reserve account is established under subregulation (1), any surplus or deficit investment income in the SFCS Fund may be credited to, or debited from, the account and distributed to, or deducted from, members' accounts.
- (3) If, at the end of a financial year, the investment income reserve account established under subregulation (1) is in surplus, the Commission must determine, on the advice of the Actuary, whether or not to distribute all or part of the surplus to members by way of an adjustment to investment returns or by way of transfer to the SFCS Fund.
- (4) If, at the end of a financial year, the investment income reserve account established under subregulation (1) is in deficit, the Commission must, on the advice of the Actuary, reduce members' account balances by way of adjustment to investment returns or by way of transfer from the SFCS Fund.

### ***Division 3 – Membership***

#### **166. Membership of SFCS Scheme**

Each person who is a transferring member and an employee appointed or employed before 1 July 2005 is a member of the SFCS Scheme and remains a member of the Scheme if he or

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she maintains a financial interest in the SFCS Fund in accordance with these regulations.

**167. Establishment of members' accounts**

- (1) The Commission may establish the accounts, and determine the administrative policy and terms and conditions, that are necessary for the efficient and effective administration of members' accounts.
- (2) Any account for a member that was maintained by the Commission before the commencement of this regulation is taken to be an account established under subregulation (1).
- (3) After members' accounts are established, the Commission –
  - (a) must credit to the accounts, if appropriate –
    - (i) all State Fire Commission superannuation contributions paid on behalf of members; and
    - (ii) all contributions paid by members; and
    - (iii) investment returns determined according to

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- the interest rates  
calculated under  
regulation 185(1); and
- (iv) any other amount that is  
authorised by these  
regulations and that the  
Commission considers  
appropriate; and
- (b) may debit to the accounts, if  
appropriate –
- (i) surcharge liability  
payments, taxation  
provisions or any other  
amounts required by the  
law of the  
Commonwealth or State;  
and
- (ii) the cost of providing  
cover for benefits on the  
death or incapacity of a  
member as provided by  
these regulations; and
- (iii) administration costs and  
management charges as  
provided by these  
regulations; and
- (iv) any other amount  
authorised by these  
regulations and

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considered appropriate by  
the Commission.

**168. Death and incapacity cover**

- (1) The Commission –
  - (a) may arrange cover for death and incapacity benefits in relation to members; and
  - (b) may receive and give full and effectual receipts, release and discharges in respect of the payment of any moneys under any such cover as may be required from the Commission and which it thinks proper, having regard to the circumstances.
- (2) Any cover for death and incapacity benefits that is arranged by the Commission in relation to members is to be in the name of the Commission and remain under the control of the Commission while the cover is subject to these regulations.
- (3) Only the Commission –
  - (a) is entitled to enforce any rights, remedies or contracts in connection with, or incidental to, any cover for death and

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incapacity benefits in relation to members that is arranged by the Commission; and

- (b) is entitled to the full benefits and advantages of such cover –

and no member, or any person claiming through or under a member, has or may claim any right, title or interest in or to any such cover or contract or in respect of moneys payable under such cover or contract.

- (4) If the Commission takes out or increases insurance, or seeks to do so, in relation to a member's benefit and the insurer –
- (a) does not accept the member on the standard terms; or
- (b) restricts the level or scope of insurance claim in relation to a member; or
- (c) for any reason does not pay the whole or any part of a claim in relation to a member –

the Commission must modify the member's benefit as it considers appropriate, if to do so is not contrary to law or the requirements imposed in similar circumstances on regulated superannuation funds by the SIS Act.

***Division 4 – Contributions***

**169. State Fire Commission superannuation contributions**

- (1) Unless otherwise agreed between the Commission and the State Fire Commission having regard to the advice of the Actuary, the State Fire Commission must contribute to the SFCS Scheme the percentage of the salaries of members who are employees, or another amount, that the Actuary recommends from time to time.
- (2) A contribution must be made for so long as the Actuary recommends.
- (3) The State Fire Commission must contribute to the SFCS Scheme such additional amounts as the Minister, on the recommendation of the Actuary, may direct, so as to enable the Commission to meet its liabilities under these regulations.

**170. Obligations of members to contribute**

- (1) A member who is an employee must contribute at the rate of 5% of the member's salary until the earlier of the following:
  - (a) the normal retirement date;

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- (b) the day on which the member ceases to be an employee.
- (2) Despite subregulation (1) –
  - (a) no contribution is payable by a member while he or she suffers a temporary incapacity and is in receipt of a benefit under regulation 183; and
  - (b) the contributions that would otherwise be payable by the member but for this subregulation are, for the purposes of these regulations, taken to have been paid by the member.
- (3) A member who is an employee, the Commission and the State Fire Commission may agree that instead of deducting the member's contributions from the member's salary, an amount equal to those contributions, after allowing for contributions tax, and any other tax agreed between the member and the State Fire Commission, is to be paid to the Commission by the State Fire Commission in respect of the member in lieu of salary.
- (4) Any –
  - (a) deductions from a member's salary by the State Fire Commission that are paid to the

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Commission and do not comply with subregulation (1) or (2) or with the member's instructions; and

- (b) amounts paid to the Commission in lieu of salary that do not comply with subregulation (3) or with the member's instructions –

are taken not to be contributions under these regulations and are to be repaid to the member.

- (5) Unless otherwise agreed under subregulation (3), the State Fire Commission must automatically deduct from a member's salary the member's regular contributions.

**171. Time and manner of paying contributions**

- (1) Unless otherwise approved by the Commission, the State Fire Commission must cause to be shown as separately identifiable amounts on each payslip of each member –
  - (a) the amount of State Fire Commission additional employer contributions made, in respect of the member, to the SFCS Fund; and

- (b) the amount of member contributions deducted from the member's salary.
- (2) The responsible officer must certify and forward, within 7 days of each pay day, a return to the Commission, in the form determined by the Commission, specifying the total amount for that pay period of –
  - (a) State Fire Commission superannuation contributions; and
  - (b) additional employer contributions; and
  - (c) member contributions –paid on behalf of each member.
- (3) Contributions, including additional employer contributions, payable by the State Fire Commission or deducted from the member's salary are to be forwarded to the Commission within 7 days of the relevant payday.

**172. Leave of absence**

- (1) This regulation only applies to a member if the State Fire Commission grants the member unpaid leave of absence.
- (2) During the period of leave of a member –

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- (a) the member's salary is to be taken for the purposes of these regulations to continue unaltered; and
- (b) the member is not required to contribute but may make the contributions, if any, that the Commission permits, having regard to the provisions that apply under the SIS Act in relation to regulated superannuation funds; and
- (c) the State Fire Commission is not required to contribute in respect of the member except to the extent –
  - (i) that the Commission requires in connection with any administration costs and management charges payable by the State Fire Commission in relation to the member; and
  - (ii) as required by the Guarantee Act so that the State Fire Commission does not incur an individual superannuation guarantee shortfall, within the meaning of the

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Guarantee Act, in relation  
to the member.

- (3) Despite any other provision of these regulations, during the period of leave of a member the Commission may, at its discretion, take action to cause death and incapacity cover in respect of the member to be discontinued.
- (4) If the Commission causes under subregulation (3) death and incapacity cover in respect of a member to be discontinued during a period, any death and incapacity benefit payable in respect of the member is to be adjusted to the extent, if any, that the Commission considers appropriate having regard to these regulations.
- (5) If the Commission causes under subregulation (3) death and incapacity cover in respect of a member to be discontinued during a period of leave of the member, the Commission may, when the period ends, require the member to submit such satisfactory evidence of good health as the Commission may require in support of an application by the Commission for the reinstatement of such cover in respect of the member.
- (6) The Commission may, at its discretion, determine that a period of leave of a member is to be wholly or partially

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excluded from the determination of any benefit that may become payable in respect of the member, whether the benefit arises during or after the end of the period.

- (7) The Commission must, as soon as reasonably practicable, notify a member of each adjustment or determination that is made under this regulation and that affects, or could affect, any benefit that may become payable in respect of the member.

**173. Part-time employees**

- (1) In this regulation –

*part-time employment*, in relation to a member, means employment, by the State Fire Commission, where the member is required to be engaged in the employment for less time per week than the standard time per week that is, disregarding overtime or similar arrangements, applicable to the member's occupation by reason of an award or a condition of employment specified by the State Fire Commission.

- (2) The State Fire Commission may request the Commission to give effect to this regulation in relation to any period, or

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- part of a period, of part-time employment of a member.
- (3) If there is a material alteration in the circumstances of part-time employment of a member, the Commission may vary any adjustment made under this regulation relating to the part-time employment of the member.
- (4) The contributions payable by and in respect of a member during the relevant period of part-time employment are to be adjusted by the Commission as the Commission considers to be reasonable and equitable having regard to –
- (a) the time per week for which the member is engaged in part-time employment; and
  - (b) the standard time per week referred to in the definition of part-time employment in subregulation (1); and
  - (c) any relevant provisions that apply under the SIS Act in relation to regulated superannuation funds; and
  - (d) the wishes of the State Fire Commission.
- (5) The basis of the determination of any benefit in respect of a member who has

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engaged in a period of part-time employment, whether the benefit arises during or after the period, is to be adjusted to the extent, if any, and in the manner, that the Commission considers to be reasonable and equitable having regard to –

- (a) the extent to which the contributions payable by or in respect of the member have been adjusted under subregulation (4); and
  - (b) the matters referred to in subregulation (4).
- (6) The Commission may adjust any amount of death and incapacity cover in respect of a member, either for the duration of a period of part-time employment of the member or for the remainder of the period during which the cover relates to the member, to the extent, if any, and in the manner, that the Commission considers to be appropriate in the circumstances.
- (7) If a member ceases to be engaged in part-time employment or there is a material alteration in the circumstances of part-time employment of a member, the Commission may require the member to submit satisfactory evidence of good health in relation to any death and

incapacity cover sought by the Commission in respect of the member.

- (8) The Commission must notify a member as soon as reasonably practicable after making under this regulation an adjustment or determination that affects, or may affect, any benefit that may become payable in respect of the member.

***Division 5 – Benefits***

**174. Benefit payment standards**

- (1) Benefits become payable to or in respect of a member when any of the events specified in this Division occur in relation to the member.
- (2) Benefits payable under these regulations may be paid by the Commission only if regulated superannuation funds are permitted by the SIS Act to make such payments in similar circumstances.
- (3) All benefits in respect of a member that are preserved in accordance with this Part or by the Commission under these regulations must be preserved and vested in the member in the accounts that the Commission determines having regard to the member's wishes.

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- (4) A preserved benefit becomes payable in respect of a member when the Commission is either notified, or becomes aware, that the member has satisfied the conditions of release set out in this Division.
- (5) The Commission must notify the member, the member's surviving partner or the member's legal personal representative of the entitlement of the member to a preserved benefit when it becomes payable under this Part, by sending a written notice to the last known address of the member, partner or representative, respectively.
- (6) A person who receives or claims a benefit from the SFCS Scheme must produce to the Commission the information, documents and other evidence that the Commission requires the person to produce for the purposes of these regulations.
- (7) If a person fails to produce to the Commission the information, documents and other evidence required by the Commission under subregulation (6), the Commission may withhold or suspend payment of the benefit or refuse to consider the claim until the requirement is met.

- (8) A benefit payable under this Part (other than a temporary incapacity benefit) must be paid as a lump sum.
- (9) When a lump sum becomes payable under this Part, the lump sum, subject to regulation 182, is to be transferred, after the deduction of any tax liability –
  - (a) to an account, in the name of the person entitled to the benefit, in a superannuation fund elected by the person; or
  - (b) if an election is not made within a reasonable period, as determined by the Commission, to the Taxation Commissioner to be dealt with under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* of the Commonwealth.

**175. Transfer of benefit out of scheme**

- (1) A member may, in writing, elect –
  - (a) to cash the whole of the member's benefit; or
  - (b) to have the whole of the member's benefit rolled over to a complying superannuation scheme.

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- (2) A member must provide to the Commission, at the same time as the member makes an election under subregulation (1), a written release from any further liability to the member under the scheme, which release is to take effect when the Commission gives effect to the election under subregulation (4).
- (3) If a member makes an election under subregulation (1), the member's benefit is to be calculated as the greater of the benefit entitlement options that the member would have had under this Division if the member had ceased to be an employee, at the date of the election, for reasons other than death, ill health, permanent incapacity or temporary incapacity.
- (4) If the Commission receives from a member an election under subregulation (1) and a written release under subregulation (2) that is in a form that is satisfactory to the Commission, the Commission, subject to subregulation (5), must give effect to the election.
- (5) A benefit may be paid by the Commission in accordance with an election under subregulation (4) only if regulated superannuation funds are permitted under the SIS Act to make such a payment in similar circumstances.

- (6) The Commission must not charge any exit fee for any amounts that are rolled over to a complying superannuation scheme.
- (7) If the Commission gives effect under subregulation (4) to an election, the member's entitlement to a benefit from the SFCS Scheme is satisfied in full.
- (8) If a member has elected to have all of his or her benefit rolled over to a complying superannuation scheme, the Commission is not responsible for the manner in which the trustee of the other scheme deals with any amount transferred or rolled over.

**176. Minimum benefit**

Despite any other provision of these regulations, the minimum benefit payable to or in respect of a member who ceases to be an employee for any reason is –

- (a) if the member was a member of the former superannuation scheme as at 30 June 1992, the aggregate of –
  - (i) the benefit that would have been payable under these regulations had the member ceased to be an employee at 30 June 1992

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and these regulations had then been in force, accumulated with interest from that date at the interest rates; and

(ii) the minimum requisite benefit accrued from 1 July 1992; and

(b) if the member became a member of the former superannuation scheme on or after 1 July 1992, the minimum requisite benefit.

**177. Reductions in salary**

When a benefit becomes payable to or in respect of a member who is an employee and the member's salary is less than the highest of the member's previous salaries, the amount of benefit payable to or in respect of the member may be increased by the amount that the Commission determines having regard to the advice of the Actuary.

**178. Normal retirement benefit**

(1) If a member ceases to be an employee at the normal retirement date, the Commission must pay to the member an amount determined as follows –

- (a) 15% of salary for each year of service completed on or before 30 June 1990; and
  - (b) 20% of salary for each year of service completed after 1 July 1990 and before 1 July 2005; and
  - (c) 16% of salary for each year of service completed on or after 1 July 2005.
- (2) Despite subregulation (1), an amount payable under that subregulation must not be less than the amount determined under regulation 181.
- (3) For the purposes of subregulation (1), service is to be calculated in years and complete months.

**179. Late retirement benefit**

If a member remains an employee after the normal retirement date, the Commission must pay to the member, on the member ceasing to be an employee, an amount equal to the sum of –

- (a) the benefit that would have been payable at the normal retirement date in accordance with regulation 178 if the member had retired at that date; and

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- (b) any contributions made to the SFCS Scheme from the normal retirement date by the member or the Commission, less any amount deducted from that amount in accordance with regulation 163(5); and
- (c) interest, on the amounts referred to in paragraphs (a) and (b), at the interest rates.

**180. Early retirement benefit**

- (1) If a member ceases to be an employee –
  - (a) within 10 years before the normal retirement date; or
  - (b) with the consent of the Commission, at any time before the normal retirement date because of ill health which, in the opinion of the Commission, is not permanent incapacity –

the Commission must pay to the member an amount equal to the amount determined by the Actuary to have accrued under regulation 178(1)(a), (b) and (c) to the date on which the member ceases to be an employee, having regard to the rate of accrual applicable to the member and the member's initial accrual, if any.

- (2) Despite subregulation (1), the amount payable under that subregulation must not be less than the amount determined under regulation 181.

**181. Leaving the service**

- (1) If a member whose date of admission is before 1 July 1990 ceases to be an employee before the normal retirement date in circumstances in which no other benefit is payable under this Division, the Commission must pay to that member the greater of the following:
- (a) an amount determined under subregulation (2) for the purposes of this paragraph;
  - (b) an amount determined under subregulation (3) for the purposes of this paragraph.
- (2) The amount determined for the purposes of subregulation (1)(a) is the amount equal to the sum of –
- (a) the amount consisting of the transfer amount, and all contributions made, or taken to be made, by the member to the SFCS Scheme, less any amounts deducted in accordance with regulation 163(5); and

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(b) if –

- (i) the member has not completed 5 years of service as at 1 July 2005 – 2.5% of the amount determined in accordance with paragraph (a) for each complete year of service as at 1 July 2005; or
- (ii) the member has completed 5 years of service as at 1 July 2005 but has not completed 10 years of service as at 1 July 2005 – 7.5% of the amount determined in accordance with paragraph (a) for each complete year of service as at 1 July 2005; or
- (iii) the member has completed 10 years of service as at 1 July 2005 but has not completed 15 years of service as at 1 July 2005 – 10% of the amount determined in accordance with paragraph (a) for each complete year of service as at 1 July 2005; or

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- (iv) the member has completed 15 years or more of service as at 1 July 2005 – 20% of the amount determined in accordance with paragraph (a) for each complete year of service as at 1 July 2005.
- (3) The amount determined for the purposes of subregulation (1)(b) is the amount equal to the sum of –
- (a) the amount consisting of –
    - (i) that element of the transfer amount comprising all contributions, made, or taken to be made, before 1 July 1990, by the member, to the former superannuation scheme or to the Fire Brigades Scheme, less any amounts deducted in accordance with regulation 163(5); and
    - (ii) interest, on that element of the transfer amount and those contributions, calculated, from

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1 July 1990, at the interest rates; and

- (b) the amount consisting of that element of the transfer amount comprising all contributions made, or taken to be made, on and from 1 July 1990, by the member, to the former superannuation scheme and the Fire Brigades Scheme and all contributions made or taken to be made by the member to the SFCS Scheme, less any amounts deducted in accordance with regulation 163(5), together with interest on that element of the transfer amount and those contributions at the interest rates; and
  - (c) the amount consisting of 10% of the amounts determined in accordance with paragraphs (a) and (b) for each completed year of service but not exceeding 100% of that amount.
- (4) If a member whose date of admission is on or after 1 July 1990 ceases to be an employee before the normal retirement date in circumstances in which no other benefit is payable under this Division, the Commission must pay to that member an amount equal to the sum of –

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- (a) the amount consisting of –
    - (i) the transfer amount, and all contributions made, or taken to be made, by the member to the SFCS Scheme, less any amounts deducted in accordance with regulation 163(5); and
    - (ii) interest on the transfer amount and those contributions at the interest rates; and
  - (b) 10% of the amount determined in accordance with paragraph (a) for each completed year of service but not more than 100% of that amount.
- (5) Despite any other provision of this regulation, if the member ceases to be an employee by reason of dismissal, or resignation to avoid dismissal, for alleged misconduct or alleged neglect of duty, the benefit payable to the member under this regulation is the amount equal to –
- (a) if the member's date of admission is before 1 July 1990 – the sum of the amounts determined in

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accordance with  
subregulation (3)(a) and (b); or

- (b) if the member's date of admission is on or after 1 July 1990 – the amount determined in accordance with subregulation (4)(a).
- (6) Despite any other provision of this regulation, if the member ceases to be an employee because of redundancy, the amount payable to the member under this regulation may be increased to an amount that the Commission, with the consent of the State Fire Commission and having regard to the advice of the Actuary, considers to be equitable in the circumstances.
- (7) Despite any other provision of this regulation, if the member is dismissed, or the member's employment is terminated, and the member applies to the appropriate industrial tribunal, the Commission must not pay any benefit to or in respect of that member until the application has been heard and determined.
- (8) For the purposes of this regulation, service is to be calculated in years and complete months.

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**182. Entitlement to death or permanent incapacity benefit**

- (1) If a member who is an employee –
- (a) dies before the normal retirement date, or ceases to be an employee before the normal retirement date as a result of permanent incapacity; and
  - (b) at the date of death or permanent incapacity, has not been refused any cover for death and permanent incapacity benefits or is a member to whom no restriction or limitation applies to the amount of such cover –

the Commission must pay in respect of the member an amount equal to the greater of –

- (c) 5 times the member's salary; or
  - (d) the amount that would have been payable under regulation 180 in respect of the member if the member had, on the date of the member's death or permanent incapacity, retired, with the consent of the State Fire Commission, because of ill health.
- (2) If a member who is an employee –

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- (a) dies before the normal retirement date, or ceases to be an employee before the normal retirement date as a result of permanent incapacity; and
- (b) at the date of death or permanent incapacity, has been refused any cover for death and permanent incapacity benefits or is a member in respect of whom a restriction or limitation applies to the amount of such cover –

the Commission must pay in respect of the member an amount equal to the sum of –

- (c) the amount that would have been payable in respect of the member under regulation 180 if the member had, on the date of the member's death or permanent incapacity, retired, with the consent of the State Fire Commission, because of ill health; and
- (d) any amount of cover credited to the SFCS Scheme in respect of the member in accordance with the applicable insurance cover –

except that the amount must not exceed the amount of 5 times the member's salary.

- (3) If a member dies while in the employment of the State Fire Commission on or after the normal retirement date, the Commission must pay in respect of that member an amount equal to that which would have been payable under regulation 179 if the member had retired on the date of his or her death.

**183. Temporary incapacity pension**

- (1) If –
- (a) a member is, because of injury or illness, absent from the employment of the Tasmania Fire Service for a continuous period of 3 months before the normal retirement date; and
  - (b) the provider to the Commission of Group Salary Continuance or similar insurance is satisfied that the member is suffering a temporary incapacity –

the Commission must, subject to subregulation (2), pay to or in respect of the member an annual income equal to 75% of the member's salary.

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- (2) The amount of the annual income for the purposes of subregulation (1) must be reduced by any amount (expressed as annual amounts) received by the member independently of the SFCS Scheme –
- (a) as periodic income from the State Fire Commission; or
  - (b) under an award; or
  - (c) as periodic income from any personal sickness and accident policy; or
  - (d) as periodic compensation under any Act of the State or the Commonwealth, or instrument under such an Act, whether as workers' compensation, accident compensation, social service payment or otherwise –

which, in the opinion of the Commission, relates to reduced income-earning capacity of the member arising from the inability of the member to work by reason of injury or illness and which relates to the period in respect of which a payment is made under subregulation (5).

- (3) If a member is absent from the employment of the Tasmania Fire Service by reason of illness or injury for a continuous period of 3 months before the normal retirement date in

circumstances to which subregulation (1) does not apply, the Commission may, in its absolute discretion, if, after consideration of the medical evidence it thinks fit, it is satisfied that the member is unable to resume work by reason of the illness or injury, pay to or in respect of the member an annual income of the amount that it determines, not exceeding the amount of annual income which would have been payable under subregulations (1) and (2) if subregulation (1) had applied in relation to the member.

- (4) The annual income payable under this regulation is payable by equal fortnightly instalments on normal pay days for the Commission.
- (5) The first instalment falls due on the day immediately after the date on which the period of 3 months referred to in this regulation expires and instalments continue to be payable until –
  - (a) the member returns to active employment with the State Fire Commission; or
  - (b) the member begins employment with another employer; or

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- (c) if subregulation (1) applies to the member, the member ceases to suffer a temporary incapacity; or
- (d) if subregulation (3) applies to the member, the Commission, after consideration of the medical evidence it thinks fit, is of the opinion that the member is able to resume work; or
- (e) the member suffers a permanent incapacity; or
- (f) the member dies; or
- (g) the member reaches the normal retirement date; or
- (h) the member ceases to be in service; or
- (i) if subregulation (3) applies to the member, a date that the Commission, in its discretion, determines.

**184. Former scheme benefit**

- (1) Subregulation (2) applies in relation to a member if –
  - (a) the member was a member of the Fire Brigades Scheme for whom there was a special policy in force under that Scheme; and

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- (b) the proceeds of the Fire Brigades Scheme were transferred to the former superannuation scheme; and
  - (c) the member retires, dies, suffers a permanent incapacity or leaves the service for any other reason.
- (2) If this subregulation applies in relation to a member, there is payable to or for the benefit of the member, in addition to any other benefit, an amount determined in accordance with this regulation.
- (3) The amount payable under subregulation (2) in respect of a member who retires, dies, suffers a permanent incapacity or resigns from the service is an amount equal to the proceeds transferred to the former superannuation scheme from the Fire Brigades Scheme in respect of that member, increased by the ratio of the member's salary at the date of the member's retirement, death, permanent incapacity or resignation to the member's salary at 1 October 1973.
- (4) The amount payable under subregulation (2) in respect of a member who ceases to be an employee for a reason other than retirement, death, permanent incapacity or resignation is an amount equal to the proceeds transferred to the former superannuation scheme

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from the Fire Brigades Scheme in respect  
of the member.

***Division 6 – Financial provisions***

**185. Fixing of interest rates**

- (1) The Commission, at least annually, is to calculate and determine interest rates in respect of the SFCS Fund, having regard to –
  - (a) the earning rates of the SFCS Fund; and
  - (b) the Commission’s investment strategy and policy; and
  - (c) any allowances for unrealised capital gains or losses; and
  - (d) the costs, in relation to the SFCS Scheme, of administration, investment management, taxation and other expenses the Commission has paid or is likely to pay.
- (2) The Commission, at least annually, is to credit to a member’s account or accounts interest under this regulation.

**186. Time and manner of benefit payments**

- (1) The Commission is to use its best endeavours to ensure that a benefit payable under this Part is paid as soon as practicable but in any case no later than 20 working days after the Commission has received a completed payment instructions form for a benefit from a member or his or her legal personal representative.
- (2) The Commission may at its discretion credit interest at the interest rate determined under these regulations to a benefit which is not paid within the period of 20 working days referred to in subregulation (1).

**187. Taxation of contributions and lump sum benefits**

- (1) For the purposes of taxation of superannuation contributions under the law of the Commonwealth, the Commission is to treat –
  - (a) as concessional contributions all employer contributions; and
  - (b) as concessional contributions all member contributions which have been included in the assessable income of the SFCS Fund; and

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- (c) as non-concessional contributions all member contributions which have not been included in the assessable income of the SFCS Fund; and
  - (d) as assessable income of the SFCS Fund the element untaxed of the SFCS Fund of roll-over superannuation benefits; and
  - (e) as assessable income of the SFCS Fund the element untaxed in the SFCS Fund of transferred superannuation benefits.
- (2) The Commission, having regard to the law of the Commonwealth, must –
- (a) establish and maintain policies and administrative procedures with respect to the taxation of superannuation contributions and superannuation benefits; and
  - (b) determine, from time to time –
    - (i) the proportion of a superannuation benefit that is to be treated by the Commission as an element untaxed in the fund for the purposes of the *Income Tax Assessment Act 1997* of the Commonwealth; and

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- (ii) the proportion of a superannuation benefit that is to be treated by the Commission as an element taxed in the fund for the purposes of the *Income Tax Assessment Act 1997* of the Commonwealth; and
  - (iii) the proportion of a superannuation benefit that is to be treated by the Commission as the tax free component for the purposes of the *Income Tax Assessment Act 1997* of the Commonwealth.
- (3) The Commission, in accordance with the law of the Commonwealth, must deduct from roll-over superannuation benefits, superannuation contributions and superannuation benefits all amounts required to be paid as taxation under the law of the Commonwealth and remit those amounts to the Taxation Commissioner.
- (4) A benefit payable under these regulations is to be reduced in accordance with regulation 189(12) at the time of payment by the Commission.

**188. Notional taxed contributions**

For the purposes of these regulations, the Commission must calculate for each member the notional taxed contributions for a financial year having regard to Division 292 of the *Income Tax Assessment Act 1997* of the Commonwealth and the *Income Tax Assessment (1997 Act) Regulations 2021* of the Commonwealth.

**189. Establishment of surchargeable contributions debt account**

- (1) The Commission must calculate for each member a notional contributions surcharge amount having regard to –
  - (a) the member’s salary; and
  - (b) the notional surchargeable contributions factor provided to the Commission by the Actuary as required by the law of the Commonwealth and these regulations.
- (2) The Commission must provide the Taxation Commissioner, as required by the law of the Commonwealth, with particulars of the notional contributions surcharge amount in respect of each member.

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- (3) If a member requests, the Commission is to give to the member a copy of the particulars in relation to that member given to the Taxation Commissioner under subregulation (2), together with details of how the notional contributions surcharge amount was calculated.
- (4) If a member believes that the amount referred to in subregulation (2) is incorrect, the member may by notice in writing to the Commission –
  - (a) request that the calculation of the amount be reviewed; and
  - (b) request the Commission to consider any evidence which the member may submit to it.
- (5) If a surchargeable contributions debt or similar account was established for a member under the former superannuation scheme, a former SFCS trust deed or the SFCS Trust Deed, the account continues to have effect as if it was a surchargeable contributions debt account established by the Commission under this regulation.
- (6) Subject to subregulation (7), on receipt of an assessment notice from the Taxation Commissioner in respect of a member, the Commission must –

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- (a) establish a surchargeable contributions debt account in the name of the member; and
  - (b) debit the surchargeable contributions debt account by the amount of any surcharge contributions tax liability specified in the notice of assessment relating to the member; and
  - (c) pay that amount to the Taxation Commissioner.
- (7) On receipt of an assessment notice, or amended assessment notice, from the Taxation Commissioner in respect of a member in circumstances where a surchargeable contributions debt account has already been established for a member, the Commission –
  - (a) must not debit the account by the amount of the surcharge contributions tax liability specified in the notice; and
  - (b) must adjust the balance of the account, to reflect the change in the member's surcharge contributions tax liability required by the notice, by comparison with the last of such notices previously provided by

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the Taxation Commissioner in respect of the member; and

- (c) must pay or recover from the Taxation Commissioner the amount by which the surchargeable contributions debt account has been adjusted under paragraph (b).
- (8) If the surchargeable contributions debt account is in debit at the end of a financial year, the Commission must, in accordance with the law of the Commonwealth, debit the account with interest.
- (9) A member may make payments to his or her surchargeable contributions debt account to reduce in full or in part the balance of the account, and any such payment is taken not to be a contribution for the purposes of these regulations.
- (10) A payment made under this regulation by the State Fire Commission on behalf of a member as part of the member's remuneration is taken to be a contribution by the State Fire Commission for the purposes of these regulations.
- (11) On receipt of a payment under subregulation (9) or (10) in relation to a member, the Commission must –

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- (a) credit the surchargeable contributions debt account of the member; and
  - (b) take any other action required under the law of the Commonwealth relating to the surcharge liability.
- (12) If a lump sum benefit entitlement becomes payable by the Commission to a member whose account, established or maintained under this regulation, is or has been in debit, the Commission must reduce the benefit payable by the extent of –
  - (a) the balance of the member's surchargeable contributions debt account; and
  - (b) any foregone investment earnings and associated amounts.
- (13) The Commission must, at least annually, inform each member of the balance of the member's surchargeable contributions debt account and of any debits or credits, including interest, to that account.

**190. Provision of information by Commission**

- (1) The Commission must provide the Actuary with the information in respect

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of members that is necessary for the purposes of these regulations.

- (2) The Commission must provide the Taxation Commissioner with the information in respect of members that is required under the law of the Commonwealth.
- (3) The Commission must, at least annually, distribute to each member –
  - (a) a report of its operations during the last financial year; and
  - (b) a statement of the benefit entitlement of the member and the balance of the member's account, detailing the total interest credited or debited, administration costs and management charges, death and incapacity premiums deducted and any surcharge or taxation liabilities deducted from the account or accounts; and
  - (c) a statement of the Commission's current investment strategies and performance.

**191. Tasmania Fire Service to provide Commission with certain information about members**

- (1) The Tasmania Fire Service must provide to the Commission, in the manner and form, if any, that the Commission determines, the information or evidence that the Commission requires in relation to members who are or were employees of the Tasmania Fire Service.
- (2) If the Tasmania Fire Service fails to provide under subregulation (1) information or evidence that is relevant to the payment of a benefit to, or in relation to, a member, the Commission may defer the payment of the benefit to, or in relation to, the member until the information or evidence is provided.

**192. Scheme solvency certificates**

The Commission must obtain from the Actuary all relevant certificates required by the SIS Act to be obtained by regulated superannuation defined benefit funds from actuaries, together with all other certificates required to be obtained by the Commission from the Actuary by law.

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***Division 7 – General provisions***

**193. Payment on death or permanent incapacity**

- (1) If a member becomes entitled to a permanent incapacity benefit, the Commission must pay the benefit to the member, unless, in the opinion of the Commission, the member is incapable of administering his or her own affairs, in which case the Commission must pay the benefit to the member's spouse or legal personal representative.
- (2) Except as provided in subregulation (3), if a lump sum benefit is payable under these regulations on the death of a member, the benefit is to be paid to –
  - (a) the surviving partner of the member; or
  - (b) if there is no surviving partner of the member – the person with whom the member was in a caring relationship which was the subject of a deed of relationship, registered under Part 2 of the *Relationships Act 2003*, which was revoked by the death of the member; or
  - (c) if there is no person referred to in paragraph (a) or (b) – the estate of the member, subject to the

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production of grant of probate or  
letters of administration; or

(d) a person, where applicable, in  
accordance with regulation 196.

(3) Despite subregulation (2), a member  
may, by notice in writing to the  
Commission –

(a) elect that in the event of the  
member's death all or part of the  
benefit payable on the member's  
death is to be paid to the  
member's estate; or

(b) revoke any such election –

and where the election is in force,  
subregulation (2) does not apply to any  
part of the benefit that is subject to the  
election.

(4) This regulation does not apply to a  
person who –

(a) was, immediately before the  
death of a member, the spouse of  
the member; and

(b) was, at the time of the member's  
death, separated and living apart  
from the member; and

(c) was not, in the opinion of the  
Commission, receiving

significant financial support from the member.

- (5) If, on the death of a member, a question arises as to who is the surviving partner of the member at the time of the member's death, for the purposes of these regulations the question is to be determined by the Commission having regard to the matters that it considers relevant.
- (6) If the Commission is unable to determine who is the surviving partner of the member at the time of the member's death after any enquiry it considers appropriate under this regulation, any benefit that would otherwise be payable to the surviving partner of the member is to be paid to the member's legal personal representative.
- (7) When determining a question under subregulation (5), the Commission must not determine more than one person to be the surviving partner of a member.

**194. Making of elections, directions, claims or applications**

- (1) An election, direction, claim or application under this Part –
  - (a) must be in writing signed by the person entitled to make the

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election, direction, claim or application; and

- (b) must be in the form determined by the Commission; and
- (c) subject to subregulation (2), is not valid until it is received by the Commission; and
- (d) takes effect when it is received by the Commission, except that the Commission may, if it thinks fit, accept that an election, direction, claim or application lodged with the State Fire Commission takes effect from the day it is so lodged.

(2) If –

- (a) an election, direction, claim or application under this Part is not received by the Commission within the time prescribed for the election, direction, claim or application; and
- (b) the Commission is satisfied that, having regard to all the circumstances of the case, it is desirable that the election, direction, claim or application should be accepted –

the Commission may, subject to the terms and conditions, if any, that it imposes, accept the election, direction, claim or application and deal with it as if it had been received within the time so prescribed.

**195. Recovery of money owing to Scheme**

- (1) The Commission may recover from a member, beneficiary or other person any money which was paid in excess of the member's benefit, together with interest calculated in accordance with this regulation, unless the Commission, having regard to the circumstances of the member, determines otherwise.
- (2) The Commission must recover from the State Fire Commission any payment to the SFCS Fund of State Fire Commission superannuation contributions, additional employer contributions, and member contributions, that have not been forwarded to the Commission within 7 days of the relevant payday and those payments attract interest calculated in accordance with this regulation.
- (3) Payments from the State Fire Commission to the SFCS Fund of State Fire Commission superannuation contributions, additional employer contributions and member contributions

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are to be credited to the members' accounts as if they were received on the relevant payday.

- (4) The interest determined under subregulation (2) is the liability of the State Fire Commission and not the member.
- (5) Interest is calculated on a daily basis using the Bloomberg's 90 day Bank Bill Swap Reference Rate, as published in the *Australian Financial Review*, on the day the amount became due for payment, plus 4%.
- (6) Interest is payable on any amount owing to the SFCS Fund calculated from the date on which the amount becomes due for payment until the date on which the amount, together with interest if applicable, is fully recovered by, or otherwise paid to, the Commission.
- (7) Any interest paid under this regulation is to be credited to the investment income reserve account established under regulation 165.

**196. Payment without grant of probate**

If, 3 months after the death of a member, a benefit not exceeding \$50 000 is payable under these regulations and the Commission has not received –

- (a) a certified copy of the probate of the will, or letters of administration of the estate, of the deceased member; or
- (b) a notice of intention to apply for a grant of probate of the will, or letters of administration of the estate, of the deceased member –

the Commission may, at its discretion, make a payment of the benefit to that member's legal personal representative.

**197. Provision of information to Minister**

The Commission must, on the written request of the Minister, provide to the Minister any information, relating to the SFCS Scheme or the SFCS Fund, that the Minister may reasonably require.

**198. Arrangements to be made for dealing with inquiries or complaints in relation to SFCS Scheme**

- (1) The Commission must take all reasonable steps to ensure there are at all times arrangements in place under which –
  - (a) a member or former member may make an inquiry into, or complaint about, the operation or

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- management of the SFCS Scheme  
in relation to that person; and
- (b) the legal personal representative of a former member may make an inquiry into, or complaint about, the operation or management of the SFCS Scheme in relation to the former member; and
  - (c) without limiting the generality of paragraph (a) or (b), any person may make an inquiry into, or complaint about, a decision of the Commission that relates to the payment of a death benefit in relation to the SFCS Scheme if –
    - (i) the person has an interest in the death benefit; or
    - (ii) the person claims to be, or is, entitled to a death benefit in relation to a person referred to in this subregulation.
- (2) The Commission is to deal with an inquiry or complaint within 90 days of receiving notice in writing of the inquiry or complaint.
- (3) The Commission may charge a fee in relation to the making of an inquiry or complaint and may waive or reduce the fee if it is satisfied that the applicant's

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intended use of information that may be obtained by making the inquiry or complaint is of general public interest or benefit.

- (4) The fee that may be charged under subregulation (3) is not to exceed 400 fee units (inclusive of GST).
- (5) If the Commission believes the fee charged under subregulation (3) may exceed 25 fee units (inclusive of GST), the Commission must notify the applicant and inquire whether the applicant wishes to proceed with the applicant's inquiry or complaint.

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Notified in the *Gazette* on 30 March 2022.

These regulations are administered in the Department of Treasury and Finance.

**EXPLANATORY NOTE**

*(This note is not part of the regulations)*

These regulations amend the *Public Sector Superannuation Reform Regulations 2017* by –

- (a) providing for interim pensions to be paid to certain surviving partners; and
- (b) allowing for determination of terminal medical conditions and payment of benefits in relation to such determinations; and
- (c) allowing for reduction or suspension of invalidity pensions in certain cases; and
- (d) allowing for certain deductions from pensions for costs incurred in paying pensions; and
- (e) inserting provisions, in relation to certain ambulance officers and employees of the Tasmania Fire Service, modelled on the provisions of trust deeds in relation to

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superannuation for such officers and employees.