

H.E.S.T. Australia Limited ABN 66 006 818 695

**Trust Deed for Health Employees  
Superannuation Trust Australia  
SCHEDULE  
Rules**

## SCHEDULE

### Rules

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## **1 Definitions and interpretation provisions**

### **1.1 Definitions**

In this Trust Deed, unless the contrary intention appears:

**Account** means:

- (a) one or more of the accounts established pursuant to the Trust Deed; and
- (b) in relation to a Member, an account maintained in respect of the Member, in accordance with clause 11.

**Account Balance** means, in relation to a Member on a day, the sum of the Withdrawal Price of the Units in each Investment Option allocated to the Member's Account on that day.

**Account-based Pension** means a pension payable under the rules of Division 4.

**Act** means the *Income Tax Assessment Act 1936*.

**Appendix** means an appendix to this Schedule.

**Application Price** of a Unit in an Investment Option on a day is the price determined for that Unit under clause 15.3 on that day.

**Approved Benefit Arrangement** means a fund or arrangement for the provision of retirement benefits including:

- (a) another complying superannuation fund;
- (b) an approved deposit fund;
- (c) an eligible rollover fund; and
- (d) a deferred annuity,

to which property (including money) may be paid or transferred from the Plan, or from which a payment may be received into the Plan, without causing the Trustee to be in breach of or to fail to comply with Superannuation Law.

**APRA** means the Australian Prudential Regulation Authority.

**ASIC** means the Australian Securities and Investments Commission.

**Binding Death Benefit Nomination** means a notice given by a Member to the Trustee which:

- (a) complies with section 59(1A) of the SIS Act or any other requirements prescribed from time to time under the SIS Act; and
- (b) is in a form approved by the Trustee,

directing the Trustee to pay a Death Benefit to the beneficiaries nominated in the notice on the Member's death.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in the place where these rules or Superannuation Law require an act to be performed or a payment to be made.

**Commencing Date** of the Plan means 1 August 1987.

**Commissioner** means, as the case requires, either the Commissioner of Taxation or the Commissioner for the time being holding the position or statutory responsibility (however such position or responsibility is entitled or prescribed) for overseeing compliance with government standards relating to occupational superannuation.

Death Benefit in relation to a Member is the benefit payable from the Plan on the death of the Member, but does not include a benefit payable to a Reversionary Beneficiary.

**Dependant** means any person:

- (a) who is a dependant, within the meaning of the SIS Act, of a Member or former Member (as the case may be); and
- (b) to whom the Trustee may lawfully pay a benefit or any part of a benefit in respect of that Member in the event of that Member's death.

**Employee** means a person:

- (c) who is an employee within the meaning of the SIS Act; and
- (d) that the Trustee determines to accept as an employee for the purposes of these rules.

**Employer** means a person, firm, corporation or other entity:

- (a) that is an employer within the meaning of the SIS Act; and
- (b) that the Trustee determines to accept as an employer for the purposes of the Trust Deed,

but does not include a person who has ceased to be an Employer in the Plan, and, where used in relation to a Member or former Member, means the employer or employers of that Member or former Member.

**Insured Benefit** means, in relation to a Member, the proceeds of any Life Policy held by the Trustee on the life of the Member or in respect of the Member's disablement (including without limitation Temporary Incapacity or Total and Permanent Disablement).

**Investment Direction** means a direction by a Member in relation to the investment of a contribution, rollover or transfer or the Member's Account.

**Investment Option** means a part of the Plan to which a discrete investment strategy applies.

**Leaving the Industry** means ceasing employment in circumstances that satisfy a condition of release under the SIS Regulations.

**Legal Personal Representative** means the executor or administrator of the deceased Member's estate.

**Life Insurer** means a life insurance company that issues a Life Policy to the Trustee in respect of one or more Members of the Plan.



**Life Policy** has the same meaning as in the *Life Insurance Act 1995*.

**Member** means a person who has been admitted as a Member of the Plan and who has not ceased to be a Member and **Membership** has a corresponding meaning.

**MySuper Member** means a Member who holds a MySuper Product in the Plan in respect of all or part of his or her interest in the Plan.

**MySuper Product** means a class of beneficial interest in the Plan the governing rules of which are in Appendix 1.

**Pension** means a pension payable under the rules of Division 3 (Transition to Retirement Pension) or Division 4 (Account-based Pension).

**Pensioner** means a Member who is entitled to a Transition to Retirement Pension or an Account-based Pension, including a Reversionary Beneficiary in receipt of a Pension.

**Plan** means the indefinitely continuing scheme known as the 'Health Employees Superannuation Trust Australia' established by deed on 30 July 1987.

**Regulator** means, as the context requires, any one or more of:

- (a) APRA;
- (c) ASIC;
- (d) the Australian Taxation Office;
- (e) the Australian Transaction Reports and Analysis Centre; and
- (f) any other regulatory body from time to time that is responsible for administering any Superannuation Law.

**Release Authority** means a release authority given to the Trustee under section 292-410 of the *Income Tax Assessment Act 1997*.

**Reversionary Beneficiary** means a person who:

- (a) is a Dependant of a Pensioner and who is nominated by the Pensioner at or before the commencement of a Pension to receive the Pension on the death of the Pensioner;
- (g) remains a Dependant of the Pensioner at the time of death of the Pensioner; and
- (h) is eligible under Superannuation Law to be paid a benefit in the form of a pension.

**Rules** means the rules set out in this Schedule and in the Appendices.

**Schedule** means this schedule.

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993* and any prudential standards made under it.

**SIS Regulations** means the *Superannuation Industry (Supervision) Regulations 1994*.

**Spouse** in relation to a Member or former Member has the meaning given to that expression in the SIS Act.

**Successor Fund** has the meaning given to that expression in the SIS Regulations.

**Superannuation Law** means:

- (a) the SIS Act;
- (b) the *Corporations Act 2001*;
- (c) the *Superannuation Guarantee (Administration) Act 1992*;
- (d) the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*;
- (e) the *A New Tax System (Goods and Services Tax) Act 1999*; and
- (f) any other present or future law of Australia or a State or Territory of Australia with which the Plan, this Trust Deed or the Trustee must comply with or satisfy to secure or better secure a concession for the Plan in respect of tax or to avoid a penalty, detriment or disadvantage to the Plan, the Trustee (as trustee of the Plan) or beneficiaries.

**Temporary Incapacity** or an expression of similar import has the same meaning as defined in any applicable Life Policy pursuant to which an Life Insurer provides cover for such incapacity (not amounting to Total and Permanent Disablement) for a Member and, if there is no Insured Benefit, has the same meaning as temporary incapacity in the SIS Regulations.

**Terminal Medical Condition** has the meaning given to it in regulation 6.01A of the SIS Regulations.

**Total and Permanent Disablement** has the meaning under a relevant Life Policy and, if there is no Insured Benefit, has the same meaning as permanent incapacity in the SIS Regulations.

**Transition to Retirement Pension** is a pension payable under the rules in Division 3.

**Trust Deed** means the trust deed dated 30 July 1987 pursuant to which the Plan was established (including any schedules or appendices) as amended from time to time.

**Trustee or Trustees** means the trustee, for the time being, of the Plan whether original, additional or substituted.

**Unit** means a part or share of the beneficial interest in the assets attributed to an Investment Option.

**Valid Investment Direction** means an Investment Direction that complies with clause 14.2(b).

**Withdrawal Price** of a Unit in an Investment Option on a day is the price determined for that Unit under clause 15.5 on that day.

## **1.2 General rules of interpretation**

In the interpretation of the Trust Deed, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect interpretation.
- (b) References to any law, legislation or legislative provision include any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (c) References to persons include natural and legal persons and their successors in law.
- (d) If the day on which any act, matter or thing is to be done under this document is not a Business Day, the act, matter or thing must be done on the next Business Day.
- (e) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (f) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (g) References to the word 'include' or 'including' are to be construed without limitation.
- (h) The Schedule and Appendices to the Trust Deed form part of the Trust Deed.

## **1.3 Superannuation Law**

If there is any inconsistency between a provision in the Trust Deed and Superannuation Law, Superannuation Law prevails to the extent of the inconsistency.

## **1.4 Void and unenforceable provisions**

If a provision of the Trust Deed is void, prohibited or unenforceable in a particular jurisdiction, it is ineffective in that jurisdiction only to the extent that the provision is void, prohibited or unenforceable in that jurisdiction.

## **2 Trustee of the Plan**

### **2.1 Nature of the Trustee**

The Trustee must be a constitutional corporation within the meaning of section 10 of the SIS Act that is not a disqualified person within the meaning of section 120 of the SIS Act.

### **2.2 Removal of the Trustee**

The Trustee will immediately cease to be the trustee of the Plan if:

- (a) the Trustee is disqualified from holding office as a trustee;

- (b) the Trustee is removed or suspended from office by a Regulator or court; or
- (c) Superannuation Law requires.

### **2.3 Retirement of the Trustee**

The Trustee may at any time retire as trustee of the Plan if the Trustee appoints, by deed, a replacement trustee who agrees to be the trustee and is eligible to be the trustee for the Plan.

### **2.4 Replacement Trustee**

If the Trustee becomes aware of circumstances that will lead to it ceasing to be the trustee of the Plan under clause 2.3 or if it ceases to be the trustee of the Plan under clause 2.3 and a replacement trustee has not been appointed, it must ask the court to appoint a replacement trustee of the Plan with effect from the date it ceases to be the trustee of the Plan.

### **2.5 Vesting of assets**

If the Trustee ceases to be the trustee of the Plan, the retiring trustee must execute all transfers, deeds and other documents necessary to give proper effect to the appointment of a new trustee and to transfer the assets of the Plan to the new trustee.

### **2.6 No release for prior breach**

The retirement of a Trustee does not release it from liability for any prior breach of trust for which it would otherwise be liable.

### **2.7 Notifiable events**

The Trustee must give notice in writing to the appropriate Regulator of any matters which constitute a notifiable event in accordance with Superannuation Law.

## **3 Trustee's duties**

### **3.1 Manage and administer the Plan**

The Trustee must manage and administer the Plan for the benefit of the Members in accordance with the Trust Deed and Superannuation Law.

### **3.2 Trustee's covenant**

The Trustee covenants to comply with the covenants in section 52 of the SIS Act.

### **3.3 Books and records**

The Trustee must ensure that:

- (a) proper books, accounts and records of all moneys received into and disbursed from the Plan and of all dealings in connection with those moneys are kept;

- (b) all financial statements and other accounts required by Superannuation Law are prepared in respect of each financial year of the Plan in accordance with Superannuation Law and the requirements of any Regulator; and
- (c) all other records, books, accounts, minutes, reports and other documentation required to be kept by the Trustee under Superannuation Law are:
  - (i) kept in a proper order;
  - (ii) held in safe custody; and
  - (iii) retained for such period as is required by Superannuation Law;
- (d) all returns required to be provided to any Regulator are prepared and lodged in such manner and within such time as is required by Superannuation Law or the Regulator.

### **3.4 Audit**

The Trustee must:

- (a) take all necessary action to ensure that the books, accounts and records of the Plan are audited including by an internal auditor and an external auditor in accordance with the Superannuation Law; and
- (b) obtain from its auditor a certificate at such time and in such form as required by Superannuation Law.

### **3.5 Valuation**

- (a) The Trustee may, at any time, arrange for an asset of the Plan to be valued in such manner as it determines and must arrange for the assets of the Investment Options and the Plan to be valued as frequently as is necessary to ensure that each Member's interest in the Plan is issued or redeemed at a price that is fair and reasonable as between the Member and the other Members of the Plan.
- (b) An asset of the Plan must be valued at its market value current at the time of valuation unless the Trustee determines that:
  - (i) there is no market in respect of the asset; or
  - (ii) the market value does not represent the fair value of the asset, in which case the Trustee must determine the method of valuing the asset.

### **3.6 Information**

The Trustee must ensure that Members and beneficiaries are provided with such information at the times and in the manner required by Superannuation Law.

## **4 Trustee's Powers**

### **4.1 General Power**

Subject to Superannuation Law and the other provisions of the Trust Deed, the Trustee:

- (a) has all the powers of a natural person and any additional powers conferred on it by law; and
- (b) may do all acts and things which it considers necessary, desirable or expedient:
  - (i) for the proper application, administration, maintenance and preservation of the Plan or any part of the Plan; and
  - (ii) to comply with the Superannuation Law.

### **4.2 Specific powers**

Without limiting clause 4.1, and in addition to any other powers conferred on the Trustee by the Trust Deed, the Trustee has power to:

- (a) open bank accounts and set conditions for the operation of those bank accounts;
- (b) establish accounts within the Plan including sub-accounts as it thinks fit
- (c) close or merge any accounts that it establishes within the Plan;
- (d) maintain reserves in respect of the Plan;
- (e) enter into agreements;
- (f) seek modifications of or exemptions from the application of Superannuation Law;
- (g) insure with any Life Insurer any risks, contingencies or liabilities of the Plan;
- (h) pay out of the Plan all costs, expenses, outgoings and taxes, duties and levies of and incidental to the management, investment and administration of the Plan including fees or other charges (if any) in respect of the provision of services to the Trustee in respect of the Plan;
- (i) deduct any fees, expenses or other charges from any benefit or any other amount payable to or in respect of a Member or other person where those fees, expenses and charges are attributable to that Member or other person;
- (j) give receipts, releases and other discharges for money payable to the Trustee in respect of the Plan;
- (k) seek, obtain and act on the advice or opinion of any consultant, claims assessor, barrister, solicitor, broker, accountant, medical practitioner, Life Insurer or other professional person;

- (l) establish a committee or committees for any purpose determined by the Trustee, with any such committee being appointed, constituted and regulated on a basis determined by the Trustee from time to time;
- (m) commence, carry on or defend proceedings relating to the Plan or to the rights of Members, former Members and beneficiaries;
- (n) abandon, settle or compromise any legal proceedings;
- (o) indemnify, or undertake to indemnify, any person in respect of any claim, matters or things relating to the Plan or to the rights of Members, former Members or beneficiaries in respect of the Plan; and
- (p) make any other rules or regulations or adopt procedures to give effect to the provisions of the Trust Deed or carry out anything contemplated under the Trust Deed or Superannuation Law including in relation to the calculation and rounding-off of contributions or benefits or interest, or to the determination of periods of time and other matters as appropriate to facilitate the management and administration of the Plan.

#### **4.3 Trustee Delegation**

The Trustee may delegate to any person or committee any of the powers, duties and discretions conferred on it under the Trust Deed.

#### **4.4 Service Providers**

In addition to its power to delegate under clause 4.3, the Trustee may appoint another person or persons to perform, on a continuing basis, any activity that is required to be undertaken by the Trustee in respect of the Plan.

#### **4.5 Exercise of powers**

All the powers and discretions conferred upon the Trustee under the Trust Deed may be exercised even if the Trustee or any director of the Trustee has a direct, indirect or personal interest (whether as a shareholder, director, member or partner of any company, organisation or partnership) in the result of exercising such power or discretion or may benefit directly or indirectly as a result of the exercise of any such power or discretion.

#### **4.6 Trustee Discretion**

The Trustee in the exercise of the trusts, authorities, powers and discretions conferred on it by the Trust Deed will have an absolute and uncontrolled discretion as to the manner, mode and timing of exercise.

#### **4.7 Trustee Direction**

The Trustee will not be subject to direction by any person in the exercise of any of its powers except to the extent that Superannuation Law provides or permits otherwise.

## **5 Liability and Indemnity**

### **5.1 No liability**

Except to the extent Superannuation Law or the Trust Deed expressly provide otherwise, the Trustee will not be responsible to any person for or in respect of any loss or damage, action, claim, counter-claim, set-off, demand, liability, cost or expense whatsoever arising from:

- (a) any exercise of discretion or power conferred on the Trustee by the Trust Deed or any failure to exercise such discretion or power, unless it has knowingly breached the Trust Deed; or
- (b) any act, omission, error of judgment, negligence or breach of trust of any person to whom the Trustee outsources the performance of any function or activity of the Trustee.

### **5.2 When liability applies**

Despite anything to the contrary in the Trust Deed, the Trustee, its directors and officers will be liable for anything they do or omit to do in respect of the Plan or the Trust Deed if, in connection with such matter, they:

- (a) fail to act honestly;
- (b) intentionally or recklessly fail to exercise the degree of care, skill and diligence that the Trustee, director or officer is required to exercise under Superannuation Law; or
- (c) incur a monetary penalty in respect of a civil penalty order under Superannuation Law.

### **5.3 Indemnity**

Unless Superannuation Law or the terms of the Trust Deed expressly provide otherwise, the Trustee, and each director of the Trustee, will be indemnified out of the assets of the Plan and kept indemnified against:

- (a) any action, claim, counter-claim, set-off, demand, liability, cost or expense whatsoever arising in the capacity of Trustee or of a director of the Trustee; and
- (b) the cost of any premiums reasonably incurred in effecting and maintaining a policy or policies of professional indemnity insurance in respect of its position as Trustee of the Fund and its directors, officers and employees, or their position as directors.

### **5.4 No Indemnity**

Despite anything to the contrary in the Trust Deed, the Trustee and each director of the Trustee will not be indemnified if they:

- (a) fail to act honestly in a matter concerning the Plan;



- (b) intentionally or recklessly fail to exercise, in relation to a matter affecting the Plan, the degree of care and diligence that the Trustee or director is required to exercise under Superannuation Law; or
- (c) incur a monetary penalty in respect of a civil penalty order under Superannuation Law.

## **6 The Plan**

### **6.1 The Plan is divided into Divisions**

The Plan is divided into the following Divisions:

- (a) Division 1 – HESTA MySuper;
- (b) Division 2 – HESTA Choice;
- (c) Division 3 – HESTA Transition to Retirement Pension; and
- (d) Division 4 – HESTA Account-based Pension.

The rules that apply to the Divisions are in the Appendices.

### **6.2 Classes of Members**

The interests of the Members of a Division comprise a separate class of interest from the interests of Members of each other Division. A Member may hold more than one class of interest in the Plan.

### **6.3 Power to create different products and categories**

The Trustee may, for the purposes of promoting interests in the Plan, administrative ease and providing tailored benefits to Employees of an Employer or any other group of Members or Employers:

- (a) create within a Division, or across more than one Division, 'products' and 'categories'; and
  - (b) determine rules that apply to those products and categories;
- provided that the Trustee does not, in doing so:
- (c) affect any substantive right or obligation of an existing Member or other Employer under this Trust Deed; or
  - (d) breach any provision of this Trust Deed.

### **6.4 Inconsistency between Trust Deed, Schedule and Appendices**

If there is an inconsistency between the Trust Deed (including the Schedule) and a provision of an Appendix, the terms of the Appendix will prevail.

## **7 Fees**

### **7.1 Fees for services**

The Trustee is entitled to fees from the Plan in the amounts and at the rates it determines are reasonably necessary to recover the costs and expenses it incurs or is

likely to incur as Trustee of the Plan and which it does not pay or recover directly from the Plan.

## **7.2 Charging fees**

In determining the amount of a fee under clause 7.1, the basis on which it is charged and how fees are to be borne by Members, the Trustee must consider:

- (a) the expenses incurred, and the expenses that are likely to be incurred, in relation to the different Divisions, products, categories and Investment Options which will be met from the Trustee's fee; and
- (b) the time at which expenses are incurred or are likely to be incurred and the time at which fees are charged, and

satisfy itself that the Trustee's fees are charged on a fair and reasonable basis. The Trustee must review at least annually the amount of the fees and any differences between fees and, in doing so, must take into account the costs applicable to different Divisions, products, categories and Investment Options which will be met from the Trustee's fee.

## **8 Expenses**

### **8.1 Power of the Trustee**

In addition to the power to charge fees under clause 7.1, the Trustee has the power to deduct, pay and otherwise make provision from the assets of the Plan for all costs and expenses that the Trustee incurs as the Trustee of the Plan and that are not recovered through fees charged under clause 7.1, including:

- (a) all taxes, duties and levies in respect of:
  - (i) the Plan;
  - (ii) any contributions to the Plan; and
  - (iii) any benefit paid or payable from the Plan;
- (b) all administration, management and other charges and expenses of and incidental to the conduct of the Plan or the exercise of any power, authority or discretion contained in this Trust Deed or in performing these trusts or relating to any contribution to the Plan or any benefit paid or payable from the Plan;
- (c) all fees and other costs incurred in employing service providers including administration services, investment management and custody services;
- (d) remuneration of the directors (but only to the extent that the remuneration is determined by the Trustee to be reasonable, having regard to the advice of an independent remuneration consultant);
- (e) any future taxation attributable to unrealised gains;
- (f) any future losses in respect of any investment for which market value cannot be fairly or accurately assessed;

- (g) any costs and expenses of realising investments of the Plan;
- (h) any averaging of earnings of the Plan whether on income or on capital account to take into account possible or actual periodic fluctuations in those earnings and any losses of the Fund not otherwise deducted.

## **8.2 Considerations for the Trustee**

In exercising any power under this clause 8, the Trustee must have regard to what is a fair and reasonable allocation of costs and expenses to groups of Members and individual Members and, taking into account its review of the Trustee's fees under clause 7, it must review:

- (a) the costs and expenses it incurs in the management, investment and administration of the Plan including the costs and benefits of maintaining the Divisions, products, categories and Investment Options which are not met from the Trustee's fees;
- (b) the benefits to Members of maintaining the Divisions, products, categories and Investment Options; and
- (c) the allocation of costs and expenses between Divisions, products, categories and Investment Options,

to satisfy itself that the costs and expenses that are incurred and the allocation of those costs and expenses are fair and reasonable. The Trustee must consider any changes that should be made to the structure of the Plan including the Divisions, products, categories and Investment Options on an annual basis.

## **9 Employers**

### **9.1 Application to become an Employer**

The Trustee may invite a person to apply to become an Employer in the Plan. The Trustee may require the person to:

- (a) complete an application in a form prescribed by the Trustee; and
- (b) enter into an agreement with the Trustee setting out any additional terms or conditions that apply to the Employer's participation in the Plan.

### **9.2 Trustee may accept or reject an application**

The Trustee may, in its absolute discretion, accept or reject an application to participate as an Employer in the Plan.

### **9.3 Trustee accepts an application**

If the Trustee accepts an application from a person to become an Employer, that person will be an Employer and will be bound by the terms of the Trust Deed from the date determined by the Trustee.

## **9.4 Employer must provide information**

An Employer must provide the Trustee with such information as is required by the Trustee, including so that the Trustee may:

- (a) admit an Employee of the Employer or an associate of the Employer as a Member of the Plan, including the tax file number;
- (b) allocate Employees of the Employer or an associate of the Employer to a specific category within the Plan; and
- (c) arrange for a Life Policy for the Employees of the Employer or an associate of the Employer.

## **10 Members**

### **10.1 Employee Members**

An Employer may, in the manner required by the Trustee, ask the Trustee to admit an Employee of the Employer or an associate of the Employer as a Member of the Plan.

### **10.2 Application for membership**

The Trustee may invite any person who is eligible for membership of a superannuation fund to apply for membership of the Plan. The Trustee may require a person applying to become a Member to complete an application in a form prescribed by the Trustee or, otherwise, to provide such information as the Trustee requires to determine whether to accept the application.

### **10.3 Trustee accepts an application**

If the Trustee accepts an application for Membership, whether by the Member or by an Employer, the Member is admitted as a Member on the earlier of:

- (a) the date determined by the Trustee; and
- (b) the date the Trustee accepts a contribution or other payment for the Member.

In either case, the person will be admitted as a Member of a Division (in accordance with clauses 10.4 to 10.7) on the date the Trustee first accepts a contribution or other payment in respect of the Member.

### **10.4 Members of Division 1**

- (a) The Trustee must admit a person as a Member of Division 1 if, on the date the Trustee first accepts a contribution or other payment in relation to the person, the Trustee does not hold a Valid Investment Direction in relation to the contribution or other payment, and the contribution or other payment is not made in respect of a Pension Division.
- (b) If the Trustee accepts an application from a person who applies to become a MySuper Member, the Trustee will admit the person as a Member of Division 1

on the day the Trustee first accepts a contribution or other payment in relation to that application.

### **10.5 Members of Division 2**

If the Trustee accepts an application from a person who applies to become a Member of the Plan and who does not apply for a Pension product or to become a MySuper Member, the Trustee will admit the person as a Member of Division 2 on the day the Trustee first accepts a contribution or other payment in relation to that application if on that day the Trustee holds a Valid Investment Direction for the Member.

### **10.6 Members of Division 3**

If the Trustee accepts an application from a person who applies for a Transition to Retirement Pension, the Trustee will admit the person as a Member of Division 3 on the day the Trustee accepts a rollover, transfer, contribution or other payment in relation to that application.

### **10.7 Members of Division 4**

If the Trustee accepts an application from a person who applies for an Account-based Pension, the Trustee will admit the person as a Member of Division 4 on the day the Trustee accepts a rollover, transfer, contribution or other payment in relation to that application.

### **10.8 A Member may transfer to another Division**

- (a) A Member may ask the Trustee to transfer their Membership from one Division to another Division. The Trustee may require a Member to complete an application in a form prescribed by the Trustee or, otherwise, to provide such information as the Trustee requires to determine whether to accept the application to transfer between Divisions.
- (b) If the Trustee accepts a Member's request under clause 10.8(a), the Member will cease to be a Member of their existing Division and commence being a Member of the requested Division on the date determined by the Trustee.

### **10.9 Trustee may transfer a Member between Divisions**

The Trustee may transfer a Member from one Division to another Division if:

- (a) the Member is a MySuper Member and the Member provides the Trustee with a Valid Investment Direction directing the Trustee to transfer the Member's Account Balance to one or more Investment Options, in which case the Trustee must transfer the Member to Division 2;
- (b) the Member is a Member of Division 2 and the Trustee ceases to hold a Valid Investment Direction for the Member, in which case the Trustee may transfer the Member to Division 1 and, at that time, invest their Account Balance in accordance with the investment strategy for the MySuper Product; and

- (c) the Member is a Transition to Retirement Pensioner who reaches age 65 or who, on an earlier date, satisfies a condition of release with a nil cashing restriction, in which case the Trustee must transfer the Member to one or more other Divisions in accordance with Appendix 3 rule 6.

#### **10.10 Notifying Members of transfer of Divisions**

Before exercising its power to transfer a Member to another Division under clause 10.9(b) or 10.9(c), the Trustee must provide a notice to the Member. The notice must include:

- (a) the information that the Trustee considers the Member is reasonably likely to need to understand:
  - (i) the effect of the transfer on the Member;
  - (ii) the options available to the Member and how the Member can exercise those options;
- (b) where the Member can obtain further information; and
- (c) the date of the proposed date of transfer if the Member does not choose another option.

#### **10.11 Member must provide information**

A Member must give to the Trustee such information and produce such documents as the Trustee requires from time to time for the purposes of the Plan.

### **11 Accounts**

#### **11.1 Member Account**

The Trustee must establish and maintain within the Plan a separate Account for each Member.

#### **11.2 Record in the Account**

The Trustee must record in a Member's Account all transactions on the Account and must:

- (a) allocate Units to the Account at the Application Price for Units in the relevant Investment Option or Investment Options in accordance with clause 15.2:
  - (i) if the Trustee receives a contribution, rollover, transfer, Insured Benefit or other amount for the Member;
  - (ii) if the Trustee has redeemed all or any part of the Member's Account Balance in an Investment Option and the Trustee invests the proceeds in another Investment Option or Investment Options;
  - (iii) in order to credit to the Member's Account any other amount reasonably determined by the Trustee having regard to the provisions of the Trust Deed; and

- (b) cancel Units from the Account at the Withdrawal Price for Units in the relevant Investment Option or Investment Options in accordance with clause 15.4:
  - (i) if the Trustee cashes, rolls over or transfers a benefit to or in respect of the Member;
  - (ii) if the Trustee redeems all or any part of the Member's Account Balance in an Investment Option in order to invest the proceeds in another Investment Option or Investment Options;
  - (iii) to pay any fees, taxes, costs or expenses allocated to the Member in accordance with clauses 7 and 8.
  - (iv) in order to debit from the Member's Account any other amount which may be debited from the Member's Account in accordance with the Trust Deed.

## **12 Contributions**

### **12.1 Employer Contributions**

An Employer:

- (a) must contribute to the Plan in respect of each of its Employees who are admitted to membership of the Plan, the amount required to be paid by the Employer:
  - (i) under the Employer's agreement with the Trustee to participate in the Plan;
  - (ii) under an industrial award or agreement; and
  - (iii) to avoid a liability for superannuation guarantee charge under the *Superannuation Guarantee (Administration) Act 1992*,  
in the manner and at the times determined by the Trustee; and
- (b) may make such other contributions to the Plan in respect of a Member as the Employer may from time to time determine and the Trustee may accept, including salary sacrifice contributions in respect of a Member.

### **12.2 Contributions by Members**

A Member may make contributions to the Plan in such amounts and at such times as the Member determines with the consent of the Trustee.

### **12.3 Contributions made by other persons**

The Trustee may accept contributions made in relation to a Member by any person permitted by Superannuation Law.

### **12.4 Cessation of Membership**

A Member will cease to be a Member upon the earlier of:

- (a) the death of the Member; and

- (b) the payment, rollover or transfer from the Plan of all benefits to which the Member has become entitled under the Trust Deed,

provided however that a Member will remain a Member of the Plan until such time as any claim for an Insured Benefit has been finalised.

## **12.5 Family Law**

Despite anything else to the contrary in the Trust Deed, the Trustee has power to undertake and complete any actions required to be taken under the *Family Law Act 1975* in relation to the Plan or the benefits of any Member or beneficiary, including to:

- (a) establish a new interest in the Plan, if the Trustee considers it appropriate to do so;
- (b) transfer the interest of a Spouse to an Approved Benefit Arrangement; and
- (c) pay moneys from the Plan to the Spouse.

## **13 Investment**

### **13.1 Plan assets**

The Trustee must invest the assets of the Plan in a manner which complies with Superannuation Law.

### **13.2 Permitted Investments**

In addition to all powers conferred upon it by law, the Trustee has all the powers of a beneficial owner of the Plan and may invest the assets of the Plan in:

- (a) debentures, stocks or bonds issued or proposed to be issued by a government (whether a domestic or foreign government);
- (b) shares or stock in, or debentures of, a company or other body;
- (c) options over or rights of any kind to shares or stock in, or debentures of, a company or other body;
- (d) units or interests in a unit trust, managed investment scheme or other collective investment;
- (e) real property or leasehold property of any description and to subdivide and build on any land and to maintain improve extend and demolish any buildings in whole or part;
- (f) chattels of any description including ships and aircraft and any shares or interest in such chattels;
- (g) public and private infrastructure;
- (h) any reversionary or deferred property or rights of any description wheresoever situated or enforceable and whether by way of original creation or assignment or otherwise;



- (i) assets for the purposes of capital gain only or which may be of a wasting or speculative nature;
- (j) any annuity or policy on the life of any Member or the happening of any other event;
- (k) one or more superannuation policies or pooled superannuation trusts;
- (l) any derivatives or other synthetic instrument;

and may:

- (m) lend or advance money with or without security;
- (n) acquire book debts, options, futures contracts, futures options, swap agreements, forward rate agreements, foreign currency, other contracts of a derivative nature including any hedging, swapping or other like arrangement and other choses in action wheresoever situated or howsoever enforceable and any shares or interests therein;
- (o) enter into securities lending arrangements;
- (p) make deposits with any bank or other regulated financial institution in any part of the world for any period whatsoever;
- (q) draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- (r) enter into bill facility or promissory note agreements;
- (s) make any other investment that the Trustee may from time to time consider appropriate; and
- (t) to the extent permitted by Superannuation Law:
  - (i) mix investments with investments of other people or trusts;
  - (ii) make a loan or give financial assistance to a person;
  - (iii) borrow or raise money up to any amount and may secure payment or repayment in a manner which it thinks fit; and
  - (iv) underwrite or sub-underwrite or join with others in underwriting or sub-underwriting the subscription of any investment authorised by the Trust Deed.

### **13.3 Deal with investments**

The Trustee has power to sell any investments, to vary and change any investments into other investments authorised by the Trust Deed and to otherwise deal with and manage the investments of the Plan as the Trustee in its discretion sees fit including if the Trustee or any director of the Trustee has a direct or indirect interest in the investment or may benefit directly or indirectly from that dealing by the Trustee.

## **14 Investment Options and Member Investment Choice**

### **14.1 Investment Options**

The Trustee may at any time establish one or more Investment Options and, if it does so, it must:

- (a) determine the investment strategy and objectives of each Investment Option; and
- (b) make information about the investment strategy and objectives for each Investment Option available to Members on the Plan's website.

### **14.2 Member Investment Choice**

- (a) The Trustee may invite a Member (or a group of Members) to choose one or more Investment Options and to switch between Investment Options by giving the Trustee an Investment Direction.
- (b) The Trustee may determine any terms and conditions that apply to an Investment Direction and the circumstances in which a Member may give the Trustee an Investment Direction.
- (c) If a Member gives the Trustee a Valid Investment Direction, the Trustee must invest the relevant amount in accordance with the Valid Investment Direction.
- (d) If a Member does not give the Trustee a Valid Investment Direction in respect of a contribution or other amount, the Trustee must invest the relevant amount in the MySuper Product unless the Member is a Member of Divisions 3 or 4 in which case the Trustee may invest the relevant amount in the Investment Option it determines is the default Investment Option.

### **14.3 Varying and closing Investment Options**

The Trustee may at any time:

- (a) change the default Investment Option;
- (b) change the investment strategy for an Investment Option;
- (c) close or remove an Investment Option by removing any options, merging options and adding new options;
- (d) make rules regarding when and how a Member may choose Investment Options in respect of the Member's interest in the Plan; and
- (e) determine whether and how costs and expenses of the Plan are to be allocated amongst the Investment Options.

### **14.4 Notifying Members of changes**

Before exercising its power to terminate an Investment Option under clause 14.3(c), the Trustee must provide a notice to each Member who has any part of their Account invested in the Investment Option at least 30 days before terminating the Investment Option. The notice must include the following information and invite the Member to choose another Investment Option or Investment Options:

- (a) the information that the Trustee considers the Member is reasonably likely to need to understand:
  - (i) the effect of the transfer on the Member; and
  - (ii) the options available to the Member;
- (b) where the Member can obtain further information about the Investment Options available to the Member; and
- (c) information about the Investment Option to which the Trustee will transfer the proceeds of the terminating Investment Option and the proposed date of transfer if the Member does not direct the Trustee otherwise.

#### **14.5 Member's death**

If the Trustee has received evidence that is satisfactory to the Trustee of a Member's death, the Trustee may, subject to the SIS Act and pending payment of a Death Benefit, switch the Investment Options in which the Member's Account is then invested to an Investment Option that the Trustee selects.

### **15 Units**

#### **15.1 Investment Options are divided into Units**

The beneficial interest in the assets of each Investment Option is divided into Units. No Unit confers a legal or equitable right in any particular asset of an Investment Option.

#### **15.2 Allocation of Units**

If the Trustee allocates Units to a Member's Account, the Trustee must allocate the number of Units in each Investment Option determined by dividing:

- (a) the amount invested in the Investment Option less any taxes, charges or deductions the Trustee is entitled to deduct under this Trust Deed before the allocation of Units; by
- (b) the Application Price of Units in that Investment Option which applies at the date of allocation to the Account.

The number of Units may be rounded in accordance with the rules established by the Trustee.

#### **15.3 Application Price**

The Application Price of a Unit in an Investment Option is:

- (a) the amount calculated by dividing the value of the assets of the Investment Option on that day by the number of Units on issue from the Investment Option on that day plus an allowance determined by the Trustee for any costs that would be incurred if that Unit's share of the assets in the Investment Option were purchased on that day; or

- (b) if the Trustee determines that the price determined under paragraph (a) would not be fair and reasonable, the price determined by the Trustee that would be fair and reasonable.

#### **15.4 Cancellation of Units**

If the Trustee cancels Units allocated to a Member's Account, the Trustee must cancel the number of Units in each Investment Option determined by dividing:

- (a) the amount to be withdrawn from the Investment Option; by
- (b) the Withdrawal Price of Units in that Investment Option which applies at the date of cancellation from the Account.

The number of Units may be rounded in accordance with the rules established by the Trustee.

#### **15.5 Withdrawal Price**

The Withdrawal Price of a Unit in an Investment Option is:

- (a) the amount calculated by dividing the value of the Investment Option on that day by the number of Units on issue from the Investment Option on that day minus an allowance determined by the Trustee for any costs that would be incurred if that Unit's share of the assets in the Investment Option were sold on that day; or
- (b) if the Trustee determines that the price determined under paragraph (a) would not be fair and reasonable, the price determined by the Trustee that would be fair and reasonable.

### **16 Insurance**

#### **16.1 Insured Benefits – MySuper Members**

Subject to the determination by the Trustee of reasonable conditions to which insurance cover is subject or to the terms of a Life Policy, the Trustee must take out and maintain one or more Life Policies on such terms and conditions as it determines to provide Insured Benefits in respect of MySuper Members in the event of a MySuper Member's death or Total and Permanent Disablement. The Trustee must permit a MySuper Member to elect not to be covered for Temporary Incapacity or Total and Permanent Disablement and death.

#### **16.2 Other Insured Benefits**

The Trustee may take out and maintain one or more Life Policies to provide Insured Benefits on such terms and conditions as the Trustee determines to provide Insured Benefits in respect of Members who are not MySuper Members in the event of a Member's death, Terminal Medical Condition, Total and Permanent Disablement or Temporary Incapacity.

### **16.3 Variation and assignment**

The Trustee may:

- (a) vary, modify or substitute any Life Policy; or
- (b) accept the assignment of a Life Policy on such terms as the Trustee, in its absolute discretion, determines.

### **16.4 Level of benefits**

The amount and nature, if any, of the Insured Benefits provided under a Life Policy is determined by the Trustee and the Trustee may agree with a Life Insurer to provide different Insured Benefits in respect of different Divisions and different classes or groups of Members.

### **16.5 Commencement of insurance**

A Member commences cover for an Insured Benefit under a Life Policy on the later of the date:

- (a) the person becomes a Member of the Plan; and
- (b) the date under the Life Policy.

### **16.6 Cessation of Insurance Cover**

A Member's cover for an Insured Benefit under a Life Policy ceases on the first of the following events to occur:

- (a) the payment of the Member's Account Balance from the Plan;
- (b) the Member ceases to be an 'insured person' under the Life Policy or otherwise ceases to be covered under the terms of the Life Policy; and
- (c) the date the Policy is terminated or cancelled.

### **16.7 Scope of Insurance Cover**

- (a) Any Insured Benefit is provided on the terms of the applicable Life Policy.
- (b) The Trustee is not required to pay an Insured Benefit that is greater than the amount received by the Trustee under the Life Policy in respect of that Member after deduction of all administration charges and expenses and taxes attributable to that amount.
- (c) Subject to clause 16.1, the Trustee has no duty:
  - (i) to effect insurance cover;
  - (ii) to increase insurance cover; or
  - (iii) to maintain any Life Policy.
- (d) If, for any reason, the Trustee fails to insure any benefit payable under this Trust Deed, or if, for any reason, the Life Insurer (with which the Trustee seeks to insure all or any of the benefits payable under this Trust Deed) declines to accept the proposal for insurance or will only accept the proposal

on terms and conditions which the Trustee regards as unacceptable, no Insured Benefit is payable to the Member or the Member's beneficiaries from the Plan.

- (e) If, for any reason, the Life Insurer (with whom all or any part of a benefit payable under this Trust Deed is insured) fails or refuses to pay, or reduces, delays or defers payment of, any part of the Insured Benefit, the Trustee must reduce the Insured Benefit payable to or in respect of a Member from the Plan to the extent of the failure or refusal to pay, or reduction, delay or deferral of payment.
- (f) The Trustee may pay the premiums and costs of any Insured Benefits under a Life Policy maintained in respect of a Member from the Member's Account as the Trustee determines.
- (g) If the balance of the Member's Account is insufficient to meet the premiums and costs of any Insured Benefits or Life Policy attributable to that Member:
  - (i) the Trustee is not bound to pay such premiums and costs from the Plan in respect of the Member; and
  - (ii) the Trustee is not liable to the Member for the Life Insurer:
    - (A) failing to pay, or reducing or deferring payment of the Insured Benefit; or
    - (B) failing to provide cover to the Member under a Life Policy.

## **17 Benefits**

### **17.1 Benefits are payable under the Division Rules**

A Member is entitled to the benefits payable under the rules for their Membership Division.

### **17.2 Adjustment of Benefits**

Unless Superannuation Law provides otherwise, the Trustee may, if it considers appropriate, deduct the amount of any taxes, duties and levies, and any management, administration and other expenses from a Member's benefit.

### **17.3 Preservation of Benefits**

Despite anything to the contrary in the Trust Deed:

- (a) if Superannuation Law requires any benefit or any part of a benefit in respect of a Member to be preserved in the Plan until:
  - (i) the Member attains a particular age; or
  - (ii) the occurrence of a particular event or circumstance in relation to the Member,

that benefit or the relevant part of it must be retained in the Plan until such time as the Trustee is permitted to pay it under Superannuation Law; and

- (b) the Trustee may determine to pay a Member a part of a benefit preserved under paragraph (a) in respect of that Member, if Superannuation Law permits including where the Trustee is satisfied that:
  - (i) the Member is suffering from severe financial hardship; or
  - (ii) the payment is appropriate on compassionate grounds.

#### **17.4 Binding Death Benefit Nominations**

- (a) The Trustee may invite Members of one or more Divisions or categories to provide the Trustee with a Binding Death Benefit Nomination and to confirm or replace a Binding Death Benefit Nomination at least at such times as is required by the SIS Act.
- (b) If the Trustee invites a Member to provide a Binding Death Benefit Nomination under clause 17.4(a), the Trustee must accept a valid Binding Death Benefit Nomination.
- (c) If the Trustee receives an invalid Binding Death Benefit Nomination from a Member, it must notify the Member that the Binding Death Benefit Nomination is invalid and that it will not be binding on the Trustee.
- (d) A Binding Death Benefit Nomination is valid at the time it is received by the Trustee if it complies, on its face, with any requirements for such a nomination under the Superannuation Law.

#### **17.5 Payment of a Death Benefit**

- (a) If, at the date of a Member's Death, the Trustee holds a valid Binding Death Benefit Nomination in respect of the Member, the Trustee must pay the Member's Death Benefit to such one or more of the Member's Dependants and Legal Personal Representative as are nominated in the Binding Death Benefit Nomination.
- (b) If, at the date of the Member's Death, the Trustee does not hold a valid Binding Death Benefit Nomination or if the Binding Death Benefit Nomination is only partly valid, the Trustee must pay the Member's Death Benefit or such part of the Member's Death Benefit to which the Binding Death Benefit Nomination does not apply, to such one or more of the Member's Dependants and Legal Personal Representative and in such manner and proportions as the Trustee determines.
- (c) In considering the payment of a Death Benefit under clause 17.5(b), the Trustee may take into account any expression of the Member's wishes provided to the Trustee.
- (d) A Binding Death Benefit Nomination is valid at the date of a Member's death if, on its face, it complies with any requirements of the Superannuation Law and each person nominated in the Binding Death Benefit Nomination is a Dependant or Legal Personal Representative of the Member on the date of the Member's death. If one or more people nominated in the Binding Death

Benefit Nomination is not a Dependant or Legal Personal Representative of the Member on the date of the Member's death, the Trustee must pay the amount of the Death Benefit that would otherwise have been payable to that person or those people in accordance with clause 17.5(b).

### **17.6 Legal disability**

- (a) If a beneficiary is a minor or otherwise subject to a legal disability, the Trustee may apply any benefit payable in respect of such a beneficiary towards the maintenance, education or advancement or otherwise for the benefit of the beneficiary and for that purpose may pay any moneys or transfer any property to any person who, in its opinion, is a trustee for, or has the custody or control for the time being of, the beneficiary and at such times and in such amounts as it determines.
- (b) The receipt of such a person is a sufficient discharge to the Trustee.
- (c) Where only part of the benefit to which a beneficiary who suffers a legal disability is entitled is applied pursuant to clause 17.6(a), the Trustee must invest the remainder of that benefit for the benefit of the beneficiary.
- (d) The Trustee is not under any duty to have recourse to the powers under this clause 17.6 or to consider whether recourse should be had to that power despite the Trustee's actual knowledge of the legal disability affecting the beneficiary.

### **17.7 Unclaimed benefits**

The Trustee must comply with Superannuation Law in relation to the payment of unclaimed moneys from the Plan if:

- (a) the Trustee is unable to identify and locate a Dependant or Legal Personal Representative of a deceased Member or if a Legal Personal Representative has not been appointed within a reasonable period; or
- (b) in any other case, the Trustee is unable to locate the person to whom a benefit is payable from the Plan within a reasonable period.

### **17.8 Pensions**

On the application of a Member who is entitled to receive a benefit or part of a benefit, the Trustee may, to the extent that Superannuation Law does not provide otherwise, determine:

- (a) to pay a Pension from the Plan to the Member on the terms and conditions set out in Division 4 or as otherwise permitted by the SIS Regulations; or
- (b) to apply the Member's Account Balance to purchase or acquire an annuity in the name of the Member to provide the Member with an income stream, in lieu of paying the benefit to the Member as a lump sum.



## **18 Reserve Accounts**

### **18.1 Operational Risk Reserve**

The Trustee must establish a reserve in the Plan being the 'Operational Risk Reserve' which must be applied, and may only be applied to meet an operational risk loss event in accordance with Superannuation Law.

### **18.2 Reserve accounts**

In addition to the 'Operational Risk Reserve', the Trustee may establish any one or more Accounts as reserve accounts in its absolute discretion and may apply any such accounts for the purposes determined by the Trustee.

### **18.3 Other accounts**

The Trustee may establish such other Accounts as it determines from time to time are necessary or convenient for the administration of the Plan and the Trustee may apply any such accounts for the purposes determined by the Trustee.

## **19 Privacy**

The Trustee will hold, and treat as confidential, all records and information it holds, receives or becomes aware of in relation to Employers, Members or beneficiaries, and will not disclose or make known any such records or information to any third party except as may be required in relation to the administration of the Plan or to facilitate the provision of services or benefits to Members or as may be required by Superannuation Law or as it may otherwise be lawfully required to do except that a Member may authorise the Trustee to release information pertaining to that Member to a third party.

## **20 Disputes and complaints**

- (a) If any dispute or doubt arises as to the interpretation of the Trust Deed or the rights of a Member, an Employer or any other person hereunder, the decision of the Trustee is final and conclusive against all persons other than a court or tribunal to whose jurisdiction the Trustee is subject.
- (b) The Trustee must establish procedures under which:
  - (i) any person entitled to a benefit from the Plan may inquire into, or complain about, the operation or management of the Plan in relation to that person; and
  - (ii) enquiries or complaints will be considered and dealt with within the period (if any) required by Superannuation Law.

## **21 Amendment**

### **21.1 Power**

The Trustee may amend this Trust Deed (including this clause) by a deed of amendment if, in the reasonable opinion of the Trustee, the amendment:

- (a) is in the interests of beneficiaries; and
- (b) would not result in one class of beneficiaries being unfairly advantaged to the prejudice of another class of beneficiaries.

The effective date of the amendment will be the date the deed is made or the date specified in the deed, which may be before the date the deed is made.

## **21.2 Limits on the power to amend**

Unless clause 21.3 applies, the Trustee may not amend this Trust Deed under clause 21.1 if the amendment would, or would authorise the Trustee to:

- (a) reduce the amount standing to a Member's Account immediately prior to the effective date of the amendment or, if the effective date and the date of execution of the deed of amendment are different, immediately prior to either of those dates;
- (b) utilise any Insured Benefit received in respect of a Member for the general purposes of the Plan or for any other purpose apart from payment of the amount to the person or persons entitled in accordance with the terms of this Trust Deed;
- (c) require a Member to contribute to the Plan;
- (d) extinguish any person's beneficial interest in the Plan except in circumstances permitted by the SIS Act;
- (e) increase the obligations of an Employer or detrimentally affect any of the rights of an Employer; or
- (f) reduce the amount of any benefit which, on or prior to the effective date of the amendment, has become payable to a person under this Trust Deed.

## **21.3 Exceptions to limits on power to amend**

The Trustee may amend the Trust Deed in a way that would not be permitted by clause 21.2 if:

- (a) each person who may be adversely affected by the amendment has consented to the amendment; or
- (b) each of the following conditions is met:
  - (i) the amendment is necessary for the Trustee to provide a payment, benefit or service to one or more beneficiaries that had not been permitted because of Superannuation Law but which has been made possible by a change in the Superannuation Law; and
  - (ii) the scope of the amendment does not exceed what is necessary for the Trustee to provide the payment, benefit or service; and
  - (iii) the Trustee obtains an opinion from an independent actuary that the amendment would be in the interests of beneficiaries and would not

result in one class of beneficiaries being unfairly advantaged to the prejudice of another class of beneficiaries; or

- (c) both of the following conditions are met:
  - (i) the amendment is necessary or desirable for the Trustee to:
    - (A) comply with its legal obligations; or
    - (B) secure or better secure relief from taxation in respect of any income of the Plan or any benefits, and
  - (ii) the scope of the amendment does not exceed what is necessary or desirable for the Trustee to comply with its legal obligations to secure or better secure relief from taxation in respect of any income of the Plan or any benefits.

#### **21.4 Accrued benefits**

The Trustee must not make any amendment to the Trust Deed that would cause the Trustee to be in breach of regulation 13.16 of the SIS Regulations.

#### **21.5 Payments to Employers**

The Trustee must not make any amendment to the Trust Deed that would authorise the Trustee to make any payment from the Plan to an Employer except:

- (a) to pay an expense of the Plan; or
- (b) with the consent of at least two-thirds of the Members.

#### **21.6 Amendment is binding**

Each amendment to this Trust Deed is binding on any person with an interest in the Plan or any rights or obligations under this Trust Deed.

#### **21.7 Notice of amendment**

If the Trustee amends this Trust Deed, the Trustee must notify Members of the amendment and the nature and effect of the amendment by:

- (a) including this information on the Plan's website within seven days after the effective date of the amendment; and
- (b) including this information with the next annual report for the Plan, except to the extent that the Trustee has notified Members of the amendment under clause 21.8.

#### **21.8 Notice of a material amendment**

If an amendment to this Trust Deed might reasonably be expected to affect steps taken or not taken by a Member, the Trustee must give the Member notice in writing about the nature and effect of the amendment as soon as practicable and in any event no later than 30 days after the date of the amendment.

### **21.9 Validity of an amendment**

A failure by the Trustee to comply with clause 21.7 or 21.8 will not affect the validity of the amendment.

## **22 Approved Benefit Arrangement**

### **22.1 Transfer from an Approved Benefit Arrangement**

- (a) The Trustee may accept on such terms as the Trustee considers appropriate from any Approved Benefit Arrangement moneys in respect of a person's interest in that Approved Benefit Arrangement, and shall apply the same to the Plan for the purpose of providing benefits for or in respect of that person and admit the person as a Member of the Plan on a basis determined by the Trustee.
- (b) The moneys received by the Trustee under clause 22.1(a) in respect of a person shall be credited to an Account for the Member.

### **22.2 Transfer to an Approved Benefit Arrangement**

- (a) Where a Member becomes a participant in an Approved Benefit Arrangement or where a Member is eligible to join any Approved Benefit Arrangement, the Trustee may, if requested by the Member:
  - (i) pay or transfer to the trustee for the Approved Benefit Arrangement the whole or a part of the Member's Account Balance as determined by the Trustee; and
  - (ii) impose such conditions as it thinks fit in relation to the Member's request,as permitted under the SIS Act.
- (b) A Member or former Member in respect of whom a Member's Account Balance is transferred under this clause 22.2 is not entitled to any other benefit from the Plan in respect of the amount transferred and the Trustee has no liability to that Member in respect of that amount.
- (c) The Trustee is not bound to inquire as to the application of any amount transferred from the Plan to an Approved Benefit Arrangement.

### **22.3 Compulsory Transfers**

The Trustee must, if required to do so by the SIS Act, transfer such part of the benefits of a Member:

- (a) to another Approved Benefit Arrangement for application by the trustee for that Approved Benefit Arrangement; or
- (b) to such other person as required by the SIS Act.

## 22.4 Successor Fund Transfer

- (a) The Trustee may transfer a Member's benefit to an Approved Benefit Arrangement without the consent of the Member where the Approved Benefit Arrangement is a Successor Fund if:
  - (i) the Trustee has determined to terminate the Plan, including to merge the Plan with another regulated superannuation fund;
  - (ii) the Trustee has determined to terminate a Division and the Member is a Member of the Division; or
  - (iii) an Employer is contributing to the Successor Fund for one or more of its Employees and the Member is an Employee of the Employer.
- (b) The Trustee must only exercise its power under this clause if it has provided at least 60 days' notice to the affected Member which contains:
  - (i) the information that the Trustee considers the Member is reasonably likely to need to understand:
    - (A) the effect of the transfer on the Member; and
    - (B) the options available to the Member and how the Member can exercise those options;
  - (ii) tells the Member where they can get further information; and
  - (iii) explains when the transfer will occur if the Member does not make another choice.

## 22.5 Transfer to eligible rollover fund

The Trustee may, in accordance with the SIS Act, transfer a Member's benefits to an eligible rollover fund and shall provide any information to the trustee of the eligible rollover fund at such time and in such manner as required by the SIS Act.

## 23 Winding Up the Plan

### 23.1 Trustee determination

The Trustee may elect to wind up the Plan for any reason determined by the Trustee, including the following circumstances:

- (a) if there are no Members remaining in the Plan; or
- (b) if it is required to do so by the Regulator.

### 23.2 Winding up procedure

If the Trustee determines to wind up the Plan, the Trustee must:

- (a) give written notice to each Employer and Member that the Plan is to terminate on a specified date (**Termination Date**);
- (b) arrange to transfer the benefits of Members to another Approved Benefit Arrangement which is a Successor Fund to the Plan without the consent of Members; or

- (c) arrange to pay or transfer benefits to Members, former Members and beneficiaries in accordance with clause 23.3 after deducting from the assets of the Plan all the costs and expenses of administering and winding up the Plan.

### **23.3 Distribution of benefits**

Subject to Superannuation Law, the Trustee will pay the following benefits in the following order to the extent that the assets of the Plan permit:

- (a) benefits to which any person is entitled at the Termination Date in respect of a Member or former Member; and
- (b) the provision of additional benefits to Members, former Members and their Dependants as the Trustee in its absolute discretion considers appropriate.

## **Appendix 1**

### **Rules for Division 1 – HESTA MySuper**

#### **1 Application of these Rules**

This Appendix applies to:

- (a) the MySuper Product and, if the Trustee is authorised to offer more than one, each MySuper Product separately;
- (b) each MySuper Member to the extent that the Member holds an interest in the MySuper Product; and
- (c) the exclusion of any inconsistent provision of this Trust Deed.

#### **2 Investment of MySuper Product assets**

The Trustee must:

- (a) invest the assets of the Plan that are attributed to the MySuper Product in accordance with a single diversified investment strategy that has been adopted by the Trustee for the MySuper Product; and
- (b) ensure that amounts are not attributed to Members in relation to their interest in the MySuper Product in a way that streams gains or losses that relate to any assets attributed to the MySuper Product only to some of those Members, except to the extent permitted by the SIS Act.

#### **3 Contributions**

A Member or any other person in respect of a Member may contribute any amount and at any time, except to the extent that Superannuation Law imposes or permits a limitation on the source or kind of contributions and, where Superannuation Law permits a limitation, as the Trustee determines.

#### **4 Options, benefits and facilities**

The Trustee must ensure that each Member who holds an interest in the MySuper Product is entitled to the same options, benefits and facilities in relation to that interest.

#### **5 Fees and costs**

- (a) The Trustee must:
  - (i) not charge any fee in relation to the MySuper Product except to the extent that the fee is permitted by the SIS Act; and
  - (ii) adopt the same process in attributing fees and costs to Members of a MySuper Product except to the extent that clause 5(b) of this Appendix applies.

- (b) The Trustee may permit an Employer (**Subsidising Employer**) to subsidise the fees payable by Members in relation to the MySuper Product provided that subsidisation does not favour one Member holding an interest in the MySuper Product employed by the Subsidising Employer over another such Member who is employed by that Subsidising Employer.

## **6 Benefits**

### **6.1 Withdrawal Benefit**

A Member is entitled to the Member's Account Balance on request.

### **6.2 Death Benefit**

If a Member dies, the Trustee must pay the Member's Account Balance and any Insured Benefit (but only if the Insured Benefit has not been included in the Member's Account Balance) to one or more of the Member's Dependants and Legal Personal Representative in accordance with clause 17.5.

### **6.3 Total and Permanent Disablement Benefit**

A Member is entitled the Member's Account Balance and any Insured Benefit (but only if the Insured Benefit has not been included in the Member's Account Balance) on the Member's Total and Permanent Disablement.

### **6.4 Temporary Incapacity Benefit**

A Member is entitled to a Temporary Incapacity benefit if such a benefit is paid to the Trustee by a Life Insurer in respect of the Member.

### **6.5 Pension**

A pension is not payable to any person from the MySuper Product.

## **7 Transferring benefits**

The Trustee cannot transfer a Member's interest in the MySuper Product to another:

- (a) MySuper Product or to a choice product without the Member's consent, which must be given within any period that is specified by the SIS Act; or
- (b) fund without the Member's consent, which must be given within any period that is specified by the SIS Act unless permitted by the SIS Act.



## **Appendix 2**

### **Rules for Division 2 – HESTA Choice**

#### **1 Application of these Rules**

This Appendix applies to:

- (a) the choice product (being one or more classes of interest in the Plan that are neither an interest in the MySuper Product nor a Pension); and
- (b) each Member to the extent that the Member holds an interest in the Plan that is not an interest in the MySuper Product nor a Pension.

#### **2 Benefits**

##### **2.1 Withdrawal Benefit**

A Member is entitled to the Member's Account Balance on request.

##### **2.2 Death Benefit**

If a Member dies, the Trustee must pay the Member's Account Balance and any Insured Benefit (but only if the Insured Benefit has not been included in the Member's Account Balance) to one or more of the Member's Dependents and Legal Personal Representative in accordance with clause 17.5.

##### **2.3 Total and Permanent Disablement Benefit**

A Member is entitled the Member's Account Balance and any Insured Benefit (but only if the Insured Benefit has not been included in the Member's Account Balance) on the Member's Total and Permanent Disablement.

##### **2.4 Temporary Incapacity Benefit**

A Member is entitled to a Temporary Incapacity benefit if such a benefit is paid to the Trustee in respect of the Member.

## **Appendix 3**

### **Rule for Division 3 – HESTA Transition to Retirement Pension**

#### **1 Application of these Rules**

This Appendix applies to:

- (a) the class of interests in the Plan that are Transition to Retirement Pensions; and
- (b) each Member or beneficiary to the extent that the Member or beneficiary is in receipt of a Transition to Retirement Pension.

#### **2 Eligibility**

The Trustee may invite any person who has reached their preservation age, but who has not satisfied a condition of release with a nil cashing restriction, to apply for a Transition to Retirement Pension. The Trustee may require a person, including a Member, applying for a Transition to Retirement Pensioner to complete an application in a form prescribed by the Trustee or, otherwise, to provide such information as the Trustee requires to determine whether to accept the application.

#### **3 Trustee accepts an application**

If the Trustee accepts an application for Membership of Division 3, the Member is admitted as a Member of the Division (and the Plan if they are not already a Member) on the date determined under clause 10.6.

#### **4 Pension commencement date**

The Trustee must pay each Transition to Retirement Pension Member a pension commencing on the day specified in the Member's application, which must not be later than necessary to comply with the pension standards in the SIS Act.

#### **5 Pension termination date**

A Member's Transition to Retirement Pension terminates on the earlier of the date the Member:

- (a) commutes or otherwise terminates the pension; and
- (b) dies without a Reversionary Beneficiary.

#### **6 Transfer to Account-based Pension**

If a Member in receipt of a Transition to Retirement Pension satisfies a condition of release with a nil cashing restriction and notifies the Trustee of that fact or reaches the age of 65, the Trustee must transfer the Member's Account Balance to Division 4 and continue to pay a pension on the terms and conditions that apply to an Account-based Pension in Division 4 unless:

- (a) the Member notifies the Trustee otherwise; or

- (b) the Member's Account Balance is at that time in excess of the 'Transfer Balance Cap' as defined in the *Income Tax Assessment Act 1997*, in which case the Trustee will transfer only that part of the Account Balance that equals the Transfer Balance Cap to Division 4 and will transfer the excess amount to Division 2.

If the Trustee transfers a Member's Account Balance to Division 4 under this rule, the Member's Valid Investment Direction, Binding Death Benefit Nomination and Reversionary Beneficiary nomination (if any) will continue on foot in Division 4.

## **7 Pension payments**

A Transition to Retirement Pension is paid at least annually and:

- (a) the total pension payments in a year (including under a payment split but excluding amounts rolled over) is at least the amount calculated under clause 2 of Schedule 7 of the SIS Regulations; and
- (b) the total pension payments in a year (excluding payments by way of commutation but including payments under a payment split) made in a financial year to amount to no more than 10% of the pension account balance:
  - (i) on 1 July in the financial year in which the payment is made; or
  - (ii) if that year is the year in which the pension commences – on the commencement day,unless the pensioner has satisfied a condition of release in respect of which the cashing restriction is nil;
- (c) if the pension is commuted, the lump sum cannot be cashed unless:
  - (i) the purpose of the commutation is to pay an amount that is permitted under regulation 6.01AB(1)(b)(iii) or 6.01AB(2) of the SIS Regulations; or
  - (ii) before the commutation, the pension satisfied a condition of release in respect of which the cashing restriction is nil; or
  - (iii) the purpose of the commutation is to satisfy an obligation to pay amount to the Commissioner;
- (d) the pension is transferrable to another person only on the death of the beneficiary (primary or reversionary); and
- (e) the capital value of the pension and the income from it cannot be used as a security for a borrowing.

## **8 Death Benefit**

### **8.1 Nominating a Reversionary Beneficiary**

The Trustee may invite an applicant for a Transition to Retirement Pension to nominate a Dependant of the applicant as a Reversionary Beneficiary by providing a notice to the Trustee in any form required by the Trustee.

## **8.2 Death of a Member with a Reversionary Beneficiary**

- (a) If a Member in receipt of a Transition to Retirement Pension dies, the Trustee must continue to pay the pension to the Member's Reversionary Beneficiary if they are eligible to receive the pension either as a Transition to Retirement Pension (because the Reversionary Beneficiary has reached their preservation age but has not satisfied a condition of release with a nil cashing restriction under the SIS Regulations) or an Account-based Pension.
- (b) If the pension will be paid to the Reversionary Beneficiary as an Account-based Pension, the Reversionary Beneficiary will be a beneficiary of Division 4 and the rules applying to that Division will apply to the Reversionary Beneficiary.

## **8.3 Death of a Member without a Reversionary**

If a Member in receipt of a Transition to Retirement Pension dies and the pension is not payable to a Reversionary Beneficiary, the Trustee must pay the Member's Account Balance and any Insured Benefit (but only if the Insured Benefit has not been included in the Member's Account Balance) to one or more of the Member's Dependents and Legal Personal Representative in accordance with clause 17.5.

## **Appendix 4**

### **Division 4 – HESTA Account-based Pension**

#### **1 Application of these Rules**

This Appendix applies to:

- (a) the class of interests in the Plan that are Account-based Pensions; and
- (b) each Member or beneficiary to the extent that the Member or beneficiary is in receipt of an Account-based Pension.

#### **2 Eligibility**

The Trustee may invite any person who has satisfied a condition of release with a nil cashing restriction to apply for an Account-based Pension. The Trustee may require a person applying to become an Account-based Pensioner, including a Member, to complete an application in a form prescribed by the Trustee or, otherwise, to provide such information as the Trustee requires to determine whether to accept the application.

#### **3 Trustee accepts an application**

If the Trustee accepts an application for Membership of the Account-based Pension Division, the Member is admitted as a Member of the Division (and the Plan if they are not already a Member) on the date determined under clause 10.7.

#### **4 Pension commencement date**

The Trustee must pay each Account-based Pension Member a pension commencing on the day specified in the Member's application, which must not be later than necessary to comply with the pension standards in the SIS Act.

#### **5 Pension termination date**

A Member's Account-based Pension terminates on the earliest of the date:

- (a) the Member's Account Balance reaches zero;
- (b) on request by the Member, or when the Member commutes or otherwise terminates the pension; and
- (c) the Member dies without a Reversionary Beneficiary.

#### **6 Pension payments**

An Account-based Pension is paid at least annually and the total pension payments in a year (including under a payment split but excluding amounts rolled over) is at least the amount calculated under clause 2 of Schedule 7 of the SIS Regulations.

## **7 Other conditions**

- (a) The pension is transferrable to another person only on the death of the beneficiary (primary or reversionary).
- (b) The capital value of the pension and the income from it cannot be used as a security for a borrowing.

## **8 Death Benefit**

### **8.1 Nominating a Reversionary Beneficiary**

The Trustee may invite an applicant for a Pension to nominate a Dependant of the applicant as a Reversionary Beneficiary by providing a notice to the Trustee in any form required by the Trustee.

### **8.2 Death of a Member with a Reversionary Beneficiary**

If a Member in receipt of an Account-based Pension dies, the Trustee must continue to pay the pension to the Member's Reversionary Beneficiary if they are eligible to receive an Account-based Pension.

### **8.3 Death of a Member without a Reversionary**

If a Member in receipt of an Account-based Pension dies and the pension is not payable to a Reversionary Beneficiary, the Trustee must pay the Member's Account Balance and any Insured Benefit (but only if the Insured Benefit has not been included in the Member's Account Balance) to one or more of the Member's Dependents and Legal Personal Representative in accordance with clause 17.5.