



# Supplemental Deed

State Super Fixed Term  
Pension Plan  
(to be renamed StatePlus Fixed  
Term Pension Plan)

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State Super Financial Services Australia Limited  
ABN 86 003 742 756 (**Trustee**)

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# Supplemental Deed

## State Super Fixed Term Pension Plan (to be renamed StatePlus Fixed Term Pension Plan)

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### Annexure A – Trust Deed for the StatePlus Fixed Term Pension Plan

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# Details

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Date

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## Parties

Name	<b>State Super Financial Services Australia Limited</b>
ABN	86 003 742 756
Short form name	<b>Trustee</b>
Notice details	Level 7, 83 Clarence Street, Sydney NSW 2000

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## Background

- A The Trustee was appointed under a deed dated 14 July 1999, as amended from time to time (**Trust Deed**), to act as trustee of the State Super Fixed Term Pension Plan (**Trust**) established under the Trust Deed.
- B Clause 39 of the Trust Deed allows the Trustee, by way of supplemental deed, to make any modification, addition or deletion to the Trust Deed.
- C The Trustee has resolved to:
  - (i) change the name of the Trust from 'State Super Fixed Term Pension Plan' to 'StatePlus Fixed Term Pension Plan'; and
  - (ii) amend the Trust Deed in the manner set out in this Supplemental Deed.
- D In the opinion of the Trustee, the amendments to the Trust Deed set out in this Supplemental Deed do not adversely affect the rights of beneficiaries, their claim to accrued benefits or to the amount of those accrued benefits.

# Agreed terms

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## 1. Amendments

The Trustee amends the Trust Deed by:

- (a) deleting all the provisions of the Trust Deed, including Appendix A to the Trust Deed; and
- (b) inserting in their place the provisions and Appendix A contained in Annexure A to this Supplemental Deed.

## 2. Effective time

The amendments set out in clause 1 take effect on the date of execution of this Supplemental Deed.

## 3. Saving Provision

Notwithstanding any other provision in this Supplemental Deed to the contrary, if any amendment contained in this Supplemental Deed is not consistent with, or breaches the restrictions in, the amendment power contained in clause 39 of the Trust Deed, that amendment shall be of no effect and the provisions purported to be amended shall continue to be determined in accordance with the provisions of the Trust Deed as they existed prior to the date of the amendment.

## 4. No re-settlement of trust

This Supplemental Deed shall be construed only as operating to amend the Trust Deed and not establishing a new or different trust or superannuation fund.

## 5. Governing law and jurisdiction

This Supplemental Deed is governed by the laws of New South Wales.

# Signing page

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**EXECUTED** as a deed.

**Executed by State Super Financial Services  
Australia Limited** in accordance with Section 127  
of the *Corporations Act 2001*

\_\_\_\_\_

Signature of director

\_\_\_\_\_

Name of director (print)

\_\_\_\_\_

Signature of director/company secretary  
(Please delete as applicable)

\_\_\_\_\_

Name of director/company secretary (print)



# Annexure A – Trust Deed for the StatePlus Fixed Term Pension Plan

Annexure to Supplemental Deed

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# Agreed terms

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## 1. Definitions

### 1.1 In this Deed:

**Commencement Date** of a Pension means the day on which the Pension commenced being the day on which the Member to whom the Pension first became payable became entitled to the Pension, being the day on which the Trustee processes and accepts the Member's application money.

**CPI-Indexed Pension** means a pension payable under **clause 20.5(b)**.

**Deed** means this deed, including any schedules, as amended from time to time.

**Dependant** has the meaning given to that term in the *Superannuation Industry (Supervision) Act 1993*.

**Fund** means the superannuation fund known as the StatePlus Fixed Term Pension Plan.

**Fund Actuary** means the actuary for the time being appointed as the Fund Actuary pursuant to **clause 15.1**.

**Fund Auditor** means the approved auditor for the time being appointed as the Fund Auditor pursuant to **clause 13.1**.

**LEP** means the life expectancy (in years) of the Member to whom the Pension is payable as at the Commencement Date determined as at the Commencement Date, rounded up to the next whole number if the Member's life expectancy at that time is not a whole number of years, but only if the Member so elects before the Commencement Date PROVIDED THAT for the purposes of determining the LEP of a Member who applied for a Pension on the basis of an offer document which proceeds on the basis that LEP will be rounded up to the next whole number, then the Member shall be deemed to have so elected.

**Member** means a person who has been admitted as a Member under **clause 7.1** or to whom a Pension is payable pursuant to **clause 23.1(a)** and who has not ceased to be a Member pursuant to **clause 7.5**.

**Meeting** means a meeting convened in accordance with the Deed.

**Nominated Dependant** means a Dependant of a Member or deceased Member who is named as such in the Member's Non-Binding Nomination, as provided for in **clause 22**.

**Pension** means a pension payable under the Deed.

**Reserve** means a reserve created by the Trustee in accordance with the Deed.

**Spouse** has the meaning given to that term in the *Superannuation Industry (Supervision) Act 1993*.

**Sub-Fund** means a sub-fund of the Fund (if any) established by the Trustee in accordance with the Deed.

**Superannuation Laws** means:

- (a) the *Superannuation Industry (Supervision) Act 1993*, the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* and the *Termination Payments Tax (Assessment and Collection) Act 1997*, and any other act relating to superannuation with which the

Trustee must comply or which provides for the concessional taxation of superannuation funds; and

- (b) all regulations made under those Acts,

as modified in their application to the Fund by any subsisting declaration, modification or exemption granted by the Superannuation Regulator and, where the Trustee deems appropriate:

- (c) any announcement of a proposed change to any of the above Acts or regulations, whether or not the change is to have retrospective effect; and
- (d) any circular, guideline, ruling, announcement or advice given by the Superannuation Regulator.

**Superannuation Regulator** means the Australian Prudential Regulation Authority, the Australian Securities and Investment Commission, the Commissioner of Taxation and any other regulatory body which has responsibility for the administration and/or regulation of superannuation in Australia from time to time.

**Taxes** means all income, capital gains, superannuation contributions, debits, land and other taxes, stamp, documentary, financial institutions, registration and other duties, excise and any other levies, imposts, deductions, surcharges and charges, related interest and penalties.

**Term** means the term of a Pension, determined in accordance with **clause 20.1** subject to any variation of the Term pursuant to **clauses 7.3, 19.2 or 23.4**.

**Trust Assets** means all property, rights and income of the Fund.

**Trustee** means the trustee of the Fund from time to time.

**Trust Liabilities** do not include Pensions, but do include (without limitation) all liabilities, borrowings, accrued costs, charges, expenses and outgoings, contingent liabilities, provisions, liability to Tax, unpaid remuneration due to the Trustee and any amounts payable to Members or their Dependants other than Pensions.

**Unindexed Pension** means a pension payable under **clause 20.5(a)**.

1.2 In this Deed, unless a contrary intention appears:

- (a) words and phrases used in this Deed have the same meanings as in the Superannuation Laws;
- (b) the singular includes the plural and vice versa; and
- (c) legislation is referred to as amended or replaced from time to time.

## 2. Establishment

By this Deed, the Trustee constitutes the Fund for the benefit of Members and their Dependants, each of whom is bound by this Deed.

### 3. Trustee

- 3.1 The Trustee is appointed as Trustee and consents to the appointment.
- 3.2 Only a single constitutional corporation may be Trustee.

### 4. Interaction with the Superannuation Laws

- 4.1 The Trustee will cause the Fund to become a 'regulated superannuation fund' for the purposes of the Superannuation Laws.
- 4.1A Notwithstanding any other provision contained in this Deed (including any provision which purports to apply notwithstanding the other provisions of this Deed), it is hereby expressly agreed and declared that:
  - (a) this Deed shall at all times be subject to the Superannuation Laws;
  - (b) all standards, covenants, requirements and provisions of the Superannuation Laws (including without limitation any standard prescribed by the SIS Regulations) that must be included in this Deed from time to time in order for the Trust to be a complying superannuation fund in any year of income are deemed to be included in this Deed, whether or not they are explicitly stated in the Deed and in the case of any inconsistency between any standard, covenant, requirement or provision deemed to be included in this Deed pursuant to this clause (deemed provision) and any other provision of this Deed, the deemed provision shall prevail and the other provisions of this Deed shall be deemed to be modified to the extent of the inconsistency. However, if a standard, covenant, requirement or provision is no longer required to be included or the Regulator does not require it to be complied with, then that standard, covenant, requirement or provision ceases to be included by this clause;
  - (c) if a provision of this Deed would otherwise be invalid in whole or in part because it subjects the Trustee to direction by another person then the provision is taken not to subject the Trustee to direction by that person but to give the Trustee the power to treat such a direction as a request only; and
  - (d) if a provision of this Deed would otherwise be invalid in whole or in part because it permits a person to exercise a discretion without the consent of the Trustee then that provision is taken to require the Trustee's consent for the exercise of the discretion.
- 4.2 Notwithstanding any other provision of this Deed, the Trustee is empowered but not required (other than as specified in this Deed) to do or procure to be done or refrain from doing such acts matters and things as in the opinion of the Trustee may be necessary or desirable to enable the Fund to become and continue to be a 'complying superannuation fund' for the purposes of the Superannuation Laws and in order to comply with or satisfy any provision or requirement of the Superannuation Laws.

### 5. Vesting

- 5.1 All the Trust Assets vest in the Trustee on trust for Members.
- 5.2 A Member may neither interfere with, nor exercise the powers of, the Trustee in respect of any Trust Asset or Trust Liability or obligation.

## 6. Fund

- 6.1 The Trustee must hold all Trust Assets as a separate fund which is not available to meet liabilities of any other trust.
- 6.2 The Trustee may, at any time, by deed, divide the Fund into two or more Sub-Funds relating to the interests of different Members.
- 6.3 If the Trustee divides the Fund into two or more Sub-Funds, the assets of any one Sub-Fund are not available to meet the liabilities of any other Sub-Fund.

## 7. Membership

- 7.1 The Trustee may admit as a Member of the Fund and (if there are any) of one or more Sub-Funds, any person eligible under the Superannuation Laws who applies for membership in such manner as the Trustee from time to time determines.
- 7.2 The Trustee may reject any application for membership without giving a reason.
- 7.3 The terms and conditions applicable to a Member's membership of the Fund, including those relating to the Member's Pension and/or any other benefits payable to or in respect of the Member may be varied by agreement between the Trustee and the Member.
- 7.4 A Member shall have no right or interest in the Fund except for such rights and interests as are expressly conferred upon the Member under the provisions contained in this Deed.
- 7.5 A Member ceases to be a Member when:
  - (a) he or she dies;
  - (b) the Pension payable to the Member ceases for any reason.

## 8. Application money

- 8.1 An applicant for Membership or an existing Member (or another person in respect of an applicant or a Member) may at any time pay to the Fund an eligible termination payment to the Trustee by way of application money, to enable the applicant or Member to receive a Pension.
- 8.2 The Trustee may reject any application money without giving a reason.

## 9. Powers

Subject to this Deed:

- (a) the Trustee has within and outside Australia all the powers in relation to the Fund, Trust Assets and Trust Liabilities, that it is legally possible for a natural person or corporation to have, including (but not limited to) to invest in real or personal property of any nature and to incur liabilities and obligations of any kind, as if it were the absolute and beneficial owner of all Trust Assets or to effect any life assurance policy on the life of any Member and for the purposes of removing doubt but without limiting the Trustee's powers in any way, this includes the power to enter into any investment contract or arrangement whatsoever in relation to the Fund, Trust Assets and Trust Liabilities; and
- (b) the Trustee may exercise any powers conferred by the Superannuation Laws including (without limitation) to implement Members' directions.

## 10. Delegation

- 10.1 The Trustee by power of attorney or otherwise, may authorise one or more persons whether or not related to or associated with the Trustee to do anything that the Trustee may do, including, but not limited to, holding any Trust Assets and executing documents on its behalf.
- 10.2 The Trustee may, as it sees fit, in connection with performance of its duties engage (whether or not related to or associated with the Trustee) any administrators, advisers, agents, brokers, contractors, custodians, investment managers, underwriters or other persons.

## 11. Discretion

The Trustee may determine the manner, mode and time of exercise of its powers in its absolute discretion.

## 12. Accounts and records

- 12.1 The Trustee will keep accounts and records for the Fund in accordance with the Superannuation Laws.
- 12.2 The Trustee may establish and maintain such accounts in respect of Members and the Fund as the Trustee considers appropriate.
- 12.3 The Trustee will prepare or cause to be prepared as at the end of the Fund's financial year (or at such other date as the Trustee may determine) a balance sheet and statement of income and expenditure and such other financial statements and records as it deems necessary for the proper operation and control of the Fund.

## 13. Fund Auditor

- 13.1 The Trustee must appoint an approved auditor to act as Fund Auditor, and may replace the Fund Auditor at any time.
- 13.2 If required by the Superannuation Laws, the Fund Auditor must audit the Fund's accounts, in the manner required by the Superannuation Laws, and in accordance with generally accepted accounting principles.

## 14. Valuations

- 14.1 The Trustee is not to be regarded as having any special expertise in valuation.
- 14.2 The Trustee may cause the Trust Assets to be revalued whenever it thinks fit.
- 14.3 Where the Trustee considers it necessary to value the Trust Assets, the value of any asset may be determined by, or by a method determined by, a qualified valuer or the Fund Actuary or such other method as the Trustee decides is appropriate in the circumstances.

## 15. Fund Actuary

- 15.1 If required by the Superannuation Laws, the Trustee must appoint an actuary to act as Fund Actuary, and the Trustee may replace the Fund Actuary at any time.
- 15.2 The Trustee must instruct the Fund Actuary to conduct actuarial investigations of the Fund in accordance with the Superannuation Laws.

## 16. Reserve

- 16.1 At the end of each year of income (or at any other time), the Trustee may, if it considers it appropriate, calculate the amount (**Surplus Amount**) by which:
- (a) the value of all Trust Assets less the sum of all Trust Liabilities and the amount standing to the credit of the Reserve;
- exceeds:
- (b) the sum determined by the Trustee acting on advice received from the Fund Actuary or determined by the Trustee in accordance with a method recommended by the Fund Actuary as the amount required to be set aside and invested to enable the payment out of the Trust Assets of all Pensions.

The Surplus Amount (if positive) shall be credited to the Reserve.

- 16.2 The Trustee may, from time to time in its absolute discretion, to the extent permitted by the Superannuation Laws, apply the amount standing to the credit of the Reserve in one or more of the following ways:
- (a) to pay fees payable to it or to pay expenses or any Taxes;
  - (b) to create or increase:
    - (i) a reserve against future fluctuations in earning rates and/or asset values;
    - (ii) a reserve established for the purpose of facilitating the payment of Pensions; or
    - (iii) such other reserve as the Trustee considers appropriate;
  - (c) in such other manner as the Trustee considers appropriate, having regard to the interests of Members;

and any amount so applied shall be debited to the Reserve.

- 16.3 If the Surplus Amount calculated in the manner described in **clause 16.1** is negative, then the Trustee may take such action as it considers appropriate, after consulting with the Fund Actuary, to ensure, as far as practicable, that the Fund does not become insolvent (or, if the Fund is insolvent, so that it becomes solvent), including but not limited to reducing Pensions and/or terminating the Fund.

## 17. Provision for Taxes

The Trustee may take any action it considers appropriate to provide for Taxes in respect of the Fund's income (including application money received) and Pensions and any other benefits paid or payable from the Fund. Without limiting the foregoing, the Trustee may make provisions or reserves or open accounts in respect of any Tax which the Trustee believes will be payable and may pay amounts from the Fund to the relevant government authorities in respect of Taxes assessed or estimated.

## 18. Outgoings and recoveries

- 18.1 All costs, charges, expenses and outgoings reasonably and properly incurred by the Trustee in connection with the performance of its duties or the exercise of its rights or powers or administration or termination of the Fund are payable or reimbursable out of the Trust Assets (and if referable to more than one Sub-Fund, apportioned in a manner determined by the Trustee).
- 18.2 Without limiting **clauses 17 and 18.1**, each Member or other recipient of a Pension or other benefit pursuant to this Deed is liable for all Taxes and costs in relation to the application money

paid in respect of the Pension, the entitlement of the Member or other recipient to a Pension or any other amounts, or any act requested by that Member or other recipient.

18.3 Without limiting **clauses 17, 18.1 and 18.2**, the Trustee may:

- (a) withhold payment of a Pension or any other money payable to a Member or other recipient until any liability of the kind referred to in **clause 18.2 (Liability)** is discharged;
- (b) meet the Liability and deduct the amount from any Pension payable to or in respect of the Member or other recipient;
- (c) if permitted by the Superannuation Laws, commute part or the whole of any Pension and apply the proceeds of commutation to meet the Liability; or
- (d) at its discretion, recover the amount of the Liability from any other money or property held for or in respect of the Member or other recipient.

18.4 Without limiting **clauses 17, 18.1, 18.2 and 18.3** if the Trustee determines that insufficient Tax was deducted from any Pension or other benefit paid under this Deed, an amount which the Trustee determines the Member or other recipient was not entitled to be paid may be deducted from any Pension payable to such Member or other recipient or (failing which) must be repaid to the Trustee on demand.

## 19. Pensions - general requirements

19.1 Pensions payable from the Fund must comply with any applicable requirements of the Superannuation Laws.

19.2 If the Trustee considers that a Pension is intended to comply with particular standards prescribed under the Superannuation Laws (or any other requirements set out in any other Act that may directly or indirectly provide any benefit or advantage in relation to the Fund or the Member, as the case may be):

- (a) the Trustee may in its absolute discretion (but is not required to) determine that the terms and conditions on which the Pension is provided will be subject to such requirements as the Trustee considers will ensure that the Pension does and will continue to comply with those standards; and
- (b) this Deed is deemed to include those requirements and those standards, but only to the extent that the Deed relates to that particular Pension.

Any determination by the Trustee under this clause will override any terms and conditions relating to the Pension (whether or not contained in this Deed).

19.3 Neither the capital value (if any) of any Pension nor any income from it may be used as security for a borrowing or mortgaged or encumbered in any manner.

19.4 A Member must not assign or transfer his or her Pension.

19.5 Notwithstanding any other provision of this Deed to the contrary, Pensions are only payable:

- (a) from the Trust Assets; and
- (b) to the extent that Trust Assets are available to meet the Pension payments as they fall due.

## 20. Payment of Pensions

20.1 Pensions commence on the Commencement Date and are payable for:

- (a) the fixed term commencing on the Commencement Date agreed between the Trustee and the Member before the commencement of the Pension; or

- (b) in the absence of such agreement, the fixed term commencing on the Commencement Date determined by the Trustee;

PROVIDED THAT if required by the Superannuation Laws:

- (c) if the Member's life expectancy as at the Commencement Date is less than 15 years, the term of the Pension must be equal to LEP;
- (d) otherwise, the term of the Pension must be not less than 15 years and not greater than LEP.

20.2 Pensions must be paid at least annually.

20.3 Subject to **clause 20.2**, the annual amount of the Pension will be paid by instalments of such amounts and on such dates as agreed between the Trustee and the Member before the commencement of the Pension or, in the absence of agreement, as the Trustee determines.

20.4 The Trustee may pay:

- (a) Unindexed Pensions;
- (b) CPI-Indexed Pensions; or
- (c) any other forms of Pension, on such terms and conditions as the Trustee may determine.

20.5 In the case of Unindexed Pensions and CPI-Indexed Pensions, the annual amount of Pension payable to a Member will be:

- (a) for Unindexed Pensions:

The fixed sum agreed between the Trustee and the Member before the commencement of the Pension or, in the absence of such agreement, the fixed sum determined by the Trustee.

- (b) for CPI-Indexed Pensions:

- (i) from the Commencement Date until the first 30 June after the date of the first Pension payment (**Initial Period**) - the fixed sum agreed between the Trustee and the Member before the commencement of the Pension or, in the absence of such agreement, the fixed sum determined by the Trustee; and
- (ii) for the year commencing on the 1 July immediately after the Initial Period (**First Indexation Date**) and thereafter for each subsequent year (or any final part year) commencing 1 July (**Indexation Date**) the sum calculated in accordance with the following formula:

$$A + (A \times B\%)$$

where:

**A** = the annual amount of the pension as at the 30 June immediately preceding the Indexation Date; and

**B** = (i) the increase in the Consumer Price Index (All Groups: All Capital Cities):

from: the 31 March preceding the Indexation Date on which the CPI-Indexed Pension was most recently increased under this formula or (if no such increase has occurred during the Term of the Pension) from the 31 March preceding the 1 July preceding the First Indexation Date;

to: the 31 March preceding the relevant Indexation Date,

expressed as a percentage, to the nearest two decimal places; or



- (ii) if no such increase has occurred, zero.

## 21. Commutation of Pensions

- 21.1 (a) Subject to paragraph (b), at the request of the Member, the Trustee may, in its absolute discretion, commute part or the whole of any Pension to a lump sum payment upon such terms and conditions as the Trustee determines from time to time.
- (b) Pensions may not be commuted except as permitted by the Superannuation Laws.
- 21.2 The lump sum payment arising from the commutation of all or part of any Pension must not exceed the lesser of:
- (a) if particular Trust Assets are held by the Trustee in order to fund that Pension, the amount the Trustee may recover from or under those Trust Assets; and
- (b) the maximum amount permitted by the Superannuation Laws.
- 21.3 Where the Trustee determines to commute part only of a Pension, the Trustee must adjust the instalments of the remaining portion of the Pension by such amount as it considers appropriate to take account of the commutation.

## 22. Non-Binding Nominations

- 22.1 Subject to the Superannuation Laws and **clause 22.2**, a Member may request at any time in such manner as the Trustee from time to time determines (**Non-Binding Nomination**) that following the Member's death either:
- (a) the remaining part of his or her Pension shall be paid to the Member's Nominated Dependant; or
- (b) the remaining portion of his or her Pension shall be applied in paying a lump sum benefit to the Member's Nominated Dependant.

The Trustee may at its discretion allow a Member to give a Non-Binding Nomination which provides for a combination of paragraphs (a) and (b).

- 22.2 A Member who became entitled to a Pension as a result of being the Dependant of a deceased Member is not entitled to make a Non-Binding Nomination.
- 22.3 Subject to the Superannuation Laws, a Member may revoke his or her Non-Binding Nomination at any time by giving notice in writing to the Trustee to that effect and may at the same time or at any time thereafter give the Trustee a further Non-Binding Nomination. Any Non-Binding Nomination received by the Trustee automatically revokes any previous Non-Binding Nomination. The death of the Member's Nominated Dependant before the death of the Member shall automatically revoke the Member's Non-Binding Nomination.
- 22.4 The Trustee may have regard to but is not bound to give effect to any Non-Binding Nomination.
- 22.5 All Spouse Nominations:
- (a) given to the Trustee under the provisions of this Deed as in force immediately prior to 16 February 2004 (**Effective Date**); and
- (b) received by the Trustee prior to the Effective Date,
- are taken to be Non-Binding Nominations for the purposes of **clause 22**.

## 23. Death of a Member

- 23.1 As soon as reasonably practical following the Trustee's receipt of notification that a Member has died, the Trustee must apply the Member's Pension in any one or more of the following ways (and if more than one, in such proportions as the Trustee decides) in its absolute discretion:
- (a) to pay the deceased Member's Pension (or portion of it) to the Member's Dependant (whether or not the Member's Dependant is a Nominated Dependant);
  - (b) to pay the deceased Member's Pension (or a portion of it) to the deceased Member's legal personal representative;
  - (c) to pay a lump sum benefit to the deceased Member's Dependant (whether or not the Member's Dependant is a Nominated Dependant) equal to the value (as determined by the Trustee) of any balance of the deceased Member's Pension (or a portion of it);
  - (d) to pay a lump sum benefit to the deceased Member's legal personal representative (whether or not there is any Nominated Spouse) to the value (as determined by the Trustee) of any balance of the deceased Member's Pension (or a portion of it).
- 23.2 If the deceased Member's Pension is required to be dealt with on some other basis than as set out in **clause 23.1** for the Fund to comply with the Superannuation Laws, it will be dealt with on that basis.
- 23.3 If the Trustee decides to pay a deceased Member's Pension (or a portion of it) to the deceased Member's Dependant pursuant to **clause 23.1**:
- (a) the Pension continues on the same terms and conditions as applied to the Pension when it was payable to the deceased Member (subject to such reduction in the amount of the Pension as the Trustee considers appropriate where only a portion of the Pension is to be paid to the deceased Member's Dependant);
  - (b) the deceased Member's Dependant becomes a Member with effect from such date as the Trustee decides and except as otherwise specifically stated in this Deed may exercise all powers and rights conferred on a Member by this Deed.
- 23.4 With the consent of the Trustee and to the extent permitted by the Superannuation Laws, when a Pension becomes payable to a deceased Member's Dependant pursuant to **clause 23.1(a)**, the deceased Member's Dependant may elect to vary the Term of the Pension, in which case the annual amount of the Pension shall be adjusted in such manner as the Trustee considers appropriate to take account of the variation.

## 24. Transfers

- 24.1 At the request of the Member and subject to the Superannuation Laws, the Trustee may receive from another superannuation fund or arrangement, approved deposit fund, eligible rollover fund or annuity provider any eligible termination payment as requested by the Member, on such terms and conditions as may be agreed between the Trustee and the Member or as determined by the Trustee.

- 24.2 Subject to the Superannuation Laws, the Trustee may pay to a complying superannuation fund or annuity provider all or any part of a Member's entitlement in the Fund, on such terms and conditions as may be agreed between the Trustee and the Member or as determined by the Trustee.
- 24.3 A payment of any amount of a Member's entitlement made under **clause 24.2** will be in complete discharge and satisfaction of the Trustee's obligations to the Member in respect of that amount.

## 25. Payments

- 25.1 Any money payable by the Trustee to any Member or other person to whom a benefit is payable under this Deed may be deposited into an account with a bank or other financial institution nominated by the Member or other recipient and accepted by the Trustee, or applied in any other manner which the Member or other recipient in writing directs and which the Trustee approves, or (at the option of the Trustee) paid by cheque posted to the Member or other recipient.
- 25.2 If a Member fails to nominate an account for payment in accordance with **clause 25.1** which is acceptable to the Trustee, the Trustee may treat the Member as having requested a commutation of his or her Pension under **clause 21**.

## 26. Unclaimed money

The Trustee may deal with any unclaimed money in the manner specified in the Superannuation Laws.

## 27. Incapacity

- 27.1 Where a person to whom a Pension or any other benefits are payable under this Deed is a minor, the Trustee may pay the Pension or other benefit to any other person for application on behalf of that minor and the receipt of the person to whom the Pension or other benefit is so paid will be a complete discharge to the Trustee in respect of the Pension or other benefit.
- 27.2 If a Member or other recipient of a benefit is declared mentally ill or becomes liable to have his or her affairs dealt with under the laws relating to mental health or if the Trustee is of the opinion that the Member or recipient is incapable of managing his or her affairs, the Trustee may, in its discretion and to the extent permitted by the Superannuation Laws, determine that the Member or recipient will cease to be entitled to receive the Pension or other benefit, in which case the Trustee may:
- (a) apply the Pension or other benefit to or for the benefit of the Member or the recipient and/or the Dependants of the Member or recipient;
  - (b) treat the Member or recipient's Pension as having been commuted, and apply the commuted value of the Pension to or for the benefit of the Member or recipient and/or the Dependants of the Member or recipient; or
  - (c) apply the Member or recipient's Pension or other benefits in such other way as is permitted by the Superannuation Laws.

## 28. Independent rights

- 28.1 The Trustee and any related corporation or associate of the Trustee may, subject always to acting in good faith to Members, deal in any capacity with the Fund or act in any capacity in relation to any other trusts, without in any such case being liable to account to the Fund or to any Member.

- 28.2 No person who is or was a director or officer of either the Trustee or any related corporation or associate of the Trustee is prohibited from becoming a Member.

## 29. Trustee Fee

- 29.1 The Trustee is entitled to be paid and retain out of the Fund fees for acting as trustee of the Fund as set out in Appendix A to this Deed.
- 29.2 The Trustee's fees will be payable monthly (or at such other intervals as the Trustee determines) on such dates as the Trustee decides.
- 29.3 The fees payable to the Trustee may be paid out of Trust Assets and, in the case of any fee that relates to a particular Member or other person, may be deducted from any Pension or from any other amount payable to that Member or other person.
- 29.4 The Trustee may in its absolute discretion from time to time waive or reduce the fees otherwise payable to it either generally or in any particular case.

## 30. Indemnity and liability

- 30.1 Except where the Trustee:
- (a) fails to act honestly in a matter concerning the Fund; or
  - (b) intentionally or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee was required to exercise; or
  - (c) unless the liability is for a monetary penalty under a civil penalty order imposed under the Superannuation Laws;

the Trustee:

- (i) shall not be liable for any loss or breach of trust; and
- (ii) is indemnified out of the Trust Assets against all liabilities, losses, costs and expenses incurred in the exercise or purported exercise of the Trustee's powers.

- 30.2 Except where a director or officer of the Trustee:

- (a) fails to act honestly in a matter concerning the Fund; or
- (b) intentionally or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the director or officer was required to exercise; or
- (c) unless the liability is for a monetary penalty under a civil penalty order imposed under the Superannuation Laws:

the director or officer of the Trustee:

- (i) shall not be liable for any loss or breach of trust; and
- (ii) is indemnified out of the Trust Assets against all liabilities, losses, costs and expenses incurred in the exercise or purported exercise of the director's or officer's or the Trustee's powers.

## 31. Liability of the Trustee

- 31.1 To the extent permitted by the Superannuation Laws, the Trustee shall not be liable to the Members or any other beneficiaries to any greater extent than in respect of the Trust Assets actually vested in the Trustee or received by it in accordance with the provisions of this Deed.

- 31.2 The Trustee is not required to do anything for which it does not have a full right of indemnity out of Trust Assets.
- 31.3 Any indemnity to which the Trustee is entitled under this Deed is in addition to any indemnity allowed by law.

## 32. Liability of Members

- 32.1 Recourse of the Trustee and Fund creditors is limited to the Trust Assets.
- 32.2 Any relationship of agency between the Trustee and any Member or Dependant of a Member is expressly excluded.

## 33. Duration

The Fund begins on the date of this Deed and ends when the Trustee decides to terminate the Fund.

## 34. Termination

- 34.1 On termination of the Fund, all Pensions will cease and the Trustee will distribute the Trust Assets, after deducting from the Trust Assets the cost of administering and winding up the Fund and such allowance for Trust Liabilities as the Trustee considers appropriate, amongst the Members and any other person or persons who may be in receipt of Pensions at the date of termination of the Fund.
- 34.2 The distribution referred to in **clause 34.1** will be made pro rata to the net present value of the Pension payable to the Member or other person at the date of termination of the Fund, as determined by the Trustee.
- 34.3 Any distribution of Trust Assets on termination in accordance with this **clause 34** will be a full discharge of all claims in respect of the Fund.

## 35. Trustee's retirement

- 35.1 The Trustee may, by deed, retire as Trustee of the Fund.
- 35.2 The Trustee may, by deed, appoint a new Trustee.

## 36. Meetings

- 36.1 The Trustee, by at least 14 days' written notice to the Members, may convene a Meeting of Members in the Fund.
- 36.2 Accidental omission to give notice to, or non-receipt of notice by, a Member, does not invalidate a Meeting nor any resolution passed at a Meeting.
- 36.3 At a Meeting, each Member is entitled to vote personally or by proxy.
- 36.4 The rules for proxy voting will be as determined by the Trustee from time to time.
- 36.5 A proxy given by facsimile may be accepted if the Trustee has no reason to believe that it is not genuine and receives the original by close of business on the date 2 business days before the date of the Meeting.
- 36.6 A Member's proxy is invalid only if it is more than 12 months old or when the Trustee receives written notice of revocation, or of the death or insanity of that Member.

36.7 Any persons nominated by the Trustee may attend and speak at any Meeting.

## 37. Conduct of meetings

37.1 The Trustee may nominate the chairperson, who need not be a Member, of any Meeting.

37.2 The quorum for a Meeting is the greater of:

(a) 2 Members; and

(b) 0.01% of the Members in number, rounded up to the next highest number.

37.3 If a quorum is not present within 15 minutes after the Meeting is due to start, then the Meeting stands adjourned to such place and time as the Trustee determines.

37.4 At an adjourned Meeting, Members and persons holding proxies present when the adjourned Meeting is due to start will constitute a quorum.

37.5 Every question arising at a Meeting shall be decided by a show of hands, unless a poll is demanded (before or on the declaration of the result) by the chairperson.

37.6 Each Member is entitled to 1 vote on a show of hands and 1 vote on a poll.

37.7 A resolution is passed if a simple majority of votes cast are in favour.

37.8 The chairperson's declaration of the validity of any vote and the result of voting is conclusive.

37.9 The chairperson may adjourn any Meeting (other than adjournment of a Meeting for lack of a quorum) to such time and place as the chairperson sees fit.

37.10 A resolution duly passed binds all Members, whether or not present at the Meeting.

37.11 Minutes of a Meeting signed by the chairperson constitute conclusive evidence of the proceedings of the Meeting.

## 38. Postal ballot

Subject to the Superannuation Laws, any Meeting may be conducted by postal ballot in accordance with such arrangements as the Trustee determines reflecting, as closely as may be practicable, the provisions of this Deed with respect to Meetings.

## 39. Deed amendments

Subject to the Superannuation Laws, the Trustee may, by supplemental deed, make any modification, addition or deletion to this Deed.

## 40. Governing law

The Deed is governed by the laws of New South Wales.

# Appendix A - Trustee's Fee (clause 29.1)

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## I General

1. The Trustee is entitled to a monthly fee (**Trustee Fee**) in respect of each Pension.
2. The amount of the Trustee's Fee payable each month in respect of each Pension (**Trustee's Fee Amount**):
  - (a) for an Unindexed Pension, is calculated on or before the Commencement Date of the Pension in accordance with Part II of this Appendix;
  - (b) for a CPI-Indexed Pension, is calculated in accordance with Part III of this Appendix on the basis that 'IF' (referred to in Part III of this Appendix and representing the Trustee's Fee Amount in respect of the 'Initial Period' as defined in Part III of this Appendix) is calculated on or before the Commencement Date of the Pension.
3. The fee is payable by the Member or other person who, for the time being, is the recipient of the Pension.
4. The Trustee's Fee in respect of a Pension ceases on the first to occur of the following:
  - (a) the last day of the Term of the Pension;
  - (b) the date on which the whole of the Pension is commuted to a lump sum; or
  - (c) if the Member to whom the Pension was being paid dies and the Trustee decides not to pay any of the Pension to the deceased Member's Dependant or legal personal representative, the date on which the Trustee so decides.

## II Trustee's Fee For an Unindexed Pension

$$\text{Trustee's Fee Amount} = \left[ \frac{Y/12}{A} - \frac{F/12}{B} \right] \times 1$$

where:

**I** = the net amount of the application money paid to the Trustee to enable the Pension to be provided

**Y** = As the Trustee considers appropriate, either:

- (a) the gross nominal annual yield convertible monthly (i.e. the gross effective monthly yield multiplied by twelve) expected to be received from Trust Assets referable to the Pension over the Term of the Pension, as quoted by the provider of any investment product in which the Trustee invests the Trust Assets or by any investment manager appointed to manage the Trust Assets (expressed as a percentage and rounded to the nearest three decimal places); or
- (b) an estimate of the gross nominal annual yield convertible monthly (i.e. the gross effective monthly yield multiplied by twelve) which the Trustee expects to receive from Trust Assets referable to the Pension over the Term of the Pension, as determined by the Trustee (in accordance with a method approved by the Fund Actuary) as at the Pension's Commencement Date (expressed as a percentage and rounded to the nearest three decimal places).

**F** = (Y minus R)

**R** = 4% per annum

$$\mathbf{A} = Y/12 + 1 - \left[ \frac{1}{1 + Y/12} \right]^{N-1}$$

$$\mathbf{B} = F/12 + 1 - \left[ \frac{1}{1 + Y/12} \right]^{N-1}$$

**N** = the number of monthly Pension payments over the full term of the Pension

### III Trustee's Fee for a CPI-Indexed Pension

The Trustee's Fee Amount shall be calculated as follows:

1. in respect of the period from the commencement of the Pension up to the first occasion on which the Pension is increased in accordance with the formula in **clause 20.5(b) (Initial Period)**, the Trustee's Fee Amount is calculated in accordance with the formula for an Unindexed Pension;
2. in respect of each subsequent period during the term of the Pension, the Trustee's Fee Amount shall be equal to:

$$\frac{\mathbf{IF} \times \mathbf{C}}{\mathbf{I}}$$

where:

**IF** = the Trustee's Fee Amount in respect of the Initial Period;

**C** = the annual amount of the Pension during the relevant period;

**I** = the annual amount of the Pension during the Initial Period.