

First State Superannuation Scheme

Appendix – Rules for the First State Superannuation Scheme

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SECTION 1 - RULES APPLYING TO ALL SECTIONS

FIRST STATE SUPERANNUATION SCHEME RULES

SECTION 1 - RULES APPLYING TO ALL SECTIONS

1. THE RULES

About the Rules

- 1.1 This document sets out the Rules of the Fund, as contemplated by the Trust Deed.
- 1.2 The Rules are divided into the provisions applying to all Sections in Section 1, the additional provisions for the Accumulation Section in Section 2, additional provisions for the Defined Benefit Section in Section 3, including the provisions for the Health Super DB Fund, and the additional provisions for the StatePlus Section in Section 4. Each Section of the Rules is then further divided into divisions containing provisions which apply to all members in the Section and divisions governing specific groups and categories of members in the Section.
- 1.3 If there is a conflict between the Rules in this Section 1 and:
- (a) any provision of Section 2, then the provision in Section 2 prevails; or
 - (b) any provision of Section 3 (including the HS DB Rules), then the provision in Section 3 prevails; or
 - (c) any provision of Section 4, then the provision in Section 4 prevails,
- unless expressly indicated otherwise.
- 1.4 Some requirements of superannuation law are treated as if they are included in the Rules, as contemplated by Rule 21 of Section 1.
- 1.5 Unless prohibited under the Rules, or a special arrangement, the Trustee may do anything which it is permitted to do under superannuation law.

Special arrangements

- 1.6 The Trustee may:
- (a) enter into a special arrangement; or
 - (b) by resolution, establish a special arrangement,
- which applies in respect of a member, or a group of members and any *beneficiaries* who have a right or entitlement through them.

Note: Rule 19 sets out the types of special arrangement that the Trustee may enter into or establish.

Amending the Rules

- 1.7 The Trustee's power to amend the Rules is set out in clause 5 of the Trust Deed.

Rights and entitlements

- 1.8 Subject to superannuation law, the rights and entitlements of each *beneficiary* and participating employer are limited to those set out in the

SECTION 1 - RULES APPLYING TO ALL SECTIONS

Trust Deed, the Rules, and any applicable special arrangement, and they have no other rights against, or entitlements from, the Trustee or the Fund. Where a *beneficiary* or participating employer exercises, or receives a benefit under a right or entitlement, they become bound by the Trust Deed and Rules and all special arrangements in respect of that right or entitlement.

Note: The term “beneficiary” is defined in section 10 of SIS to include a member and any other person who has a beneficial interest in the Fund.

- 1.9 If a person loses a right to which he or she is entitled under the Rules or a special arrangement as a consequence of failing to exercise that right, the Trustee may allow the person to exercise the right on conditions that the Trustee determines.

Interpretation 1.10 Rule 22 of Section 1 sets out how the Rules must be interpreted.

Meaning of words and expressions 1.11 Some words and expressions used in the Rules have a particular meaning. These words and expressions:

- (a) have the same meaning as in SIS, if they are shown in *italics*; or
- (b) are explained in the Dictionary in Rule 23 of Section 1; or
- (c) are explained in the Dictionary in the relevant Division of the Rules.

2. THE FUND

Nature of the Fund 2.1 The Fund is an indefinitely continuing superannuation fund which is maintained solely for:

- (a) one or more core purposes; and
- (b) one or more ancillary purposes,

as set out in SIS.

Note: The “core purposes” and the “ancillary purposes” are set out in section 62 of SIS (being what is generally referred to as the “sole purpose test”).

Election and registration 2.2 The Trustee has:

- (a) elected that SIS apply in relation to the Fund (with effect from the transition date), so that the Fund is a *regulated superannuation fund*; and

- (b) registered the Fund with APRA .

Note: The Trustee may elect that the Fund be a regulated superannuation fund under section 19 of SIS. The Fund, once a regulated superannuation fund, must be registered under Part 2B of SIS.

Sections 2.3 Members of the Fund may be grouped within Sections if the Trustee considers it convenient to manage the Fund in that way. The interests of each member in a Section are determined by reference to the provisions governing that Section.

SECTION 1 - RULES APPLYING TO ALL SECTIONS

2.4 The Trustee may, by resolution, create Sections within the Fund, close a Section or merge Sections.

2.5 The Fund consists of:

- (a) an Accumulation Section;
- (b) a Defined Benefits Section; and
- (c) a StatePlus Section.

2.6 A Section is not:

- (a) a sub-plan;
- (b) a sub-fund; or
- (c) a separate fund or trust,

unless the Trustee determines it to be so.

Divisions

2.7 Members of the Fund may be grouped within Divisions of a Section if the Trustee considers it convenient to manage the Fund in that way.

2.8 The Trustee may, by resolution, create Divisions within a Section of the Fund, close a Division or merge Divisions.

2.9 The Fund consists of:

- (a) the following Divisions within the Accumulation Section:
 - (i) the First State Super Accumulation and Pension Division; and
 - (ii) the Health Super Accumulation Division;
- (b) the following Divisions within the Defined Benefits Section:
 - (i) the Health Super DB Division (to be known as the Health Super DB Fund) comprising:
 - (A) Division 3C; and
 - (B) Division 3D; and
- (c) the following Divisions with the StatePlus Section:
 - (i) Division 4B (the Personal Retirement Plan Division); and
 - (ii) Division 4C (the Tailored Super Plan Division); and
 - (iii) Division 4D (the Allocated Pension and Term Allocated Pension Division); and
 - (iv) Division 4E (the Flexible Income Plan Division); and

SECTION 1 - RULES APPLYING TO ALL SECTIONS

- (v) Division 4F (the Transition to Retirement Division).

2.10 A Division is not:

- (a) a sub-plan;
- (b) a sub-fund; or
- (c) a separate fund or trust,

unless the Trustee determines it to be so.

Note: Corporations Regulation 7.9.02 sets out the matters that the Trustee must have regard to when making a determination as to whether a sub-plan should be made.

2.10A The interests of each beneficiary of a Division are determined by reference only to the provisions of that Division.

Sub-fund

2.11 Members of the Fund may be grouped within sub-funds (within the meaning of SIS) if the Trustee considers it convenient to manage the Fund in that way.

2.12 The Trustee may, by resolution or by deed, create sub-funds within the Fund, close a sub-fund or merge sub-funds.

2.13 A sub-fund must at all times have separately identifiable assets and separately identified beneficiaries.

2.14 The interests of each beneficiary of a sub-fund are to be determined by reference only to the provisions governing that sub-fund.

2.15 The Defined Benefits Section includes a sub-fund known as the Health Super DB Fund.

2.16 A sub-fund will be held by the Trustee within the Fund as part of the one regulated superannuation fund and not as a separate regulated superannuation fund.

Sub-plans

2.17 Members of the Fund may be grouped within sub-plans (within the meaning of the Corporations Act) if the Trustee considers it convenient to manage the Fund in that way.

2.18 The Trustee may, by resolution, create sub-plans within the Fund, close a sub-plan or merge sub-plans.

2.19 The Fund has no sub-plans.

2.20 A sub-plan is not a separate fund or trust.

Accounts

2.21 The Trustee may:

- (a) establish, close or merge accounts in respect of a member; and
- (b) by resolution, establish other accounts (including reserve accounts) within the Fund, and close or merge such accounts, as the Trustee considers appropriate or convenient to manage the Fund.

SECTION 1 - RULES APPLYING TO ALL SECTIONS

Note: Section 115 of SIS permits a trustee of a regulated superannuation fund to maintain reserves, as long as the governing rules of the Fund do not prohibit this.

Terminating the Fund 2.22 The Fund may be closed to *contributions* or terminated as set out in Rule 20 of Section 1.

3. THE TRUSTEE

Eligibility 3.1 The Fund must have a trustee and the trustee must be a *constitutional corporation*.

3.2 The Trustee:

- (a) must hold an *RSE licence* and an Australian financial services licence;
- (b) must comply with the basic equal representation rules, as set out in SIS; and
- (c) may appoint an *independent director* if the constituent document of the Trustee:
 - (i) permits the appointment of an *independent director*; and
 - (ii) does not permit the *independent director* to exercise a casting vote in any proceedings of the board of the Trustee.

Note: "RSE licence" means a licence granted under section 29D of SIS. "Australian financial services licence" means a licence granted under section 913B of the Corporations Act. The basic equal representation rules are set out in Part 9 of SIS. "Independent director" is defined in section 10 of SIS and restrictions are placed on an independent director under section 89(2) of SIS.

Appointment and retirement 3.3 FSS Trustee Corporation was the Trustee of the Fund before the transition date and continues in that capacity after the transition date. The Trustee continues to hold the *assets* of the Fund on trust for the *beneficiaries*.

Note: FSS Trustee Corporation was a body corporate constituted under the Superannuation Administration Act 1996 (NSW). Shortly prior to the transition date, FSS Trustee Corporation became a corporation registered under the Corporations Act.

3.4 The Trustee may retire if:

- (a) the Trustee first enters into a deed (**retirement and appointment deed**) with a *constitutional corporation* which holds an *RSE licence* and an Australian financial services *licence* (**new trustee**);
- (b) the retirement and appointment deed records the Trustee's retirement and the new trustee's appointment, as Trustee of the Fund; and
- (c) the Trustee transfers the assets of the Fund to the new trustee, and does all consequential things reasonably required of it, in accordance with the retirement and appointment deed.

SECTION 1 - RULES APPLYING TO ALL SECTIONS

3.5 The Trustee must cease being the Trustee of the Fund if it:

- (a) becomes a disqualified person; or
- (b) otherwise ceases to qualify as a trustee of a *regulated superannuation fund* under superannuation law.

Note: Section 120 of SIS sets out when a person is a "disqualified person".

Removal

3.6 The Trustee may only be removed by APRA.

Note: Section 60A of SIS sets out the circumstances in which a trustee of a public offer entity may be removed.

Powers and covenants

3.7 The Trustee has the powers set out in Rule 16 of Section 1.

3.8 The Trustee covenants to act, or refrain from acting, in accordance with the covenants that SIS deems to be included in the Rules. This Rule 3.8 prevails over any inconsistent Rule.

Note: Section 52 of SIS sets out the deemed covenants.

Trustee fee

3.9 The Trustee may determine and charge a fee, to be retained for the Trustee's own purposes, for any of the duties or services that the Trustee performs in its capacity as trustee of the Fund (**Trustee fee**). The Trustee fee may be deducted from the Fund in the manner determined by the Trustee.

3.10 The Trustee fee may be charged at intervals during a *year of income*, in the proportion that the interval bears to the *year of income*, as at the date that the instalment of the Trustee fee is charged.

Liability and indemnity

3.11 The Trustee is entitled to be indemnified out of the *assets* of the Fund in respect of any liability incurred while acting as trustee of the Fund, except in relation to:

- (a) liability for breach of trust if the Trustee:
 - (i) fails to act honestly in a matter concerning the Fund; or
 - (ii) intentionally or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care or diligence that the Trustee was required to exercise; or
- (b) liability for a monetary penalty under a civil penalty order.

Note: The right to, and extent of, the Trustee's indemnity is governed by section 56 of SIS. "Civil penalty order" means a declaration or order made under section 196 of SIS. A "monetary penalty" is contemplated by section 196(3) of SIS.

3.12 Without limiting the Trustee's general right of indemnity, the Trustee may seek advice from any person in respect of any matter relating to the performance of the duties or the exercise of the powers of the Trustee and be indemnified out of the *assets* of the Fund in respect of the cost of obtaining such advice.

3.12A No Member admitted to the Fund pursuant to Rule 5.9A of this Section 1 shall have any obligation personally to indemnify the Trustee or any creditor of the Trustee in respect of any of the liabilities (actual, contingent or otherwise and whether due to any deficiency or not) of the

SECTION 1 - RULES APPLYING TO ALL SECTIONS

Trustee in relation to, arising from or in connection with the Fund whether arising from or by reason of the Member being a Member or the holding of an interest in the Fund or from any direction or request given to the Trustee by those Members or any one or more of them.

- 3.13 A *beneficiary* must indemnify the Trustee for any overpayment made, or any failure to provide for tax, as a result of the Trustee relying on information given to it by the *beneficiary* or, if applicable, the member in respect of whom the *beneficiary's* interest was derived.
- 3.14 A participating employer must indemnify the Trustee for any overpayment made, or any failure to provide for tax, as a result of the Trustee relying on information given to it by the employer.
- 3.15 A participating employer must indemnify the Trustee and the Fund for any loss, damage or expense suffered by the Trustee or the Fund as a result of the employer:
- (a) failing to provide the Trustee with the information or evidence required under Rule 6.7 of Section 1; or
 - (b) providing information or evidence pursuant to Rule 6.7 of Section 1 that is false or misleading (or in relation to which there is a material omission).

4. DIRECTORS OF THE TRUSTEE

Liability and indemnity

- 4.1 To the extent permitted by law, a director of the Trustee is exempted from, and is entitled to be indemnified out of the *assets* of the Fund in respect of, any liability incurred while acting as a director of the Trustee, except in relation to:
- (a) a liability that arises because the director:
 - (i) fails to act honestly in a matter concerning the Fund;
or
 - (ii) intentionally or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the director is required to exercise; or
 - (b) liability for a monetary penalty under a civil penalty order.

Note: The right to, and extent of, a director's indemnity is governed by section 57 of SIS. "Civil penalty order" means a declaration or order made under section 196 of SIS. A "monetary penalty" is contemplated by section 196(3) of SIS.

Remuneration

- 4.2 The Trustee is entitled to be reimbursed from the Fund for reasonable remuneration payable to each director of the Trustee for any of the duties or services that the director performs in his or her capacity as a director of the Trustee. The remuneration payable to the directors immediately before the transition date is taken to be reasonable.
- 4.3 The Trustee may cause the remuneration payable to directors to be paid from the Fund directly to the director.

SECTION 1 - RULES APPLYING TO ALL SECTIONS

- 4.4 To the maximum extent permissible under law, a director of the Trustee may participate in the process of determining the remuneration payable to a director under Rule 4.2 of Section 1.

5. MEMBERS

- Eligibility**
- 5.1 The Trustee may admit any natural person as a member of the Fund, as long as this is permitted by superannuation law.
- 5.2 The Trustee may only admit a natural person as a defined benefit member if that person satisfies the eligibility criteria set out in the relevant Division of the Defined Benefit Section.
- Note: The Trustee must refuse to admit a person as a member if it cannot accept contributions in respect of the member under the contributions standard.
- Application**
- 5.3 The Trustee may require a person to complete an application form, in a form approved by the Trustee, before becoming a member of the Fund.
- 5.4 The Trustee may admit a person as a member of the Fund without an application form, as long as this is permitted by superannuation law.
- Note: Section 1016A of the Corporations Act sets out when an application form is required.
- When membership starts and ends**
- 5.5 A person becomes a member of the Fund on the date determined by the Trustee. With the consent of the member, the Trustee may determine a date earlier than the date of the application.
- 5.6 A person ceases to be a member when:
- (a) the whole of the member's benefit in the Fund has been *cashied, transferred or rolled over*;
 - (b) the member's superannuation account has been closed; or
 - (c) the member's entitlement to the member's benefit has otherwise been terminated.
- Division**
- 5.7 On and after the Health Super transfer date, a member who was:
- (a) employed by a NSW Public Sector Employer as at the transition date, will be a member of the employer sponsored sub division of Division 2B;
 - (b) not employed by a NSW Public Sector Employer as at the transition date, will be a member of the personal sub division of Division 2B.
- 5.8 A person who is admitted to the Fund on or after the transition date is admitted to the Section, Division, sub-fund and/or sub-plan (as applicable) determined by the Trustee.
- 5.9 On the Health Super transfer date, the Trustee will admit members of the Health Super Fund to the Section, Division or sub-fund that applies to them, according to their categories of membership in the Health Super Fund as at the Health Super transfer date.

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5.9A On the StatePlus transfer date:

- (a) the Trustee will admit members of the StatePlus Retirement Fund (**Transferring Members**) to the StatePlus Section in the Division that applies to them, according to their categories of membership in the StatePlus Retirement Fund as at immediately before the StatePlus transfer date;
- (b) each 'binding nomination notice', 'non-lapsing nomination notice' and 'non-binding nomination notice' given to the trustee of the StatePlus Retirement Fund by a Transferring Member in accordance with the rules of the StatePlus Retirement Fund and in force and current on the StatePlus transfer date is a binding nomination notice, non-lapsing nomination notice or non-binding nomination notice, as the case may be, for the purposes of these Rules and is taken to be a notice given to the Trustee by the relevant Transferring Member on the date it was given to the trustee of the StatePlus Retirement Fund; and
- (c) each instruction, nomination or direction in relation to the investment of a Transferring Member's superannuation benefits in the StatePlus Retirement Fund given to the trustee of that fund and in force and current on the StatePlus transfer date is an instruction, nomination or direction in relation to his or her superannuation benefits in the Fund for the purposes of these Rules.

5.10 If a member's employment circumstances change after he or she is admitted to the Fund, the Trustee may transfer the member to another Section, Division, sub-fund and/or sub plan (as applicable), as the Trustee considers appropriate.

No beneficial interest in particular assets

5.11 Each *beneficiary* has a beneficial interest in the Fund as a whole but no *beneficiary* has an interest in any particular *asset* of the Fund.

5.12 No *beneficiary* is entitled (other than as permitted under the Rules, a special arrangement or superannuation law) to:

- (a) interfere with the rights or powers of the Trustee in respect of the Fund;
- (b) exercise any rights, powers or privileges in respect of any *assets* of the Fund; or
- (c) require the transfer to such *beneficiary* of any *assets* of the Fund.

6. PARTICIPATING EMPLOYERS

Participating employers

6.1 A NSW Public Sector Employer is a participating employer of the Fund on and from the transition date and continues as such for so long as it has an obligation to contribute to the Fund in respect of a member.

6.2 An employer who was a participating employer in the Health Super Fund immediately before the Health Super transfer date is a participating employer in the Fund.

SECTION 1 - RULES APPLYING TO ALL SECTIONS

- 6.3 On or after the transition date, the Trustee may require an employer who wishes to become a participating employer of the Fund to complete an application form, in a form approved by the Trustee.
- 6.4 The Trustee may admit an employer, or any successor to that employer, as a participating employer on the date determined by the Trustee and on such terms and conditions as required by the Trustee.
- 6.5 The Trustee may admit an employer as a participating employer of the Fund without an application form, as long as this is permitted by superannuation law.

Note: Section 1016A of the Corporations Act sets out when an application form is required. Also, section 16(2) of SIS sets out the definition of standard employer sponsor.

- 6.6 On or after the transition date, as a condition of participation, a participating employer is bound by the *governing rules* of the Fund.

Information

- 6.7 A participating employer must submit to the Trustee information that the Trustee reasonably requests relating to an employee of the employer in respect of the employee's membership of the Fund.

- 6.8 If a participating employer fails to provide the information that the Trustee reasonably requests, the Trustee may:

- (a) require the employer to pay to the Fund the management costs, as determined by the Trustee, arising out of the failure to provide the information or to provide accurate information;
- (b) defer payment of a benefit, if the information is relevant to the payment;
- (c) take any action it considers appropriate in dealing with *contributions*, the member's superannuation account, or relevant special arrangements if the information sought is relevant to those matters,

but in each case subject to superannuation law.

Conditions of employment not affected

- 6.9 The Trust Deed, the Rules, or any special arrangement, do not, in respect of a member's contract of employment or terms of engagement with a participating employer:

- (a) restrict the employer from varying or terminating the contract or engagement;
- (b) provide grounds for awarding (or increasing) damages or compensation in an action by the member against his or her employer; or
- (c) confer any rights on a member in relation to the member's contract of employment or terms of engagement,

other than as expressly stated in the Trust Deed, the Rules or a special arrangement.

SECTION 1 - RULES APPLYING TO ALL SECTIONS

7. CONTRIBUTIONS, ROLLOVERS AND TRANSFERS INTO THE FUND

Accepting contributions

- 7.1 The Trustee may accept *contributions* that are made in respect of a member, unless it is:
- (a) prohibited by the contributions standard from doing so; or
 - (b) directed by APRA not to accept *contributions*.

Note: "Contributions" is defined in SIS Regulation 1.03. The contributions standard is set out in Part 7 of the SIS Regulations. APRA may direct the Trustee not to accept contributions under section 63 of SIS.

Accepting transfers and rollovers

- 7.2 The Trustee may accept benefits in respect of a member that have been *rolled over* or *transferred* to the Fund, unless it is prohibited by the contributions standard from doing so.

Allocating a contribution, transfer or rollover

- 7.3 If the Trustee receives a *contribution*, *transfer* or *rollover* in respect of a member, the Trustee must credit the payment to the member's superannuation account as soon as reasonably possible, but no later than the latest time permitted by SIS.

Note: SIS Regulation 7.08 specifies the timing requirements for allocating a contribution to a member.

Preservation

- 7.4 Contributions, transfers and rollovers made to the Fund are to be treated as unrestricted non-preserved benefits, restricted non-preserved benefits or preserved benefits (as the case may be), in accordance with superannuation law.

Note: Division 6.1 of the SIS Regulations sets out how the preservation status of a member's benefit is to be determined.

Repayments

- 7.5 If the Trustee accepts a *contribution*, *transfer* or *roll over* and the contributions standard requires that it be repaid, the Trustee:
- (a) must repay the *contribution*, *transfer* or *rollover* in accordance with superannuation law;
 - (b) in making a repayment, may adjust the amount to be repaid to account for investment earnings (whether positive or negative) and fees, costs and expenses as permitted by superannuation law;
 - (c) subject to superannuation law will not otherwise be liable for any interest, or be obliged to account for any earnings, or to compensate the person who made the payment; and
 - (d) subject to superannuation law must not recognise the person in respect of whom the payment was made as being a member merely by reason of the payment into the Fund.

Related expenses

- 7.6 If the Trustee incurs any expense in respect of the receipt of a, or the dishonour of an anticipated, *contribution* the Trustee may recover the expense from the person who made, or was obliged to make, the *contribution*.

SECTION 1 - RULES APPLYING TO ALL SECTIONS

- 7.7 If the Trustee incurs any expense in respect of the receipt of a, or the dishonour of an anticipated *transfer* or *rollover*, the Trustee may recover the expense from the applicable *beneficiary*.
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8. BENEFIT PAYMENTS

- Benefits payments** 8.1 A member's benefit in the Fund may be paid by being *cash*ed, *rolled over*, *transferred* or *allotted* in accordance with the payment standard.
- Note: "Cashed" means cashed in accordance with Division 6.3 of the SIS Regulations. A member's benefit may be "allotted" under the spouse contribution splitting provisions in Division 6.7 of the SIS Regulations. The payment standard is set out in Division 6.2 of the SIS Regulations.
- Form of payment** 8.2 A member's benefit may be *cash*ed in any one or more of the following forms, in accordance with the payment standard:
- (a) a lump sum;
 - (b) a pension;
 - (c) the purchase of an *annuity*.
- Note: The definition of "lump sum" in SIS Regulation 6.01 allows a payment to be paid in the form of cash or in-specie (ie with Fund assets). "Pension" and "annuity" are defined in section 10 of SIS.
- Restrictions on benefit payments** 8.3 A member's benefit must not be paid except when, and to the extent that, the Trustee is required or permitted under the payment standard to pay the benefit.
- Note: A member's unrestricted non-preserved benefits may be cashed at any time – SIS Regulation 6.20. A member's preserved benefits and restricted non-preserved benefits may be cashed on or after the satisfaction by the member of a condition of release (as specified in Schedule 1 of the SIS Regulations) – SIS Regulations 6.18 and 6.19. References to the singular include the plural (Rule 23.1(a)). The Fund receiving a release authority is a condition of release.
- Compulsory payments** 8.4 A member's benefit in the Fund must be paid when, and to the extent that, the Trustee is required under the payment standard to pay the benefit.
- Note: Effective 1 July 2007, SIS Regulation 6.21 requires the cashing of a member's benefit only on his or her death (previously, cashing was required in specified circumstances, such as at age 65 unless certain requirements were met). Division 6.5 of the SIS Regulations sets out when a member's benefit must be rolled over or transferred from the Fund.
- Recipient of a member's benefit – generally** 8.5 If a member's benefit may be *cash*ed, the benefit must be *cash*ed in favour of the member or the member's *legal personal representative* unless:
- (a) the member has died;
 - (b) the benefit (or part of the benefit) is *cash*ed in favour of a *non-member spouse* in order to satisfy a *payment split*;
 - (c) superannuation law treats a member's benefit as unclaimed money (in which case the Trustee must deal with the member's

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benefit in accordance with the requirements of superannuation law relating to unclaimed money); or

- (d) otherwise permitted under the payment standard.

Note: SIS Regulation 6.22 allows benefits to be cashed in favour of the Commissioner of Taxation in accordance with a release authority.

Recipient of a member's benefit – on death

- 8.6 Subject to any contrary provision in a Section or Division of these Rules, if a member dies:
- (a) before the transition date, the member's benefit must be *cash*ed in accordance with the terms of the Trust Deed that applied before the transition date; or
- (b) on or after the transition date, the member's benefit must be *cash*ed in favour of either or both of:
- (i) the member's legal personal representative; and
- (ii) one or more of the member's *dependants*,
as the Trustee determines, unless:
- (iii) the Trustee has not, after making reasonable enquiries, found either a *legal personal representative*, or a *dependant* of the member; or
- (iv) otherwise permitted under the payment standard.

- 8.7 If a member has died and the Trustee has not, after making reasonable enquiries, found either a *legal personal representative*, or a *dependant* of the member, the member's benefit must be cashed in the favour of an individual, as the Trustee determines subject to superannuation law.

Note: SIS Regulation 6.22 sets out the persons to whom a member's benefit must be cashed.

- 8.8 If the Trustee believes that a person to whom the member's benefit is payable is:
- (a) under a legal disability; or
- (b) unable to manage his or her financial affairs,

the Trustee may pay the benefit to another person for the maintenance, education or advancement of the person entitled to the benefit, or to hold on trust for the person entitled to the benefit, as long as the Trustee is not prohibited from doing so under the payment standard. The Trustee is not obliged to pay a benefit in accordance with this Rule 8.8 of Section 1 even if the Trustee has actual notice of the member's legal disability or inability to manage his or her financial affairs.

Non-binding death benefit nomination

- 8.9 The Trustee may permit a member to inform the Trustee (by notice) of the person or persons that the member would prefer to receive the member's benefit on or after the death of the member (**non-binding nomination notice**).

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Note: Under Rule 22.3 of Section 1, a notice must be in writing or other form acceptable under superannuation law.

8.10 If the Trustee has received a non-binding nomination notice from a member, the Trustee must consider the notice but must exercise its own discretion as to the person or persons to whom the member's benefit is to be paid.

Binding death benefit nomination

8.11 The Trustee may permit a member to require the Trustee (by notice) to pay the member's benefit, on or after the death of the member, to either or both of:

- (a) the member's legal personal representative; or
- (b) one or more of the member's *dependants*,

(binding nomination notice), as long as the requirements of the binding nomination standard are satisfied.

Note: A binding death benefit nomination is a discretion that may be exercised by a person other than the Trustee – see section 59(1A) of SIS. The **binding nomination standard** is set out in SIS Regulation 6.17A.

8.12 The Trustee must act in accordance with a binding nomination notice (including a binding nomination notice given to the trustee of the Health Super Fund before the Health Super transfer date) if the Trustee is required to do so by the binding nomination standard. This Rule 8.12 of Section 1 prevails over any inconsistent Rule (other than Rule 22).

8.13 A binding nomination notice given to the trustee of the Health Super Fund and in effect immediately prior to the Health Super transfer date is, subject to the binding nomination standard, deemed by the Trustee to remain in effect after the Health Super transfer date.

Non-lapsing nominations

8.13A The Trustee may consent to an exercise of discretion by a member that the member's benefit on or after the death of the member will be paid to either or both of:

- (a) the member's legal personal representative; or
- (b) one or more of the member's *dependants*,

as notified to the Trustee in accordance with guidelines determined by the Trustee (**non-lapsing nomination notice**).

8.13B The Trustee must act in accordance with a non-lapsing nomination notice if the requirements of the Trustee's guidelines are satisfied. Otherwise the benefit payable on or after the death of the member will be paid in accordance with Rule 8.6 of Section 1.

Proof of entitlement

8.14 A member's benefit in the Fund may only be paid if the member (or other person to whom the member's benefit may be paid) provides proof to the satisfaction of the Trustee:

- (a) of the event which enables the member's benefit to be *cash*ed;
- and

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- (b) that the person is the member (or otherwise a person to whom the member's benefit may be paid).

The costs of providing proof are not recoverable by a member from the Trustee or the Fund except that, if the Trustee requires the member to undergo any medical or similar examination, the costs of the person conducting the examination are to be paid from the Fund.

Transfers

8.15 A member's benefit may be *transferred* from the Fund:

- (a) with the consent of the member; or
- (b) without the consent of the member, if the *transfer* is to an *eligible rollover fund* or a *successor fund*.

Note: SIS Regulation 6.29 sets out the restrictions relating to transfers from the Fund. "Eligible rollover fund" is defined in SIS Regulation 10.01. "Successor fund" is defined in SIS Regulation 1.03.

Rollovers

8.16 A member's benefit may be *rolled over* from the Fund:

- (a) with the consent of the member; or
- (b) without the consent of the member, if the *rollover* is to an *eligible rollover fund*.

Note: SIS Regulation 6.28 sets out the restrictions relating to rollovers from the Fund. "Eligible rollover fund" is defined in SIS Regulation 10.01.

Payment of benefit

8.17 If a member's benefit becomes payable, the benefit is payable in full, unless:

- (a) SIS only permits part of the member's benefit to be *cashied*, in which case the lesser amount payable under SIS may be paid by the Trustee and the member's benefit is reduced accordingly;
- (b) the member requests payment of a lesser amount and, in accordance with the payment standard, the lesser amount requested may be paid by the Trustee and the member's benefit reduced accordingly; or
- (c) the payment arises because of the *temporary incapacity* of the member, in which case only the insured benefit in respect of *temporary incapacity* is payable.

Note: The payment of insured benefits is subject to Rule 11. "Temporary incapacity" is defined in SIS Regulation 6.01.

Rules

8.18 The Trustee may in its absolute discretion make rules in relation to the payment of pensions from the Fund. If there is a conflict between those rules and these Rules, then these Rules prevail.

Forfeiture

8.19 The Trustee may, subject to superannuation law and the Bankruptcy Act 1966 (Cth), forfeit a member's benefit if:

- (a) the member becomes bankrupt or insolvent; or

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- (b) a person other than the member may become entitled to the benefit (other than by the ordinary consequence of the member's death or pursuant to a *payment split*).
- 8.20 The Trustee must apply a member's benefit which has been forfeited to one or more of:
- (a) the member;
 - (b) the member's dependants; and
 - (c) any other individual,
- if permitted under and, if so, in accordance with, superannuation law.
- Postponement of payment** 8.21 Subject to Rule 6 of Division 4B, the Trustee may postpone a payment to or in respect of a member for a period not exceeding 90 days (or such other period permitted by superannuation law) if the Trustee considers that:
- (a) *assets* of the Fund must be sold to make the payment; and
 - (b) other members will be materially disadvantaged by a sale at that time.
- 8.22 If the Trustee postpones a payment in respect of a member under Rule 8.21 of Section 1, the Trustee must:
- (a) calculate the value of the amount payable as at the date on which the payment would ordinarily, but for the postponement, have been made (**ordinary payment date**); and
 - (b) pay interest to the applicable *beneficiary* on that value for the period from the ordinary payment date until actual payment.
- The *beneficiary* is not entitled to any investment gain, or liable to any investment losses, in the period after the ordinary payment date.
- Interest** 8.23 The Trustee may, when paying a member's benefit, pay interest at such rates, for such periods and in such circumstances as the Trustee determines. The Trustee must pay interest if legally required to do so.
- Discharge and release** 8.24 The Trustee is discharged from all obligations in respect of a member's benefit if the member's benefit is paid by the Trustee from the Fund in accordance with this Rule 8 of Section 1.

9. FAMILY LAW

- Compliance** 9.1 The Trustee may do anything that it is permitted or is required to do under Part VIII B of the Family Law Act 1975 (Cth).

Note: Section 90MB of the Family Law Act provides that Part VIII B of the Family Law Act overrides inconsistent laws or other instruments.

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- Family law fees** 9.2 The Trustee may charge reasonable fees in respect of any matter contemplated by Part VIIIIB of the Family Law Act, if it is permitted to do so under that Act.

Note: Section 90MY of the Family Law Act allows the Trustee to charge reasonable fees in accordance with that section and Regulation 59 of the Family Law (Superannuation) Regulations 2001 (Cth).

10. INVESTMENT OPTIONS

- Establish options** 10.1 The Trustee:
- (a) must formulate and give effect to an investment strategy;
 - (b) may establish two or more investment options, each with distinct investment strategies; and
 - (c) so far as practicable, the Trustee must invest amounts attributed to each investment option in accordance with the investment strategy determined by the Trustee for the time being for that investment option.

Note: The Trustee's obligation to formulate and give effect to an investment strategy is a covenant under section 52(2) of SIS. Members may give directions to the Trustee relating to the investment strategy to be followed by the Trustee, as long as the requirements of SIS Regulation 4.02 are satisfied. The Trustee is given a broad discretionary investment power under Rule 16.1 of Section 1.

- Unitisation** 10.2 The Trustee may:
- (a) in respect of a new investment option opened in the Fund; and
 - (b) in respect of an investment option established in the Fund in accordance with the terms of a successor fund transfer of a fund to the Fund,

divide the value of the net assets attributed to that investment option (**investment option assets**) by one dollar (or another amount selected by the Trustee) to determine the initial number of units on issue in that investment option

- 10.3 The Trustee may, at any time, divide an investment option into any number of units other than the number into which it is already divided, but must maintain the relative values of the units created.
- 10.4 At any given time, all units on issue from an investment option must be identified as units referable to that investment option and have equal value.
- 10.5 No unit issued from an investment option constitutes property nor confers on any *beneficiary* an interest in any particular part of the investment option, or in any investment option asset or the Fund.

- Valuation** 10.6 The Trustee:
- (a) must value the investment option assets at least once each month; and
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- (b) may value investment option assets more regularly, or at other times, as the Trustee determines.

10.7 At each valuation of investment option assets, the Trustee must determine the net asset value of each investment option, being the value of the investment option assets determined after taking into account:

- (a) the expenses incidental to acquiring, realising, managing and valuing the investment option assets;
- (b) fees paid to a person appointed by the Trustee to provide investment advice, investment management and custodial services, in respect of the investment option;
- (c) any accruals and provisions which the Trustee considers appropriate; and
- (d) any other liabilities which the Trustee considers appropriate.

10.8 The value of each unit on issue from an investment option is determined by dividing the net asset value of the investment option by the number of units then on issue from that investment option.

10.9 The Trustee must issue or cancel units of an investment option after a valuation, in accordance with the investment choice rules, at the unit value determined at that valuation.

11. INSURANCE

Effect and maintain

11.1 The Trustee may acquire, hold, vary or dispose of one or more insurance policies to provide insured benefits for members.

Limitations on insured benefits

11.2 The insured benefit of a member is:

- (a) limited to the extent that the Trustee is able to effect cover under an insurance policy;
- (b) only payable to the extent that the Trustee receives payment from the insurer under an insurance policy.

11.3 The Trustee will adjust the benefit, and any other benefit payable to the member which the Trustee may consider to be affected, in the manner and to the extent the Trustee considers necessary in order to effect and take account of the limited benefit.

11.4 Rule 11.2 and Rule 11.3 of this Section 1 prevail over any inconsistent Rule (other than Rule 21 of this Section 1).

Investment option

11.5 The Trustee may:

- (a) credit the proceeds it receives from an insurer in respect of a member (**insurance proceeds**) to the superannuation account of the member; and

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- (b) invest the insurance proceeds in an investment option that the Trustee selects.

Note: Payment from the Fund is subject to the payment standard.

12. SUPERANNUATION ACCOUNTS

- Establish and maintain** 12.1 The Trustee must establish and maintain within the Fund a superannuation account for each member as soon as practicable after a person becomes a member.
- Sub-accounts** 12.2 The Trustee may maintain separate sub-accounts, within each superannuation account.
- Credits and debits** 12.3 The Trustee may credit amounts or make other adjustments to a member's superannuation account (or a sub-account) as the Trustee determines.
- 12.4 The Trustee may, subject to SIS, debit amounts from, or make other adjustments to, a member's superannuation account (or a sub-account) as the Trustee determines.

Note: The debiting of a member's superannuation account is subject to the benefit protection standard set out in Part 5 of the SIS Regulations. SIS Regulation 6.16A sets out the order of debiting a negative investment return, depending on the preservation status of an amount in a member's superannuation account.

- Adjustments** 12.5 Where any adjustments made in accordance with the Rules would result in a negative balance in any sub-account of a member's superannuation account, the Trustee must record the balance as nil until such time as amounts are credited to the sub-account or the account is closed.
- 12.6 Where the balance in a member's superannuation account is nil for a continuous period of six months and the Trustee is not reasonably aware of any potential credit to the account by way of further contributions, a claim for insurance proceeds or otherwise, the Trustee may close the account.

13. RESERVE ACCOUNTS AND STATUTORY CAPITAL

- Types of reserve account** 13.1 On and from the transition date, the Fund has:
- (a) an administration reserve account; and
- (b) an insurance reserve account.
- Note: The Trustee's power to establish, close or merge reserve accounts is set out in Rule 2.9. Prior to the transition date, the insurance reserve account was known as the Death or Invalidity Benefit Management Reserve.
- Credits and debits** 13.2 The Trustee may credit or debit, or make other adjustments to, a reserve account.
- Health Super insurance reserve** 13.3 The Trustee must establish and maintain a separate insurance reserve comprising the Health Super insurance reserve on and from the Health Super transfer date.

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13.4 Subject to Rule 13.5 of Section 1, the Trustee must apply the Health Super insurance reserve for the purpose of meeting liabilities in respect of former accumulation and defined benefit members of the Health Super Fund who were covered by that fund's self-insurance arrangements in the period before 2004.

13.5 The Trustee, on the advice of the Fund's actuary, may:

- (a) repatriate some or all of the Health Super insurance reserve to the administration reserve account if the actuary certifies that the monies held in the Health Super insurance reserve exceed the funding required for the purpose of meeting the liabilities set out in Rule 13.4 of Section 1; and
- (b) transfer monies from the administration reserve to the Health Super insurance reserve if the actuary certifies that such monies are necessary to meet the liabilities set out in Rule 13.4 of Section 1.

Adequacy of financial resources

13.6 By this Rule 13.6, the Trustee may, for the purpose of the Trustee satisfying:

- (a) the adequacy of resources standard; or
- (b) any other financial capacity or solvency requirement imposed on the Trustee under superannuation law or by a Regulator from time to time,

have access to an amount in a reserve account (**statutory capital**).

Note: The adequacy of resources standard is set out in SIS Regulation 4.15.

Statutory capital

13.7 The Trustee must maintain at least the minimum statutory capital as required by the Regulator, under superannuation law or under any condition of its *RSE licence*.

13.8 If the whole or part of the statutory capital is paid from the Fund to the Trustee, the Trustee must:

- (a) use and maintain the statutory capital in a way permitted by superannuation law;
- (b) pay any interest it earns from the statutory capital directly to the Fund; and
- (c) repay the statutory capital to the Fund when it is no longer required for the purpose for which it was paid from the Fund.

Closure of a reserve account

13.9 If the Trustee closes a reserve account, including the Health Super insurance reserve, the Trustee may apply the balance in any way which, in the Trustee's opinion, enables the Fund to be more conveniently, advantageously, efficiently or economically administered, promoted or invested.

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14. TAX

14.1 The Trustee may pay, either directly or through another person, to the relevant authority, any tax assessed on:

- (a) contributions, transfers and rollovers to the Fund;
- (b) members' benefits which are *cash*ed, *transferred* or *rolled over* from the Fund;
- (c) any other payment to, or from, the Fund;
- (d) any income or capital gain of the Fund;
- (e) any *asset* of the Fund; and
- (f) any adjustment, dealing or other transaction or event in respect of the Fund.

14.2 The Trustee may:

- (a) provide for any future tax liability (whether actual or potential) as the Trustee determines;
- (b) deduct tax, or provide for tax, from any account or from any payment to or from, the Fund;
- (c) enter into an arrangement with any entity which has the effect of transferring to that entity all or part of the liability for tax of the Fund; and
- (d) offset any tax credit or rebate against any provision for tax under the Rules and, regardless of the time at which the credit or rebate is received, may apportion the credit or rebate across the relevant *year of income* for the purposes of taxation legislation as the Trustee determines, as long as it is permitted to do so under superannuation law.

15. DISPUTE RESOLUTION

15.1 If required by superannuation law, the Trustee must:

- (a) establish and maintain an internal dispute resolution procedure; and
- (b) be a member of an external dispute resolution scheme,

in accordance with the requirements of superannuation law, for the purposes of dealing with complaints.

Note: Dispute resolution obligations are set out in section 912A of the Corporations Act.

15.2 If required by a member employed by a NSW Public Sector Employer, the Trustee must consent to the NSW Industrial Relations Commission having jurisdiction in respect of any dispute with the member.

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16. POWERS OF THE TRUSTEE

General powers

- 16.1 The Trustee has all the powers of a natural person, as if the Trustee solely holds the legal and beneficial interest in the *assets* of the Fund, including:
- (a) entering into, varying and terminating contracts;
 - (b) opening and maintaining accounts with any financial institution or facility;
 - (c) commencing, defending and settling legal proceedings;
 - (d) compromising a claim;
 - (e) giving an indemnity or a guarantee;
 - (f) borrowing money;
 - (g) acquiring an asset from any person;
 - (h) providing for, and transferring any, liability for tax;
 - (i) arranging for the provision of a clearing house service for contributions to the Fund and paying the costs of that service as an *administration cost*; and
 - (j) investing and transposing Fund *assets*,
- but in each case subject to superannuation law.

Note: Borrowing restrictions are set out in section 67 of SIS. Restrictions on acquiring *assets* are set out in section 66 of SIS. Restrictions on investing are set out in Part 8 and section 109 of SIS.

Delegation

- 16.2 The Trustee may:
- (a) delegate its powers, duties and discretions to any person or committee;
 - (b) permit the delegate to sub-delegate any power, including the power to appoint a nominee, custodian or delegate on such terms as the delegate may, in its discretion in good faith, determine; and
 - (c) permit the delegate to mix Fund *assets* with other *assets* held by the delegate provided that the delegate at all times maintains strict records listing all the Fund *assets* (and, if applicable, the investment option to which such *assets* are attributable) in a manner which distinguishes such Fund *assets* from all other *assets* held by the delegate.

16.3 A delegation must be in writing, setting out its scope and limits.

Outsourcing

- 16.4 The Trustee may enter into agreements under which a person is to perform a service for, or an activity of, the Trustee (**outsourcing**

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agreement). The types of outsourcing agreements that the Trustee may enter into include agreements relating to the:

- (a) administration of the Fund;
- (b) investment of the Fund; and
- (c) custody of the Fund *assets*.

16.5 An outsourcing agreement must be in writing and comply with any other applicable requirements under SIS.

Note: "Material outsourcing agreements" must comply with SIS Regulation 4.16. Sections 102 and 116 of SIS also set out requirements in relation to agreements between the Trustee and an investment manager.

Anti-Money Laundering and Counter-Terrorism

16.6 The Trustee may take any action it considers necessary or desirable to satisfy its obligations under, and to meet the objectives of, AML Law. Without limitation, this includes delaying, suspending or refusing any transaction, receipt or payment and developing and implementing procedures to:

- (a) identify and verify the identity of any person;
- (b) identify and report suspicious transactions; and
- (c) manage and mitigate the risk of money laundering and terrorism financing.

17. COMMUNICATION AND DISCLOSURE

Communication and disclosure

17.1 The Trustee must provide to a *beneficiary* (or any other relevant person) the applicable disclosure notices in the form, in the circumstances and at the times, required by superannuation law.

Note: The disclosure obligations of the Trustee are generally set out in Part 7.9 of the Corporations Act. Other disclosure obligations also apply, for example, the member investment choice information requirements set out in SIS Regulation 4.02.

Access to documents

17.2 If required under superannuation law, the Trustee must make the following documents available to a *beneficiary* (or any other relevant person), in any manner permitted, and within the time specified, under superannuation law:

- (a) the Trust Deed, the Rules and any other instrument which forms part of the *governing rules* of the Fund;
- (b) the audited accounts of the Fund (and the auditor's reports in relation to the accounts);
- (c) the most recent periodic fund statement for the Fund;
- (d) the risk management plan of the Fund;
- (e) the rules for the appointment and removal of *member representative* directors of the Trustee and any *independent director* of the Trustee; and

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- (f) any other document which is required to be made available to a *beneficiary* (or any other relevant person) under superannuation law.

Note: See sections 29PD, 52(2)(h), 107 and 108 of SIS, SIS Regulation 4.01, section 1017C(5) of the Corporations Act and Corporations Regulation 7.9.45(2).

18. RECORD KEEPING AND AUDIT

Statutory record keeping

- 18.1 The Trustee must keep records as required, and for the period specified, under superannuation law.

Note: For example, record keeping requirements are contained in Parts 12 and 13 of SIS.

Register of special arrangements Audit

- 18.2 The Trustee must keep a register of all special arrangements.
- 18.3 For each *year of income*, the Trustee must ensure that an approved auditor is appointed to provide a report about the operations of the Fund and the Trustee, in accordance with the requirements of superannuation law.

Records

- 18.4 In the absence of manifest error:
- (a) the accounts and records of the Trustee and the Fund are conclusive evidence of matters recorded in them;
 - (b) a certificate of the Trustee is conclusive evidence of matters stated in it; and
 - (c) a receipt, acknowledgement or release executed by the Trustee may be relied upon by any person dealing with the Trustee.

Nature of transactions

- 18.5 The Trustee may determine the character, timing and amount of any transaction, receipt or payment by the Trustee or the Fund. No member, *beneficiary*, participating employer or other person is entitled to challenge or dispute the Trustee's determination.
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19. SPECIAL ARRANGEMENTS

Member agreement

- 19.1 The Trustee may agree in writing with a member (and, if the member is in the employer-sponsored sub division of the Accumulation Section, the member's employer) that special terms are to apply to the member's membership in the Fund (**member agreement**).
- 19.2 The provisions of the member agreement prevail over any inconsistent Rule (other than Rule 21 of Section 1).

Employer agreement

- 19.3 The Trustee may agree in writing with a participating employer that special terms are to apply to the membership of some or all of the current or future members of the Fund who are employed by the employer (**employer agreement**).

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- 19.4 The provisions of the employer agreement prevail over any inconsistent Rule (other than Rule 21 of Section 1 and, if applicable, the member agreement relating to the member under Rule 19.1 of Section 1).
- Successor fund agreement**
- 19.5 The Trustee may agree in writing with a trustee (**old trustee**) of a superannuation fund (**old fund**) that special terms are to apply to the membership of some or all of the future members of the Fund who will transfer from the old fund to the Fund pursuant to a *successor fund* transfer.
- 19.6 The special terms agreed between the Trustee and the old trustee must be recorded in the agreement which is required by SIS in order for the Fund to be a *successor fund* of the old fund (**successor fund agreement**).
- 19.7 The provisions of the successor fund agreement prevail over any inconsistent Rule (other than Rule 21 of Section 1 and, if applicable, the member agreement relating to the member under Rule 19.1 of Section 1).
- Select member arrangement**
- 19.8 The Trustee may establish, by resolution, a special arrangement which applies to a group of members other than to members admitted to the Fund pursuant to Rule 5.9A of Section 1 (**select member arrangement**).
- 19.9 The provisions of the select member arrangement prevail over any inconsistent Rule (other than Rule 21 of Section 1 and, if applicable, the member agreement relating to the member under Rule 19.1 of Section 1).

Note: As at the transition date, the Trustee has established a special arrangement in respect of members and former members who are or were firefighters.

20. TERMINATING THE FUND

- 20.1 At any time, the Trustee may:
- (a) cease accepting *contributions* and continue the Fund; or
 - (b) terminate the Fund.
- 20.2 If the Fund is terminated, the Trustee must cease accepting *contributions* from the date of termination (**termination date**) and wind up the Fund by applying the *assets* of the Fund in the following order of priority:
- (a) to pay any taxes and all other liabilities of the Fund; and
 - (b) to pay the benefits in accordance with the payment standard.
- 20.3 If there are any surplus *assets* remaining in the Accumulation Section, the *assets* of the Accumulation Section are to be distributed between the accumulation members in a manner that the Trustee considers to be fair and equitable in all the circumstances.

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- 20.4 If there are any surplus *assets* remaining in the Defined Benefit Section, the *assets* of that Section are to be distributed in accordance with the Rules relevant to that Section.
- 20.4A If there are any surplus *assets* remaining in the StatePlus Section, the *assets* of that Section are to be distributed between the members of that Section in a manner that the Trustee considers to be fair and equitable in all the circumstances.
- 20.4B If there are any surplus *assets* which are referrable to all Sections of the Fund, those *assets* are to be distributed between all members in a manner that the Trustee considers to be fair and equitable in the circumstances.
- 20.5 To the extent permitted by law, the Trustee may delay payment of benefits until all *assets* are realised to cash or an account with a financial institution and all liabilities are identified and satisfied (or appropriate provisions made).

21. COMPLIANCE WITH SUPERANNUATION LAW

Compliance with superannuation law

- 21.1 Any provision under superannuation law which must be incorporated in the Rules is deemed to be included in the Rules.
- 21.2 A provision under superannuation law which is deemed to be included in the Rules:
- (a) will only apply to the extent necessary to meet the requirements of superannuation law; and
 - (b) will prevail over any inconsistent Rule (or term of a special arrangement).
- 21.3 If a provision which is deemed to be included in the Rules is required under superannuation law to be amended, the provision in its amended form is substituted for the previous provision and is deemed to be included in the Rules from the date required under superannuation law.
- 21.4 The Trustee must:
- (a) take any action in order to comply with superannuation law; and
 - (b) refrain from taking any action in order to ensure that it does not breach superannuation law.

Directions

- 21.5 A person cannot direct the Trustee as to the exercise, or manner of exercise, of any of the Trustee's powers under the Rules, unless the direction is permitted under the Rules and SIS.

Note: Governed by section 58 of SIS

Discretions

- 21.6 A person cannot exercise a discretion that the Trustee has under the Rules, unless the exercise of the discretion is permitted under the Rules and SIS.

Note: Governed by section 59 of SIS

SECTION 1 - RULES APPLYING TO ALL SECTIONS

Deemed compliance

- 21.7 The Trustee is deemed to have complied with superannuation law if the Regulator:
- (a) treats the Trustee as having complied with superannuation law; or
 - (b) advises the Trustee that it will not take any action in relation to the breach of superannuation law.
- 21.8 This Rule 21 of this Section 1 prevails over any inconsistent Rule.
-

22. INTERPRETATION

Interpreting the Rules

- 22.1 In the Rules, unless the contrary intention appears:
- (a) the singular includes the plural and vice versa;
 - (b) where a word or expression has a particular meaning (as defined in the Rules or in SIS), its other grammatical forms have a corresponding meaning;
 - (c) if a Rule, or a term of a special arrangement, is expressed to prevail over a Rule, the Rule or term, as the case may be, prevails only to the extent of the inconsistency;
 - (d) “notes” have been included in the Rules for convenience only and do not form part of the Rules and are not relevant in the interpretation of the Rules;
 - (e) if a Rule, or a term of a special arrangement, says that the Trustee “may” act in a specified way, or is to make a decision or determination, the Trustee is permitted (but not obliged) to act in the way specified, as the Trustee determines in its absolute discretion;
 - (f) the use of the word “including” does not limit a Rule to the things (or things of a similar nature) which come after that word;
 - (g) a reference to a person includes a natural person and a body corporate;
 - (h) a reference to legislation or to any provision of legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments under it;
 - (i) a reference to an “account” includes a superannuation account, reserve account, or any other account maintained by the Trustee in respect of the Fund.
- 22.2 Where a right, entitlement or obligation in respect of the Fund arose before, or is calculated by reference to a period (whether wholly or partly), before the commencement of Schedule 2.1 of the Superannuation Legislation Further Amendment Act 1998 (NSW), the right, entitlement or obligation continues and is calculated as if the Trust Deed had not been executed.

SECTION 1 - RULES APPLYING TO ALL SECTIONS

- Notices**
- 22.3 A notice must be in writing or any other form permissible under superannuation law.
- 22.4 A notice is given by the Trustee to a person if it is sent to the address last notified to the Trustee as the address for notices of that person or another address that the Trustee believes to be an appropriate address for giving the notice.
- 22.5 A notice is given to the Trustee if it is sent to the address published by the Trustee as the address for notices in its current product disclosure statement.
-

23. DICTIONARY

- 23.1 In the Rules, unless the contrary intention appears:

A

1988 Act means the Hospital Superannuation Act 1988 (Vic). Provisions of the 1988 Act which are referred to in these Rules are attached to the Rules as Exhibit 1.

accumulation member means a member of the Accumulation Section of the Fund.

actuary means for any particular purpose under this Deed, the person nominated by the Trustee from time to time, either generally or for that particular purpose, being a person who is a Fellow or Accredited member of the Institute of Actuaries of Australia (or of any body which succeeds that Institute).

adequacy of resources standard means the rules in relation to resources set out in APRA Prudential Standard SPS 220.

AML Law means the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and the Anti-Money Laundering and Counter-Terrorism Financing Rules.

APRA means the Australian Prudential Regulation Authority or its successor.

B

benefit protection standard means the standard relating to the protection of member benefits in a *regulated superannuation fund*, as set out in Part 5 of the SIS Regulations.

binding nomination standard means the standard applicable to the payment of death benefits in a *regulated superannuation fund*, as set out in Regulation 6.17A of the SIS Regulations.

C

Complaints Act means the Superannuation (Resolution of Complaints) Act 1993 (Cth) or the Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018 (Cth) (as applicable at the time) and the Regulations and other statutory rules made pursuant to those Acts.

contributions standard means the standard relating to the acceptance of contributions into a *regulated superannuation fund*, as set out in Part 7 of the SIS Regulations.

SECTION 1 - RULES APPLYING TO ALL SECTIONS

	<p>Corporations Act means the Corporations Act 2001(Cth) and the Regulations and other statutory rules made pursuant to that Act.</p>
D	<p>defined benefit member means a member of the Defined Benefits Section of the Fund.</p> <p>Division means a division created by the Trustee under Rule 2 of Section 1 and includes a sub division.</p>
E	<p>Exhibit means an exhibit to these Rules but not forming part of the Rules.</p>
F	<p>Fund means the First State Superannuation Scheme.</p>
H	<p>Health Super DB Fund means the sub-fund created by the Trustee pursuant to Rule 2.12 of Section 1.</p> <p>Health Super Fund means the superannuation fund known as Health Super Fund from 1 January 1999 and as the Hospitals Superannuation Fund prior to that date.</p> <p>Health Super Fund trust deed means the trust deed of the Health Super Fund in effect immediately prior to the Health Super transfer date.</p> <p>Health Super insurance reserve means the monies previously held by the trustee of the Health Super Fund for the purpose of meeting liabilities arising from the Health Super Fund's self-insurance of accumulation and defined benefit members in the period before 2004 which were transferred from the Health Super Fund to FSS as at the Health Super transfer date.</p> <p>Health Super transfer date means 30 June 2011 or such other date as determined by the Trustee.</p> <p>HS DB Rules means the Rules in Divisions 3B, 3C and 3D pertaining to the Health Super DB Fund.</p>
I	<p>insurance policy means a policy of insurance issued to the Trustee to provide insured benefits for members.</p> <p>insured benefit means, in respect of a member, the amount payable to the Trustee from an insurance policy in respect of the death or disability of that member.</p> <p>investment choice rules means the rules specified by the Trustee, as it determines from time to time, about when and how the selection and switching of investment options can be made and notified to the Trustee.</p> <p>investment option means an investment strategy formulated by the Trustee into which a member may direct that the Trustee invest the whole or part of the member's benefit.</p>
M	<p>member means a person recorded as a member of the Fund at the transition date and thereafter admitted to the Fund in accordance with the Rules.</p>

SECTION 1 - RULES APPLYING TO ALL SECTIONS

member's benefit means the amount standing to the credit of the member's superannuation account and includes any insured benefit referable to the member.

N

NSW Public Sector Employer means an employer who is taken to be an employer to which the First State Superannuation Act 1992 (NSW) applies.

Note: See section 6(1) of the First State Superannuation Act 1992 (NSW).

P

participating employer means an employer who is:

- (a) a NSW Public Sector Employer on the transition date; and
- (b) otherwise, a *standard employer sponsor* of the Fund.

Note: "Standard employer sponsor" is defined in section 16 of SIS.

payment splitting standard means the standard applicable to satisfying payment splits, as set out in Part 7A of the SIS Regulations.

payment standard means the standard applicable to the payment of benefits from a *regulated superannuation fund*, as set out in Division 6.2 of the SIS Regulations.

R

Regulator means, as applicable, APRA, the Australian Securities & Investments Commission and the Commissioner of Taxation, or the successor of any of them.

Rules means the Rules governing the Fund as amended from time to time and includes the HS DB Rules unless expressly excluded.

S

Section means a section created by the Trustee under Rule 2 of Section 1.

SG Act means the Superannuation Guarantee (Administration) Act 1992 (Cth).

SIS means the Superannuation Industry (Supervision) Act 1993 (Cth) and the Regulations and other statutory rules made pursuant to that Act.

special arrangement means an arrangement contemplated by Rule 20.

StatePlus Retirement Fund means the superannuation fund known as StatePlus Retirement Fund established by a deed dated 23 November 1993.

StatePlus transfer date means 30 June 2019 or such other date as determined by the Trustee.

sub-fund means a sub-fund within the meaning of SIS and created by the Trustee under Rule 2 of Section 1.

superannuation account means an account established under Rule 12 of Section 1 in respect of a member.

SECTION 1 - RULES APPLYING TO ALL SECTIONS

superannuation law means SIS, the Corporations Act, the Complaints Act, AML Law and any other law relating to the Trustee or the Fund (as modified by the Regulator) with which the Trustee is required, or permitted, to comply.

T

tax means any tax, duty, levy or government impost by the Commonwealth or a State or Territory (however described), including the superannuation contribution surcharge and any interest, penalty fine or charge (however described) applied in respect of them.

transition date means the date of commencement of section 4 of the First State Superannuation Legislation Amendment (Conversion) Act 2005 (NSW).

Note: The First State Superannuation Legislation Amendment (Conversion) Act 2005 (NSW) amended the Superannuation Administration Act 1996 (NSW) and the First State Superannuation Act 1992 (NSW) with respect to the conversion of the Trustee to a proprietary company limited by shares and the conversion of the Fund to a superannuation fund regulated under Commonwealth legislation.

Trust Deed means the trust deed of the Fund dated 19 February 1999 as varied from time to time.

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

SECTION 2 – ADDITIONAL RULES APPLYING TO THE ACCUMULATION SECTION

SECTION 2 – ADDITIONAL RULES APPLYING TO THE ACCUMULATION SECTION

DIVISION 2A – General Provisions

1. APPLICATION AND INTERPRETATION

Interpretation

- 1.1 The provisions of this Division 2A relate to and provide for all accumulation members of the Accumulation Section of the Fund.
 - 1.2 This Division 2A prevails over any provision in the Rules to the extent of any conflict unless otherwise determined by the Trustee.
 - 1.3 The Trustee may make such provisions as it feels necessary for any Division of the Accumulation Section.
-

2. FEES AND CHARGES

Determining and applying fees and charges

- 2.1 The Trustee:
 - (a) must determine the *administration costs* to be charged from time to time against each accumulation member's superannuation account; and
 - (b) may charge administration costs, in the manner that the Trustee determines but subject to the benefit protection standard. The amount charged may be paid immediately or, if the underlying *administration cost* is payable at a future time, transferred to a reserve account as the Trustee determines.

Note: The benefit protection standard is set out in Part 5 of the SIS Regulations. "Administration costs" is defined in SIS Regulation 5.01 - it does not include the costs of insured benefits (which are dealt with under Rule 11 of Section 1) or taxation costs (which are dealt with under Rule 14 of Section 1).

- 2.2 The administration costs (or a component of the administration costs) may be:
 - (a) a dollar amount;
 - (b) a percentage; or
 - (c) such other basis, as the Trustee determines.
-

3. INSURANCE

Cost of insurance

- 3.1 Where the cost of providing all or part of an insured benefit can be determined:

SECTION 2 – ADDITIONAL RULES APPLYING TO THE ACCUMULATION SECTION

- (a) in respect of a particular member, the Trustee may debit the cost of the insured benefit to the member's superannuation account; or
- (b) in respect of a group of members, the Trustee may determine a fair apportionment of the cost of the insured benefits among such members and debit each member's apportioned amount to that member's superannuation account.

4. INVESTMENT OPTIONS

- Establish options** 4.1 The Trustee:
- (a) may allow accumulation members to select from one or more investment options made available by the Trustee in accordance with the investment choice rules;
 - (b) so far as practicable, the Trustee must invest amounts attributed to each investment option in accordance with the investment strategy determined by the Trustee for the time being for that investment option.
- Note: The Trustee's obligation to formulate and give effect to an investment strategy is a covenant under section 52(2) of SIS. Members may give directions to the Trustee relating to the investment strategy to be followed by the Trustee, as long as the requirements of SIS Regulation 4.02 are satisfied. The Trustee is given a broad discretionary investment power under Rule 16.1 of Section 1.
- Default option** 4.2 The Trustee must:
- (a) determine an investment option to be the default investment option, being the investment option which will apply to accumulation members who do not make a valid investment option selection; and
 - (b) may select a different default investment option for members of a particular Division and/or sub-plan, or for groups of members within a Division and/or sub-plan.
- 4.3 The Trustee may change the default investment option from time to time by notice to accumulation members.
- On death of member** 4.4 If the Trustee has received proof to its satisfaction that an accumulation member has died, the Trustee may, pending payment of the member's benefit, switch the investment options in which the member's benefit was then invested to an investment option that the Trustee selects.

5. SUPERANNUATION ACCOUNTS

- Establish and maintain** 5.1 Each accumulation member's superannuation account is to be invested by the trustee in accordance with Rule 10.1 of Section 1 and Rule 4 of Division 2A of Section 2.

6. PARTICIPATING EMPLOYER OBLIGATIONS

SECTION 2 – ADDITIONAL RULES APPLYING TO THE ACCUMULATION SECTION

- Participating employer obligations**
- 6.1 It is the responsibility of the participating employer, and not the Trustee, to ensure that *contributions* made to the Fund comply with any legal or contractual obligation to which the employer is subject.
- 6.2 The Trustee is not:
- (a) obliged to monitor, or enforce the participating employer's compliance with, any obligation referred to in Rule 6.1 of Section 1;
 - (b) liable to an employer or *beneficiary* if a *contribution* to the Fund does not satisfy such obligations; or
 - (c) obliged to report any non-compliance by an employer to any *beneficiary* or any other person, unless required to do so under superannuation law.
-

7. FAMILY LAW

- Satisfying a payment split**
- 7.1 If a member's interest becomes subject to a *payment split*, the Trustee may satisfy the *payment split* in any of the ways permitted by the payment splitting standard, including:
- (a) creating a new interest in Division 2B of the Accumulation Section of the Fund for the *non-member spouse*;
 - (b) *transferring or rolling over* from the Fund an amount in favour of the *non-member spouse*; or
 - (c) paying a lump sum to the non-member spouse (if he or she satisfies a relevant condition of release),

and correspondingly reduce the member's benefit by the amount permissible under the payment splitting standard.

Note: The payment splitting standard is set out in Part 7A of the SIS Regulations. By satisfying a payment split in one of the ways specified above, any future payments of the member's benefit are not "splittable payments" for the purposes of the Family Law Act – see Regulations 14 and 14F of the Family Law (Superannuation) Regulations 2001(Cth). "Relevant condition of release" is defined in SIS Regulation 7A.01A.

8. MYSUPER MEMBERS

- Application**
- 8.1 If the Trustee is authorised to offer and determines to offer a class of beneficial interest in the Fund as a *MySuper product*, this rule applies to the extent that a member's interest in the Fund is a *MySuper product*, notwithstanding anything expressed or implied to the contrary in these Rules.
- Additional trustee obligations**
- 8.2 The Trustee must comply with the additional trustee obligations imposed under SIS in relation to the *MySuper product*.
- MySuper product characteristics**
- 8.3 The following rules apply to the *MySuper product*:

SECTION 2 – ADDITIONAL RULES APPLYING TO THE ACCUMULATION SECTION

- (a) the Trustee must adopt a single diversified investment strategy (or, where permitted by SIS, a lifestyle investment strategy) for the MySuper assets, as determined by the Trustee from time to time;
 - (b) all MySuper members must have access to the same options, benefits and facilities (as determined by the Trustee from time to time) except to the extent that a benefit is provided by taking out risk insurance;
 - (c) the Trustee must allocate the gains and losses attributable to the MySuper assets by attributing them to the superannuation accounts of all MySuper members, unless otherwise permitted by SIS;
 - (d) the Trustee must adopt the same process for attributing other amounts permitted to be debited and credited to the superannuation accounts of MySuper members;
 - (e) the Trustee must not limit the sources or kinds of contributions that may be made to the *MySuper product*, except as otherwise permitted by SIS;
 - (f) a MySuper member's interest cannot be replaced with another class of interest in the Fund unless the MySuper member consents in writing to the replacement no more than 30 days before it occurs or as otherwise permitted by SIS;
 - (g) a MySuper member's beneficial interest in the Fund cannot be replaced with a beneficial interest in another superannuation entity unless the replacement is permitted or required under a law or the MySuper member consents in writing to the replacement no more than 30 days before it occurs;
 - (h) the Trustee must not pay a pension from the MySuper assets other than by payment of a benefit provided to the Fund by an insurer in the event of a MySuper member ceasing work due to ill-health or as otherwise permitted by SIS; and
 - (i) any other rules determined by the Trustee for the *MySuper product* from time to time.
- 8.4 The Trustee must ensure that the rules applicable to the *MySuper product* comply with SIS. Any inconsistent provisions of this rule shall be deemed to be amended or deleted and any additional requirement shall be deemed to be included to the extent necessary to ensure compliance.
- MySuper fee rules**
- 8.5 The Trustee must charge fees in relation to the *MySuper product* in the manner required by SIS and only as permitted by SIS.
- 8.6 The Trustee must not pay any *conflicted remuneration* in relation to the *MySuper product*.
- 8.7 The Trustee must ensure that any arrangement for the payment of a *performance-based fee* to an investment manager for the investment of one or more of the MySuper assets complies with SIS.

SECTION 2 – ADDITIONAL RULES APPLYING TO THE ACCUMULATION SECTION

- Insured benefits** 8.8 The Trustee must provide insured benefits for MySuper members to the extent and on the basis required by SIS and only as permitted by SIS.
- Accrued default amounts** 8.9 Unless the MySuper member directs the Trustee in writing not to do so, the Trustee must attribute to the MySuper member's *MySuper product* any accrued default amount held in the Fund for the MySuper member within the period required by SIS.

Note: The additional trustee obligations, MySuper product characteristics and fee rules for MySuper products are set out in Part 2C of the SIS Act. The insurance provisions for MySuper members are set out in section 68AA of the SIS Act.

9. DICTIONARY

In this Division 2A, unless the contrary intention appears or the context requires otherwise:

A **accrued default amount** has the meaning given to that expression under SIS.

L **law** means a law of the Commonwealth.

M **MySuper assets** means the Fund assets attributable to the *MySuper product*.

MySuper member means a member who holds a *MySuper product* in respect of all or part of their interest in the Fund.

SECTION 2 – ADDITIONAL RULES APPLYING TO THE ACCUMULATION SECTION

DIVISION 2B – First State Super Accumulation and Pension

1. APPLICATION AND INTERPRETATION

- Interpretation**
- 1.1 The provisions of this Division 2B relate to and provide for accumulation members of the Fund in the First State Super Accumulation and Pension Division.
- 1.2 This Division 2B prevails over any other provision in the Rules to the extent of any conflict unless otherwise determined by the Trustee.
- 1.3 The Trustee may make such provisions as it feels necessary for this Division.
-

2. SUPERANNUATION ACCOUNTS

- Establish and maintain**
- 2.1 If the Trustee becomes aware that more than one superannuation account exists in respect of a member, it must consolidate those accounts to one single superannuation account as soon as practicable (and no adjustment is to be made to any charges applied to the separate superannuation accounts).
- 2.2 If the Trustee becomes aware that more than one superannuation account exists in respect of an accumulation member, it must consolidate those accounts to one single superannuation account as soon as practicable (and no adjustment is to be made to any charges applied to the separate superannuation accounts).
- Recording of account**
- 2.3 The superannuation account of a member of this Division is to be recorded as a number of units (and fractions of a unit) in the applicable investment options.
- Credits and debits**
- 2.4 The Trustee may, subject to SIS, debit amounts from, or make other adjustments to, a Division 2B member's superannuation account (or a sub-account) by allocating or canceling units, as the Trustee determines.

Note: The debiting of a member's superannuation account is subject to the benefit protection standard set out in Part 5 of the SIS Regulations. SIS Regulation 6.16A sets out the order of debiting a negative investment return, depending on the preservation status of an amount in a member's superannuation account.

SECTION 2 – ADDITIONAL RULES APPLYING TO THE ACCUMULATION SECTION

DIVISION 2C – Health Super

1. APPLICATION AND INTERPRETATION

- Application of Division 2C**
- 1.1 This Division 2C prevails over any other provision in the Rules to the extent of any conflict unless otherwise determined by the Trustee.
- 1.2 The provisions of this Division 2C relate to and provide for accumulation members of the Fund in the Health Super Accumulation Division.
- Membership**
- 1.3 A member of the Health Super Accumulation Division may also be a member of another Division of the Fund while a member of the Health Super Accumulation Division. In that event, any benefit payable from the Health Super Accumulation Division shall be paid in accordance with this Division 2C and any benefit payable from another Division shall be paid in accordance with the rules applying to that Division.
- 1.4 A person who was a member of any of the following divisions of the Health Super Fund immediately prior to the Health Super transfer date is, unless otherwise advised by the Trustee in writing, a member of the Health Super Accumulation Division upon transfer to the Fund on the Health Super transfer date:
- (a) division B (Baker Heart members);
 - (b) division E (Accumulation);
 - (c) division F (Eligible Spouse); and
 - (d) division G (Account Based Pension).
- Member transfer**
- 1.5 The Trustee may allow a defined benefit member of the Health Super DB Fund to elect to become a member of this Health Super Accumulation Division. The transfer is subject to such procedures as the Trustee may determine.
-

2. MEMBER'S SUPERANNUATION ACCOUNT

- Debits and credits**
- 2.1 The Trustee shall credit to a member's superannuation account, as appropriate:
- (a) the monies received by the Trustee from the trustee of the Health Super Fund on the Health Super transfer date representing the accumulation account balance of that member as at the Health Super transfer date;
 - (b) on and from the Health Super transfer date:
 - (i) participating employer *contributions* made in respect of the member in accordance with Rule 4 of Division 2C of Section 2;
 - (ii) any *contributions* by or in respect of the member in accordance with Rule 7.1 of Section 1;
 - (iii) any amounts transferred in respect of the member from another Division of this Deed and which the Trustee
-

SECTION 2 – ADDITIONAL RULES APPLYING TO THE ACCUMULATION SECTION

determines to credit to the member's superannuation account;

- (iv) any amount *rolled over* or *transferred* in respect of the member in accordance with the Rules and which the Trustee determines to credit to the member's superannuation account;
- (v) earnings (if positive);
- (vi) the member's retained benefit;
- (vii) in respect of a member commencing an *account based pension*, the initial credit;
- (viii) any amounts the Trustee may decide to credit because of a valid family law arrangement; and
- (ix) any other amounts which these Rules may require to be credited to the member's superannuation account or which the Trustee may determine to credit to the account,

and there shall be debited to a member's superannuation account, as appropriate:

- (a) any amounts which the Trustee may determine to debit in respect of tax, *administration costs* and insurance;
- (b) any amount *rolled over* or *transferred* in respect of the member in accordance with these Rules and which the Trustee determines to debit to the member's superannuation account;
- (c) any amounts transferred in respect of the member to another Division of these Rules;
- (d) any benefit paid to or in respect of a member from the member's superannuation account;
- (e) earnings (if negative);
- (f) in respect of a member with an *account based pension*, any pension payments or benefit paid by way of commutation;
- (g) any amounts which the Trustee may decide to debit because of a valid family law arrangement pursuant to Rule 7.1 of Division 2A of Section 2; and
- (h) any other amounts which these Rules may require to be debited to the member's superannuation account or which the Trustee may determine to debit to the account.

3. INVESTMENT PERFORMANCE

- | | | |
|-------------------------------|-----|--|
| Superannuation account | 3.1 | In respect of a member of the Health Super Accumulation Division, the Trustee may allocate earnings to the member's superannuation account on such basis as the Trustee may determine either generally or in any |
|-------------------------------|-----|--|
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SECTION 2 – ADDITIONAL RULES APPLYING TO THE ACCUMULATION SECTION

particular case, including without limitation by way of unit price movements or a particular net earning rate.

4. EMPLOYER CONTRIBUTIONS

- | | | |
|-------------------------------------|-----|---|
| Amount to be contributed | 4.1 | A participating employer must contribute to the Fund in respect of a member the amount necessary to fund the member's benefit under the SG Act and may contribute any additional amount which the employer may determine either generally or in a particular case. |
| Manner and timing of payment | 4.2 | The <i>contributions</i> payable by a participating employer must be paid to the Fund in the manner and at the times reasonably determined or approved by the Trustee. If the Trustee consents, <i>contributions</i> payable by one participating employer may be paid by another employer. |
| | 4.3 | If, after an amount becomes payable, a participating employer does not pay the whole of the amount to the Trustee, the Trustee may require the employer to pay interest on the unpaid amount at a rate determined by the Trustee from time to time. |

5. BENEFITS

- | | | |
|------------------------------------|-----|---|
| Death or Disability benefit | 5.1 | Subject to Rule 9.3 of Division 2C of Section 2 and without limiting the circumstances when a benefit may be paid under Rule 8 of Section 1, if:

(a) a member dies; or

(b) a member becomes disabled,

there is, subject to superannuation law on preservation and to the member being eligible to receive an insured benefit, payable to or in respect of the member a lump sum benefit of an amount equal to the sum of:

(a) the balance of the member's superannuation account; and

(b) any proceeds of insurance in respect of the member subject to any maximum insured amount determined by the Trustee from time to time either generally or in any particular case and in the case of Baker Heart members, being no less than the level of insurance proceeds that the member would have received in the relevant circumstances had the policy of insurance in force as at the Health Super transfer date continued to apply. |
| Total disability benefit | 5.3 | If the Trustee becomes entitled to a total disability benefit under any policy of insurance effected in respect of the member, the Trustee will pay a benefit from the Fund in accordance with the terms of that policy, being in the case of Baker Heart members no less than the level of insurance proceeds that the member would have received had the policy of insurance in force as at the Health Super transfer date continue to apply. |
| Payment of death benefits | 5.4 | Subject to Rule 8.12 of Section 1 in respect of any binding nomination and to Rule 5.5 of Division 2C of Section 2, any benefit payable from this Fund as a result of the death of a member of the Health Super Accumulation Division which is not expressed to be payable to or for the benefit of some |

SECTION 2 – ADDITIONAL RULES APPLYING TO THE ACCUMULATION SECTION

specified person or persons must be paid or applied by the Trustee to or for the benefit of:

- (a) the member's dependants; and
- (b) the member's legal personal representatives,

in the form, manner, proportions and subject to the conditions determined by the Trustee.

5.5 If after such inquiries and such period as the Trustee considers appropriate, the Trustee is unable to identify a dependant or *legal personal representative* of a deceased member to its satisfaction, the Trustee may pay or apply the benefit otherwise payable under Rule 5.4 of Division 2C of Section 2 in any other manner permissible under superannuation law.

5.6 Notwithstanding Rule 5.4 of Division 2C of Section 2, if superannuation law so requires, the Trustee must pay a lump sum death benefit to any *beneficiary* who is not a dependant or who is an Adult Child.

Forfeiture

5.7 The Trustee may, in its absolute discretion and subject to superannuation law, determine that a member whose benefit has been forfeited under Rule 8.19 of Section 1 is re-entitled to the benefit and may adjust any such right, interest or obligation in the manner and to the extent and on such conditions as the Trustee considers appropriate.

5.8 The Trustee is not under a duty to apply Rule 5.7 of Division 2C of Section 2 or to consider whether it should apply Rule 5.7 of Division 2C of Section 2, even if the Trustee has actual notice of a relevant matter.

6. TRANSFER OF BENEFITS

Transfers between Divisions

6.1 Subject to superannuation law and Rule 6.2 of Division 2C of Section 2, the Trustee may without obtaining the consent of an employed member or *beneficiary*, transfer an amount representing the value of the member's benefit under the Health Super Accumulation Division of the Fund to another Division of the Fund, other than a Division of the Defined Benefit Section.

6.2 A transfer under Rule 6.1 of Division 2C of Section 2 must, in the opinion of the Trustee, provide the employed member or beneficiary with equivalent rights to the member's benefits as a whole in the new Division to the rights to benefits as a whole that the member enjoyed in the Health Super Accumulation Division immediately prior to the transfer.

7. VESTING

Vesting

7.1 Subject to superannuation law, the whole of a member's superannuation account vests in the member.

8. PAYMENT OF ACCOUNT BASED PENSION

Payment of an account based pension

8.1 If a member has an *account-based pension*, it will be paid in accordance with the rules made by the Trustee under Rule 8.18 of Section 1.

SECTION 2 – ADDITIONAL RULES APPLYING TO THE ACCUMULATION SECTION

9. FORMER DIVISION B MEMBERS OF HEALTH SUPER FUND

- Application of Rule** 9.1 This Rule 9 of Division 2C of Section 2 only applies to former division B members.
- Definitions** 9.2 In this Rule 9 of Division 2C of Section 2, unless the contrary intention appears or the context requires otherwise:
- additional cover** means any insurance cover in excess of the base cover.
- annualised salary** means in relation to a member the annual equivalent of the average of salary paid to the member since the commencement of the previous financial year.
- approved insurer** means the insurance company determined by the Trustee.
- base cover** means the amount of insurance cover determined from time to time by the Trustee.
- insurable component** means at any particular date in respect of a member of the Health Super Accumulation Division and a benefit provided for in any provision of the Rules for this Division the amount determined by the Trustee from time to time, after obtaining the advice of the actuary, either generally or in any particular case.
- Death and Disability Benefits: restrictions** 9.3 If, during the first two years of membership of the Health Super Fund and, if the two year period had not expired at the Health Super transfer date, the Fund at a time that the Trustee had not effected insurance in respect of the member with an insurer in respect of base cover, the member dies or suffers disability as a direct consequence of a medical condition:
- (a) which was, in the opinion of the Trustee after obtaining the advice of a legally registered medical practitioner, pre-existing at the commencement of membership of the Health Super Fund; or
 - (b) in respect of which a contract of insurance is not available at reasonable costs,
- the member has no additional cover.
- 9.4 If, having previously ceased to be an *employee*, a person again becomes an *employee*, then during and in respect of the period after the date of again becoming an *employee* the person must be treated for all intents and purposes as if that person had never previously been a member of the Health Super Fund or the Fund (as the case may be).
- 9.5 In all other instances where an insurance policy is in effect in respect of a member's death or disability, any restrictions on a member's additional cover or base cover, or both, are those imposed by the insurer under the policy.
- Former division B members – death benefit** 9.6 If:
- (a) a former division B member dies while an employed member or ceases to be an employee because of disability;

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- (b) the member's superannuation account balance contains a "basic benefit" under part 6 of the 1988 Act, and
- (c) the member did not experience a break in "Service" under division C or division D of the Health Super Fund or of Division 3C or 3D of the Fund, as applicable, or become an employee of an employer that did not contribute to the Health Super Fund or the Fund in respect of any defined benefit members,

there is payable to or in respect of the member a lump sum benefit equal to the percentage of annualised salary necessary to fund the member's benefit under the SG Act for each year between the date of death or disability (as applicable) and the date the member would have attained the age of 60 years, in addition to any amount payable under Rule 5.1 of Division 2C of Section 2.

No transfer to Health Super DB Fund

- 9.7 For the avoidance of doubt, if a former member of division B of the Health Super Fund whose superannuation account contains a "basic benefit" under part 6 of the 1988 Act experienced a break in "Service" under division C or division D of the Health Super Fund or Division 3C or Division 3D of the Fund, as applicable, or became an employee of an employer that did not contribute to the Health Super Fund or does not contribute to the Fund in respect of any defined benefit members, that member is no longer eligible to elect membership of the Health Super DB Fund.

Reduction of benefits

- 9.8 Where:
- (a) the Trustee considers that; or
 - (b) subject to superannuation law, the approved insurer advises that, on the balance of probabilities the approved insurer would have:
 - (i) for any reason failed to provide insurance on the insurer's standard terms for standard lives; or
 - (i) for any reason:
 - (A) failed to provide or to increase the level of insurance;
 - (B) reduced or terminated insurance;
 - (C) limited or restricted insurance or the circumstances in which insurance proceeds will become payable; or
 - (D) refused to consider, deferred or denied a claim in whole or in part,

if the Trustee or the trustee of the Health Super Fund had sought from time to time during the member's membership of the Health Super Accumulation Division of this Fund or division B of the Health Super Fund to effect group life insurance with the approved insurer on its standard terms for standard lives in respect of the whole of the insurable component of any benefit secured or to be secured under those Divisions (having regard to changes in particular insurable components, and in the approved insurer's standard terms, from time to time), the amount of any benefit

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otherwise payable under any provision of these Rules may be reduced to the extent that, in consequence of that action by the approved insurer:

- (c) group life insurance would not have been available from the approved insurer on its standard terms for standard lives; or
- (d) group life insurance, or the proceeds thereof, would have otherwise been refused, withheld, reduced, terminated, limited or restricted by the approved insurer,

either generally or in any particular case. The Trustee may adjust that benefit, and any other benefit which the Trustee may consider to be affected, in the manner and to the extent the Trustee considers necessary in order to effect and take account of that reduction.

- 9.9 In forming an opinion under Rule 9.8 of Division 2C of Section 2, the Trustee may rely on the advice or opinion of the approved insurer.
- 9.10 Any adjusted benefits provided under Rule 11.2 of Section 1 or 9.8 of Division 2C of Section 2 are in lieu of and in full satisfaction of the benefits which would or might have been or become payable but for those Rules.

10. DICTIONARY

B

Baker Heart member means a member of the Health Super Accumulation Division of the Fund who was a member of division B of the Health Super Fund as at the Health Super transfer date.

C

casual employee means a casual employee as defined by the relevant award determinations or an employee who the participating employer notifies the Trustee is a casual employee or who was as at the Health Super transfer date recorded in the records of the Health Super Fund as being a casual employee.

D

dependant means in relation to a person ("**relevant person**") any one or more of

- (a) the *spouse* of the relevant person;
- (b) any *child* of the relevant person;
- (c) any other natural person who, in the opinion of the Trustee, is at the relevant date (or, in the case of a deceased person, was at the time of death of the deceased) wholly or partially dependent on the relevant person or who at that date had a legal right to look to him or her for financial support; and
- (d) any other natural person who may qualify as a dependant under superannuation law.

disability in relation to a member means:

- (a) the same meaning as that term has for the time being and from time to time in any applicable policy of insurance; or
- (b) in any other case, the permanent inability of the member due to a continuing or recurring injury, disease or infirmity as determined by

SECTION 2 – ADDITIONAL RULES APPLYING TO THE ACCUMULATION SECTION

the Trustee on the basis of reports provided by at least two legally registered medical practitioners appointed by the Trustee to perform his or her duties or any other duties for which he or she is suited by education, training or experience or for which he or she would be suited as a result of retraining.

E

employee has, in relation to an participating employer, the same meaning as in SIS, and a person ceases to be an employee:

- (a) if that person is not a casual employee, on the date which is 4 weeks after a participating employer was last required to make a *contribution* to the Fund in respect of that person; and
- (b) if that person is a casual employee, on the date which is 8 weeks after a participating employer was last required to make a *contribution* to the Fund in respect of that person.

employed member means a person who is for the time being both an employee and a member.

employer means:

- (a) an entity which was deemed to be an employer in the Health Super Fund pursuant to section 68D of the Public Sector Superannuation (Administration) Act 1993 as added by section 40 of the Amending Act but not including an entity which ceased to participate as an employer in the Health Super Fund prior to the Health Super transfer date; or
- (b) a participating employer admitted in accordance with Rule 6 of Section 1 but not including an entity which ceased to participate in the Fund as an employer; and
- (c) in relation to an employee, means the participating employer or employers by which the employee is for the time being an employee, or, in relation to a former employee, means the participating employer or employers by which the former employee was last an employee.

F

former division B members means members of the Health Super Accumulation Division of the Fund who were members of division E of the Health Super Fund as at the Health Super transfer date but prior to their membership of division E, were former members of division B of the Health Super Fund.

I

initial credit means in relation to a member who commences an *account based pension* after the Health Super transfer date, the amount first applied to establish a pension for that member;

N

net earning rate means the rate of earnings (which may be positive or negative) determined by the Trustee after having regard to the income of the Fund or of any particular investment option within the Fund or any other matter considered relevant by the Trustee, in respect of any period specified by the Trustee:

- (a) a net earning rate may be prospectively determined on an interim basis in respect of a particular period; and
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SECTION 2 – ADDITIONAL RULES APPLYING TO THE ACCUMULATION SECTION

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- (b) a net earning rate may be subsequently determined on a final or declared basis in respect of that period.

P

pension account balance means in relation to an *account based pension* as at any particular date the credit balance (if any) in the pensioner's superannuation account maintained in respect of the *account based pension*, after all relevant credits and debits have been made to the superannuation account.

R

retained benefit means any or all of the amount that becomes payable under the rules of another Division but:

- (a) receipt of which amount that member elects to defer in accordance with rules determined by the Trustee and to have retained in the Fund in accordance with this Division 2C; or
- (b) which the Trustee transfers to the Health Super Accumulation Division.

S

salary means in respect of a member of the Health Super Accumulation Division:

- (a) who is a casual employee, the amount advised to the Trustee by the participating employer, comprising the total of all amounts payable to that member on an annual basis as remuneration under the relevant award determination, excluding any expense of office, uniform allowance or reimbursement of travelling or other incidental expenses; and
- (b) who is not a casual employee, the amount advised to the Trustee by the participating employer as being equal to that member's ordinary time rate of pay, plus any allowances (not of a cost-reimbursement type such as an expense of office, uniform allowance, tool allowance, reimbursement for travel or other incidental expenses) which are ordinarily payable regularly and periodically (including shift and roster related payments), including certificate/qualification allowances and higher duties allowances for at least a 52 week period, but excluding any other allowances which are ordinarily not paid over a 52 week cycle or do not flow from regular rostered duty or any higher amount advised to the Trustee by the participating employer from time to time; and
- (c) who is an employee of a union or employee organisation:
- (i) the salary of the member immediately before becoming a full-time officer of the union or employee organisation; or
- (ii) any greater salary as is paid to the member by the union or employee organisation and approved by the Trustee; and
- (d) who is subject to an industrial arrangement, award or agreement which specifies that salary be calculated in a particular way for purposes of benefits from the Fund, the salary calculated in accordance with that arrangement, award or agreement; and
- (e) if no other provision of this definition applies, ordinary time earnings as defined under the SG Act.

SECTION 2 – ADDITIONAL RULES APPLYING TO THE ACCUMULATION SECTION

T **total disability** has the same meaning as that term (or any equivalent term in the opinion of the Trustee) has for the time being and from time to time in any applicable policy of insurance.

SECTION 3 – DEFINED BENEFITS

SECTION 3– DEFINED BENEFITS

DIVISION 3A – General Provisions

1. APPLICATION AND INTERPRETATION

Interpretation

- 1.1 The provisions of this Section 3 relate to and provide for all defined benefit members of the Defined Benefits Section of the Fund.
- 1.2 The Trustee may make such provisions as it feels necessary for any Division of the Defined Benefits Section.

2. FUND EXPENSES

Payment of Fund Expenses

- 2.1 The Trustee may charge in respect of a Division of the Defined Benefits Section, an amount payable by the Employers in the relevant Division and determined by the Trustee either generally or in any particular case, for the purpose of meeting Fund Expenses and insurance premiums of members of the relevant Division of the Defined Benefits Section.
- 2.2 The Trustee may charge a fee of an amount determined by the Trustee either generally or in any particular case, in relation to matters undertaken by the Trustee to comply with any notices or orders received by the Trustee under the Bankruptcy Act 1966 in respect of a member or *beneficiary* and may recover that fee by debit from the relevant member's superannuation account, by deduction from the relevant *beneficiary's* benefit or in any other manner determined by the Trustee.

3. INFORMATION REGARDING FUND

Information from Employers

- 3.1 A participating employer must, as and when requested by the Trustee, give to the Trustee all information in the employer's possession or under the employer's control which may be reasonably necessary for the operation, management and administration of the Fund.

Information for Employers

- 3.2 Except for any matter which is the subject of a binding obligation of confidence imposed on the Trustee, the Trustee must cause to be provided to a participating employer, as and when requested by the employer, any information which that participating employer may reasonably require in order to determine and discharge an obligation or liability of the employer in connection with the Fund or to exercise a power or perform a duty of the employer.

4. EMPLOYER CEASING BUSINESS

Employer ceasing business

- 4.1 Where an employer:
 - (a) is or includes a body corporate, and a binding resolution is passed or order is made, or any other enforceable action is taken, for the purpose of winding up that body or a scheme of arrangement providing for the dissolution of that body is approved by a court;

SECTION 3 – DEFINED BENEFITS

- (b) is or includes a partnership and that partnership is dissolved;
 - (c) is or includes a natural person or natural persons and that person or any of those persons becomes bankrupt; or
 - (d) ceases to carry on business for any reason,
 - (e) the Trustee may enter into a participation agreement with a person (the **successor**) who wholly or partially succeeds or replaces the participating employer, for the successor to take the place of the participating employer under this Deed. The participation agreement may be on such terms and in any form acceptable to the Trustee and is binding on all interested persons.
- 4.2 Subject to the specific provisions of the participation agreement and Rule 5.1 of Division 3A of Section 3, if an event provided for in Rule 4.1 of Division 3A of Section 3 occurs in relation to an employer but no agreement is entered into as provided in that Rule within 90 days (or any other period determined or allowed by the Trustee) after the date the relevant event occurred, the Trustee is deemed to have received on the last day of that period a notice from the employer in accordance with Rule 5.1 of Division 3A of Section 3 that the employer has decided to terminate all of its payments to and in respect of the Fund with effect on that last day.

5. TERMINATION OF EMPLOYER CONTRIBUTIONS ON WITHDRAWAL FROM THE FUND

Notice of termination

- 5.1 Subject to Rules 6 and 21 of Section 1, an Employer which contributes or is liable to contribute in respect of a defined benefit member may, after giving 6 months (or any lesser period as determined by the Trustee) prior written notice to the Trustee, either generally or in respect of any person or persons named or described in that notice (or then or thereafter falling within a group or class of persons described in that notice):
- (a) terminate all or any of its payments in respect of the Fund; or
 - (b) reduce or suspend all or any of its payments in respect of the Fund to the extent specified in that notice, either indefinitely or for the period specified,

but a notice does not change the Employer's liability in respect of payments due from the Employer before the notice takes effect.

Non-payment or inadequacy of Employer payments because of withdrawal from the Fund

- 5.2 If an Employer has given or is deemed to have given a notice pursuant to Rule 5.1 of Division 3A of Section 3 then:
- (a) unless otherwise agreed between the Trustee and the Employer, no *contributions* will be accepted from a member (unless otherwise provided in another Division of the Defined Benefits Section or the HS DB Rules), and no Employee will be admitted as a member, during or in respect of any period when an Employer's payments are or would be terminated in respect of that person pursuant to that notice; and
 - (b) the Trustee, after obtaining the advice of the actuary and subject to Rule 5.4 of Division 3A of Section 3 and Rule 5.5 of Division 3A of

SECTION 3 – DEFINED BENEFITS

Section 3, may adjust any benefit which is or may become payable to or in respect of any person whom the Trustee may consider is affected by that termination to the extent and in the manner the Trustee considers appropriate and equitable; and

- (c) subject to any agreement made under Rule 6 of Section 1, and unless the Trustee determines otherwise, the Employer will cease to be an Employer after it has satisfied any outstanding liabilities under Rule 5.1 of Division 3A of Section 3.

Revocation of notice or remedy of failure or inadequacy

5.3 Subject to any conditions imposed by the Trustee, Rule 21 of Section 1, any agreement under Rule 6 of Section 1, Rule 5.4 of Division 3A of Section 3 and Rule 5.5 of Division 3A of Section 3, an Employer may:

- (a) revoke or vary a notice given or deemed to have been given by that Employer pursuant to Rule 5.1 of Division 3A of Section 3; or
- (b) remedy a failure or inadequacy which has occurred or arisen in terms of Rule 5.2 of Division 3A of Section 3,

and, in that event, the Trustee (after obtaining the advice of the actuary) may adjust the rights and obligations of the persons who, in the opinion of the Trustee, are affected by the revocation, variation or remedy to the extent and in the manner determined by the Trustee.

Adjustment procedures and limits

5.4 An adjusted benefit determined in respect of a person under this Rule 5 of Division 3A of Section 3 may be provided in any manner or form, by way of any arrangements (including transfer to the relevant Division of the Accumulation Section) and subject to any conditions determined by the Trustee either generally or in any particular case, and is in lieu of and in full satisfaction of any benefit which would or might have been or become payable from the Fund but for this Rule 5.

5.5 Unless otherwise agreed between the Trustee and the Employer, an adjustment made pursuant to Rule 5.2(b) of Division 3A of Section 3 or Rule 5.3 of Division 3A of Section 3 must not increase the amount of any benefit which, in the opinion of the Trustee after obtaining the advice of the actuary, has accrued in respect of a person immediately prior to the effective date of that adjustment in respect of the period up to that date or improve the basis upon which benefits accrue during or in respect of any period after that date.

6. INDEMNITIES AND PROTECTIONS

Trustee's liability limited to sub-fund assets

6.1 Where the Trustee has determined that a sub-fund is to be established in respect of specified defined benefit members of the Fund, except to the extent that the Trustee cannot be exempted from personal liability under superannuation law, the Trustee is not required to make any payment (in respect of a benefit or otherwise) except out of that sub-fund or be liable to any greater extent than the moneys and property comprising the sub-fund.

7. FAMILY LAW

SECTION 3 – DEFINED BENEFITS

Satisfying a payment split

- 7.1 If a member's interest becomes subject to a *payment split*, the Trustee may, at its discretion:
- (a) flag a member's interest or lift a flag on a member's interest or benefit in the Fund where and as required by superannuation law; or
 - (b) satisfy the *payment split* in any of the ways permitted by superannuation law, including (without limitation):
 - (i) *transferring* or *rolling over* from the Fund an amount in favour of the *non-member spouse*, including to an eligible rollover fund; or
 - (ii) paying a lump sum to the *non-member spouse* (if he or she satisfies a relevant condition of release).
- 7.2 Where Rule 7.1(a) of Division 3A of Section 3 applies, the Trustee may record in the Fund the amount that the Trustee considers represents the amount to which the *non-member spouse* is entitled having regard to the requirements of superannuation law and adjust or do any other act, matter or thing in respect of that record until the Trustee determines to pay or transfer that amount from the Fund in accordance with Rule 7.1(b) of Division 3A of Section 3.
- 7.3 Where Rule 7.1(b) of Division 3A of Section 3 applies, the Trustee may, on the advice of the actuary, adjust any benefit or other amount payable or which may become payable from the Fund in respect of a member to take account of the *payment split* in respect of the member or in respect of benefits payable from the Fund for or in respect of that member. Subject to superannuation law, any adjustment will be on such terms as the Trustee determines.
- 7.4 The Trustee must not create a new interest in the Defined Benefits Section of the Fund for or in respect of a *non-member spouse*.

Note: The payment splitting standard is set out in Part 7A of the SIS Regulations. By satisfying a payment split in one of the ways specified above, any future payments of the member's benefit are not "splittable payments" for the purposes of the Family Law Act – see Regulations 14 and 14F of the Family Law (Superannuation) Regulations 2001 (Cth). "Relevant condition of release" is defined in SIS Regulation 7A.01A.

8. DICTIONARY

- 8.1 In this Section 3, unless the contrary intention appears:

Fund Expenses means the costs and expenses of and incidental to the establishment, operation, management, administration and investment of the Fund in respect of defined benefit members.

SECTION 3 – DEFINED BENEFITS

HEALTH SUPER DB RULES

SECTION 3 – DEFINED BENEFITS

DIVISION 3B – General Provisions

1. APPLICATION AND INTERPRETATION

Interpretation

- 1.1 The Trustee resolved to create a sub-fund with effect from the Health Super transfer date to be known as the Health Super DB Fund.
- 1.2 The Health Super DB Fund will be held by the Trustee as a separate trust for defined benefit members of the Health Super Fund who were transferred by way of a successor fund transfer pursuant to regulation 6.29 of SIS with effect from the Health Super transfer date.
- 1.3 The interests of each member and beneficiary of the Health Super DB Fund are determined by reference only to the provisions governing that sub-fund.
- 1.4 The Divisions of this Health Super DB Fund relate to and provide for the defined benefit members of the former Health Super Fund.
- 1.5 This Division 3B only applies to and in respect of a member who is for the time being categorised as a member of the Health Super DB Fund.
- 1.6 The intention of the Rules in Divisions 3B, 3C and 3D of this Section 3 (in accordance with section 40 of the Amending Act) is that all persons, things and circumstances existing or continuing under the 1988 Act immediately before 1 January 1999 (including benefit accruals and benefit entitlements) shall continue to have the same status, operation and effect as they would have had if the 1988 Act had not been repealed and as if the Health Super DB Fund replaced (as successor to) the Health Super Fund with effect from the Health Super transfer date.
- 1.7 Subject to Rule 1.8 of Division 3B of Section 3 and any amendment validly made under clause 5 of the Trust Deed, notwithstanding any other provision in the Rules, a member of the Health Super DB Fund will not be entitled to a benefit that is less than, or more than, the benefit that the member would have been entitled to under the trust deed of the Health Super Fund had the member continued to be a member of the Health Super Fund.
- 1.8 On the advice of the actuary, the Trustee may determine to augment the benefit of a member of the Health Super DB Fund.
- 1.9 For the purposes of interpreting any provision of the HS DB Rules, the Trustee may have regard to the provisions of the Health Super Fund trust deed as it stood immediately before the Health Super transfer date.

Application of Division 1A and Division 3A

- 1.10 Subject to Rule 1.11 of Division 3B of Section 3, the Rules of Section 1 and Division 3A of Section 3 apply to members of the Health Super DB Fund.
 - 1.11 The HS DB Rules apply only in respect of the Health Super DB Fund and prevail over any other provisions of the Rules, including Section 1 or
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SECTION 3 – DEFINED BENEFITS

Division 3A of Section 3, to the extent of any conflict unless otherwise determined by the Trustee.

2. CATEGORISATION OF MEMBERS

Former categories of membership

- 2.1 As at the establishment of the Health Super DB Fund, the following categories of membership apply:
- (a) a member of division C of the Health Super Fund immediately prior to the Health Super transfer date is a member of Division 3C of Section 3 of the Fund; and
 - (b) a member of division D of the Health Super Fund immediately prior to the Health Super transfer date is a member of Division 3D of Section 3 of the Fund,

unless otherwise advised in writing by the Trustee.

Re-categorisation

- 2.2 At the request of a member and with the consent of the member's Employer (if applicable) the Trustee may determine to categorise the member as a member of any Division (including the Health Super Accumulation Division) for which the member is eligible. The transfer is subject to such procedures as the Trustee may determine.
-

3. TRANSFER OF BENEFITS

Transfer of Employed members

- 3.1 Subject to superannuation law, if:
- (a) in accordance with this Deed all *contributions* by and in respect of an Employed member have ceased; and
 - (b) the Employed member has become a participant in another Approved Benefit Arrangement which is maintained by the Employer for some or all of its Employees,

the Trustee may allow the Employed member:

- (c) to transfer from the Division of the Health Super DB Fund of which the member was a member at the date Employer *contributions* ceased to the Health Super Accumulation Division of the Fund; or
- (d) to transfer to an Approved Benefit Arrangement upon application and approval by the Trustee,

an amount determined by the Trustee (after obtaining the actuary's advice) and on the terms and conditions determined by the Trustee from time to time.

Transfers between Divisions

- 3.2 Subject to superannuation law, the Trustee may, without obtaining the consent of an Employed member or *beneficiary*, transfer an amount representing the value of the member's benefit under a Division of the Health Super DB Fund to another Division of the Health Super DB Fund or the Health Super Accumulation Division of the Fund if the Trustee determines, either generally or in a particular case, that the transfer would
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SECTION 3 – DEFINED BENEFITS

not detrimentally affect the member's rights in relation to benefits under this Deed.

4. RESIDUAL ASSETS

- Distribution of surplus**
- 4.1 If at any time there are no members or *beneficiaries* in the Health Super DB Fund and, in the opinion of the Trustee, all benefits which could become payable from the Health Super DB Fund have been paid, then the Health Super DB Fund must be dissolved, any moneys and other assets then remaining in the Health Super DB Fund (after payment of Fund Expenses) must be realised, and the proceeds must be distributed among the Employers as determined by the Trustee after obtaining the advice of the actuary.
- 4.2 If at any time there are members or *beneficiaries* remaining in the Health Super DB Fund but there are no members or *beneficiaries* in any particular Division of the Health Super DB Fund and, in the opinion of the Trustee, all benefits which could become payable with respect to that Division have been paid, then that Division must be closed and any money or assets remaining in the accounts of the Health Super DB Fund with respect to that Division (after payment of the relevant Division expenses) must be realised, and the proceeds must be distributed among the relevant Employers that contributed to that Division, as determined by the Trustee after obtaining the advice of the actuary.
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5. TAXATION

- Trustee's powers in relation to tax**
- 5.1 Subject to Rules 4.30 and 4.31 of Division 3C of Section 3 and Rules 5.42 and 5.43 of Division 3D of Section 3, the Trustee may take any actions (whether prospective or retrospective) which the Trustee considers necessary or appropriate to calculate, pay, deduct or otherwise take account of any tax, including without limitation, allowing a defined benefit member to elect to have any surcharge tax deducted from that member's superannuation account in the Health Super Accumulation Division of the Fund.
- Member's liability for tax**
- 5.2 Each member is liable for all tax incurred by the Trustee or the Fund in respect of that member and must indemnify the Trustee in respect of such tax if the Trustee is unable to recover the tax against the member's interest in the Fund.
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6. MEMBER CONTRIBUTIONS

- Amount to be contributed**
- 6.1 The amount of a defined benefit member's *contributions* to the Fund at any particular time must be determined in accordance with the relevant Division of the HS DB Rules.
- Manner and timing of payment**
- 6.2 Member *contributions* must be paid to the Fund in the manner and at the times determined or approved by the Trustee.
- Reduction, suspension or waiver**
- 6.3 Subject to any conditions determined by the Employer and approved by the Trustee and the member concerned (including without limitation conditions upon which *contributions* otherwise payable by the member and interest must be made up by and in respect of the member and conditions as to how benefits to be provided in respect of the member

SECTION 3 – DEFINED BENEFITS

must be adjusted to take account of a reduction, suspension or waiver), the Employer may for any period determined by the Employer reduce, suspend or waive *contributions* otherwise payable by the member.

- 6.4 Without limiting Rule 6.3 of Division 3B of Section 3, the Employer may determine that *contributions* which would have been paid by a member but for the exercise of a discretion as provided in Rule 6.3 of Division 3B of Section 3 will be deemed to have been paid by the member for the purpose of calculating the amount of, or determining the eligibility for, payment of any benefit payable pursuant to these HS DB Rules the amount of or eligibility for which depends on the amount of the *contributions* paid by the member or the period during which the member has contributed.
- 6.5 The Employer must notify the Trustee of any determination under Rule 6.3 of Division 3B of Section 3 or Rule 6.4 of Division 3B of Section 3 as soon as practicable.
- Compliance with superannuation law** 6.6 The Trustee must not accept *contributions* in respect of a member where:
- (a) superannuation law does not permit acceptance of such *contributions*; or
 - (b) the Trustee determines not to accept *contributions* of that particular type or in those particular circumstances.
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7. EMPLOYER CONTRIBUTIONS

- Amount to be contributed** 7.1 Subject to this Rule 7 of Division 3B of Section 3 and Rule 5 of Division 3A of Section 3, each Employer must contribute to the Fund at any particular time the amount or rate of *contributions* determined by the Trustee after obtaining the advice of the actuary. As soon as practicable, the Trustee must notify the Employer of each determination in respect of that Employer under this Rule 7.1 of Division 3B of Section 3.
- Manner and timing of payment** 7.2 The *contributions* payable by an Employer must be paid to the Fund in the manner and at the times reasonably determined or approved by the Trustee. If the Trustee consents, *contributions* payable by one Employer may be paid by another Employer.
- 7.3 If, after an amount becomes payable, an Employer does not pay the whole of the amount to the Trustee, the Trustee may require the Employer to pay interest on the unpaid amount at a rate determined by the Trustee from time to time.
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8. GENERAL CONDITIONS OF PAYMENT OF BENEFITS

- Normal amount and circumstances of payment** 8.1 Subject to this Division 3B and superannuation law, the amount and circumstances of payment of benefits in respect of a member at any particular time must be determined in accordance with the relevant Division of these HS DB Rules.
- Payment of benefits** 8.2 A benefit payable from the Fund is payable at the place and in the manner (including without limitation payment in specie or in kind, payment by electronic means or by way of installments or as an account based pension) determined by the Trustee and, without limiting Rule 8.14 of

SECTION 3 – DEFINED BENEFITS

Section 1, a person to whom a benefit is payable (whether in that person's own right or for and on behalf of another person) must, upon request by the Trustee, provide all information and do all acts and things which the Trustee considers necessary or desirable in effecting payment.

- 8.3 When a member or *beneficiary* receives an amount from the Trustee that is payable to that person, that receipt is a complete discharge to the Trustee in respect of that amount, and the Trustee is not bound to see to the application of that amount.
- 8.4 The Trustee will determine the relevant rate of earnings or the relevant unit price, as applicable, for the purposes of the whole or any particular provision of these HS DB Rules for all or part of the period between the date the benefit becomes payable out of the Fund until the date it is paid.
- Standard of proofs** 8.5 Whenever it is necessary under these HS DB Rules for the Trustee, an Employer or other person to decide questions of fact, that person may act upon any proofs or presumptions which that person may consider satisfactory, whether or not they are strictly legal proofs or legal presumptions.
- No personal claim** 8.6 No person is entitled to require a payment from the Health Super DB Fund except in accordance with these HS DB Rules.
- Proof of qualification for benefits** 8.7 Without limiting Rule 21 of Section 1 or Rule 8.5 of Division 3B of Section 3, a person's entitlement to a benefit from the Fund is contingent upon:
- (a) the Trustee being notified of that person's claim or intention to make a claim in respect of that benefit in writing or another manner or form reasonably satisfactory to the Trustee; and
 - (b) the availability to the Trustee or a delegate or nominee of the Trustee of all information, evidence and proofs required by the Trustee, delegate or nominee in order to be fully satisfied as to that person's existence, identity and whereabouts, and that person's entitlement or continued entitlement to receive that benefit.
- 8.8 Without limiting Rule 8.7 of Division 3B of Section 3 or Rule 8.5 of Division 3B of Section 3:
- (a) the Trustee may suspend consideration of a person's claim to or payment of a benefit until all required information, evidence and proofs become available to the satisfaction of the Trustee; and
 - (b) whether or not any action has been taken to identify, locate, contact or advise a claimant or potential claimant, if no person has notified the Trustee of a claim or intention to make a claim in respect of a particular benefit within 6 months after:
 - (i) in the case of a benefit arising on the death of a member, the date of death of the member;
 - (ii) in the case of a benefit arising on the disablement of a member, the date the member ceased to be an Employee; or
 - (iii) in any case, any date or other date determined or allowed by the Trustee either generally or in any particular case,

SECTION 3 – DEFINED BENEFITS

that benefit may be withheld or transferred to the Health Super Accumulation Division until a claim is made, further instructions given or the required proof is received.

Beneficiary under disability

- 8.9 If it appears to the Trustee that a *beneficiary* is under a legal disability or is unable for any reason to satisfactorily deal with an amount otherwise payable to the *beneficiary* from the Fund, the Trustee may pay or apply the whole or part of any amount payable to the *beneficiary* for or towards the maintenance, education, advancement or otherwise for the benefit of the *beneficiary* in any form and manner and subject to any conditions determined by the Trustee, including without limitation by way of payment to a person who, in the opinion of the Trustee:
- (a) is a trustee for the *beneficiary*, including without limitation a trustee of a separate trust established by the Trustee upon the trusts and with the powers determined by the Trustee;
 - (b) is a representative, *spouse*, *child*, parent or guardian of the *beneficiary*; or
 - (c) has custody or care (or the financial expense of custody or care) of the *beneficiary*.

Provision of benefits at particular ages

- 8.10 If, in the opinion of the Trustee, an amount or a benefit must be paid or commence to be paid from the Fund to or in respect of a member upon the member attaining a particular age or upon the occurrence of a particular event or circumstance (notwithstanding that there is no actual termination or interruption of employment) in order to satisfy superannuation law:
- (a) the Trustee must pay that amount or benefit or commence payment of that benefit subject to such conditions as are necessary to satisfy superannuation law; and
 - (b) subject to any contrary agreement between the Trustee and the Employer, for the purposes of determining the amount of, or eligibility for payment of, any benefit payable pursuant to these HS DB Rules in respect of an event or circumstance occurring or arising after the date the benefit is paid or commences to be paid, the Trustee may take into account, as it determines appropriate, any previous amount or benefit paid by the trustee of the Health Super Fund or by the Trustee under these HS DB Rules.
- 8.11 If, in the opinion of the Trustee, an amount or benefit may be paid or commence to be paid from the Fund in respect of a member upon the member attaining a particular age or upon the occurrence of a particular event or circumstance (notwithstanding that there is no actual termination or interruption of employment) without causing a breach of superannuation law:
- (a) the Employer and the Trustee may agree that the Trustee may pay that amount or benefit or commence payment of that benefit; and
 - (b) subject to any contrary agreement between the Trustee and the Employer, for the purposes of determining the amount of, or eligibility for payment of, any benefit payable pursuant to these HS DB Rules in respect of an event or circumstance occurring or arising after the date the benefit is paid or commenced to be paid, the Trustee may take into account, as it determines appropriate,

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any previous amount or benefit paid by the trustee of the Health Super Fund or by the Trustee under these HS DB Rules.

8.12 If a benefit becomes payable in accordance with Rule 8.10 of Division 3B of Section 3 or Rule 8.11 of Division 3B of Section 3, the benefit will be calculated:

- (a) in the case of a benefit payable under Rule 8.10 of Division 3B of Section 3, as at the day on which the Trustee must pay or commence payment of the benefit in order to satisfy superannuation law; or
- (b) in the case of a benefit payable under Rule 8.11 of Division 3B of Section 3, as at the later of the day on which the member requests payment of the benefit and the day on which the Trustee may pay or commence payment of the benefit without causing a breach of superannuation law.

Payment of death benefits

8.13 Subject to Rule 8.12 of Section 1 in respect of any binding nomination and to Rule 8.14 of Division 3B of Section 3, any benefit payable from this Fund as a result of the death of a member of Division 3C or Division 3D which under that Division is not expressed to be payable to or for the benefit of some specified person or persons must be paid or applied by the Trustee to or for the benefit of:

- (a) one or more of the member's dependants; or
- (b) if there are no dependants, the member's *legal personal representatives*,

in the form, manner, proportions and subject to the conditions determined by the Trustee.

8.14 If after such inquiries and such period as the Trustee considers appropriate, the Trustee is unable to identify a dependant or *legal personal representative* of a deceased member to its satisfaction, the Trustee may pay or apply the benefit otherwise payable under Rule 8.13 of Division 3B of Section 3 in any other manner permissible under superannuation law.

8.15 Notwithstanding Rule 8.13 of Division 3B of Section 3, if superannuation law so requires, the Trustee must pay a lump sum death benefit to any *beneficiary* who is not a dependant or who is an Adult Child.

Early release

8.16 In accordance with any procedures and subject to any conditions as determined from time to time by the Trustee, a member:

- (a) may apply to the Trustee for the early release of his or her vested benefits on the grounds of severe financial hardship or any other ground permitted under superannuation law; and
- (b) must provide any information required by the Trustee to determine the existence of the member's severe financial hardship or other ground for early release.

8.17 If all or part of a member's vested benefit is paid under Rule 8.16 of Division 3B of Section 3 or Rule 8.18 of Division 3B of Section 3, the benefits in respect of that member must be adjusted by the Trustee to

SECTION 3 – DEFINED BENEFITS

reflect the payment under Rule 8.16 of Division 3B of Section 3 or Rule 8.18 of Division 3B of Section 3 as follows:

- (a) if any lump sum benefit is subsequently payable to the member under Division 3C or 3D and the member's benefits have not been adjusted previously as a consequence of the same payment made under Rule 8.16 of Division 3B of Section 3 or Rule 8.18 of Division 3B of Section 3, that benefit:
 - (i) will be calculated under the relevant division of these HS DB Rules as if no payment had been made under Rule 8.16 of Division 3B of Section 3 or Rule 8.18 of Division 3B of Section 3; but
 - (ii) will then be reduced by the amount paid under Rule 8.16 of Division 3B of Section 3 or Rule 8.18 of Division 3B of Section 3 (plus earnings on that amount at the rate determined under Rule 6.1 of Division 3D of Section 3 to 6.4 of Division 3D of Section 3 in accordance with movements in the Consumer Price Index from the date of payment);
- (b) if the member has benefits payable under Division 2C the amount paid under Rule 8.16 of Division 3B of Section 3 or Rule 8.18 of Division 3B of Section 3 will be debited to one or more accounts maintained in respect of the member as the Trustee determines to be appropriate; and
- (c) if any pension benefit is subsequently payable and the member's benefits have not been adjusted previously as a consequence of the same payment made under Rule 8.16 of Division 3B of Section 3 or Rule 8.18 of Division 3B of Section 3, the amount paid under Rule 8.16 of Division 3B of Section 3 or Rule 8.18 of Division 3B of Section 3 (plus earnings on that amount from the date of payment as calculated under the commutation principles determined by the Trustee) will be treated as a commutation and the pension benefit will be adjusted accordingly.

8.18 If, in accordance with superannuation law, a member's application to APRA for early release of that member's *preserved benefits* or *restricted non-preserved benefits* in the Fund is approved, the Trustee will make the payment approved by APRA.

9. TRANSFER OF BENEFITS

Transfers to Approved Benefit Arrangements and other Divisions

- 9.1 Without limiting Rule 9.2 of Division 3B of Section 3 but subject to Rule 21 of Section 1 and the express provisions of any relevant Division, in lieu of providing all or part of a benefit from the Fund in respect of a *beneficiary*, the Trustee with the consent of the *beneficiary* may pay or transfer to or towards an Approved Benefit Arrangement in which the *beneficiary* participates or is eligible to participate:
- (a) an amount representing the value of all or that part of the benefit, as determined by the Trustee; or
 - (b) any greater amount agreed between the Trustee and the Employer but not exceeding the *beneficiary's* Equitable Share.

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9.2 Subject to Rule 21 of Section 1, if a *beneficiary* does not take all steps which, in the opinion of the Trustee, are reasonably necessary in order to ensure that the value of the benefit payable to the *beneficiary* (including without limitation any deferred or preserved benefit) is transferred to an Approved Benefit Arrangement approved by the Trustee, the Trustee must without obtaining the consent of the *beneficiary*:

- (a) cause that value to be transferred to another Approved Benefit Arrangement approved by the Trustee; or
- (b) if the Trustee determines either generally or in any particular case, and after any period of time determined by the Trustee, cause that value to be transferred to a Division of the Accumulation Section of the Fund,

but the Trustee must refrain from making a payment or transfer under this Rule 9.2 of Division 3B of Section 3 if and for so long as the Trustee considers it is necessary to do so in order to comply with any applicable requirement of superannuation law.

10. INSURANCE

Definitions

10.1 In this Rule 10 of Division 3B of Section 3, unless the contrary intention appears or the context requires otherwise:

approved insurer means the insurance company determined by the Trustee.

10.2 **insurable component** means at any particular date in respect of a member of the Health Super DB Fund and a benefit provided for in any provision of the HS DB Rules the amount determined by the Trustee from time to time, after obtaining the advice of the actuary, either generally or in any particular case.

Reduction of benefits

10.3 Where:

- (a) the Trustee considers that; or
- (b) subject to superannuation law, the approved insurer advises that,

on the balance of probabilities the approved insurer would have:

- (i) for any reason failed to provide insurance on the insurer's standard terms for standard lives; or
- (ii) for any reason:
 - (A) failed to provide or to increase the level of insurance;
 - (B) reduced or terminated insurance;
 - (C) limited or restricted insurance or the circumstances in which insurance proceeds will become payable; or
 - (D) refused to consider, deferred or denied a claim in whole or in part,

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if the Trustee or the trustee of the Health Super Fund had sought from time to time during the member's membership of Divisions 3C or 3D of the Fund or divisions C or D of the Health Super Fund to effect group life insurance with the approved insurer on its standard terms for standard lives in respect of the whole of the insurable component of any benefit secured or to be secured under those divisions (having regard to changes in particular insurable components, and in the approved insurer's standard terms, from time to time), the amount of any benefit otherwise payable under any provision of these Rules may be reduced to the extent that, in consequence of that action by the approved insurer:

- (c) group life insurance would not have been available from the approved insurer on its standard terms for standard lives; or
- (d) group life insurance, or the proceeds thereof, would have otherwise been refused, withheld, reduced, terminated, limited or restricted by the approved insurer,

either generally or in any particular case. The Trustee may adjust that benefit, and any other benefit which the Trustee may consider to be affected, in the manner and to the extent the Trustee considers necessary in order to effect and take account of that reduction.

- 10.4 In forming an opinion under Rule 10.3 of Division 3B of Section 3, the Trustee may rely on the advice or opinion of the approved insurer.
- 10.5 Any adjusted benefits provided under Rule 11.2 of Section 1 or Rule 10.3 of Division 3B of Section 3 are in lieu of and in full satisfaction of the benefits which would or might have been or become payable but for those Rules.

11. DICTIONARY

- 11.1 In these HS DB Rules applicable to the Health Super DB Fund, unless the contrary intention appears:

1988 Fund means the Hospitals Superannuation Fund under the 1988 Act.

A

Adult Child means a *child* who is aged 18 years or more unless the *child* is

- (a) aged less than 25 years and was financially dependent on the member as at the date of the member's death; or
- (b) disabled within the meaning of section 8(1) of the Disability Services Act 1986,

or such other similar concept as may apply under superannuation law from time to time.

Amending Act means the Superannuation Acts (Amendment) Act 1998 (Vic).

Approved Benefit Arrangement means a fund or benefit arrangement other than the Fund (including without limitation a superannuation fund, a retirement savings account, an approved deposit fund, a deferred annuity and an eligible rollover fund), being a fund or benefit arrangement to

SECTION 3 – DEFINED BENEFITS

which money or property may be paid or transferred from the Fund, or from which money or property may be received into the Fund, without causing the Fund to cease to be a complying superannuation fund under the Tax Act.

C

Casual Employee means a casual employee as defined by the relevant award determinations or an Employee who the Employer notifies the Trustee is a casual employee or in respect of whom a notification was made to the trustee of the Health Super Fund.

Consumer Price Index means the all groups consumer price index number for all capital cities published by the Commonwealth Statistician in respect of the June quarter and the December quarter for each year.

D

Dependant means in relation to a person ("relevant person") any one or more of:

- (a) the *spouse* of the relevant person;
- (b) any *child* of the relevant person;
- (c) any other natural person who, in the opinion of the Trustee, is at the relevant date (or, in the case of a deceased person, was at the time of death of the deceased) wholly or partially dependent on the relevant person or who at that date had a legal right to look to him or her for financial support; and
- (d) any other natural person who may qualify as a dependant under superannuation law.

Disability in relation to a Division 3C or Division 3B member means:

- (a) the same meaning as that term has for the time being and from time to time in any applicable policy of insurance; or
- (b) in any other case, the permanent inability of the member due to a continuing or recurring injury, disease or infirmity as determined by the Trustee on the basis of reports provided by at least two legally registered medical practitioners appointed by the Trustee to perform his or her duties or any other duties for which he or she is suited by education, training or experience or for which he or she would be suited as a result of retraining.

E

Employed member means a person who is for the time being both an Employee and a member.

Employee has, in relation to an Employer, the same meaning as in SIS, and a person ceases to be an Employee:

- (a) if that person is not a Casual Employee, on the date which is 4 weeks after an Employer was last required to make a *contribution* to the Fund in respect of that person; and
 - (b) if that person is a Casual Employee, on the date which is 8 weeks after an Employer was last required to make a *contribution* to the Fund in respect of that person.
-

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Employer means:

- (a) an entity which was deemed to be an employer in the Health Super Fund pursuant to section 68D of the Public Sector Superannuation (Administration) Act 1993 as added by section 40 of the Amending Act but not including an entity which ceased to participate as an employer in the Health Super Fund prior to the Health Super transfer date;
- (b) an employer admitted in accordance with Rule 6 of Section 1 but not including an entity which has ceased to participate as an employer in the Fund; and
- (c) in relation to an Employee, means the Employer or Employers by which the Employee is for the time being an Employee, or, in relation to a former Employee, means the Employer or Employers by which the former Employee was last an Employee.

Entitled Person means a living natural person other than:

- (a) subject to section 302A of the Bankruptcy Act:
 - (i) a person who is bankrupt or insolvent or whose affairs are subject to official management; or
 - (ii) a person in respect of whom (other than with the approval of the Trustee or as otherwise provided for under the Trust Deed) anything has occurred or any circumstance exists which would deprive the person of absolute legal and beneficial ownership of the whole or any part of a benefit under this Deed; or
- (b) a person who has failed to comply with Rule 8.14 of Section 1 to the satisfaction of the Trustee.

Equitable Share means in relation to a member or a *beneficiary* as at any particular date the amount determined by the Trustee, after obtaining the advice of the actuary, to be that person's equitable share of the Division of the Health Super DB Fund of which he or she is a member, as if that sub-fund was terminated and all assets were entirely apportioned between the members and *beneficiaries* as at that date.

F

Fund Year means a period of 12 months commencing on 1 July in any year and for the avoidance of doubt may include a relevant period in the Health Super Fund.

G

Gainful Employment means employment for earnings, including business income, bonuses, commissions, fees, salary and wages.

Group Life Insurance means term or temporary insurance, whether on a group or individual basis.

I

Insurer means a person from whom insurance is sought or with whom insurance is effected by the Trustee.

N

Net Earning Rate means the rate of earnings (which may be positive or negative) determined by the Trustee after having regard to the income of the Health Super DB Fund or of any particular investment portfolio within

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the Health Super DB Fund or any other matter considered relevant by the Trustee, in respect of any period for the purposes of the whole or any particular provision of these HS DB Rules and without limiting the preceding words but subject to any conditions determined by the Trustee, for the purposes of the whole or any particular provision of these HS DB Rules:

- (a) a Net Earning Rate may be prospectively determined on an interim basis in respect of a particular period; and
- (b) a Net Earning Rate may be subsequently determined on a final or declared basis in respect of that period.

P

Part-time Employee means an Employee who the Employer has notified to the Trustee is employed on a part-time basis or in respect of whom a notification was made to the trustee of the Health Super Fund.

S

Salary means in respect of a defined benefit member:

- (a) who is a Casual Employee, the amount, determined and computed by the Trustee, of the total of all amounts payable to that member on an annual basis as remuneration under the relevant award determination, excluding any expense of office, uniform allowance or reimbursement of travelling or other incidental expenses; and
- (b) who is not a Casual Employee:
 - (i) the member's Superannuation Salary; or
 - (ii) if there is no Superannuation Salary in respect of the member at the relevant time, the amount equal to that member's ordinary time rate of pay, plus any allowances (not of a cost-reimbursement type such as an expense of office, uniform allowance, tool allowance, reimbursement for travel or other incidental expenses) which are ordinarily payable regularly and periodically (including shift and roster related payments), including certificate/qualification allowances and higher duties allowances for at least a 52 week period, but excluding any other allowances which are ordinarily not paid over a 52 week cycle or do not flow from regular rostered duty or any higher amount advised to the Trustee by the Employer from time to time; and
- (c) who is an employee of a union or employee organisation:
 - (i) the salary of that member immediately before becoming a full-time officer of the union or employee organisation; or
 - (ii) any greater salary as is paid to that member by the union or employee organisation and approved by the Trustee; and
- (d) in relation to the benefits (other than amounts contributed by the Employer in satisfaction of the SG Act) of a defined benefit member who is a Part-time Employee, the salary which would be payable to a person performing those duties on a full-time basis; and

SECTION 3 – DEFINED BENEFITS

-
- (e) if that defined benefit member's salary has been reduced and the Employer and the defined benefit member have agreed (and so notified the Trustee) that the reduction is not to be taken into account, the greater, from time to time, of:
- (i) the salary of the defined benefit member immediately before the reduction; or
 - (ii) any subsequent salary of the defined benefit member;
- and
- (f) if that defined benefit member's salary is increased substantially within a two year period, the Trustee may require an undertaking from the Employer that it will contribute to the Fund additional amounts or rates of *contribution* which the Trustee (after obtaining the advice of the actuary) considers necessary to fund any additional benefits resulting from that increase in salary.

Any notification under paragraphs (b) or (e) or undertaking under paragraph (f) made to the trustee of the Health Super Fund and in effect as at the Health Super transfer date will continue to be in effect after the Health Super transfer date until such time as a further notification or undertaking is made to the Trustee.

Salary Amendment Date means the prospective date advised by the Employer to the Trustee as the date when the Employer and the member have agreed that the member's Superannuation Salary will apply.

Superannuation Salary means the amount advised to the Trustee by the Employer from time to time as the member's salary for the purposes of the HS DB Rules (being an amount not less than the member's Salary immediately before the Salary Amendment Date).

T

Tax Act means the Income Tax Assessment Act 1936 and Income Tax Assessment Act 1997 as appropriate.

SECTION 3 – DEFINED BENEFITS

HS DB RULES

DIVISION 3C – Post-1988 Defined Benefit Members under 1988 Act

1. APPLICATION AND INTERPRETATION

Application of Division 3C

- 1.1 This Division 3C prevails over any other provisions in the Rules to the extent of any conflict unless otherwise determined by the Trustee.
- 1.2 This Division only applies to a member of the Fund who was a member of division C of the Health Super Fund immediately prior to the Health Super transfer date and is for the time being categorised as a member of Division 3C of the Fund.
- 1.3 In the Health Super Fund, a division C member:
 - (a) was a member of the 1988 Fund immediately before the repeal of the 1988 Act and whose benefits would have been determined under part 6 of the 1988 Act; or
 - (b) was receiving a Disability pension under part 6 of the 1988 Act immediately before the repeal of the 1988 Act on 1 January 1999; or
 - (c) was a member of the 1988 Fund who had only a “basic benefit” under part 6 of the 1988 Act immediately before the repeal of the 1988 Act on 1 January 1999 and who elected after 1 January 1999 to become a member of division C of the Health Super Fund.

Membership

- 1.4 A member of Division 3C may also be a member of another Division of the Fund while a member of Division 3C. In that event, any benefit payable from Division 3C shall be paid in accordance with this Division and any benefit payable from another Division shall be paid in accordance with that Division.

Determinations and elections in Health Super Fund

- 1.5 For the purposes of the Rules for this Division 3C:
 - (a) any determination or requirement made or notice issued by the trustee of the Health Super Fund which was in effect immediately prior to the Health Super transfer date will be deemed to have been made or issued by the Trustee and will continue to be in effect after the Health Super transfer date until such time as a further determination, requirement or notice is made or issued or as otherwise determined by the Trustee; and
 - (b) any application or election made by a member prior to the Health Super transfer date will, subject to any necessary approval for that application or election having been granted, continue to apply after the Health Super transfer date.

2. ADMINISTRATION AND PROCEDURES

Medical examinations and classification

- 2.1 The Trustee may, after consideration of any medical evidence it considers relevant, issue a medical classification notice with respect to any member which notice shall specify the medical condition that causes the member to have restricted cover for the purposes of death and disability benefits

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under Rules 4.8 to 4.11 of Division 3C of Section 3 and Rules 4.12 to 4.20 of Division 3C of Section 3, respectively.

2.2 The Trustee may at any time:

- (a) reassign a member from one level of medical classification to another from a specific date; and
- (b) make any necessary adjustments to the member's benefits.

2.3 Subject to Rule 2.4 of Division 3C of Section 3 below, until a member has been assessed and classified by the Trustee, the member is regarded as having a restricted medical classification notice for death and Disability purposes.

2.4 If a member who has not been assessed and classified (or, if assessed and classified, has been classified as having restricted cover) by the Trustee dies or becomes Disabled and:

- (a) the death was not, in the opinion of the Trustee, due to the fault of the member or any person liable to benefit financially from the member's death; or
- (b) the death or Disability was, in the opinion of the Trustee, caused or substantially contributed to by a traumatic bodily injury suffered by the member within 12 months (or any longer period that is approved by the Trustee) before the death or the Disability (as applicable) of the member,

the death or Disability benefit payable under this Division 3C to or in respect of the member shall be calculated as if the member had no restricted medical classification.

2.5 If the Trustee is satisfied that:

- (a) a member has failed to disclose fully and honestly any information which the member was requested to give in relation to his or her medical classification or reclassification; or
- (b) the member has given any false or misleading information in relation to his or her medical classification or reclassification,

the Trustee may reclassify the member as it thinks fit, which reclassification is to take effect from the date (retrospective or prospective) specified by the Trustee.

**Service and
Contributions for
Part-time
Employees and
Casual
Employees**

2.6 Subject to Rules 2.7 of Division 3C of Section 3 and 2.8 of Division 3C of Section 3, if a member has any period of Service during which that member was a Part-time Employee or a Casual Employee, in determining any benefit payable under this Division 3C, the member's total period of Service is adjusted on a pro rata basis as follows:

$$\frac{A}{B}$$

where:

SECTION 3 – DEFINED BENEFITS

- A is the total period of Service during which that member was a Part-time Employee or a Casual Employee
- B is the total period of Service which would have applied if that member had been a comparable full-time employee during the period that the member was a Part-time Employee or a Casual Employee.

2.7 For purposes of determining any period of prospective Service under this Division 3C for a member who has been a Part-time Employee or a Casual Employee during the three years preceding the date of determination, prospective Service will be adjusted to reflect the proportion that the member's average period of Service during the lesser of:

- (a) the preceding three years; or
- (b) the member's period of membership of the Health Super Fund and the Fund,

bears to the period of Service which would have applied if that member had been a comparable full-time employee during the period that the member was a Part-time Employee or a Casual Employee.

2.8 To determine the contributions to be paid by a member who is a Part-time Employee when those contributions are due, the contributions required for a comparable full-time employee must be multiplied by a fraction representing the proportion that the period of Service of the Part-time Employee bears to the Service of a comparable full-time employee.

3. CONTRIBUTIONS

Member contribution rates

- 3.1 Subject to Rules 2.6, 2.7, 2.8, 3.2, 3.3 and 3.4 of Division 3C of Section 3, a member must contribute to the Fund at a rate of 0%, 3% or 4% of Salary.
- 3.2 A member who was contributing at the rate of 6% of Salary on 31 December 1993 may continue to contribute at that rate until the member elects to contribute at another rate specified in Rule 3.1 of Division 3C of Section 3 and, upon so electing, cannot again elect to contribute at the rate of 6%.
- 3.3 Until a member has made an election under Rule 3 of Division 3C of Section 3 in a manner approved by the Trustee, the member is deemed to have elected to contribute at 0% of Salary.
- 3.4 A member may elect to change the rate of contribution at any time. An election continues in force until another election is made in accordance with the procedures determined by the Trustee.

Length of contribution period

- 3.5 A member must cease to contribute to this Division 3C on the earlier of the dates on which that member:
 - (a) attains the age of 65 years; or
 - (b) becomes entitled to the maximum retirement benefit specified in Rule 4.7 of Division 3C of Section 3.

SECTION 3 – DEFINED BENEFITS

Contributions during periods of leave without pay

- 3.6 Except where the Trustee is prohibited by superannuation law from accepting contributions during any period in which the member is on parental leave or leave without pay, the Trustee may on application of the member or the Employer allow contributions to be made.
- 3.7 With respect to a member on leave without pay (otherwise than by reason of ill health certified by a legally registered medical practitioner approved by the Trustee) the member may elect:

(a) to continue to contribute at a rate equal to:

- (i) 2% of Salary; or
- (ii) such other percentage of Salary as is determined by the Trustee on the advice of an actuary, having regard to the member's *contribution* rate election under Rules 3.1 to 3.4 of Division 3C of Section 3,

in which event the member will remain eligible for death and Disability benefits under Rules 4.8 to 4.20 of Division 3C of Section 3 during that period of leave and for this purpose:

- (iii) such benefits will be calculated as if the member had continued to contribute at the same rate at which the member was contributing immediately before the period of leave without pay commenced; and
- (iv) **Salary** will be the member's Salary immediately before the period of leave without pay commenced; and

the Trustee must adjust any benefit that is ultimately payable from the Fund to the member to take into account any contributions which were payable under this Rule 3.7(a) of Division 3C of Section 3 but were not paid; or

(b) to pay no *contributions*, in which event the member will not be eligible for death or Disability benefits under Rule 4.8 of Division 3C of Section 3 to Rule 4.20 of Division 3C of Section 3 during the period of leave without pay; or

(c) to pay the member's contributions and the contributions of the member's Employer which would have been payable if the member had not taken leave and had continued to receive the Salary payable to the member on the date on which the leave commences for a period not exceeding:

- (i) 7 years, if the member is on parental leave; or
- (ii) 2 years, if the member is on leave for any other reason except ill health,

and in that event, the member will remain eligible for all benefits under this Division 3C during that period of leave but the Trustee must adjust any benefit that is ultimately payable from the Fund to the member to take into account any contributions which were payable under this Rule 3.7(c) of Division 3C of Section 3 but were not paid.

- 3.8 A member who is absent on leave without pay or with reduced pay by reason of ill health (certified by a legally registered medical practitioner

SECTION 3 – DEFINED BENEFITS

approved by the Trustee) must pay the same rate of contributions during or in respect of that period of leave as the member was paying immediately preceding the period of leave and the member will remain eligible for all benefits under this Division 3C during the period of leave on account of ill health.

- 3.9 On the application of the member, the Trustee may permit the contributions due from the member during the leave of absence to be paid in smaller instalments and at the intervals approved by the Trustee.

4. BENEFITS

Benefit on retirement

- 4.1 Subject to superannuation law on preservation and subject to Rules 4.2, 4.5 and 4.7 of Division 3C of Section 3, if a member ceases to be an Employee on or after attaining the age of 55 years when no benefit is payable under Rules 4.8 to 4.11 of Division 3C of Section 3 or Rules 4.12 to 4.20 of Division 3C of Section 3, there is payable to the member a lump sum benefit from the Fund equal to the sum of:
- (a) 9% of the Adjusted Final Fund Salary of the member for each year of Service after 1 July 1988 in which the member contributed 3% of Salary to the Health Super Fund or the Fund; and
 - (b) 18% of the Adjusted Final Fund Salary of the member for each year of Service after 1 July 1988 in which the member contributed 6% of Salary to the Health Super Fund or the Fund; and
 - (c) 11% of the Adjusted Final Fund Salary of the member for each year of Service after 1 July 1988 in which the member contributed 4% of Salary to the Health Super Fund or the Fund.
- 4.2 In respect of a period of Service in which the SG Act applied to the member while an Employee, the applicable percentage accrual rate set out in Rule 4.1 of Division 3C of Section 3 shall be changed to reflect the relevant rate from the applicable chart below:

4.3 Accrual Rates (Employer Aggregate Payroll more than \$1 million in SG Act base year)			
Fund Year	6% member Contribution	4% member Contribution	3% member Contribution
Ending 30 June 1993	18.0%	N/A	9.0%
1993/1994	14.0%	8.0%	6.5%
1994/1995	14.0%	8.0%	6.5%
1995/1996	13.0%	7.1%	5.6%
1996/1998	13.0%	7.1%	5.6%
1998/2000	12.0%	6.2%	4.7%
2000/2002	11.0%	5.3%	3.8%

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2002/2003 and later	10.0%	4.5%	3.0%
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4.4 Accrual Rates (Employer Aggregate Payroll \$1 million or less in SG Act base year)			
Fund Year	6% member Contribution	4% member contribution	3% member Contribution
Ending 30 June 1993	18.0%	N/A	9.0%
1993/1994	16.0%	10.0%	8.5%
1994/1995	15.0%	9.0%	7.5%
1995/1996	14.0%	8.1%	6.6%
1996/1998	13.0%	7.1%	5.6%
1998/2000	12.0%	6.2%	4.7%
2000/2002	11.0%	5.3%	3.8%
2002/2003 and later	10.0%	4.5%	3.0%

4.5 In respect of a period of Service in which the SG Act did not apply to the member while an Employee on and after 1 July 1992, the applicable accrual rate set out in Rule 4.1 of Division 3C of Section 3 shall be changed to reflect the applicable rate from the following chart for all Fund Years ending after 30 June 1992:

4.6 Accrual Rates		
6% member Contribution	4% member Contribution	3% member Contribution
16%	10%	8.5%

4.7 The retirement benefit of a member under Rules 4.1 to 4.7 of Division 3C of Section 3 must not exceed 7.2 times the member's Adjusted Final Fund Salary.

Benefit on death before retirement

4.8 Subject to Rules 4.9, 4.10 and 4.11 of Division 3C of Section 3, if a member dies before attaining the age of 60 years while an Employee and while the member has no restricted medical classification, there is payable in accordance with Rules 8.13 to 8.15 of Division 3B of Section 3 a lump sum benefit equal to the greater of:

- (a) the benefit that would have been payable under Rule 4.1 of Division 3C of Section 3 if:
 - (i) the member's date of death was the date of the member's retirement; and
 - (ii) the member was contributing 4% of Salary from the date of death for each prospective year of Service until the date the member would have attained the age of 60 years; and

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(iii) the member's Adjusted Final Fund Salary immediately before the member's death remained the same until the date the member would have attained the age of 60 years; or

(b) the member's death benefit immediately prior to 1 January 1994 under the 1988 Act.

4.9 Subject to Rules 4.10 of Division 3C of Section 3 and 4.11 of Division 3C of Section 3, if a member in respect of whom there is a restricted medical classification notice dies before attaining the age of 60 years while an Employee and the Trustee is of the opinion that the death was caused or substantially contributed to by a condition specified in the medical classification notice, the benefit payable instead of the benefit under Rule 4.8 of Division 3C of Section 3 is a lump sum equal to the sum of:

(a) the benefit which would have been payable under Rule 4.1 of Division 3C of Section 3 if the date of death was the date of retirement; and

(b) for each year of Service at the date of death, one-eighteenth of the balance of the lump sum benefit which would have been payable under Rule 4.8 of Division 3C of Section 3 if no restricted medical classification notice was in force,

but not exceeding the benefit which would have been payable under Rule 4.8 of Division 3C of Section 3 if no restricted medical classification notice was in force.

4.10 If a member dies before attaining age 60 while still an Employee and with no dependants surviving, there is payable to the member's *legal personal representative* a lump sum equal to the member's Adjusted Member Contributions.

4.11 If a member was contributing at the rate of 6% of Salary immediately before the date of death, that member's death benefit must be calculated under section 35 of the 1988 Act as in force on 31 December 1993, if the benefit calculated in that manner would be greater than the benefit otherwise payable under Rules 4.8 to 4.11 of Division 3C of Section 3.

Benefit on Disability

4.12 Subject to these Rules 4.12 to 4.20 of Division 3C of Section 3, if a member ceases to be an Employee before attaining the age of 60 years because of Disability and the member has no restricted medical classification notice, there is payable to the member from the Fund an annual pension (payable in fortnightly installments) for life at the rate of one-twelfth of the greater of:

(a) the benefit that would have been payable under Rule 4.1 of Division 3C of Section 3 if:

(i) the member's date of Disability was the date of the member's retirement; and

(ii) the member was contributing at 4% of Salary from the date of Disability for each prospective year of Service until the date the member would have attained the age of 60 years; and

SECTION 3 – DEFINED BENEFITS

- (iii) the member's Adjusted Final Fund Salary at the date of Disability remained the same until the date the member would have attained the age of 60 years; or
 - (b) the member's Disability benefit immediately prior to 1 January 1994 under the 1988 Act.
- 4.13 Subject to Rule 4.15 of Division 3C of Section 3, if a member in respect of whom there is a restricted medical classification notice ceases to be an Employee before attaining the age of 60 years because of Disability and the Trustee is of the opinion that the Disability was caused, or substantially contributed to, by a condition specified in the medical classification notice, the benefit payable instead of the benefit under Rule 4.12 of Division 3C of Section 3 is an annual pension (payable in fortnightly installments) for life at the rate of one-twelfth of the sum of:
 - (a) the lump sum benefit that would have been payable under Rule 4.1 of Division 3C of Section 3 if the date of Disability was the date of retirement; and
 - (b) for each year of Service at the date of Disability, one-eighteenth of the balance of the lump sum benefit which would have been payable under Rule 4.12 of Division 3C of Section 3 as if no restricted medical classification notice was in force,but not exceeding the pension which would have been payable under Rule 4.12 of Division 3C of Section 3 if no restricted medical classification notice was in force.
- 4.14 If a Pensioner continues to receive a Disability pension under Rule 4.12 of Division 3C of Section 3 or Rule 4.13 of Division 3C of Section 3 until the member attains the age of 65 (or any earlier date determined by the Trustee), the member may, in accordance with the procedures determined by the Trustee, elect upon attaining the age of 65 years to cease receiving the Disability pension and to receive instead a lump sum benefit equal to the retirement benefit that would have been payable under Rules 4.1 to 4.7 of Division 3C of Section 3 if the member had retired on the date of Disability.
- 4.15 The Trustee may at any time determine that a Disability pension under Rule 4.12 of Division 3C of Section 3 or Rule 4.13 of Division 3C of Section 3 should cease and that the Pensioner should receive instead:
 - (a) a lump sum amount equal to a part of the retirement benefit that would have been payable under Rules 4.1 to 4.7 of Division 3C of Section 3 (such part to be determined by the Trustee) if the date of Disability was the date of retirement; and
 - (b) a pension at the rate of one-twelfth of the balance of the retirement benefit that was not paid under Rule 4.15(a) of Division 3C of Section 3,in the proportions determined by the Trustee.
- 4.16 Subject to Rule 4.19 of Division 3C of Section 3, if a Pensioner receiving a Disability pension under Rules 4.12, 4.13 or 4.15 of Division 3C of Section 3 dies before, on or after attaining the age of 65 years, there is payable in

SECTION 3 – DEFINED BENEFITS

accordance with Rules 8.13 to 8.15 of Division 3B of Section 3, a lump sum equal to:

$$D \frac{(312-x)}{312}$$

where:

“D” is the balance of the benefit calculated under Rules 4.1 to 4.7 of Division 3C of Section 3 that would have been payable if the member had died on the date of retirement; and

“x” is the number of fortnightly pension instalments paid (whether from the Health Super Fund or the Fund) prior to the date of death.

- 4.17 If the Trustee determines that a Pensioner who has not attained the age of 60 years is capable of Gainful Employment, the Trustee may:
- (a) discontinue or reduce the Disability pension being paid; and
 - (b) review any determination regarding discontinuance or reduction as it deems necessary.
- 4.18 A Pensioner’s Disability status and the extent of that Disability may be reviewed by the Trustee from time to time but no more frequently than monthly, and if a Pensioner refuses to be medically examined to assist the Trustee in a review of that Pensioner’s condition, the Trustee may stop payment of the Disability pension until the Pensioner undergoes the required examination.
- 4.19 If a Pensioner receiving a Disability pension dies before, on or after attaining the age of 65 years and with no dependants surviving, there is payable to the Pensioner’s *legal personal representative* a lump sum equal to:
- (a) the member’s Adjusted Member Contributions; less
 - (b) the total amount of Disability pension payments already made to the Pensioner (whether from the Health Super Fund or the Fund) at the date of the Pensioner’s death.
- 4.20 If a member was contributing at the rate of 6% of Salary immediately before the date of Disablement, that member’s Disability pension must be calculated under section 36 of the 1988 Act as in force on 31 December 1993, if the benefit calculated in that manner would be greater than the benefit otherwise payable under Rules 4.12 to 4.20 of Division 3C of Section 3.
- 4.21 These Rules 4.21 to 4.25 of Division 3C of Section 3 apply if the Trustee determines that a member who has applied for a Disability benefit under Rules 4.12 to 4.20 of Division 3C of Section 3 cannot receive a Disability benefit solely because the member is likely to substantially recover from a recurring injury or illness.
- 4.22 If the Trustee makes a determination under Rule 4.21 of Division 3C of Section 3, the member will receive a temporary Disability benefit calculated in accordance with Rules 4.12 to 4.20 of Division 3C of Section

Temporary Disability benefit

SECTION 3 – DEFINED BENEFITS

3 as if the member had retired on the basis of Disability, but payments shall be made only for a limited period not exceeding 2 years from the date on which the Trustee makes the determination under Rule 4.21 of Division 3C of Section 3 or the date on which a determination was made by the trustee of the Health Super Fund.

4.23 The Trustee must, within 6 months of the determination being made under Rule 4.21 of Division 3C of Section 3 or the date on which a determination was made by the trustee of the Health Super Fund, conduct a review to determine whether:

- (a) Rule 4.21 of Division 3C of Section 3 still applies to the member; or
- (b) the member is suffering from a Disability and may retire on the ground of Disability.

4.24 If the member becomes entitled to a benefit under any other provision of this Division 3C, the member ceases to be entitled to a temporary Disability benefit under Rules 4.21 to 4.25 of Division 3C of Section 3.

4.25 If the member fails to comply with a requirement by the Trustee to attend a medical examination or to participate in a rehabilitation program or to provide information required by the Trustee so as to determine whether the member is still suffering from a temporary Disability, the Trustee:

- (a) may by notice in writing to the member suspend payment of the benefit under these Rules 4.21 to 4.25 of Division 3C of Section 3 until the member complies; and
- (b) must cancel payment of the benefit if the member does not comply with a requirement under this Rule 4.25 of Division 3C of Section 3 within 12 months.

Benefit on Retrenchment

4.26 Subject to the superannuation law on preservation, if a member ceases to be an Employee due to Retrenchment, there is payable from the Fund a lump sum benefit equal to the retirement benefit that the member would have received under Rules 4.1 to 4.7 of Division 3C of Section 3 if the date of Retrenchment was the date of retirement.

Benefit on resignation

4.27 If a member ceases to be an Employee when no other benefit is payable under this Division 3C, subject to Rule 4.28 of Division 3C of Section 3, there is payable from the Fund a lump sum benefit equal to the sum of the member's:

- (a) Adjusted Member Contributions; and
- (b) Deferred Benefit.

4.28 Subject to superannuation law on preservation and Rule 4.29 of Division 3C of Section 3:

- (a) the Adjusted Member Contributions are payable to the member immediately; and
- (b) the Deferred Benefit is payable in accordance with Rules 5.1 to 5.4 of Division 3C of Section 3.

SECTION 3 – DEFINED BENEFITS

4.29 If the member does not want immediate payment of the Adjusted Member Contributions under Rule 4.28(a) of Division 3C of Section 3, the Trustee will transfer the Adjusted Member Contributions to the Health Super Accumulation Division.

Discretion to compensate for detriment

4.30 In relation to benefits payable under this Division 3C if:

- (a) upon application by a member (in the form and manner determined by the Trustee); and
- (b) after obtaining the advice of the actuary,

the Trustee is satisfied that the reduction in benefits under the 1988 Act, which was effective from 1 July 1993, has resulted in a unreasonable detriment to a member, the Trustee must take such steps as the Trustee considers necessary to compensate the member for that detriment, including increasing the member's benefit or making an additional benefit payment to the member.

4.31 For the purpose of Rule 4.30 of Division 3C of Section 3:

- (a) **unreasonable detriment** means receiving a benefit which, after deducting tax that would have been payable by a person aged 55 years or more based on the Income Tax Assessment Act 1936 (**tax law**) in effect on 1 July 1993, is less than the amount of after-tax benefit than would have been received if:
 - (i) the benefit accrual rates in Rules 4.1 to 4.7 of Division 3C of Section 3 had not been reduced effective from 1 July 1993; and
 - (ii) the benefit had been classified for the purposes of the tax law as an untaxed benefit; and
 - (iii) tax had applied in accordance with the rates of tax and the basis for its assessment under the tax law as at 1 July 1993 in respect of a benefit that becomes payable to a person aged 55 years or more; and
 - (iv) any other matters that the actuary considers relevant; and
- (b) **untaxed benefit** means there is no "taxed element" as defined in section 27A of the tax law.

Transfer to Division 2C

4.32 If Rule 3.5 of Division 3C of Section 3 requires a member to cease contributions to the Fund, that member may elect:

- (a) to have a benefit amount calculated under Rules 4.1 to 4.7 of Division 3C of Section 3 as if the member had retired on the date of the election; and
- (b) to become a member of the Health Super Accumulation Division and to credit the amount in paragraph (a) to the member's superannuation account in the Health Super Accumulation Division.

4.33 If the member does not make the election to become a member of the Health Super Accumulation Division in accordance with Rule 4.32 of

SECTION 3 – DEFINED BENEFITS

Division 3C of Section 3, the member's benefit will be determined in accordance with this Division 3C.

5. PAYMENT OF DEFERRED BENEFITS

- Deferred Benefit**
- 5.1 For purposes of Rule 4.27 to 4.29 of Division 3C of Section 3, the Deferred Benefit is an amount equal to the sum of:
- (a) 5% of the member's retirement benefit under Rules 4.1 to 4.7 of Division 3C of Section 3 (after deducting Adjusted Member Contributions) for each year in excess of 5 years during which the member was an Employee, but:
 - (i) with a maximum of 100% after 25 years as an Employee; and
 - (ii) years as an Employee for this purpose include up to 12 months of unpaid parental leave for each period of parental leave after which period of parental leave the member returned for at least 12 months as an Employee; and
 - (b) earnings at the rate determined under Rules 6.1 to 6.4 of Division 3D of Section 3 in accordance with movements in the Consumer Price Index from the date of resignation until the date the benefit is paid under Rule 5.2 of Division 3C of Section 3.
- 5.2 Subject to superannuation law on preservation and Rules 5.3 of Division 3C of Section 3 and 5.4 of Division 3C of Section 3, the Deferred Benefit is payable:
- (a) on the earliest to occur of the following events:
 - (i) the member attains the age of 55 years and ceases to be an Employee; or
 - (ii) the member dies; or
 - (iii) the member becomes Disabled; or
 - (iv) the member makes an election under Rule 5.3 of Division 3C of Section 3 or Rule 5.4 of Division 3C of Section 3; or
 - (b) at any time, if the Deferred Benefit is less than \$200.
- 5.3 If a member with a Deferred Benefit is less than 55 years of age, that member may elect:
- (a) to transfer an amount that represents the present day value of that Deferred Benefit (as determined by the Trustee after obtaining the actuary's advice) to the Health Super Accumulation Division or to an Approved Benefit Arrangement in accordance with terms and conditions determined by the Trustee from time to time; or
 - (b) any other option which might be offered by the Trustee from time to time.

SECTION 3 – DEFINED BENEFITS

Deferred Accrued Retirement Benefit

- 5.4 If a member with a Deferred Benefit is more than 55 years of age, that member may elect to transfer that Deferred Benefit to the Health Super Accumulation Division or to an Approved Benefit Arrangement.
- 5.5 At any time a member may elect to become a member of the Health Super Accumulation Division and to cease to be a member of this Division 3C.
- 5.6 Upon making an election under Rule 5.5 of Division 3C of Section 3, a Deferred Accrued Retirement Benefit will be calculated in respect of that member under Rules 4.1 of Division 3C of Section 3 to 4.7 of Division 3C of Section 3 as if the member had retired on the date of that election based on the member's accrual rate, Adjusted Final Fund Salary and years of Service at the date of the election, which amount will be credited with earnings at the rate determined under Rules 6.1 of Division 3D of Section 3 to 6.4 of Division 3D of Section 3 in accordance with movements in the Consumer Price Index from the date of the election until the date the benefit is paid under Rule 5.7 of Division 3C of Section 3.
- 5.7 Subject to the superannuation law on preservation and Rule 5.8 of Division 3C of Section 3 and Rule 5.9 of Division 3C of Section 3, the Deferred Accrued Retirement Benefit is payable:
- (a) on the earliest to occur of the following events:
 - (i) the member attains the age of 55 years and ceases Gainful Employment; or
 - (ii) the member dies; or
 - (iii) the member becomes Disabled; or
 - (iv) the member makes an election under Rule 5.8 of Division 3C of Section 3 or Rule 5.9 of Division 3C of Section 3; or
 - (b) at any time, if the Deferred Accrued Retirement Benefit is less than \$200.
- 5.8 If a member with a Deferred Accrued Retirement Benefit is less than 55 years of age, that member may elect:
- (a) to transfer an amount that represents the present day value of that Deferred Accrued Retirement Benefit (as determined by the Trustee after obtaining the actuary's advice) to the Health Super Accumulation Division or to an Approved Benefit Arrangement in accordance with terms and conditions determined by the Trustee from time to time; or
 - (b) any other option that might be offered by the Trustee from time to time.
- 5.9 If a member with a Deferred Accrued Retirement Benefit is more than 55 years of age, that member may elect to transfer that Deferred Accrued Retirement Benefit to the Health Super Accumulation Division or to an Approved Benefit Arrangement.

SECTION 3 – DEFINED BENEFITS

6. DICTIONARY

Definitions

- 6.1 In this Division 3C, unless the contrary intention appears or the context requires otherwise:

A

Adjusted Final Fund Salary means:

- (a) in relation to a member with less than two years of Service, an amount calculated in accordance with the formula:

$$\frac{A}{B} \times \frac{365}{1}$$

where:

“A” is the total Salary paid to the member in respect of the member’s period of Service;

“B” is the total number of days in that period of Service; and

- (b) in relation to a member with two or more years of Service, an amount equal to one-half of the member’s total Salary during the two years of Service immediately preceding the member’s last day of Service,

but if the period of Service in paragraph (a) or paragraph (b) includes a period of leave without pay, the member’s Salary for purposes of this definition for that period of leave will be deemed to be the greater of:

- (c) the member’s Salary immediately before the period of leave without pay commenced; or
- (d) any higher Salary approved by the trustee of the Health Super Fund before the Health Super transfer date or by the Trustee for purposes of these HS DB Rules,

and, in any event, if the member was a member of the Health Super Fund on 1 January 1994, the member’s Adjusted Final Fund Salary must not be less than the member’s Salary on 1 January 1994 but, for the avoidance of doubt, does not include any amount that is not referable to the member’s Salary **entitlement for that two year Service period.**

Adjusted Member Contributions means the sum of:

- (a) the total *contributions* which would have been made by a member if the Salary of the member had always been equal to the member’s Adjusted Final Fund Salary at the date the member ceased to be an Employee; and
- (b) a percentage of the member’s Adjusted Final Fund Salary at the date the member ceased to be an Employee determined by the Trustee having regard to any amounts transferred to the Health Super Fund or the Fund in respect of the member from an Approved Benefit Arrangement.

SECTION 3 – DEFINED BENEFITS

D

Deferred Accrued Retirement Benefit is defined in Rules 5.5 to 5.9 of Division 3C of Section 3.

Deferred Benefit is defined in Rules 5.1 to 5.4 of Division 3C of Section 3.

Dependant means in relation to a person ("relevant person") any one or more of

- (a) the *spouse* of the relevant person;
- (b) any *child* of the relevant person;
- (c) any other natural person who, in the opinion of the Trustee, is at the relevant date (or, in the case of a deceased person, was at the time of death of the deceased) wholly or partially dependent on the relevant person or who at that date had a legal right to look to him or her for financial support; and

any other natural person who may qualify as a dependant under superannuation law.

L

Last day of Service in relation to a member who becomes entitled to a benefit pursuant to Rules 8.10 to 8.12 of Division 3B of Section 3 (notwithstanding that there is no actual termination or interruption of employment) means:

- (a) in respect of a benefit that must be paid or commence to be paid under superannuation law, the day on which the Trustee must pay or commence payment of that benefit; or
- (b) in respect of a benefit that may be paid or commence to be paid under superannuation law, the day on which the member requests payment of that benefit or the day on which that benefit may be paid or commence to be paid (whichever is the later),

or such other date that the Employer and the Trustee may agree on the advice of an actuary.

M

member means a member of this Division 3C who is not a Pensioner.

P

Pensioner means a person who is receiving a pension under this Division 3C.

R

Retrenchment means, in respect of a member, ceasing to be an Employee before attaining the age of 55 years in circumstances where the Employer has certified in writing to the Trustee that retrenchment has occurred for purposes of these Rules or in respect of whom a certification was in effect immediately prior to the Health Super transfer date.

S

Service in relation to a member, and subject to Rules 2.6 to 2.8 of Division 3C of Section 3, means the sum of the number of years (with each additional complete month counting as a fraction of a year) for which that member:

- (a) was a "contributor" under the 1988 Act;

SECTION 3 – DEFINED BENEFITS

(b) was an Employed member under division C of the Health Super Fund on and after 1 January 1999; and

(c) is an Employed member under this Division 3C as from the Health Super transfer date,

and includes:

(d) with respect to a member who is not a Casual Employee, a period of up to 4 weeks in respect of which no *contributions* are paid to the Fund by an Employer in respect of that member if the member becomes an Employee of an Employer before the expiration of those 4 weeks; and

(e) with respect to a member who is a Casual Employee, a period of up to 8 weeks in respect of which no *contributions* are paid to the Fund by an Employer in respect of that member if the member becomes an Employee of an Employer before the expiration of those 8 weeks; and

(f) with respect to a member who is not a Casual Employee and who ceases to be an Employee, a period of up to six months (or any further period determined by the Trustee either generally or in any particular case) so long as the member:

(i) notifies the Trustee of his or her intention to continue as a member; and

(ii) does not accept any benefit from this Division 3C in respect of that cessation; and

(iii) again becomes an Employee of an Employer within 6 months after the initial cessation as an Employee (or any further period determined by the Trustee either generally or in any particular case); and

(iv) continues member and Employer *contributions* to the Fund at a rate determined by the Trustee during the period when he or she was not an Employee; and

(g) any period with respect to which the Trustee allows *contributions* to be made by or in respect of the member even though the member is not an Employee of an Employer as long as

(i) the member makes *contributions* at the rate determined by the Trustee; and

(ii) the member's employer (not an Employer) makes *contributions* at the rate determined by the Trustee,

and includes any leave of absence:

(h) without pay or with reduced pay on account of illness or injury certified by a legally registered medical practitioner during which the member and the Employer continue to make *contributions* at the same rate at which they were contributing immediately prior to the commencement of the leave of absence; and

SECTION 3 – DEFINED BENEFITS

-
- (i) during which the member made *contributions* in accordance with Rule 3.7(c) of Division 3C of Section 3,

but does not include:

- (j) any period in respect of which a benefit has previously been paid; or
- (k) any leave of absence during which the member made *contributions* in accordance with Rule 3.7(a) of Division 3C of Section 3.

When calculating Service of a member, the Trustee must also take into account whether paragraphs (d) to (k) above applied (reading the relevant paragraphs as if they were referring to membership of division C of the Health Super Fund) in respect of any period of time in which the member was:

- (l) a “contributor” under the 1988 Act; or
- (m) an Employed member under division C of the Health Super Fund on and after 1 January 1999,

and, to the extent not already taken into account, adjust the period of Service accordingly.

SECTION 3 – DEFINED BENEFITS

HS DB RULES

DIVISION 3D – Pre-1988 Defined Benefit Members Under 1988 Act

1. APPLICATION AND INTERPRETATION

Application of Division 3D

- 1.1 This Division 3D prevails over any other provisions in the Rules to the extent of any conflict unless otherwise determined by the Trustee.
- 1.2 This Division only applies to a member of the Fund who was a member of division D of the Health Super Fund immediately prior to the Health Super transfer date and is for the time being categorised as a member of this Division 3D.
- 1.3 In the Health Super Fund, a member of division D:
- (a) was a member of the 1988 Fund immediately before the repeal of the 1988 Act and whose benefits would have been determined under part 4A of the 1988 Act; or
 - (b) was receiving a pension under part 4A of the 1988 Act immediately before the repeal of the 1988 Act on 1 January 1999.

Membership

- 1.4 A member of Division 3D may also be a member of another Division of the Fund while a member of Division 3D. In that event, any benefit payable from Division 3D shall be paid in accordance with this Division and any benefit payable from another Division shall be paid in accordance with that Division.

Determinations and elections in Health Super Fund

- 1.5 For the purposes of the Rules for this Division 3D:
- (a) any determination or requirement made or notice issued by the trustee of the Health Super Fund which was in effect immediately prior to the Health Super transfer date will be deemed to have been made or issued by the Trustee and will continue to be in effect after the Health Super transfer date until such time as a further determination, requirement or notice is made or issued or as otherwise determined by the Trustee; and
 - (b) any application, election or agreement made by a member prior to the Health Super transfer date will, subject to any necessary approval for that application or election having been granted, continue to apply after the Health Super transfer date.

2. ADMINISTRATION AND PROCEDURES

Medical examinations and classification

- 2.1 Subject to Rule 2.2 of Division 3D of Section 3 and Rule 2.3 of Division 3D of Section 3:
- (a) the medical classification assigned to the member immediately prior to 1 January 1999 must continue after that date; and
 - (b) a member with more than 20 years of Service must be assigned an unrestricted medical classification; and

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- (c) that portion of the member's death or Disability benefit under this Division 3D which is calculated in respect of the prospective period of Service after the date of death or Disability (as applicable) must be adjusted by the percentage applicable to the member's medical classification as indicated in the following table:

Rank	Medical Classification	Percentage
1st	A	100
2nd	A	100
3rd	B	75
4th	C	50
5th	D	25
6th	O	0

2.2 The Trustee may at any time:

- (a) reassign a member from one level of medical classification to another from a specific date; and
- (b) make any necessary adjustments to the member's benefits.

2.3 If a member dies while an Employee and the death:

- (a) was, in the opinion of the Trustee, outside the control of the member or any person liable to benefit financially from the member's death; and
- (b) was, in the opinion of the Trustee, unconnected with the circumstances that resulted in the member having a medical classification other than the highest classification,

the death benefit payable under this Division 3D to or in respect of the member shall not be reduced because of the member's medical classification.

Service and Contributions for Part-time Employees and Casual Employees

2.4 Subject to Rule 2.5 of Division 3D of Section 3 and Rule 2.6 of Division 3D of Section 3, if a member has any period of Service during which that member was a Part-time Employee or a Casual Employee, in determining any benefit payable under this Division 3D, the member's total period of Service is adjusted on a pro rata basis as follows:

$\frac{A}{B}$ where:

- A is the total period of Service during which that member was a Part-time Employee or a Casual Employee
- B is the total period of Service which would have applied if that member had been a comparable full-time employee during the period that the member was a Part-time Employee or a Casual Employee.

2.5 For purposes of determining any period of prospective Service under this Division 3D for a member who has been a Part-time Employee or a Casual Employee during the three years preceding the date of determination, prospective Service will be adjusted to reflect the proportion that the member's average period of Service during the lesser of:

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- (a) the preceding three years; or
- (b) the member's period of membership of the Health Super Fund and the Fund,

bears to the period of Service which would have applied if that member had been a comparable full-time employee during the period that the member was a Part-time Employee or a Casual Employee.

- 2.6 To determine the contributions to be paid by a member who is a Part-time Employee when those contributions are due, the contributions required for a comparable full-time employee must be multiplied by a fraction representing the proportion that the period of Service of the Part-time Employee bears to the Service of a comparable full-time employee.

3. CONTRIBUTIONS

Member contribution rates

- 3.1 Subject to Rules 2.4 to 2.6 of Division 3D of Section 3 and Rules 3.2 to 3.4 of Division 3D of Section 3, a member must contribute to the Fund at a rate of 6% of Salary.
- 3.2 If a member elects at any time after 1 January 1999 to contribute at 0%, 3% or 4% of Salary, then the member will cease to be a member of this Division 3D and will become a member of Division 3C for all purposes and the member's benefits will then be calculated as if he or she had always been a member of Division 3C.
- 3.3 If, as at 30 June 1988, a member was a Pension Scheme Contributor and continued on and after 1 July 1988 to contribute to the Health Super Fund and the Fund at a rate other than 6% of Salary, the retirement benefit of that member determined under Rules 5.1 to 5.5 of Division 3D of Section 3 must be calculated as if the member contributed at the rate of 6% of Salary in respect of the period of Service on and after 1 July 1988.
- 3.4 If a member to whom Rule 3.3 of Division 3D of Section 3 does not apply continues on and after 1 July 1988 to contribute at the rate of 3.5% of Salary:
- (a) the retirement benefit of that member determined under Rules 5.1 to 5.5 of Division 3D of Section 3 must be calculated as if the member contributed at the rate of 3% of Salary in respect of the period of Service on and after 1 July 1988; and
 - (b) no benefit payable under this Division 3D will be paid in the form of a pension to or in respect of that member.

Length of contribution period

- 3.5 A member must cease to contribute to this Division 3D on the earlier of the dates on which that member:
- (a) attains the age of 65 years; or
 - (b) becomes entitled to the maximum retirement benefit specified in Rule 5.5 of Division 3D of Section 3.

Contributions during periods of leave without pay

- 3.6 Except where the Trustee is prohibited by superannuation law from accepting contributions during any period in which the member is on

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parental leave or leave without pay, the Trustee may on application of the member or the Employer allow contributions to be made.

3.7 With respect to a member on leave without pay (otherwise than by reason of ill health certified by a legally registered medical practitioner approved by the Trustee) the member may elect:

(a) to continue to contribute at a rate equal to:

- (i) 2% of Salary; or
- (ii) such other percentage of Salary as is determined by the Trustee on the advice of the actuary, having regard to the member's contribution rate election under Rules 3.1 to 3.4 of Division 3D of Section 3,

in which event the member will remain eligible for death and Disability benefits under Rules 5.9 to 5.27 of Division 3D of Section 3 during that period of leave and for this purpose:

(iii) such benefits will be calculated as if the member had continued to contribute at the same rate at which the member was contributing immediately before the period of leave without pay commenced; and

(iv) **Salary** will be the member's Salary immediately before the period of leave without pay commenced; and

the Trustee must adjust any benefit that is ultimately payable from the Fund to the member to take into account any *contributions* which were payable under Rules 3.7(a)(i) of Division 3D of Section 3 or 3.7(a)(ii) of Division 3D of Section 3 but not paid; or

(b) to pay no *contributions*, in which event the member will not be eligible for death or Disability benefits under Rules 5.9 to 5.27 of Division 3D of Section 3 during the period of leave without pay; or

(c) to pay the member's *contributions* and the *contributions* of the member's Employer which would be payable if the member had not taken leave and had continued to receive the Salary payable to the member on the date on which the leave commences for a period not exceeding:

(i) 7 years, if the member is on parental leave; or

(ii) 2 years, if the member is on leave for any other reason except ill health,

and in that event, the member will remain eligible for all benefits under this Division 3D during that period of leave but the Trustee must adjust any benefit that is ultimately payable from the Fund to the member to take into account any contributions which were payable under this Rule 3.7(c) of Division 3D of Section 3 but not paid.

3.8 A member who is absent on leave without pay or with reduced pay by reason of ill health certified by a legally registered medical practitioner approved by the Trustee must pay the same rate of contributions during or in respect of that period of leave as the member was paying immediately preceding the period of leave and the member will remain

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eligible for all benefits under this Division 3D during the period of leave on account of ill health.

- 3.9 On the application of the member, the Trustee may permit the contributions due from the member during the leave of absence to be paid in smaller instalments and at the periods approved by the Trustee.

4. ACCOUNTS

Accumulation Account

- 4.1 The Trustee must cause to be maintained under these Rules 4.1 and 4.2 of Division 3D of Section 3 an account to be called the Accumulation Account for each member.

- 4.2 There shall be credited to the Accumulation Account:

- (a) the amount transferred from the Health Super Fund to the Fund on the Health Super transfer date representing the balance of the member's Accumulation Account in the Health Super Fund; and
- (b) on and from the Health Super transfer date:
 - (i) the member's Lump Sum Contributions, if any;
 - (ii) any Employer contributions made under the chart in Rule 5.8 of Division 3D of Section 3 in respect of a member;
 - (iii) earnings at the Net Earning Rate (if positive); and
 - (iv) any other amounts which this Deed may require to be credited or which the Trustee determines to credit to the Account,

and there shall be debited to the Accumulation Account:

- (c) any amounts which the Trustee may determine to debit in respect of Tax upon payment of the Account;
- (d) any benefit paid to or in respect of the member from the Account;
- (e) earnings at the Net Earning Rate (if negative); and
- (f) any other amounts which the Rules may require to be debited to the Account or which the Trustee determines to debit to the Account.

Supplementary Account

- 4.3 The Trustee must cause to be maintained under these Rules 4.3 and 4.4 of Division 3D of Section 3 an account to be called the Supplementary Account for each Deferred member who had a "Supplementary Account" under section 25W of the 1988 Act immediately before 1 January 1999.

- 4.4 There shall be credited to the Supplementary Account:

- (a) the amount transferred from the Health Super Fund to the Fund on the Health Super transfer date representing the balance of the member's Supplementary Account in the Health Super Fund; and

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- (b) on and from the Health Super transfer date:
 - (i) earnings at the Net Earning Rate (if positive); and
 - (ii) any other amounts which this Deed may require to be credited or which the Trustee determines to credit to the Account,

and there shall be debited to the Supplementary Account:

- (c) any benefit paid to or in respect of the member from the Account;
- (d) earnings at the Net Earning Rate (if negative); and
- (e) any other amounts which the Rules may require to be debited or which the Trustee determines to debit to the Account.

Defined Benefit Account

- 4.5 The Trustee must cause to be maintained under Rules 4.5 of Division 3D of Section 3 and 4.6 of Division 3D of Section 3 an account to be called the Defined Benefit Account for each member.
- 4.6 There shall be credited to the Defined Benefit Account:
 - (a) an amount representing, at the particular time, the sum of;
 - (i) the product of the member's Deferred Lump Sum Retirement Multiple and the member's Adjusted Final Fund Salary;
 - (ii) the product of the member's Post-1988 Retirement Multiple and the member's Adjusted Final Fund Salary and the appropriate percentage in the table in Rule 5.8(a)(iii) of Division 3D of Section 3; and
 - (iii) earnings representing movements in the Consumer Price Index, determined under Rules 6.1 to 6.4 of Division 3D of Section 3, from the date the member ceased to be an Employee until the date the Account is paid; and
 - (b) any other amounts which the Rules may require to be credited or which the Trustee determines to credit to the Account,

and there shall be debited to the Defined Benefit Account:

- (c) any amounts which the Trustee may determine to debit in respect of tax upon payment of the Account; and
- (d) any benefit paid to or in respect of the member from the Account; and
- (e) any other amounts which the Rules may require to be debited to the Account or which the Trustee determines to debit to the Account.

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5. BENEFITS

Benefit on retirement

- 5.1 Subject to superannuation law on preservation and subject to Rules 5.2 to 5.5 of Division 3D of Section 3, if a member ceases to be an Employee on or after attaining the age of 55 years when no benefit is payable under Rules 5.9 to 5.27 of Division 3D of Section 3, there is payable to the member a lump sum benefit from the Fund equal to the sum of:
- (a) 10% of the member's Adjusted Final Fund Salary for each year of Service (not exceeding 40) completed before 1 July 1988 during which the member made Pension Contributions or such contributions were deemed by the Trustee to have been made; and
 - (b) 10% of the member's Adjusted Final Fund Salary for each year of Service completed before 1 July 1988 or any greater multiple determined by the Trustee for the period of Service prior to 1 July 1988, having regard to the member's "old scheme contributor's member's account balance" under part 4A of the 1988 Act as at 30 June 1988; and
 - (c) 9% of the member's Adjusted Final Fund Salary for each year of Service completed on or after 1 July 1988 in which the member is deemed under Rules 3.1 to 3.4 of Division 3D of Section 3 to have contributed 3% of Salary to the Health Super Fund or the Fund; and
 - (d) 18% of the member's Adjusted Final Fund Salary for each year of Service completed on or after 1 July 1988 in which the member contributed, or is deemed under Rules 3.1 to 3.4 of Division 3D of Section 3 to have contributed, 6% of Salary to the Health Super Fund or the Fund.
- 5.2 In respect of a period of Service in which the SG Act applied to the member while an Employee, the applicable accrual rate set out in Rule 5.1 of Division 3D of Section 3 shall be changed to reflect the relevant rate from the following charts:
- 5.3 Accrual Rates:

Accrual Rates (Employer Aggregate Payroll more than \$1 million in SG Act base year)		
Fund Year	6% member Contributions	3% member Contributions
Ending 30 June 1993	18.0%	9.0%
1993/1994	14.0%	6.5%
1994/1995	14.0%	6.5%
1995/1996	13.0%	5.6%
1996/1998	13.0%	5.6%
1998/2000	12.0%	4.7%
2000/2002	11.0%	3.8%
2002/2003 and later	10.0%	3.0%

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Accrual Rates (Employer Aggregate Payroll \$1 million or less in SG Act base year)		
Fund Year	6% member Contributions	3% member Contributions
Ending 30 June 1993	18.0%	9.0%
1993/1994	16.0%	8.5%
1994/1995	15.0%	7.5%
1995/1996	14.0%	6.6%
1996/1998	13.0%	5.6%
1998/2000	12.0%	4.7%
2000/2002	11.0%	3.8%
2002/2003 and later	10.0%	3.0%

- 5.4 In respect of a period of Service in which the SG Act did not apply to the member while an Employee on and after 1 July 1992, the applicable accrual rate set out in Rule 5.1 of Division 3D of Section 3 shall be changed to reflect the relevant rate from the following chart for all Fund Years ending after 30 June 1992:

Accrual Rates	
6% member Contribution	3% member Contribution
16%	8.5%

- 5.5 The retirement benefit of a member under Rules 5.1 to 5.5 of Division 3D of Section 3 must not exceed 8.0 times the member's Adjusted Final Fund Salary.

Pension Scheme Contributor retirement benefit option

- 5.6 Subject to superannuation law on preservation, a Pension Scheme Contributor who ceases to be an Employee after having attained the age of 55 years may elect to substitute for the benefit payable under Rule 5.1 of Division 3D of Section 3 a benefit comprising an annual pension payable for life (calculated in accordance with Rule 5.7 of Division 3D of Section 3 and a lump sum (calculated in accordance with Rule 5.8 of Division 3D of Section 3).

- 5.7 The annual pension is equal to the sum of:

- (a) five-sixths of one per cent of the member's Adjusted Final Fund Salary for each year of Service before 1 July 1988 during which Pension Contributions were made, or deemed by the Trustee to have been made, by the member; and
- (b) five-sixths of one per cent of the member's Adjusted Final Fund Salary for each year of Service after 30 June 1988:

which sum is to be:

multiplied by the following fraction:

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$$\frac{12}{C}$$

where

“C” represents the lump sum factor set out in the table below for the age in completed years and months at which the pension becomes payable, or (if the member retires on or after having attained the age of 66 years) increased by an amount that is determined by the Trustee upon the advice of the actuary:

Age	Lump sum factor	Amount to be subtracted from lump sum factor for each additional completed month of age
55	13.6	0.0167
56	13.4	0.0167
57	13.2	0.0167
58	13.0	0.0167
59	12.8	0.0167
60	12.6	0.0167
61	12.4	0.0083
62	12.3	0.0083
63	12.2	0.0083
64	12.1	0.0083
65	12.0	0.0083

and

(c) increased from time to time in accordance with Rule 6.1 to 6.4 of Division 3D of Section 3.

5.8 The lump sum is an amount which is the greater of:

(a) the sum of:

- (i) the amount set out in Rule 5.1(b) of Division 3D of Section 3; and
- (ii) for each year of Service after 30 June 1988 and before 1 July 1993, 8% of the member’s Adjusted Final Fund Salary; and
- (iii) for each year of Service after 30 June 1993 during which the SG Act applied to the member, a percentage of the member’s Adjusted Final Fund Salary as follows:

Period of Service	% Adjusted Final Fund Salary	
	Employer’s aggregate payroll \$1	Employer’s aggregate payroll more than

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	million or less in the SG Act base year	\$1 million in the SG Act base year
1 July 1993 to 30 June 1994	6	4
1 July 1994 to 30 June 1995	5	4
1 July 1995 to 30 June 1996	4	3
1 July 1996 to 30 June 1997	3	3
1 July 1997 to 30 June 1998	3	3
1 July 1998 to 30 June 1999	2	2
1 July 1999 to 30 June 2000	2	2
1 July 2000 to 30 June 2001	1	1
1 July 2001 to 30 June 2002	1	1
From 1 July 2002	0	0

and

- (i) for each year of Service in which the SG Act did not apply to the Pension Scheme Contributor while an Employee on and after 1 July 1992, 6% of the member's Adjusted Final Fund Salary; and
- (ii) for each year of Service during which the member contributes 3.5% of Salary, 3.5% of the member's Adjusted Final Fund Salary,

or

- (b) the member's Accumulation Account Balance.

Benefit on death before retirement

5.9 Subject to Rule 2.1, 2.3 and 5.10 of Division 3D of Section 3, if a member dies before attaining the age of 60 years while still an Employee, there is payable in accordance with Rules 8.13 to 8.15 of Division 3B of Section 3, a lump sum benefit equal to the greater of:

- (a) the benefit that would have been payable under Rule 5.1 of Division 3D of Section 3 if:
 - (i) the member's date of death was the date of the member's retirement; and
 - (ii) the member was contributing:
 - (A) 4% of Salary from the date of death for each prospective year of Service until the date the member would have attained the age of 60 years; or
 - (B) 6% of Salary from the date of death for each prospective year of Service until the date the member would have attained the age of 60 years if the member was contributing, or is deemed under Rules 3.1 to 3.4 of Division 3D of Section 3 to be contributing, 6% immediately before the date of death; and

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- (iii) the member's Adjusted Final Fund Salary immediately before the member's death remained the same until the date the member would have attained the age of 60 years; or
 - (b) the member's death benefit immediately before 1 January 1994 under the 1988 Act.
- 5.10 If a member was contributing at the rate of 6% of Salary immediately before the date of death, that member's death benefit must be calculated under section 35 of the 1988 Act as in force on 31 December 1993, if the benefit calculated in that manner would be greater than the benefit otherwise payable under Rules 5.9 of Division 3D of Section 3 and 5.10 of Division 3D of Section 3.
- Pension Scheme Contributor death benefit option** 5.11 If a Pension Scheme Contributor dies while still an Employee and before attaining the age of 65 years, a dependant or the personal representative of that member (whomever the Trustee has determined is appropriate) may elect to substitute for the death benefit payable under Rules 5.9 to 5.10 of Division 3D of Section 3 a benefit comprising a dependant's pension (calculated under Rule 5.12(a) of Division 3D of Section 3) and a lump sum (calculated under Rule 5.12(c) of Division 3D of Section 3) and any Child's Allowance (calculated in accordance with Rules 6.9 to 6.14 of Division 3D of Section 3).
- 5.12 The death benefit is equal to:
- (a) subject to Rule 5.13 of Division 3D of Section 3, an annual pension to the *spouse* (or if there is no *spouse*, any other dependant of the member as the Trustee determines, except a *child* of the member) equal to two-thirds of the pension to which the member would have been entitled under Rule 5.22 to 5.27 of Division 3D of Section 3 if at the date of death:
 - (i) the member had retired on the ground of Disability; and
 - (ii) if subject to a "B" medical classification, the member was in fact subject to an "A" medical classification; or
 - (b) if the member has no *spouse* or dependant other than a *child*, to the *legal personal representative* of the member an amount equal to:
 - (i) that proportion of the multiple fixed in accordance with Rule 5.1(b) of Division 3D of Section 3 which the Trustee determines represents Pension Contributions made by the member before 1 July 1988; and
 - (ii) one-half of the member's Adjusted Member Contributions made on and after 1 July 1988,less an amount determined by the actuary to be required for the payment of any Child's Allowance payable under Rules 6.9 to 6.14 of Division 3D of Section 3; and
 - (c) subject to Rule 5.14 of Division 3D of Section 3, a lump sum to be apportioned by the Trustee between the dependants of the member or the member's *legal personal representative* as the Trustee considers appropriate, which is to be (subject to Rule 5.13

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of Division 3D of Section 3) calculated in accordance with Rule 5.24 of Division 3D of Section 3, and subject to Rules 2.1 to 2.3 of Division 3D of Section 3, as if the member had ceased to be an Employee because of Disability at the date of death; and

- (d) any Child's Allowance determined in accordance with Rules 6.9 to 6.14 of Division 3D of Section 3.

5.13 If a Pension Scheme Contributor who attains 65 years of age dies while still an Employee, Rule 5.11 of Division 3D of Section 3 applies as if:

- (a) any pension payable under Rule 5.12(a) of Division 3D of Section 3 were equal to two-thirds of the pension to which the member would have been entitled under Rules 5.6 to 5.8 of Division 3D of Section 3 if at the date of death the member had retired; and
- (b) any lump sum payable under Rule 5.12(c) of Division 3D of Section 3 were calculated in accordance with Rules 5.6 to 5.8 of Division 3D of Section 3 as if the member had retired at the date of death.

5.14 The Trustee (after obtaining the actuary's advice) must pay to any person entitled to receive a death benefit under Rule 5.12(c) of Division 3D of Section 3 an additional amount (if any) representing the amount by which that death benefit, when added to the member's superannuation account balance under "the Health Accumulation Division", is less than the lump sum benefit which would have been payable under the 1965 Act had the member:

- (a) died on 30 June 1988; and
- (b) been subject to a "1" medical classification under the 1965 Act on the date of death.

Benefit on Disability

5.15 Subject to Rules 2.1 to 2.3 of Division 3D of Section 3 and Rules 5.15 to 5.21 of Division 3D of Section 3, if a member ceases to be an Employee before attaining the age of 60 years because of Disability, there is payable to the member from the Fund an annual pension (payable in fortnightly installments) for life at the rate of one-twelfth of the greater of:

- (a) the benefit that would have been payable under Rule 5.1 of Division 3D of Section 3 if:
 - (i) the member's date of Disability was the date of the member's retirement; and
 - (ii) the member was contributing at:
 - (A) 4% of Salary from the date of Disability for each prospective year of Service until the date the member would have attained the age of 60 years; or
 - (B) 6% of Salary from the date of Disability for each prospective year of Service until the date the member would have attained the age of 60 years if the member was contributing, or is deemed under Rules 3.1 to 3.4 of Division 3D of Section 3 to be

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contributing, 6% immediately before the date of Disablement; and

(iii) the member's Adjusted Final Fund Salary at the date of Disablement remained the same until the date the member would have attained the age of 60 years; or

(b) the member's Disability benefit immediately before 1 January 1994 under the 1988 Act.

5.16 If a Pensioner continues to receive a Disability pension under Rule 5.15 of Division 3D of Section 3 until the member attains the age of 65 (or any earlier date determined by the Trustee), the member may, in accordance with the procedures determined by the Trustee, elect upon attaining the age of 65 years to cease receiving the Disability pension and to receive instead a lump sum benefit equal to the retirement benefit that would have been payable under Rules 5.1 to 5.5 of Division 3D of Section 3 if the member had retired on the date of Disability.

5.17 The Trustee may at any time determine that a Disability pension under Rule 5.17 of Division 3D of Section 3 should cease and that the Pensioner should receive instead:

(a) a lump sum equal to a part of the retirement benefit that would have been payable under Rules 5.1 to 5.5 of Division 3D of Section 3 (such part to be determined by the Trustee) if the date of Disability was the date of retirement; and

(b) a pension at the rate of one-twelfth of the balance of the retirement benefit that was not paid under Rule 5.17(a) of Division 3D of Section 3,

in the proportions determined by the Trustee.

5.18 If a Pensioner receiving a Disability pension under Rule 5.15 of Division 3D of Section 3 or Rule 5.17 of Division 3D of Section 3 dies before attaining the age of 65 years, there is payable in accordance with Rules 8.13 to 8.15 of Division 3B of Section 3, a lump sum equal to:

$$D \frac{(312 - x)}{312}$$

where:

"D" is the balance of the benefit calculated under Rules 5.1 to 5.5 of Division 3D of Section 3 that would have been payable if the member had died on the date of retirement; and

"x" is the number of fortnightly pension instalments paid (whether from the Health Super Fund or the Fund) prior to the date of death.

5.19 If the Trustee determines that a Pensioner who has not attained the age of 65 years is capable of Gainful Employment, it may:

(a) discontinue or reduce the Disability pension being paid; and

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- (b) review any determination regarding discontinuance or reduction as it deems necessary.
- 5.20 A Pensioner's Disability status and the extent of that Disability may be reviewed by the Trustee from time to time but no more frequently than monthly, and if a Pensioner refuses to be medically examined to assist the Trustee in a review of that Pensioner's condition, the Trustee may stop payment of the Disability pension until the Pensioner undergoes the required examination.
- 5.21 If a member was contributing at the rate of 6% of Salary immediately before the date of Disability, the member's Disability pension must be calculated under section 36 of the 1988 Act as in force on 31 December 1993, if the benefit calculated in that manner would be greater than the benefit otherwise payable under Rules 5.15 to 5.21 of Division 3D of Section 3.
- Pension Scheme Contributor Disability benefit option** 5.22 Subject to Rule 2.1 of Division 3D of Section 3 and to Rule 5.27 of Division 3D of Section 3, a Pension Scheme Contributor who ceases to be an Employee because of Disability before attaining the age of 65 years may elect to substitute for the benefit payable under either Rules 5.1 to 5.5 of Division 3D of Section 3 or Rules 5.15 to 5.21 of Division 3D of Section 3 a benefit comprising:
- (a) a pension (calculated under Rule 5.23 of Division 3D of Section 3); and
 - (b) lump sum (calculated under Rule 5.24 of Division 3D of Section 3); and
 - (c) any Child's Allowance (calculated under Rules 6.9 to 6.14 of Division 3D of Section 3).
- 5.23 The pension is a pension calculated in accordance with Rule 5.6 to 5.8 of Division 3D of Section 3, as if:
- (a) the member had retired having attained the age of 65 years; and
 - (b) the member's Service included prospective Service to the date on which the member would have attained the age of 65 years.
- 5.24 Subject to Rule 5.27 of Division 3D of Section 3, the lump sum is a lump sum which is the greater of:
- (a) the sum of:
 - (i) the amount calculated under Rule 5.1(b) of Division 3D of Section 3; and
 - (ii) for each year of Service after 30 June 1988 and before 1 July 1993, 8% of the member's Adjusted Final Fund Salary; and
 - (iii) for each year of Service after 30 June 1993 a percentage of the member's Adjusted Final Fund Salary as follows:

Period of Service	% per annum of Adjusted Final Fund Salary
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	Employer's aggregate payroll \$1 million or less in the SG Act base year	Employer's aggregate payroll more than \$1 million in the SG Act base year
1 July 1993 to 30 June 1994	6	4
1 July 1994 to 30 June 1995	5	4
1 July 1995 to 30 June 1996	4	3
1 July 1996 to 30 June 1997	3	3
1 July 1997 to 30 June 1998	3	3
1 July 1998 to 30 June 1999	2	2
1 July 1999 to 30 June 2000	2	2
1 July 2000 to 30 June 2001	1	1
1 July 2001 to 30 June 2002	1	1
From 1 July 2002	0	0

as if the member's Service included prospective Service to the date on which the member would have attained the age of 65 years; or

- (b) the member's Accumulation Account Balance, plus a percentage of the member's Adjusted Final Fund Salary for each year of prospective Service to the date on which the member would have attained the age of 65 years as follows:

Period of Service	% per annum of Adjusted Final Fund Salary	
	Employer's aggregate payroll \$1 million or less in the SG Act base year	Employer's aggregate payroll more than \$1 million in the SG Act base year
1 July 1993 to 30 June 1994	6	4
1 July 1994 to 30 June 1995	5	4
1 July 1995 to 30 June 1996	4	3
1 July 1996 to 30 June 1997	3	3
1 July 1997 to 30 June 1998	3	3
1 July 1998 to 30 June 1999	2	2
1 July 1999 to 30 June 2000	2	2
1 July 2000 to 30 June 2001	1	1
1 July 2001 to 30 June 2002	1	1
From 1 July 2002	0	0

5.25 The Child's Allowance is determined in accordance with Rules 6.9 to 6.14 of Division 3D of Section 3.

5.26 A Disability lump sum benefit payable under or in accordance with Rules 5.22 to 5.27 of Division 3D of Section 3 may be paid by the Trustee in one payment or in more than one payment, as determined by the Trustee.

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5.27 The Trustee (after obtaining the actuary's advice) must pay to any person entitled to receive a Disability benefit under Rule 5.24 of Division 3D of Section 3 an additional amount (if any) representing the amount by which that Disability benefit, when added to the member's superannuation account balance under "the Health Accumulation Division", is less than the lump sum benefit which would have been payable under the 1965 Act had the member:

- (a) died on 30 June 1988; and
- (b) been subject to a "1" medical classification under the 1965 Act on the date of death.

Temporary Disability benefit

5.28 Rules 5.28 to 5.34 of Division 3D of Section 3 apply if the Trustee determines that a member who has applied under Rules 5.15 to 5.21 of Division 3D of Section 3 or Rules 5.22 to 5.27 of Division 3D of Section 3 to retire on the ground of Disability cannot receive a Disability benefit solely because the member is likely to substantially recover from a recurring injury or illness.

5.29 If the Trustee makes the determination in Rule 5.28 of Division 3D of Section 3, the member will be eligible to choose to receive a temporary Disability benefit of either:

- (a) a pension calculated in accordance with Rules 5.15 to 5.21 of Division 3D of Section 3; or
- (b) a pension calculated in accordance with Rule 5.22(a) of Division 3D of Section 3 and a partial payment of a lump sum under Rule 5.22(b) of Division 3D of Section 3,

as if the member had retired on the basis of Disability, but payments shall be made only for a limited period not exceeding 2 years from the date that the Trustee makes a determination under Rules 5.28 to 5.34 of Division 3D of Section 3 or the date on which a determination was made by the trustee of the Health Super Fund.

5.30 The Trustee must within 6 months of the determination being made under Rule 5.28 of Division 3D of Section 3 conduct a review to determine whether:

- (a) Rule 5.28 of Division 3D of Section 3 still applies to the member; or
- (b) the member is suffering from a Disability and may retire on the ground of Disability.

5.31 If a member who is receiving a temporary Disability benefit under Rule 5.29 of Division 3D of Section 3 becomes entitled to a benefit under any other provision of this Division 3D, the member ceases to be entitled to a temporary Disability benefit under Rules 5.28 to 5.34 of Division 3D of Section 3.

5.32 If, after ceasing to be entitled to a temporary Disability benefit under Rule 5.29 of Division 3D of Section 3, a member becomes entitled to a benefit under another provision of this Division 3D, the subsequent benefit payment must be adjusted to take account of what has already been paid

SECTION 3 – DEFINED BENEFITS

to the member under Rule 5.29 of Division 3D of Section 3 or the equivalent provision of the Health Super Fund trust deed.

- 5.33 If the member fails to comply with a requirement by the Trustee to attend a medical examination or to participate in a rehabilitation program or to provide information required by the Trustee so as to determine whether the member is still suffering from a Disability, the Trustee:
- (a) may by notice in writing to the member suspend payment of the benefit under Rules 5.28 to 5.34 of Division 3D of Section 3 until the member complies; or
 - (b) must cancel the payment of the benefit if the member does not comply with a requirement under this Rule 5.33 of Division 3D of Section 3 within 12 months.
- 5.34 Earnings at the Net Earning Rate will be applied to any partial lump sum remaining under Rule 5.29(b) of Division 3D of Section 3, until it is paid.
- Benefit on Retrenchment** 5.35 Subject to superannuation law on preservation, if a member ceases to be an Employee due to Retrenchment, there is payable from the Fund a lump sum benefit equal to the retirement benefit that the member would have received under Rules 5.1 to 5.5 of Division 3D of Section 3 if the date of Retrenchment was the date of retirement.
- Pension Scheme Contributor Retrenchment benefit option** 5.36 Subject to superannuation law on preservation, a Pension Scheme Contributor who ceases to be an Employee due to Retrenchment may elect to substitute for the benefit payable under Rule 5.35 of Division 3D of Section 3 a benefit calculated in accordance with Rules 5.6 to 5.8 of Division 3D of Section 3 (and payable in accordance with paragraphs (a) and (b) of this Rule 5.36) as if the member had retired having attained the age of 65 years at the date of Retrenchment.
- (a) The pension benefit calculated under Rule 5.7 of Division 3D of Section 3 must be deferred and paid in accordance with Rules 7.12 to 7.15 of Division 3D of Section 3.
 - (b) The lump sum benefit payable under Rule 5.8 of Division 3D of Section 3 is, subject to superannuation law on preservation, payable immediately.
- Benefit on resignation** 5.37 Subject to superannuation law on preservation and Rule 5.38 of Division 3D of Section 3, if a member ceases to be an Employee before attaining the age of 55 years when no other benefit is payable under this Division 3D, a member may elect:
- (a) to receive a lump sum benefit equal to the sum of the member's Adjusted Member Contributions (including a multiple of the member's Adjusted Final Fund Salary determined by the Trustee having regard to the member's resignation benefit as at 30 June 1988 under the 1965 Act or the 1985 Regulations) and Deferred Benefit Option 1; or
 - (b) to defer receipt of any benefit until attaining the age of 55 years at which time:

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- (i) a member (who is not a Lump Sum member) must elect Deferred Benefit Option 3 or Deferred Benefit Option 4; and
 - (ii) a Lump Sum member must elect Deferred Benefit Option 2 or Deferred Benefit Option 4.
- 5.38 Subject to superannuation law on preservation and Rule 5.39 of Division 3D of Section 3:
- (a) the Adjusted Member Contributions are payable to the member immediately; and
 - (b) Deferred Benefit Option 1 is payable in accordance with Rules 7.1 to 7.4 of Division 3D of Section 3; and
 - (c) Deferred Benefit Option 2 is payable in accordance with Rules 7.16 to 7.18 of Division 3D of Section 3; and
 - (d) Deferred Benefit Option 3 is payable in accordance with Rules 7.19 to 7.22 of Division 3D of Section 3; and
 - (e) Deferred Benefit Option 4 is payable in accordance with Rules 7.23 to 7.26 of Division 3D of Section 3.
- 5.39 If the member does not want immediate payment of the Adjusted Member Contributions under Rule 5.38(a) of Division 3D of Section 3, the member must elect that the Adjusted Member Contributions be transferred to the Health Super Accumulation Division or to an Approved Benefit Arrangement in accordance with terms and conditions determined by the Trustee from time to time.
- 5.40 In the event of the member's death before any benefit has been paid under Rule 5.37 of Division 3D of Section 3, the member's dependant or *legal personal representative* selected under Rules 8.13 to 8.15 of Division 3B of Section 3 will make the election.
- Pension Scheme Contributor resignation benefit option** 5.41 Subject to superannuation law on preservation, a Pension Scheme Contributor who ceases to be an Employee when no other benefit is payable under this Division 3D may elect to substitute for all benefits payable under Rules 5.37 to 5.40 of Division 3D of Section 3 a deferred benefit being, at the election of the member, either:
- (a) a benefit calculated in accordance with Rule 5.35 of Division 3D of Section 3, and payable in accordance with Rules 7.1 to 7.4 of Division 3D of Section 3; or
 - (b) a benefit calculated in accordance with Rule 5.36 of Division 3D of Section 3, and payable in accordance with Rules 5.36(a) of Division 3D of Section 3 and 5.36(b) of Division 3D of Section 3.
- Discretion to compensate for detriment** 5.42 In relation to benefits payable under this Division 3D if:
- (a) upon application by a member (in the form and manner determined by the Trustee); and
 - (b) after obtaining the advice of the actuary,

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the Trustee is satisfied that the reduction in benefits under the 1988 Act, which was effective from 1 July 1993, has resulted in an unreasonable detriment to a member, the Trustee must take such steps as the Trustee considers necessary to compensate the member for that detriment, including increasing the member's benefit or making an additional benefit payment to the member.

5.43 For the purpose of Rule 5.42 of Division 3D of Section 3:

- (a) **unreasonable detriment** means receiving a benefit which, after deducting tax that would have been payable by a person aged 55 years or more based on the Income Tax Assessment Act 1936 (“tax law”) in effect on 1 July 1993, is less than the amount of after-tax benefit than would have been received if:
- (i) the benefit accrual rates in Rules 5.1 of Division 3D of Section 3 and 5.5 of Division 3D of Section 3 had not been reduced effective from 1 July 1993; and
 - (ii) the benefit had been classified for the purposes of the tax law as an untaxed benefit; and
 - (iii) tax had applied in accordance with the rates of tax and the basis for its assessment under the tax law as at 1 July 1993 in respect of a benefit that becomes payable to a person aged 55 years or more; and
 - (iv) any other matters that the actuary considers relevant; and
- (b) **untaxed benefit** means there is no “taxed element” as defined in section 27A of the tax law.

Marriage Benefit 5.44 A female member who became a member of the 1988 Fund prior to 1 September 1985 and who ceases to be an Employee prior to attaining the age of 55 years may elect to receive a Marriage Benefit in lieu of any other benefit from the Fund if that member marries:

- (a) while a member of the Health Super Fund or the Fund; or
 - (b) within three months of ceasing to be an Employee,
- but:
- (c) if that member divorces without remarrying prior to ceasing to be an Employee, no Marriage Benefit is payable; and
 - (d) if that member divorces and remarries prior to ceasing to be an Employee, a Marriage Benefit is payable but the Benefit must be calculated from the date of the member's last marriage prior to ceasing to be an Employee.

5.45 The Trustee may also determine that any other member who became a member of the 1988 Fund prior to 1 September 1985 and who ceases to be an Employee prior to attaining the age of 55 years in the circumstances set out in Rule 5.44 of Division 3D of Section 3 is entitled to the Marriage Benefit.

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Transfer to the Health Super Accumulation Division

- 5.46 If Rule 5.35 of Division 3D of Section 3 requires a member to cease contributions to the Fund, the member may elect:
- (a) to have a benefit calculated under Rules 5.1 to 5.5 of Division 3D of Section 3 or Rules 5.6 to 5.8 of Division 3D of Section 3 (as applicable) as if the member had retired on the date of the election; and
 - (b) to become a member of the Health Super Accumulation Division and to credit the amount in paragraph (a) to the member's superannuation account in that Division.
- 5.47 If the member does not make the election to become a member of the Health Super Accumulation Division in accordance with Rule 5.46 of Division 3D of Section 3, the member's benefit will be determined in accordance with this Division 3D.
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6. PENSIONS

Payment of pensions

- 6.1 For purposes of this Rule 6 of Division 3D of Section 3, the following words have the following meanings:

- (a) **Prescribed Half Year** means a period of six months ending on 30 June or 31 December in which the Consumer Price Index is higher than the previous highest Consumer Price Index in or since a half year after 31 December 1987.
- (b) **Prescribed Percentage** in relation to a Prescribed Half Year after 31 December 1998 means the percentage calculated to two decimal places in accordance with the formula:

$$\frac{A - B}{B}$$

where -

"A" is the Consumer Price Index number for the Prescribed Half Year; and

"B" is the Consumer Price Index number for the preceding Prescribed Half Year.

- 6.2 Any pension to which a Pensioner or the *spouse* or *child* or other dependant of a deceased Pensioner is entitled under this Rule 6 of Division 3D of Section 3 shall:
- (a) if the pension is then payable, be adjusted on the payment of the first instalment of pension in the month of June or December by an amount equal to one-sixth of the Prescribed Percentage (if any) for the preceding half year of the pension that person is receiving for every whole month or part of a month during which that person was entitled to the pension during the preceding Prescribed Half Year; and
 - (b) if for any reason the pension is not then payable, it shall notionally be increased as if it is then payable.

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6.3 If a Pensioner:

- (a) again becomes an Employee of an Employer at a Salary less than the Salary appropriate to the grade in which he or she was employed at the time of retirement because the Pensioner is unable to perform the previous duties due to ill health, the Trustee must reduce the pension as from a date determined by the Trustee (being not earlier than the date the Pensioner became entitled to the benefit) to an amount equal to the difference between the Salary received by the person in respect of the resumed employment with an Employer and the current equivalent of the Salary appropriate to the grade in which the Pensioner was employed at the time of retirement; or
- (b) who is receiving or entitled to any outstanding instalment of a Disability lump sum benefit resumes as a full-time Employee of an Employer, the Trustee must discontinue the pension payments.

6.4 Upon the death of a Pensioner whose pension has been temporarily reduced under Rules 6.3(a) of Division 3D of Section 3 or 6.3(b) of Division 3D of Section 3, the Pensioner's *spouse* or dependant will be entitled to a pension calculated on the basis that no reduction was made.

Death of Pensioner

6.5 Upon the death of a Pensioner, a benefit is payable in accordance with Rule 6.6 of Division 3D of Section 3 and a Child's Allowance is payable in accordance with Rules 6.9 to 6.14 of Division 3D of Section 3.

6.6 The benefit is a benefit being:

- (a) subject to Rule 6.7 of Division 3D of Section 3 a pension to the *spouse* (or if there is no *spouse* to any other dependant of the member as the Trustee determines appropriate, except a *child* of the Pensioner) equal to two-thirds of the pension payable to the Pensioner at the time of the Pensioner's death; or
- (b) if there is no *spouse* or dependant other than a *child* of the Pensioner, to the personal representative of the Pensioner an amount equal to :
 - (i) that proportion of the multiple fixed in accordance with Rule 6.37(a) of Division 3D of Section 3 which the Trustee determines represents Pension Contributions made by the Pensioner before 1 July 1988, and one-half of any Adjusted Member Contributions calculated as from 1 July 1988; less
 - (ii) the total amount of pension payments already made to the Pensioner whether from the Health Super Fund or the Fund, together with an amount determined by the actuary to be required for the payment of any Child's Allowance under Rules 6.9 and 6.14 of Division 3D of Section 3.

6.7 If the Pensioner was receiving a Disability pension at the date of death and, at the date of the Pensioner's retirement on the grounds of Disability was subject to a "B" medical classification, or, having died before 1 July 1988 was subject to a "Limited" pension classification under the 1965 Act, the benefit under Rule 6.6(a) of Division 3D of Section 3 is to be

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calculated as if the Pensioner had not been subject to a restricted medical classification at the date of the Pensioner's Disability retirement.

- Death of Spouse Pensioner**
- 6.8 Upon the death of a *spouse* or other dependant of a Pensioner (other than a *child* of the Pensioner) to whom a pension is payable, there is payable to the *legal personal representative* of the deceased *spouse* or deceased dependant an amount equal to:
- (a) that proportion of the multiple fixed in accordance with Rule 5.37(a) of Division 3D of Section 3 which the Trustee determines represents Pension Contributions made by the Pensioner before 1 July 1988, and one-half of any Adjusted Member Contributions calculated from 1 July 1988; less
 - (b) the total amount of pension payments already made to the Pensioner whether from the Health Super Fund or the Fund, or to the deceased *spouse* or deceased dependant, together with an amount determined by the actuary to be required for the payment of any Child's Allowance in respect of the Pensioner.
- Child's Allowance**
- 6.9 A Child's Allowance under this Division 3D is payable in respect of each *child* (subject to a maximum of 4) of the Pensioner or the Pension Scheme Contributor or (where provided for on the death of a Pensioner) of the *spouse* of the Pensioner who:
- (a) is less than 18 years of age; or
 - (b) is deemed by the Trustee to be a full-time student of not more than 25 years of age; and
 - (c) in the case of a Pensioner who receives a Disability pension, is a *child* of that Pensioner at the time that the Disability pension commences.
- 6.10 An allowance payable under Rule 6.9 of Division 3D of Section 3 is to be calculated at the rate of \$2,212.60 per annum (as at 28 May 1998) and increased in accordance with Rules 6.1 to 6.4 of Division 3D of Section 3 (and, if applicable, the equivalent provisions of the Health Super Fund trust deed) as if a pension at the rate of \$2,212.60 per annum were payable for each month of the Prescribed Half Year.
- 6.11 On the death of:
- (a) a Pensioner or Pension Scheme Contributor; or
 - (b) a Pensioner or Pension Scheme Contributor who has no *spouse*,
- any Child's Allowance which would otherwise be calculated under Rule 6.10 of Division 3D of Section 3 is to be payable to the person whom the Trustee determines is appropriate and is to be calculated at twice the rate of the allowance which is payable under Rule 6.10 of Division 3D of Section 3.
- 6.12 The Trustee may, having regard to the interests and welfare of the *child*, substitute for any allowance payable in respect of a *child* under the 1965 Act an allowance calculated in respect of a *child* under this Rules 6.9

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to 6.14 of Division 3D of Section 3 (as if no maximum of 4 children were specified in Rule 6.9 of Division 3D of Section 3).

6.13 One amount only is payable as an allowance in respect of a *child* who would otherwise be entitled to an allowance in respect of more than one Pensioner.

6.14 Despite anything to the contrary in this Division 3D, money payable in respect of a *child* may, at the discretion of the Trustee, be paid to any person as the Trustee directs on behalf of the *child* and for the benefit of the child or expended by the Trustee for the benefit of the *child*.

Commutation of pensions

6.15 Subject to Rule 6.16 of Division 3D of Section 3 and Rule 6.17 of Division 3D of Section 3, any person who is receiving, or entitled to receive, a pension under this Division 3D may apply to the Trustee to commute all or part of that pension (as permitted by the Trustee) to a lump sum amount and any future pension payments must be adjusted as determined by the actuary to take account of the lump sum payment.

6.16 If a person is receiving an annual pension of \$520 (or any higher amount determined by the Trustee), the Trustee may determine to allow that person to elect an equivalent lump sum payment, as determined by the actuary.

6.17 If a member is entitled to receive a pension under this Division 3D, that member may irrevocably agree with the Trustee (on a form provided by the Trustee) before the commencement of that pension:

(a) to forfeit any right of commutation that that member might have under Rule 6.15 of Division 3D of Section 3; and

(b) to limit any other right of commutation that might otherwise exist in order to ensure that the pension will meet the standards for a complying pension under the superannuation law.

6.18 Notwithstanding Rule 6.15 of Division 3D of Section 3 and Rule 6.16 of Division 3D of Section 3, if superannuation law so requires the Trustee must commute any pension (including a Child Allowance) payable to an Adult Child to an equivalent lump sum payment as determined by the actuary either at the commencement of the pension or in the course of payment once the *child* becomes an Adult Child.

7. PAYMENT OF DEFERRED BENEFITS

Deferred Benefit Option 1

7.1 For purposes of Rules 5.37 to 5.40 of Division 3D of Section 3, Deferred Benefit Option 1 is an amount equal to the sum of:

(a) 5% of the member's retirement benefit under Rules 5.1 to 5.5 of Division 3D of Section 3 (after deducting the amount determined in Rule 5.37(a) of Division 3D of Section 3 from the total of the amounts in Rules 5.1(a) of Division 3D of Section 3 and 5.1(b) of Division 3D of Section 3) for each year in excess of 5 years during which the member was an Employee, but:

(i) with a maximum of 100% after 25 years as an Employee; and

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- (ii) years as an Employee for this purpose include up to 12 months of unpaid parental leave for each period of parental leave after which period of parental leave the member returned for at least 12 months as an Employee; and
 - (b) earnings at the rate determined under Rules 6.1 to 6.4 of Division 3D of Section 3 in accordance with movements in the Consumer Price Index from the date of resignation until the date the benefit is paid under Rule 7.2 of Division 3D of Section 3.
- 7.2 Subject to superannuation law on preservation and Rules 7.3 of Division 3D of Section 3 and 7.4 of Division 3D of Section 3, Deferred Benefit Option 1 is payable:
 - (a) on the earliest to occur of the following events:
 - (i) the member attains the age of 55 years and ceases to be an Employee; or
 - (ii) the member dies; or
 - (iii) the member becomes Disabled; or
 - (iv) the member makes an election under Rule 7.3 of Division 3D of Section 3 or 7.4 of Division 3D of Section 3; or
 - (v) the member attains the age of 65 years, or
 - (b) at any time, if the Deferred Benefit is less than \$200.
- 7.3 If a member with Deferred Benefit Option 1 is less than 55 years of age, that member may elect:
 - (a) to transfer an amount that represents the present day value of that Deferred Benefit (as determined by the Trustee after obtaining the actuary's advice) to the Health Super Accumulation Division or to an Approved Benefit Arrangement in accordance with terms and conditions determined by the Trustee from time to time; or
 - (b) any other option which might be offered by the Trustee from time to time.
- 7.4 If a member with Deferred Benefit Option 1 is more than 55 years of age, that member may elect to transfer that Deferred Benefit to the Health Super Accumulation Division or to an Approved Benefit Arrangement.
- Deferred members**
 - 7.5 A Deferred Pension Contributor member who elected, at the time that member ceased to be an Employee, a refund of Pension Contributions will receive, in accordance with Rule 7.10 of Division 3D of Section 3, that member's Accumulation Account Balance.
 - 7.6 A Deferred Pension Contributor member who elected, at the time that member ceased to be an Employee, a refund of Lump Sum Contributions will receive, in accordance with Rules 7.12 to 7.15 of Division 3D of Section 3, a Deferred Pension.

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- 7.7 A Deferred Pension Contributor member who elected, at the time that member ceased to be an Employee, not to receive a refund of either Pension Contributions or Lump Sum Contributions will receive both:
- (a) in accordance with Rule 7.10 of Division 3D of Section 3, that member's Accumulation Account Balance; and
 - (b) in accordance with Rule 7.12 to 7.15 of Division 3D of Section 3, a Deferred Pension.
- 7.8 A Deferred Pension Contributor member who elected to transfer to another "eligible scheme" under the Superannuation (Portability) Act 1989 (Victoria) will receive a deferred lump sum and a deferred pension determined in accordance with the applicable provisions of that Act.
- 7.9 A Deferred Lump Sum Contributor member who elected, at the time that member ceased to be an Employee, not to receive a refund of Lump Sum Contributions, will receive in accordance with Rule 7.10 of Division 3D of Section 3, that member's Accumulation Account Balance.
- 7.10 Subject to superannuation law on preservation and Rule 7.11 of Division 3D of Section 3, the Accumulation Account Balance is payable:
- (a) on the earliest to occur of the following events:
 - (i) the member attains the age of 55 years and ceases to be an Employee; or
 - (ii) the member dies; or
 - (iii) the member becomes Disabled; or
 - (iv) the member attains the age of 65 years; or
 - (b) at any time, if the Accumulation Account Balance is less than \$200.
- 7.11 A Deferred member with an Accumulation Account Balance may elect:
- (a) to transfer that Accumulation Account Balance to the Health Super Accumulation Division or to an Approved Benefit Arrangement in accordance with terms and conditions determined by the Trustee from time to time; or
 - (b) any other option which might be offered by the Trustee from time to time.

Deferred Pension 7.12 For purposes of this Division 3D:

- (a) the Deferred Pension is the amount calculated in accordance with Rule 5.7 of Division 3D of Section 3 as if the member had attained the age of 65 years, which amount is indexed as determined under Rules 6.1 to 6.4 of Division 3D of Section 3 in accordance with movements in the Consumer Price Index from the date the member ceased to be an Employee until the date the Deferred Pension is paid under Rules 7.12 to 7.15 of Division 3D of Section 3; but
- (b) when the Deferred Pension is paid, the amount in Rule 7.12(a) of Division 3D of Section 3 is re-calculated (except where paid in the

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event of death or Disability) to reflect the member's (including a Deferred Pension Contributor member) actual years of Service and actual age at the time the Deferred Pension commences to be paid.

7.13 The Deferred Pension is payable to or in respect of a Deferred Pension Contributor member under Rules 7.5 to 7.11 of Division 3D of Section 3 or a member under Rules 7.19 to 7.22 of Division 3D of Section 3 on the earliest to occur of the following events:

- (a) the member attains the age of 55 years and ceases Gainful Employment; or
- (b) the member dies; or
- (c) the member becomes Disabled; or
- (d) the member attains the age of 65 years.

7.14 In the event of the Deferred Pension Contributor member's death or the death of a member under Rules 7.19 of Division 3D of Section 3 to 7.22 of Division 3D of Section 3 before the Deferred Pension commences to be paid where:

- (a) there is a *spouse* or other dependant as the Trustee determines appropriate and one or more *children* surviving the member, the Deferred Pension will be paid in accordance with Rules 6.5 of Division 3D of Section 3 to 6.7 of Division 3D of Section 3 and Rules 6.9 of Division 3D of Section 3 to 6.14 of Division 3D of Section 3, as if the Deferred Pension had commenced to be paid to the member before death; or
- (b) there is no *spouse* or other appropriate dependant but there are one or more *children* surviving the member, the Deferred Pension will be paid in accordance with Rule 6.12 of Division 3D of Section 3 as if the Deferred Pension had commenced to be paid to the member before death; or
- (c) there is no *spouse*, other appropriate dependant or *child* surviving the member, there will be paid to the member's *legal personal representative*, a lump sum equal to the total Pension Contributions made by the member with earnings at the applicable Net Earning Rate from the time of contribution to the date of payment.

7.15 In the event of the member's Disability before any payment has been made under Rules 7.12 of Division 3D of Section 3 to 7.15 of Division 3D of Section 3:

- (a) the Deferred Pension will be paid to the member; and
- (b) if the member has one or more *children*, a Child's Allowance will be paid in accordance with Rules 6.9 of Division 3D of Section 3 to 6.14 of Division 3D of Section 3.

Deferred Benefit Option 2

7.16 A member with Deferred Benefit Option 2 under Rules 5.37 of Division 3D of Section 3 to 5.40 of Division 3D of Section 3 will be entitled to receive the greater of that member's:

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- (a) Accumulation Account Balance; or
- (b) Defined Benefit Account Balance.

7.17 Subject to the superannuation law on preservation and Rule 7.18 of Division 3D of Section 3, Deferred Benefit Option 2 is payable to or in respect of a member upon the earliest to occur of the following events:

- (a) the member attains the age of 55 years and ceases Gainful Employment; or
- (b) the member dies; or
- (c) the member becomes Disabled; or
- (d) the member attains the age of 65 years.

7.18 If a member with Deferred Benefit Option 2 is more than 55 years of age, that member may elect to transfer that Deferred Benefit to the Health Super Accumulation Division or to an Approved Benefit Arrangement.

Deferred Benefit Option 3

7.19 Subject to Rules 7.20 of Division 3D of Section 3 and 7.21 of Division 3D of Section 3, a member (who is not a Lump Sum member) with Deferred Benefit Option 3 under Rules 5.37 of Division 3D of Section 3 to 5.40 of Division 3D of Section 3 will be entitled to receive a benefit consisting of:

- (a) the greater of that member's:
 - (i) Accumulation Account Balance; or
 - (ii) Defined Benefit Account Balance,

and

- (b) a Deferred Pension.

7.20 Subject to the superannuation law on preservation and Rule 7.21 of Division 3D of Section 3 and Rule 7.22 of Division 3D of Section 3, Deferred Benefit Option 3 is payable to or in respect of a member upon the earliest to occur of the following events:

- (a) the member attains the age of 55 years and ceases Gainful Employment; or
- (b) the member dies; or
- (c) the member becomes Disabled; or
- (d) the member attains the age of 65 years.

7.21 If a member with Deferred Benefit Option 3 is more than 55 years of age, that member may elect to transfer that Deferred Benefit to the Health Super Accumulation Division or to an Approved Benefit Arrangement.

7.22 In the event of that member's Disability before any payment has been made under this Rule, the member will receive:

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- (a) the greater of the amount in Rule 7.19(a)(i) or (ii) of Division 3D of Section 3; and
- (b) a Deferred Pension (determined as if the member had attained the age of 65 years), and

a Child's Allowance (if applicable) will be paid in accordance with Rules 6.9 of Division 3D of Section 3 to 6.14 of Division 3D of Section 3.

Deferred Benefit Option 4

7.23 Deferred Benefit Option 4 is a lump sum which is the sum of the following:

- (a) the product of the member's Deferred Lump Sum Retirement Multiple and the member's Adjusted Final Fund Salary; and
- (b) the product of the member's Deferred Pension Multiple and the member's Adjusted Final Fund Salary; and
- (c) the product of the member's Post-1988 Retirement Multiple and the member's Adjusted Final Fund Salary,

with earnings at the rate determined under Rules 6.1 of Division 3D of Section 3 to 6.4 of Division 3D of Section 3 in accordance with movements in the Consumer Price Index from the date of ceasing to be an Employee until the date that the benefit is paid under Rule 7.24 of Division 3D of Section 3.

7.24 Subject to superannuation law on preservation and Rule 7.25 of Division 3D of Section 3 and Rule 7.26 of Division 3D of Section 3, Deferred Benefit Option 4 is payable to or in respect of a member on the earliest to occur of the following events:

- (a) the member attains the age of 55 years and ceases Gainful Employment; or
- (b) the member dies; or
- (c) the member becomes Disabled; or
- (d) the member attains the age of 65 years.

7.25 If a member with Deferred Benefit Option 4 is less than 55 years of age, that member may elect:

- (a) to transfer an amount that represents the present day value of Deferred Benefit Option 4 (as determined by the Trustee after obtaining the actuary's advice) to the Health Super Accumulation Division or to an Approved Benefit Arrangement in accordance with terms and conditions determined by the Trustee from time to time; or
- (b) any other option which might be offered by the Trustee from time to time.

7.26 If a member with Deferred Benefit Option 4 is more than 55 years of age, that member may elect to transfer that Deferred Benefit to the Health Super Accumulation Division or to an Approved Benefit Arrangement.

SECTION 3 – DEFINED BENEFITS

Deferred Accrued Retirement Benefit

- 7.27 At any time a member may elect to become a member of the Health Super Accumulation Division and to cease to be a member of this Division 3D.
- 7.28 Upon making an election under Rule 7.27 of Division 3D of Section 3, a Deferred Accrued Retirement Benefit will be calculated in respect of that member under Rules 5.1 of Division 3D of Section 3 to 5.5 of Division 3D of Section 3 as if the member had retired on the date of that election based on the member's accrual rate, Adjusted Final Fund Salary and years of Service at the date of the election, which amount will be credited with earnings at the rate determined under Rules 6.1 of Division 3D of Section 3 to 6.4 of Division 3D of Section 3 in accordance with movements in the Consumer Price Index from the date of the election until the date the benefit is paid under Rule 7.29 of Division 3D of Section 3.
- 7.29 Subject to the superannuation law on preservation and Rule 7.30 of Division 3D of Section 3 and Rule 7.31 of Division 3D of Section 3, the Deferred Accrued Retirement Benefit is payable:
- (a) on the earliest to occur of the following events:
 - (i) the member attains the age of 55 years and ceases Gainful Employment; or
 - (ii) the member dies; or
 - (iii) the member becomes Disabled; or
 - (iv) the member makes an election under Rule 7.30 of Division 3D of Section 3 or Rule 7.31 of Division 3D of Section 3; or
 - (v) the member attains the age of 65 years; or
 - (b) at any time, if the Deferred Accrued Retirement Benefit is less than \$200.
- 7.30 If a member with a Deferred Accrued Retirement Benefit is less than 55 years of age, that member may elect:
- (a) to transfer an amount that represents the present day value of that Deferred Accrued Retirement Benefit (as determined by the Trustee after obtaining the actuary's advice) to the Health Super Accumulation Division or to an Approved Benefit Arrangement in accordance with terms and conditions determined by the Trustee from time to time; or
 - (b) any other option that might be offered by the Trustee from time to time.
- 7.31 If a member with a Deferred Accrued Retirement Benefit is more than 55 years of age, that member may elect to transfer that Deferred Accrued Retirement Benefit to the Health Super Accumulation Division or to an Approved Benefit Arrangement.
- 7.32 If a Deferred member has a Supplementary Account Balance, that Account Balance will be paid in addition to any other benefit in this Rule 7 of Division 3D of Section 3.

Supplementary Account Balance

SECTION 3 – DEFINED BENEFITS

8. ELECTIONS

- Election Period** 8.1 Unless otherwise provided, an election made by a Pension Scheme Contributor or other person entitled to benefits under this Division 3D is not valid unless made in the form required by the Trustee (or, if made prior to the Health Super transfer date, by the trustee of the Health Super Fund) and before the expiry of 6 months, or any longer period which the Trustee (or, if applicable, the trustee of the Health Super Fund) may in special circumstances allow, from the date upon which the person became entitled to make the election.
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9. DICTIONARY

- Definitions** 9.1 In this Division 3D, unless the contrary intention appears or the context requires otherwise:

1965 Act means the Hospitals Superannuation Act 1965 (Vic). Provisions of the 1965 Act which are referred to in this Division 3D are attached to the Rules as Exhibit 2.

1985 Regulations means the Hospitals Superannuation (Fund) Regulations 1985. Provisions of the 1985 Regulations which are referred to in this Division 3D are attached to the Rules as Exhibit 3.

A

Accumulation Account means the account maintained in respect of a member under Rule 4.2 of Division 3D of Section 3.

Accumulation Account Balance means in relation to a member, the credit balance (if any) in the member's Accumulation Account after all the relevant credits and debits have been made.

Adjusted Final Fund Salary means:

- (a) in relation to a member with less than two years of Service, an amount calculated in accordance with the formula:

where:

“A” is the total Salary paid to the member in respect of the member's period of Service;

“B” is the total number of days in that period of Service, and

- (b) in relation to a member with two or more years of Service, an amount equal to one-half of the member's total Salary during the two years of Service immediately preceding the member's last day of Service,

but if the period of Service in paragraph (a) or paragraph (b) includes a period of leave without pay, the member's Salary for purposes of this definition for that period of leave will be deemed to be the greater of:

SECTION 3 – DEFINED BENEFITS

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- (c) the rate of Salary the member was receiving immediately prior to the commencement of the period of leave without pay; or
 - (d) any higher Salary approved by the trustee of the Health Super Fund prior to the Health Super transfer date or subsequently by the Trustee for the purposes of these Rules,

and, in any event, if the member was a member of the Fund on 1 January 1994, the member's Adjusted Final Fund Salary must not be less than the member's Salary on 1 January 1994 but, for the avoidance of doubt, does not include any amount that is not referable to the member's Salary entitlement for that two year Service period.

Adjusted Member Contributions means the sum of:

- (a) the total *contributions* which would have been made by a member if the Salary of the member had always been equal to the member's Adjusted Final Fund Salary at the date the member ceased to be an Employee; and
- (b) a percentage of the member's Adjusted Final Fund Salary at the date the member ceased to be an Employee determined by the Trustee having regard to any amounts transferred to the Health Super Fund or the Fund in respect of the member from an Approved Benefit Arrangement.

C

Child's Allowance means the allowance determined under Rules 6.9 of Division 3D of Section 3 to 6.14 of Division 3D of Section 3.

D

Deferred Accrued Retirement Benefit is defined in Rules 7.27 of Division 3D of Section 3 to 7.31 of Division 3D of Section 3.

Deferred Benefit Option 1 is defined in Rules 7.1 of Division 3D of Section 3 to 7.4 of Division 3D of Section 3.

Deferred Benefit Option 2 is defined in Rules 7.16 of Division 3D of Section 3 to 7.18 of Division 3D of Section 3

Deferred Benefit Option 3 is defined in Rules 7.19 of Division 3D of Section 3 to 7.22 of Division 3D of Section 3

Deferred Benefit Option 4 is defined in Rules 7.23 of Division 3D of Section 3 to 7.26 of Division 3D of Section 3.

Deferred Lump Sum Contributor member means a Deferred member who is not a Deferred Pension Contributor member:

- (a) who last ceased to be an Employee before 1 July 1988; and
- (b) by or in respect of whom only Lump Sum Contributions were being made to the Health Super Fund immediately before ceasing to be an Employee.

Deferred Lump Sum Retirement Multiple means the multiple calculated under Rules 5.1 of Division 3D of Section 3 to 5.5 of Division 3D of Section 3 in respect of the member's Service and Lump Sum Contributions before 1 July 1988.

SECTION 3 – DEFINED BENEFITS

Deferred member means a person who is either a Deferred Lump Sum Contributor member or a Deferred Pension Contributor member.

Deferred Pension is defined in Rule 7.12 of Division 3D of Section 3 to 7.15 of Division 3D of Section 3.

Deferred Pension Contributor member means a Pension Scheme Contributor:

- (a) who last ceased to be an Employee before 1 July 1988; and
- (b) by or in respect of whom 6% contributions were being made to the Fund immediately before ceasing to be an Employee.

Deferred Pension Multiple means, in respect of a member, the multiple determined under Rules 5.1 of Division 3D of Section 3 to 5.5 of Division 3D of Section 3 in respect of the member's Service and Pension Contributions before 1 July 1988.

Defined Benefit Account means the account maintained in respect of the member under Rules 4.5 of Division 3D of Section 3 and 4.6 of Division 3D of Section 3.

Defined Benefit Account Balance means the credit balance (if any) in the member's Defined Benefit Account after all the relevant credits and debits have been made.

Dependant means in relation to a person ("relevant person") any one or more of

- (a) the *spouse* of the relevant person;
- (b) any *child* of the relevant person;
- (c) any other natural person who, in the opinion of the Trustee, is at the relevant date (or, in the case of a deceased person, was at the time of death of the deceased) wholly or partially dependent on the relevant person or who at that date had a legal right to look to him or her for financial support; and
- (d) any other natural person who may qualify as a dependant under superannuation law.

L

Last day of Service in relation to a member who becomes entitled to a benefit pursuant to Rules 8.10 of Division 3B of Section 3 to 8.12 of Division 3B of Section 3 (notwithstanding that there is no actual termination or interruption of employment) means:

- (a) in respect of a benefit that must be paid or commence to be paid under superannuation law, the day on which the Trustee must pay or commence payment of that benefit; or
- (b) in respect of a benefit that may be paid or commence to be paid under superannuation law, the day on which the member requests payment of that benefit or the day on which that benefit may be paid or commence to be paid (whichever is the later),

or such other date that the Employer and the Trustee may agree on the advice of an actuary.

SECTION 3 – DEFINED BENEFITS

Lump Sum Contribution means a contribution to the Fund equal to:

- (a) 3.5% of Salary made, before 1 July 1988, by or in respect of a member (including a Deferred member); or
- (b) 3% of Salary made, on or after 1 July 1988, by or in respect of any member.

Lump Sum member means a member who was a member of the Health Super Fund prior to 1 July 1988 but who last ceases to be an Employee after 1 July 1988 and by or in respect of whom only Lump Sum Contributions were being made to the Health Super Fund and the Fund immediately before ceasing to be an Employee.

M

Marriage Benefit means the benefit under Regulation 15(1)(e), Regulation 16(e) or Regulation 17(d) (as applicable) of the 1985 Regulations (being a benefit in lieu of the resignation benefit under Rules 5.37 of Division 3D of Section 3 to 5.40 of Division 3D of Section 3 or Rule 5.41 of Division 3D of Section 3).

member means a member of this Division 3D who is not a Pensioner.

P

Pension Contribution means a contribution to the Health Super Fund or the Fund equal to:

- (a) 2.5% of Salary made, before 1 July 1988, by or in respect of a member (including a Deferred Pension Contributor member); or
- (b) 3% of Salary made, on or after 1 July 1988 by or in respect of any member.

Pension Scheme Contributor means a member by or in respect of whom Pension Contributions were made to the Health Super Fund or the Fund in accordance with section 35B or 35ZF of the 1965 Act.

Pensioner means a person who is receiving a pension under this Division 3D.

Post-1988 Retirement Multiple means, in respect of a member, the multiple calculated under Rules 5.1 of Division 3D of Section 3 to 5.5 of Division 3D of Section 3 in respect of the member's Service and contributions after 1 July 1988.

R

Retrenchment means, in respect of a member, ceasing to be an Employee before attaining the age of 55 years in circumstances where the Employer has certified in writing to the Trustee that retrenchment has occurred for purposes of these Rules or in respect of whom a certification was in effect immediately prior to the Health Super transfer date.

S

Service in relation to a member, and subject to Rules 2.4 of Division 3D of Section 3 to 2.6 of Division 3D of Section 3, means the sum of the number of years (with each additional complete month counting as a fraction of a year) for which that member:

- (a) was a "contributor" under the 1988 Act;
- (b) was an Employed member under division D of the Health Super Fund on and after 1 January 1999; and
- (c) is an Employed member under this Division 3D as from the Health Super transfer date,

SECTION 3 – DEFINED BENEFITS

and includes any leave of absence:

- (d) during which the member continues to receive Salary from the Employer or periodic payments under the Accident Compensation Act 1985 (or its subsequent equivalent) and continues to make member and Employer contributions to the Fund; and
- (e) without pay or with reduced pay on account of illness or injury certified by a legally registered medical practitioner during which the member and the Employer continue to make contributions at the same rate at which they were contributing immediately prior to the commencement of the leave of absence; and
- (f) during which the member made contributions in accordance with Rule 3.7(c) of Division 3D of Section 3; and
- (g) approved by the Employer during which a member has made contributions in accordance with section 30(4)(c) of the 1965 Act; and
- (h) in respect of which the member has made contributions in accordance with section 28A of the 1965 Act,

but does not include:

- (i) any period in respect of which a benefit has previously been paid; or
- (j) any leave of absence during which the member made contributions in accordance with Rule 3.7(a) of Division 3D of Section 3; or
- (k) any leave of absence during which a member made contributions to the Fund in accordance with section 30(4)(b) of the 1965 Act,

and includes:

- (l) with respect to a member who is not a Casual Employee, a period of up to 4 weeks in respect of which no contributions are paid to the Fund by an Employer in respect of that member if the member becomes an Employee of an Employer before the expiration of those 4 weeks; and
- (m) with respect to a member who is a Casual Employee, a period of up to 8 weeks in respect of which no contributions are paid to the Fund by an Employer in respect of that member if the member becomes an Employee of an Employer before the expiration of those 8 weeks; and
- (n) with respect to a member who is not a Casual Employee and who ceases to be an Employee, a period of up to six months (or any further period determined by the Trustee either generally or in any particular case) so long as the member:
 - (i) notifies the Trustee of his or her intention to continue as a member; and
 - (ii) does not accept any benefit from this Division 3D in respect of that cessation; and
 - (iii) again becomes an Employee of an Employer within 6 months after the initial cessation as an Employee (or any further period determined by the Trustee either generally or in any particular case); and

SECTION 3 – DEFINED BENEFITS

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- (iv) continues member and Employer contributions to the Fund at a rate determined by the Trustee during the period when he or she was not an Employee; and
 - (o) any period with respect to which the Trustee allows contributions to be made by or in respect of the member even though the member is not an Employee of an Employer so as long as:
 - (i) the member makes contributions at the rate determined by the Trustee; and
 - (ii) the member's employer (not an Employer) makes contributions at the rate determined by the Trustee; and
 - (p) any other period prior to 1 January 1999 recognised by the Trustee.

When calculating Service of a member, the Trustee must also take into account whether paragraphs (d) to (p) above applied (reading the relevant paragraphs as if they were referring to membership of division D of the Health Super Fund) in respect of any period of time in which the member was:

- (a) a "contributor" under the 1988 Act; or
- (e) an Employed member under division D of the Health Super Fund on and after 1 January 1999,

and, to the extent not already taken into account, adjust the period of Service accordingly.

Supplementary Account means the account maintained in respect of the member under Rules 4.3 of Division 3D of Section 3 and 4.4 of Division 3D of Section 3.

Supplementary Account Balance means in relation to a member at any particular date the credit balance (if any) in the member's Supplementary Account after all the relevant credits and debits are made.

SECTION 4 - STATEPLUS MEMBERS

SECTION 4 - STATEPLUS MEMBERS

DIVISION 4A – General Provisions

1. APPLICATION AND INTERPRETATION

- 1.1 The provisions of this Division 4A relate to and provide for all members of the StatePlus Section of the Fund.
 - 1.2 This Division 4A prevails over any provision in Section 1 to the extent of any conflict unless otherwise determined by the Trustee.
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2. INVESTMENT OPTIONS

- 2.1 Each investment option in the StatePlus Section:
 - (a) has separately identifiable assets and separately identifiable beneficiaries;
 - (b) is intended to be a sub-fund, maintained in relation to the members to the extent their superannuation accounts are invested in the investment option; and
 - (c) does not constitute a separate superannuation fund.
 - 2.2 The assets identified with a particular investment option in the StatePlus Section may only be applied for the purposes of that investment option or to pay or provide for an appropriate portion (as determined by the Trustee) of the liabilities and expenses of the investment option as a whole.
 - 2.3 To the extent that a member's superannuation account is invested in an investment option in the StatePlus Section, benefits payable to or in respect of those members may only be provided from the assets of that investment option.
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3. SUPERANNUATION ACCOUNTS

- 3.1 Where a member is a member of more than one Division in the StatePlus Section, the Trustee must establish a superannuation account in respect of each Division.
 - 3.2 The Trustee shall credit to the superannuation account of a member of the StatePlus Section:
 - (a) the total redemption value of the Units held by the member in Unitised Investment Options on the date of issue of those Units to the member and which are allocated to that Division;
 - (b) any increase in the total redemption value of the Units held by the member in Unitised Investment Option and which are allocated to that Division;
 - (c) the total amount invested in Non-Unitised Investment Options;
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SECTION 4 - STATEPLUS MEMBERS

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- (d) the amount of investment performance at the Investment Performance Rate paid from a Non-Unitised Investment Option from time to time; and
 - (e) such other amounts as the Trustee may think fit,
- and the Trustee shall debit to that account:
- (f) any payment made in relation to that Division to or in respect of the member under these Rules;
 - (g) any decrease in the total redemption value of the Units held by the member in Unitised Investment Options;
 - (h) any decrease in value of an investment in a Non-Unitised Investment Option due to the early redemption from that Fund;
 - (i) any tax determined by the Trustee to be attributable to the member or the superannuation account; and
 - (j) such other amounts as the Trustee may think fit.
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4. UNITISATION

- 4.1 Subject to the other provisions of these Rules and the superannuation law, the Trustee may adopt policies and procedures from time to time in relation to:
- (a) whether parts of Units may be issued in relation to an investment option in the StatePlus Section and, if so, the number of decimal places to which part Units may be issued;
 - (b) the means by which actual or anticipated transaction costs in relation to the acquisition or disposal of the underlying assets in a Unitised Investment Option are recovered;
 - (c) switching between the Units of one Unitised Investment Option and another;
 - (d) any other matter which the Trustee determines to be necessary or appropriate for administering the investment option as a Unitised Investment Option.
- 4.2 If and to the extent that the Trustee administers an investment option in the StatePlus Section's investments on a unitised basis the following shall apply:
- (a) the Trustee may:
 - (i) credit any amount in respect of a member by allocating an appropriate number of Units to that member's superannuation account in the StatePlus Section in the relevant investment option or options in which the amount is to be invested, at the relevant Issue Price of those Units; and
 - (ii) debit any amounts (including Liabilities and tax) in respect of a member by redeeming an appropriate number of
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SECTION 4 - STATEPLUS MEMBERS

Units from that member's superannuation account in the StatePlus Section in the relevant investment option or options in which the account is invested, at the relevant Redemption Price of those Units.

- (b) Where the superannuation law requires it, or the Trustee does not believe that the Issue Price or the Redemption Price is fair and reasonable, or can be calculated, the Trustee may apply such alternative Issue Price or Redemption Price as the Trustee determines.
- (c) To the extent that a member's superannuation account is invested in one or more Unitised Investment Options, the investment performance attributable to a member's superannuation account shall be determined by reference to the number of Units of each investment option in which the member's superannuation account is invested and any rise or fall in the unit price of those Units.

5. INVESTMENT OPTIONS

- 5.1 Any member may request, in a form determined by the Trustee, (**Switching Request**) for the Trustee to redeem all or any of his or her Units in any Unitised Investment Option or interests in a Non-Unitised Investment Option and apply the redemption proceeds towards the creation and issue of Units in any other Unitised Investment Option or interests in any other Non-Unitised Investment Option (**Nominated Investment Option**).
- 5.2 The Trustee may determine from time to time:
 - (a) the minimum amount in a particular investment option which may be redeemed; and
 - (b) the minimum amount in a particular investment option which may be issued, pursuant to a Switching Request. The Trustee may impose conditions or restrictions from time to time in relation to a switch to a Non-Unitised Investment Option.
- 5.3 The Trustee may determine to offer the Progressive Investment Facility to all or a group of members. Where the Trustee has determined to offer members the Progressive Investment Facility, a member may vary and cancel a Switching Request under the Progressive Investment Facility.
- 5.4 The Trustee may accept or reject a Switching Request without giving a reason.
- 5.5 Subject to the other provisions of this Rule 5 of Division 4A of Section 4, where the Progressive Investment Facility applies in respect of a member, the Trustee may switch Units in accordance with the terms of the Progressive Investment Facility and the member's Switching Request (as varied from time to time).
- 5.6 The Trustee may from time to time specify rules, conditions and restrictions relating to the Progressive Investment Facility. The Trustee may vary, add to or revoke the rules, conditions and restrictions from time to time in its absolute discretion. Each member who has established a Progressive

SECTION 4 - STATEPLUS MEMBERS

Investment Facility is bound by the terms of that facility, as amended from time to time.

- 5.7 The Trustee may terminate the Progressive Investment Facility at any time in its absolute discretion.
- 5.8 On the switching of any Units in a Unitised Investment Option under this rule, the Trustee shall redeem Units at a price per Unit equal to the Redemption Price of a Unit in the relevant Unitised Investment Option. On the switching of any interests in a Non-Unitised Investment Option under this clause, the Trustee shall redeem the interest in accordance with the rules determined by the Trustee from time to time. The date at which those Units are redeemed shall be determined by the Trustee. The Trustee shall be entitled to deduct from the redemption proceeds:
- (a) all taxes, or other costs, charges and expenses properly incurred by the Trustee or paid or payable by the Trustee in respect of the conversion of the subject Units; and
 - (b) the switching fee (if any) payable to the Trustee pursuant to this Section 4.
- 5.9 The net balance of the redemption proceeds after making the deductions mentioned in Rule 5.8 of Division 4A of Section 4 shall be applied by the Trustee in creating and issuing to the member new Units or interests in the Nominated Investment Option. If the Nominated Investment Option is a Unitised Investment Option, the number of Units in the Nominated Investment Option so created and issued shall be that number which is derived after dividing the net balance so derived by the Issue Price of a Unit in that Fund. The date at which Units in a Unitised Investment Option or interests in a Non-Unitised Investment Option are created and issued shall be determined by the Trustee.
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6. TRUSTEE AND OTHER FEES

- 6.1 Notwithstanding Rule 3.9 of Section 1, but subject to Divisions 4B and 4C of Section 4, the Trustee is entitled to charge a fee in the Personal Retirement Division and the Allocated Pension and Term Allocated Pension Division calculated at the rate not exceeding 2% per annum of the Net Asset Value of an investment option in those Divisions. Such remuneration shall be calculated for each day of each month and shall be paid in arrears on the first Business Day at such times as determined by the Trustee.
- 6.2 Notwithstanding Rule 3.9 of Section 1, the Trustee is entitled to charge the following fees in the Tailored Super Division, Flexible Income Division and Transition to Retirement Division:
- (a) an administration fee of up to 2% per annum of the member's Account Balance; and
 - (b) an investment fee per investment option of up to 2% per annum of the value of the member's superannuation account invested in the investment option.
- 6.3 Subject to the superannuation law, the Trustee may, in its absolute discretion, increase up to the limits set out in Rule 6.2 of Division 4A of
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SECTION 4 - STATEPLUS MEMBERS

Section 4, waive, suspend or reduce an administration fee or investment fee in relation to a member.

- 6.4 Subject to the superannuation law, if a member consents to the payment of an amount of remuneration from their superannuation account for the provision of Adviser Services to the member, the Trustee may deduct such amount of adviser remuneration from the member's superannuation account and pay it to the member's adviser or to the Australian financial services licensee who authorised or employs the member's adviser.
- 6.5 The Trustee shall be entitled to charge a member in respect of a Switching Request a switching fee of \$185, which fee may be increased annually by the increase (if any) in the Consumer Price Index on and from the Transfer Date.
- 6.6 The Trustee may:
- (a) choose to receive less than the fees under this Rule 6 of Division 4A of Section 4 in respect of any member or any and all interests in an investment option in the StatePlus Section (whether determined by reference to a minimum balance); and
 - (b) pay (from its own resources) a member any amount which in its discretion it determines by way of offset or rebate of these fees.

7. GENERAL PENSION RULES

- 7.1 The capital supporting a Pension cannot be added to by way of contribution, transfer or rollover after a Pension has commenced.
- 7.2 A Pension is not transferrable. A member must not use the capital value of his or her Pension or the income from it as security for a borrowing.
- 7.3 If a Pension reverts, it must not have a reversionary component greater than 100% of the benefit that was payable before the reversion.

8. AMENDMENTS TO STATEPLUS SECTION

- 8.1 The Trustee may only amend the rules of the StatePlus Section if:
- (a) the Trustee reasonably believes that the amendment will not adversely affect the rights of members of the StatePlus Section; or
 - (b) the superannuation law permits or requires the amendment to be made without the consent of members.

9. DICTIONARY

In Section 4, unless the contrary intention appears:

Account Balance, in relation to a member, means the net amount for the time being standing to the credit of the member's superannuation account.

SECTION 4 - STATEPLUS MEMBERS

Account Based Pension means a pension payable from Division 4D of Section 4 which complies with the standards set out in subregulations 1.06(1) and 1.06(9A)(a) of the SIS Regulations.

Adviser Services includes the following services:

- (a) advice (including general and personal financial product advice);
- (b) dealing or arranging (including transaction or execution related) services;
- (c) reporting services; and
- (d) administration services,

that may be provided by a person in respect of a member's interest in the Fund.

Allocated Pension includes:

- (a) a Pension that meets the standards of subregulation 1.06(4) or subregulation 1.06(9A)(a) of the SIS Regulations; and
- (b) a Non-Commutable Allocated Pension.

Allocated Pension Category or AP Category is defined in Rule 2.3 of Division 4D of Section 4.

Allocated Pension Category Member or AP Category Member means an Allocated Pension member in receipt of an Allocated Pension.

Business Day means any day (not being a Saturday or Sunday) on which the Trustee and trading banks in Sydney are open for business.

Class, in relation to any Units, means all Units in the same investment option.

Consumer Price Index means the Consumer Price Index (All Groups - weighted average of the eight capital cities) as published by the Australian Bureau of Statistics and includes any replacement index.

Gross Asset Value in relation to an Investment Option, means the sum from time to time calculated by the Trustee which is the aggregate of:

- (a) the values of all assets of the relevant Investment Option;
- (b) all accrued income of the Investment Option to the extent it is not otherwise included in the aggregate; and
- (c) any other amounts which in the opinion of the Trustee should be included in the aggregate for the purpose of making a fair and reasonable determination of the Gross Asset Value of the Investment Option having regard to generally accepted accounting principles.

Issue Price, in relation to a Unit in a Unitised Investment Option, means the issue price of the Unit being \$1.00 during the period up to and including the first addition to the relevant Unitised Investment Option and thereafter, at any time such price is required to be ascertained, the amount calculated in accordance with the following formula:

SECTION 4 - STATEPLUS MEMBERS

$$\frac{\text{NAV} + \text{AC}}{\text{U}}$$

where:

NAV = The Net Asset Value of the relevant Unitised Investment Option as at:

- (a) if an application for an interest in the Unitised Investment Option is received by the Trustee before the Prescribed Time on a Business Day or on a day which is not a Business Day, the next Valuation Time following receipt of the application; or
- (b) if an application for an interest in the Unitised Investment Option is received by the Trustee after the Prescribed Time on a Business Day, the second Valuation Time following receipt of the application,

if the application is accepted by the Trustee;

AC = the amount determined by the Trustee in accordance with generally accepted accounting principles to be the aggregate of all costs, charges, expenses, disbursements, commissions, brokerage and other usual fees and all Taxes which would have been incurred in the acquisition of the Assets of the Unitised Investment Option at the applicable Valuation Time if all such Assets had been acquired at that time;

U = the number of Units in Issue in the Unitised Investment Option at the applicable Valuation Time;

and, if the calculation results in a fraction of a cent, the Issue Price shall be adjusted downwards to the nearest second decimal place of a cent in relation to the Units of a Unitised Fund offered in the Personal Retirement Division and the nearest fourth decimal place of a cent in relation to the Units of a Unitised Investment Option offered in the Allocated Pension and Term Allocated Pension Division.

Liabilities in respect of an investment option in the StatePlus Section include:

- (a) unpaid administrative costs and expenses including fees of the Trustee;
- (b) accrued charges in respect of or owing in relation to any Assets;
- (c) amounts required to meet current liabilities;
- (d) deposits or margin calls required to be paid under any futures contract and any put option or call option;
- (e) any provision for Tax which in the opinion of the Trustee should be taken into account; and
- (f) any other amounts required to meet liabilities or expenditure which in accordance with generally accepted accounting principles should be taken into account and which have not otherwise been taken into account in determining the amount of the Liabilities in any of the preceding paragraphs of this definition.

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Net Asset Value, in relation to an investment option in the StatePlus Section, means the sum from time to time calculated by the Trustee which is the Gross Asset Value of the investment option less the aggregate of:

- (a) all Liabilities of the investment option; and
- (b) any other amount which in the opinion of the Trustee should be included in the aggregate for the purpose of making a fair and reasonable determination of the Net Asset Value of the investment option having regard to generally accepted accounting principles.

Nominated investment Option is defined in Rule 5.1 of Division 4A of Section 4.

Non-Commutable Allocated Pension means:

- (a) a Pension that meets the standards of subregulation 1.06(4) of the SIS Regulations; or
- (b) a Pension that meets the definition of 'transition to retirement income stream' in regulation 6.01 of the SIS Regulations,

and, where the Pension is commuted, the resulting lump sum payment cannot be cashed except in accordance with Rule 9.8 of Division 4D of Section 4.

Non-Commutable Term Allocated Pension means a Pension that meets the standards of subregulation 1.06(8) of the SIS Regulations and, where the Pension is commuted, the resulting lump sum payment cannot be cashed except in accordance with Rule 9.10 of Division 4D of Section 4.

Non-Unitised Investment Option means an investment option in the StatePlus Section which has not been unitised and is identified as a Non-Unitised Investment Option in Division 4B or Division 4D of Section 4.

Pension means a pension payable to a member in the StatePlus Section.

Pension Account means the superannuation account maintained in respect of an Account Based Pension.

Pension Commencement Date, in relation to a member means the date a Pension commences to be paid in respect of the member from this Division.

Prescribed Time means for a Unitised Investment Option, such time or times as is determined by the Trustee from time to time.

Progressive Investment Facility means a facility pursuant to which the Trustee periodically switches Units from one Unitised Investment Option to another Unitised Investment Option in accordance with a Progressive Investment Facility Application (as varied from time to time).

Progressive Investment Facility Application means an application by a Member for the Trustee to periodically switch Units from one Unitised Fund to another Unitised Fund under the Progressive Investment Facility. For the avoidance of doubt, a Progressive Investment Facility Application may, but is not required to be, in a separate form or document.

Redemption Price, in relation to a Unit in a Unitised Investment Option, means the redemption price of the Unit being, at any time such price as is required to be ascertained, the amount calculated in accordance with the following formula:

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NAV - DC

U

where:

NAV = The Net Asset Value of the relevant Unitised Investment Option as at:

- (a) if a request to redeem an interest in the investment option or a Switching Request is received by the Trustee before the Prescribed Time on a Business Day or on a day which is not a Business Day, the next Valuation Time following receipt of the request; or
- (b) if a request to redeem an interest in the Unitised Investment Option or a Switching Request is received by the Trustee after the Prescribed Time on a Business Day, the second Valuation Time following receipt of the request,

if the request is accepted by the Trustee;

DC = the amount determined by the Trustee in accordance with generally accepted accounting principles to be the aggregate of all costs, charges, expenses, disbursements, commissions, brokerage and other usual fees and all Taxes which would have been incurred in the sale of the Assets of the investment option at the applicable Valuation Time if all those Assets had been sold at that time;

U = the number of Units in Issue in the Unitised Investment Option at the applicable Valuation Time;

and if the calculation results in a fraction of a cent, the Issue Price shall be adjusted downwards to the nearest second decimal place of a cent in relation to the Units of a Unitised Fund offered in the Personal Retirement Division and the nearest fourth decimal place of a cent in relation to the Units of a Unitised Investment Option offered in the Allocated Pension and Term Allocated Pension Division.

Reversionary Beneficiary means the Spouse of a member entitled to a Pension who is nominated by the member in accordance with and pursuant to Divisions 4D and 4E of Section 4 (as applicable) to continue to receive the Pension after the death of the member.

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

Switching Request is defined in Rule 5.1 of Division 4A of Section 4.

Term Allocated Pension includes:

- (a) a Pension that meets the standards of subregulation 1.06(8); and
- (b) a Non-Commutable Term Allocated Pension.

Term Allocated Pension Category or TAP Category is defined in Rule 2.3 of Division 4D of Section 4.

Term Allocated Pension Category Member or TAP Category Member means a Term Allocated Pension member in receipt of a Term Allocated Pension.

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Transition to Retirement Division member means a member of the Transition to Retirement Division.

Transition to Retirement Income Stream or **TRIS** means a pension which meets the definition of a 'transition to retirement income stream' in the superannuation law.

Unit means (in relation to a Unitised Investment Option) a unit (including part of a unit in that Unitised Investment Option) created and issued pursuant to this Deed and not cancelled and which represents a part or share of the portfolio of assets and liabilities of an investment option in the StatePlus Section determined in accordance with any rules made pursuant to Rule 4.1 of Division 4A of Section 4.

Unitised Investment Option means an investment option in the StatePlus Section which has been unitised and is identified as a Unitised Investment Option in Division 4B or Division 4D.

Valuation Time means a time as at which the Trustee calculates the Net Asset Value of the Investment Options.

SECTION 4 - STATEPLUS MEMBERS

DIVISION 4B – PERSONAL RETIREMENT DIVISION

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1. APPLICATION AND INTERPRETATION

- 1.1 The provisions of this Division 4B relate to and provide for Personal Retirement Division members of the StatePlus Section.
 - 1.2 This Division 4B prevails over any provision to the Rules to the extent of any conflict unless otherwise determined by the Trustee.
-

2. MEMBERSHIP

- 2.1 The Trustee may, but is not required to, admit a person as a member of the Personal Retirement Division.
 - 2.2 The Trustee may from time to time specify conditions and restrictions in relation to the admission of persons as members of the Personal Retirement Division.
-

3. INVESTMENT OPTIONS

- 3.1 The Trustee may vary the investment strategy for any investment option offered in the Personal Retirement Division, provided that the Trustee must not vary the investment strategy for the following investment options in a manner that members invested in those options would not reasonably expect having regard to the information in disclosure documents issued in relation to the Personal Retirement Division (or its predecessor division in the StatePlus Retirement Fund) unless notice is given to those members within such period before the variation takes effect as is adequate in the reasonable opinion of the Trustee to enable the members to dispose of their units in the relevant investment option:
 - (a) Cash Fund;
 - (b) Capital Stable Fund;
 - (c) Balanced Fund; and
 - (d) Growth Fund.
-

4. CONTRIBUTION SPLITTING

- 4.1 Subject to the superannuation law, the Trustee may, but is not required to, split contributions received by or in respect of a member in accordance with a request received by the member in a form approved by the Trustee.
- 4.2 The Trustee may from time to time specify conditions and restrictions in relation to the splitting of contributions.

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5. SWITCHING

- 5.1 The Trustee shall effect the switching between investment options set out in any valid Switching Request that the Trustee accepts:
- (a) within 30 days after the Trustee's receipt of the request; or
 - (b) in relation to a Switching Request from a Non-Unitised Fund, within 45 days after the Trustee's receipt of the request.

6. BENEFITS

- 6.1 Subject to SIS Regulations, benefits shall be paid by the Trustee:
- (a) if the benefit is payable to the member, because the member requests, within 30 days after the Trustee's receipt of that member's request to redeem;
 - (b) if the benefit is payable to the member because of a requirement of the SIS Regulations, within 30 days after the event which required the Units to be redeemed (or such other period as may be prescribed by the SIS Regulations);
 - (c) if, as a consequence of the death of a member, benefits are payable to the deceased member's legal personal representative, as soon as reasonably practicable after the legal personal representative produces the grant of probate or letter of administration to the Trustee; and
 - (d) if, as a consequence of the death of a member, benefits are payable to a person other than the member's legal personal representative, as soon as reasonably practicable after the Trustee receives written evidence of the death and such other documentation as the Trustee may require.

7. TRUSTEE FEES

- 7.1 The Trustee is entitled to charge a fee in relation to the following investment options calculated at the rate not exceeding 1.5% per annum of the Net Asset Value of the investment option:
- (a) Cash Fund;
 - (b) Capital Stable Fund;
 - (c) Balanced Fund; and
 - (d) Growth Fund.

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DIVISION 4C – TAILORED SUPER DIVISION

1. APPLICATION AND INTERPRETATION

- 1.1 The provisions of this Division 4C relate to and provide for Tailored Super Division members of the StatePlus Section.
 - 1.2 This Division 4C prevails over any provision to the Rules to the extent of any conflict unless otherwise determined by the Trustee.
-

2. MEMBERSHIP

- 2.1 The Trustee may, but is not required to, admit a person as a member of the Tailored Super Division.
- 2.2 The Trustee may from time to time specify conditions and restrictions in relation to the admission of persons as members of the Tailored Super Division.
- 2.3 A member ceases to be a member of the Tailored Super Division when all the benefits of the member in the superannuation account for the Tailored Super Division are paid or otherwise exhausted, satisfied or dealt with under this Section 4.

3. CONTRIBUTION SPLITTING

- 3.1 Subject to the superannuation law, the Trustee may, but is not required to, split contributions received by or in respect of a member in accordance with a request received by the member in a form approved by the Trustee.
- 3.2 The Trustee may from time to time specify conditions and restrictions in relation to the splitting of contributions.

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DIVISION 4D – ALLOCATED PENSION AND TERM ALLOCATED PENSION DIVISION

1. APPLICATION AND INTERPRETATION

- 1.1 The provisions of this Division 4D relate to and provide for Allocated Pension and Term Allocated Pension Division members of the StatePlus Section.
- 1.2 This Division 4D prevails over any provision to the Rules to the extent of any conflict unless otherwise determined by the Trustee.

2. MEMBERSHIP

- 2.1 The Trustee may, but is not required to, admit a person as a member of the Allocated Pension Division. For the avoidance of doubt the Trustee will not admit any new member to the Term Allocated Pension Division.
- 2.2 The Trustee may from time to time specify conditions and restrictions in relation to the admission of persons as members of the Allocated Pension Division
- 2.3 The Allocated Pension and Term Allocated Pension Division may provide benefits to or in respect of members in the following categories:
 - (a) **Allocated Pension Category** or **AP Category** means a category established under the Allocated Pension Division; and
 - (b) **Term Allocated Pension Category** or **TAP Category** means a category established under the Term Allocated Pension Division.
- 2.4 For the avoidance of doubt, a member may belong to more than one category at a time.
- 2.5 Subject to the superannuation law, the Trustee may transfer a member to a different category with the consent of the member.

3. INVESTMENT OPTIONS

- 3.1 The Trustee may vary the investment strategy for any investment option offered in the Allocated Pension and Term Allocated Pension Division, provided that the Trustee must not vary the investment strategy for the following investment options in a manner that members invested in those options would not reasonably expect having regard to the information in disclosure documents issued in relation to the Personal Retirement Division (or its predecessor division in the StatePlus Retirement Fund) unless notice is given to those members within such period before the variation takes effect as is adequate in the reasonable opinion of the Trustee to enable the members to dispose of their units in the relevant investment option:
 - (a) Cash Fund;
 - (b) Capital Stable Fund;

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- (c) Balanced Fund; and
- (d) Growth Fund.

4. SWITCHING

- 4.1 The Trustee shall effect the switching between investment options set out in any valid Switching Request that the Trustee accepts:
 - (a) within 30 days after the Trustee's receipt of the request; or
 - (b) in relation to a Switching Request from a Non-Unitised Fund, within 45 days after the Trustee's receipt of the request.

5. TRUSTEE FEES

- 5.1 The Trustee is entitled to charge a fee in relation to the following investment options calculated at the rate not exceeding 1.5% per annum of the Net Asset Value of the investment option:
 - (a) Cash Fund;
 - (b) Capital Stable Fund;
 - (c) Balanced Fund; and
 - (d) Growth Fund.

6. RULES FOR ALLOCATED PENSIONS

- 6.1 Subject to the provisions of this Section 4 and the superannuation law, the Trustee shall pay each AP Category member an Allocated Pension as provided in this Rule 6 of Division 4D of Section 4.
- 6.2 The annual amount of the Allocated Pension payable, and the frequency of payment, to an AP Category Member who transferred from the StatePlus Retirement Fund shall be the annual amount payable, and the frequency of payment, to the person immediately prior to the StatePlus transfer date in the StatePlus Retirement Fund.
- 6.3 If a member had nominated a reversionary beneficiary for their allocated pension in the StatePlus Retirement Fund, that person becomes their Reversionary Beneficiary for the Allocated Pension
- 6.4 Subject to Rule 6.2 of Division 4D of Section 4, the amount of the Allocated Pension payable to an AP Category Member shall be (subject to any subsequent variation as provided in this Rule 6) the amount nominated by the member in their application for an Allocated Pension. However, if the amount so nominated falls outside the maximum or minimum limits permitted under the superannuation law, the amount of the Allocated Pension shall be:

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- (a) if the amount nominated by the member exceeds the maximum limit permitted under the superannuation law, the maximum that may be paid under the superannuation law; or
 - (b) if the amount nominated by the member was less than the minimum limit permitted under the superannuation law, the minimum amount that may be paid under the superannuation law.
- 6.5 The amount of the Allocated Pension payable to an AP Category member shall be expressed as an annual payment and shall be paid by an annual single payment or by such instalments (which may be equal or unequal) and on or about such dates as the member may nominate in his or her application for an Allocated Pension and the Trustee may approve. The Pension shall be payable to an AP Category member as from the time the member becomes an AP Category member or, if permitted by the superannuation law, as from such later date as the member may nominate in his/her application and the Trustee may approve.
- 6.6 The Allocated Pension payable to a member shall be payable from his or her superannuation account in the Allocated Pension and Term Allocated Pension Division and shall be payable only to the extent that the member's Account Balance will permit. The Trustee may close an AP Category member's superannuation account when the Account Balance is zero. Subject to Rule 9 of Division 4D of Section 4, the Allocated Pension payable to a member which has not otherwise ceased to be payable shall cease to be payable on the Trustee being notified of the member's death.
- 6.7 At such times as the Trustee allows, an AP Category member may request the Trustee to vary the amount of the Allocated Pension payable to him or her or the manner or time of payment.
- 6.8 Subject to the superannuation law, the Trustee on approving a request pursuant to 6.7 of Division 4D of Section 4 shall vary the amount of the Allocated Pension payable to the member or the manner or time of payment in accordance with the member's request, as approved by the Trustee.
- 6.9 Subject to the superannuation law and an AP Category member's request, the Trustee shall continue to pay the member the Allocated Pension in the same amount (subject to any variation required under the superannuation law) and in the same manner and times as the Pension was payable to the member in the previous year.

7. RULES FOR TERM ALLOCATED PENSIONS

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- 7.1 Subject to the provisions of this Section 4 and the superannuation law, the Trustee shall pay each TAP Category member a Term Allocated Pension as provided in this Rule 7 of Division 4D of Section 4.
- 7.2 Subject to the superannuation law, for a TAP Category member who transferred from the StatePlus Retirement Fund:
- (a) the annual amount of the Term Allocated Pension payable, and the frequency of payment, shall be the annual amount payable, and the frequency of payment, to the person immediately prior to the StatePlus transfer date in the StatePlus Retirement Fund; and

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- (b) if a member had nominated a reversionary beneficiary for their term allocated pension in the StatePlus Retirement Fund, that person becomes their Reversionary Beneficiary for the Term Allocated Pension;
- (c) the term of the Term Allocated Pension shall be the term nominated by the member in the StatePlus Retirement Fund reduced by the period over which the member received a term allocated pension as a member of the StatePlus Retirement Fund.

7.3 The Term Allocated Pension payable to a member shall be payable from his or her superannuation account in the Term Allocated Pension Division and shall be payable only to the extent that the member's Account Balance will permit. The Term Allocated Pension shall be payable until the earlier of:

- (a) the expiry of the period chosen by the member, which is not less than the minimum period permitted under the superannuation law or greater than the maximum period permitted under the superannuation law; and
- (b) when the member's Account Balance is zero.

The Trustee may close a TAP Category member's superannuation account when the Account Balance is zero. The Term Allocated Pension payable to a member which has not otherwise ceased to be payable shall cease to be payable on the Trustee being notified of the member's death.

7.4 A TAP Category member (or Reversionary Beneficiary) may from time to time request the Trustee in writing to vary one or both of the following:

- (a) the amount of the Term Allocated Pension payable to him or her, provided that the varied amount of the payment does not fall outside the maximum or minimum limits permitted under or, if the superannuation law permits, determined by the Trustee in accordance with the superannuation law;
- (b) the manner or time of payment.

Subject to the superannuation law, the Trustee on approving such a request shall vary the amount of the Term Allocated Pension payable to the member (or Reversionary Beneficiary) or the manner or time of payment in accordance with the request, as approved by the Trustee.

7.5 On the death of a member in receipt of a Term Allocated Pension who did not nominate a Reversionary Beneficiary, the Trustee must pay a benefit in accordance with Rule 8.6 of Section 1.

8. REVERSIONARY BENEFICIARIES

8.1 The Trustee may impose such terms, conditions and restrictions in connection with the payment of an Allocated Pension or Term Allocated Pension on the death of member to a Reversionary Beneficiary as the Trustee determines from time to time which must be complied with.

8.2 A Reversionary Beneficiary nomination ceases to be valid and effective upon the earlier of the following events:

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- (a) on receipt by the Trustee from the member of a replacement, conflicting or inconsistent notice provided pursuant to Rules 8.9 to 8.13B of Section 1;
 - (b) the member separates on a permanent basis from their *spouse*; or
 - (c) any other event determined by the Trustee from time to time.
- 8.3 Upon the death of a member who has nominated a Reversionary Beneficiary for an Allocated Pension or Term Allocated Pension which is valid and effective at the member's death, the Trustee must, subject to the superannuation law and any terms and conditions of payment determined pursuant to Rule 8.1 of Division 4D of Section 4, continue to pay the Pension to the Reversionary Beneficiary until the earlier of:
- (a) the member's Account Balance reaching zero;
 - (b) the death of the Reversionary Beneficiary;
 - (c) in respect of a Term Allocated Pension, the expiry of the period of the Term Allocated Pension chosen by the member; or
 - (d) the benefit is no longer permitted by the Trustee or by superannuation law to be paid in the form of a Pension,

in which case, the balance (if any) of the remaining Account Balance must be paid to the Reversionary Beneficiary as a lump sum.

- 8.4 If the Trustee pays an Allocated Pension or a Term Allocated Pension to a Reversionary Beneficiary under Rule 8.3 of Division 4D of Section 4, subject to such conditions and restrictions as the Trustee determines from time to time, unless the context otherwise requires, each reference to the member, or either Allocated Pension member or Term Allocated Pension member (as applicable) in this Division 4D must be read as a reference to the Reversionary Beneficiary.

9. COMMUTATION OF PENSION

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- 9.1 Subject to the superannuation law and rules 10.5 to 10.10 of Division 4D of Section 4 (inclusive), a member (other than a member who is a Reversionary Beneficiary) may at any time direct the Trustee in writing to commute the whole or part of the member's Account Balance and direct the Trustee to either:
- (a) pay the commuted amount to the member as a lump sum; or
 - (b) transfer or roll over the commuted amount to another benefit arrangement.
- 9.2 Within 30 days of the receipt of the directions referred to in Rule 9.1(a) of Division 4D of Section 4, the Trustee must transfer the amount so specified by the member.
- 9.3 Within 30 days of the receipt of the directions referred to Rule 9.1(b) of Division 4D of Section 4, the Trustee must (where the Trustee is permitted to pay the lump sum) pay the member the amount so specified by the member.

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- 9.4 Following the transfer or roll over of benefits pursuant to **Rule 9.2 of Division 4D of Section 4** or the payment of a lump sum to a member pursuant to **Rule 9.3 of Division 4D of Section 4**, the Trustee must, if required under the superannuation law, recalculate the Pension payable to the member having regard to the amount (if any) remaining in the relevant member's superannuation account in relation to that Pension, any further written request from the member and the superannuation law and shall pay the revised Pension to the member at the same time and in the same manner as the Pension was previously paid.
- 9.5 A deceased member's *legal personal representative* shall not be entitled to give the Trustee a direction under Rule 9.1 of Division 4D of Section 4 and following the death of the member, his or her Account Balance shall be dealt with in accordance with Rule 8.6 and 8.7 of Section 1.
- 9.6 The Trustee may refuse to make any payment under **Rule 9.1** of Division 4D of Section 4 which is less than \$5,000 unless the member's superannuation account Balance in relation to that Division is less than \$5,000 and the member's direction relates to the whole of that Account Balance.
- 9.7 An Allocated Pension can only be commuted and paid as a lump sum to a member under Rule 9.3 of Division 4D of Section 4 if:
- (a) the commutation results from the death of the member;
 - (b) the sole purpose of the commutation meets the requirements in regulation 1.07A of the SIS Regulations;
 - (c) for partial commutations, the member's superannuation account Balance after the commutation would be equal to or exceeds the limits in regulation 1.07A of the SIS Regulations; or
 - (d) the pension payments for the year to date at least equal the minimum amount required under regulation 1.07A of the SIS Regulations.
- 9.8 A Non-Commutable Allocated Pension can only be commuted and paid as a lump sum to a member under Rule 9.3 of Division 4D of Section 4 if:
- (a) the purpose of the commutation meets the requirements of the definition of 'non-commutable allocated pension' in regulation 6.01 of the SIS Regulations; or
 - (b) before commutation, the member has satisfied a condition of release as contemplated in the definition of 'non-commutable allocated pension' in regulation 6.01 of the SIS Regulations.
- 9.9 A Term Allocated Pension can only be commuted and paid as a lump sum to a member under Rule 9.3 of Division 4D of Section 4 if:
- (a) the commutation occurs within the first six months and otherwise meets the standards of the superannuation law;
 - (b) the commutation results from the death of the member or Reversionary Beneficiary in the circumstances set out in the superannuation law;

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- (c) the resulting lump sum is used to purchase another income stream;
 - (d) the sole purpose of the commutation meets the requirements in regulation 1.07C of the SIS Regulations;
 - (e) for partial commutations, the balance of the member's member Account after the commutation is equal to or exceeds the limits calculated in accordance with regulation 1.07C of the SIS Regulations; or
 - (f) the pension payments for the year to date at least equal the minimum amount required under regulation 1.07C of the SIS Regulations.
- 9.10 A Non-Commutable Term Allocated Pension can only be commuted and paid as a lump sum to a member under Rule 9.3 of Division 4D of Section 4 if:
- (a) the purpose of the commutation meets the requirements of the definition of 'non-commutable pension' in regulation 6.01 of the SIS Regulations; or
 - (b) before commutation, the member has satisfied a condition of release as contemplated in the definition of 'non-commutable pension' in regulation 6.01 of the SIS Regulations.

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DIVISION 4E – FLEXIBLE INCOME DIVISION

1. APPLICATION AND INTERPRETATION

- 1.1 The provisions of this Division 4E relate to and provide for Flexible Income Division members of the StatePlus Section.
 - 1.2 This Division 4E prevails over any provision to the Rules to the extent of any conflict unless otherwise determined by the Trustee.
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2. MEMBERSHIP

- 2.1 The Trustee may, but is not required to, admit a person as a member of the Flexible Income Division.
 - 2.2 The Trustee may from time to time specify conditions and restrictions in relation to the admission of persons as members of the Flexible Income Division.
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3. GENERAL PENSION RULES

- 3.1 The capital supporting a Pension cannot be added to by way of contribution, transfer or rollover after a Pension has commenced.
- 3.2 A Pension is not transferrable. A member must not use the capital value of his or her Pension or the income from it as security for a borrowing.
- 3.3 If a Pension reverts, it must not have a reversionary component greater than 100% of the benefit that was payable before the reversion.

4. RULES FOR PENSIONS

Pension payments

- 4.1 Subject to the superannuation law and Rule 4.4 of Division 4E of Section 4, a member is entitled to an Account Based Pension, as agreed with the Trustee, in accordance with the provisions of this Division 4E.
- 4.2 The annual amount of the Account Based Pension payable, and the frequency of payment, to a member who transferred from the StatePlus Retirement Fund shall be the annual amount payable, and the frequency of payment, to the person immediately prior to the StatePlus transfer date in the StatePlus Retirement Fund.
- 4.3 Otherwise, each Pension shall be paid from the Pension Commencement Date and continue to be paid for such period (if any) as is agreed between the member and the Trustee unless the balance of the member's Pension Account is exhausted before that time.

Changes to pension terms

- 4.4 Subject to the superannuation law, the Trustee may:
 - (a) on the request of a member or Reversionary Beneficiary; or
 - (b) in its absolute discretion,

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- alter the terms of a Pension payable to, or in respect of, the member or Reversionary Beneficiary, from a date determined by the Trustee.
- Pension commencement date**
- 4.5 The Trustee may allow a member to nominate the Pension Commencement Date for each Pension payable in respect of the member.
- 4.6 The Pension Commencement Date must not be later than the date necessary to comply with the superannuation law.
- 4.7 If the Trustee allows a member to nominate the Pension Commencement Date for a Pension payable in respect of the member and the member does not nominate a Pension Commencement Date that complies with the superannuation law as it relates to that Pension:
- (a) the Trustee may commence to pay the Pension with effect from a Pension Commencement Date that complies with the superannuation law as it relates to that Pension;
 - (b) if the Trustee is unable to identify a Pension Commencement Date that complies with the superannuation law, the Trustee may (in accordance with Rule 4.4 of Division 4E of Section 4) commence to pay a different Pension (new Pension) with effect from a Pension Commencement Date that complies with the superannuation law as it relates to the new Pension; or
 - (c) transfer the member and the member's Pension Account to another Division.
- Frequency of pension payments**
- 4.8 Subject to the superannuation law, the Trustee must make Pension payments to the relevant member with such frequency and at such intervals and times as are agreed between the Trustee and the member.
- 4.9 Subject to the superannuation law, the Trustee may alter the frequency with which Pension payments are to be made:
- (a) at any time the Trustee considers appropriate; or
 - (b) at any time agreed upon between the member and the Trustee.
- 4.10 If at any time the frequency of the Pension payments has not been agreed upon by the Trustee and the member, the Trustee must ensure that at least one Pension payment is made during each financial year after the Pension Commencement Date.
- 4.11 Notwithstanding any agreement with the member to the contrary, the Trustee must ensure that at least one Pension payment is made to the member during each financial year after the Pension Commencement Date.
- Selecting the value of pension payments**
- 4.12 The Trustee may allow a member to nominate the value of Pension payments to be paid under a Pension during a financial year.
- 4.13 The sum of the Pension Payments made under a Pension to a member in each financial year or part of a financial year must not be less than the minimum limits set out in the superannuation law in relation to the Pension, provided such payments do not exceed the value determined by the Trustee. In the event that such payments fall outside such limits, the Trustee may, without notice, make such adjustment to the value of all or some of the Pension payments in respect of a Pension as the Trustee

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considers necessary to ensure that their sum does fall within the limits required under this rule.

- 4.14 If the Trustee allows a member to nominate the value of Pension payments and the member does not nominate a value within the limits required under Rule 4.13 of Division 4E of Section 4 within such period as determined by the Trustee, the Trustee must either:
- (a) make the Pension payments for the current financial year calculated according to any previous agreement between the Trustee and member; or
 - (b) in the absence of any such agreement make the Pension payments at the minimum limit required to be paid under Rule 4.13 of Division 4E of Section 4.
- 4.15 The Trustee may at any time and without prior notice to the member adjust the value of Pension payments to such member to a level that complies with the superannuation law.

Commutation

- 4.16 Subject to Rule 4.19 of Division 4E of Section 4 and the superannuation law, the Trustee may, on the request of a member, commute to a lump sum, the whole or any part of his or her Pension.
- 4.17 Subject to Rule 4.19 of Division 4E of Section 4, on the commutation of the whole of a Pension, subject to the superannuation law, the Trustee must pay a lump sum benefit to the member equal to the balance of his or her Pension Account as at the date of commutation.
- 4.18 Subject to Rule 4.19 of Division 4E of Section 4, on the commutation of part of a Pension, subject to the superannuation law, the Trustee must pay a lump sum benefit to the member from his or her Pension Account equal to the amount requested up to the balance of the Pension Account as at the date of commutation.
- 4.19 The Trustee must commute all or any part of a Pension that is being paid to a member or a Reversionary Beneficiary where required by the superannuation law.

Reversionary beneficiaries

- 4.20 The Trustee may approve such form, adopt such procedures and impose such terms, conditions and restrictions in connection with the nomination of a Reversionary Beneficiary as the Trustee determines from time to time which must be complied with by a member in order for a nomination to be valid and effective. The Trustee may impose such terms, conditions and restrictions in connection with the payment of a Pension on the death of the member to a Reversionary Beneficiary as the Trustee determines from time to time which must be complied with,
- 4.21 A Reversionary Beneficiary nomination ceases to be valid and effective upon the earlier of the following events:
- (a) on receipt by the Trustee from the member of a replacement, conflicting or inconsistent notice provided pursuant to Rules 8.9 to 8.13B of Section 1; or
 - (b) the member separates on a permanent basis from their Spouse; or
 - (c) any other event determined by the Trustee from time to time.

SECTION 4 - STATEPLUS MEMBERS

4.22 Upon the death of a member who has nominated a Reversionary Beneficiary for the superannuation account Based Pension which is valid and effective at the member's death, the Trustee must, subject to the superannuation law and any terms and conditions of payment determined pursuant to Rule 4.20 of Division 4E of Section 4, continue to pay the Account Based Pension to the Reversionary Beneficiary until the earlier of:

- (a) the Pension Account reaching zero; or
- (b) the death of the Reversionary Beneficiary; or
- (c) the benefit is no longer permitted by the Trustee or by superannuation law to be paid in the form of a Pension,

in which case, the balance (if any) of the Pension Account must be paid to the Reversionary Beneficiary as a lump sum.

4.23 If the Trustee pays an Account Based Pension to a Reversionary Beneficiary under Rule 4.22 of Division 4E of Section 4, subject to such conditions and restrictions as the Trustee determines from time to time, unless the context otherwise requires, each reference to the member in this Schedule must be read as a reference to the Reversionary Beneficiary.

Cessation of pension

4.24 The Pension will cease to be payable on the earlier of the following:

- (a) the balance of the Pension Account is exhausted or decreases to a value determined by the Trustee;
- (b) the term of the Pension agreed to by the Trustee and the member has expired; or
- (c) on the date determined by the Trustee in accordance with the superannuation law.

4.25 Any balance of the member's Pension Account at the date determined under Rule 4.24 of Division 4E of Section 4 shall be paid to the member as soon as practicable thereafter.

SECTION 4 - STATEPLUS MEMBERS

DIVISION 4F – TRANSITION TO RETIREMENT DIVISION MEMBERS

1. APPLICATION AND INTERPRETATION

- 1.1 The provisions of this Division 4F relate to and provide for Transition to Retirement Division members of the StatePlus Section.
 - 1.2 This Division 4F prevails over any provision to the Rules to the extent of any conflict unless otherwise determined by the Trustee.
-

2. MEMBERSHIP

- 2.1 The Trustee may, but is not required to, admit a person as a member of the Flexible Income Division.
 - 2.2 The Trustee may from time to time specify conditions and restrictions in relation to the admission of persons as members of the Flexible Income Division.
-

3. GENERAL PENSION RULES

- 3.1 The capital supporting a Pension cannot be added to by way of contribution, transfer or rollover after a Pension has commenced.
 - 3.2 A Pension is not transferrable. A member must not use the capital value of his or her Pension or the income from it as security for a borrowing.
 - 3.3 If a Pension reverts, it must not have a reversionary component greater than 100% of the benefit that was payable before the reversion.
-

4. PENSIONS – TRANSITION TO RETIREMENT (TRIS)

Pension payments

- 4.1 Subject to the superannuation law and Rule 4.4 of Division 4F of Section 4, a member is entitled to a TRIS, on such terms and conditions as the Trustee may determine from time to time, and otherwise in accordance with the provisions of this Division 4F.
- 4.2 The annual amount of the TRIS payable, and the frequency of payment, to a member who transferred from the StatePlus Retirement Fund shall be the annual amount payable, and the frequency of payment, to the person immediately prior to the StatePlus transfer date in the StatePlus Retirement Fund.
- 4.3 Otherwise, a TRIS shall be paid from the Pension Commencement Date and continue to be paid for such period (if any) as is agreed between the member and the Trustee unless the balance of the member's Pension Account is exhausted.

Transfer to another division

- 4.4 Subject to the superannuation law, the Trustee may:
 - (a) on the request of a member or Reversionary Beneficiary; or
 - (b) in its absolute discretion,

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- transfer the member or Reversionary Beneficiary and the whole or any part of the Pension Account to another Division from a date determined by the Trustee.
- 4.5 The Trustee may allow a member to nominate the Pension Commencement Date for the TRIS payable in respect of the member.
- Pension commencement date**
- 4.6 The Pension Commencement Date must not be later than the date necessary to comply with the superannuation law.
- 4.7 If the Trustee allows a member to nominate the Pension Commencement Date for a Pension payable in respect of the member and the member does not nominate a Pension Commencement Date that complies with the superannuation law the Trustee may commence to pay the Pension with effect from a Pension Commencement Date that complies with the superannuation law, as determined by the Trustee.
- Frequency of pension payments**
- 4.8 Subject to the superannuation law, the Trustee must make Pension payments to the relevant member with such frequency and at such intervals and times as are agreed between the Trustee and the member.
- 4.9 Subject to the superannuation law, the Trustee may alter the frequency with which Pension payments are to be made:
- (a) at any time the Trustee considers appropriate;
 - (b) to comply with superannuation law; or
 - (c) at any time agreed upon between the member and the Trustee.
- Selecting the value of Pension payments**
- 4.10 The Trustee may allow a member to nominate the value of Pension payments to be paid under a Pension during a financial year.
- 4.11 The sum of the Pension Payments made under a Pension to a member in each financial year or part of a financial year must not be:
- (a) less than the minimum limits; or
 - (b) greater than the maximum limits,
- set out in the superannuation law, provided such payments do not exceed the value determined by the Trustee.
- 4.12 The Trustee may at any time and without prior notice to the member adjust the value of Pension payments to such member to a level that complies with the superannuation law.
- Commutation**
- 4.13 The Trustee may only commute a TRIS (or any part of it) in the circumstances permitted by superannuation law.
- 4.14 The Trustee must commute all or any part of a TRIS where required by the superannuation law.
- Reversionary beneficiaries**
- 4.15 The Trustee may determine to allow a member to nominate a Reversionary Beneficiary and, if so, approve such form, adopt such procedures and impose such terms, conditions and restrictions in connection with the nomination of a Reversionary Beneficiary as the Trustee determines from time to time. The member must comply with any such forms, procedures,

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terms, conditions and restrictions in order for the nomination to be valid and effective.

- 4.16 The Trustee may impose such terms, conditions and restrictions in connection with the payment of a Pension on the death of the member to a Reversionary Beneficiary as the Trustee determines from time to time.
- 4.17 Unless otherwise agreed between the Trustee and the member, a Reversionary Beneficiary nomination ceases to be valid and effective upon the earlier of the following events:
- (a) on receipt by the Trustee from the member of a replacement, conflicting or inconsistent Binding Nomination, Non-Lapsing Nomination, Reversionary Beneficiary nomination or Non-Binding Nomination;
 - (b) the member separates on a permanent basis from their Spouse; or
 - (c) any other event determined by the Trustee from time to time.
- 4.18 Upon the death of a member who has nominated a Reversionary Beneficiary which is valid and effective at the member's death, the Trustee must, subject to the superannuation law and any terms and conditions of payment determined pursuant to Rule 4.16 of Division 4F of Section 4 continue to pay the Pension to the Reversionary Beneficiary until the earlier of:
- (a) the Pension Account reaching zero; or
 - (b) the death of the Reversionary Beneficiary; or
 - (c) the benefit is no longer permitted by the Trustee or by superannuation law to be paid in the form of a Pension,
- in which case, the balance (if any) of the Pension Account must be paid to the Reversionary Beneficiary as a lump sum.
- 4.19 If the Trustee pays the Pension to a Reversionary Beneficiary under Rule 4.18 of Division 4F of Section 4, subject to such conditions and restrictions as the Trustee determines from time to time, unless the context otherwise requires, each reference to the member in this Schedule must be read as a reference to the Reversionary Beneficiary.
- 4.20 The Pension will cease to be payable on the earlier of the following:
- (a) the balance of the Pension Account is exhausted or decreases to a value determined by the Trustee;
 - (b) the term of the Pension agreed to by the Trustee and the member in Rule 4.3 of Division 4F of Section 4 has expired; or
 - (c) on the date determined by the Trustee in accordance with the superannuation law.
- 4.21 Any balance of the member's Pension Account at the date determined under Rule 4.20 of Division 4F of Section 4 shall be paid to the member as soon as practicable thereafter.

Cessation of pension

Exhibit 1: Relevant Provisions of the 1988 Act

Exhibit 1: Relevant Provisions of the 1988 Act

Section 3: Definitions

"contributor" means-

- (a) a member who makes contributions under this Act; and
- (b) any person who is to be taken to be a contributor for the purposes of this Act by this or any other Act; and
- (c) a member who has made contributions but elects to cease to make contributions;

Part 4A – Old Scheme

25A. Definitions

In this Part-

"contributory service" means the period of service calculated in years (including fractions appropriate to complete months) during which a contributor has contributed (or is deemed to have contributed under Part IIIA of the previous Act) to the Fund and includes-

but does not include –

"deferral account balance" means, in relation to a former contributor-

and the amount of any net earnings or net loss calculated on the basis of the net earning rate of the Fund as determined by the Board;

"disability" has the meaning it has in section 3, but where appropriate, as if the words "before the age of 60 years" were omitted;

"old pension scheme contributor" means a person who as at 30 June 1988 was (except during any leave of absence) making or deemed to be making pension scheme contributions and who after that date continues to make contributions (except during any leave of absence) until the termination of his or her service (subject to section 30(5), 25R(2) or 25R(3) as appropriate) at the rate at which he or she was contributing at that date or at 6% of Fund salary;

"old scheme contributor" means a contributor to the Fund as at 30 June 1988 who (except during any leave of absence) continues to make contributions after that date;

"old scheme contributor's member's account balance" means in relation to an old scheme contributor, the total, from time to time, of-

- (a) any leave of absence during which the contributor continues to receive salary from the employer or periodic payments under the **Accident Compensation Act 1985** and continues to make contributions; and
- (b) any leave of absence without pay or with reduced pay on account of illness or injury certified by a registered medical practitioner during which the contributor and the employer continue to make contributions without reduction; and
- (c) any other leave of absence approved by an employer during which a contributor has made contributions in accordance with section 42(4)(c) or in accordance with section 30(4)(c) of the previous Act; and
- (d) any period in respect of which the contributor has made contributions in accordance with section 28A of the previous Act; and

Exhibit 1: Relevant Provisions of the 1988 Act

- (e) (if relevant to the calculation of contributory benefits on death or retirement due to disability), prospective service recognised by the Board;
- (f) any period in excess of 4 weeks in respect of which no contribution payments are made to the Fund; or
- (g) any period in respect of which a benefit has previously been paid; or
- (h) any leave of absence during which a contributor has made contributions in accordance with section 42(4)(b) or in accordance with section 30(4)(b) of the previous Act;
- (i) the amount in a beneficiary's account which was established under the previous Regulations; or
- (j) the amount of the entitlement to a deferred benefit under this Part which represents the old scheme contributor's member's account balance at the date of termination of service; or
- (k) the amount of the unpaid balance of a lump sum disability benefit being paid in more than one payment under section 25G(5)-
- (l) the total balance at 30 June 1988 of all the "member's accounts" maintained for the contributor under the previous Regulations; and
- (m) 25% of the balance in paragraph (a) which the Board determines is attributable to the member's employment with a participating institution on or after 1 January 1964 or, in the case of a person who transferred from a Part IVA scheme under section 11(4A) of the previous Act, on or after the date of becoming a member; and
- (n) 7% of the contributor's Fund salary during periods of contributory service from 1 July 1988 to 30 June 1993, and for each year of contributory service after 30 June 1993 a percentage of the contributor's Fund salary as follows-
- (o) the amount of any net earnings or net loss calculated on the basis of the net earning rate of the Fund as determined by the Board;
- (p) an amount calculated in accordance with section 25J.

Period of membership % per annum of contributor's Fund Salary
 Employer's aggregate Employer's aggregate payroll
 payroll \$1 million or less more than \$1 million in the
 in the base year for the base year for the purposes of
 purposes of C'lth Law C'lth Law

1 July 1993 to 30 June 1994	6	4
1 July 1994 to 30 June 1995	5	4
1 July 1995 to 30 June 1996	4	3
1 July 1996 to 30 June 1997	3	3
1 July 1997 to 30 June 1998	3	3
1 July 1998 to 30 June 1999	2	2
1 July 1999 to 30 June 2000	2	2
1 July 2000 to 30 June 2001	1	1
1 July 2001 to 30 June 2002	1	1
From 1 July 2002	0	0

; and

"pension scheme contribution" means a payment made to the Board by or in respect of a contributor in accordance with section 35B or 35ZF of the previous Act;

"pensioner" means any person who is entitled to receive a pension (other than a pension calculated by reference to section 36) under this Part or the previous Act;

Exhibit 1: Relevant Provisions of the 1988 Act

"previous Act" means the Hospitals Superannuation Act 1965;

"previous Regulations" means the Hospitals Superannuation (Fund) Regulations 1985.

25B. Medical classifications for old scheme contributors

- (1) For the purposes of section 25C, each old scheme contributor is to be assigned a single medical classification in the following manner-
 - (a) the highest classification of the contributor under the previous Act is to be ascertained (out of all the classifications allocated to him or her for lump sum death, lump sum disability or pension), after ranking the classification as follows-

Rank	Death Lump Sum	Disability Lump Sum	Pension
1st	1	A	F
2nd	2	B	
3rd			L
4th	3	C	
5th	4	D	
6th	0	O	S

- (b) classifications for the purposes of this Act are to be assigned according to the contributor's highest classification (or equal-highest classifications) under the previous Act as ascertained under paragraph (a), as follows-

Rank	Medical Classification	Percentage applied under section 25C
1st	A	100
2nd	A	100
3rd	B	75
4th	C	50
5th	D	25
6th	O	0;

- (c) despite anything to the contrary in this sub-section, a contributor with more than 20 years' service is to be assigned an "A" classification.
- (2) An old scheme contributor who has not yet been examined may undergo an examination (at the Board's expense) or supply information of a medical nature as the Board requires, in order to be assigned a medical classification under sub-section (1).

25C. Benefits payable in accordance with transitional medical classifications

Subject to section 25H(5), that portion of a death or disability benefit (other than a basic benefit) payable to an old scheme contributor under this Act which is calculated in respect of the unexpired period of contributory service following the date of death or retirement due to disability, must be adjusted by multiplying it by the percentage set out next to the contributor's medical classification code specified in section 25B.

25D. Accrued retirement benefits for old scheme contributors to whom section 31 applies

- (1) If a member who at 30 June 1988 was making or was deemed to be making pension scheme contributions (except during any leave of absence without pay) continues under section 31 to contribute at a rate other than 6% of Fund salary in respect of any period after 30 June 1988, the accrued retirement benefit determined in respect of that member in

Exhibit 1: Relevant Provisions of the 1988 Act

calculating any benefits under Part 6 is to be calculated as if during that period the member were contributing at the rate of 6% of Fund salary.

- (2) If a member to whom sub-section (1) does not apply continues under section 31 to contribute at the rate of 3.5% of Fund salary in respect of any period after 30 June 1988, the accrued retirement benefit determined in respect of that member in calculating any benefits under Part 6 is to be calculated as if during that period the member were contributing at the rate of 3% of Fund salary.

25E. Additional benefits for contributory service before 1 July 1988

- (1) For the purposes of Part 6, the accrued retirement benefit of an old scheme contributor is not subject to the limit in section 34(2), and includes-
 - (a) 10% of the adjusted final Fund salary of the contributor for each year (not exceeding 40) of contributory service completed before 1 July 1988 during which pension scheme contributions were made or deemed to have been made by that contributor; and
 - (b) 10% of the adjusted final Fund salary of the contributor for each year of contributory service completed before 1 July 1988 or any greater multiple of adjusted final Fund salary that is fixed by the Board having regard to the old scheme contributor's member's account balance at 30 June 1988.
- (2) For the purposes of section 37, the adjusted member contributions of an old scheme contributor are to include a multiple of adjusted final Fund salary that is fixed by the Board having regard to the resignation benefit of the contributor under the previous Act or under the previous Regulations as at 30 June 1988.
- (3) For the purposes of section 37, the balance of the accrued retirement benefit of an old scheme contributor as at 30 June 1988 is to be the amount calculated under sub-section (1) less the amount calculated under sub-section (2).

25F. Retirement benefit option

- (1) An old pension scheme contributor who retires for any reason having attained the age of 55 years may elect to substitute for the benefit payable under section 34 a benefit comprising an annual pension and a lump sum in accordance with this section.
- (2) The annual pension is an annual pension at the rate of-
 - (a) five-sixths of one per cent of adjusted final Fund salary for each year of contributory service before 1 July 1988 during which pension scheme contributions were made or deemed to have been made by that contributor; and
 - (b) five-sixths of one per cent of adjusted final Fund salary for each year of contributory service after 30 June 1988-

which is to be-

- (i) multiplied by the following fraction-

12·0/C-

where C represents the lump sum factor set out in the table below for the age in completed years and months at which the pension becomes payable, or (if the contributor retires having attained the age of 66 years) increased by an amount that is determined by the Board upon the advice of an actuary appointed by the Board;

Exhibit 1: Relevant Provisions of the 1988 Act

Age	Lump Sum Factor	Amount to be subtracted from lump sum For each additional complete month of age
55	13.6	0.0167
56	13.4	0.0167
57	13.2	0.0167
58	13.0	0.0167
59	12.8	0.0167
60	12.6	0.0167
61	12.4	0.0083
62	12.3	0.0083
63	12.2	0.0083
64	12.1	0.0083
65	12.0	0.0083

; and

- (ii) increased in accordance with section 53; and
- (iii) payable until the person receiving the pension dies.

(3) The lump sum is a lump sum which is the greater of-

- (a) the amount set out in section 25E(1)(b) plus-
 - (i) for each year of contributory service after 30 June 1988 and before 1 July 1993, 8% of the adjusted final Fund salary of the contributor; and
 - (ii) for each year of contributory service after 30 June 1993 a percentage of the contributor's adjusted final Fund salary as follows-

Period of membership % per annum of contributor's adjusted final Fund Salary

	Employer's aggregate payroll \$1 million or less in the base year for the purposes of C'lth Law	Employer's aggregate payroll more than \$1 million in the base year for the purposes of C'lth Law
1 July 1993 to 30 June 1994	6	4
1 July 1994 to 30 June 1995	5	4
1 July 1995 to 30 June 1996	4	3
1 July 1996 to 30 June 1997	3	3
1 July 1997 to 30 June 1998	3	3
1 July 1998 to 30 June 1999	2	2
1 July 1999 to 30 June 2000	2	2
1 July 2000 to 30 June 2001	1	1
1 July 2001 to 30 June 2002	1	1
From 1 July 2002	0	0

; or

- (b) the old scheme contributor's member's account balance.

25G. Disability benefit option

Exhibit 1: Relevant Provisions of the 1988 Act

- (1) An old pension scheme contributor who retires on the ground of disability before attaining the age of 65 years may elect to substitute for the benefit payable under either section 34 or 36, a benefit comprising (subject to section 49) a pension and lump sum and any child's allowance in accordance with this section.
- (2) The pension is a pension calculated in accordance with section 25F, as if-
- (a) the contributor had retired having attained the age of 65 years; and
 - (b) the contributor's contributory service included prospective service to the date on which he or she would attain the age of 65 years-

and reduced where appropriate by any percentage applicable on account of health impairment under section 25C.

- (3) The lump sum is a lump sum which is the greater of-
- (a) the amount set out in section 25E(1)(b) plus-
 - (i) for each year of contributory service after 30 June 1988 and before 1 July 1993, 8% of the adjusted final Fund salary of the contributor; and
 - (ii) for each year of contributory service after 30 June 1993 a percentage of the contributor's adjusted final Fund salary as follows-

Period of membership % per annum of contributor's adjusted final Fund Salary

	Employer's aggregate payroll \$1 million or less in the base year for the purposes of C'lth Law	Employer's aggregate payroll more than \$1 million in the base year for the purposes of C'lth Law
1 July 1993 to 30 June 1994	6	4
1 July 1994 to 30 June 1995	5	4
1 July 1995 to 30 June 1996	4	3
1 July 1996 to 30 June 1997	3	3
1 July 1997 to 30 June 1998	3	3
1 July 1998 to 30 June 1999	2	2
1 July 1999 to 30 June 2000	2	2
1 July 2000 to 30 June 2001	1	1
1 July 2001 to 30 June 2002	1	1
From 1 July 2002	0	0

as if the contributor's contributory service included prospective service to the date on which he or she would attain the age of 65 years, reducing the benefit in respect of prospective service where appropriate by any percentage applicable on account of health impairment under section 25C; or

- (b) the old scheme contributor's member's account balance, plus a percentage of the contributor's adjusted final Fund salary for each year of prospective contributory service to the date on which he or she would attain the age of 65 years as follows-

Exhibit 1: Relevant Provisions of the 1988 Act

Period of membership % per annum of contributor's Fund Salary

payroll of	Employer's aggregate	Employer's aggregate
	payroll \$1 million or less in the base year for the purposes of C'lth Law	more than \$1 million in the base year for the purposes C'lth Law
1 July 1993 to 30 June 1994	6	4
1 July 1994 to 30 June 1995	5	4
1 July 1995 to 30 June 1996	4	3
1 July 1996 to 30 June 1997	3	3
1 July 1997 to 30 June 1998	3	3
1 July 1998 to 30 June 1999	2	2
1 July 1999 to 30 June 2000	2	2
1 July 2000 to 30 June 2001	1	1
1 July 2001 to 30 June 2002	1	1
From 1 July 2002	0	0

and reducing the benefit in respect of prospective service where appropriate by any percentage applicable on account of health impairment under section 25C.

- (4) The child's allowance is any child's allowance determined in accordance with section 25S.
- (5) A disability lump sum benefit payable under or in accordance with this section may be paid by the Board in one payment or in more than one payment as determined by the Board.

25H. Death benefits option

- (1) Upon the death of an old pension scheme contributor, the dependant or the personal representative of that contributor whom the Board has determined is the appropriate person to make the election may elect to substitute for the benefit payable under section 35 a benefit comprising a benefit and lump sum and any child's allowance in accordance with this section.
- (2) The benefit is a benefit being either-
 - (a) subject to sub-section (6), an annual pension to the spouse (or if there is no spouse, any other dependant of the deceased contributor as the Board determines appropriate, except a child of the deceased contributor) equal to two-thirds of the pension to which the deceased contributor would have been entitled under section 25G(2) if at the date of death-
 - (i) he or she had retired on the ground of disability; and
 - (ii) if subject to a "B" medical classification he or she was in fact subject to an "A" medical classification-

which is (subject to section 25P) to be payable until the person receiving the pension dies; or

- (b) if there is no spouse or dependant other than a child of the deceased contributor, to the personal representative of the deceased contributor an amount equal to-
 - (i) that proportion of the multiple fixed in accordance with section 25E(2) which the Board determines represents pension scheme contributions made by the contributor before 1 July 1988; and

Exhibit 1: Relevant Provisions of the 1988 Act

- (ii) one-half of the contributor's adjusted member contributions calculated as from 1 July 1988-

less an amount determined by an actuary appointed by the Board to be required for the payment of any child's allowance payable under section 25S.

- (3) A lump sum to be apportioned by the Board between those of the dependants of the deceased contributor or the legal personal representative of the deceased contributor as the Board considers appropriate, which is to be (subject to sub-section (6)) calculated in accordance with section 25G(3) as if the deceased contributor had retired on the ground of disability at the date of death.
- (4) The child's allowance is any child's allowance determined in accordance with section 25S.
- (5) A pension or lump sum benefit payable under this section or section 35 to an old scheme contributor is not to be reduced on account of health impairment if, in the opinion of the Board, the death arose from causes outside the contributor's own control or outside the control of any person who would benefit from the contributor's death, and was unconnected with the circumstances which resulted in the contributor having been assigned a classification other than "A" under section 25B.
- (6) If an old scheme contributor who has attained 65 years of age dies before retirement, sub-section (1) applies as if-
 - (a) any pension payable under sub-section (2)(a) were equal to two-thirds of the pension to which the deceased contributor would have been entitled under section 25F if at the date of death he or she had retired; and
 - (b) any lump sum payable under sub-section (3) were calculated in accordance with section 25F as if the deceased contributor had retired at the date of death.

25I. Minimum death and disability benefit

The Board must pay to any person entitled to receive a benefit under section 25G(3) or 25H(3) as a result of an election made under either of those sections any amount by which that benefit when added to the contributor's basic benefit is less than an amount determined by the Board upon the advice of an actuary appointed by the Board which is not greater than the lump sum benefit that would have been payable under the previous Act had the contributor died on 30 June 1988 and had been subject to a "1" medical classification at that date.

25J. Retrenchment benefit option

An old pension scheme contributor who is retrenched may elect to substitute for the benefit payable under section 38 a benefit, subject to section 58B, calculated in accordance with section 25F as if the contributor had retired having attained the age of 65 years at the date of retrenchment, except that any pension entitlement is to be deferred and payable in accordance with section 25V.

25K. Deferred resignation benefit option

An old pension scheme contributor who resigns or is dismissed and to whom no other benefits are payable under this Part may elect to substitute for all benefits payable under section 37 a benefit deferred and payable in accordance with section 25V being, at the election of the contributor, either-

- (a) an amount calculated in accordance with section 38; or
- (b) an amount calculated in accordance with section 25J.

25L. Options for contributors who are paying at 3.5% or 6%

Exhibit 1: Relevant Provisions of the 1988 Act

An old scheme contributor who is not an old pension scheme contributor and who continues to make contributions at the rate of either 3·5% or 6% of Fund salary until the termination of his or her service (subject to section 30(5) or section 25R(2) or 25R(3) as appropriate) may elect to substitute for benefits calculated under section 34, 35, 36, 37 or 38 a benefit calculated in accordance with-

- (a) in the case of retirement, early retirement or retrenchment, section 25F(3); or
- (b) in the case of resignation, at the election of the contributor either-
 - (i) section 25F(3) (deferred and payable in accordance with section 25V); or
 - (ii) section 34 (deferred and payable in accordance with section 25V); or
- (c) in the case of disability, section 25G(3) and 25G(4) and payable in accordance with section 25G(5); or
- (d) in the case of death, sections 25H(3), 25H(4) and 25H(6).

25M. Additional death and disability benefits

A member who as at 30 June 1988 was paying premiums for additional death or disability benefits under regulation 7(3) of the previous Regulations may continue to pay premiums and be entitled to benefits as under that regulation, provided that the member's total level of cover under that regulation in respect of any Fund year after that date is to be no higher than the total level of cover under that regulation in respect of the Fund year ending on 30 June 1988.

25N. Death of a pensioner

- (1) Upon the death of a former contributor to the Fund to whom a pension is payable under this Part or under the previous Act (other than a pension payable in accordance with section 36 or 43B), there is payable a benefit comprising a benefit in accordance with sub-section (2) and any child's allowance.
- (2) The benefit is a benefit being-
 - (a) subject to sub-section (4), a pension to the spouse (or if there is no spouse to any other dependant of the deceased former contributor as the Board determines appropriate, except a child of the deceased former contributor) equal to two-thirds of the pension payable to the deceased former contributor at the time of his or her death; or
 - (b) if there is no spouse or dependant other than a child of the deceased former contributor, to the personal representative of the deceased former contributor an amount equal to-
 - (i) that proportion of the multiple fixed in accordance with section 25E(2) which the Board determines represents pension scheme contributions made by the contributor before 1 July 1988, and one-half of any adjusted member contributions calculated as from 1 July 1988; less
 - (ii) the total amount of pension payments already made to the deceased former contributor, together with an amount determined by an actuary appointed by the Board to be required for the payment of any child's allowance under section 25S.
- (3) The child's allowance is any child's allowance determined in accordance with section 25S.
- (4) If the deceased former contributor was receiving a disability pension and at the date of his or her retirement on the ground of disability was subject to a "B" medical classification, or, having died before 1 July 1988 was subject to a "Limited" pension classification under the previous Act, the benefit under sub-section (2)(a) is to be calculated as if the deceased

Exhibit 1: Relevant Provisions of the 1988 Act

former contributor had been entitled to full benefits at the date of his or her retirement on the ground of disability.

25O. Death of a former contributor entitled to outstanding instalment of disability lump sum benefit

Upon the death of a former contributor to the Fund to whom any outstanding instalment of a disability lump sum benefit is payable under this Part or under the previous Regulations, there is payable to those of the deceased former contributor's dependants as the Board considers appropriate (or if there are no dependants, to the deceased former contributor's personal representative), a benefit comprising-

- (a) the deceased former contributor's deferral account balance; and
- (b) in the case of a contributor who became a member of the Fund before 1 January 1981 and who became entitled to a disability benefit before 1 July 1988, any amount that the Board determines is appropriate having regard to regulations 15 and 16 of the previous Regulations.

25P. No entitlement to multiple pensions

- (1) Despite anything to the contrary in this Part or under the previous Act, a person is not entitled-
 - (a) to a pension under this Part or under the previous Act as the spouse of a deceased contributor or deceased former contributor in respect of any period during which he or she is the spouse of another person; or
 - (b) to receive at any time, under this Part or under the previous Act, more than one pension as the spouse or dependant of a deceased contributor or deceased former contributor (but any person who is entitled to a pension as the spouse or dependant of more than one deceased contributor or former contributor will be entitled to whichever of the pensions is the greater); or
 - (c) to receive at the same time, under this Part or under the previous Act, a pension as a former contributor and a pension as the spouse of a deceased former contributor if he or she became the spouse of the deceased former contributor after the retirement of the deceased former contributor (but so long as he or she would but for this paragraph be entitled to both of those pensions, he or she will be entitled to whichever pension is the greater).
- (2) If a person becomes the spouse of a pensioner after the pensioner's retirement, a pension is not payable to the spouse on the death of the pensioner unless-
 - (a) at the time that the person became the pensioner's spouse, the pensioner was receiving a disability retirement pension and had not attained the age of 60 years; or
 - (b) the person became the pensioner's spouse at least 3 years before the pensioner's death.
- (3) If a spouse-
 - (a) is entitled to a pension by virtue of sub-section (2)(b); and
 - (b) was more than 3 years younger than the pensioner-

the pension payable to the spouse is to be reduced to the pension that in the opinion of an actuary appointed by the Board is the actuarial equivalent at the date the person became the pensioner's spouse of the pension that would have been payable if the spouse was 3 years younger than the pensioner.

Exhibit 1: Relevant Provisions of the 1988 Act

25Q. Death of spouse pensioner

Upon the death of a spouse or other dependant of a deceased contributor or of a deceased former contributor (other than a child of the deceased contributor or deceased former contributor) to whom a pension is payable, there is payable to the personal representative of the deceased spouse or deceased dependant an amount equal to-

- (a) that proportion of the multiple fixed in accordance with section 25E(2) which the Board determines represents pension scheme contributions made by the contributor before 1 July 1988, and one-half of any adjusted member contributions calculated from 1 July 1988; less
- (b) the total amount of pension payments already made to the deceased contributor or deceased former contributor, or to the deceased spouse or deceased dependant, together with an amount determined by an actuary appointed by the Board to be required for the payment of any child's allowance in respect of the deceased contributor or deceased former contributor.

25R. Maximum lump sum benefit payable

- (1) Despite anything to the contrary in this Part the sum of-
 - (a) the annual pension payable to an old pension scheme contributor under section 25F(2) multiplied by the lump sum factor specified in that section for the age in completed years and months at which the pension becomes payable, or the annual pension payable to an old pension scheme contributor under section 25G(2) multiplied by 12.0; and
 - (b) the lump sum payable to the old pension scheme contributor under section 25F(3) or 23G(3)-must not exceed the greater of-
 - (c) 8.0 times the adjusted final Fund salary of the contributor; or
 - (d) the sum if the total contributory service recognised for the purposes of section 25F(2)(a) or 25F(2)(b) did not exceed 30 years or such greater period not exceeding 40 years as had been completed by the contributor on 30 June 1988.
- (2) Despite anything to the contrary in this Part if an old scheme contributor is entitled to an accrued retirement benefit under section 25E(1) of not less than 8.0 times adjusted final Fund salary at 1 July 1988 no contributions are to be made by that contributor after 30 June 1988 but any subsequent membership of the Fund is to be recognised as contributory service for the purposes of section 25F(2).
- (3) Despite anything to the contrary in this Part if an old scheme contributor becomes entitled to an accrued retirement benefit of 8.0 times adjusted final Fund salary after 1 July 1988 no further contributions are thereafter to be made by that member but any subsequent membership of the Fund is to be recognised as contributory service for the purposes of section 25F(2).

25S. Children's allowances

- (1) A child's allowance under this Part is payable in respect of each child (subject to a maximum of 4) of the contributor or (where provided for on the death of a contributor or former contributor) of the spouse of the deceased contributor or deceased former contributor (except a child born more than 10 months after the death of the deceased contributor or deceased former contributor) who-
 - (a) is less than 18 years of age; or
 - (b) is deemed by the Board to be a full-time student of not more than 25 years of age.

Exhibit 1: Relevant Provisions of the 1988 Act

- (2) An allowance payable under sub-section (1) is to be calculated at the rate of \$1560 per annum from the first payment period commencing on or after 1 July 1988 and increased in accordance with section 53 as if a pension at the rate of \$1560 per annum were payable for each month of the prescribed half year ending on 31 December 1987.
- (3) On the death of a contributor or pensioner whose spouse is dead or divorced, any child's allowance which would otherwise be calculated under sub-section (2) is to be payable to the person whom the Board determines is appropriate and is to be calculated at twice the rate of the allowance which is payable under sub-section (2).
- (4) The Board may, having regard to the interests and welfare of the child, substitute for any allowance payable in respect of a child under the previous Act an allowance calculated in respect of a child under this section (as if no maximum of 4 children were specified in sub-section (1)).
- (5) One amount only is payable as an allowance in respect of a child who would otherwise be entitled to an allowance in respect of more than one contributor or deceased former contributor.
- (6) Despite anything to the contrary in this Part, any money payable in respect of a child may, at the discretion of the Board, be paid to any person as the Board directs on behalf of the child and for the benefit of the child or expended by the Board for the benefit of the child.

25T. Commutation of pensions

- (1) Subject to the terms and conditions from time to time approved by the Minister, any person who is receiving or entitled to a pension under this Part or under the previous Act may apply to the Board for and the Board may grant the payment of a lump sum amount in consideration of the reduction of the pension or any future pension entitlement that may arise as a consequence of that pension.
- (2) On receipt of an application by a person under sub-section (1), the Board may require the person to provide any additional information that it requires.
- (3) The amount of the lump sum paid under sub-section (1) is to be determined by an actuary appointed by the Board.

25TA. Commutation of pension not exceeding declared rate

- (1) This section applies to a person who is entitled to a pension administered by the Board under this Act at a rate per year which does not exceed the declared rate.
- (2) Notwithstanding anything to the contrary in this Act, the Board may at its discretion determine that instead of a pension the person may elect to receive a lump sum payment as determined by the Board on the advice of an actuary.
- (3) If a person elects to accept a lump sum payment under sub-section (2), the Board is released from any liability to make any further payments to, or in respect of, any entitlements of that person or any of his or her dependants and this Act ceases to apply to that person.
- (4) In this section, "**declared rate**" means-
 - (a) \$520 per year; or
 - (b) such higher rate per year as may be declared from time to time by the Minister by Order published in the Government Gazette.

25U. Reduction of pensions

Exhibit 1: Relevant Provisions of the 1988 Act

- (1) If a person entitled to a disability benefit in the form of a pension or any outstanding instalment of a disability lump sum benefit under this Part or under the previous Act or the previous Regulations is in the opinion of the Board capable of obtaining gainful employment, the Board may reduce or stop the pension or instalment payments either temporarily or permanently.
- (2) Despite anything to the contrary in this Part or in the previous Act or the previous Regulations-
 - (a) if a former contributor who is receiving or entitled to a pension in respect of his or her former membership of the Fund resumes employment with a participating institution at a salary less than the salary appropriate to the grade in which he or she was employed at the time of retirement because the pensioner is unable to perform the previous duties due to ill health, the Board must reduce the pension as from a date to be fixed by the Board (being not earlier than the date the person became entitled to the benefit) to an amount equal to the difference between the salary received by the person in respect of the employment with a participating institution and the current equivalent of the salary appropriate to the grade in which he or she was employed at the time of retirement; or
 - (b) if a person who is receiving or entitled to any outstanding instalment of a disability lump sum benefit resumes full-time employment with a participating institution, the Board must discontinue the payments.
- (3) Upon the death of a person whose pension has been temporarily reduced under subsection (2), the person's spouse or dependant will be entitled to a pension calculated on the basis that no reduction was made.

25V. Payment of deferred benefits

- (1) A deferred benefit under this Part is payable upon the earliest of-
 - (a) the retirement of the former contributor from gainful employment, from the age of 55 years except for that part of the deferred benefit which is subject to the specified standards; or
 - (b) the death or disability of the former contributor; or
 - (c) the age of 65 years.
- (2) A deferred benefit payable under this Part is to be increased in accordance with the definition of "deferral account balance" as applicable, or otherwise in accordance with section 53.
- (3) The amount payable as a deferred lump sum benefit to a former contributor to the Fund who became entitled to that benefit under the previous Regulations is the former contributor's deferral account balance.
- (4) Upon the death or disability of a former contributor who was an old scheme contributor before entitlement to payment of a deferred benefit which is calculated under this Part otherwise than in accordance with Part 6, there is payable any child's allowance which is determined in accordance with section 25S.
- (5) If a former contributor entitled to a deferred lump sum benefit under this Part dies before payment of the benefit, the amount of that benefit is to be apportioned by the Board between those of the dependants of the deceased contributor or the legal personal representative of the deceased contributor as the Board considers appropriate.

Exhibit 1: Relevant Provisions of the 1988 Act

- (6) Except where the deferred pension becomes payable upon the death or disability of a former contributor, a deferred pension under this Part is to be calculated in accordance with section 25F, based on the actual number of years of contributory service and the age at which the pension becomes payable.
- (7) If a former contributor who had been an old scheme contributor and who is entitled to a deferred pension under this Part dies before the pension becomes payable, there is payable to the spouse (or if there is no spouse, any other dependant of the deceased former contributor as the Board determines appropriate, except a child of the deceased former contributor), a pension equal to two-thirds of the deferred pension to which the contributor would have been entitled if the contributor had become entitled to payment of the deferred pension having attained the age of 65 years.
- (8) If a former contributor who had been an old scheme contributor and who is entitled to a deferred pension under this Part becomes disabled before the pension becomes payable, the deferred pension is to be calculated as if the contributor became entitled to payment of the deferred pension having attained the age of 65 years.

25W. Benefits for supplementary contributions

Upon the termination of service of a member, the Board must pay to the member or in appropriate instances, to his or her dependants or personal representative, an amount representing-

- (a) the member's entitlement at 30 June 1988 under regulation 7(1) of the previous Regulations in respect of "supplementary contributions" or under section 32 of this Act or section 33 of the previous Act in respect of "lump sum contributions", made by the member; and
- (b) all supplementary contributions made by the member or in respect of the member on or after 1 July 1988 under regulation 21 or 22 of the Hospitals Superannuation Regulations 1988; and
- (c) the amount of any net earnings or net loss calculated on the basis of the net earning rate of the Fund as determined by the Board.

25X. Application of the Act to pensions, allowances and deferred benefits under previous Act and previous Regulations

Despite anything to the contrary in the previous Act or the previous Regulations, sections 41(12), 52, 53, 55, 56 and 57 apply in respect of persons entitled to or receiving pensions, allowances or outstanding instalments of disability lump sum benefits still payable under that Act or those Regulations, as if the entitlements arose under this Act.

Part 6 – Benefits

33. Basic benefit

- (1) Except in the case of death or disability, a member is entitled to a basic benefit equal to-
 - (a) 3 per cent, or such higher percentage as is determined by the Board on the advice of an actuary having regard to the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth as amended and in force for the time being, of the salary of the member for each year of his or her membership-
 - (i) on or after 1 January 1988 in the case of a member employed by a participating institution Class A; or
 - (ii) on or after a day being not later than 1 January 1989 which is agreed to between a participating institution Class B and the Board in the case of a member employed by a participating institution Class B; and

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- (b) interest at the rate determined by the Board less the cost of death and disability benefits and, if appropriate, an amount on account of administration expenses as determined by the Board and Commonwealth charges.
- (2) In the case of death or disability, a member is entitled to a basic benefit equal to-
 - (a) the basic benefit under sub-section (1); and
 - (b) the specified percentage of annual salary multiplied by the number of years from the date of death or disability until age 60.
- (2A) In sub-section (2)(b) "**specified percentage**" means-
 - (c) until 31 December 1993--3 per cent; and
 - (d) after that date, the percentage which is equal to the employer contribution rate payable in respect of the member under the Commonwealth Superannuation Guarantee (Administration) Act 1992 on the day that the member dies or retires due to disability.
- (3) A basic benefit under this section is payable-
 - (a) on the death of the member; or
 - (b) on the disability of the member; or
 - (c) on the request of the member at any time after ceasing to be employed from the age of 55 years except for that part of the benefit which is subject to the specified standards-

whichever first occurs.
- (4) The basic benefit under sub-section (2) is payable-
 - (a) in the case of the death of the member, to his or her dependants; and
 - (b) in the case of the disability of the member, to the member.
- (5) The basic benefit under sub-section (1) is payable in the case of the death of the member to his or her personal representative if there are no dependants.
- (6) For the purposes of this Part, a casual employee within the meaning of section 24(1) is to be taken to have ceased to be a member on the day which is two months or such other period as may be determined by the Board since he or she last performed any duties.

34. Contributory benefit on retirement due to age

- (1) The accrued retirement benefit of a contributor is the sum of-
 - (a) 9 per cent of the adjusted final Fund salary of the member for each year of membership after the commencement of this Act in which he or she contributed 3 per cent of salary to the Fund; and
 - (b) 18 per cent of the adjusted final Fund salary of the member for each year of membership after the commencement of this Act in which he or she contributed 6 per cent of salary to the Fund; and

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- (c) 11 per cent of adjusted final Fund salary for each year of membership after the commencement of section 113(1) of the **Public Sector Superannuation (Administration) Act 1993** in which he or she contributed 4 per cent of salary to the Fund.
- (1A) Despite sub-section (1), in respect of a year of membership in which the Commonwealth Superannuation Guarantee (Administration) Act 1992 applies, the percentage of adjusted final Fund salary specified in paragraph (1)(a) or (1)(b) or (1)(c) must be reduced by the amount that the rate of contributions relevant to the employer of the member as set out in that Act exceeds 3 per cent.
- (2) The accrued retirement benefit of a contributor must not exceed 7.2 times the adjusted final Fund salary of that member.
- (3) Subject to sub-section (2), on the retirement of a contributor on or after the minimum retirement age, the Board must pay to him or her a lump sum equal to his or her accrued retirement benefit.

35. Contributory benefit on death before retirement

- (1) On the death of a contributor entitled to full benefits who has not attained the age of 60 years before retirement the Board must apportion between those of his or her dependants that the Board considers appropriate a lump sum equal to the accrued retirement benefit which would have become payable if the contributor had retired at 60 years of age and was contributing at 4 per cent of salary from the date of death until the date of retirement as if his or her adjusted final Fund salary at death had been his or her adjusted final Fund salary at age 60 and counting the service recognised by the Board which would have been completed by that age.
- (2) On the death of a contributor who has attained the age of 60 years before retirement the Board must apportion between those of his or her dependants that the Board considers appropriate a lump sum equal to his or her accrued retirement benefit.
- (3) If on the death of a contributor before retirement there are no dependants, the Board must pay to his or her personal representative a lump sum equal to-
 - (a) the amount referred to in section 33(1); and
 - (b) adjusted member contributions.

36. Contributory benefit on retirement through disability

- (1) If a contributor entitled to full benefits retires on the ground of disability before the age of 60 years he or she is entitled to an annual pension payable in fortnightly instalments for life at the rate of one-twelfth of the accrued retirement benefit which would have been payable if the member had retired at 60 years of age and was contributing at 4 per cent of salary from the date of retirement until the date on which he or she would attain 60 years of age as if his or her adjusted final Fund salary at the date of retirement had been his or her adjusted final Fund salary at age 60 and counting the service recognised by the Board which would have been completed by that age.

If a former contributor continues to receive a pension under sub-section (1) until he or she attains 65 years of age, he or she may elect to receive a lump sum equal to his or her accrued retirement benefit calculated at the date of disability instead of continuing to receive a pension under sub-section (1).

Despite sub-sections (1) and (2), the Board may at any time at its discretion determine that instead of the pension at the rate under sub-section (1) the former contributor is to receive-

Exhibit 1: Relevant Provisions of the 1988 Act

- (a) a lump sum equal to a part of the accrued retirement benefit; and
 - (b) a pension at the rate of one-twelfth of the balance of the accrued retirement benefit-
 - (c) in the proportions determined by the Board.
- (i) If the former contributor dies before attaining the age of 65 years the Board must pay to the dependants or other persons that it determines a lump sum equal to

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where-

D means the balance of the accrued retirement benefit that would have been payable if he or she had died on the date of retirement;

X means the number of instalments of pension already paid.

- (2) If on the death of the contributor or former contributor before attaining the age of 65 years there are no dependants, the Board must pay to his or her personal representative a lump sum equal to adjusted member contributions less the sum of the instalments of pension already paid.

36A. Transitional provision

Despite the amendment of sections 35 and 36 by section 114 of the **Public Sector Superannuation (Administration) Act 1993-**

- (a) the contributory benefit for or in respect of a member who was contributing 6 per cent of salary at the date of disability or death must be calculated according to section 35 or 36 as in force on 31 December 1993; and
- (b) a contributory benefit under section 35 or 36 payable to or in respect of a member must not be less than the amount that would have been payable under those sections as in force before 1 January 1994 had the member died or retired due to disability on 31 December 1993.

37. Contributory benefit on resignation

- (1) If a contributor resigns he or she is entitled to-
 - (a) a cash benefit equal to the adjusted member contributions; and
 - (b) for each year of service whether before or after the commencement of this Act in excess of 5 years a deferred benefit of, 5 per cent of the balance of the accrued retirement benefit up to a maximum of 100 per cent of the balance of the accrued retirement benefit after 25 years of service.
- (2) For the purposes of sub-section (1)(b) "service" includes up to 12 months unpaid parental leave for each confinement if the contributor has returned for at least 12 months of paid employment after the period of unpaid parental leave.
- (2A) If the amount of the deferred benefit under sub-section (1)(b) does not exceed \$200, the Board may pay the deferred benefit to the contributor at any time after he or she ceases to be an employee of a participating institution.
- (3) Subject to section 51B, the deferred benefit is payable to the contributor on the request of the contributor to the Board at any time after ceasing to be an employee from the age of 55 years except for that part of the deferred benefit which is subject to the specified standards.
- (4) The deferred benefit is payable-

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- (a) in the case of the death of the former contributor, upon his death to his or her dependants, or if there are no dependants, to his or her personal representative; or
- (b) in the case of the disability of the former contributor, when the former contributor becomes disabled, to the former contributor.

37A. Register of dependants

- (1) In this section "**relevant section**" means section 33, 35, 36 or 37.
- (2) A member may register the names of persons which he or she considers to be his or her dependants (other than a spouse or child) with the Board.
- (3) The Board may assume that there are no dependants for the purposes of the relevant section if-
 - (a) no dependants have been registered under sub-section (2); and
 - (b) the Board has not received any claims by dependants within 12 months of the death of the member or former member.

38. Benefit on retrenchment

Subject to section 51B, a member who is retrenched is entitled to a lump sum equal to the accrued retirement benefit at the time of his or her retrenchment.

39. Additional benefits in respect of membership of approved superannuation arrangements

If the Board has received a transfer of money or other assets from a superannuation arrangement approved by the Minister by instrument for the purposes of this section in which a member was participating before becoming a member, the Board may determine that the accrued retirement benefit of the member is to include an additional benefit equal to the percentage of the salary of the member that is determined by the Board having regard to the amount of money or assets transferred, the period of membership, the contributions (if any) of the member under that approved superannuation arrangement and any benefits paid to the member from that approved superannuation arrangement.

40. Transitional benefit for existing members

The Board must determine the special transitional benefit rights of a member who makes or is treated as having made an election under section 31.

Part 6A – New Scheme - HOSFUND

40A. Definitions

In this Part-

"beneficiary's account" means a beneficiary's account established and maintained by the Board for each beneficiary under section 40HB;

"casual employee" means a person other than a part-time employee or a full-time employee who is defined by the relevant award determination to be a casual employee or an employee determined by the Board to be a casual employee;

"child", in relation to a member, means a child of the member or of his or her spouse, other than any child born more than 10 months after his or her death;

"complying superannuation fund" means a superannuation entity or a superannuation fund within the meaning of section 10 of the Commonwealth Superannuation Industry (Supervision) Act 1993 which is a complying superannuation fund or a complying approved deposit fund within the meaning of Part IX of the Commonwealth Income Tax Assessment Act 1936;

Exhibit 1: Relevant Provisions of the 1988 Act

"dependant" means in relation to a deceased member of the new scheme-

- (a) his or her spouse; or
- (b) a child of the member; or
- (c) any other person who in the opinion of the Board was at the date of the death of the member wholly or partially dependent on the member or who at that date had a legal right to look to him or her for financial support;

"disability" means in relation to a member of the new scheme-

- (d) if a disability benefit insurance policy is in force in respect of the member, disability as defined in or for the purposes of that policy; and
- (e) in any other case, the permanent inability of the member due to a continuing or recurring injury, disease or infirmity-
 - (i) to perform his or her duties; and
 - (ii) to perform any other duties for which he or she is suited by education, training or experience or for which he or she would be suited as a result of retraining-

as determined by the Board on the basis of reports provided by at least 2 registered medical practitioners appointed by the Board;

"employee" means a person who is an employee within the meaning of the Commonwealth Superannuation Guarantee (Administration) Act 1992;

"employer" means a person who is an employer within the meaning of the Commonwealth Superannuation Guarantee (Administration) Act 1992;

"investment fund" means an investment fund established under section 40I;

"member of the scheme" means a person who is a member of the new scheme under section 40B;

"member's account" means a member's account established and maintained by the Board for each member under section 40E;

"member's account balance" means the credit balance in the member's account as at a particular date after all relevant credits and debits up to that date have been made;

"net earning rate" means in respect of any particular period, and for any particular purpose, the rate of earnings (which may be positive or negative) determined by the Board in respect of an investment fund or in respect of the new scheme (excluding investment funds), as the case may be, for that period and that purpose and having regard to-

- (a) the income derived from the investment of the new scheme or investment funds; and
- (b) any realised or unrealised gains or losses in respect of any investments of the new scheme or investment funds; and
- (c) any tax; and
- (d) expenses of the new scheme or an investment fund not otherwise debited to member's accounts; and
- (e) any relevant specified standards; and
- (f) any other matters the Board considers relevant;

"new scheme" means the new scheme called HOSFUND;

"participating employer" means an employer that the Secretary to the Department of Treasury and Finance by instrument in writing declares to be a participating employer in the new scheme;

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"spouse" means in relation to a person-

- (a) that person's husband, wife, widower or widow; or
- (b) a person of the opposite sex who, though not legally married to the first mentioned person, in the opinion of the Board lives or lived with the first mentioned person as at the relevant date (being, in the case of a deceased person, the date of death) on a bona fide domestic basis as the husband or wife of the first mentioned person.

40B. membership of the new scheme

(1) Subject to this section, a person becomes a member of the new scheme-

- (a) if the person-
 - (i) becomes an employee of a participating employer; and
 - (ii) is not a contributor to, or eligible to contribute to, any other public sector superannuation scheme; and
 - (iii) is an employee in respect of which the participating employer has, or believes that the participating employer will have, an obligation to make contributions under the Commonwealth Superannuation Guarantee (Administration) Act 1992-

when the person's employer notifies the Board of the person's employment; or

- (b) if the person is an employee of a participating employer and applies in writing to the Board to become a member of the new scheme, if and when the Board accepts the application or from such later date as the Board may determine with the approval of the participating employer.
- (2) Subject to sub-section (3A), a person who is an employee of a participating employer and has attained the age of 65 years is not eligible to become a member of the new scheme, or to make contributions or be the subject of contributions to the new scheme.
- (3) Subject to sub-section (3A), a person who is a member of the new scheme and attains the age of 65 years is to be taken to have ceased to be an employee of a participating employer upon attaining that age.
- (3A) A person employed by a participating employer is eligible to remain or become a member of the new scheme even if the person has attained the age of 65 years if-
- (a) contributions are required to reduce the employer's liability under the Commonwealth Superannuation Guarantee Charge Act 1992 or are required to satisfy the employer's obligation to make contributions for that member under a contract of employment or any employment agreement made on or after 1 July 1986 under any law of Victoria or the Commonwealth of Australia; or
 - (b) the person is employed for at least 10 hours each week until the person attains the age of 70 years.
- (3B) When sub-section (3A) ceases to apply, a person is to be taken for the purposes of this Act to have ceased to be an employee of a participating employer.
- (4) Subject to sub-section (5), if a participating employer certifies in writing to the Board that it is meeting its entire obligations under the Commonwealth Superannuation Guarantee (Administration) Act 1992 in respect of a person through another complying superannuation fund, then-

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- (a) if that person is not a member of the new scheme, he or she is not eligible to become a member of the new scheme in respect of employment with that participating employer; or
 - (b) if that person is a member of the new scheme, no further contributions are to be made to the new scheme in respect of that person by that participating employer.
- (5) Subject to the approval of the Board, sub-section (4) ceases to apply to a person if the participating employer certifies in writing to the Board that the participating employer has ceased meeting its obligations in respect of that person under the Commonwealth Superannuation Guarantee (Administration) Act 1992 through another complying superannuation fund.
- (6) A person ceases to be a member of the new scheme on-
- (a) the death of that person; or
 - (b) the payment, cessation or termination under this Act of all benefits from the new scheme to which that person could become entitled; or
 - (c) the transfer of that person's member's account balance from the new scheme to another complying superannuation fund-
- whichever first occurs.

40C. Employer contributions

- (1) Subject to sections 40B(4) and 40B(5), each participating employer must contribute to the Fund in respect of each of its employees who is a member of the Fund so that the employer does not have an individual guarantee shortfall in relation to that member under the Commonwealth Superannuation Guarantee (Administration) Act 1992.
- (2) A participating employer may make contributions in respect of a member or class of members which exceed the amount specified in sub-section (1).
- (3) A participating employer must make contributions in the manner determined by the Board.
- (4) It is the sole responsibility of a participating employer to ensure that the participating employer complies with this section.

40D. Members' contributions

- (1) A member of the new scheme may at any time elect in accordance with this section and subject to such conditions as the Board may determine to-
 - (a) make contributions to the new scheme; or
 - (b) vary the amount of contributions to the new scheme; or
 - (c) cease making contributions to the new scheme.
- (2) An election-
 - (a) must be in the form determined by the Board; and
 - (b) must be accompanied by any information required by the Board; and
 - (c) takes effect as from the day determined by the Board.

Exhibit 1: Relevant Provisions of the 1988 Act

- (3) If a person who becomes a member in accordance with section 40B(1)(a) is required to contribute to a superannuation fund and his or her employer is a participating employer who is required under a law of the Commonwealth of Australia to contribute to the new scheme in respect of the member under section 40C(1)-
- (a) the member is deemed to have elected to make contributions to the new scheme which are not less than the contributions required of the member; and
 - (b) the contributions are to be made by deductions from the salary of the member.

40E. Members' Accounts

- (1) The Board must establish and maintain within the new scheme a separate account for each member of the new scheme.
- (2) The Board must credit to a member's account-
- (a) any employer contributions made in respect of that member; and
 - (b) any contributions made by the member; and
 - (c) any net earnings calculated on the basis of the net earning rate of the new scheme or an investment fund; and
 - (d) any other amount payable to the member's account, including any amount transferred from another superannuation fund or any complying superannuation fund.
- (3) The Board must debit to a member's account-
- (a) an amount determined by the Board in respect of management and administration costs incurred by the Board in the administration of the new scheme; and
 - (b) the amount of any premiums payable by or in respect of the member including any amount determined under section 40G(3) or 40H(3); and
 - (c) an amount determined by the Board in respect of any tax paid or payable by the Board in respect of contributions to a member's account; and
 - (d) any net loss calculated on the basis of the net earning rate of the new scheme or an investment fund; and
 - (e) the amount of any benefit payable to the member or payable in respect of the member; and
 - (f) any amounts transferred to another complying superannuation fund; and
 - (g) any other amount payable by the member.

40F. Disability and death cover

- (1) Subject to this section and sections 40G and 40H, each member of the new scheme who is not a casual employee has as from the date of commencing to be a member disability and death benefits cover at a level determined from time to time by the Board.
- (2) Until the Board makes its first determination under this section, the level of disability and death benefits cover for each member is \$50 000.
- (3) The Board must make its first determination under this section as soon as possible after the commencement of this section.

Exhibit 1: Relevant Provisions of the 1988 Act

- (4) The Board may determine the level of disability and death benefits cover on any basis that the Board considers appropriate including any of the following-
- (a) as a fixed dollar amount for each member;
 - (b) as a dollar amount varying according to the age of the member or some other determinate factor;
 - (c) as the difference between a fixed dollar amount and the member's account balance from time to time.
- (5) A member of the new scheme is not covered in the event of disability or death during the period of 2 years from the commencement of membership of the new scheme which the Board determines on the advice of a medical practitioner is a direct consequence of a medical condition which was pre-existing at the commencement of membership and is a medical condition in respect of which a contract of insurance is not available at a reasonable cost.
- (6) A member's disability and death benefits cover in force under this section ceases-
- (a) 30 days after the earlier of-
 - (i) section 40B(4) applying to that member; or
 - (ii) the member ceasing to be an employee of a participating employer-unless the Board otherwise determines; or
 - (b) at a later date determined by the Board and notified in writing to the member.
- (7) Subject to any contrary determination by the Board and to any conditions imposed by the Board, this section applies in respect of a member of the new scheme from the date section 40B(4) ceases to apply to the member as if the member commenced to be a member of the new scheme on that date.
- (8) A member of the new scheme who is not a casual employee may subject to such conditions as are determined by the Board apply in accordance with this section to terminate, change or reinstate his or her disability and death benefits cover.
- (9) An application-
- (a) must be in a form approved by the Board; and
 - (b) must be accompanied by any information required by the Board.
- (10) The Board may require a member of the new scheme to submit to any medical examinations that the Board considers appropriate.
- (11) The Board may obtain any evaluation of any medical examinations or other information provided as the Board considers appropriate.
- (12) The Board may-
- (a) approve an application; or
 - (b) approve an application subject to any variations the Board considers appropriate; or

Exhibit 1: Relevant Provisions of the 1988 Act

- (c) in the case of an application to change or reinstate the level of cover, refuse the application on the ground that the applicant has failed to pass a medical examination or has not complied with any requirement made by the Board; or
 - (d) in the case of an application to terminate, change or reinstate the level of cover, refuse the application on any other ground that it considers appropriate.
- (13) If the Board approves an application (with or without variations) the Board must determine the day as from which disability and death benefits cover is to be terminated, changed or reinstated.
- (14) If the Board refuses an application the Board must advise the applicant of the refusal.

40FA. Casual employees--disability and death cover

- (1) The Board must as soon as possible after the commencement of section 4 of the **Superannuation Acts (General Amendment) Act 1995** make a determination as to whether or not to provide disability and death benefits cover for members of the new scheme who are casual employees.
- (2) If the Board determines under sub-section (1) not to provide disability and death benefits cover for casual employees, the Board may subsequently determine that the Board will provide disability and death benefits cover.
- (3) If the Board determines to provide disability and death benefits cover for casual employees, sub-sections (4) to (14) of section 40F apply with the following modifications-
- (a) as if in sub-section (8)-
 - (i) for "is not" there were substituted "is";
 - (ii) after "to" (where secondly occurring) there were inserted "obtain disability and death benefits cover or to";
 - (b) in sub-section (12)(c) after "application to" there were inserted "obtain cover or to";
 - (c) in sub-section (12)(d) after "application to" there were inserted "obtain cover or to";
 - (d) in sub-section (13) after "cover" there were inserted "is to commence or".

40G. Disability and death insurance

- (1) The Board must if it is reasonably possible enter into a contract of insurance in respect of the total amount of the member's disability and death benefits cover in force under section 40F on terms and conditions acceptable to the Board.
- (2) The terms and conditions of the contract of insurance must include a definition of "disability" which is substantially the same as paragraph (b) of the definition of disability in section 40A.
- (3) The Board must determine the proportion of the amount of the premiums paid under sub-section (1) which is to be debited to a member's account.
- (4) At any time before the payment of a benefit to or in respect of a member under section 40L(1)(b), the Board may reduce that member's disability and death cover or impose terms and conditions on that cover having regard to-
- (a) any failure to obtain insurance under sub-section (1) in respect of the whole of the member's disability and death benefits cover; and

Exhibit 1: Relevant Provisions of the 1988 Act

- (b) any terms and conditions imposed by the relevant insurer in respect of insurance secured by the Board under sub-section (1); and
- (c) subject to section 40H, the advice of an actuary in respect of the amount held in the Disability and Death Benefits Reserve.

40H. Disability and Death Benefits Reserve

- (1) The Board may establish and maintain within the Fund a Disability and Death Benefits Reserve.
- (2) The Board must determine the amounts to be paid into the Disability and Death Benefits Reserve from time to time on the advice of an actuary.
- (3) The Board must determine the proportion of the amount paid under sub-section (2) which is to be debited to a member's account.
- (4) No amount is payable from the Disability and Death Benefits Reserve in respect of a disability which the Board determines to have been deliberately inflicted or incurred for the purpose of obtaining a benefit from the Fund.
- (5) Subject to section 40G(4) and sub-section (4), if a benefit becomes payable to or in respect of a member under section 40L(1)(b), the Board must debit to the Disability and Death Benefits Reserve the amount by which the amount of the member's disability and death benefits cover exceeds the amount of insurance secured in respect of that benefit under an insurance contract entered into under section 40G.
- (6) The Board must apply the amount debited to the Disability and Death Benefits Reserve under sub-section (5) towards the benefit payable under section 40L(1)(b).

40HA. Beneficiary must make election

- (1) In this section-

"beneficiary" means a person who is entitled under this Act to a lump sum payment (other than a deferred benefit until it becomes payable in accordance with this Act or a death benefit);

- (2) A person who on or after 5 December 1995 becomes a beneficiary, must within 14 days of becoming entitled to a lump sum payment elect in writing to the Board in accordance with sub-section (3).
- (3) An election may provide-
 - (a) in the case of a person referred to in sub-section (2)-
 - (i) for all or part of the lump sum payment to be credited to an account established under section 40HB; or
 - (ii) for the lump sum payment to be paid to a complying superannuation fund; or
 - (iii) for the lump sum payment after deduction of any income tax payable on the lump sum to be paid to that person or to his or her legal personal representative.
- (4) If a beneficiary fails to make an election under sub-section (2), he or she is deemed to have made an election under sub-section (3)(b)(i).

40HB. Separate accounts

Exhibit 1: Relevant Provisions of the 1988 Act

- (1) The Board must establish and maintain within the Fund as part of HOSFUND a separate account for each beneficiary who makes an election under section 40HA(3)(b)(i).
- (2) The Board must credit to the separate account-
 - (a) in the case of an election under section 40HA(3)(b)(i), the amount referred to in that section after deduction of any income tax payable on the benefit; and
 - (b) any net earnings calculated on the basis of the net earning rate of the Fund or an investment fund; and
 - (c) any amounts transferred from another complying superannuation scheme or arrangement.
- (3) The Board must debit to the separate account-
 - (a) an amount determined by the Board in respect of management and administration costs incurred by the Board in the administration of the new scheme; and
 - (b) any net loss calculated on the basis of the net earning rate of the Fund or an investment fund; and
 - (c) any amounts transferred to another complying superannuation scheme or arrangement; and
 - (d) any other amount payable by the member.

40I. Investment funds

- (1) The Board may establish special arrangements within the new scheme to be called investment funds.
- (2) The Board may, with the consent of a member of the new scheme or a beneficiary, treat the whole or part of a member's account or beneficiary's account as forming part of an investment fund.
- (3) The Board may allow a member of the new scheme or a beneficiary to elect, at such time and on such terms as the Board determines, to withdraw the whole or part of a member's account or beneficiary's account from an investment fund and to treat the whole or part of the same as forming part of the new scheme or a different investment fund.
- (4) If any part of a member's or beneficiary's account balance is treated as forming part of an investment fund, the adjustment to the member's or beneficiary's account balance under section 40J must have regard to that particular investment.

40J. Net earning rate

- (1) Subject to sub-section (2), the Board must at the end of such periods as it determines increase or decrease the balance in each member's or beneficiary's account by the net earning rate of the new scheme during the relevant period.
- (2) If the whole or part of the balance of a member's or beneficiary's account comprised a particular investment fund during the relevant period the whole or part of the balance of the member's or beneficiary's account must be increased or decreased by the net earning rate of the particular investment fund during the relevant period.

Exhibit 1: Relevant Provisions of the 1988 Act

- (3) For the purpose of calculating and paying benefits under this Part, the Board may from time to time determine an interim net earning rate having regard to the expected net earning rate of the new scheme or particular investment fund during the relevant period.

40K. Amount and payment of benefits

- (1) Except where a benefit is payable under section 40L or as otherwise provided by this Act, a benefit payable to or in respect of a member of the new scheme under this Part is an amount equal to the balance of the member's account at the time the benefit is paid.
- (2) The benefit is payable in accordance with any specified standards.
- (3) Subject to sub-sections (2) and (3A), the benefit is payable at the earlier of-
 - (a) on the request of the member of the new scheme at any time after ceasing to be employed by a participating employer; or
 - (b) the attainment by the member of the new scheme of the age of 65 years.
- (3A) The benefit is payable as soon as practicable after section 40B(3B) applies.
- (4) The whole of the balance of a beneficiary's account must be withdrawn as a single amount by the beneficiary or his or her legal personal representative by application to the Board in a form approved by the Board upon the death of the beneficiary.
- (5) Subject to sub-section (4), a beneficiary may subject to such terms and conditions as are determined by the Board withdraw part or the whole of the balance of a beneficiary's account by application to the Board in a form approved by the Board.

40L. Amount and payment of disability or death benefits

- (1) Subject to sub-section (2) and section 40M, in the case of the disability or death of a member the benefit is to be equal to-
 - (a) the member's account balance at the time the benefit is paid; and
 - (b) where the member died or became disabled while disability and death benefits cover for him or her under section 40F was in force, the amount of any insurance proceeds received by the Board under an insurance contract entered into under section 40G, any amount applied from the Disability and Death Benefits Reserve under section 40H(6) and interest on the basis determined by the Board in respect of the period up to the time the benefit is paid.
- (2) A disability benefit is payable to the member.
- (3) A death benefit in respect of a member is payable to such one or more of the member's dependants and legal personal representatives and in such proportions as the Board in its absolute discretion determines.

40M. Application for disability benefits

- (1) An application for a disability benefit must be made to the Board by or on behalf of a member of the new scheme in a form approved by the Board.
- (2) An application for that portion of a disability benefit provided for in section 40L(1)(b) can only be made-
 - (a) during the period of 6 months immediately after-

Exhibit 1: Relevant Provisions of the 1988 Act

- (i) the member of the new scheme ceases to be an employee of a participating employer; or
 - (ii) section 40F(6)(b) ceases to apply; or
 - (b) if the Board considers that there are special and exceptional circumstances which have prevented an application being made by or on behalf of a member within the period specified in paragraph (a), any longer period determined by the Board.(3) The applicant may provide medical evidence to the Board in support of the application.
- (3) The Board is to determine the question as to whether a disability benefit is payable after considering among other things medical reports from such legally qualified medical practitioners as the Board considers appropriate.
- (4) The Board may appoint a legally qualified medical practitioner who has not given a medical report under sub-section (4)-
- (a) to advise the Board in respect of the application; and
 - (b) to attend the meeting of the Board at which the application is considered.
- (5) If the Board determines not to pay a disability benefit to a member of the new scheme, the member has the right to require the Board to review its determination and obtain a further medical report from-
- (a) a legally qualified medical practitioner mutually agreed upon by the member and the Board; or
 - (b) if the member and the Board do not agree, a legally qualified medical practitioner appointed by the Minister.

40N. Transfer of preserved benefit

- (1) If a benefit under this Part is required by the specified standards to be preserved and a participating employer has certified in writing to the Board in accordance with section 40B(4), the member of the new scheme entitled to the benefit is entitled to have the amount of preserved benefit transferred to another complying superannuation fund and may apply to the Board to make the transfer.
- (2) Subject to section 56A, the Board must transfer that amount to that other complying superannuation fund.

40O. Transfer to or from new scheme

- (1) The Board may, with the consent of a member of the new scheme or beneficiary, transfer the member of the new scheme or beneficiary to another complying superannuation fund.
- (2) The Board must determine the assets that are to be transferred from the new scheme and the terms and conditions that are to apply to the transfer as a result of a transfer of a member or beneficiary under sub-section (1).
- (3) The Board may accept on such terms and conditions as the Board determines the transfer to the new scheme of a member or other beneficiary of another complying superannuation fund.

40P. Transfer of benefits to other fund

- (1) If a member of the new scheme or beneficiary-

Exhibit 1: Relevant Provisions of the 1988 Act

- (a) is entitled to a benefit or part of a benefit under this Part which is not required by the specified standards to be preserved; and
- (b) is a member, or has applied to become a member, of another complying superannuation fund-

the member or beneficiary is entitled to have the amount of that benefit or that part of that benefit transferred to that complying superannuation fund and may apply to the Board to make the transfer.

- (2) Subject to section 56A, the Board must transfer that amount to that other complying superannuation fund.

Exhibit 2: Relevant Provisions of the 1965 Act

Section 28A:

A person-

- (a) who is not an employee of a participating institution; and
- (b) to whom amounts are payable under this Act; and
- (c) who is entitled to weekly payments of compensation under the Accident Compensation Act 1985-

must make contributions to the Board of-

- (d) the per centum of the current equivalent of the salary on retirement of the person that would have been payable by him or her under sections 30(1), 33(1), 35B and 35ZF; or
 - (e) one half of the amounts payable to the person under this Act-
- whichever is the less, and the Board must deduct those contributions from the amounts payable under this Act.

Section 30(4)(b)&(c):

A contributor who is absent on leave without pay may in respect of the period for which the leave is granted elect-

- (a) to pay contributions at half the rate of the contribution which would be payable by the contributor if he had not taken leave and had continued to work; or
- (b) to pay contributions at three and one half times the rate of contributions which would be payable by him if he had not taken the leave and had continued to work.

Section 35B:

- (1) This Part shall apply to and in relation to every person who becomes a contributor on or after the commencement of section 5 of the Hospitals Superannuation (Amendment) Act 1976.
- (2) A person to whom this Part applies shall be liable to make contributions, and entitled to have benefits paid to or in respect of him, under this Part as well as the preceding provisions of this Act.
- (3) No contributions shall be payable under this Part by a contributor whose weekly instalment of Fund salary does not exceed the minimum wage to the extent of at least One per centum thereof.
- (4) For each amount equal to One per centum of the minimum wage by which the weekly instalment of Fund salary of a contributor exceeds the minimum wage, the contributor shall be liable to pay as contributions under this Part an amount equal to 0.05 per centum of his Fund salary, but no contributor shall be liable to make contributions at a rate exceeding Two and one-half per centum of his Fund salary.

Section 35ZF:

- (1) Any person who is a contributor immediately before the commencement of section 5 of the Hospitals Superannuation (Amendment) Act 1976 may by election in writing delivered to the Board elect to have this Part apply to him.
- (2) Subject to sub-sections (3), (4) and (5), the benefits payable under this Part to or in respect of a person to whom this Part applies by virtue of an election made under sub-section (1) shall be determined as if he had been a contributor only for so long as he had been a pension contributor.
- (3) A person who becomes a contributor on or after the 1st day of July, 1976 and makes an election under sub-section (1) on or before the 30th day of June, 1977 shall be entitled to further elect in that election to have this Part apply to him on the basis that he shall be deemed to have been a pension contributor before the commencement of section 5 of the Hospitals Superannuation (Amendment) Act 1976 for a period equal to the number of complete years in the sum of-
 - (a) the period immediately preceding the said commencement during which he was a contributor; and
 - (b) one-half of any period preceding the period referred to in paragraph (a) and during which he was employed by a participating institution other than-
 - (i) a period which ended more than six months (and whether the period of six months is wholly before or partly before and partly after the 1st day of January, 1977) before the next succeeding date when he was employed by a participating institution;
 - (ii) any period prior to the period referred to in sub-paragraph (i).
- (3A) Sub-section (3) as amended by the Hospitals Superannuation (Amendment) Act 1977 shall be deemed to have come into operation at the commencement of section 5 of the Hospitals Superannuation (Amendment) Act 1976 and a further election made in accordance with sub-section (3) as in force prior to the commencement of the Hospitals Superannuation (Amendment) Act 1977 shall be deemed to have been a further election for the purposes of sub-section (3) as hereby deemed to have come into operation.
- (4) A person who became a contributor before the 1st day of July, 1976 and makes an election under sub-section (1) on or before the 30th day of June, 1977 shall be entitled to further elect in that election to have this Part apply to him on the basis that he shall be deemed to have been a pension contributor for a period equal to the number of complete years in the sum of-
 - (a) the period immediately preceding the said commencement during which he was a contributor; and
 - (b) any other period preceding the period referred to in paragraph (a) during which he was employed by a participating institution other than-
 - (i) a period which ended more than six months before the next succeeding date on which he was employed by a participating institution;
 - (ii) any period prior to the period referred to in sub-paragraph (i).

- (4A) Sub-section (4) as amended by the Hospitals Superannuation (Amendment) Act 1977 shall be deemed to have come into operation on the commencement of section 5 of the Hospitals Superannuation (Amendment) Act 1976 and a further election made in accordance with sub-section (4) as in force prior to the commencement of the Hospitals Superannuation (Amendment) Act 1977 shall be deemed to have been a further election for the purposes of the sub-section as hereby deemed to have come into operation.
- (5) A person making a further election under sub-section (3) or (4) shall be liable to pay additional contributions at the rate set out in the following table whenever he is liable to make contributions under this Part::

Number of complete years allowed	Percentage of salary %
1 – 5	Nil
6 – 10	0.2
11 – 15	0.4
16 – 20	0.6
21 – 25	0.8
26- 30	1.0

First State Superannuation **Scheme**

Exhibit 3: Relevant Provisions of the 1985 Regulations

Regulation 15(1)(e): “Payment to female member on marriage”

Where a female member or a former female member was contributing to the Fund prior to 1 September 1985 and marries during membership or within three months of ceasing to be a member, the amount of the benefit payable to her as a result of her resignation shall be determined pursuant to Rule 7 of Schedule 1.

Regulation 16(e): “Payment to female member on marriage”

Where a female member or a former female member was contributing to the Fund prior to 1 September 1985 and marries during membership or within three months of ceasing to be a member, the amount of the benefit payable to her as a result of her resignation shall be determined pursuant to Rule 7 of Schedule 2.

Regulation 17(d): “Payment to female on marriage”

Where a female member or a former female member was contributing to the Fund prior to 1 September 1985 and marries during membership or within three months of ceasing to be a member, the amount of the benefit payable to her as a result of her resignation shall be determined pursuant to Rule 3 of Schedule 3.