

# Consolidated Trust Deed

As at 1 November 2021

## **Incorporating:**

- Deed of Amendment No.41 (amendments to clauses 26A, 32.9 and 33.2 footnoted only due to delayed commencement)
- Deed of Amendment No.42
- Deed of Amendment No.43
- Deed of Amendment No.44
- Deed of Amendment No.45
- Deed of Amendment No.46
- Deed of Amendment No.47
- Deed of Amendment No.48
- Deed of Amendment No.49

**UNISUPER**

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## Interpretation

### 1. DEFINITIONS AND INTERPRETATION

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#### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**Accrued Benefit Index** means the actuarial value of accrued benefits ratio calculated by the Actuary for Division A and Division B in accordance with the Professional Standard.

**Accruing Member** has the meaning given to those words in Division E of this Deed.

**Accruing Service** has the meaning given to those words in Division E of this Deed.

**ACF or Average Contribution Factor** means in relation to a Member of Division A or Division B who has elected to reduce their Member Contribution rate under Clause 32.9 the time weighted average of the Member's Contribution Factors.

**Actuarial Investigation and Valuation** means an annual investigation and valuation of UniSuper by the Actuary, or any other investigation and valuation of UniSuper by the Actuary as determined to be relevant for the purposes of Clause 34 or Clause E.7 (as applicable) by resolution of the Trustee.

**Actuary** means the actuary or acting actuary for UniSuper for the time being appointed pursuant to Clause 23.2.

**Administration Amount** means, in relation to an Employer, an amount determined by the Trustee having regard to:

- (a) the number of Members employed by the Employer; and
- (b) the administration services provided to UniSuper by the Employer.

**Appropriated Sum** has the meaning given in Clause 28.2.

**Approved Fund** means:

- (a) a superannuation fund;
- (b) a pension scheme;
- (c) an approved deposit fund;
- (d) a deferred annuity fund; or
- (e) another similar fund or scheme,

which has been approved by the Trustee for the purposes of UniSuper.

**ASF or Average Service Fraction** means, in relation to a Member of Division A or Division B, the time weighted average of a Member's Service Fractions during their Contributing Service.

**Auditor** means the auditor of UniSuper appointed pursuant to Clause 7 for the time being.

**Australian Financial Complaints Authority** means the authority established by the Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018 of the Commonwealth of Australia.

**Benefit Amount** in relation to a Member means an amount equal to the lump sum benefit which would have been payable to the Member had the Member ceased to be in the Service of the Employer at the date of calculation. For the purposes of Clause 38.1, Benefit Amount does not include any defined benefit component within the meaning of Superannuation Law.

**Benefit Salary** means, in relation to a Member of Division A or Division B, a Member's average annual Equivalent Full-Time Indexed Salary:

- (a) for the last 3 years of Service as a Contributing Member before the date of calculation; or
- (b) during the period of Service as a Contributing Member if that period is less than 3 years.

**Benefit Service** means, in relation to a Member of Division A or Division B, the period of a Member's Contributing Service plus:

- (a) in the case of a Contributing Member who dies, the period from the date of their death to the Member's 60th birthday; and
- (b) in the case of a Contributing Member who suffers Disablement, the period from the date of their Disablement to the Member's 65th birthday, expressed in years and days.

**Binding Nomination** means a nomination which:

- (a) has been given to the Trustee by a Member;
- (b) is in a form acceptable to the Trustee, with such form indicating that the nomination lapses and ceases to be binding after the expiration of the period of time fixed by SIS;
- (c) requires the Trustee to pay the Member's benefits to persons nominated in the nomination if the Member dies (the nominees must be Dependents or legal personal representatives of the Member); and
- (d) complies with Superannuation Law and any conditions specified by the Trustee from time to time.

**Child** in relation to a Member includes a child, an adopted child, a foster child, a ward or child within the meaning of the Family Law Act 1975 of the Member or of the Spouse of the Member.

**Consultative Committee** means the committee constituted in accordance with Clause 9.

**Contributing Member** means a Member of Division A or Division B or a Division C14 Member who is for the time being contributing to UniSuper under Clause 32 in respect of benefits under Divisions A, B or C or is relieved of that obligation under Clause 32.7 or Clause 32.9.

**Contributing Service** means the period of a Member's Service as a Contributing Member to Division A or Division B, plus any period to be counted as Contributing Service pursuant to the Deed, expressed in years and days.

**Contribution Factor** means at any particular time in relation to a Member of Division A or Division B who has selected a reduced Member contribution rate under Clause 32.9 at that time a factor determined in accordance with the following table:

- (a) where the Employer contribution rate to UniSuper in respect of the Member is 17%:

<b>Member Contribution Rate (after tax)</b>	<b>Contribution factor</b>
0%	74.5%
1%	80.2%
2%	86.0%
3%	91.7%
4%	97.4%
4.45%	100.0%

- (b) where the Employer contribution rate to UniSuper in respect of the Member is 14%:

<b>Member Contribution Rate (after tax)</b>	<b>Contribution Factor</b>
2.55%	74.5%
3.55%	80.2%
4.55%	86.0%
5.55%	91.7%
6.55%	97.4%
7.00%	100%

**CPI Index** means the all groups figure of the consumer price index for the weighted average of the eight capital cities published by the Australian Statistician unless:

- (a) such index ceases to be published; or
- (b) in the opinion of the Trustee, such index no longer appropriately reflects general price increases,

in which case CPI Index will mean such other index reflecting general price increases selected by the Trustee. The operative CPI Index at any date will be that last adopted by the Trustee. The Trustee will adopt the CPI Index at the expiration of two months after the end of the quarter to which it relates.

**Deed** means the Deed establishing UniSuper as amended from time to time and includes any Division.

**Deferred Benefit Amount** in relation to a Member of Division A or Division B on the date of calculation means the amount that would have been payable had the Member entitled to deferred benefits under Clause 35.2 ceased to be in the Service of the Employer on the date of calculation after:

- (a) taking into account the matters referred to in Clause 35.2(b) in respect of the period during which the Member was not a Contributing Member; and
- (b) adjusting the Member's Benefit Salary for the purposes of calculation having regard to any increase in the CPI Index as specified in the Regulations.

**Defined Benefit Division** means Division A, Division B and Division E of UniSuper, either together or each separately, as the context requires.

**Dependent Child** means a Child who, in the opinion of the Trustee, is substantially dependent upon a deceased Member of Division A or Division B at the date of the Member's death and who is:

- (a) under school age;
- (b) genuinely pursuing a regular course of school, college or university education on a full time day attendance basis, such course being approved for this purpose by the Trustee; or
- (c) a Disabled Child.

**Dependants** means:

- (a) the Spouse or surviving Spouse and each Child;
- (b) any person in an interdependent relationship (as defined under Superannuation Law) with the Member at the date of the Member's death; and
- (c) any other persons (irrespective of age) who in the opinion of the Trustee are or were in any way financially dependent upon the Member at the date of the Member's death.

**Directors** means the directors for the time being of the Trustee acting as a Board.

**Disabled Child** means a Child of a Member of Division A or Division B who, in the opinion of the Trustee, is substantially dependent on the Member and is handicapped or disabled either mentally or physically to such an extent that they are unable to adequately maintain themselves and who was so dependent and handicapped or disabled at the time the member became entitled to a Disablement benefit or at the date of the Member's death as the case may require.

**Disablement** means, in relation to:

- (a) a Member of Division A or Division B, a state of health which in the opinion of the Trustee renders a Member permanently incapable of performing duties or engaging in employment for which they are reasonably qualified by training and experience provided that the Trustee is satisfied that the state of health is not due to or induced by any wilful action on the part of the Member to obtain a benefit;
- (b) a Member of Division C or Division D, has the same meaning as is given to that word (or what the Trustee considers to be the corresponding word or words, such as without limitation 'total and permanent disability' or 'permanent incapacity', but for the avoidance of doubt does not include 'temporary incapacity') in any policy of insurance effected by the Trustee; and
- (c) a Member of Division E, has the meaning given to the term 'permanent incapacity' under Superannuation Law,

and **Disabled** has a corresponding meaning.

**Division C14 Member** means a Member of Division C who is employed within a Superannuable Classification.

**Division C Account** has the meaning given to those words in Division C of this Deed.

**Division D Account** has the meaning given to those words in Division D of this Deed.

**Division E Benefit Salary** has the meaning given to those words in Division E of this Deed.

**Division E Service Fraction** has the meaning given to those words in Division E of this Deed.

**Division E Spouse Pension** has the meaning given to those words in Division E of this Deed.

**Division F Pension Account** has the meaning given to those words in Division F of this Deed.

**Eligible Institution** means a body corporate or unincorporate which is:

- (a) a university or a university college;
- (b) a body which in the opinion of the Trustee is in any way associated with a body referred to in paragraph (a);
- (c) a body otherwise engaged in higher education (or any related or incidental purpose which is approved by the Trustee for participation in UniSuper); or
- (d) the Trustee or any related body corporate of the Trustee as an employer.

**Employee** means a person who, for the time being, is employed by an Employer.

**Employer** means:

- (a) an Eligible Institution which has been approved by the Trustee for participation in the Scheme and entered into an arrangement with the Trustee pursuant to Clause 27; and
- (b) in relation to a particular Employee, the Employer employing them for the time being.

**Equivalent Full-Time Indexed Salary** for any year means a Member's Equivalent Full-Time Salary for that year increased in proportion to any increase in the CPI Index from the last day of that year up to the date of calculation.

**Equivalent Full-Time Salary** means:

- (a) in relation to a Member who is not a Fractional Time Member, the Member's Salary; and
- (b) in relation to a Fractional Time Member, the Salary which the Member would have been receiving if they were not a Fractional Time Member,

excluding a Temporary Allowance which is included in the Member's Salary.

**Fractional Time Member** means a Member who for the time being is employed on a fractional time basis.

**Fractional Time Service** means a period of Contributing Service or Accruing Service (as the case may be) while in regular employment by an Employer which is deemed by that Employer to be fractional time employment.

**Full Time Service** means a period of Contributing Service or Accruing Service (as the case may be) which is not Fractional Time Service.

**Income Protection Benefit** means in respect of Divisions C and D, the proceeds of insurance payable in relation to the Temporary Incapacity of a Member received by the Trustee from the Insurer in accordance with the particular amount of cover applicable to the relevant Member under a policy of insurance effected by the Trustee.

**Insured Benefit** means in respect of Divisions C and D, the proceeds of insurance payable in relation to the death, Disablement or Terminal Medical Condition (as applicable) of a Member received by the Trustee from the Insurer in respect of a Member under a policy of insurance effected by the Trustee.

**Insurer** means any entity which carries on in Australia a business of issuing policies or contracts insuring the payment of money on death, disability, injury, accident or sickness (either alone or with other businesses).

**Investment Choice Charge** means an amount calculated in accordance with the Regulations which is charged to a Member who gives or is required to give directions to the Trustee in relation to investment strategies pursuant to Clause 26.

**Member** means a person who has been admitted to membership of UniSuper and:

- (a) is entitled to receive any present or future benefit; or

- (b) but for commutation pursuant to Clause A.11, would have been in receipt of a pension.

**MySuper Member** means a Member in respect of whom the Trustee must comply with the MySuper Requirements.

**MySuper Product** has the same meaning as "MySuper product" under SIS.

**MySuper Requirements** means any requirement applying to the Trustee under Superannuation Law in relation to amounts within UniSuper that are MySuper Products.

**MySuper Rules** means any written rule, guideline, business policy or requirement made or established by the Trustee in respect of UniSuper or a division or divisions of UniSuper in relation to:

- (a) compliance with the MySuper Requirements; or
- (b) a matter or matters concerning the MySuper Product which is or are permissible under SIS,

including but not limited to –

- (c) the investment strategy or strategies adopted in relation to assets of UniSuper which correspond to MySuper Members;
- (d) the provision of options, benefits and facilities to or in respect of MySuper Members;
- (e) the attribution of any amounts (whether positive or negative) to or in respect of MySuper Members;
- (f) the process of attributing amounts (whether positive or negative) to or in respect of MySuper Members;
- (g) the replacement of any beneficial interest of a MySuper Member with another beneficial interest in UniSuper; and
- (h) any prohibition on the extent to which assets held in respect of a MySuper Member may be used for a particular purpose.

**Non-Lapsing Binding Nomination** means a nomination which:

- (a) has been given to the Trustee by a Member;
- (b) is in a form acceptable to the Trustee, with such form indicating that the nomination does not lapse or cease to be binding after the expiration of the period of time fixed by SIS;
- (c) requires the Trustee to pay the Member's benefit to persons nominated in the nomination if the Member dies (the nominees must be Dependents or legal personal representatives of the Member); and
- (d) complies with any conditions specified by the Trustee from time to time, including any conditions in the Regulations.

**Normal Retirement Date** means:



- (a) the date on which a Member attains the age of 65 years; or
- (b) such later date upon which the Member's employment determines in accordance with their conditions of employment (being not later than the end of the calendar year in which the Member attains the age of 65 years).

**Option Period** in relation to a Member of Division A or Division B for the purposes of Clause 35 means the period commencing on the date the Member ceases to be a Contributing Member and ending on the later of:

- (a) 90 days after the Member ceases to be a Contributing Member; and
- (b) 30 days, or such other period as may be specified in the Regulations, after notification by the Trustee to the Member.

**Prescribed Law** means a law of the State or Territory prescribed for the purposes of section 2E of the Acts Interpretation Act 1901.

**Preservation Age** means the earliest age at which preserved benefits may be cashed under Superannuation Law.

**Preserved Component** means that part of any amount or benefit under this Deed (if any) which, in the Trustee's opinion, must be preserved under:

- (a) Superannuation Law; or
- (b) any agreement or undertaking entered into or given by the Trustee pursuant to Clause 31.2.

**Professional Standard** means, as determined by the Actuary, the professional standard or standards relevant to the Actuarial Investigation and Valuation issued by the Institute of Actuaries of Australia (or any successor body regulating the actuarial profession).

**Regulations** means the regulations prescribed from time to time by the Trustee under Clause 19.

**Retiring Institution** has the meaning given by Clause 28.1.

**Salary** means the rate of salary or remuneration payable to the Member expressed as an annual rate. Salary includes:

- (a) any allowance which is taken into account for the purpose of calculating superannuation entitlements; and
- (b) payments (including but not limited to workers' compensation or similar payments) which are paid to or in respect of the Member under legislation or an industrial agreement or award or otherwise instead of salary.

Salary does not include overtime and other payments or emoluments of a special nature.

In the case of doubt or difference, the amount thereof shall be as declared by the Trustee provided that the Trustee may disregard any variation in the level of salary or change in the method of determining the salary of a Member if the Trustee is of the opinion that the variation is abnormal and would result in a significant change to the benefits provided under UniSuper in respect of the Member.

**Secretary** means the secretary or the acting secretary of UniSuper for the time being appointed by the Trustee pursuant to Clause 11.

**Service** means, in relation to a Member, continuous employment with one or more Employers since last becoming a Member.

**Service Fraction** means, in relation to a Member of Division A or Division B:

- (a) in relation to a Fractional Time Member, that fraction of full-time service which the Employer deems to be Fractional Time Service and which, unless otherwise agreed between the Employer and the Trustee, will be calculated by comparing the Member's Salary during any period of Fractional Time Service with the Equivalent Full-Time Salary;
- (b) in relation to a Contributing Member who is not a Fractional Time Member:
  - (i) one; or
  - (ii) where a Member's Salary includes a Temporary Allowance, a fraction which is greater than one and which is determined by increasing the fraction of one by the proportion that the Temporary Allowance bears to the Member's Equivalent Full-Time Salary; and
- (c) in relation to a Member who is not a Contributing Member, zero,

and, unless expressly provided otherwise in this Deed, the last Service Fraction at which a Member was employed will continue to be the Member's Service Fraction.

**SIS** means the Superannuation Industry (Supervision) Act 1993 of the Commonwealth of Australia and any regulations prescribed under it.

**Spouse** means:

- (a) in relation to a Member who is living:
  - (i) a person who is legally married to the Member;
  - (ii) a person (whether of the same or a different sex) with whom the Member is in a relationship that is registered under a Prescribed Law as a prescribed kind of relationship; and
  - (iii) a person who, although not legally married to the Member, lives with the Member on a genuine domestic basis in a relationship as a couple within the meaning of Superannuation Law; and
- (b) in relation to a Member who has died:
  - (i) a person who was legally married to the Member at the date of death;
  - (ii) a person (whether of the same or a different sex) with whom the Member was in a relationship at the date of death that was registered under a Prescribed Law as a prescribed kind of relationship; and
  - (iii) a person who, although not legally married to the Member lived with the Member at the date of death on a genuine domestic basis in a relationship as a couple within the meaning of Superannuation Law.

**Superannuable Classification** means a classification described in the terms of participation between the Trustee and an Employer, being a classification (however described) that entitles a Member to participate in a Defined Benefit Division. (Even if a Member elects to participate in Division C instead of a Defined Benefit Division, that election will be deemed to not alter a Member's Superannuable Classification for the purposes of this definition.)

**Superannuation Authority** means any person or body appointed under any Superannuation Law with power or authority to:

- (a) exercise any discretion;
- (b) give any consent or approval; or
- (c) give effect to and administer Superannuation Law.

**Superannuation Complaints Tribunal** means the tribunal established by the Superannuation (Resolution of Complaints) Act 1993 of the Commonwealth of Australia.

**Superannuation Law** means requirements contained in any act, regulation, statutory instrument, ruling or determination which UniSuper or the Trustee must comply with or satisfy (or ought to comply with or satisfy, in the opinion of the Trustee) in order:

- (a) for UniSuper to be a complying superannuation fund for the purposes of the Tax Act;
- (b) to secure or better secure any concession in respect of any tax or other government impost granted or available to UniSuper; or
- (c) to avoid what the Trustee may consider to be a relevant penalty, detriment or disadvantage,

and includes SIS, the Corporations Act 2001, the Family Law Act 1975 and the regulations made under such legislation.

**Tax Act** means the Income Tax Assessment Act 1936 or the Income Tax Assessment Act 1997.

**Taxation Amount** means the amount (if any) determined by the Trustee as representing:

- (a) any tax, levy, surcharge, impost or other charge (however described); and
- (b) any advance instalment and similar or associated amounts;

which, in the Trustee's opinion, have been (or may be) assessed against UniSuper in respect of a Member and in respect of which no adjustment has been made under other provisions of the Deed.

**Temporary Allowance** means, in relation to a Member, any allowance which the Trustee determines is temporary in nature including:

- (a) any allowance paid or payable by or on behalf of the Employer to the Member for a period of less than five years; and

- (b) any allowance paid or payable by or on behalf of the Employer in connection with an agreement to terminate the employment of the Member at a particular time.

**Temporary Incapacity** means in relation to:

- (a) a Member of Division A or Division B, a state of health which, in the opinion of the Trustee, renders a Member unable to perform their own duties or any other duties for which they are reasonably qualified by training and experience and which are available at the Member's Employer where:
  - (i) the Member has been absent from employment through injury or illness for the Waiting Period immediately prior to the date of making a claim for a benefit on the grounds of Temporary Incapacity; and
  - (ii) the Trustee is satisfied that the state of health is not due to or induced by any wilful action on the part of the Member to obtain a benefit;
- (b) a Member of Division C or Division D, has the same meaning as is given to those words (or what the Trustee considers to be the corresponding word or words) in any policy of insurance effected by the Trustee.

**Terminal Medical Condition** means, in relation to:

- (a) a Member of Division A or Division B, a condition in relation to the Member where the Trustee is satisfied that the following circumstances exist:
  - (i) two registered medical practitioners have certified separately that the person suffers from an illness, or has incurred an injury, where it is likely to result in the death of that person within a period (the Certification Period) that ends not more than 12 months after date of the certification;
  - (ii) at least one of the registered medical practitioners is a specialist practising in the area related to the illness or injury suffered by the person;
  - (iii) for each of the certificates, the Certification Period has not ended;
- (b) a Member of Division C or Division D, has the same meaning as is given to those words (or what the Trustee considers to be the corresponding word or words) in any policy of insurance effected by the Trustee; and
- (c) a Member of Division E, has the same meaning as is given to those words under Superannuation Law.

**Transfer Value** means the amount representing the value of the money or other assets received by the Trustee in respect of a Member pursuant to Clause 31.1.

**Trustee** means the trustee for the time being of UniSuper appointed in accordance with this Deed.

**UniSuper** means the superannuation fund established and maintained in accordance with the Deed.

**Vested Benefit Index** means the vested benefit ratio calculated by the Actuary for Division A and Division B in accordance with the Professional Standard.

**Waiting Period** means, within a period of twelve consecutive months:

- (a) sixty working days, subject to the remainder of this clause;
- (b) in relation to a Member who, but for the injury or illness, would not be anticipated to work on a full-time basis, a pro-rated number of days equivalent to a proportion of sixty working days determined by the Trustee, subject to the remainder of this clause;
- (c) for a Member whose claim involves an absence due to an illness or injury where the illness or injury first arose before 1 July 2019 or such other date determined by the Trustee, the lesser of:
  - (i) the number of days determined under paragraph (a) or (b) (as applicable); or
  - (ii) three months.

For the avoidance of doubt, paragraph (c) does not apply to any claim which had already been determined by the Trustee (in the affirmative or the negative) prior to the date referred to above.

## **1.2 Interpretation**

Headings are for convenience only and do not affect interpretation. In this Deed the following rules apply unless the context requires otherwise.

- (a) A reference to “amendment” includes additions, variations, modifications, deletions, repeals and alterations and “amend” will have a corresponding meaning.
- (b) The singular includes the plural and conversely.
- (c) The gender includes all genders.
- (d) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (e) Terms used in this Deed which are given a meaning by Superannuation Law, the Corporations Act or the Tax Act have that meaning unless the context otherwise requires.
- (f) A reference to a person, corporation, trust, partnership, institution, unincorporated body or other entity includes any of them.
- (g) A reference to a director or officer is a reference to a director or officer within the meaning of the Corporations Act.
- (h) A reference to a clause, paragraph, Division or Annexure is a reference to a clause or paragraph of, or a Division or Annexure to, this Deed.
- (i) A reference to a particular rule is a reference to a provision contained in the Rules regulating a particular Division.
- (j) A reference to an agreement or document (including without limitation a reference to this Deed) is to the agreement or document as amended, varied,

supplemented, novated or replaced except to the extent prohibited by this Agreement or that other agreement or document.

- (k) A reference to a power is a reference to a power, right, authority or discretion of any type and arising in any way (including formation of an opinion) and at any time.
- (l) A reference to a person includes their successors and permitted substitutes or assigns and, where applicable, the person's legal personal representatives.
- (m) A reference to legislation or a legislative provision includes regulations and other instruments issued under it and consolidations, amendments, re-enactments or replacements of any of them.
- (n) A reference to writing includes a facsimile transmission and any other means of reproducing words in a tangible form.
- (o) A reference to an application or notification to the Trustee is a reference to an application in the form and in the manner prescribed by the Trustee.
- (p) Subject to Superannuation Law and if approved by the Trustee, where a document is required to be signed by a person or persons, the document may be signed by the person by using an electronic method in accordance with the procedures (if any) determined by Trustee.

## **UniSuper – The Fund**

### **2. CONSTITUTION OF UNISUPER**

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#### **2.1 Establishment and commencement**

A superannuation fund known as UniSuper has been established by the Deed. The provisions of the Deed relating to membership, contributions and benefits came into operation on 1 January 1983.

#### **2.2 Assets of UniSuper**

The assets comprising UniSuper include:

- (a) all investments, cash and other assets transferred to the Trustee pursuant to the provisions of the Deed;
- (b) all contributions by Members;
- (c) all amounts contributed or paid by any Employer to the Trustee;
- (d) all amounts or assets transferred to UniSuper pursuant to the provisions of the Deed;
- (e) any grants or other gifts, donations, legacies or other benefactions from any source; and
- (f) income earned from the investments and assets of UniSuper, including income from the investment of those assets by the Trustee and any other profits, gains or accretions.

## **The Trustee and the Management of UniSuper**

### **3. ROLE AND QUALIFICATIONS OF THE TRUSTEE**

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#### **3.1 Eligibility**

The Trustee must be and remain a constitutional corporation.

#### **3.2 Compliance with Superannuation Law**

The Trustee must take such action as it considers necessary and appropriate to ensure that the Trustee is constituted in a manner which complies with Superannuation Law.

#### **3.3 Trustee to manage and administer UniSuper**

The general control, management and administration of UniSuper is vested in the Trustee which will administer UniSuper in accordance with the Deed.

#### **3.4 Power to appoint alternative trustee**

The Trustee may, with the consent of the Consultative Committee, appoint:

- (a) a new Trustee of UniSuper; and
- (b) a separate trustee in respect of certain assets of UniSuper which are designated by the Trustee as held for the benefit of a group or category of persons.

#### **3.5 Trustee's right to be reimbursed for costs of administration**

- (a) All expenses and costs which may be incurred in connection with the administration of UniSuper (including the administration amounts payable to Employers):
  - (i) may be paid out of the money and other assets constituting UniSuper; and
  - (ii) may be reimbursed to the Trustee to the extent that the Trustee has incurred such amounts.
- (b) The Trustee is entitled to be paid remuneration out of the money and other assets constituting UniSuper not exceeding the amount agreed between the Trustee and the Consultative Committee.

#### **3.6 Trustee may act by its Directors**

- (a) The Trustee may act by resolution of its Directors.
- (b) Any document of whatsoever nature will be sufficient to comply with the Deed if signed on behalf of the Trustee by:
  - (i) any two Directors; or
  - (ii) by any one Director and the Secretary.
- (c) A Director or other officer of the Trustee may be:

- (i) a Member; or
  - (ii) an Employee or officer of any Employer (including the Trustee), and will not be disqualified from exercising any power, authority or discretion vested in the Trustee by reason of their dual capacity.
- (d) The Trustee may at its discretion appoint officers and servants of UniSuper and may pay the remuneration and other expenses properly attributable to their employment out of UniSuper.

#### **4. MINUTES**

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The Trustee will ensure that minutes of all resolutions and proceedings of all meetings are kept.

#### **5. RECORDS AND STATISTICS**

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The Trustee will keep a complete record of all Members and all other matters necessary or expedient for the operation of UniSuper in accordance with any relevant requirements of Superannuation Law.

#### **6. BOOKS OF ACCOUNT AND REPORTS**

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##### **6.1 Obligation to keep accounts**

The Trustee will ensure that:

- (a) books of account are kept showing all dealings with UniSuper assets; and
- (b) an account and balance sheet in respect of UniSuper made up to 30 June in each year (or such other day as the Trustee determines) are prepared and audited by the Auditor.

##### **6.2 Distribution of accounts to Employers**

After the accounts and balance sheet of UniSuper have been audited, the Trustee will provide each Employer with:

- (a) a copy of the audited accounts and balance sheet;
- (b) a copy of the Auditor's report; and
- (c) a report of the Trustee containing the information required by Superannuation Law (if any).

Each Employer will keep copies of the accounts, balance sheet and reports available for inspection by its Employees.

#### **7. AUDITOR**

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The Trustee will appoint a suitably qualified person within the meaning of Superannuation Law as Auditor of UniSuper. The appointment may be on such terms as the Trustee thinks fit. The Trustee may remove any Auditor and appoint a replacement.



## **8. ACTUARIAL INVESTIGATION**

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The Trustee must require the Actuary to make an actuarial investigation and valuation of UniSuper at intervals of not more than 3 years. The Trustee, the Secretary and each Member must supply the Actuary with all information which the Actuary may require. The Actuary must give the Trustee a written report in relation to:

- (a) its investigation and valuation;
- (b) the financial position of UniSuper;
- (c) any other matters required under Superannuation Law; and
- (d) any other matters which the Trustee may require.

## **9. CONSULTATIVE COMMITTEE**

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### **9.1 Establishment of Consultative Committee**

There will be a Consultative Committee consisting of persons nominated, appointed or elected as follows:

- (a) in the case of an Employer with 750 or more Employees who are Members of the Defined Benefit Division or are Division C14 Members:
  - (i) two persons representing the Employer appointed by the controlling body of the Employer;
  - (ii) one person representing the academic staff of the Employer, being a person who is:
    - (A) a Member entitled to benefits under the Defined Benefit Division or is a Division C14 Member;
    - (B) a member of the academic staff of the Employer; and
    - (C) elected by such of the academic staff of the Employer who are Members;
  - (iii) one person representing the non-academic staff of the Employer, being a person who is:
    - (A) a Member entitled to benefits under the Defined Benefit Division or is a Division C14 Member;
    - (B) a member of the non-academic staff of the Employer; and
    - (C) elected by such of the non-academic staff of the Employer who are Members;
- (b) in the case of an Employer with more than 249 but less than 750 Employees who are Members of the Defined Benefit Division or are Division C14 Members:
  - (i) one person representing the Employer appointed by the controlling body of the Employer;

- (ii) subject to Clause 9.2, one person representing the academic or non-academic staff of the Employer, being a person who is:
  - (A) a Member entitled to benefits under the Defined Benefit Division or is a Division C14 Member;
  - (B) a member of the academic or non-academic (as the case may be) staff of the Employer; and
  - (C) elected by such of the staff of the Employer who are Members.

## **9.2 Trustee to direct Employers in relation to certain nominations**

For the purposes of Clause 9.1(b), the Trustee may direct an Employer as to whether the person to be nominated, appointed or elected is to represent the academic or non-academic staff of the Employer having regard to:

- (a) the composition of the Consultative Committee; and
- (b) the intention that, as near as practicable, one quarter of the membership is to represent the academic staff of Employers and one quarter is to represent the non-academic staff of Employers.

## **9.3 Determining the number of Employees who are Members**

For the purpose of determining the number of Employees who are Members in respect of a calendar year, the number of Employees who are Members of the Defined Benefit Division or a Division C14 Member at the preceding 30 June will be taken into account.

## **9.4 Term of office for Consultative Committee**

Subject to Clause 9.5, a person who has been elected to the Consultative Committee pursuant to Clause 9.1 (as opposed to appointed) will hold office until the conclusion of the election held on or about the fourth anniversary of the effective date of their most recent election to the Consultative Committee. Such a person will be eligible for re-election.

## **9.5 Ceasing to be a member of the Consultative Committee**

A person elected to the Consultative Committee pursuant to Clause 9.1 (as opposed to appointed) will cease to hold office if they:

- (a) retire from office by giving notice in writing to the Employer and the Trustee;
- (b) cease to be a Member;
- (c) cease to be a member of the academic staff or the non-academic staff (as the case may be); or
- (d) die.

## **9.6 Meetings of the Consultative Committee and quorum**

The Consultative Committee may determine the basis on which its meetings are to be conducted and the quorum for the transaction of business. Unless otherwise determined, a quorum for a meeting of the Consultative Committee will be 50% of the

total number of eligible representatives (including not less than 30% of the total number of eligible representatives of each of the classes of representatives referred to in Clause 9.1(a)).

#### **9.7 Functions of the Consultative Committee**

The functions of the Consultative Committee are as follows:

- (a) to advise and to make recommendations to the Trustee:
  - (i) on matters of difficulty in the implementation or application of the Deed;
  - (ii) on matters concerning the Deed; and
  - (iii) on any other matters on which the Trustee requires advice; and
- (b) to consider and, if thought fit, to give its consent in relation to any matter requiring its consent under the Deed.

#### **9.8 Alternates and Proxies**

Members of the Consultative Committee who are likely to be absent may, in accordance with procedures determined by the Consultative Committee, appoint:

- (a) an alternate to receive notices and papers concerning the business of the Consultative Committee and to attend at or vote on any matter or resolution before the Consultative Committee whether in meeting, by circular resolution or otherwise; and
- (b) a proxy to vote on any resolution before a meeting of the Consultative Committee.

### **10. POWER TO ESTABLISH COMMITTEES**

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- (a) The Trustee may appoint one or more committees to perform such duties as may be delegated or conferred by the Trustee at its discretion.
- (b) The members of any such committee may be removed from office by the Trustee at any time.
- (c) Any committee so appointed must conform with any directions which may be given by the Trustee.
- (d) The Trustee will not be liable for any breach of duty or other wrongful act of any committee or of any member of any committee.

### **11. POWER TO APPOINT SECRETARY**

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- (a) The Trustee may appoint any person as Secretary on such terms as it thinks fit and may remove the Secretary and appoint a replacement at any time.
- (b) The Secretary will perform such duties as the Trustee may direct.
- (c) The Trustee may appoint an acting Secretary:
  - (i) pending the appointment of a Secretary;

- (ii) during the absence of the Secretary; or
  - (iii) if the Secretary is unable to act.
- (d) The receipt of the Trustee, or the receipt of the Secretary given on the Trustee's behalf, for any moneys payable to UniSuper will be a sufficient discharge to the person by whom those moneys were paid.

## **12. POWER TO CREATE SEPARATE FUNDS**

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The Trustee has power to designate assets of UniSuper which are to be held separate from the other assets of UniSuper for the benefit of a group or category of Members or Dependants. Any such assets will be held by the Trustee as a separate fund for the benefit of the group or category of Members or Dependants concerned to the exclusion of the other Members or Dependants.

## **13. POWER TO ENTER INTO CONTRACTS**

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The Trustee may enter into and execute arrangements, including all contracts, deeds and documents, and do all acts, matters and things which it may deem expedient for the purpose of securing the benefits to be provided through UniSuper and for otherwise effectuating and carrying out the trusts, authorities, powers and discretions conferred upon the Trustee by the Deed. For the avoidance of doubt, the Trustee may enter into arrangements including:

- (a) letters of credit;
- (b) guarantees in relation to the obligations of third parties;
- (c) convertible notes and the like; and
- (d) any arrangement relating in any way to an investment by or in respect of UniSuper.

## **14. POWER TO EFFECT POLICIES**

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Subject to Superannuation Law, the Trustee has power:

- (a) to effect and maintain one or more insurance policies which:
  - (i) secure any part of any benefits payable under this Deed; or
  - (ii) provide benefits to Members which augment the benefits otherwise payable under this Deed,and to vary or cancel any such policies; and
- (b) to pay the associated premiums:
  - (i) out of UniSuper; or
  - (ii) by deducting those premiums from benefits payable, or from any one or more accounts maintained by the Trustee, in respect of relevant Members.

## **15. POWER TO PROVIDE AND TO PURCHASE PENSIONS OR ANNUITIES**

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Subject to Superannuation Law, and with the consent of the person entitled to a benefit, the Trustee has power:

- (a) to convert the benefit into a pension benefit or annuity payable on such terms as the Trustee and the person agree; and
- (b) to apply any benefit (or the capital value of any pension as determined by the Trustee) to purchase a pension or annuity from an insurance company selected by the Trustee. If such a purchase is effected, the Trustee will be released and discharged in respect of the person otherwise entitled to receive the benefit or pension and persons claiming through, under or otherwise in respect of that person.

## **16. POWER TO OPERATE BANK ACCOUNTS**

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The Trustee may open and operate bank and other accounts. All cheques and other negotiable or transferable instruments and all receipts for money paid to UniSuper may be drawn, accepted, endorsed or otherwise executed in such manner as the Trustee determines.

## **17. POWER TO BORROW**

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Subject to Superannuation Law, the Trustee has power:

- (a) to raise or borrow sums of money; and
- (b) to secure the repayment of any moneys so raised or borrowed in such manner and upon such terms and conditions in all respects as the Trustee thinks fit,

whenever the Trustee considers it to be in the interests of UniSuper to do so.

## **18. POWER TO DEDUCT AND RELEASE MONEYS IN RESPECT OF TAXES**

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### **18.1 Power to deduct tax: general**

The Trustee has power to deduct amounts (including from benefits payable under the Deed) in respect of any:

- (a) tax or surcharge;
- (b) advance or instalment; and
- (c) similar or associated amounts,

which, in the opinion of the Trustee, is or may become assessable or payable in relation to UniSuper, whether in respect of contributions, income or realised capital gains of UniSuper or otherwise.

### **18.2 Dealing with tax deducted**

The Trustee has power to credit amounts deducted pursuant to Clause 18.1 to an account in the books of UniSuper pending actual payment to the relevant government authority.

### **18.3 Power to release amounts in respect of tax**

- (a) Subject to Superannuation Law, where a Member has incurred a liability to tax in relation to contributions made to UniSuper by or in respect of the Member, the Trustee shall have power to release an amount equal to the tax assessed to reimburse the Member or to the relevant government authority on behalf of the Member.
- (b) The amount released under Clause 18.3(a) must be debited to an account maintained in respect of the Member as determined by the Trustee.

### **18.4 Discharge for moneys paid or released for taxes**

The Trustee shall be released and discharged in respect of amounts deducted or released pursuant to this Clause 18.

### **18.5 Trustee may make adjustments to Member benefits**

If the Trustee pays an amount of a kind described in Clause 18.1 or 18.3, benefits payable to or in respect of the Member may be reduced in such manner as the Trustee considers fair and equitable having regard to:

- (a) the amount so paid; and
- (b) the accretions which would have accrued on that amount had the amount not been paid,

unless a reduction, deduction or adjustment has already been made to the relevant benefit under another provision of the Deed. For this purpose the Trustee must assume that the tax or surcharge (and any advance instalment and similar or associated amounts) is levied against affected Members having regard to the Employer's contribution in respect of each such Member.

## **19. POWER TO MAKE REGULATIONS**

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The Trustee has power to make Regulations to deal with matters not specifically dealt with by the Deed, including any matters incidental to the operation of the Deed. Regulations may be prescribed and amended by resolution of the Trustee or in such other manner as the Trustee may determine.

## **20. POWER TO COMPROMISE**

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The Trustee has power to compromise, abandon, settle or otherwise resolve or determine any claims, disputes, actions, proceedings, demands or differences in respect of the Deed or UniSuper.

## **21. POWER TO DO ALL THINGS INCIDENTAL**

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The Trustee has power to do all acts or things which the Trustee deems to be necessary, desirable or incidental to the performance or execution of any authorities, powers, discretions or trusts under the Deed.

## **22. ABSOLUTE DISCRETION OF THE TRUSTEE**

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All authorities, powers and discretions of the Trustee under this Deed may be exercised, or not exercised, at the absolute discretion of the Trustee (unless expressly specified otherwise).

## **23. PROFESSIONAL ADVISERS TO UNISUPER**

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### **23.1 Trustee may act on advice of professionals**

The Trustee may act on the advice of any professional person and will not be responsible for any loss occasioned by so acting.

### **23.2 Trustee to appoint an Actuary**

The Trustee will appoint a suitably qualified person (within the meaning of Superannuation Law) to be the Actuary for UniSuper on terms acceptable to the Trustee. The Trustee may remove any such Actuary and appoint a replacement.

### **23.3 Trustee may appoint solicitors**

The Trustee may appoint any suitably qualified person as solicitor to UniSuper on such terms acceptable to the Trustee. The Trustee may remove any such solicitor and appoint a replacement.

## **24. INDEMNITY**

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### **24.1 Indemnity to Trustee and Directors**

- (a) The Trustee and each Director of the Trustee is entitled to be indemnified out of UniSuper in respect of all liabilities whatsoever incurred in connection with the execution, attempted execution or non-execution of the trusts, authorities, powers and discretions conferred upon them by the Deed.
- (b) The indemnity provided by this Clause extends to payments by the Trustee to persons whom the Trustee incorrectly believed were entitled to receive payment.

### **24.2 Trustee's lien**

The Trustee will have a lien on and may use any assets or moneys in its hands:

- (a) to satisfy the indemnity under Clause 24.1; and
- (b) to pay all costs, charges and expenses of administering UniSuper or otherwise performing its duties under the Deed.

### **24.3 No personal liability**

The Trustee, its Directors and the members of any committee established by the Trustee or the Consultative Committee will not be personally liable in any way to provide any benefits contemplated under the Deed.

#### **24.4 Insurance**

The Trustee may enter into insurance arrangements with insurers to protect:

- (a) UniSuper; and
- (b) the Directors and other officers (including former Directors and officers) of the Trustee in respect of liabilities incurred in connection with the execution (or non execution) of the trusts, authorities, powers and discretions conferred upon the Trustee by this Deed,

and may continue or vary any such arrangements.

#### **25. INVESTMENTS ON BEHALF OF UNISUPER**

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##### **25.1 General power to invest**

Subject to Superannuation Law, any assets or money of UniSuper may be invested or applied by the Trustee in or towards investments, property, assets or rights:

- (a) of whatsoever nature;
- (b) whether involving liability or not;
- (c) whether producing income or not; or
- (d) upon personal credit (with or without security),

as if the Trustee were the beneficial owner of the assets or money. The Trustee has power to sell, deal with, realise and re-invest any such assets, investments, property or rights or any proceeds thereof.

##### **25.2 Financial instruments and derivatives**

Subject to Superannuation Law, the Trustee may:

- (a) enter into arrangements relating to financial instruments, contracts and other derivative transactions of whatever nature (whether in Australia or elsewhere) including:
  - (i) currency hedging arrangements;
  - (ii) options;
  - (iii) interest rate swaps;
  - (iv) futures;
  - (v) any index traded on an options, futures or forward market; and
  - (vi) any other similar transactions of whatever nature; and
- (b) give a charge or other security over, or in relation to, an asset of UniSuper for the purpose of securing the performance of the Trustee's obligations in relation to an arrangement within the meaning of paragraph (a).



### **25.3 Underwriting**

The Trustee may:

- (a) underwrite or sub-underwrite the subscription of any investments permissible under the Deed; and
- (b) in exercising its powers of delegation under this Clause 25, give an investment manager general authority to enter into underwriting or sub-underwriting arrangements (whether for UniSuper alone or for UniSuper in conjunction with others).

### **25.4 Appointment of custodians and investment managers**

(a) The Trustee may at any time appoint:

- (i) custodians; or
- (ii) investment managers,

to perform such authorities, powers and discretions as may be delegated by the Trustee. The Trustee may remove or replace a custodian or investment manager at any time.

- (b) Subject to Superannuation Law, the Trustee will not be liable for any act, omission, error of judgment, negligence or breach of trust of any custodian or investment manager.
- (c) The Trustee has no obligation to take proceedings against any custodian or investment manager.
- (d) The Trustee may remunerate custodians and investment managers out of the assets of UniSuper.
- (e) The Trustee will ensure that the assets of UniSuper are not invested inconsistently with Superannuation Law.

## **26. MEMBER INVESTMENT CHOICE**

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### **26.1 Trustee's general power**

Subject to Superannuation Law, the Trustee may invite or require Members (or categories or classes of Members) to direct the Trustee as to the strategy to be adopted in relation to the investment of assets of UniSuper or assets attributable to the relevant Members.

### **26.2 Trustee's ancillary powers**

For the purposes of this Clause 26, the Trustee may:

- (a) make (or amend) Regulations relating to choices of investment strategies, including Regulations relating to the basis on which costs and expenses referable to the choice of investment strategies are to be apportioned or allocated;

- (b) create one or more sub-funds of UniSuper in respect of Members (or categories or classes of Members) by allocating such assets and liabilities of UniSuper as the Trustee determines;
- (c) make provision for the payment of benefits from the assets of the sub-funds created under paragraph (b) in such manner as the Trustee thinks fit;
- (d) invest the assets of each sub fund created under paragraph (b) separately from the assets of the other sub funds or other assets of UniSuper;
- (e) determine the crediting rate (which may be positive or negative) in relation to the assets of each sub-fund created under paragraph (b) as if each sub-fund were UniSuper and apply that crediting rate to Members covered by the relevant sub-fund; and
- (f) do such other acts and things as may in the opinion of the Trustee be necessary or desirable in order to give effect to the intention of this Clause 26.

### **26.3 Financial advice for Members**

Subject to Superannuation Law, the Trustee:

- (a) with the consent of the Member concerned, may pay to an approved licensed adviser a fee where the Member has obtained financial planning advice that relates solely to the Member's interest in UniSuper or to superannuation and retirement planning generally; and
- (b) shall debit the amount of the fee paid from the Member's Division C Account, Division D Account or Division F Pension Account (as the case may be) in a manner determined by the Trustee.

### **26.4 Crediting rates**

- (a) The Trustee may periodically determine crediting rates for each investment strategy established pursuant to Clause 26 for the purposes of periodically allocating net gains and net losses arising from or otherwise attributable to the relevant investment strategy in relation to the relevant period.
- (b) The crediting rate may take into account the Trustee's information or estimate as to any gain, loss, expense or tax of any nature arising from or otherwise referable to the investment strategy, whether realised or accrued, unless the Trustee determines otherwise. For the avoidance of doubt, the crediting rate may take into account such proportion of any actual or estimated gain, loss, expense or tax that arose in relation to UniSuper generally, or in relation to a category of investments, that the Trustee considers appropriate to attribute to the investment strategy. A crediting rate may be positive or negative.
- (c) In determining the crediting rates for an investment strategy, the Trustee may determine a crediting rate to be applied in respect of assets that are attributable to pension benefits and a different crediting rate to be applied in respect of all other assets.
- (d) The Trustee may determine crediting rates with regard to such periods as the Trustee determines, which may include quarterly, monthly, weekly or daily periods or otherwise or such combinations as the Trustee determines. In determining the crediting rate for an investment strategy following the end of a period, the Trustee may include a positive or negative component for the

purposes of adjusting the crediting rates that may have applied on an interim basis during the course of that period.

- (e) The Trustee may determine the basis on which crediting rates are to be applied to Members who directed the Trustee to make a change in relation to the investment strategy (or investment strategies) adopted in respect of their membership during the course of a period.
- (f) In determining crediting rates, the Trustee must have regard to Superannuation Law, the Regulations and any arrangement entered into for the purposes of Clause 31.

## **26A. EMPLOYER REQUIRED TO CONTRIBUTE TO ANOTHER FUND**

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### **26A.1 When this clause applies**

- (a) The provisions of this Clause 26A apply where a Division C Member (who is not a member of Division A or Division B) purports to choose an eligible superannuation fund under the Superannuation Guarantee (Administration) Act 1992, and the Employer would not be acting in compliance with the choice of fund requirements under the Superannuation Guarantee (Administration) Act 1992 if it was to make contributions to UniSuper.
- (b) The provisions of this Clause 26A apply where an Employer of a Member of Division C (who is not a member of Division A or Division B) makes contributions to a stapled fund in compliance with the choice of fund requirements under the Superannuation Guarantee (Administration) Act 1992.

### **26A.2 Consequences of contributions to another fund**

Where an Employer makes contributions to another fund as contemplated by Clause 26A.1:

- (a) Clauses 32.2 to 32.4, 32.7, 32.9 and 32.10 cease to apply to the Member; and
- (b) Clause 33.2 shall cease to apply to the Member's Employer.

## **27. PARTICIPATION BY EMPLOYERS**

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An Eligible Institution may participate in UniSuper if it applies to become an Employer in a manner determined by the Trustee (**Employer Application**) and that Employer Application is approved by the Trustee.

Any approved Employer Application, or documentation between the Trustee and the Eligible Institution which results from an approved Employer Application, may be subject to such terms as are acceptable to the Trustee and may include terms which reflect an arrangement entered into pursuant to Clause 31.4, in which case this Deed will apply to the Employer subject to those terms (as in force from time to time).

## **28. WITHDRAWAL OF EMPLOYERS**

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### **28.1 Meaning of "Retiring Institutions"**

For the purposes of this Clause 28, a Retiring Institution means an Employer in respect of which one or more of the following conditions has been satisfied:

- (a) an order has been made or an effective resolution passed for the winding up or dissolution of the Employer for a purpose other than reconstruction or amalgamation with any of the other Employers; or
- (b) subject to Clause 28.5, it has been determined by the Employer or by the Trustee to be impracticable or inexpedient for that Employer to continue to participate in UniSuper.

## **28.2 Retirement by Employers**

Upon becoming a Retiring Institution, an Employer must retire from UniSuper on terms determined by the Trustee. Such terms may provide for the appropriation of assets of UniSuper (the Appropriated Sum) for the benefit of Employees and former Employees of the Retiring Institution on a fair and equitable basis having regard to:

- (a) the amounts contributed by the Retiring Institution and by the Members concerned and remaining in UniSuper; and
- (b) the advice of the Actuary.

## **28.3 Appropriated Sums**

The Appropriated Sum will be transferred to the Retiring Institution on terms determined by the Retiring Institution and the Trustee with the consent of the Consultative Committee. Following that transfer, the Trustee will be released in respect of the Retiring Institution, its Employees and former Employees (and persons claiming in respect of them).

## **28.4 Trustee responsible for existing benefits**

Notwithstanding Clause 28.3, the Trustee will continue to be responsible for:

- (a) benefits in the course of payment; and
- (b) benefits held in respect of former Employees of the Retiring Institution,

unless otherwise agreed by the Retiring Institution and the Trustee.

## **28.5 Restrictions on retirement from UniSuper**

An Employer may not determine pursuant to Clause 28.1 that it is impracticable or inexpedient for it to continue to participate in UniSuper unless:

- (a) at least 3 actuarial investigations (made in a period of not less than 6 years) and valuations of UniSuper have been completed after the Employer agreed to participate in UniSuper; and
- (b) the Employer has given the Trustee at least 3 years' notice in writing of its intention to make such a determination.

## **Members**

### **29. MEMBERSHIP**

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#### **29.1 Eligibility**

A person is eligible to become a Member if:

- (a) they are an Employee; or
- (b) they fall within a category of persons set out in the Regulations.

## **29.2 Applications to become a Member**

- (a) A person wishing to become a Member must complete an application in a form acceptable to the Trustee. Any person making such an application will be deemed to have agreed to comply with and to be bound by the Deed.
- (b) The Trustee may require any Employee or applicant for membership:
  - (i) to undertake medical examinations, including blood tests; and
  - (ii) to provide statements of medical history.
- (c) Any person who does not comply with paragraph (b), or who fails to pass a medical examination (including a blood test), may:
  - (i) be refused membership; or
  - (ii) be admitted to membership on such conditions as the Trustee may determine,at the Trustee's discretion.
- (d) If the Trustee considers that a Member has:
  - (i) made a false, misleading or inappropriate statement; or
  - (ii) failed to disclose any relevant fact or information in relation to their application for membership or in any medical examination or test,the Trustee may reduce or adjust any benefit payable in respect of the Member in such manner as the Trustee may determine.
- (e) If the Trustee accepts an application for membership, the person will become a Member, and will be subject to the Deed, from such date as the Trustee may determine.

## **29.3 Membership may not be withdrawn by Member**

Except where permitted under this Deed, a Member may not withdraw or cease their Membership while they are an Employee of any Employer. For the avoidance of doubt, this Clause does not affect the right of a Member to receive the unrestricted, non-Preserved Component of any UniSuper benefits (including the unrestricted, non-Preserved Component of any benefits transferred to UniSuper pursuant to Clause 31) or to exercise portability rights in respect of their benefits in accordance with Superannuation Law.

## **29.4 Deemed membership**

An Employee in relation to whom the Trustee has accepted a contribution from an Employer in accordance with this Deed shall become a Member on such terms as the Trustee shall determine notwithstanding that the Employee has not completed an application for membership under Clause 29.2.

### **29.5 Persons joining UniSuper after age 65**

A person who joins UniSuper after age 65 and who, but for this sub-clause, would be eligible to join Division B will be admitted to membership of Division C only and will not be eligible for benefits under Division B. All contributions otherwise payable by the person or in respect of the person by their Employer under Clause 33.2 shall be credited to the person's Division C Account.

### **29.6 Persons rejoining UniSuper after attaining age 65**

A person who joins the Service of an Employer after attaining age 65 and:

- (a) who has previously received or transferred a lump sum benefit or amount from UniSuper and is not immediately prior to joining the Service of the Employer entitled to benefits under Division A or Division B; or
- (b) who is in receipt of a pension (other than a Transition to Retirement pension under clause 38.3) from UniSuper,

and who, but for the operation of this sub-clause, would be eligible to join Division A or Division B will be admitted to membership of Division C only and will not be eligible for benefits under Division A or Division B. All contributions otherwise payable by the person or in respect of the person by the Employer under Clause 33.2 shall be credited to the person's Division C Account.

## **30. INFORMATION WHICH MAY BE REQUIRED BY THE TRUSTEE**

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In addition to the Trustee's powers and discretions under Clause 29.2, the Trustee may:

- (a) require Employers to provide information in relation to their Employees to the extent that such information is relevant to UniSuper;
- (b) require Employers to certify that information provided pursuant to paragraph (a) is true, accurate and complete;
- (c) rely on certificates provided pursuant to paragraph (b) as conclusive evidence of the matters certified for all purposes connected with UniSuper whatsoever; and
- (d) require any Member (or any person claiming an amount from UniSuper):
  - (i) to supply information or documents; or
  - (ii) to undergo medical examinations (including blood tests) by a medical practitioner or other person selected by the Trustee,

for any purpose connected with UniSuper.

If a Member or person does not comply with paragraph (d), the Trustee may:

- (e) suspend payment of any amount in respect of the Member or person; and
- (f) suspend consideration of any claim by the Member or person.

## **Transferring into UniSuper**

### **31. TRANSFERS OF MEMBERS AND BENEFITS TO UNISUPER**

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#### **31.1 Transfer of assets to UniSuper in respect of existing Members**

The Trustee may receive money or other assets in respect of a Member from:

- (a) an Approved Fund;
- (b) a life assurance office;
- (c) their Employer; or
- (d) any source approved by the Trustee.

Upon receiving any such money or other assets:

- (e) the benefits and other rights of that Member will be determined by the Trustee after having obtained the advice of the Actuary; or
- (f) the Trustee will credit an amount determined by the Trustee to an account maintained in respect of the Member selected by the Trustee.

#### **31.2 Power to enter into preservation arrangements**

The Trustee has power to give undertakings to, or enter into preservation arrangements with, the trustees, administrators or other controlling body of another superannuation, pension or like scheme or fund on such terms and conditions as the Trustee thinks fit. Any benefits or other rights granted to a Member will be subject to the terms and conditions of any such undertaking or arrangement. The terms and conditions of any such undertaking or arrangement may not be set aside by any amendments or repeals made pursuant to Clause 53.

#### **31.3 Guarantee provisions continue to apply**

If a Member was entitled to a guarantee in respect of a transfer to UniSuper pursuant to the provisions of the Deed which were in force prior to 1 January 1990, those provisions will continue to apply in respect of the Member.

#### **31.4 Transfers of new Members to UniSuper**

Subject to Superannuation Law, the Trustee may enter into an arrangement with the trustees, administrators or other controlling body (the transferor fund trustee) of a superannuation fund or an approved deposit fund (the transferor fund) under which the Trustee agrees:

- (a) to accept into UniSuper money or other assets from the transferor fund trustees;
- (b) to admit persons who were members of the transferor fund to membership of UniSuper;
- (c) to confer on such persons rights in respect of benefits which are equivalent to the rights that such persons had under the governing rules relating to the transferor fund;

- (d) at the Trustee's discretion, to assume the liability of the transferor fund trustee to pay or provide pensions or other benefits out of the transferor fund to or in respect of such persons; and
- (e) to deal with any unallocated surplus or other amounts in a particular manner;
- (f) to such other terms acceptable to the Trustee.

## **Contributions**

### **32. CONTRIBUTIONS BY MEMBERS**

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#### **32.1 [Deleted]**

#### **32.2 Calculation and deduction of contributions: general**

- (a) Subject to this Deed, a Member of a Defined Benefit Division who is within a Superannuable Classification and a Division C14 Member must contribute to UniSuper an amount equal to 7% of their Salary each normal pay period.
- (b) All contributions by a Member pursuant to Clause 32.2(a) must be deducted by the Employer from the Member's Salary and must be paid to the Trustee as soon as practicable and, in any event, within 7 days of the deduction.
- (c) Unless the Trustee determines otherwise, a Member of the Defined Benefit Division may not claim a deduction under the Tax Act regarding contributions to the Defined Benefit Division.

#### **32.3 Calculation of contributions where Salary is reduced**

- (a) If a Contributing Member's Salary or an Accruing Member's Salary (as the case may be) is reduced because they are employed in a less remunerative capacity or on a fractional time basis, the Member may, with the agreement of the Trustee and the Employer, continue making contributions on the basis of the Member's Salary prior to the reduction (and in respect of which the Member was previously making contributions). The Member's Salary prior to the reduction will be deemed to be the Salary for the time being applicable to the Member's employment classification immediately prior to the reduction.
- (b) A Member may only continue making contributions on the basis contemplated by paragraph (a) if:
  - (i) the agreement between the Trustee and the Employer pursuant to paragraph (a) requires the Employer also to make contributions on the basis of the Member's Salary prior to the reduction; or
  - (ii) the Member agrees to make contributions equal to the difference between the Employer's contributions prior to the reduction and after the reduction.
- (c) If a Contributing Member or an Accruing Member makes contributions on the basis referred to in paragraph (a), their Benefit Salary or Division E Benefit Salary (as the case may be) will be calculated on the basis of the Salary in respect of which those contributions are made.
- (d) If a Contributing Member's or Accruing Member's Salary is reduced because they are employed in a less remunerative capacity and an agreement is not



entered into under paragraph (a), the Trustee and the Member may agree for the purposes of the calculation of benefits that the Member be regarded as a Fractional Time Member from the date of the reduction in Salary. The Service Fraction or Division E Service Fraction (as the case may be) in respect of such a Member will be calculated by comparing the Member's Salary with the Equivalent Full-Time Salary which they would have been receiving had their Salary not been reduced.

#### **32.4 Reduced contributions by certain Members**

- (a) This Clause 32.4 only applies to Members of Division A and Division B and Division C14 Members and who:
  - (i) fall within categories of Employees which have been specified by the Trustee with the agreement of the relevant Employers; or
  - (ii) in the opinion of the Trustee, are suffering from significant financial hardship and should therefore be subject to this clause.
- (b) If this Clause 32.4 applies to a Member, the Member may elect to pay only half contributions in respect of half benefits. If the Member makes that election, such half contributions will be taken to be the Member's contributions to UniSuper.  
  
A Member may, with the consent of the Trustee, revoke an election made under this clause.
- (c) Where this Clause 32.4 applies, the benefits payable to a Member of Division A or Division B will be calculated by:
  - (i) treating the period during which half contributions were made as a period of Fractional Time Service to which a Service fraction of one half applied; and
  - (ii) in all other respects, applying the provisions of the Deed.
- (d) If this Clause 32.4 ceases to apply to a Member for any reason, subject to any election made by the Member under Clause 32.9, the Member must make full contributions in respect of full benefits in accordance with the other provisions of the Deed.
- (e) Notwithstanding any provision of this Deed, in circumstances where:
  - (i) the Member of Division A or Division B has revoked an election under Clause 32.4(b) so as to make full contributions even though this Clause 32.4 applies to them; and
  - (ii) during the three years following the revocation of the election, the Member ceases to be in Service due to death, Terminal Medical Condition or Disablement or qualifies for a Temporary Incapacity benefit,

the amount of any benefits payable to the Member will be determined by the Trustee after having regard to the advice of the Actuary.

### **32.5 Voluntary contributions**

- (a) A Member may elect to make additional voluntary contributions to UniSuper in accordance with Regulations prescribed by the Trustee.
- (b) Any additional voluntary contributions by a Member shall be credited to the Member's Division C Account or Division D Account (as applicable).

### **32.6 Trustee may decline to accept contributions**

Notwithstanding anything expressed or implied in this Deed, no contribution may be paid to or accepted by UniSuper if, in the opinion of the Trustee, payment or acceptance of the contribution may cause UniSuper:

- (a) to breach or fail to comply with Superannuation Law; or
- (b) to prejudice the taxation concessions available to UniSuper under the Tax Act.

### **32.7 Trustee may relieve Members from contribution obligations**

Notwithstanding anything expressed or implied in this Deed, the Trustee may relieve a Member of a Defined Benefit Division or a Division C14 Member from all or part of the obligation to pay contributions under this Clause 32 if the Employer has agreed to pay:

- (a) all or part of the Member's contributions; and
- (b) any further amounts determined by the Trustee in respect of the tax payable in connection with any payments by the Employer under paragraph (a).

### **32.8 Other contributions**

Subject to Superannuation Law, the Trustee may:

- (a) accept Government co-contributions in respect of Members; and
- (b) if determined by the Trustee either generally or in any particular case, accept any other contributions of any nature which are permitted to be made under Superannuation Law in respect of a Member,

and may credit any such amounts to accumulation accounts maintained in UniSuper in respect of a Member as the Trustee shall determine.

### **32.9 Flexible Member Contributions\***

- (a) A Member entitled to benefits under Divisions A, B or C may, in accordance with Regulations prescribed by the Trustee, reduce their contributions to UniSuper in accordance with this Clause.
- (b) A Member electing to reduce their contributions may, in accordance with Regulations prescribed by the Trustee, select a contribution rate as a percentage of Salary which is lower than their rate of contribution at the time of election from one of the following rates:

Flexible Contribution Rate (17% Employer Contribution Rate)	Flexible Contribution Rate (14% Employer Contribution Rate)
4.45%	7.00%
4.00%	6.55%
3.00%	5.55%
2.00%	4.55%
1.00%	3.55%
0.00%	2.55%

- (c) Where a Member reduces their rate of contribution under this Clause, any Employer's Part A Contribution to Division D in respect of the Member will after the effective time of the Member's election be treated as an Employer contribution under whichever of the Divisions (other than Division D) applies in relation to the Member.
- (d) If the Employer contribution rate to UniSuper in respect of a Member reduces from 17% to 14%, during the period of the reduction the Member shall be required to contribute at a rate specified as the Member contribution rate (after tax) set out in paragraph (b). of the definition of Contribution Factor in order to maintain a Contribution Factor at a level no greater than that which applied in relation to the Member immediately prior to the reduction in the Employer contribution rate and which is not less than 74.5%;
- (e) Subject to Clause 32.9(b), if the Member subsequently elects to increase their contribution to UniSuper, they will be treated as voluntary contributions under Clause 32.5.

### 32.10 Cessation of Contributions – RBL Election

- (a) The provisions of this Clause apply in respect of a Member who has elected under the provisions of this Deed in force prior to 30 June 2007 to have Member and Employer contributions cease in respect of the Member.
- (b) Where this Clause applies in respect of a Member entitled to benefits under Division A, or Division B, then notwithstanding anything expressed or implied to the contrary in this Deed:
- (i) the death, Temporary Incapacity and Disablement benefits payable under whichever of Division A (A.5, A.6, A.8 and A.14) or Division B (B.5, B.6, B.8, B.12 and B.13) applies in respect of the Member will cease to be payable;
  - (ii) the Member's ACF or Average Contribution Factor will be the ACF at the date the election was effective;
  - (iii) the period of Service after the effective time of the election will count as Contributing Service with a Service Factor of zero but will not count as Service as a Contributing Member;

- (iv) the benefits payable under whichever of Division A or Division B applies in respect of the Member will be calculated on the basis that the Member is a deferred member under Clause 35.2
- (c) The obligation of the Employer to contribute to UniSuper in accordance with Clause 33 in respect of the Member shall cease from the effective time of the election.

### **32.11 Splittable Contributions**

- (a) Subject to Superannuation Law, a Member may, in accordance with Regulations prescribed by the Trustee, request the Trustee to allocate an amount (the split amount) up to an amount equal to the Member's splittable contributions to the Member's Spouse.
- (b) Where Clause 32.11(a) applies in respect of a Member, subject to Regulations prescribed by the Trustee, the Trustee will have power:
  - (i) to rollover or transfer in favour of the Spouse the split amount to another approved arrangement nominated by the Spouse; or
  - (ii) credit the split amount to a Division D Account held in respect of the Spouse; and
  - (iii) to reduce or adjust the benefits payable to, or in respect of, the Member in such manner as the Trustee considers appropriate.
- (c) Subject to Superannuation Law, the Trustee shall have power to accept into UniSuper amounts representing contributions split in favour of Members or Spouses of Members from the governing bodies of other complying superannuation funds and retirement savings accounts.
- (d) For the purposes of this Clause, splittable contributions shall have the meaning given to that expression under Superannuation Law.

### **32.12 Contribution not accepted or refunded**

- (a) Where the Trustee is required by Superannuation Law not to accept contributions required to be made by a Member under Clause 32.2, the Trustee must reduce the benefit payable to or in respect of the Member on such basis or in such manner as the Trustee considers appropriate.
- (b) Where the Trustee is required by Superannuation Law to refund or repay a contribution or amount which has been credited to an account of a Member, the Trustee shall have power to debit the account of the Member with the amount required to be refunded or repaid and to adjust the account in such manner as the Trustee considers appropriate.

## **33. CONTRIBUTIONS BY EMPLOYERS**

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### **33.1 Application of contribution provisions**

This Clause 33 applies as follows:

- (a) in respect of a Member of Division A or Division B—all provisions of this Clause 33 are applicable;

- (b) in respect of a Member of Division C—all provisions of this Clause 33 are applicable other than Clause 33.8;
- (c) in respect of a Member of Division D—Clause 33.5 only is applicable;
- (d) in respect of a Member of Division E—all provisions of this Clause 33 are applicable; and
- (e) in respect of a Member of Division F—none of the provisions of this Clause 33 are applicable.

### **33.2 Calculation and payment of contributions: general\*\***

Subject to this Deed, each Employer must make contributions in respect of each person who is a Contributing Member and employed by the Employer equal to:

- (a) 14% of their Salary; or
- (b) if the person makes an election under Clause 32.4(b), 7% of their Salary.

Such contributions must be paid to UniSuper whenever payments are made in respect of the relevant Members pursuant to Clause 32.2(b).

### **33.3 Additional contributions**

Each Employer must also pay to UniSuper any additional contributions which may be required pursuant to any agreement entered into by the Employer pursuant to the Deed in respect of a person who is:

- (a) a Contributing Member or an Accruing Member (as the case may be); and
- (b) employed by the Employer.

### **33.4 Failure by Employer to make contributions**

The Trustee may require an Employer to pay interest at a rate determined by the Trustee (but not exceeding 20% per annum) if:

- (a) the Employer fails to make payments or contributions to UniSuper as required by Clauses 32.2 and 32.9; and
- (b) such failure continues for 7 days.

Such interest will be calculated in respect of the unpaid contributions and payments from the respective due dates of payment to the date of payment.

### **33.5 Contributions may not be accepted in certain circumstances**

Notwithstanding anything expressed or implied in this Deed, no contribution may be paid to or accepted by UniSuper if, in the opinion of the Trustee, payment or acceptance of the contribution may cause UniSuper:

- (a) to breach or fail to comply with Superannuation Law; or
- (b) to prejudice the taxation concessions available to UniSuper under the Tax Act.

**33.6 [Deleted]**

**33.7 Contributions to avoid a Superannuation Guarantee Charge**

- (a) Where as a result of an election made by the Member under this Deed, the Employer's contribution in respect of a Member is less than the contribution necessary to avoid a superannuation guarantee shortfall in respect of the Member, the Employer may make an additional contribution to UniSuper in respect of the Member.
- (b) Any contribution made by an Employer under Clause 33.7(a) shall be credited to an account maintained in UniSuper in respect of the Member as determined by the Trustee.

**33.8 Superannuation Guarantee Augmentation**

- (a) The Trustee shall have power to augment benefits payable to or in respect of Members entitled to benefits under a Defined Benefit Division up to the level appropriate to avoid their Employers incurring a liability for a superannuation guarantee shortfall.
- (b) The Trustee may require Employers whose Members are being augmented under clause 33.8(a) to pay such additional contributions to UniSuper as the Trustee determines to be necessary to cover the cost of such augmentation after obtaining the advice of the Actuary.
- (c) Where an Employer fails to pay any contribution under Clause 33.8(b) as and when required by the Trustee, the Trustee may suspend or terminate any further augmentation under Clause 33.8(a) in respect of Members employed by that Employer.

**33.9 Contributions pursuant to employer participation arrangements**

The Trustee may, at its discretion, treat an "Employer Part A Contribution" or any other contribution required to be made to UniSuper in respect of a Member under any arrangement pursuant to which the Employer participates in UniSuper as a contribution in relation to any Division that applies to the Member.

**34. REDUCTIONS TO DIVISION A AND DIVISION B WHERE UNISUPER ASSETS ARE INSUFFICIENT**

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- (a) If, after any Actuarial Investigation and Valuation of UniSuper, the Actuary advises in the report that:
  - (1) the Accrued Benefit Index is less than 100%; or
  - (2) the Vested Benefit Index is less than 95%; or
  - (3) the level of contributions to UniSuper is such that it is likely that either (or both):
    - (A) the Accrued Benefit Index, although not less than 100%, will decline to less than 100%;
    - (B) the Vested Benefit Index, although not less than 95%, will decline to less than 95%;

the Trustee must notify each Employer and the Members entitled to benefits under Divisions A or B accordingly.

- (b) Following a notification under Clause 34(a) (whether the notification is made under Clause 34(a) before or after the amendment of that Clause with effect on and from 1 January 2012 or such other date determined by the Board), if the Actuary advises in the report of the first Actuarial Investigation and Valuation which is carried out after the expiration of 4 years from the date of the Actuarial Investigation and Valuation that gave rise to the notification that:
- (1) the Accrued Benefit Index is less than 100%; or
  - (2) the Vested Benefit Index is less than 95%; or
  - (3) the level of contributions to UniSuper is such that it is likely that either (or both):
    - (A) the Accrued Benefit Index, although not less than 100%, will decline to less than 100%;
    - (B) the Vested Benefit Index, although not less than 95%, will decline to less than 95%.

then within 6 months of the receipt of the current report the Trustee must consider whether it is in the interests of the Members of Division A and Division B as a whole to reduce the benefits payable under Division A and Division B and, if it so considers that it should reduce benefits (which may include benefits in the course of payment), it must do so on a fair and equitable basis and at a time or times it decides.

- (c) Notwithstanding anything in this Clause 34, if UniSuper is taken to be technically insolvent for the purposes of Superannuation Law, the Trustee must comply with Superannuation Law.

### **Provisions relating to member benefits**

## **35. MEMBERS CEASING AND RECOMMENCING AS CONTRIBUTING MEMBERS, ABSENCES WITHOUT PAY AND ADDITIONAL BENEFITS**

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### **35.1 Absences without pay**

- (a) If a Member entitled to benefits under Division A or Division B is absent from Service without Salary with the approval of the Employer:
- (i) and the period during which the Member does not contribute to Division A or Division B in accordance with Clause 32 will count as Contributing Service with a Service Fraction of zero but will not count as Service as a Contributing Member and shall be disregarded for the purposes of calculating the Member's Average Contribution Factor; and
  - (ii) if the Member dies or suffers Disablement or Terminal Medical Condition during such period, the Member will be deemed to have resumed as a Contributing Member and to have then ceased to be in the Service of the Employer.
- (b) If a Member entitled to benefits under Division C is absent from Service without Salary with the approval of the Employer, and if the Member dies or suffers

Disablement or Terminal Medical Condition during such period, the Member will be deemed to have resumed as a Contributing Member and to have then ceased to be in the Service of the Employer.

- (c) For the avoidance of doubt:
  - (i) Clause 35.2 to Clause 35.6 (inclusive) do not apply in relation to the Member during the period of absence; and
  - (ii) For the purposes of Clause 35.2 to 35.6 only, unless the Member recommences as a Contributing Member at the end of that period the Member will be deemed to resume as a Contributing Member and to have then ceased to be in the Service of the Employer.

### **35.2 Ceasing to be a Contributing Member - Division A or B**

- (a) Subject to Clause 35.1, if a Member entitled to benefits under Division A or B ceases to be a Contributing Member on or after 1 March 2012, the Member may within the Option Period, by notice in writing to the Trustee elect to:
  - (i) defer their benefits in Division A or B with effect from the date the Member ceased to be a Contributing Member; or
  - (ii) transfer their benefits in Division A or B to an account in Division D maintained in respect of the Member. The Member shall cease to be entitled to benefits under Division A or B and the Member's benefits will be calculated and credited to the account in Division D as from the date of processing the transfer.
- (b) If a Member elects to defer their benefits under Clause 35.2(a)(i), the period during which the Member is not a Contributing Member will count as Contributing Service with a Service Fraction of zero but will not count as Service as a Contributing Member and shall be disregarded for the purposes of calculating the Member's Average Contribution Factor; and
  - (i) if the Member dies or suffers Disablement or Terminal Medical Condition during the period which the Member is not a Contributing Member, the Member will be deemed to have resumed as a Contributing Member and to then have ceased to be in the Service of the Employer provided that:
    - (A) no Disablement, death or Terminal Medical Condition benefit will be payable under Division A or Division B; and;
    - (B) the Deferred Benefit Amount will be payable; and
  - (ii) the Member will not be entitled to a Temporary Incapacity benefit under Division A or B if the Member suffers Temporary Incapacity during the period which the Member is not a Contributing Member; and
  - (iii) for the avoidance of doubt, clause 35.2(b)(i) does not prevent a Member claiming a Disablement benefit if the Member ceased Service due to Disablement on or after 1 April 2020 but completes the Waiting Period requirements of clause 41.6 within the period prescribed by that section; and



- (iv) clause 35.2(b)(i) does not prevent a Member claiming a Terminal Medical Condition benefit if the Member met all of the criteria of a Terminal Medical Condition benefit and the certificates are dated after deferral, provided that:
  - (A) the certificates confirm that the Member was suffering the injury or illness at the earlier to occur of the date of deferral and the date of cessation of Service; and
  - (B) the illness or injury was likely to result in death within 12 months of the date determined under clause 35.2(b)(iv)(A); and
- (v) for the avoidance of doubt, this clause does not prevent a Member claiming a Temporary Incapacity benefit if they suffered Temporary Incapacity while in Service and still a member of Division A or Division B, and they were absent from employment through the illness or injury for the Waiting Period from the earlier of:
  - (A) the date of cessation of Service where that cessation occurs before deferral of the person's benefit in Division A or Division B; or, otherwise
  - (B) the date of deferral of the person's benefit in Division A or Division B.
- (c) If a Member's benefits are deferred in Division A or B, subject to Superannuation Law and any other provision of the Deed and Regulations prescribed by the Trustee, the Member may at any time by notice in writing elect to access or transfer all or any part of their Deferred Benefit Amount. The Member shall cease to be entitled to benefits under Division A or B except to the extent the Member has accessed a retirement pension payable under Clauses A.4 or B.4 and any supplementary pension to the retirement pension. If the Member elects to access or transfer part of their Deferred Benefit Amount, the remaining balance shall be calculated and credited to an account in Division D maintained in respect of the Member as from the date of processing the transfer.
- (d) If a Member fails to exercise an election within the Option Period, the Member shall cease to be entitled to benefits under Division A or B and the Member's Deferred Benefit Amount shall be transferred to an account maintained in Division D in respect of the Member as from the date of processing the transfer.
- (e) If the Member has a right to receive a retirement pension under Clause A.4 or Clause B.4 at the time of ceasing to be a Contributing Member, the Member may within 90 days of ceasing to be a Contributing Member by notice in writing to the Trustee, elect to receive their benefits calculated as at the date the Member last ceased to be in the Service of the Employer and any such retirement pension will be paid with effect from that date and any remaining balance of the Member's benefits shall be credited to an account in Division D maintained in respect of the Member with effect from the date of processing the transfer.
- (f) For the purpose of calculating the amount to be accessed or transferred to Division D under this clause 35.2, the Member shall be treated as if they

elected to defer their benefits in Division A or B during the period between the date of ceasing to be a Contributing Member and the date the application to access benefits or the transfer is processed.

- (g) For the avoidance of doubt:
  - (i) subject to the Deed, any contributions in respect of a Member whose benefits are deferred or are treated as if they elected to defer their benefits under Clause 35.2 that relate to a period during which the Member is not a Contributing Member shall be credited to an account in Division D maintained in respect of the Member;
  - (ii) nothing in this Clause 35.2 affects the rights (if any) of the surviving spouse of a deceased Member under Clause A.9;
  - (iii) nothing in this Clause 35.2 affects any benefits payable under any arrangements established by the Trustee under Clause 35.6; and
  - (iv) the provisions of Clause 35 of the Deed in force prior to 1 March 2012 shall continue to apply in respect of Members who last ceased to be Contributing Members prior to that date.

### **35.3 [Deleted]**

### **35.4 Recommencing as a Contributing Member - Divisions A or B**

- (a) Subject to Clause 35.1 and Clause 35.4(b), where a Member's benefits under Division A or B are deferred or treated as being deferred under Clause 35.2 and the Member recommences as a Contributing Member during the Option Period, the Member's benefits shall cease to be deferred and the Member shall continue to accrue benefits under Division A or B as the case may require and the Member shall become entitled to death, Disablement, Terminal Medical Condition and Temporary Incapacity benefits under Division A or B from the date the Member recommences as a Contributing Member.
- (b) Where a Member recommences as a Contributing Member more than 90 days after ceasing to be a Contributing Member Clause B.13 shall apply in respect of the Member as if the Member joined UniSuper for the first time on the date the Member recommences as a Contributing Member.
- (c) Where a Member's benefits under Division A or B have been transferred to Division D under Clause 35.2 and the Member becomes entitled to recommence as a Contributing Member of Division B, subject to B.13, the Member shall become entitled to benefits under Division B as if the Member joined UniSuper for the first time on the date the Member recommences as a Contributing Member.

### **35.5 [Deleted]**

### **35.6 Power to enter into agreements and arrangements concerning certain benefits**

Subject to Superannuation Law and such terms and conditions as may be determined by the Trustee after obtaining the advice of the Actuary, the Trustee may:

- (a) enter into agreements with Members to whom this Clause 35 applies to maintain benefits payable on death, Terminal Medical Condition or Disablement; and/or

- (b) establish and discontinue arrangements to maintain benefits payable on death, Terminal Medical Condition, Temporary Incapacity or Disablement in respect of Members who otherwise cease to be entitled to such benefits under Division A or Division B.

## **36. APPLICATION OF DIVISIONS**

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### **36.1 Division A – Defined Benefit Division**

Division A applies only in respect of the Members described in Clause A.1. A Member of Division A cannot simultaneously be a Member of Division E.

### **36.2 Division B – Defined Benefit Division**

Division B applies only in respect of the Members described in Clause B.1. A Member of Division B cannot simultaneously be a Member of Division E.

### **36.3 Division C – Accumulation**

Division C applies only in respect of the Members described in Clause C.1.1.

### **36.4 Division D – Accumulation**

Division D applies only in respect of the Members described in Clause D.1.1.

### **36.4A Division E - Defined Benefit Division**

Division E applies only in respect of the Members described in Clause E.1. A person who is a Member of Division E cannot simultaneously be a Member of Division A or Division B.

### **36.4B Division F - Non-Defined Benefit Division Pensions**

Division F applies only in respect of the Members described in Clause F.1.1.

### **36.5 Elections by Members of Division A**

Members of Division A may elect to receive benefits under either Division A or Division B as follows:

- (a) on retirement from the Service on or after attaining age 55, the Member may elect to receive retirement benefits under Clauses A.4 or B.4;
- (b) on ceasing to be in the Service by reason of Disablement, the Member may elect to receive disablement benefits under Clauses A.5 or B.5;
- (c) on death in Service, in respect of a Member who has made a Binding Nomination under Clause 44A or a Non-Lapsing Binding Nomination under Clause 44B, the benefit under Clause B.6 and, in respect of other Members, the Trustee must in its absolute discretion determine which of Clauses A.6 or B.6 will apply in respect of the Member concerned.
- (d) on Temporary Incapacity, the Member may elect to receive the temporary incapacity benefit payable under Clauses A.8 or B.8;

- (e) on reaching Normal Retirement Date while in receipt of a Disablement benefit under Clause A.5.1, the Member may elect to receive benefits under Clauses A.5.2 or B.5.2; and
- (f) on ceasing to be in the Service due to a Terminal Medical Condition, the Member may elect under clause 39.2 to receive the lump sum benefit referred to in Clause B.6A.

On leaving Service in other circumstances, the benefit referred to in Clause B.7 will become payable in respect of the Member concerned.

### **36.6 Members unable to make an election**

If the Trustee is satisfied that a person is incapable of exercising any election available under the Deed, the Trustee may in its absolute discretion make the election on their behalf.

### **36.7 Elections available to Members who have attained age 65**

Subject to Superannuation Law and Regulations prescribed by the Trustee, Members entitled to benefits under Division A or Division B or who have elected to defer benefits under Clause 35.2 and who have attained age 65 shall have the following elections:

- (a) in the case of Members entitled to benefits under Division A or Division B, an election to be treated as a Member who is entitled to deferred benefits under Clause 35.2 with all future contributions by or in respect of the Member under Clause 33.2 being made to the Member's Division C Account;
- (b) A Member:
  - (i) who has elected to defer benefits under Clause 35.2 and who has become eligible to recommence as a Contributing Member may, by notice in writing to the Trustee, elect to accrue benefits under Division A (if eligible) or Division B or to have all future contributions by or in respect of the Member under Clause 33.2 credited to the Member's Division C Account; or
  - (ii) whose benefits under Division A or Division B have been transferred to Division D under Clause 35 and who becomes eligible to recommence as a Contributing Member may, by notice in writing to the Trustee, elect to accrue benefits under Division B (if eligible) or to have all future contributions by or in respect of the member under Clause 33.2 credited to the Member's Division C Account.

A Member who has elected to have all future contributions made to the Member's Division C Account under this Clause 36.7 shall not be entitled to any benefits under Division A or Division B except as provided in Clause 35.

### **36.8 Members who have not elected benefits but attained age 75**

If, upon the attainment of age 75, a Member entitled to benefits under Division A or Division B has not elected to commence to receive benefits from UniSuper:

- (a) the Member's benefits shall be treated as deferred under Clause 35.2; and

- (b) any future contributions in respect of such a Member shall be credited to the Member's Division C Account.

### **37. TRANSITIONAL PROVISIONS – JANUARY 1990**

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#### **37.1 Voluntary contributions and transfers from Approved Funds prior to 1 January 1990**

- (a) This Clause 37.1 only applies in relation to:
  - (i) lump sum voluntary contributions to UniSuper; and
  - (ii) transfers to UniSuper from an Approved Fund,  
  
under the provisions of the Deed in force as at 31 December 1989.
- (b) If a Member of Division A was granted additional service for benefit purposes, the same period of additional Contributing Service will apply for the purposes of both Division A and Division B.
- (c) If a Member of Division A was granted an entitlement to an additional pension:
  - (i) the Member will have the same entitlement for the purposes of Division A; and
  - (ii) for the purposes of Division B, the Member will be entitled to a period of additional Contributing Service (in years) calculated by dividing the Member's additional pension at age 65 expressed as a percentage of Salary (as determined by the Trustee) by 1.6.

#### **37.2 Members making voluntary contributions as at 31 December 1989**

A Member of Division A who, on 31 December 1989 was making regular voluntary contributions in accordance with the Deed in force at that date in return for additional benefits, will continue to be entitled to such additional benefits provided that they continue to make regular voluntary contributions to UniSuper. If the Member ceases to make such regular voluntary contributions at any time prior to age 65, the additional benefits granted in respect of the Member will be determined by the Trustee after having obtained the advice of the Actuary.

#### **37.3 Members entitled to deferred pensions as at 31 December 1989**

A Member who, on 31 December 1989, was entitled to a deferred pension:

- (a) will remain entitled to a deferred pension under the Deed in force at that date; and
- (b) will not be entitled to any other benefits unless they resume Contributing Service, in which event:
  - (i) the deferred pension will be cancelled;
  - (ii) the Member will be deemed to have ceased contributing to UniSuper at the date they became entitled to the deferred pension; and
  - (iii) the provisions of Clause 35 will apply.

### **37.4 Members entitled to partial deferred pensions as at 31 December 1989**

A Member who, on 31 December 1989, was entitled to a partial deferred pension will:

- (a) remain entitled to a partial deferred pension under the provisions of the Deed in force at that date;
- (b) not be entitled to any other benefits unless they resume relevant Service (as determined by the Trustee), in which event:
  - (i) the Member will be deemed to be a new Member;
  - (ii) the partial deferred pension will be cancelled; and
  - (iii) an amount determined by the Trustee will be credited to an account maintained in respect of the Member selected by the Trustee.

### **37.5 Rights of other Members as at 31 December 1989**

The rights of:

- (a) Members who were in the Service on 31 December 1989 and who, having passed their Normal Retirement Date, had ceased to contribute to UniSuper;
- (b) persons entitled to pensions as at 31 December 1989; and
- (c) surviving Spouses and Dependent Children of Members who ceased to be in the Service prior to 1 January 1990,

will continue and will be governed by the provisions of the Deed in force as at 31 December 1989.

## **38. PORTABILITY, CASHING, TRANSITION TO RETIREMENT AND SIS CONDITIONS OF RELEASE**

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### **38.1 Rollovers and transfers including under portability requirements**

- (a) Subject to the Regulations, and if required to do so by Superannuation Law, the Trustee must transfer or rollover all or part of the Member's Benefit Amount or a beneficiary's entitlement to a complying superannuation fund if requested to do so by the Member or beneficiary. Subject to the Regulations, if the Trustee is not required by Superannuation Law to make a transfer or rollover which has been requested by the Member or beneficiary, the Trustee may still make the transfer or rollover if that transfer or rollover is permitted by Superannuation Law.
- (b) Subject to Superannuation Law, the Trustee shall debit the Member's Accounts in UniSuper (or reduce the beneficiary's entitlement) with the amount transferred under Clause 38.1(a).

### **38.2 Cashing of benefit prior to cessation of Service at Member request**

- (a) Notwithstanding anything expressed or implied to the contrary in the Deed, but subject to Superannuation Law and any Regulations prescribed by the Trustee, a Member may by notice in writing to the Trustee, request the Trustee to pay to or at the direction of the Member all or any part of the Member's Benefit

Amount notwithstanding that the Member continues in the Service of his or her Employer.

- (b) Where the Member concerned is entitled to receive benefits under a Defined Benefit Division, the balance (if any) of the Member's Benefit Amount shall be credited to the Member's Division C Account and the Member shall cease to be entitled to benefits under the applicable Defined Benefit Division. Further, Employer contributions in respect of the Member will be credited to the Member's Division C Account.

### **38.3 Transition to Retirement**

- (a) Subject to Superannuation Law and any Regulations prescribed by the Trustee, a Member may elect to apply all or part of the Member's Benefit Amount in the acquisition of a complying pension or annuity under Division F notwithstanding that the Member continues in the Service of the Employer.
- (b) Where a Member entitled to benefits under a Defined Benefit Division makes an election under Clause 38.3(a):
  - (i) if the Member is a Member of Division A or Division B, the Member ceases to be a Member of that Division and will no longer be eligible to be a Member of that Division; and
  - (ii) the Trustee shall credit the Member's Benefit Amount to the Member's Division C Account pending the establishment of the pension or annuity.
- (c) Where a Member entitled to receive benefits under Division C or Division D elects to receive a complying pension or annuity, the Member's Division C Account or Division D Account shall be reduced by the amount applied to acquire the complying pension or annuity.

### **38.4 SIS conditions of release**

- (a) Notwithstanding anything expressed or implied to the contrary in this Deed, upon request by the Member in writing, the Trustee must pay to or in respect of a Member of Division C or D all or part of the amount which the Trustee determines represents the Member's interest in those Divisions of UniSuper at the time of making the determination in accordance with a relevant condition of release under SIS, but subject to any terms and conditions in the Regulations.
- (b) Subject to Superannuation Law, where the Trustee pays an amount to or in respect of a Member under Clause 38.4(a), the Trustee will:
  - (i) reduce the benefits payable in respect of the Member; or
  - (ii) debit an account maintained in respect of the Member selected by the Trustee,in a manner and by an amount determined by the Trustee.

### **38.5 Release in other circumstances**

- (a) Subject to Superannuation Law, in the case of:

- (i) grounds which have been specified by Regulation or by resolution of the Trustee arising in respect of a Member; or
- (ii) any other circumstances arising in relation to a Member which are considered by the Trustee to be exceptional,

the Trustee may pay to (or in respect of) the Member all or part of the amount which the Trustee determines represents the Member's interest in UniSuper at the time of making the determination. Any such amount may be provided in such form and by way of such arrangements as the Trustee thinks fit.

- (b) Subject to Superannuation Law, where the Trustee pays an amount to or in respect of a Member under Clause 38.5(a), the Trustee will:
  - (i) reduce the benefits payable in respect of the Member; or
  - (ii) debit an account maintained in respect of the Member selected by the Trustee,

in a manner and by an amount determined by the Trustee.

### **39. TERMINAL MEDICAL CONDITION BENEFIT - DIVISIONS A AND B**

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#### **39.1 Application of provisions**

This Clause 39 only applies in respect of Members of Division A or Division B.

#### **39.2 Election to receive Terminal Medical Condition benefit**

A Member entitled to benefits under Division A or Division B who suffers a Terminal Medical Condition may, by notice in writing to the Trustee, elect to receive a Terminal Medical Condition benefit in lieu of any other benefits payable to or in respect of the Member under UniSuper. A notice under this clause is irrevocable.

#### **39.3 Special Conditions on re-employment**

Where a Member who has received a Terminal Medical Condition benefit in accordance with Clause 39.2 becomes employed by an Employer he or she shall be admitted to membership of Division C on such terms and conditions as the Trustee may determine and shall not be eligible for membership of Divisions A or B by way of transfer or otherwise.

#### **39.4 Special Conditions on continuing in Service**

Where a Member of Division A or Division B who suffers a Terminal Medical Condition wishes to continue in the Service of the Employer, the Trustee may determine to pay an amount equal to the Terminal Medical Condition benefit which would have been payable had the Member ceased to be in the Service due to a Terminal Medical Condition on condition that the Member acknowledges and agrees that no further benefits shall be payable to or in respect of the Member under Division A or Division B and that all future contributions by or in respect of the Member shall be made to the Member's Division C Account.



## **40. TEMPORARY INCAPACITY BENEFIT - DIVISIONS A AND B**

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### **40.1 Application of provisions**

This Clause 40 only applies in respect of Members of Division A or Division B.

### **40.2 Duration of benefits**

A Member may receive Temporary Incapacity benefits for:

- (a) a period of up to six months as the Trustee may determine; and
- (b) such further period as the Trustee may determine provided that the total period during which Temporary Incapacity benefits are paid in respect of:
  - (i) the same or a related illness or injury; or
  - (ii) an illness or injury arising out of an illness or injury in respect of which Temporary Incapacity benefits have previously been paid,
  - (iii) must not exceed two years.

### **40.3 Monthly instalments**

Temporary Incapacity benefits will be paid by monthly instalments (unless the Trustee determines to pay at more frequent intervals) commencing on such date as the Trustee may determine.

### **40.4 Cessation of benefits**

Temporary Incapacity benefits will cease to be payable to a Member if:

- (a) the Member returns to active employment with the Employer unless the Trustee is satisfied that:
  - (i) the work is less remunerative on an equivalent full-time basis than the Member's previous employment with the Employer; or
  - (ii) on or after the return to active employment the Member's Service Fraction (if not for the operation of clause 40.5) is less than the Service Fraction immediately prior to the Member's Temporary Incapacity;
- (b) the Member dies; or
- (c) the Member suffers Disablement.

### **40.5 Contributions not required during Temporary Incapacity**

Notwithstanding anything expressed or implied to the contrary in the Deed, a Member to whom the provisions of this Clause 40 applies is not required to contribute to UniSuper in respect of any period during which the Member is in receipt of a Temporary Incapacity benefit. For the purposes of calculating benefits, the period during which the Temporary Incapacity benefit is paid will count as Contributing Service with a Contribution Factor of one and with a Service Fraction equal to the Member's Service Fraction immediately prior to the Member's Temporary Incapacity.

Any Salary received by a Member while in receipt of a Temporary Incapacity benefit shall not be recognised as Salary for the purposes of calculating Benefit Salary.

#### **40.6 Arrangements with Employers during Temporary Incapacity**

The Trustee may require a Member's Employer to enter into an agreement or undertaking with the Trustee such that the Employer will:

- (a) keep a suitable position available for the Member with the Employer for:
  - (i) twenty four months; or
  - (ii) a period not exceeding the unexpired term of the Member's contract of employment (if any),
  - (iii) whichever is the shorter period; and
- (b) notify the Trustee of regular payments made to the Member,  
on terms acceptable to the Trustee.

### **41. GENERAL PROVISIONS APPLICABLE TO MEMBERS RECEIVING DISABLEMENT AND TEMPORARY INCAPACITY BENEFITS - DIVISIONS A AND B**

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#### **41.1A Application of provisions**

This Clause 41 only applies in respect of Members of Division A or Division B.

#### **41.1 Obligation to provide information**

If a Member is receiving a Disablement benefit or a Temporary Incapacity benefit and has not reached age 65, the Member must, on request, give the Trustee the following within a period specified by the Trustee:

- (a) proof of continued Disablement or Temporary Incapacity;
- (b) information in relation to any actual earnings from personal exertion; and
- (c) information in relation to any payments received by the Member of the type referred to in Clause 41.2(c).

#### **41.2 Reduction of benefits**

- (a) The Trustee may reduce a Member's Disablement benefit or Temporary Incapacity benefit if the Member receives or has received actual earnings from personal exertion:
  - (i) in the case of the Disablement of a Member entitled to benefits under Division A or Division B, by an amount up to but not exceeding one-half of the amount of such earnings; and
  - (ii) [deleted]
  - (iii) in the case of Temporary Incapacity, by an amount up to the total amount of such earnings.

- (b) The Trustee may reduce a Member's Disablement benefit or Temporary Incapacity benefit if the Trustee is satisfied that the Member is capable of earning some income from personal exertion in a suitable capacity (having regard to the Member's training and experience) and that a suitable opportunity exists for earning such income:
  - (i) in the case of the Disablement of a Member entitled to benefits under Division A or Division B, by an amount up to but not exceeding one-half of the estimated possible income; and
  - (ii) [deleted]
  - (iii) in the case of Temporary Incapacity, by an amount up to the whole of the estimated possible income.
- (c) The Trustee may reduce a Member's Disablement benefit or Temporary Incapacity benefit by an amount determined by the Trustee and not exceeding the total amount payable to the Member in respect of their Disablement or Temporary Incapacity under:
  - (i) any legislation dealing with workers compensation and similar payments; and
  - (ii) any award or agreement relating to their employment with the Employer.

#### **41.3 Cessation of benefits upon failing to provide information or co-operate**

- (a) All of a Member's rights in respect of a Disablement benefit or a Temporary Incapacity benefit cease if:
  - (i) in the opinion of the Trustee, the Disablement or Temporary Incapacity of the Member ceases;
  - (ii) the Member does not give the Trustee satisfactory proof of continued Disablement or Temporary Incapacity or other information after the Trustee has requested such proof or other information pursuant to Clause 41.1; or
  - (iii) the Member refuses to undergo or allow an appropriate medical examination on request by the Trustee.
- (b) If a Member receiving a Disablement benefit does not give the Trustee information which has been requested pursuant to Clause 41.1(b) or (c) within the period specified by the Trustee, no further payments of any benefits will be made in respect of that Member unless the Trustee otherwise determines.

#### **41.4 Preservation of service fractions: Disablement after returning to work following Temporary Incapacity**

- (a) This Clause 41.4 applies only if a Member previously in receipt of a Temporary Incapacity benefit returns to work and qualifies for a Disablement benefit within 5 years of the commencement of the Temporary Incapacity benefit.
- (b) The Trustee will calculate the Disablement benefit using the higher of:

- (i) the Average Service Fraction applicable as at the Temporary Incapacity benefit calculation date; and
  - (ii) the Average Service Fraction applicable as at the Disablement benefit calculation date.
- (c) For the purposes of Division A, the Trustee will calculate a Disablement benefit using:
- (i) the higher of:
    - (A) the Minimum Division A Disablement benefit calculated as at the Disablement benefit calculation date; and
    - (B) the Minimum Division A Disablement benefit calculated as if the Member had become Disabled as at the Temporary Incapacity calculation date; or
  - (ii) the higher of:
    - (A) the Notional Pension calculated as at the Disablement benefit calculation date; and
    - (B) the Notional Pension calculated as if the Member had become Disabled as at the Temporary Incapacity calculation date.

#### **41.5 Contributions whilst in receipt of Disablement benefit or Temporary Incapacity benefit**

Subject to this Clause 41, where a Member who is in receipt of a Disablement benefit or a Temporary Incapacity benefit is in the active employment of an Employer, any contributions made by or in respect of the Member shall be credited to the Member's Division C Account.

#### **41.6 Application of Waiting Period**

For a Disablement Benefit under Division A or Division B to become payable, the Member must have been absent from employment through the injury or illness for the Waiting Period. Where the Member ceased to be in the Service due to Disablement prior to 1 April 2020, the Member must have been absent from employment through the injury or illness for the Waiting Period immediately prior to ceasing to be in the Service. Where the Member ceased to be in the Service on or after 1 April 2020, the Member must have been absent from employment through the injury or illness for the Waiting Period by the later to occur of:

- (a) sixty working days; or
- (b) three months;

from the date of cessation of Service.

## **42. BENEFIT SPLITTING AND FLAGGING ARRANGEMENTS**

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### **42.1 Application**

Subject to Clause 42.2, this Clause 42 will apply in respect of a Member and their Spouse if:

- (a) a superannuation agreement (which provides for a payment flag or a payment split) or a flag lifting agreement has been entered into by the Member and their Spouse and such agreement has taken effect; or
- (b) a splitting order or a flagging order has been made by a court of competent jurisdiction in respect of the Member and their Spouse.

#### **42.2 Trustee may require Member and Spouse to provide details**

A Member and/or their Spouse must provide such information, declarations, proofs, documents and payments as the Trustee may require under Superannuation Law. The Trustee may determine that this Clause 42 will not apply in respect of a Member and their Spouse if the requirements of this Clause 42.2 have not been complied with to the satisfaction of the Trustee.

#### **42.3 Definitions**

Terms used in this Clause 42 will have the same meanings as they do under Superannuation Law.

#### **42.4 Establishment of accounts**

- (a) The Trustee may establish an account in respect of the Spouse of a Member. If the Trustee has previously established an account in respect of the Spouse pursuant to other provisions of this Deed, the Trustee may credit and debit amounts to that account for the purposes of this Clause 42.
- (b) The following amounts may be credited to an account maintained in respect of a Spouse:
  - (i) any amount which becomes payable (but which has not yet been paid) to or in respect of the Spouse pursuant to any relevant superannuation agreement, flag lifting agreement or splitting order;
  - (ii) any amount representing the entitlement of the Spouse under a relevant superannuation agreement, flag lifting agreement or splitting order;
  - (iii) an amount (if any) in respect of a positive crediting rate on the balance of the account, calculated on a basis approved by the Trustee and in accordance with Superannuation Law; and
  - (iv) such other amounts determined in accordance with the Regulations.
- (c) The following amounts may be debited from an account maintained in respect of a Spouse:
  - (i) any amounts which have been withdrawn and paid to or in respect of the Spouse;
  - (ii) any costs and expenses incurred in connection with this Clause 42 or the Deed and which have been allocated to the Spouse;
  - (iii) an amount (if any) in respect of a negative crediting rate on the balance of the account, calculated on a basis approved by the Trustee and in accordance with Superannuation Law; and

- (iv) such other amounts determined in accordance with the Regulations.

#### **42.5 Cessation of benefits**

Notwithstanding any other provision of this Deed, the Trustee is not required to pay any amount in respect of a Member if any part of that amount is a splittable payment which is subject to a flagging order or a payment flag. The Trustee will deal with such amounts in accordance with, and has power to take such steps as may be required by, this Clause 42 and Superannuation Law.

#### **42.6 Calculation of benefits**

The Trustee may adjust the benefits payable in respect of a Member, and may calculate the amounts payable in respect of their Spouse, in accordance with any relevant superannuation agreement, flag lifting agreement, court order and Superannuation Law. The Trustee has power to pay such adjusted benefits and calculated amounts or to credit those benefits and amounts to such accounts as may be determined by the Trustee.

#### **42.7 Commutations – Family Law**

For the purpose of giving effect to the provision of this Clause 42, the Trustee may at any time commute a pension payable in respect of a Member in whole or in part in circumstances where such commutation is expressly or impliedly required under Superannuation Law. For the avoidance of doubt, the provisions of this Deed relating to the commutation of the relevant pension will apply for the purposes of any such commutation.

#### **42.8 Splitting interests in the growth phase and allocated pensions**

- (a) The Trustee may maintain an account in respect of a Spouse for the purposes of splitting any interest of the Member in UniSuper which is in the growth phase or which is being paid as an allocated pension.
- (b) The Trustee may credit to the account referred to in paragraph (a) an amount corresponding to the Spouse's entitlement in respect of the Member's interest in UniSuper (less any costs or expenses charged by the Trustee). Such amount will be determined on a basis determined by the Trustee which is in accordance with the relevant superannuation agreement, flag lifting agreement or court order and Superannuation Law.
- (c) The Trustee may make such adjustments and take such steps as may be necessary or desirable to reduce the Member's interest in UniSuper by the amount of the Spouse's entitlement calculated under paragraph (b). Such adjustments may be made on a basis determined by the Trustee which is not inconsistent with the relevant superannuation agreement, flag lifting agreement or splitting order and Superannuation Law.
- (d) Subject to Superannuation Law, the Trustee may determine the preserved, unrestricted non-preserved and restricted non-preserved components of the benefits of the Member and their Spouse in UniSuper.

#### **42.9 Payments to or in respect of Spouse**

- (a) Subject to paragraph (b), the credit balance of an account established in respect of a Spouse may, to the extent that such credit balance arises from amounts credited pursuant to this Clause 42, be:

- (i) paid to or at the direction of the Spouse at their request; or
  - (ii) in the event of the Spouse's death, paid to such one or more of the Spouse's Dependants and legal personal representatives to the exclusion of such of them, or in such shares between them, as the Trustee may determine.
- (b) Paragraph (a) is subject to:
- (i) the Deed;
  - (ii) Superannuation Law;
  - (iii) any agreement or undertaking entered into or given by the Trustee pursuant to Clause 31.2; and
  - (iv) any Regulations prescribed by the Trustee.

#### **42.10 Provision of information**

The Trustee may:

- (a) provide the Member and/or their Spouse with information relating to the benefits and interests of the Member and their Spouse; and
- (b) require charges to be paid in connection with, and prior to, the provision of such information,

in accordance with Superannuation Law.

#### **42.11 Costs and expenses**

Subject to Superannuation Law, the Trustee may at its discretion allocate any costs and expenses incurred in connection with the application and administration of this Clause 42 between the Member and their Spouse on a basis determined by the Trustee. The Trustee may debit an amount so allocated to any one or more accounts maintained by the Trustee in respect of the Member or their Spouse (as the case may be) as the Trustee may determine.

#### **42.12 Accrued Benefit Multiple**

For the purposes of Superannuation Law, the "Accrued Benefit Multiple" in respect of a Member entitled to benefits:

- (a) under Division A or Division B is calculated as follows:

$(ASF \times 23\% \times \text{Benefit Service} \times ACF) + RASF \times [(4\% \times \text{Pre December 2000 Contributing Service}) + (15\% \times 23\% \times \text{Qualifying Benefit Service})]$ .

where "RASF" means relevant ASF, being the Member's ASF as at 31 December 2003; and

- (b) under Division E is calculated in accordance with the Regulations.

#### **42.13 Transfer of benefits**

If a Spouse is a Member, the Trustee may transfer the balance of an account maintained in respect of the person to such other account as may be maintained by the Trustee in respect of the person as the Trustee may determine.

#### **42.14 Rollover**

The Trustee may, in accordance with Superannuation Law, transfer or rollover to an Approved Fund:

- (a) the credit balance of an account maintained in respect of a Spouse; or
- (b) if an account has not yet been established in respect of the Spouse, any amount which would constitute the credit balance if there were to be no transfer or rollover and an account was established in respect of the Spouse, after the deduction of all relevant costs and expenses.

#### **42.15 Disclosure upon opening account**

If an account is established in respect of a Spouse under this Clause 42, the Trustee will provide the Spouse with such information and disclosure documents relating to UniSuper and their account as may be required under Superannuation Law.

#### **42.16 Status of Spouse**

A Spouse in respect of whom an account is maintained by the Trustee under this Clause 42 will only have the rights and entitlements which are contemplated by this Clause 42. A Spouse may, at the discretion of the Trustee, be admitted as a Member of Division D, subject to any special conditions or restrictions contained in Regulations prescribed by the Trustee. A Spouse will not otherwise enjoy any of the rights and entitlements of Members under any other provision of the Deed, and will not be a Member for the purposes of any of the Divisions unless:

- (a) the Spouse has made an application for Membership in accordance with the Deed and that application has been accepted by the Trustee; or
- (b) the Trustee has made a determination to the contrary and the Spouse agrees, or is deemed by the Trustee to have agreed, to comply with any conditions specified in the determination (as amended from time to time).

### **43. PAYMENT OF DEPENDENT CHILD PENSION - DIVISION A AND B**

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- (a) Payment of pensions in respect of a Dependent Child of a deceased Member will be made to or for the benefit of such one or more of the Dependent Children to the exclusion of such of them or in such shares between them as the Trustee determines having regard to such matters as the Trustee considers relevant.
- (b) A pension payable in respect of a Dependent Child of a Deceased Member will only continue while the Trustee is satisfied that the person qualifies as a Dependent Child of that Member and, where relevant, during the period the person is over age 18 genuinely pursuing an approved course of study on a full-time day attendance basis.
- (c) Where a Dependent Child is genuinely pursuing an approved course of study on a full-time day attendance basis, the Dependent Child Pension shall cease



at the end of the academic year for that approved course during which the Dependent Child attains age 25, unless the Dependent Child is also a Disabled Child at that time.

- (d) Where Superannuation Law prohibits the payment of a pension in respect of a Dependent Child:
  - (i) the Trustee must commute the pension to a lump sum of an amount determined by the Trustee and pay that lump sum to or for the benefit of that Child; and
  - (ii) that Child will, from a date determined by the Trustee, be treated for the purposes of this Deed as if he or she had ceased to be a Dependent Child.

#### **44. PAYMENT OF BENEFITS**

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##### **44.1 Recipients of benefits - Divisions A and B**

Subject to the provisions of the Deed, benefits under Divisions A and B will be payable as follows:

- (a) on the death in service of a Member:
  - (i) the single lump sum payments referred to in Clause A.6.1(a) and Clause A.6.2 will be payable to the Dependants of the Member;
  - (ii) the single lump sum payment referred to in Clauses A.6.3 or B.6 will be payable to such one or more of the Dependants (if any) and legal personal representatives of the Member to the exclusion of such of them, or in such shares between them, as the Trustee may in its absolute discretion determine having regard to such matters as the Trustee considers relevant;
- (b) the pensions payable under Clauses A.6.1(b), A.9 or B.9 will be payable to the Spouse;
- (c) all pensions payable under Clauses A.6.1(c), A.10 and B.10 in respect of Dependent Children will be payable in accordance with Clause 43;
- (d) all pensions payable in respect of a Disabled Child will, subject to Clause 47, be paid to the Disabled Child; and
- (e) in all other cases, benefits will be payable to or at the direction of the Member.

##### **44.2 Multiple Spouses**

Where a deceased Member who was a Member of Division A or Division B is survived by more than one Spouse:

- (a) any benefit payable under the Deed will be at such rate or of such amount as would be applicable if the deceased Member were survived by one Spouse; and
- (b) the benefit will be payable to such one or more of those persons to the exclusion of such of them, or in such shares between them as the Trustee determines having regard to such matters as the Trustee considers relevant.

#### **44.3 Lump sum benefit upon death of Member - Divisions A and B**

If the Member dies before the benefit payable under Clauses A.7 or B.7 has been paid in full, any part of the benefit which has not previously been dealt with on behalf of the Member will be payable to such one or more of the Dependants and legal personal representatives of the Member, as the Trustee may determine in accordance with Clause 46, subject to Clause 44A and Clause 44B.

#### **44.4 Recipients of death benefits - Divisions C, D, E and F**

Subject to Clause 44A and Clause 44B, benefits under Divisions C and D and those benefits payable pursuant to Clause E.5.2 and F.7(a)(ii) will be payable upon the Member's death to such one or more of:

- (a) the Dependants of the Member;
- (b) the legal personal representative of the Member; and
- (c) if applicable, any other person to the extent permitted under Superannuation Law,

as the Trustee may determine in accordance with Clause 46.

#### **44A. BINDING NOMINATIONS**

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- (a) The Trustee may determine the extent to which, and the benefits in relation to which, Members may give the Trustee Binding Nominations (if at all). A Member may give the Trustee a Binding Nomination at any time, subject to any restrictions or conditions determined by the Trustee.
- (b) A Binding Nomination will cease to be binding if:
  - (i) the Member revokes the Binding Nomination or gives the Trustee a new Binding Nomination or a new Non-Lapsing Binding Nomination; or
  - (ii) under Superannuation Law the Binding Nomination ceases to be binding.
- (c) If all Superannuation Law requirements have been satisfied, the Trustee must pay any benefits in respect of a Member in accordance with any Binding Nomination.

#### **44B. NON-LAPSING BINDING NOMINATIONS**

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- (a) The Trustee may consent to a Member exercising a discretion regarding the payment of any benefits in respect of the Member on or after the Member's death to a person or persons mentioned in a Non-Lapsing Binding Nomination.
- (b) The Trustee may determine the extent to which, and the benefits in relation to which, Members may give the Trustee Non-Lapsing Binding Nominations (if at all). A Member may give the Trustee a Non-Lapsing Binding Nomination at any time, subject to any restrictions or conditions, in the Regulations or otherwise, determined by the Trustee.
- (c) A Non-Lapsing Binding Nomination will cease to be binding if, in a form approved by the Trustee, the Member revokes the Non-Lapsing Binding

Nomination or gives the Trustee a new Non-Lapsing Binding Nomination or a new Binding Nomination.

- (d) Subject to clauses 44B(c) and 44B(e), if the Trustee has consented to a Member making a Non-Lapsing Binding Nomination and all of the Trustee's requirements and conditions, including any conditions in the Regulations, in relation to a Non-Lapsing Binding Nomination have been satisfied, the Trustee must pay any benefits in respect of a Member in accordance with any Non-Lapsing Binding Nomination.
- (e) The Trustee is not required to comply with clause 44B(d) if the Trustee:
  - (i) is subject to a court order that has the effect of restraining or prohibiting the Trustee from paying a benefit in respect of the Member in accordance with any Non-Lapsing Binding Nomination; or
  - (ii) is aware that the Member is subject to a court order that requires the Member to amend or revoke any Non-Lapsing Binding Nomination that the Member has given the Trustee or has the effect of restraining or prohibiting the Member from giving a Non-Lapsing Binding Nomination to the Trustee.

## **45. PAYMENTS OF LUMP SUM BENEFITS**

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### **45.1 Lump sum benefits during life of Member**

Lump sum benefits may, at the option of the Member, be dealt with in any one or more of the following ways:

- (a) as to any non-Preserved Component, paid to or at the direction of the Member;
- (b) as to any Preserved Component, as a Transfer Value to an Approved Fund subject to such terms as the Trustee may impose;
- (c) as a Transfer Value to an Approved Fund subject to such terms as the Trustee may impose;
- (d) transferred to the Member's Division C Account or Division D Account (as applicable) subject to such terms as the Trustee may impose;
- (e) paid in the form of a pension under Clause 15(a), which pension may include the payment of one or more pensions payable on the death of the Member; or
- (f) to purchase a pension or an annuity from an insurance company under Clause 15(b).

### **45.2 Compulsory transfer of Division C or D benefit to Approved Fund**

If a benefit under Division C or D becomes payable to a Member and the Member does not provide payment instructions to the Trustee, the Trustee may transfer the Member's benefit to an Approved Fund provided that to do so would not be inconsistent with Superannuation Law.

## **46. PAYMENTS TO DEPENDANTS AND LEGAL PERSONAL REPRESENTATIVES**

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### **46.1 Trustee's discretion as to allocation of benefits between Dependants**

Any benefit which becomes payable to the Dependants of a Member may be paid to such one or more of those Dependants and to the exclusion of such of them or in such shares between them as the Trustee may in its absolute discretion determine.

### **46.2 Identifying Dependants**

- (a) In ascertaining the Dependants of a Member:
  - (i) the Trustee has no obligation to locate, establish or identify all the persons who may qualify; and
  - (ii) the Trustee may act upon such information as it thinks fit to locate, establish and identify persons as Dependants of that Member.
- (b) If after reasonable enquiry the Trustee determines that there are no Dependants satisfactorily known to the Trustee, any benefit payable in respect of the Dependants of the Member:
  - (i) will cease to be payable and will be retained by the Trustee for the general purposes of UniSuper; or
  - (ii) if Superannuation Law requires the amount which ceases to be payable to be dealt with in a particular manner, the amount will be dealt with in that manner.

### **46.3 Identifying legal personal representatives**

- (a) Any benefit or other amount payable to a Member's legal personal representative will, subject to any requirements imposed by law, be paid upon production of probate or letters of administration unless in any particular case the Trustee waives that requirement and is reasonably satisfied that the recipient of the benefit or other amount would be entitled on application to a grant of probate or letters of administration or to benefit under the estate of the deceased Member had it been formally administered.
- (b) If after reasonable enquiry the Trustee has not found a legal personal representative of the deceased Member and the Trustee has not exercised its discretion under Clause 46.3(a), the relevant benefit or other amount will:
  - (i) be paid to such individual or individuals (if any) as the Trustee may in its absolute discretion determine; or
  - (ii) cease to be payable or retained by the Trustee for the general purposes of UniSuper; or
  - (iii) if Superannuation Law requires the amount which ceases to be payable to be dealt with in any particular manner be dealt with in that manner.

## **47. PAYMENTS TO PERSONS UNDER A LEGAL DISABILITY**

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### **47.1 Payment to a recipient under a legal disability**

If an amount is payable to or for the benefit of a person (the beneficiary) and the beneficiary is in the opinion of the Trustee:

- (a) under any legal disability or incapacity; or
- (b) suffering from any physical or mental sickness, injury or infirmity which the Trustee considers renders the relevant person unable to manage their affairs properly,

the Trustee may at its discretion (upon obtaining such evidence as the Trustee may require):

- (c) suspend the beneficiary's right to receive such payment; and
- (d) apply the whole or such part of the proposed payment:
  - (i) towards the beneficiary's maintenance, education, advancement or benefit; or
  - (ii) for the general benefit of the beneficiary to any person purporting:
    - (A) to be a Dependant, parent, trustee, representative or guardian of the beneficiary; or
    - (B) to have the care or custody (or financial expense of that care or custody) of the beneficiary,

and the receipt of the person will be a good and full discharge to the Trustee.

### **47.2 Trustee to retain amounts not paid due to the legal disability of the recipient**

Any amount the payment of which is suspended pursuant to Clause 47.1 and which has not been otherwise paid or applied in accordance with this Clause 47 must be:

- (a) retained by the Trustee for the general purposes of UniSuper; or
- (b) if Superannuation Law requires the amount to be dealt with in a particular manner, the amount must be dealt with in that manner.

### **47.3 Payments to children under a legal disability**

- (a) If an amount is payable to or for the benefit of a Child who is under a legal disability:
  - (i) the Trustee may instead pay the amount to a parent who has the care or custody of the Child;
  - (ii) if the Trustee does not believe there to be a person qualifying under paragraph (i), the Trustee may instead pay the amount to a person who, in the Trustee's opinion:
    - (A) is the guardian of the Child;

- (B) acts in loco parentis to the Child; or
- (C) has the care or custody of the Child (or the financial expense of such care or custody),

at the discretion of the Trustee; or

- (iii) if the Trustee does not believe there to be any persons qualifying under either paragraphs (i) or (ii), subject to Clause 47.3(b), the amount will cease to be payable.
- (b) If an amount has ceased to be payable pursuant to Clause 47.3(a)(iii) and:
- (i) the Child subsequently ceases to be under a legal disability; or
  - (ii) a person subsequently qualifies under Clause 47.3(a) and is capable of receiving the payment,

the Trustee may at its discretion pay an amount determined by the Trustee to the Child or the person (as applicable).

#### **47.4 Trustee has no obligation to monitor application of benefits**

The Trustee has no obligation:

- (a) to see to the application of moneys applied pursuant to this Clause 47;
- (b) to consider whether there is any other money available for any of the purposes referred to in this Clause 47; or
- (c) to consider whether there is any other person bound by law to provide for such purposes.

### **48. PAYMENT OF PENSIONS - DEFINED BENEFIT DIVISION**

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#### **48.1 Timing of pension payments**

All pensions will be paid monthly (unless the Trustee determines to pay at more frequent intervals) on dates determined by the Trustee. A Member's first pension payment will be due on the first pension payment date after the right to receive the pension arose. A Member's last pension payment will be due on the last pension payment date before the right to receive the pension ceases.

#### **48.2 Certain amounts to be included in a Member's first pension payment**

A Member's first pension payment will include an amount equal to the pension which accrues in respect of the period between:

- (a) the date on which the right to receive the pension arises; and
- (b) the first pension payment date in relation to that pension.

#### **48.3 Certain amounts to be included in a Member's last pension payment**

- (a) If a Member's right to receive a pension ceases and there is a pension payable to a Spouse or Child under Division A or Division B or a Division E Spouse

Pension payable under Division E, the Trustee will pay an amount equal to the pension which accrued in respect of the period between:

- (i) the last pension payment date (referred to in Clause 48.1); and
  - (ii) the date on which the Member's right to receive the pension ceased,  
to the person entitled to receive the reversionary pension.
- (b) If a Member's right to a pension ceases and there is no pension payable to a Spouse or Child under Division A or Division B or a Division E Spouse Pension payable under Division E, the Trustee will pay an amount equal to the pension which accrued in respect of the period between:
- (i) the last pension payment date (referred to in Clause 48.1); and
  - (ii) the date on which the Member's right to receive the pension ceased,  
to the legal personal representative of the person entitled to the pension.

#### **48.4 Trustee not obliged to recover pension payments**

If a pension has been paid to a person who ceased to be entitled to the pension prior to the pension payment date, the Trustee has no obligation to recover any part of the payment.

#### **48.5 Pension increases - Divisions A and B**

- (a) The Trustee will increase pensions and Temporary Incapacity benefits payable to or in respect of Members of Division A or Division B that are in the course of payment on 1 July each year:
- (i) in the same proportion to any increase in the CPI Index since the last revision under this paragraph; and
  - (ii) to the extent relevant, having regard to variations in:
    - (A) the Benefit Salary;
    - (B) any notional pension which relates to a pension benefit;
    - (C) the minimum Division A Disablement benefit.
- (b) The Trustee may, with the approval of the Consultative Committee, increase pensions payable to or in respect of Members of Division A or Division B that are in the course of payment on such terms and conditions as the Trustee may determine.
- (c) No pension or Temporary Incapacity benefit will be reduced as the result of any revision under this Clause.

#### **48.6 Application of Clause 48**

This Clause 48 only applies in relation to pensions which are payable from the Defined Benefit Division.

**49. [DELETED]**

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**50. NO CLAIM APART FROM DEED**

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No person whatsoever will be entitled to require payment of any amount from UniSuper except as expressly provided for and specified in the Deed.

**51. MAKING A CLAIM FOR A BENEFIT OR OTHER AMOUNT FROM UNISUPER**

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**51.1 Obligation to establish claims**

It is the responsibility of each person who may be entitled to receive a benefit or other amount from UniSuper to make and establish their claim to the satisfaction of the Trustee by:

- (a) notifying the Trustee as to their whereabouts; and
- (b) providing the Trustee with such other information as the Trustee may require.

**51.2 Failure to make a claim, unclaimed moneys and lost Members**

- (a) All claims to benefits or other amounts must be made and established to the satisfaction of the Trustee within 2 years (or such further period as the Trustee may determine) after the date on which the benefit or amount could have commenced or become payable. Subject to paragraph (b) of this Clause 51.2, if a claim is not made in this time the benefit or other amount will cease to be payable and:

- (i) will be retained by the Trustee for the general purposes of UniSuper; or,
- (ii) if Superannuation Law requires the amount to be dealt with in a particular manner, the amount will be dealt with in that manner,

unless the Trustee determines to reinstate all or part of the benefit or other amount which would be payable to a person but for this Clause 51.2.

- (b) The Trustee has power:

- (i) to give any statement;
- (ii) to make any payment;
- (iii) to transfer an amount to an eligible rollover fund; and
- (iv) to do any other thing,

which is required or permitted by Superannuation Law or any legislation in respect of unclaimed moneys or lost Members. If a payment or transfer is made pursuant to this Clause, the Trustee may:

- (v) reduce the benefits payable in respect of the Member; or
- (vi) debit an account maintained in respect of the Member selected by the Trustee,



in a manner and by an amount determined by the Trustee.

### **51.3 Time for providing evidence in support of claims**

A person claiming to be entitled to a Disablement benefit or a Temporary Incapacity benefit may only produce evidence to support their claim prior to a decision being made pursuant to UniSuper's internal complaints procedure unless the Trustee determines otherwise.

### **51.4 Claims for further benefits restricted**

(a) This clause 51.4 is subject to clause 51.2.

(b) If:

- (i) a person receives a benefit from Division A or Division B after ceasing to be in Service;
- (ii) a person's benefit is transferred from Division A or Division B to another Division within UniSuper; or
- (iii) a person's benefit is rolled over or transferred from Division A or Division B to an Approved Fund;

the person is not entitled to make a subsequent claim for a Disablement, Terminal Medical Condition or Temporary Incapacity benefit from Division A or Division B unless all requirements of clauses 51.4(c) to 51.4(g) have been satisfied.

(c) A person described in clause 51.4(b) may claim:

- (i) a Terminal Medical Condition benefit under Division B if the person met all of the criteria of a Terminal Medical Condition benefit including that the certificates, irrespective of date of issue, confirm that:
  - (A) the Member was suffering the injury or illness at the date of payment, transfer or rollover of the benefit from Division A or B (as applicable), or the date of cessation of Service if that occurred earlier; and
  - (B) the injury or illness was likely to result in death within 12 months of the date determined under clause 51.4(c)(i)(A);
- (ii) a Disablement benefit under:
  - (A) Division A or Division B (by election) if the person was a Division A Member; or
  - (B) Division B if the person was a Division B Member,  
but only if the person ceased Service due to Disablement while in Division A or Division B and met the Waiting Period requirements under clause 41.6; or
- (iii) a Temporary Incapacity benefit under Division A or Division B (as applicable) if the person suffered Temporary Incapacity while in

Service and a member of Division A or Division B, provided that the person was absent from employment through the illness or injury for the Waiting Period from the earlier of:

- (A) the date of cessation of Service where that cessation occurs before payment, rollover or transfer of the person's benefit from Division A or Division B; or, otherwise
  - (B) the date of payment, rollover or transfer of the person's benefit from Division A or Division B.
- (d) If the person establishes an entitlement to a Terminal Medical Condition, Disablement or Temporary Incapacity benefit under clause 51.4(c), the Trustee must determine any conditions relating to the benefit. The Trustee may change the method of calculation of the Terminal Medical Condition, Disablement or Temporary Incapacity benefit in any manner it considers to be fair and reasonable to other members of the Defined Benefit Division, as well as other benefits that may subsequently become payable if the person is re-admitted to Division A or Division B.
- (e) The conditions relating to the payment of the Terminal Medical Condition, Disablement or Temporary Incapacity benefit may include, without limitation, repayment or setting off of part or all of the benefit previously paid, transferred or rolled over, including interest at a rate considered appropriate by the Trustee.
- (f) For the avoidance of doubt, the Trustee may determine that it is fair and reasonable for the purposes of clause 51.4(d) for the Terminal Medical Condition, Disablement or Temporary Incapacity benefit to be paid without the person being re-admitted to Division A or Division B.
- (g) Before a Terminal Medical Condition, Disablement or Temporary Incapacity benefit becomes payable, the Trustee must obtain the person's consent, in a manner determined by the Trustee, to all of the changes to their benefits (including conditions) determined by the Trustee under clauses 51.4(d) to 51.4(f). If the person declines to consent to the changes, then no Terminal Medical Condition, Disablement or Temporary Incapacity benefit will become payable.

## **52. NATURE OF INTERESTS IN BENEFITS**

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### **52.1 Benefits not assignable**

All rights and benefits of Members, Spouses and Children under the Deed are strictly personal and may not be assigned or charged in any way.

### **52.2 Rights and benefits forgone in certain circumstances**

Subject to Clause 52.3, if any Member, Spouse or Child:

- (a) becomes bankrupt or commits an act of bankruptcy;
- (b) attempts to assign or charge their rights or benefits under UniSuper in any way;
- (c) does or is involved in any matter whatsoever which may result in their rights and benefits becoming vested in or payable to another person; or

- (d) does or is involved or is affected by any matter which may result in them being deprived of the full and free personal enjoyment of any part of their rights or benefits under UniSuper,

the relevant rights and benefits of the Member will cease.

### **52.3 Rights and benefits circumstances**

Clause 52.2 does not apply to:

- (a) any right or benefit to which any person is absolutely entitled; or
- (b) in the case of a Member, Spouse or Child who becomes bankrupt, commits an act of bankruptcy or executes a deed of assignment or a deed of arrangement under the Bankruptcy Act, the beneficial interest (within the meaning of the Bankruptcy Act 1966) of the relevant person.

### **52.4 Trustee's discretion where rights and benefits forgone**

If rights or benefits have ceased pursuant to Clause 52.2, the moneys representing those rights or benefits may, at the Trustee's discretion, be:

- (a) applied as a benefit under UniSuper;
- (b) applied for or towards the maintenance or benefit of the relevant Member or any of their Dependants;
- (c) retained by the Trustee for the general purposes of UniSuper; or
- (d) if Superannuation Law requires the amount which ceases to be payable to be dealt with in a particular manner, dealt with in that manner.

## **Amending the Trust Deed**

### **53. AMENDMENT**

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#### **53.1 General power to amend the Deed**

The Trustee may amend the Deed, including the provisions of this Clause 53 (but not Clause 53.4):

- (a) with the consent of the Consultative Committee; or
- (b) if, in the opinion of the Trustee, the amendment is necessary or desirable so as to ensure that UniSuper complies with Superannuation Law.

#### **53.2 Effective date of amendments**

An amendment to the Deed:

- (a) will come into force upon the execution of the amending deed;
- (b) will take effect on and from the date of the amending deed or such other date as may be specified in the amending deed; and
- (c) having come into force and taken effect, will be of the same validity as if it had been originally contained in the Deed.

### **53.3 Trustee to give notice of amendments**

The Trustee must notify each Member of any amendments to the Deed. No failure or omission to give any such notification will prejudice or invalidate the relevant amendment.

### **53.4 Limitations to power of amendment**

No alteration, addition or repeal as aforesaid shall:

- (a) prejudice or affect any pension or other benefit payable under the Scheme or the rights of any member who is then excused from or not liable for contribution;
- (b) have the effect of altering the purpose of the Scheme which shall continue to be the provision of benefits for members and their dependants;
- (c) result in the return to any of the Employers of any part of the Fund but subject to the provisions of Clause 28.

### **53.5 Superannuation Law**

If an amendment requires the consent or approval of any person in order to comply with Superannuation Law, the amendment must not be made without the consent or approval of the person concerned.

## **Winding up UniSuper**

### **54. WINDING UP AND DETERMINATION OF UNISUPER**

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#### **54.1 Circumstances in which UniSuper to be wound up**

UniSuper will be determined and wound up if either of the following circumstances occur:

- (a) all the Employers agree to that effect in writing; or
- (b) the Trustee and the Consultative Committee so determine on the grounds that the objects for which UniSuper was established no longer exist or the administration of such objects cannot conveniently be carried on.

#### **54.2 Procedure upon winding up**

- (a) Upon the determination of UniSuper, the assets of UniSuper will be realised.
- (b) The proceeds of realised assets (and any other money in UniSuper) will be applied by the Trustee to satisfy the following obligations in the following order:
  - (i) to pay all costs, charges and expenses which may be owing in respect of UniSuper;
  - (ii) to secure the continuance of any pensions which have actually commenced and the prospective pensions and benefits payable in respect of Members then not liable for contributions to which they or persons claiming through or in respect of them would have been respectively entitled had the UniSuper continued in existence;

- (iii) to provide benefits as determined by the Trustee (after obtaining the advice of the Actuary) for each Member at a level necessary to satisfy the obligations of Employers under any superannuation guarantee charge or similar legislation and, in this regard, the Trustee can take into account a notice in writing from the Employer as to any other arrangements which the Employer has in place to meet such obligations;
- (iv) to provide benefits at a level determined by the Trustee for Members and other persons entitled in anticipation to benefits under UniSuper having regard to:
  - (A) the benefits required to be provided under paragraph (iii);
  - (B) the advice of the Actuary; and
  - (C) the prospects of the relevant persons of becoming entitled to such benefits had UniSuper continued in existence.

### **54.3 Trustee may make arrangements following winding up**

- (a) For the purposes of Clause 54.2, the Trustee may, with the written consent of the relevant Member, transfer amounts in respect of the Member to another superannuation, pension or like scheme or fund approved by the Trustee. Upon such a transfer being effected, the Trustee will be released and discharged in respect of the Member and persons claiming in respect of them.
- (b) Where a transfer is not made in respect of a Member pursuant to paragraph (a), any provision to be made for the Member will be made by purchasing an annuity, deferred annuity or other insurance contract from an insurance company selected by the Trustee.
- (c) Payments pursuant to an annuity purchased in accordance with this Clause must not commence to be payable earlier than the earliest date on which a pension or an annuity could have been payable had UniSuper continued in existence. Except to the extent provided in the Deed, all such annuities must be non-assignable and non-commutable.

### **Miscellaneous General Provisions**

## **55. SUPERANNUATION LAW AND OTHER PRUDENTIAL REQUIREMENTS**

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### **55.1 Paramountcy of Superannuation Law and this Clause**

- (a) The whole of the Deed operates subject to this Clause 55.
- (b) The whole of the Deed is subject to Superannuation Law.
- (c) The Trustee has power to do anything which may be required to be done by Superannuation Law.
- (d) The Trustee must not do anything which would (or would in its opinion) contravene Superannuation Law even if the Trustee would otherwise have power under the Deed to do that thing.
- (e) The Trustee has power to comply with:

- (i) any directions, administrative guidelines, rulings or determinations made or laid down by the Superannuation Authority, the Superannuation Complaints Tribunal or the Australian Financial Complaints Authority; and
- (ii) statements by the government of the Commonwealth of Australia or any State or Territory (as the case may be) advising changes or proposed changes to Superannuation Law.

### **55.2 Election to be subject to Superannuation Law**

The Trustee may, where permitted by Superannuation Law, elect that Superannuation Law is to apply in relation to UniSuper. An election may be made pursuant to this Clause even though the election may be irrevocable.

### **55.3 Provisions deemed to be included by Superannuation Law**

Any provision of Superannuation Law that is required to be included in this Deed:

- (a) for UniSuper to be (or remain) a complying superannuation fund; or
- (b) for UniSuper to comply with or satisfy other requirements of Superannuation Law, is deemed to be included in this Deed:
- (c) on and from the date that the provision is required to be so included; and
- (d) until such date that the provision ceases to be required to be included.

In the event of an inconsistency between a provision of this Deed and a provision deemed to be included pursuant to this Clause 55.3, the deemed provision will prevail to the extent of the inconsistency.

### **55.4 Overriding provisions applicable to pensions and annuities**

If a benefit is payable in the form of a pension or an annuity, the Trustee will pay the pension or annuity on such basis as it considers necessary or desirable to comply with Superannuation Law. Where the Trustee determines to pay a pension on the basis that it qualifies as a pension, or a particular type of pension, under Superannuation Law, any condition, standard or requirement of the Superannuation Law which is required to be included in the governing rules of UniSuper in order for the pension to qualify as a pension or as the particular type of pension (as the case may be) is deemed to be included in the Deed for so long as and only to the extent of any such requirement. The Trustee has the power to adjust the operation of the Deed if the Trustee considers such adjustments to be necessary or desirable having regard to the intention of this Clause 55.4 and the advice of the Actuary.

### **55.5 Trustee has power to consent to exercise of discretion**

If the Deed provides for the exercise of a discretion by a person other than the Trustee, and Superannuation Law requires that discretion to be exercised only with the consent of the Trustee:

- (a) that discretion may only be exercised by that person with the consent of the Trustee; and
- (b) the Trustee may give its consent to the exercise of such discretion.

## **55.6 Certain circumstances will not give rise to a contravention by the Trustee**

If the Trustee does anything, or fails to do anything, which is in contravention of Superannuation Law and:

- (a) the contravention is approved by the Superannuation Authority, or the persons (if any) specified for that purpose, in accordance with Superannuation Law; or
- (b) the contravention is rectified within 30 days from the date the Trustee became aware of the contravention or, where applicable, such other period allowed by Superannuation Law,

the Trustee will not have contravened the Deed or breached any relevant trust.

## **55.7 Modifications and exemptions**

- (a) Subject to Superannuation Law, the Trustee may seek modifications of, or exemptions from, the requirements of Superannuation Law.
- (b) If any modification or exemption by the Superannuation Authority applies in respect of the Deed, UniSuper or the Trustee, the Trustee is relieved from compliance with those provisions of the Deed and Superannuation Law expressed in that modification or exemption (subject to any conditions in that modification or exemption).

## **55.8 Determination of disputes**

The Trustee may determine any question in relation to the existence, meaning, application or effect of Superannuation Law or any provision deemed by this Clause 55 to be included in the Deed. Any such determination by the Trustee will be final, conclusive and binding on all interested persons.

## **55.9 Reporting Account Balances**

Notwithstanding anything expressed or implied to the contrary in the Deed, for the purposes of reporting only the Trustee shall have the power to:

- (a) consolidate accounts and account balances of a Member as the Trustee thinks fit; and
- (b) classify Members as active or inactive based on such criteria as may be specified in Regulations prescribed by the Trustee.

## **56. EMPLOYERS RIGHTS NOT AFFECTED**

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Nothing in the Deed affects any right or power of Employers in relation to the dismissal, remuneration, promotion, demotion, variation of employment or other dealings with any of their Employees.

## **57. SEVERANCE OF VOID PROVISIONS**

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- (a) Any provision of the Deed which is void, prohibited or unenforceable (whether by reason of Superannuation Law or otherwise) is ineffective to the extent that the provision is void, prohibited or unenforceable.
- (b) A provision which is ineffective by reason of paragraph (a) will not invalidate the remaining provisions of the Deed.

- (c) Subject to Superannuation Law:
  - (i) if a provision is ineffective by reason of this Clause, the Trustee will determine the effect and interpretation of the remaining provisions of the Deed; and
  - (ii) the Trustee's determination will be final, conclusive and binding on all persons.

## **58. MYSUPER**

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### **58.1 General power to comply with MySuper Requirements**

The Trustee may do anything which the Trustee considers is necessary or desirable to comply with the MySuper Requirements.

### **58.2 MySuper Requirements**

The Trustee must take all actions necessary to ensure that the Trustee complies with the MySuper Requirements and may establish MySuper Rules as the Trustee sees fit.

### **58.3 MySuper Rules**

Any MySuper Rule must be evidenced in writing (in one or more documents) and may be varied, replaced or revoked as determined by the Trustee subject to Superannuation Law.

### **58.4 MySuper Member's interest in the Fund**

- (a) A MySuper Member's interest in UniSuper is subject to and determined in accordance with this Deed and the MySuper Rules.
- (b) If there is conflict between this Deed and the MySuper Rules in respect of a MySuper Member, the MySuper Rules prevail.
- (c) If there is a conflict between the MySuper Rules and Superannuation Law, Superannuation Law prevails to the extent of the conflict.

### **58.5 Payment of benefits in respect of a MySuper Member**

Notwithstanding anything in this Deed, any benefit payable in respect of a MySuper Member may be paid in any circumstance allowed by Superannuation Law.



## DIVISION A

### Defined Benefit Division

#### A.1 APPLICATION OF DIVISION A

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- (a) Division A only applies to persons who:
  - (i) commenced as Members of a Defined Benefit Division pursuant to an arrangement between the Employer and the Trustee prior to 1 January 1990; and
  - (ii) have not had their entire benefit under Division A paid or transferred from Division A; andand whom the Trustee has admitted to Division A.
- (b) For the avoidance of doubt, a Member in receipt of a pension from Division A remains a Member of this Division A whilst a pension is being paid from this Division A.

#### A.2 DEFINITIONS

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The following definitions apply to Division A unless the context requires otherwise.

**Accrued Benefit** means the present capital value as determined by the Trustee after obtaining the advice of the Actuary of an annual pension commencing at Normal Retirement Date (or the date of retirement if later) of an amount equal to the lesser of:

- (a) Benefit Salary x Benefit Service x 1.7% x ASF; and
- (b) Benefit Salary x Accrued Percentage.

**Accrued Percentage** means the aggregate of:

- (a) in relation to the first twenty years of a Member's Service as a Contributing Member, 2.1% of the sum of all such periods of Service as a Contributing Member (in years) multiplied by their relevant Service Fractions; and
- (b) in relation to periods of Service as a Contributing Member in excess of twenty years, 1.1% of the sum of all such periods of Service as a Contributing Member (in years) multiplied by their relevant Service Fractions.

**Lump Sum Death Benefit** means an amount equal to a deceased Member's annual rate of Salary at death, reduced by 5% for each complete year by which the Member's age at the date of death exceeds 45 years provided that if the deceased Member was paying half contributions pursuant to Clause 32.4 at the date of death, then that amount will be further reduced by 50%.

**Minimum Division A Disablement benefit** means Equivalent Full-Time Salary at the date of Disablement x 60% x notional ASF increased in proportion to any increase in the CPI Index from the date of disablement until the date of calculation,

where "notional ASF" is the time weighted average of a Member's Service Fractions during the Member's Benefit Service (excluding periods where there is a Service Fraction of zero) assuming a Salary and Service Fraction equal to

their annual Salary and Service Fraction respectively at the date of Disablement from that date until Normal Retirement Date.

**Notional Pension** means:

- (a) in relation to a Member who ceases to be in the Service prior to their Normal Retirement Date on account of death or Disablement, the rate of pension to which the Member would have become entitled under Clause A.4 had the Member continued in the Service until their Normal Retirement Date with a Salary and Service Fraction equal to their annual Salary and Service Fraction respectively at the date on which the Member ceased to be in the Service increased in proportion to any increase in the CPI Index from the date of ceasing to be in the Service until the date of calculation and on the basis that the Member's Contribution Factor for that period was one;
- (b) in relation to a Member who ceases to be in the Service by reason of death on or after their Normal Retirement Date, the rate of pension to which the Member would have become entitled under Clause A.4 had they ceased to be in the Service (other than by reason of death) immediately prior to the date of death increased in proportion to any increase in the CPI Index from the date of ceasing to be in the Service until the date of calculation; and
- (c) in relation to a Member who has qualified for a pension (other than a Disablement benefit), the initial pension for which the Member has qualified (disregarding any commutation pursuant to Clause A.11) increased in proportion to any increase in the CPI Index from the date on which the Member so qualified until the date of calculation.

### **A.3 BENEFITS UNDER DIVISION A**

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#### **A.3.1 Benefits subject to Deed**

This Clause A.3 operates subject to the Deed (other than the provisions of Division B, Division C or any agreement or undertaking entered into or given pursuant to Clause 31.2).

#### **A.3.2 Types of benefits payable**

Subject to Clause 36.5, the Trustee must pay benefits (or cause benefits to be paid) out of UniSuper as follows:

- (a) if a Member ceases to be in the Service due to retirement on or after their 55th birthday:
  - (i) a retirement pension calculated in accordance with Clause A.4; or
  - (ii) a lump sum benefit calculated in accordance with Clause A.7,selected at the option of the Member;
- (b) if a Member ceases to be in the Service due to Disablement, a Disablement benefit calculated in accordance with Clause A.5;
- (c) if a Member ceases to be in the Service due to their death, the benefits referred to in Clause A.6;

- (d) if a Member ceases to be in the Service for any reason not coming within any of the previous paragraphs, a lump sum benefit calculated in accordance with Clause A.7; and
- (e) supplementary benefits calculated in accordance with Clause A.12.

Subject to Superannuation Law, benefits must also be paid by the Trustee in circumstances where Clause 38 applies in respect of the Member.

## **A.4 RETIREMENT PENSION**

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### **A.4.1 Benefits at 65<sup>th</sup> birthday**

The retirement pension on the Member's 65<sup>th</sup> birthday is an immediate pension payable for the life of the Member at annual rate calculated in accordance with the following formula:

Benefit Salary x Accrued Percentage x ACF

### **A.4.2 Benefits prior to age 65**

The retirement pension before the Member's 65<sup>th</sup> birthday will be an immediate pension payable for the life of the Member at an annual rate equal to the greater of:

- (a) the product of Benefit Salary and Accrued Percentage and Average Contribution Factor reduced by:

$$\frac{M(M + 12)}{288} \text{ per centum thereof}$$

where 'M' equals the number of complete months by which the date of the Member's retirement precedes their 65<sup>th</sup> birthday; and

- (b) whichever is the lesser of the following amounts:
  - (i) Benefit Salary x Benefit Service x 1.7% x ASF x ACF; and
  - (ii) Benefit Salary x Accrued Percentage x ACF,

reduced by 4% per annum simple for the period by which the date of the Member's retirement precedes their 65<sup>th</sup> birthday.

### **A.4.3 Benefits after age 65**

The retirement pension after the Member's 65<sup>th</sup> birthday will be an immediate pension payable for the life of the Member at an annual rate calculated in accordance with the following formula:

$$\text{Benefit Salary x Accrued Percentage x ACF x } \frac{A}{1.70\%}$$

where "A" is the Pension Factor determined in accordance with Table B of Schedule 2 having regard to the age of the Member at the date they cease to be in the Service of the Employer.

## **A.5 DISABLEMENT BENEFIT**

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### **A.5.1 Benefit prior to Normal Retirement Date**

The Disablement benefit prior to a Member's Normal Retirement Date will be an immediate pension payable until the Member's Normal Retirement Date or earlier death at an annual rate equal to the greater of:

- (a) the Notional Pension; and
- (b) the Minimum Division A Disablement benefit.

### **A.5.2 Benefit following Normal Retirement Date**

On and from the Normal Retirement Date, the Disablement benefit will be an immediate pension payable for the life of the Member at an annual rate equal to the Notional Pension.

### **A.5.3 Cessation of disablement benefits**

The pension payable under this Clause A.5 will be subject to cessation or reduction pursuant to the provisions of Clause 41.

### **A.5.4 Benefits where Member ceases to be Disabled**

If a Member ceases to be Disabled and does not return to active employment or elects to be treated as if they have ceased to be Disabled, the Member will be treated as if they had returned to active employment and immediately ceased to be in the Service of the Employer.

## **A.6 DEATH IN SERVICE BENEFITS**

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### **A.6.1 Death benefits where Member survived by a Spouse or a Dependent Child**

If a deceased Member is survived by a Spouse or Dependent Child, the following benefits will be payable upon the death in Service of the Member:

- (a) a single lump sum payment equal to the Lump Sum Death Benefit;
- (b) if the deceased Member is survived by a Spouse, an immediate pension for the life of the Spouse at an annual rate equal to 62.5% of the Notional Pension; and
- (c) if the deceased Member is survived by a Dependent Child, an immediate pension payable at the following percentages of the Notional Pension:
  - (i) If there is a surviving Spouse as at the date on which a payment is to be made pursuant to this Clause A.6.1 and:

one Dependent Child 17.5%

two Dependent Children 27.5%

three or more Dependent Children 37.5%

OR

- (ii) if there is no surviving Spouse as at the date on which a payment is to be made pursuant to this Clause A.6.1 and:

one Dependent Child 62.5%

two Dependent Children 80.0%

three Dependent Children 90.0%

four or more Dependent Children 100.0%

For the avoidance of doubt, if a pension becomes payable in respect of a Dependent Child or Dependent Children in accordance with Clause A.6.1(c)(i) and the surviving Spouse dies after the date on which such a pension first becomes payable, pensions payable after the date of death of the Spouse will be calculated in accordance with Clause A.6.1(c)(ii). Subject to Clause 43(d), if a Child ceases to be a Dependent Child or dies after the date on which a pension first becomes payable, the pension payable in respect of the former Dependent Child or remaining Dependent Children will cease, or be adjusted, accordingly.

#### **A.6.2 Death benefits where Member survived by Dependants**

If the Trustee considers that a deceased Member is survived by a Dependant and there is no Spouse and no Dependent Child, a lump sum benefit will be payable upon the death in Service of the Member equal to the greater of:

- (a) the Lump Sum Death Benefit; and
- (b) the Accrued Benefit;

#### **A.6.3 Death benefits where no Dependants**

If a deceased Member is not survived by a Dependant, a single lump sum payment equal to the Accrued Benefit will be payable upon the death in Service of the Member.

### **A.7 LUMP SUM BENEFIT**

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The lump sum benefit is equal to the Accrued Benefit. A lump sum benefit will be payable in accordance with Clause 45.

### **A.8 TEMPORARY INCAPACITY BENEFIT**

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#### **A.8.1 Circumstances in which benefits payable**

Subject to Clauses 40 and 41 and any agreement or undertaking entered into pursuant to the Deed, the Trustee will pay a Temporary Incapacity benefit in respect of any Member who by reason of Temporary Incapacity:

- (a) is absent from active employment with the Employer; or
- (b) is employed in work that is less remunerative (on an equivalent full time basis) than the Member's previous employment with the Employer; or
- (c) has returned to work with the Employer and would have a Service Fraction (but for the operation of clause 40.5) of less than the Member's Service Fraction immediately prior to the Member's Temporary Incapacity.

### **A.8.2 Calculating the temporary incapacity benefit**

A Temporary Incapacity benefit under Clause A.8.1 will be at an annual rate calculated as follows:

Equivalent Full-Time Indexed Salary x 60% x Service Fraction

and will be payable subject to Clauses 40 and 41.

### **A.9 SURVIVING SPOUSE PENSION**

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If a Member who is in receipt of a pension (or who would be in receipt of a pension but for commutation pursuant to Clause A.11) under this Division dies, an immediate pension will be payable for the life of the deceased Member's surviving Spouse at an annual rate equal to 62.5% of the Notional Pension.

### **A.10 DEPENDENT CHILD PENSION**

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If a Member who is in receipt of a pension (or who would be in receipt of a pension but for commutation pursuant to Clause A.11) under this Division dies, an immediate pension will be payable at the following percentages of the Notional Pension:

- (a) if there is a surviving Spouse as at the date on which a payment is to be made pursuant to this Clause A.10 and:

one Dependent Child 17.5%

two Dependent Children 27.5%

three or more Dependent Children 37.5%

OR

- (b) if there is no surviving Spouse as at the date on which a payment is to be made pursuant to this Clause A.10 and:

one Dependent Child 62.5%

two Dependent Children 80%

three Dependent Children 90%

four or more Dependent Children 100%

For the avoidance of doubt, if a pension becomes payable in respect of a Dependent Child or Dependent Children in accordance with Clause A.10(a) and the surviving Spouse dies after the date on which such a pension first becomes payable, pensions payable after the date of death of the Spouse will be calculated in accordance with Clause A.10(b). Subject to Clause 43(d), if a Child ceases to be a Dependent Child or dies after the date on which a pension first becomes payable, the pension payable in respect of the former Dependent Child or remaining Dependent Children will cease, or be adjusted, accordingly.

### **A.11 COMMUTATION**

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- (a) A Member or a Spouse of a deceased Member who is about to become entitled to a pension (other than a Disablement benefit) may commute all or part of the

pension to a single lump sum payment. The single lump sum payment will be equal to an amount determined by multiplying the pension by the factor set out in Schedule 1 which is established having regard to the age of the Member or the Spouse.

- (b) Any person who is entitled to a pension (other than a Disablement benefit) may request the Trustee to commute all or part of the pension to a single lump sum payment. Any such request will be dealt with by the Trustee at its absolute discretion. The Trustee is not required to give reasons as to the manner in which it exercises that discretion. If the Trustee allows the request, it may commute all or part of the pension on a basis determined by the Trustee after having obtained the advice of the Actuary.
- (c) Subject to Superannuation Law, Disablement benefits, Temporary Incapacity benefits and pensions payable to or in respect of Dependent Children under this Division A may not be commuted.
- (d) The Trustee must not commute any pension under this Division A in any manner which, in the opinion of the Trustee, is in any way inconsistent with Superannuation Law.

## **A.12 SUPPLEMENTARY BENEFITS**

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### **A.12.1 Supplementary benefits in certain circumstances**

Subject to this Clause A.12, a supplementary benefit will be payable in respect of a Member who ceases to be in the Service for any reason on or after 1 December 1999. The amount of the supplementary benefit will be calculated as follows:

Benefit Salary x Pre December 2000 Contributing Service x 4% x RASF

where

**Pre December 2000 Contributing Service** means the Member's Contributing Service prior to 1 December 2000; and

**RASF** means relevant ASF, being the Member's ASF as at 31 December 2003.

### **A.12.2 Manner of payment of supplementary benefits**

Subject to the Deed, a supplementary benefit will be payable:

- (a) to the person entitled to receive the other benefit payable in respect of the Member;
- (b) upon the same terms and conditions applicable to the other benefit; and
- (c) subject to the same trusts, authorities, powers and discretions applicable in relation to the other benefit.

### **A.12.3 Reduction of supplementary benefits**

The Trustee may, after obtaining the Actuary's advice, determine that the supplementary benefit payable under this Clause A.12 cease to be payable or be reduced at the Trustee's absolute discretion. However, the Trustee may only make

such a determination in respect of Members who cease to be in the Service after the effective date of the determination.

#### **A.12.4 Additional Accumulation Benefit**

Division A Members will be entitled to any additional amounts which the Trustee determines to allocate and credit in accordance with Clause B.16.

#### **A.13 SUPPLEMENTARY PENSIONS**

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- (a) The Trustee may from time to time increase any pension or Temporary Incapacity benefit payable under Division A by such rate or rates as the Trustee may determine.
- (b) Any increased pension or Temporary Incapacity benefit will be:
  - (i) payable from such date or dates as the Trustee determines;
  - (ii) paid on and subject to the same terms applicable in respect of the original pension or benefit; and
  - (iii) if applicable, subject to increase in accordance with the provisions of the Deed from 1 July next following the effective date of any such increase.

#### **A.14 DISABLED CHILD PENSION**

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If a Member to whom this Division A applies has a Disabled Child, benefits will be payable subject to and in accordance with Clause B.12. For the purposes of calculating the amount of such benefits, all references in Clause B.12 to:

- (a) pensions payable to the Member; and
- (b) pensions which would in certain circumstances be payable to the Member,

are to pensions payable or which would be payable (as the case may be) under this Division A.



## DIVISION B

### Defined Benefit Division

#### B.1 APPLICATION OF DIVISION B

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- (a) Division B only applies to persons:
- (i) in a Defined Benefit Division prior to 1 January 1990 who elected, including under Clause 36.5, to be subject to Division B (or who are deemed to have made such an election); and
  - (ii) eligible to become Members of this Division B after 31 December 1989 under an arrangement between the Employer and the Trustee and who are not eligible to become Members of Division E,
- provided that:
- (iii) they have not elected to receive benefits under Division C instead of Division A and Division B under Clause C.1.2 (or a predecessor Clause); and
  - (iv) the Trustee has admitted or admits them to Division B. For the avoidance of doubt, nothing requires the Trustee to admit a person and nothing in this clause creates an entitlement to be admitted. The Trustee may make regulations regarding eligibility for admission to Division B including the period within which any application for admission must be made.
- (b) For the avoidance of doubt, a Member in receipt of a pension from Division B remains a Member of this Division B whilst a pension is being paid from this Division B.
- (c) A Member will cease to be a Member of this Division B when all benefits payable under this Division B have been paid to or in respect of the Member or all benefits in respect of the Member under this Division B have been transferred to another Division of UniSuper.
- (d) References in this Division B to Disabled Children only include Disabled Children of Members to whom this Division B applies.

#### B.2 DEFINITIONS

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The following definitions apply to Division B unless the context requires otherwise.

**Lump Sum Factor** in relation to a Member means the factor determined in accordance with Table A set out in schedule 2;

**Pension Factor** in relation to a Member means the factor determined in accordance with Table B set out in schedule 2.

### **B.3 BENEFITS UNDER DIVISION B**

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#### **B.3.1 Benefits subject to Deed**

This Clause B.3 operates subject to the Deed (other than the provisions of Division A, Division C or any agreement or undertaking entered into or given pursuant to Clause 31.2).

#### **B.3.2 Types of benefits payable**

The Trustee must pay benefits (or cause benefits to be paid) out of UniSuper as follows:

- (a) if a Member ceases to be in the Service due to retirement on or after their 55th birthday:
  - (i) in the case of a Member who last joined UniSuper prior to 1 July 1998, either:
    - (A) a retirement pension calculated in accordance with Clause B.4; or
    - (B) a lump sum benefit pursuant to Clause B.7,at the election of the Member; and
  - (ii) in the case of a Member who last joined UniSuper on or after 1 July 1998, a lump sum benefit pursuant to Clause B.7.
- (b) if a Member ceases to be in the Service due to Disablement, a Disablement benefit calculated in accordance with Clause B.5;
- (c) if the Member ceases to be in the Service due to a Terminal Medical Condition and makes an election under Clause 39.1, the lump sum benefit referred to in Clause B.6A.
- (d) if a Member ceases to be in the Service due to their death, benefits pursuant to Clause B.6;
- (e) if a Member ceases to be in the Service for any reason not coming within any of the previous paragraphs, a lump sum benefit pursuant to Clause B.7; and
- (f) any supplementary benefits payable pursuant to Clause B.14.

Subject to Superannuation Law, benefits must also be paid by the Trustee in circumstances where Clause 38 applies in respect of the Member.

### **B.4 RETIREMENT BENEFITS**

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If a Member is entitled to retirement benefits under this Clause, the Member may elect to receive one of the following types of benefit:

- (a) an immediate pension payable for the life of the Member at an annual rate calculated as follows:

$$\text{Benefit Salary} \times \text{Benefit Service} \times \text{Pension Factor} \times \text{ASF} \times \text{ACF};$$

- (b) a single lump sum payment of an amount calculated in accordance with Clause B.7; or
- (c) benefits consisting of:
  - (i) an immediate pension for the life of the Member at an annual rate not exceeding the rate referred to in paragraph (a) (to be specified by the Member); and
  - (ii) a lump sum payment calculated as follows:

$$(100 - R)\% \times \text{the single lump sum referred to in paragraph (b)}$$

where "R" is the ratio of the pension selected by the Member to the pension referred to in paragraph (a), expressed as a percentage.

## **B.5 DISABLEMENT BENEFITS**

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### **B.5.1 Benefits prior to age 65**

If a Member is entitled to a Disablement Benefit under this Clause B.5, the Disablement benefit prior to age 65 will be an immediate pension payable until the Member's 65th birthday or earlier death at an annual rate calculated as follows:

$$\text{Benefit Salary} \times 60\% \times \text{ASF}$$

### **B.5.2 Benefits upon reaching age 65**

If a Member is entitled to a Disablement Benefit under this Clause B.5, the Member may elect to receive one of the following types of benefit upon reaching age 65:

- (a) an immediate pension payable for the life of the Member at an annual rate calculated as follows:

$$\text{Benefit Salary} \times \text{Benefit Service} \times \text{Pension Factor} \times \text{ASF} \times \text{ACF};$$

- (b) a single lump sum payment calculated in accordance with Clause B.7; or
- (c) benefits consisting of:
  - (i) an immediate pension for the life of the Member at an annual rate not exceeding the rate referred to in paragraph (a) (to be specified by the Member); and
  - (ii) a lump sum amount calculated as follows:

$$(100 - R)\% \times \text{the single lump sum referred to in paragraph (b)}$$

where "R" is the ratio of the pension selected by the Member to the pension referred to in paragraph (a), expressed as a percentage.

### **B.5.3 Benefits where Member dies prior to age 65**

If a Member in receipt of a pension under this Clause B.5 dies prior to age 65, the Trustee will pay the death in service benefit pursuant to Clause B.6 as if the Member had returned to active employment immediately prior to their death.

#### **B.5.4 Benefits where Member ceases to be Disabled**

If a Member ceases to be Disabled and does not return to active employment or elects to be treated as if they have ceased to be Disabled, the Member will be treated as if they had returned to active employment and immediately ceased to be in the Service of the Employer.

#### **B.5.5 Calculating the Service Fraction and ACF**

For the purposes of Clauses B.5.2, B.5.3 and B.5.4, in the period during which the Member was in receipt of a pension under clause B.5.1, the Member's Service Fraction is deemed to be equal to the Member's ASF at the calculation date of the Member's disablement pension under clause B.5.1 and the Member will be deemed to have a Contribution Factor of one.

#### **B.5.6 Payment of lump sum in addition to pension**

The Trustee may, at the request of a Member entitled to a Disablement benefit under this Division B, pay the Member a lump sum not exceeding the Member's Benefit Salary at the date of Disablement multiplied by their ASF. If the Trustee exercises its discretion, the benefits subsequently payable will be reduced on a basis determined by the Trustee and notified to the Member.

#### **B.5.7 Benefits subject to cessation**

The benefits payable under this Clause B.5 are subject to cessation or reduction pursuant to Clause 41.

### **B.6 DEATH IN SERVICE BENEFIT**

---

Upon the death in Service of a Member, the Trustee will provide a single lump sum benefit equal to the greater of:

- (a) an amount calculated as follows:

$\text{Benefit Salary} \times \text{Benefit Service} \times 21\% \times \text{ASF}$ ; and

- (b) an amount equal to:

- (i) the lump sum benefit which would have been payable under this Division had the Member ceased to be in the Service (other than by reason of death) on the date of their death; PLUS

- (ii) an amount calculated as follows:

$\text{Benefit Salary} \times \text{Potential Service} \times 21\% \times \text{GF}$

where

**GF** means the greater of:

- (A) the Member's Service Fraction at the date of death; and  
(B) the Member's ASF at the date of death; and

**Potential Service** means the period from the date of the Member's death to the date on which the Member would have had their 60th birthday.

Provided that if the Member has made an election under Clause 32.9, the benefit payable shall be that set out in paragraph (b) of this Clause B.6.

#### **B.6A TERMINAL MEDICAL CONDITION BENEFIT**

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The lump sum benefit shall be an amount equal to the benefit payable under Clause B.6 had the Member died on the date the Member ceased to be in the Service.

#### **B.7 LUMP SUM BENEFIT**

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Lump sum benefits under this Division will be payable in accordance with Clause 45 and will be calculated as follows:

Benefit Salary x Benefit Service x Lump Sum Factor x ASF x ACF

PLUS

0.15 x Benefit Salary x Qualifying Benefit Service x Lump Sum Factor x RASF,

where

**Qualifying Benefit Service** in relation to a Member is the Member's Benefit Service (if any) prior to 1 January 2002 or such later date as may be determined from time to time by the Trustee.

**RASF** means relevant ASF, being the Member's ASF as at 31 December 2003.

#### **B.8 TEMPORARY INCAPACITY BENEFIT**

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##### **B.8.1 Circumstances in which benefit payable**

Subject to Clauses 40, 41 and B.13 and any agreement or undertaking entered into pursuant to the Deed, the Trustee must pay a Temporary Incapacity benefit in respect of any Member who by reason of Temporary Incapacity:

- (a) is absent from active employment with the Employer; or
- (b) is employed in work that is less remunerative (on an equivalent full time basis) than the Member's previous employment with the Employer; or
- (c) has returned to work with the Employer and would have a Service Fraction (but for the operation of clause 40.5) of less than the Member's Service Fraction immediately prior to the Member's Temporary Incapacity.

##### **B.8.2 Calculation of benefits**

A Temporary Incapacity benefit under Clause B.8.1 will be payable subject to Clauses 40 and 41 and will be payable at an annual rate calculated as follows:

Benefit Salary x 60% x ASF

## **B.9 SURVIVING SPOUSE PENSION**

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If a Member who is in receipt of a pension (other than a Disablement benefit prior to age 65) under this Division dies, an immediate pension will be payable for the life of the deceased Member's surviving Spouse at an annual rate equal to 62.5% of the pension otherwise payable to the Member.

## **B.10 DEPENDENT CHILD PENSION**

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If a Member who is in receipt of a pension (other than a Disablement benefit prior to age 65) under this Division dies, an immediate pension will be payable at the following percentages of the pension otherwise payable to the Member:

- (a) if there is a surviving Spouse as at the date on which a payment is to be made pursuant to this Clause B.10 and:
  - one Dependent Child 17.5%
  - two Dependent Children 27.5%
  - three or more Dependent Children 37.5%
  
- (b) if there is no surviving Spouse as at the date on which a payment is to be made pursuant to this Clause B.10 and:
  - one Dependent Child 62.5%
  - two Dependent Children 80.0%
  - three Dependent Children 90.0%
  - four or more Dependent Children 100.0%

For the avoidance of doubt, if a pension becomes payable in respect of a Dependent Child or Dependent Children in accordance with Clause B.10(a) and the surviving Spouse dies after the date on which such a pension first becomes payable, pensions payable after the date of death of the Spouse will be calculated in accordance with Clause B.10(b). Subject to Clause 43(d), if a Child ceases to be a Dependent Child or dies after the date on which a pension first becomes payable, the pension payable in respect of the former Dependent Child or remaining Dependent Children will cease, or be adjusted, accordingly.

## **B.11 COMMUTATION**

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- (a) Subject to Clause B.11(d), a Spouse of a deceased Member who is about to become entitled to a pension may commute all or part of the pension to a single lump sum payment calculated by applying the appropriate factor set out in Schedule 1 having regard to the age of the Spouse.
  
- (b) Subject to Clause B.11(d), any person who is in receipt of a pension (other than a Disablement benefit prior to age 65) may request the Trustee to commute all or part of the pension to a single lump sum payment. Any such request will be dealt with by the Trustee at its absolute discretion. The Trustee is not required to give reasons as to the manner in which it exercises that discretion. If the Trustee allows the request, it may commute all or part of the

pension on a basis determined by the Trustee after having obtained the advice of the Actuary.

- (c) Subject to Clause B.5.6, Disablement benefits, Temporary Incapacity benefits and pensions payable to or in respect of Dependent Children under this Division B may not be commuted.
- (d) The Trustee must not commute any pension under this Division in any manner which, in the opinion of the Trustee, will or may be inconsistent with Superannuation Law.

## **B.12 DISABLED CHILD PENSION**

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### **B.12.1 Benefits to Disabled Children surviving a Member who dies in Service**

If a Member dies in Service and is survived by a Disabled Child, a pension will be payable in respect of the Disabled Child for their life. The pension will be at an annual rate equal to 20% of the pension that the deceased Member would have been entitled under this Division to elect to receive at age 65 had the Member survived to that age, provided that if the Member dies in Service after attaining age 65, the pension will be at an annual rate equal to 20% of the pension that the deceased Member would have been entitled under this Division to elect to receive as at the date immediately prior to death.

### **B.12.2 Benefits to Disabled Children during the life of a Member**

If a Member:

- (a) receives a Disablement benefit prior to age 65; and
- (b) has a Disabled Child,

a pension will be payable in respect of the Disabled Child for the life of the Disabled Child. The pension will be at an annual rate equal to 20% of the pension that the Member would be entitled to elect to receive at age 65 should the Member survive to that age.

### **B.12.3 Benefits to Disabled Children upon the death of a Disabled Member**

Upon the death of a Member who:

- (a) is in receipt of a Disablement benefit prior to age 65; and
- (b) has a Disabled Child,

a life pension will be payable in respect of the Disabled Child. The pension will be at an annual rate equal to 20% of the pension the Member would have been entitled to elect to receive at age 65 had the Member survived to that age.

### **B.12.4 Benefits to Disabled Children during life of a Disabled Member**

During the life of a Member who:

- (a) is in receipt of a Disablement benefit after age 65; and
- (b) has a Disabled Child,

a life pension will be payable in respect of the Disabled Child. The pension will be at an annual rate equal to 20% of the Member's pension.

#### **B.12.5 Benefits to Disabled Children upon the death of Member receiving a pension**

Upon the death of a Member who:

- (a) is in receipt of a pension (other than a Disablement benefit prior to age 65); and
- (b) has a Disabled Child,

a life pension will be payable in respect of the Disabled Child. The pension will be at an annual rate equal to 20% of the annual rate of the pension which would have been payable to the Member had they survived.

#### **B.12.6 Benefits to or because of Disabled Children are supplemental**

A pension payable in respect of (or arising because of) a Disabled Child under this Clause B.12:

- (a) is payable in addition to any other benefit under the Deed; and
- (b) is not to be taken into account in determining eligibility for, or the calculation of, any other benefit under the Deed.

#### **B.12.7 Cessation of Disabled Child benefits**

For the avoidance of doubt, a pension payable under this Clause B.12 will cease to be payable if the relevant Child ceases to be a Disabled Child.

#### **B.12.8 Disabled Child pensions arising on and after 1 July 2011**

In respect of pensions which, but for this Clause B.12.8, would become payable in respect of Disabled Children under Clauses B.12.2 and B.12.4, the following modifications to those Clauses will apply in respect of pension applications made on and from 1 July 2011:

- (a) A pension will not be payable in respect of a Disabled Child during the life of the Member.
- (b) Instead, the amount of the pension which otherwise would have been payable in respect of the Disabled Child during the life of the Member will be paid to the Member as an additional pension for the Member.

### **B.13 DEATH, DISABLEMENT AND TERMINAL MEDICAL CONDITION BENEFITS DUE TO PRE-EXISTING CONDITIONS**

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#### **B.13.1 Division B subject to this Clause**

Division B is subject to this Clause B.13.

#### **B.13.2 Calculation of benefits where pre-existing condition**

- (a) If the Trustee considers that a Member:
  - (i) died;



- (ii) became Disabled; or
- (iii) suffered a Terminal Medical Condition,

having completed less than 3 years Contributing Service after joining Division B, as a direct or indirect result of a condition which existed at the time of joining Division B, the benefit in respect of the Member's death, Disablement or Terminal Medical Condition will be a lump sum equal to the greater of:

- (iv) an amount calculated as follows:  
$$\text{Benefit Salary} \times \text{Contributing Service} \times 21\% \times \text{ASF} \times \text{ACF}; \text{ and}$$
- (v) the lump sum benefit which would have been payable under this Division had the Member retired on the date of the Member's death, Disablement or Terminal Medical Condition.

For the purposes of this Clause, the Trustee shall have power to disregard any transfer to Division B which occurs within 90 days of the Member transferring or being transferred from Division B to Division D.

- (b) The Temporary Incapacity benefit under Clause B.8 will not be payable if:
  - (i) a Member suffers a Temporary Incapacity having completed less than 3 years of Contributing Service after joining Division B; and
  - (ii) the Trustee considers that the Temporary Incapacity arises directly or indirectly from a condition which existed at the time of joining Division B,

unless the Trustee considers there to be special or exceptional circumstances.

## **B.14 SUPPLEMENTARY BENEFITS**

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### **B.14.1 Supplementary benefits in certain circumstances**

Subject to this Clause B.14, a supplementary benefit will be payable in respect of a Member who ceases to be in the Service for any reason on or after 1 December 1999. The amount of the supplementary benefit will be calculated as follows:

$$\text{Benefit Salary} \times \text{Pre December 2000 Contributing Service} \times 4\% \times \text{RASF}$$

where

**Pre December 2000 Contributing Service** means the Member's Contributing Service prior to 1 December 2000; and

**RASF** means relevant ASF, being the Member's ASF as at 31 December 2003.

### **B.14.2 Manner of payment of supplementary benefits**

Subject to the Deed, a supplementary benefit will be payable:

- (a) to the person entitled to receive the other benefit payable in respect of the Member;
- (b) upon the same terms and conditions applicable to the other benefit; and

- (c) subject to the same trusts, authorities, powers and discretions applicable in relation to the other benefit.

#### **B.14.3 Reduction of supplementary benefits**

The Trustee may, after obtaining the Actuary's advice, determine that the supplementary benefit payable under this Clause B.14 cease to be payable or be reduced at the Trustee's absolute discretion. However, the Trustee may only make such a determination in respect of Members who cease to be in the Service after the effective date of the determination.

#### **B.14.4 Calculation of Contributing Service**

For the purposes of Clause B.14.1, periods of Contributing Service will be disregarded if they are attributable to the transfer or rollover of moneys which were received into UniSuper:

- (a) on or after 1 January 1994; and
- (b) before 1 December 1994.

#### **B.14.5 Clause only applicable to some Members**

This Clause B.14 only applies in respect of:

- (a) Members of Division B who were Members of Division A prior to 1 January 1990;
- (b) Members of Division B who were admitted to this Division prior to 1 July 1998; and
- (c) Members of Division B who:
  - (i) were admitted to this Division on or after 1 July 1998; and
  - (ii) have been Contributing Members for the purposes of this Division for not less than twelve months.

### **B.15 SUPPLEMENTARY PENSIONS**

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- (a) The Trustee may from time to time increase any Temporary Incapacity benefit or pension (including a pension resulting from the conversion of a lump sum benefit to a pension pursuant to Clause 15(a)) payable under Division B by such rate or rates as the Trustee may determine.
- (b) Any increased pension or Temporary Incapacity benefit will be:
  - (i) payable from such date or dates as the Trustee determines;
  - (ii) continue to be paid on and subject to the same terms applicable in respect of the original pension or benefit; and
  - (iii) if applicable, subject to increase in accordance with the provisions of the Deed from 1 July next following the effective date of any such increase.

## **B.16 DIVISION A AND DIVISION B – ADDITIONAL ACCUMULATION BENEFIT**

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- (a) If, as at 1 December 2000 and 1 December in each year thereafter, the Trustee is, after obtaining the advice of the Actuary, satisfied that the assets of UniSuper available to meet the benefits payable under Division A and this Division exceed the liabilities those benefits represent, the Trustee may allocate all or such part of that excess as the Trustee thinks appropriate to be credited in accordance with Clause B.16(b).
- (b) The amount to be allocated under Clause B.16(a) will be distributed to Members prospectively entitled to benefits under Division A and this Division in proportion to the value of the Member's lump sum vested benefit as at 30 November immediately prior to the distribution by being credited to an account in the name of the Member concerned maintained under Division C or Division D as the Trustee considers appropriate.

## **DIVISION C**

### **Accumulation**

#### **C.1 APPLICATION OF DIVISION**

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##### **C.1.1 Members to whom Division C applies**

- (a) Division C applies in respect of Employees whom the Trustee has admitted or admits into this Division C.
- (b) For the avoidance of doubt, this Division C applies in respect of Members who have elected or elect to receive benefits under this Division C under Clause C.1.2 and whom the Trustee has admitted or admits into this Division C.

##### **C.1.2 Member elections**

- (a) Members who have been admitted to Division A or Division B may elect:
  - (i) at the time of their admission to UniSuper; or
  - (ii) in respect of Members of Division B, during the 12 months, or such other time prescribed by the Regulations, after their date of admission to Division B, or at a later time with the Trustee's consent,to receive benefits under this Division C instead of Division A or Division B (as the case may be).
- (b) Specified Members who, return to active employment with their Employer at any time on or after 1 July 1999, after ceasing to be Disabled or ceasing to receive a Temporary Incapacity benefit under Division A or Division B (as the case may be) may elect within the period nominated by the Trustee to receive benefits under this Division C instead of Division A or Division B (as the case may be).
- (c) Members (other than Specified Members) who were admitted to UniSuper prior to 1 July 1998, may elect, with the Trustee's consent, to receive benefits under this Division C instead of Division A or Division B (as the case may be) prior to 1 July 1999 (or at a later date with the consent of the Trustee).
- (d) Members who were admitted to Division C, and who are employed in a Superannuable Classification, may on or after a date to be determined by the Trustee elect to join Division B if permitted by, and in accordance with, the Regulations.

##### **C.1.3 Elections by Division C Members under Clause C.1.2**

An election made by a Member for the purposes of Clause C.1.2:

- (a) must comply with any relevant Regulations; and
- (b) will take effect on and from the relevant Member's Transfer Date.

#### **C.1.4 Transfer of account in Division D**

A Member to whom this Division C applies and who:

- (a) had, immediately prior to the Division C Redesign Date or such other date as determined by the Trustee, an account maintained in Division D; or
- (b) at any time has an amount paid into this Division C,

will have the account balance that was held in respect of that Member in Division D (if any) transferred to the Member's Division C Account.

#### **C.1.5 Transfer to other Divisions**

The Trustee may pay or transfer part or all of an amount held in respect of a Member from this Division C to any other Division of UniSuper (other than Division A or Division B).

#### **C.1.6 Cessation of membership in Division C**

A Member will cease to be a Member of this Division C when all benefits payable under this Division C have been paid to or in respect of the Member or transferred to another Division of UniSuper.

### **C.2 DEFINITIONS**

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The following definitions apply to this Division C unless the context requires otherwise.

**Administration Fee** means a Member's share of the costs and expenses of administering UniSuper and which are referable to this Division C, as determined by the Trustee.

**Division C Account** means an account established and maintained by the Trustee in respect of the Member pursuant to Clause C.3.

**Division C Account Balance** means at any particular time the amount standing to the credit of a Member's Division C Account.

**Division C MySuper Member** means a Member of this Division C who is a MySuper Member.

**Division C Redesign Date** means such date as is determined by the Trustee.

**Specified Member** means a Member who is in receipt of a Disablement benefit or a Temporary Incapacity benefit under Division A or Division B (as the case may be).

**Transfer Amount** means, in respect of a Member of Division A or Division B:

- (a) the amount (if any) which would have been payable to the Member if they had ceased to be a Member and qualified for a benefit under Clause A.7 or Clause B.7 (as the case may be) immediately prior to the Transfer Date; PLUS
- (b) an amount (if any) determined by the Trustee having regard to the market value of the assets and liabilities of UniSuper as at the Transfer Date.

**Transfer Date** means the date agreed between the Member and the Trustee on which the Transfer Amount is to be transferred to this Division C.

### **C.3 DIVISION C ACCOUNT**

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#### **C.3.1 Establishment of accounts**

- (a) Upon the admission of a Member to this Division C, the Trustee will establish and maintain in respect of the Member a Division C Account.
- (b) The Trustee may establish and operate sub-accounts within any account (including any Division C Account) established for the purposes of this Division C.

#### **C.3.2 Credits to Division C Account**

The Trustee may credit the following amounts to a Division C Account:

- (a) any amounts transferred under Clause C.1.4 (if relevant);
- (b) any other amount that is transferred into this Division C in respect of the Member under the Deed or Regulations;
- (c) any contributions made or deemed to be made to this Division C by or in respect of the Member in accordance with this Deed, the Regulations or with the agreement of the Trustee;
- (d) any contributions made in respect of a Member to this Division C by the Member's Employer or any other employer in accordance with this Deed, the Regulations or with the agreement of the Trustee;
- (e) any amounts paid to UniSuper by the Insurer in respect of the Member in lieu of contributions;
- (f) an amount (if any) in respect of a positive crediting rate;
- (g) any amount which the Trustee determines to credit in respect of a Division C MySuper Member in accordance with the MySuper Rules; and
- (h) such other amounts which:
  - (i) are expressly or (in the opinion of the Trustee) impliedly required to be credited to the Division C Account under the Deed or the Regulations; or
  - (ii) the Trustee considers is appropriate or equitable to credit to the Division C Account.

#### **C.3.3 Debits from Division C Account**

The Trustee may debit the following amounts from a Division C Account:

- (a) the Administration Fee;
- (b) any Taxation Amount;

- (c) any insurance premiums payable to the Insurer in respect of the Member (if relevant);
- (d) any benefits or other amounts paid to or in respect of the Member from the Division C Account;
- (e) any amount required to be deducted pursuant to Clauses 18, 26 or 32.12;
- (f) any amount that is transferred from this Division C in respect of the Member under the Deed or Regulations;
- (g) an amount (if any) in respect of a negative crediting rate;
- (h) any amount transferred from the Division C Account to an Approved Fund in accordance with Clause 45.1;
- (i) any amount which the Trustee determines to debit in respect of a Division C MySuper Member in accordance with the MySuper Rules; and
- (j) such other amounts which:
  - (i) are expressly or (in the opinion of the Trustee) impliedly required to be debited to the Division C Account under the Deed or the Regulations; or
  - (ii) the Trustee considers is appropriate or equitable to debit to the Division C Account .

#### **C.4 BENEFITS UNDER DIVISION C**

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##### **C.4.1 Benefits on death and Terminal Medical Condition**

Upon application, the Trustee must pay to or in respect of a Member who dies or suffers from a Terminal Medical Condition, a lump sum benefit equal to the aggregate of:

- (a) the amount of the Member's Division C Account Balance; and
- (b) the Insured Benefit (if any).

##### **C.4.2 Benefits on Disablement**

Upon application, the Trustee must pay to or in respect of a Member who ceases to be in Service by reason of Disablement, a benefit or benefits comprising:

- (a) the amount of the Member's Division C Account Balance; and
- (b) the Insured Benefit (if any).

##### **C.4.3 Benefits on Temporary Incapacity**

If payable under an insurance policy held by the Trustee, the Trustee must pay, to or in respect of a Member who suffers from Temporary Incapacity, the Income Protection Benefit.

#### **C.4.4 Other benefits**

- (a) If a Member ceases to be in Service for any reason other than death, Disablement or Terminal Medical Condition, the Trustee may pay or transfer to or in respect of the Member, a lump sum benefit equal to the Member's Division C Account Balance.
- (b) The Trustee may retain within this Division C in respect of a Member any benefit payable to or in respect of the Member under Clause C.4.4(a) for such time as it may determine.

#### **C.5 POLICY TERMS AND LIMITATIONS IMPOSED BY INSURER**

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##### **C.5.1 Benefits subject to policy terms**

Any proceeds of insurance payable under Clause C.4 are subject to the terms of the applicable insurance policy and to Clause C.5.2.

##### **C.5.2 Limitations imposed by Insurer**

Any benefit payable under Clause C.4 in respect of which the Trustee seeks to effect, or effects, insurance must be reduced to the extent to which:

- (a) for any reason the Insurer fails to provide insurance on the Insurer's standard terms for standard lives; or
- (b) for any reason the Insurer:
  - (i) fails to provide or increase insurance;
  - (ii) reduces or terminates insurance;
  - (iii) limits or restricts insurance or the circumstances in which insurance proceeds will become payable; or
  - (iv) refuses to consider, defers or denies a claim in whole or in part.

The Trustee will adjust 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.



## **DIVISION D**

### **Accumulation**

#### **D.1 APPLICATION OF DIVISION**

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##### **D.1.1 Members to whom Division D applies**

Division D applies in respect of:

- (a) Eligible Spouses in respect of whom a Member has elected, in accordance with the Regulations, to make contributions to UniSuper or to split contributions to UniSuper;
- (b) Members who are transferred to this Division D from another Division of UniSuper in accordance with this Deed; and
- (c) any other person who is ineligible for the Defined Benefit Division and Division C and who falls within any category set out in the Regulations,

and whom the Trustee has admitted or admits into this Division D.

##### **D.1.2 Transfer to other Divisions**

The Trustee may pay or transfer part or all of an amount held in respect of a Member from this Division D to any other Division of UniSuper (other than Division A or Division B).

##### **D.1.3 Cessation of membership in Division D**

A Member will cease to be a Member of this Division D when all benefits payable under this Division D have been paid to or in respect of the Member or transferred to another Division of UniSuper.

#### **D.2 DEFINITIONS**

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The following definitions apply to this Division D unless the context requires otherwise.

**Administration Fee** means a Member's share of the costs and expenses of administering UniSuper and which are referable to this Division D, as determined by the Trustee.

**Division D Account** means an account established and maintained by the Trustee in respect of the Member pursuant to Clause D.3.

**Division D Account Balance** means at any particular time the amount standing to the credit of a Member's Division D Account.

**Division D MySuper Member** means a Member of this Division D who is a MySuper Member.

**Eligible Spouse** means a person who is the spouse of a Member for the purposes of subdivision 290-D of the Tax Act (unless the Regulations provide otherwise).

### **D.3 DIVISION D ACCOUNT**

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#### **D.3.1 Establishment of accounts**

- (a) Upon the admission of a Member to this Division D, the Trustee will establish and maintain in respect of the Member a Division D Account.
- (b) The Trustee may establish and operate sub-accounts within any account (including any Division D Account) established for the purposes of this Division D.

#### **D.3.2 Credits to Division D Account**

The Trustee may credit the following amounts to a Member's Division D Account:

- (a) any contributions made or deemed to be made to this Division D by or in respect of the Member in accordance with this Deed, the Regulations or with the agreement of the Trustee;
- (b) any contributions made in respect of a Member to this Division D by the Member's employer or Spouse;
- (c) any amounts paid to UniSuper by the Insurer in respect of the Member in lieu of contributions;
- (d) any amount that is transferred into this Division D in respect of the Member under the Deed or Regulations;
- (e) an amount (if any) in respect of a positive crediting rate;
- (f) any amount which the Trustee determines to credit in respect of a Division D MySuper Member in accordance with the MySuper Rules; and
- (g) such other amounts which:
  - (i) are expressly or (in the opinion of the Trustee) impliedly required to be credited to the Member's Division D Account under the Deed or the Regulations; or
  - (ii) the Trustee considers is appropriate or equitable to credit to the Member's Division D Account.

#### **D.3.3 Debits from Division D Account**

The Trustee may debit the following amounts from a Member's Division D Account:

- (a) the Administration Fee;
- (b) any Taxation Amount;
- (c) any insurance premiums payable to the Insurer in respect of the Member (if relevant);
- (d) any benefits or other amounts paid to or in respect of the Member from the Division D Account;
- (e) any amount required to be deducted pursuant to Clauses 18, 26 or 32.12;

- (f) any amount that is transferred from this Division D in respect of the Member under the Deed or Regulations;
- (g) an amount (if any) in respect of a negative crediting rate;
- (h) any amount transferred from the Member's Division D Account to an Approved Fund in accordance with Clause 45.1;
- (i) any amount which the Trustee determines to debit in respect of a Division D MySuper Member in accordance with the MySuper Rules; and
- (j) such other amounts which:
  - (i) are expressly or (in the opinion of the Trustee) impliedly required to be debited to the Member's Division D Account under the Deed or the Regulations; or
  - (ii) the Trustee considers is appropriate or equitable to debit to the Member's Division D Account.

#### **D.4 BENEFITS UNDER DIVISION D**

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##### **D.4.1 Benefits on death and Terminal Medical Condition**

Upon application, the Trustee must pay to or in respect of a Member who dies or suffers from a Terminal Medical Condition, a lump sum benefit equal to the aggregate of:

- (a) the amount of the Member's Division D Account Balance; and
- (b) the Insured Benefit (if any).

##### **D.4.2 Benefits on Disablement**

Upon application, the Trustee must pay to or in respect of a Member:

- (i) who is in Service and ceases to be in Service by reason of Disablement; or
- (ii) who is not in Service and becomes Disabled,

a benefit or benefits comprising:

- (a) the amount of the Member's Division D Account Balance; and
- (b) the Insured Benefit (if any).

##### **D.4.3 Benefits on Temporary Incapacity**

If payable under an insurance policy held by the Trustee, the Trustee must pay, to or in respect of a Member who suffers from Temporary Incapacity, the Income Protection Benefit.

##### **D.4.4 Other benefits**

Subject to Superannuation Law, the Trustee may pay or transfer to or in respect of a Member, a lump sum benefit equal to the Member's Division D Account Balance in

accordance with Clause 38, unless it has already been paid by the Trustee pursuant to Clause D.4.1 or D.4.2.

## **D.5 POLICY TERMS AND LIMITATIONS IMPOSED BY INSURER**

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### **D.5.1 Benefits subject to policy terms**

Any proceeds of insurance payable under Clause D.4 are subject to the terms of the applicable insurance policy and to Clause D.5.2.

### **D.5.2 Limitations imposed by Insurer**

Any benefit payable under Clause D.4 in respect of which the Trustee seeks to effect, or effects, insurance must be reduced to the extent to which:

- (a) for any reason the Insurer fails to provide insurance on the Insurer's standard terms for standard lives; or
- (b) for any reason the Insurer:
  - (i) fails to provide or increase insurance;
  - (ii) reduces or terminates insurance;
  - (iii) limits or restricts insurance or the circumstances in which insurance proceeds will become payable; or
  - (iv) refuses to consider, defers or denies a claim in whole or in part.

The Trustee will adjust 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.

## DIVISION E

### Defined Benefit Division

#### E.1 APPLICATION OF DIVISION E

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##### E.1.1 Members to whom Division E applies

Division E only applies in respect of:

- (a) a person who:
  - (i) becomes an Employee of an Employer on or after the Division E Commencement Date; and
  - (ii) is eligible for membership of this Division E under the terms of any participation arrangement between the Trustee and the Employer; and
- (b) a Member who was previously a Member of another Division and who has consented to become a Member of Division E,

and whom the Trustee admits into this Division E on such terms and conditions as it may determine.

##### E.1.2 Concurrent membership of Division C

A Member of this Division E will also be a Member of Division C.

##### E.1.3 Cessation of membership in Division E

A Member will cease to be a Member of this Division E when all benefits payable under this Division E have been paid to or in respect of the Member or transferred to another Division of UniSuper unless otherwise determined by the Trustee.

##### E.1.4 Transfers to or from another Division

- (a) With the consent of the Member, the Trustee may transfer a Member's benefit from another Division to this Division E on such terms and conditions as the Trustee may determine notwithstanding any other provision of this Division E.
- (b) The Trustee may transfer a Member's benefit to another Division in circumstances where the Member's Normal Retirement Date has passed and the Member has not elected to be paid a pension under Clause E.4.1 and the Trustee has been unable to contact the Member for a period set out in the Regulations. The Trustee must commute such a benefit using the formula in Clause E.5.1(b) prior to any such transfer.

#### E.2 DEFINITIONS

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The following definitions apply to this Division E unless the context requires otherwise.

**Accrued Pension Multiple** means in relation to a Member the sum of the Member's Pension Multiples for each Period of Accruing Service included in the Member's total period of Accruing Service, or such other greater amount as the Trustee may determine, in accordance with the Regulations.

**Accruing Member** means a Member of Division E (other than a Member who has made an election that is still effective under Clause E.3.1(c)(ii)):

- (a) in respect of whom the Member's Employer is contributing 17% of the Member's Salary to UniSuper in accordance with Clause E.3.1(a);
- (b) who is suffering from temporary incapacity or Disablement and who, with the consent of the Trustee, is contributing, or in respect of whom an Insurer is contributing, where, in either case, the amount being contributed is sufficiently in lieu of the Employer contributions that would otherwise be required under Clause E.3.1(a) as determined by the Trustee;
- (c) who is otherwise on leave without pay but who, with the consent of the Trustee, is contributing an amount that is sufficiently in lieu of the Employer contributions that would otherwise be required under Clause E.3.1(a) as determined by the Trustee; or
- (d) who is contributing an amount in accordance with Clause 32.3(a),

provided that the Trustee may deem a Member to be an Accruing Member subject to such terms and conditions as the Trustee may determine, in accordance with the Regulations.

**Accruing Service** means, in relation to a Member of Division E, the total period of time during which the Member has been an Accruing Member, excluding those periods in respect of which a benefit has been paid or transferred to or in respect of the Member from Division E, as determined by the Trustee.

**AWOTE Index** means an index adopted by the Trustee that has regard to the original full-time adult average weekly ordinary time earnings figure in the survey of average of weekly earnings published by the Australian Statistician or such other index reflecting general wage increases selected by the Trustee from time to time.

**Division E Benefit Salary** means a Member's average annual Equivalent Full-Time Salary:

- (a) for the last 5 years of Accruing Service before the date of calculation; or
- (b) during the period of Accruing Service if that period is less than 5 years,

and in circumstances where a Member's Accruing Service is not continuous during any portion of the period described in either paragraph (a) or (b), the Member's Equivalent Full-Time Salary, for the purposes of calculating the Member's Division E Benefit Salary, will be adjusted for those portions, as determined by the Trustee, having regard to any increase in the AWOTE Index.

**Division E Commencement Date** means, in respect of a Member, the date specified in the Regulations from which the Member's Employer may contribute to this Division E in respect of its Employees.

**Division E Commutation Factor** means, at any particular time in relation to a Member, a factor determined by the Trustee from time to time on the advice of the Actuary and as set out in the Regulations.

**Division E Contribution Factor** means at any particular time in relation to a Member the factor determined under Clause E.3.5.

**Division E Eligible Service** means, in relation to a Member of this Division E, continuous employment with one or more Employers since last becoming a Member

in classifications eligible for Division E participation under the terms of an Employer's participation with UniSuper.

**Division E Employer Contribution Rate** means the rate determined in accordance with Clause E.3.1.

**Division E Member Contribution Rate** means the rate determined in accordance with Clause E.3.2.

**Division E Non-Reversionary Pension** means a pension payable under Clause E.4.1(a)(i) or (a)(iii)(B).

**Division E Reversionary Pension** means a pension payable under Clause E.4.1(b).

**Division E Service Fraction** means, in relation to an Accruing Member:

(a) who is a Fractional Time Member, the number that is calculated, unless otherwise determined by the Trustee, by dividing the Member's Salary during any period of Fractional Time Service with the Equivalent Full-Time Salary; or

(b) who is not a Fractional Time Member, one,

provided that:

(c) where a Member's Salary includes a Temporary Allowance, the Division E Service Fraction can be increased as determined by the Trustee; and

(d) the Trustee may adjust a Member's Division E Service Fraction to take account of delays in being notified of changes in the Member's Salary, service details, or terms and conditions of employment, instead of giving retrospective effect to the changes notified to the Trustee.

**Division E Spouse Pension** means the pension payable to a Member's Nominated Spouse under Clause E.4.2 on the death of a Member to whom a Division E Reversionary Pension was being paid.

**Indexation PVI** means a benefit ratio calculated by the Actuary for Division E based on assumptions deemed appropriate by the Actuary for the purposes of Clause E.6 and allowing for future pension increases at a rate or rates determined by the Trustee.

**Market Adjustment Factor** or **MAF** means a factor of one or less than one as determined by the Trustee from time to time having regard to advice received from the Actuary as to the funding position of Division E.

**Member's Life Expectancy Period** for any Member means the period from the commencement of the Member's Division E Non-Reversionary Pension or Division E Reversionary Pension, as applicable, to the date on which the Member would reach his or her life expectancy as determined at the date of commencement of the pension as determined by Superannuation Law.

**Minimum Period** means the lesser of 10 years from the date of commencement of a Division E Non-Reversionary Pension or Division E Reversionary Pension and the Member's Life Expectancy Period.

**Monitoring PVI** means the vested benefit ratio calculated by the Actuary for Division E in accordance with the Professional Standard based on assumptions deemed

appropriate by the Actuary for the purposes of Clauses E.6 and E.7 and allowing for no future pension increases.

**Nominated Spouse** means the Spouse who is nominated by a Member at the time that the Member elects to receive a Division E Reversionary Pension under clause E.4.1(b). If a Nominated Spouse ceases to be the Spouse of a Member then he or she ceases to be the Nominated Spouse of the Member and the Member is not entitled to nominate a new Nominated Spouse.

**Pension Accrual Rate** in relation to a Member means, a factor determined by the Trustee from time to time on the advice of the Actuary and as set out in the Regulations according to the Member's Accruing Service.

**Pension Multiple**, in respect of any Period of Accruing Service, is calculated as follows:

$$\text{Period of Accruing Service} \times \text{Division E Contribution Factor} \times \text{Division E Service Fraction} \times \text{Pension Accrual Rate}$$

**Period of Accruing Service** is any period of a Member's Accruing Service in years and fractions of a year for which the Member's Division E Contribution Factor, Division E Service Fraction and Pension Accrual Rate are all constant.

**Reversion Factor** means a factor determined in accordance with the Regulations.

### **E.3 CONTRIBUTIONS**

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#### **E.3.1 Employer Contributions**

- (a) An Employer must make contributions in respect of each Member of this Division E who is employed by the Employer equal to 17% of the Member's Salary to UniSuper. Contributions made by an Employer under this Clause E.3.1(a) satisfy the Employer's obligation to contribute in accordance with Clause 33.2(a) in respect of a Member of this Division E.
- (b) Unless the Member has elected otherwise in accordance with Clause E.3.1(c), of the 17% of the Member's Salary that is contributed by an Employer under Clause E.3.1(a):
  - (i) 2% of the Member's Salary, or such other amount prescribed by the Regulations, must be credited to the Member's Division C Account, and
  - (ii) the remainder (which, subject to the Regulations, would be 15% of the Member's Salary) must be applied toward the accrual of benefits under this Division E;

and the Member's Division E Employer Contribution Rate will be equal to **15%** (or such other rate that reflects the remainder in Clause E.3.1(b)(ii)).

- (c) A Member may elect, or the Trustee may deem a Member to have elected, subject to such terms and conditions as the Trustee may determine:
  - (i) to apply the entire 17% of the Member's Salary that is contributed by an Employer pursuant to Clause E.3.1(a) toward the accrual of



benefits under this Division E, in which case, the Member's Division E Employer Contribution Rate will be equal to **17%**; or

- (ii) to credit the entire amount that is contributed by an Employer to the Member's Division C Account, in which case, the Member's Division E Employer Contribution Rate will be equal to **0%**.

### **E.3.2 Member Contributions**

- (a) A Member who is making contributions in accordance with Clause 32.2 will have a Division E Member Contribution Rate equal to **7%**, unless the Member has made an election that is still effective pursuant to clause E.3.1(c)(ii) to credit the entire 17% of the Member's Salary that is contributed by an Employer pursuant to Clause E.3.1(a) to the Member's Division C Account, in which case, the Trustee will credit all of the Member's contributions to the Member's Division C Account, and the Division E Member Contribution Rate will be equal to **0%**.

- (b) A Member may:

- (i) subject to such terms and conditions as the Trustee may determine, elect to credit the contributions made in accordance with Clause 32.2 to the Member's Division C Account; or
- (ii) decide to make contributions of less than 7% (including, for the avoidance of doubt, 0%) of the Member's Salary, in which case, the Trustee will credit the reduced amount to the Member's Division C Account until such time as the Member resumes making contributions of 7% of the Member's Salary,

and in either case, the Division E Member Contribution Rate will be equal to **0%**.

For the avoidance of doubt, a Member's decision to contribute less than 7% of Salary referred to in Clause E.3.2(b)(ii) is not an election that involves the Trustee, and is thus not subject to Clause E.3.3.

### **E.3.3 Member Elections in Clause E.3**

Any election made by a Member under this Clause E.3:

- (a) may, subject to such terms as may be determined by the Trustee, be reversed; but
- (b) will otherwise remain in force even if the Member ceases and recommences employment.

### **E.3.4 Contributions during absence from Service**

During periods of leave without pay, temporary incapacity or Disablement, the Trustee may, on such terms as it may determine and detail in the Regulations, allow a Member to make contributions, or have contributions made in respect of him or her, in lieu of the Employer or Member contributions that would otherwise be payable.

### **E.3.5 Division E Contribution Factors**

The Division E Contribution Factor used to calculate a Member's Pension Multiple will depend on any elections made by a Member under this Clause E.3. The Division

E Contribution Factor is determined using the Division E Contribution Factor Table set out in the Regulations.

## **E.4 PENSION BENEFITS**

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### **E.4.1 Retirement benefits**

(a) Upon a Member ceasing Service due to retirement at any time on or after attaining Preservation Age, the Member may elect to be paid, on such terms as determined by the Trustee:

(i) an immediate pension payable for the life of the Member at an annual rate calculated in accordance with the following formula:

$$\text{Division E Benefit Salary} \times \text{Accrued Pension Multiple} \times \text{Age Factor}$$

where the **Age Factor** is equal to 1 if the Member is aged 65 and for any other age is determined by the Trustee from time to time on the advice of the Actuary and as set out in the Regulations;

(ii) a lump sum benefit (referred to in this Clause E.4 as the "**Lump Sum Retirement Benefit**") calculated in accordance with Clause E.5.1(a); or

(iii) benefits consisting of a combination of:

(A) a lump sum benefit calculated as follows:

$$(100 - R)\% \times \text{Lump Sum Retirement Benefit}$$

where "R" is a percentage between 0 and 100% as elected by the Member; and

(B) an immediate pension payable for the life of the Member at an annual rate determined by the Trustee after allowing for the partial commutation of the pension that would otherwise have been payable pursuant to Clause E.4.1(a)(i) to provide the lump sum benefit referred to in Clause E.4.1(a)(iii)(A).

(b) The Trustee may give Members an option, prior to the commencement of a Division E Non-Reversionary Pension, on such terms and conditions as the Trustee may determine, to elect to instead receive a reversionary pension. If a Member makes an election in accordance with this Clause E.4.2(b), an immediate pension will be payable for the life of the Member at an annual rate calculated in accordance with Clause E.4.1(a)(i) or Clause E.4.1(a)(iii)(B), as applicable, multiplied by the Reversion Factor.

### **E.4.2 Division E Spouse Pension**

(a) Upon the death of a Member who was receiving a Division E Reversionary Pension, a pension will be payable to the Member's Nominated Spouse, if he or she survives the Member, for the life of that surviving Spouse at an annual rate equal to 62.5% of the Division E Reversionary Pension payable to the Member immediately prior to the Member's death.

- (b) Where a Member in receipt of a Division E Reversionary Pension dies and, at the time of death, the Member did not have a Nominated Spouse, no Division E Spouse Pension will be payable.
- (c) Where a Nominated Spouse in receipt of a Division E Spouse Pension dies and, at the time of death, the lesser of the Member's Life Expectancy Period and 20 years from the commencement of the Division E Reversionary Pension has expired, no benefit will be payable pursuant to Clause E.4.3.

**E.4.3 Lump sum benefit payable on death of Member or surviving Nominated Spouse in receipt of pension**

- (a) Where:
  - (i) a Member who is receiving a Division E Non-Reversionary Pension or a Division E Reversionary Pension dies within the Minimum Period; and
  - (ii) in the case of a Division E Reversionary Pension:
    - (A) the Member did not have a surviving Nominated Spouse at the date of the Member's death; or
    - (B) the Member's surviving Nominated Spouse became entitled to the Division E Spouse Pension under E.4.2 on the Member's death but subsequently also dies within the lesser of the Member's Life Expectancy Period and 20 years from the commencement of the Division E Reversionary Pension,

the Trustee must pay in respect of the Member a lump sum benefit equal to the amount calculated in accordance with the formula set out in Clause E.4.3(b).

Any benefit payable under:

- (iii) Clause E.4.3(a)(i) or (a)(ii)(A) must be paid to the Member's legal personal representative; and
  - (iv) Clause E.4.3(a)(ii)(B) must be paid to the Nominated Spouse's legal personal representative.
- (b) For the purposes of this Clause E.4.3, the lump sum benefit is to be calculated in accordance with the following formula:

<b>Sum of Future Pension Payments</b>	<b>Less</b>	<b>Surviving Nominated Spouse Payments (if any)</b>
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where:

- (A) "**Sum of Future Pension Payments**" is the sum of expected future pension payments in respect of the Minimum Period that would have been paid to the Member from the date of his or her death, assuming that the Member had survived for the remainder of the Minimum Period; and

(B) **"Surviving Nominated Spouse Payments"** is the total amount of Division E Spouse Pension payments made to the surviving Nominated Spouse.

(c) Where a Member in receipt of a Division E Non-Reversionary Pension or a Division E Reversionary Pension dies and, at the time of death, the Minimum Period has expired, no benefit will be payable pursuant to Clause E.4.3.

#### **E.4.4 Capital supporting Pensions**

For the avoidance of doubt, Division E Non-Reversionary Pensions, Division E Reversionary Pensions and Division E Spouse Pensions have no residual capital value and cannot be transferred by the recipient to any other person. The capital supporting Division E Non-Reversionary Pensions, Division E Reversionary Pensions and Division E Spouse Pensions cannot be added to by way of contribution or rollover after the pension has commenced and cannot be used by the Member or other recipient as security for a borrowing.

#### **E.4.5 Commutation**

The Trustee must not commute any Division E Non-Reversionary Pension, Division E Reversionary Pension or Division E Spouse Pension, once commenced under this Division, unless the Regulations otherwise provide, and such a commutation is permitted in the circumstances permitted by Superannuation Law. The Trustee must have regard to the advice of the Actuary for any commutation.

### **E.5 LUMP SUM BENEFITS**

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#### **E.5.1 Lump sum benefit formulae**

For the purposes of this Clause E.5, a lump sum benefit may be calculated in accordance with either formula listed below, as specified in the relevant Clause:

(a) **Division E Benefit Salary** X **Accrued Pension Multiple** X **Commutation Factor** X **MAF**

(b) **Division E Benefit Salary** X **Accrued Pension Multiple** X **Commutation Factor**

#### **E.5.2 Benefits payable on death, Disablement and Terminal Medical Condition**

Upon application the Trustee must pay a lump sum benefit equal to an amount calculated in accordance with the formula set out in Clause E.5.1(b) where:

- (a) a Member dies;
- (b) a Member suffers from a Terminal Medical Condition; or
- (c) a Member ceases to be in Service by reason of Disablement.

For the avoidance of doubt, a benefit is payable under this Clause E.5.2 only in respect of a member who has not made an election under Clause E.4.1.

#### **E.5.3 Other benefits**

- (a) Subject to Clause E.5.3(b), a Member who ceases to be in Division E Eligible Service with an Employer for any reason other than death, Terminal Medical

Condition or Disablement may elect to commute the Member's benefit under this Division E to a lump sum benefit equal to an amount calculated in accordance with the formula set out in Clause E.5.1(a).

For the avoidance of doubt, a benefit is payable under this Clause E.5.3(a) only in respect of a Member who has not made an election under Clause E.4.1.

- (b) The Trustee must commute a Member's benefit under this Division E to a lump sum benefit equal to an amount calculated in accordance with the formula set out in Clause E.5.1(b) where the Member has less than two years of Accruing Service:
  - (i) due to the Member having elected pursuant to Clause E.3.1(c)(ii) for Employer contributions to be credited to his or her Division C Account unless the Member elects otherwise when making the election under Clause E.3.1(c)(ii); or
  - (ii) due to the Member ceasing to be in Division E Eligible Service with an Employer for any reason other than death, Terminal Medical Condition or Disablement but in this case, the benefit will be commuted at the end of the Division E Option Period unless the Member elects otherwise or recommences Accruing Service during the Division E Option Period,

where **Division E Option Period** means the period commencing on the date the Member ceases to be in Division E Eligible Service and ending on the later of:

- (a) 90 days after the Member ceases to be in Division E Eligible Service; and
- (b) 30 days, or such other period as may be specified in the Regulations, after the Trustee has notified the Member of its intention to commute the Member's benefit.

For the avoidance of doubt, a benefit is payable under this Clause E.5.3(b) only in respect of a member who has not made an election under Clause E.4.1.

#### **E.5.4 Application of lump sum benefits**

- (a) Lump sum benefits payable pursuant to this Clause E.5 may be paid to the Member, transferred or rolled over to another fund in accordance with the provisions of the Deed or credited to the Member's Division C Account or Division D Account, as determined by the Trustee.
- (b) Any benefit payable on the death of a Member under Clause E.5.2 must be paid in accordance with Clause 44.4.

#### **E.5.5 Special Conditions on continuing in Service**

Where a Member:

- (a) suffers a Terminal Medical Condition;
- (b) receives a benefit under Clause E.5.2; and
- (c) continues in the Service of the Employer,

no further benefits shall be payable to or in respect of the Member under this Division E and all future contributions by or in respect of the Member shall be made to the Member's Division C Account.

#### **E.6 DIVISION E PENSION INCREASES**

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- (a) The Trustee will determine annually (or more or less frequently as it determines) whether or not to increase pensions in payment to or in respect of Members of Division E. In determining whether or not to increase pensions and the amount of such increase, if any, the Trustee will have regard to advice obtained from the Actuary and the matters set out in Clause E.6(b).
- (b) If the Trustee determines to increase pensions under Clause E.6(a), the Trustee will determine the rate of pension increase in a manner consistent with the Regulations after obtaining the advice of the Actuary and will have regard to:
  - (i) any increase in the preceding years in a consumer price index considered appropriate for these purposes by the Trustee;
  - (ii) the most recent Indexation PVI and Monitoring PVI as calculated by the Actuary;
  - (iii) the level of pension increases previously declared for Division E;
  - (iv) any other known fund experience since the most recent funding ratios have been calculated;
  - (v) the expected future movement in the funding ratios; and
  - (vi) any other matters considered relevant by the Trustee.
- (c) For the avoidance of doubt, the Trustee must not reduce pensions in payment to or in respect of Members of Division E as the result of any determination by the Trustee pursuant to this Clause E.6.

#### **E.7 REDUCTION TO DIVISION E WHERE UNISUPER ASSETS ARE INSUFFICIENT**

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- (a) If, after any Actuarial Investigation and Valuation of UniSuper, the Actuary advises in the report that:
  - (i) the Monitoring PVI is less than 100%; or
  - (ii) it is likely that the Monitoring PVI will decline to less than 100%,the Trustee must notify each Employer and the Members entitled to benefits under Division E accordingly.
- (b) Following a notification under Clause E.7(a), if the Actuary advises in the report of the first Actuarial Investigation and Valuation which is carried out after the expiration of 4 years from the date of the Actuarial Investigation and Valuation that gave rise to the notification that:
  - (i) the Monitoring PVI is less than 100%; or
  - (ii) it is likely that the Monitoring PVI will decline to less than 100%,

then within 6 months of the receipt of the current report the Trustee must consider whether it is in the interests of the Members of Division E as a whole to reduce the benefits payable under Division E and, if it so considers that it should reduce benefits (which may include benefits in the course of payment), it must do so on a fair and equitable basis and at a time or times it decides.

- (c) Notwithstanding anything in this Clause E.7, if UniSuper is taken to be technically insolvent for the purposes of Superannuation Law, the Trustee must comply with Superannuation Law.

#### **E.8 ADDITIONAL ACCUMULATION BENEFIT**

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If the Actuary recommends, having regard to the financial position of Division E of UniSuper as determined by the Actuary in accordance with the Professional Standard, the Trustee may, in its sole and absolute discretion, allocate any amount that the Trustee considers appropriate between Members of Division E and recipients of a Division E Spouse Pension for the purpose of increasing the benefits provided to them. Any amounts allocated pursuant to this Clause E.8 will be paid to the Member or Spouse or credited to a Division C Account or Division D Account held in the name of the Member or Spouse concerned as the Trustee considers appropriate.

## **DIVISION F**

### **Non-Defined Benefit Division Pensions**

#### **F.1 APPLICATION OF DIVISION**

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##### **F.1.1 Persons to whom Division F applies**

- (a) Division F applies in respect of persons who have applied to the Trustee to receive a pension from UniSuper and whom the Trustee has admitted or admits into this Division F.
- (b) For the avoidance of doubt, this Division F does not apply to pensions which have commenced under a Defined Benefit Division.

##### **F.1.2 Election**

An application under Clause F.1.1(a) must be in the form required by the Trustee under the Regulations.

#### **F.2 DEFINITIONS**

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The following definitions apply to this Division F unless the context requires otherwise.

**Fees** means the amount of fees (if any) specified in the Regulations.

**Dependant Pensioner** means any person nominated under Clause F.6 to whom a pension is paid, or becomes payable, following the death of the Pensioner.

**Division F Pension Account** means the account maintained by the Trustee in respect of a Pensioner.

**Pensioner** means a person who is receiving a pension under this Division other than a Dependant Pensioner.

#### **F.3 DIVISION F PENSION ACCOUNTS**

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##### **F.3.1 Establishment**

The Trustee must cause to be maintained in respect of each Pensioner and Dependant Pensioner an account to be called the Division F Pension Account.

##### **F.3.2 Credits to Division F Pension Account**

The Trustee may credit the following amounts to a Division F Pension Account:

- (a) any amount that is transferred to this Division F in respect of the Pensioner under the Deed or Regulations;
- (b) any amounts transferred to this Division F in respect of the Pensioner from another Approved Fund;
- (c) any contributions to this Division F by or in respect of the Pensioner under Clause F.3.4;



- (d) an amount (if any) in respect of a positive crediting rate; and
- (e) such other amounts which:
  - (i) are expressly or (in the opinion of the Trustee) impliedly required to be credited to the Division F Pension Account under the Deed or the Regulations; or
  - (ii) the Trustee considers is appropriate or equitable to credit to the Division F Pension Account.

### **F.3.3 Debits from Division F Pension Account**

The Trustee may debit the following amounts from a Division F Pension Account:

- (a) Fees;
- (b) any Taxation Amount;
- (c) any benefits or other amounts paid or transferred to or in respect of the Pensioner or Dependant Pensioner (as the case may be) from the Division F Pension Account;
- (d) any amount deducted from the Division F Pension Account pursuant to Clause 18 or 26;
- (e) an amount (if any) in respect of a negative crediting rate; and
- (f) such other amounts which:
  - (i) are expressly or (in the opinion of the Trustee) impliedly required to be debited to the Division F Pension Account under the Deed or the Regulations; or
  - (ii) the Trustee considers is appropriate or equitable to debit to the Division F Pension Account.

### **F.3.4 Contributions**

Subject to Superannuation Law, a Pensioner (or other person in respect of a Pensioner) may make contributions under the conditions and in the manner determined by the Trustee.

## **F.4 PENSION PAYMENTS**

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The Trustee must pay a pension to a Pensioner or Dependant Pensioner (as the case may be) from the Division F Pension Account in accordance with the terms set out in the Regulations.

## **F.5 COMMUTATION**

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- (a) Subject to Superannuation Law and such other terms and conditions as the Trustee may determine:

- (i) a Pensioner or Dependant Pensioner may commute the whole or a part of a pension payable under this Division F at any time by notifying the Trustee in a manner approved by the Trustee; or
  - (ii) the Trustee may commute a pension payable under this Division F at any time as it considers appropriate.
- (b) In respect of a commuted pension referred to in Clause F.5 (a), the Trustee may, subject to Superannuation Law:
- (i) transfer all or part of the amount to an account established or maintained by the Trustee in respect of the Pensioner; or
  - (ii) pay all or part of the amount in any manner it determines and as may be set out in the Regulations.

#### **F.6 NOMINATION OF DEPENDANT PENSIONER**

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- (a) A Pensioner may nominate a person to receive pension payments after the death of the Pensioner provided that the person is permitted to receive such pension benefits under Superannuation Law.
- (b) A nomination under F.6(a) must be made in accordance with any terms and conditions as the Trustee may determine and the requirements (if any) of Superannuation Law.

#### **F.7 DEATH**

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- (c) Subject to the terms and conditions established by the Trustee at any time and any requirements of Superannuation Law, on the death of a Pensioner:
  - (i) if the Pensioner has made a valid nomination under Clause F.6, the Trustee must transfer the Pensioner's pension to the nominated Dependant Pensioner; or
  - (ii) if Clause F.7(a)(i) does not apply, the Trustee must, pay the balance of the Pensioner's Division F Pension Account in accordance with Clause 44.4.
- (d) On the death of a Dependant Pensioner who is in receipt of or entitled to receive a pension under this Division F, the Trustee must pay the remaining balance of the Division F Pension Account to the Dependant Pensioner's legal personal representative.

## SCHEDULE 1

### Commutation Factor

Age at Commutation	Commutation factor	Age at Commutation	Commutation factor
Up to 40	12.0	65	9.5
41	11.9	66	9.3
42	11.8	67	9.1
43	11.7	68	8.9
44	11.6	69	8.7
45	11.5	70	8.5
46	11.4	71	8.2
47	11.3	72	7.9
48	11.2	73	7.6
49	11.1	74	7.3
50	11.0	75	7.0
51	10.9	76	6.6
52	10.8	77	6.2
53	10.7	78	5.8
54	10.6	79	5.4
55	10.5	80	5.0
56	10.4	81	4.8
57	10.3	82	4.6
58	10.2	83	4.4
59	10.1	84	4.2
60	10.0	85	4.0
61	9.9	86	3.8
62	9.8	87	3.6
63	9.7	88	3.4
64	9.6	89	3.2
		90	3.0

An interpolated factor, based on age in years and completed months at the date of commutation, is to be used.

## SCHEDULE 2

Table A

### Lump Sum Factors

Age	%	Age	%
40 or less	18.0	55	21.0
41	18.2	56	21.2
42	18.4	57	21.4
43	18.6	58	21.6
44	18.8	59	21.8
45	19.0	60	22.0
46	19.2	61	22.2
47	19.4	62	22.4
48	19.6	63	22.6
49	19.8	64	22.8
50	20.0	65 and over	23.0
51	20.2		
52	20.4		
53	20.6		
54	20.8		

An interpolated factor, based on age in years and days, is to be used.

Table B

**Pension Factors**

<b>Age</b>	<b>%</b>	<b>Age</b>	<b>%</b>
55	1.30	66	1.74
56	1.34	67	1.78
57	1.38	68	1.82
58	1.42	69	1.86
59	1.46	70	1.90
60	1.50	71	1.94
61	1.54	72	1.98
62	1.58	73	2.02
63	1.62	74	2.06
64	1.66	75	2.10
65	1.70		

For ages over 75, the factor is to be determined by the Trustee after obtaining the advice of the Actuary. An interpolated factor, based on age in years and days, is to be used.

**IMPORTANT NOTES TO INTERPRETATION – LATER COMMENCEMENT OF CERTAIN AMENDMENTS TO BE EFFECTED BY DEED OF AMENDMENT NO.41**

\* Deed of Amendment No.41 provides for clause 32.9 to be amended as follows (except for the marked up amendment which is provided for in Deed of Amendment No.43), but these amendments will be given effect at a future date to be fixed by the Board:

- (a) A Member of Division A or Division B or a Division C14 Member may reduce their contributions to UniSuper, in accordance with the Regulations or this Clause 32.9.
- (b) A Member of Division A or Division B electing to reduce their contributions may, in accordance with Regulations prescribed by the Trustee, select a contribution rate as a percentage of Salary which is lower than their rate of contribution at the time of election from one of the following rates:

<b>Flexible Contribution Rate (17% Employer Contribution Rate)</b>	<b>Flexible Contribution Rate (14% Employer Contribution Rate)</b>
4.45%	7.00%
4.00%	6.55%
3.00%	5.55%
2.00%	4.55%
1.00%	3.55%
0.00%	2.55%

- (c) Where a Member of Division A or Division B reduces their rate of contribution under this Clause, any "Employer's Part A Contribution" required to be made to UniSuper in respect of the Member under any arrangement pursuant to which the Employer participates in UniSuper will after the effective time of the Member's election be treated as an Employer contribution under whichever of the Divisions applies in relation to the Member.
- (d) If the Employer contribution rate to UniSuper in respect of a Member reduces from 17% to 14%, during the period of the reduction the Member shall be required to contribute at a rate specified as the Member contribution rate (after tax) set out in paragraph (b) of the definition of Contribution Factor in order to maintain a Contribution Factor at a level no greater than that which applied in relation to the Member immediately prior to the reduction in the Employer contribution rate and which is not less than 74.5%;
- (e) Subject to Clause 32.9(d), if the Member subsequently elects to increase their contribution to UniSuper, they will be treated as voluntary contributions under Clause 32.5.

\*\* Deed of Amendment No.41 provides for the clause 33.2 to be amended to read as follows, but these amendments will be given effect at a future date to be fixed by the Board:

Subject to this Deed, an Employer must make contributions in respect of each person who is required to contribute under Clause 32.2(a) (or is relieved of that obligation under Clause 32.7, Clause 32.9 or Division E) and employed by the Employer equal to:

- a) 14% of their Salary;
- b) if the person makes an election under Clause 32.4(b) (where applicable), 7% of their Salary; or
- c) if in the case of a Division C14 Member the person has (together with their Employer) chosen a lower percentage, that percentage of their Salary.

Such contributions must be paid to UniSuper whenever payments are made in respect of the relevant Members pursuant to Clause 32.2(b).