

# Local Authorities Superannuation Fund Consolidated Trust Deed

Vision Super Pty Limited (ABN 50 082 924 561) (**Trustee**)

Note: This is a working consolidation of the Local Authorities Superannuation Fund trust deed showing the provisions adopted in the amending deed dated 9 October 2024 and the changes made by the amending deed dated 4 February 2025.

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# Trust deed for the Local Authorities Superannuation Fund

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# General terms

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## 1 Definitions and interpretation

### 1.1 Definitions

In this Deed, unless the contrary intention appears:

**1988 Act** means the *Local Authorities Superannuation Act 1988* (Vic).

**Account Balance** means the balance of a Benefit Account of a Member or other beneficiary.

**Accumulation and Pension Division** means the Division of the Fund identified in clause 2.1(a)(i) and to which Schedule A applies.

**Active Super** means Local Government Super (ABN 28 901 371 321).

**Active Super Defined Benefit Division** means the Division of the Fund identified in clause 2.1(a)(iii) and to which Schedule C applies.

**Active Super Trustee** means LGSS Pty Limited (ABN 68 078 003 497).

**Actuary** means for any particular purpose under this Deed the person nominated by the Trustee from time to time, either generally or for that particular purpose, being:

- (a) a Fellow or Accredited Member of the Institute of Actuaries of Australia (or of any body which succeeds that Institute) or any other person recognised by that body or its successor as being qualified to provide actuarial advice and reports in relation to a superannuation fund (a **qualified actuary**);
- (b) a partnership of which one of the partners is a qualified actuary; or
- (c) a body corporate which employs or engages a qualified actuary for the purpose of providing actuarial advice.

**Administration Reserve** means the reserve maintained under clauses 12.3(a) to 12.3(c).

**Approved Benefit Arrangement** means a fund or benefit arrangement other than the Fund (including a superannuation fund or an annuity), being a fund or benefit arrangement to which money or property may be paid or transferred from the Fund, or from which money or property may be received into the Fund, without causing the Fund to cease to be a complying superannuation fund for purposes of the Tax Act.

**Benefit Account** means an account established and maintained under clause 12.6.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Death Benefit** means a benefit payable on the death of a Member or, where relevant, on the death of another beneficiary, under the applicable Schedule.

**Declared Rate** means a rate of interest (which may be positive or negative) determined by the Trustee after having regard to the income of the Fund or of any particular Investment Option within the Fund or any other matter considered relevant by the Trustee, in respect of any period for the purposes of the whole or any particular provision of this Deed and without limiting the preceding words but subject to any conditions determined by the Trustee, for the purposes of the whole or any particular provision of this Deed:

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

**Deed** means this trust deed governing the Fund, including the Schedules to the trust deed, as amended from time to time.

**Division** means a part of the Fund identified as such in clause 2.1(a) and, in relation to a Member or other beneficiary, means the Division or Divisions to which they belong.

**Employed Member** means a person who is for the time being both an Employee of an Employer and a Member.

**Employee** has the meaning given in the SIS Act.

**Employer** means:

- (a) an entity which is deemed to be a participating employer in the Fund pursuant to section 68B(4) of the *Public Sector Superannuation (Administration) Act 1993* as added by section 48 of the Omnibus Act; or
- (b) an entity which has entered into an agreement with the Trustee under clause 4.2, including an entity which replaces or succeeds an Employer as provided for in clause 4.4; or
- (c) an entity which is a transferred employer within the meaning of the *Superannuation Administration (LASF Transitional Provisions) Regulation 2024* (NSW) or which is otherwise an 'Employer' within the meaning of Schedule C,

and:

- (d) for the purposes of Part 1 of Schedule B, includes an "Authority" as set forth in Annexure 4 of Part 1;
- (e) for the purposes of Part 2 of Schedule B, includes the "Council" under that Part 2; and
- (f) for the purposes of Part 3 of Schedule B, includes the "Board" under that Part 3,

and:

- (g) in relation to an Employee, means the Employer or Employers of which the Employee is for the time being an Employee, or, in relation to a former Employee, means the Employer or Employers of which the former Employee was last an Employee,

but:

- (h) excludes any person who has ceased to participate in the Fund as an Employer where the cessation of participation occurred with the consent of the Trustee or otherwise in accordance with this Deed.

**Employer Agreement** means an agreement entered into under clause 4.2.

**Financial Year** means a year ending on 30 June, or any part of such a year occurring at the commencement or termination of the Fund.

**Fund** means the Local Authorities Superannuation Fund (ABN 24 496 637 884) continued and maintained under this Deed.

**Investment Option** means, as the context requires:

- (a) an investment strategy formulated by the Trustee for one or more separately identified portfolios of assets; or
- (b) a portion of the assets and liabilities of the Fund identified as being attributable to such an investment strategy.

**Member** means a person who has been admitted to membership of the Fund and who has not ceased to be a Member in accordance with this Deed.

**MySuper Product** has the meaning given in the SIS Act.

**Omnibus Act** means the *Miscellaneous Acts (Omnibus No. 1) Act 1998 (Vic)*.

**Operational Risk Financial Requirement Reserve** means the reserve maintained under clauses 12.4(a) to 12.4(c).

**Prior Trustee** means the trustee of an Approved Benefit Arrangement who transfers a benefit to the Fund on the basis that the Fund is a successor fund and, in respect of the Transferred Members, means the Active Super Trustee.

**Qualified Adviser** means:

- (a) an accountant, barrister, solicitor, actuary, medical practitioner or other professional person;
- (b) an insurer; and
- (c) any other person considered by the Trustee in good faith to be capable of giving advice in relation to any matter or question, whether by virtue of formal qualifications or experience in business or otherwise.

**Representative** has the meaning given in the Corporations Act.

**RSE Licence** has the meaning given in the SIS Act.

**Schedule** means a Schedule to this Deed.

**SG Benefit** means in relation to a Member:

- (a) the minimum amount which must be provided as a benefit in respect of a Member in order to ensure that there is not an individual superannuation guarantee shortfall in respect of the Member in terms of the *Superannuation Guarantee (Administration) Act 1992 (Cth)*, having regard to such matters as may be taken into account for this purpose under that Act; or

- (b) subject to clause 19, such greater amount as may be determined or approved (or calculated in a manner determined or approved) by the Employer and notified to the Trustee from time to time either generally or in any particular case.

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993* (Cth).

**Sub-Division** means a part of a Division identified as such in the applicable Schedule and, in relation to a Member or other beneficiary, means the Sub-Division or Sub-Divisions to which they belong.

**Superannuation Authority** means the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, the Commissioner of Taxation or any other government authority responsible for administering the laws or any other rules governing superannuation funds or the availability of concessions under the Tax Act to superannuation funds.

**Superannuation Law** means:

- (a) the SIS Act, the Corporations Act, the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth), the *Family Law Act 1975* (Cth), the *Superannuation Administration (LASF Transitional Provisions) Regulations 2024* (NSW) or any other law or any requirement imposed by the Superannuation Authority which must be satisfied by the Trustee or the Fund in order to qualify for the maximum available concessions under the Tax Act, secure or better secure a concession or benefit for the Fund or avoid a penalty, detriment or disadvantage for the Fund, the Trustee or a Member or other beneficiary of the Fund; and
- (b) any other present or future law of the Commonwealth of Australia or any state or territory of Australia or any other jurisdiction or non-binding statement from a Superannuation Authority which the Trustee determines to be a Superannuation Law for the purposes of the Fund or this Deed.

**Tax** means a governmental impost (including a tax, duty or levy) which is or might become payable in connection with the Fund, income of the Fund, payment or transfer of money or property to or from the Fund, this Deed or anything done or which may be done under this Deed, including any surcharge, duty or levy payable in respect of a Member that must be paid or collected by the Trustee or the Fund in relation to this Deed.

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth) and/or the *Income Tax Assessment Act 1997* (Cth), as applicable.

**Transfer Time** means 12:00:01am on 1 March 2025 or such other time and/or date as may be agreed in writing by the Trustee and the Active Super Trustee.

**Transferred Member** means each member and other beneficiary of Active Super immediately before the Transfer Time.

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

**Unfunded Liability Amount** means, in relation to an Employer (other than an entity that is an employer under paragraph (c) of the definition of 'Employer'), the outstanding amount (if any) of the unfunded liability determined to be attributable to that Employer and calculated in accordance with the methodology set forth in Circular 12/97 issued by the Local Authorities Superannuation Board under the 1988 Act. For the avoidance of doubt, where an entity is an Employer under



paragraph (c) of the definition of that term, they will have no unfunded liability, for the purposes of this definition.

**Unit** means a part or share of an Investment Option or an underlying portfolio of the Fund created by the Trustee.

**Unit Price** means the applicable price of a Unit as determined by the Trustee from time to time.

**Vision Super Defined Benefit Division** means the Division of the Fund identified in clause 2.1(a)(ii) and to which Schedule B applies.

## 1.2 Interpretation

In this Deed, unless the contrary intention appears:

- (a) a reference to this Deed or any other document includes any variation, supplement or replacement of any of them and terms that are incorporated by reference into them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) a word or phrase includes other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;
- (e) a power to appoint includes a power to vary or cancel the appointment;
- (f) amend includes delete or replace;
- (g) the use of the word 'includes' or 'including' when introducing a list of items or providing an example of the scope of an expression or rule does not exclude a reference to other items of the same class or limit the scope of that expression or rule;
- (h) person includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated association or an authority;
- (i) a reference to a power of approval includes a power to withhold or revoke approval, and any appointment to an office or position under this Deed, which requires the continued approval of the Trustee or (subject to clause 19) an Employer, ceases on revocation of that approval;
- (j) headings are for convenience only and do not affect interpretation; and
- (k) a reference to a "portion of the assets of the Fund" or similar does not require the Trustee to segregate the assets of the Fund between Divisions or Sub-Divisions.

## 1.3 Inconsistency

- (a) Subject to this clause 1.3, the provisions of this Deed (excluding the Schedules) apply to all Members and beneficiaries of the Fund in accordance with their terms.
- (b) In respect of all Divisions other than the Active Super Defined Benefit Division, if there is any inconsistency between the provisions of this Deed (excluding the Schedules) and the provisions in the Schedules, the

provisions of this Deed (excluding the Schedules) prevail unless the Schedules expressly provide to the contrary.

- (c) In respect of the Active Super Defined Benefit Division, if there is any inconsistency between the provisions of this Deed (excluding Schedule C) and the provisions in Schedule C, the provisions in Schedule C prevail unless Schedule C expressly provides to the contrary. This rule applies irrespective of whether any particular provision of this Deed (excluding Schedule C) is or is not expressed as operating subject to any provision of any Schedule.

## 1.4 Other general rules

- (a) To the extent legally possible and unless the Trustee otherwise determines, this Deed is not subject to the *Trustee Act 1958* (Vic) or any of its equivalents in any of the States or Territories of Australia.
- (b) The intention of this Deed is that all persons, things and circumstances existing or continuing under the 1988 Act immediately before 1 July 1998 (including benefit accruals and benefit entitlements) shall continue to have the same status, operation and effect under this Deed as they would have had if the 1988 Act had not been repealed.

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## 2 Fund

### 2.1 Divisions

- (a) Members and other beneficiaries of the Fund are grouped into Divisions. With effect from the Transfer Time, the Fund consists of the following Divisions:
  - (i) the 'Accumulation and Pension Division';
  - (ii) the 'Vision Super Defined Benefit Division'; and
  - (iii) the 'Active Super Defined Benefit Division'.
- (b) The Schedules to this Deed specify rules that apply only in relation to a particular Division.
- (c) A Member or other beneficiary of the Fund may belong to more than one Division at a time.
- (d) The entitlements and interests of a Member or other beneficiary of a Division are determined by reference only to the provisions governing that Division. Where a Member or other beneficiary belongs to more than one Division, any benefit payable from one Division shall be paid in accordance with the applicable Schedule for that Division and any benefit payable from another Division shall be paid in accordance with the applicable Schedule for that Division.
- (e) The Trustee must identify a portion of the assets of the Fund as being attributable to each Division. The Trustee:
  - (i) may only apply the portion of the assets of the Fund attributable to a Division for the purposes of that Division or to pay or provide for an appropriate portion (as determined by the Trustee) of the liabilities and expenses of the Fund as a whole, except that and subject always to clause 2.1(e)(ii), the Trustee may determine from time to time that a portion of the assets of

the Fund attributable to a particular Division (**Transferring Division**) may be applied for the benefit of another Division (**Receiving Division**) provided that a portion of the assets of the Fund attributable to the Receiving Division, of the same value as the Transferring Division's portion, is reattributed by the Trustee from the Receiving Division to the Transferring Division; and

- (ii) must pay the benefits payable to or in respect of Members and other beneficiaries who belong to a Division from the portion of the assets of the Fund attributable to the Division.
- (f) Divisions do not constitute separate trusts or superannuation funds. A Division does not constitute a sub-plan, unless the Trustee determines otherwise.
- (g) For the avoidance of doubt, clause 2.1(e) does not limit how the portion of the assets of the Fund that is attributable to the Administration Reserve, the Operational Risk Financial Requirement Reserve or any other reserve that is not specific to a particular Division, may be applied.

## **2.2 Sub-Divisions**

- (a) Members and other beneficiaries of the Vision Super Defined Benefit Division are grouped into Sub-Divisions. At and from the Transfer Time, the Vision Super Defined Benefit Division consists of the following Sub-Divisions:
  - (i) Former LAS Defined Benefit Members under 1988 Act Sub-Division;
  - (ii) Former Members of the City of Melbourne Superannuation Fund Sub-Division; and
  - (iii) Former Members of the Melbourne Water Corporation Employees' Superannuation Fund Sub-Division and "port authority employee" (formerly being a member of the Transport Superannuation Fund, the State Superannuation Fund (Revised Division) or the Port of Melbourne Authority Superannuation Scheme, as applicable).
- (b) Schedule B specifies rules that apply only in relation to a particular Sub-Division of the Vision Super Defined Benefit Division.
- (c) Subject to Schedule B, a Member or other beneficiary of the Vision Super Defined Benefit Division may belong to more than one Sub-Division at a time.
- (d) The entitlements and interests of a Member or other beneficiary of a Sub-Division of the Vision Super Defined Benefit Division are determined by reference only to the provisions governing that Sub-Division. Where a Member or other beneficiary belongs to more than one Sub-Division of the Vision Super Defined Benefit Division, any benefit payable from one Sub-Division shall be paid in accordance with the applicable Part of Schedule B and any benefit payable from another Sub-Division shall be paid in accordance with the applicable Part of Schedule B for that Sub-Division.
- (e) Sub-Divisions do not constitute separate trusts or superannuation funds. A Sub-Division does not constitute a sub-plan, unless the Trustee determines otherwise.

## 2.3 Classes

- (a) The Fund provides interests in respect of Members and other beneficiaries in the following classes:
  - (i) MySuper Products;
  - (ii) choice products; and
  - (iii) defined benefit interests.
- (b) A Member or other beneficiary may hold an interest in one or more classes, provided that a Member or other beneficiary can only hold an interest in one MySuper Product.

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## 3 Members

### 3.1 Eligibility

- (a) Subject to clause 3.1(b), the Trustee may admit any natural person as a Member of the Fund if Superannuation Law permits.
- (b) The Trustee may only admit a natural person as a Member of the Vision Super Defined Benefit Division or the Active Super Defined Benefit Division if that person satisfies any eligibility criteria for that Division set out in the applicable Schedule.

### 3.2 Commencing membership

- (a) Subject to clause 3.2(b), the Trustee may require a person or their Employer to complete an application, in a form approved by the Trustee, before becoming a Member. The Trustee has the discretion to accept or reject an application for membership of the Fund without giving reasons.
- (b) The Trustee may admit a person as a Member without an application if permitted by Superannuation Law. The Trustee must admit each Transferred Member as a Member or other beneficiary of the Fund without an application at the Transfer Time.
- (c) A person becomes a Member on the date determined by the Trustee, unless they are a Transferred Member, in which case they become a Member with effect at and from the Transfer Time. With the consent of:
  - (i) the Member, if the Member completes an application; or
  - (ii) the Member's Employer, if the Employer completes an application for the Member,the Trustee may determine a date earlier than the date of the application.

### 3.3 Information

- (a) Each person who is applying or has applied to the Trustee to become a Member (**Applicant**) and each Member, except a Transferred Member, must provide all information and evidence, sign all documents, undergo all medical examinations and tests, and generally satisfy all requirements as and when the Trustee reasonably considers necessary or desirable.
- (b) Without limiting clause 3.3(a), if:

- (i) an Applicant or Member (other than a Transferred Member) fails to comply with clause 3.3(a) or to satisfy a test or requirement prescribed under that clause to the satisfaction of the Trustee; or
- (ii) a statement made or evidence provided by or in respect of an Applicant or Member (other than a Transferred Member) is found to contain a mis-statement, error, mistake, inaccuracy or suppression,

the Trustee may:

- (iii) in the case of an Applicant, admit that person as a Member subject to conditions determined or approved by the Trustee, or refuse to admit that person as a Member; or
- (iv) in the case of a Member (other than a Transferred Member), impose conditions.

### **3.4 Other information**

In addition to providing all information required in order to satisfy Superannuation Law, the Trustee may provide to Members, other beneficiaries and any other person as required by Superannuation Law any other information which the Trustee considers to be necessary or appropriate.

### **3.5 Effect of conditions and consents**

Any:

- (a) condition properly imposed under this Deed in respect of a Member or other beneficiary;
- (b) consent, approval or agreement given or made by a Member or other beneficiary; and
- (c) act of the Trustee or an Employer pursuant to or as a consequence of that condition, consent, approval or agreement,

is binding on the Member or other beneficiary concerned and any other person who is an heir, executor or assign of the Member or other beneficiary or is or would otherwise have been entitled to claim a benefit in respect of the Member or other beneficiary or upon the occurrence of an event or circumstance affecting the Member or other beneficiary, and this Deed takes effect accordingly.

### **3.6 Transfers between Employers**

A Member does not cease to be a Member or an Employee for the purposes of this Deed by reason of ceasing to be an Employee of one Employer and immediately becoming an Employee of another Employer.

### **3.7 Interests of Members and beneficiaries**

- (a) Notwithstanding anything to the contrary in this Deed, each Member and other beneficiary has an undivided interest in the assets of the Fund as a whole and does not have any interest in a particular asset, even where a Member or other beneficiary belongs to a Division or Sub-Division and a portion of the assets of the Fund are attributable to the Division or Sub-Division.

- (b) No Member or other beneficiary is entitled (other than as expressly permitted by this Deed, a special arrangement or Superannuation Law) to:
  - (i) interfere with the rights or powers of the Trustee in respect of the Fund;
  - (ii) exercise any rights, powers or privileges in respect of any assets of the Fund; or
  - (iii) require the transfer to such Member or other beneficiary of any assets of the Fund.

### **3.8 Membership ceases**

Subject to the Schedules, a person ceases to be a Member or other beneficiary of the Fund on the earlier of the date on which:

- (a) the whole of the Member's or other beneficiary's benefit in the Fund has been cashed out, or transferred or rolled over to an Approved Benefit Arrangement or the Commissioner of Taxation;
- (b) in the case of a Member or other beneficiary of the Accumulation and Pension Division, the applicable Benefit Account is closed; or
- (c) the Member's or other beneficiary's entitlement to a benefit from the Fund has otherwise ceased or been terminated.

### **3.9 Non-member spouses not beneficiaries**

To the maximum extent permitted by Superannuation Law:

- (a) a person is not a beneficiary of the Fund by virtue of being a non-member spouse under Superannuation Law; and
- (b) the Trustee owes no duties (fiduciary or otherwise) to any person by virtue of them being a non-member spouse.

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## **4 Employers**

### **4.1 Application**

Nothing in this clause 4 applies to the Active Super Defined Benefit Division.

### **4.2 Employer Agreement**

- (a) The Trustee may enter into an agreement with any person for that person to become an Employer.
- (b) The agreement may provide for the Employer to participate in one or more Divisions and / or one or more Sub-Divisions of the Fund.
- (c) Subject to any conditions imposed under the relevant agreement or this Deed, Employees of an Employer who become eligible as provided in that agreement or this Deed are eligible to become a Member of the Divisions or Sub-Divisions of the Fund that the Employer participates in.

### 4.3 Form and status of Employer Agreements

Any Employer Agreement may be in any form and subject to any conditions acceptable to the Trustee and the Employer and may be amended or replaced by a subsequent agreement between the parties or in the manner provided in this Deed. If there is a conflict between a provision of this Deed (excluding a Schedule) and an Employer Agreement, the provision of this Deed (excluding a Schedule) prevails. Except where the Employment Agreement expressly provides otherwise, if there is a conflict between an Employer Agreement and Schedules A or B, the Employer Agreement prevails.

### 4.4 Employer ceasing business

Subject to the express terms of an Employer Agreement, if:

- (a) where an Employer is or includes a body corporate, a binding resolution is passed or order is made, or any other enforceable action is taken, for the purpose of winding up that body or a scheme of arrangement providing for the dissolution of that body is approved by a court;
- (b) where an Employer is or includes a partnership, that partnership is dissolved;
- (c) where an Employer is or includes a natural person or natural persons, that person or any of those persons becomes bankrupt; or
- (d) an Employer ceases to carry on business for any reason,

the Trustee may enter into an agreement with a person (**successor**) which in the opinion of the Trustee, wholly or partially succeeds or replaces the Employer for the successor to take the place of the Employer under this Deed. An agreement may be in any form acceptable to the Trustee and is binding on all interested persons.

### 4.5 Employer not replaced

- (a) Subject to clause 4.5(b) and the express terms of an Employer Agreement, if an event provided for in clause 4.4 occurs in relation to an Employer but no Employer Agreement is entered into as provided for in that clause within 90 days (or any other period determined or allowed by the Trustee) after the date the relevant event occurred, the Trustee is deemed to have received on the last day of that period a notice from the Employer that the Employer terminates all of its contributions to the Fund with effect on that last day.
- (b) Notwithstanding clause 4.5(a) or any other provision of this Deed, an Employer in respect of which there is, at the relevant time, an Unfunded Liability Amount, may not, in any case, terminate, reduce or suspend all or any of its payments in respect of the Fund.

### 4.6 Information

- (a) An Employer must, as and when requested by the Trustee, give to the Trustee all information in the Employer's possession or under the Employer's control which may be reasonably necessary for the operation, management and administration of the Fund.
- (b) Except for any matter which is the subject of a binding obligation of confidence imposed on the Trustee and subject to Superannuation Law, the Trustee must cause to be provided to an Employer, as and when requested by the Employer, any information which that Employer may

reasonably require in order to determine and discharge an obligation or liability of the Employer in connection with the Fund or to exercise a power or perform a duty of the Employer.

#### **4.7 Employer's powers not affected**

Nothing in this Deed prejudices the powers of an Employer regarding the dismissal or remuneration of or any dealings whatever with any of its officers, employees or other Representatives. Any benefit to which a person may be entitled under this Deed must not be used or alleged or claimed as damages or as grounds for increasing damages in any action or claim by or in respect of that person against an Employer in relation to the dismissal of or other dealings with that person by the Employer.

#### **4.8 Employer's discretion**

Except to the extent otherwise expressly provided elsewhere in this Deed, in the exercise, non-exercise or partial exercise of each power exercisable by it under this Deed, an Employer has an absolute and uncontrolled discretion.

#### **4.9 Appointment of receiver**

If a receiver, receiver and manager, liquidator or trustee in bankruptcy is appointed in respect of an Employer or the whole of the property of an Employer or if an Employer is placed under the official management of a person or a committee of management (collectively called the **Receiver**), until the Receiver is discharged from, or otherwise ceases to hold, office all powers exercisable by the Employer are exercisable by the Receiver and references in this Deed to that Employer are deemed to be references to the Receiver.

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## **5 Contributions - General**

### **5.1 Contributions**

- (a) Subject to clause 5.1(b) and the Schedules, a Member and any other person in respect of the Member may contribute to the Fund in the manner and at the times agreed with the Trustee and on such reasonable conditions and after completing such forms as determined by the Trustee from time to time.
- (b) An Employer must or may contribute to the Fund as specified in clause 6 and the applicable Schedule.
- (c) The Trustee may accept a payment or cash or any other asset as a contribution from or in respect of a Member.

### **5.2 Contribution splitting**

Subject to Superannuation Law and the Trustee offering a contribution splitting facility to a Member:

- (a) the Member may, in a Financial Year, apply to the Trustee in a form determined by the Trustee from time to time, to roll over, transfer or allot an amount under a contribution splitting facility to another person provided that the Member has satisfied any conditions imposed by the Trustee; and
- (b) the Trustee may accept an application from the Member under a contribution splitting facility and effect the requested transaction.



### **5.3 Return of contributions**

If the Trustee receives contributions made by or in respect of a Member in a manner which is inconsistent with Superannuation Law or paid by mistake, and if the Trustee returns those contributions, the Trustee may:

- (a) return an amount lesser than the contributions received by the Trustee;  
or
- (b) return an amount greater than the contributions received by the Trustee,

in each case in accordance with Superannuation Law, and the Trustee shall not be liable to pay any interest to, or account for any earnings to, or compensate in any way, the person who paid those moneys.

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## **6 Employer contributions**

### **6.1 Application**

Nothing in this clause 6 applies to the Active Super Defined Benefit Division.

### **6.2 Amount to be contributed**

Subject to this clause 6 and to clause 7 and Schedule A, each Employer must contribute to the Fund at any particular time determined by the Trustee the amount or rate of contributions determined by the Trustee after obtaining the advice of the Actuary, including the Unfunded Liability Amount. Without limiting an Employer's contribution obligation, for each Member employed by the Employer the amount so determined must be at least equal to the superannuation guarantee amount or the amount specified in an award or registered industrial agreement applying to that Member (whichever is greater). As soon as practicable, the Trustee must notify the Employer of each determination in respect of that Employer under this clause 6.2.

### **6.3 Manner and timing of payment**

- (a) The contributions payable by an Employer must be paid to the Fund in the manner and at the times set out in Schedule A or Schedule B (as applicable) or, if not set out in the applicable Schedule, as reasonably determined or approved by the Trustee. If the Trustee consents, contributions payable by one Employer may be paid by another Employer.
- (b) If an Employer does not pay the whole of an amount to the Trustee within 14 days after the amount becomes payable, the Employer must pay interest at a rate determined by the Trustee from time to time.

### **6.4 Reduction, suspension or waiver of contributions**

- (a) Subject to any conditions determined by the Employer and approved by the Trustee and the Member of the Division concerned (including conditions upon which contributions otherwise payable by the Member and interest must be made up by and in respect of the Member and conditions as to how benefits to be provided in respect of the Member must be adjusted to take account of a reduction, suspension or waiver), an Employer may for any period determined by the Employer reduce, suspend or waive contributions otherwise payable by an Employed Member.

- (b) Without limiting clause 6.4(a), an Employer may determine that contributions which would have been paid by an Employed Member but for the exercise of a discretion as provided in clause 6.4(a) will be deemed to have been paid by the Member for the purpose of calculating the amount of, or determining the eligibility for, payment of any benefit payable pursuant to this Deed the amount of or eligibility for which depends on the amount of the contributions paid by the Member or the period during which the Member has contributed.
- (c) The Employer must notify the Trustee of any determination under clauses 6.4(a) or (b) as soon as practicable.

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## **7 Termination of Employer contributions**

### **7.1 Application**

Nothing in this clause 7 applies to the Active Super Defined Benefit Division.

### **7.2 Non-payment or inadequacy of Employer payments**

If an Employer has given a notice pursuant to clause A.5.2 of Schedule A or clause B.2(a) of Schedule B then:

- (a) unless otherwise agreed between the Trustee and the Employer, no contributions will be accepted from a Member covered by the notice (either generally or as named or described in the notice), and no Employee will be admitted as a Member, during or in respect of any period when the Employer's payments are or would be terminated in respect of that person pursuant to that notice; and
- (b) the Trustee, after obtaining the advice of the Actuary and subject to clause 7.4, may adjust any benefit which is or may become payable to or in respect of any person whom the Trustee may consider is affected by that termination to the extent and in the manner the Trustee considers appropriate and equitable.

### **7.3 Revocation of notice or remedy of failure or inadequacy**

Subject to any conditions imposed by the Trustee and to clause 7.4, an Employer may:

- (a) revoke or vary a notice given or deemed to have been given by that Employer pursuant to clause A.5.2 of Schedule A or clause B.2(a) of Schedule B; or
- (b) remedy a failure or inadequacy which has occurred or arisen in terms of clause 7.2,

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

### **7.4 Adjustment procedures and limits**

An adjusted benefit provided in respect of a person under this clause 7 may be provided in any manner or form, by way of any arrangements and subject to any conditions determined by the Trustee either generally or in any particular case, and is in lieu of and in full satisfaction of any benefit which would or might have

been or become payable from the Fund but for this clause 7. Unless otherwise agreed between the Trustee and the Employer, an adjustment made pursuant to clauses 7.2(b) or 7.3 must not increase the amount of any benefit which, in the opinion of the Trustee after obtaining the advice of the Actuary, has accrued in respect of a person immediately prior to the effective date of that adjustment in respect of the period up to that date or improve the basis upon which benefits accrue during or in respect of any period after that date.

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## **8 Roll overs and transfers**

### **8.1 Roll overs and transfers to the Fund**

- (a) The Trustee may make arrangements it considers appropriate with:
- (i) a Member or other beneficiary (in either case, actual or prospective) of the Fund;
  - (ii) a group of Members and/or other beneficiaries (in either case, actual or prospective) of the Fund;
  - (iii) an employer or previous employer of anyone identified in paragraphs (a)(i) or (ii);
  - (iv) the trustee or issuer of an Approved Benefit Arrangement of which anyone identified in paragraphs (a)(i) or (ii) is or has been a member or other beneficiary;
  - (v) the issuer of an annuity held or to be held by anyone identified in paragraphs (a)(i) or (ii);
  - (vi) the Commissioner of Taxation or a government; or
  - (vii) any other person,

to roll over or transfer benefits and associated assets and entitlements to the Fund and, subject to the Schedules, to provide benefits in respect of anyone identified in paragraphs (a)(i) or (ii).

- (b) The Trustee may accept a payment or cash or any other asset as a roll over or transfer in respect of anyone identified in paragraphs (a)(i) or (ii).

### **8.2 Transfers within the Fund**

- (a) Subject to the applicable Schedules, the Trustee may transfer one or more Members or other beneficiaries and all or part of their benefits (and, in that case, a part, if appropriate, of a reserve or unallocated amount in a Division or Sub-Division) to a different superannuation product in the Fund, whether that superannuation product is in the same Division or Sub-Division or in a different Division or Sub-Division, with or without their consent, by way of either:
- (i) the redemption of their interest in one superannuation product and the issue of an interest in another superannuation product;
  - (ii) a variation of the terms and conditions of their superannuation product,

on such terms as it reasonably determines.

- (b) Without limiting any other provision of this Deed, the Trustee may at any time (subject to such procedures and in accordance with such terms and conditions as it may determine) offer or allow, either generally or in any particular case, a Member of the Vision Super Defined Benefit Division or the Active Super Defined Benefit Division or a class of such Members to elect to become a Member of the Accumulation and Pension Division. The basis for membership of the Accumulation and Pension Division shall be:
  - (i) in relation to a Member who has not yet become entitled to a defined benefit, as agreed between the Trustee and the Employer for the Member, and the amount credited to the Member's Benefit Account shall be the amount determined by the Trustee after obtaining the advice of the Actuary; and
  - (ii) in relation to a Member who has become entitled to a defined benefit, as determined by the Trustee, and the amount credited to the Member's Benefit Account shall be some or all of the amount of their defined benefit entitlement as agreed between the Trustee and the Member.

### **8.3 Roll overs and transfers from the Fund**

- (a) Nothing in this clause 8.3 applies to the Active Super Defined Benefit Division.
- (b) Subject to the Superannuation Law, if a person, who is entitled to a benefit, requests in a manner approved by the Trustee to roll over or transfer all or part of their benefit in the Fund to another Approved Benefit Arrangement, the Trustee may roll over or transfer the amount of the benefit requested to the nominated Approved Benefit Arrangement.
- (c) The Trustee may:
  - (i) transfer an amount representing all or part of a Member's or other beneficiary's interest in the Fund to an Approved Benefit Arrangement or to the Commissioner of Taxation, in either case without the consent of the Member or other beneficiary in the circumstances permitted by Superannuation Law; and
  - (ii) where clause 8.3(c)(i) applies, transfer all or part, if appropriate, of a reserve or unallocated amount in the Fund to the Approved Benefit Arrangement or to the Commissioner of Taxation (as applicable).
- (d) A roll over, transfer or payment from the Fund to another Approved Benefit Arrangement or to the Commissioner of Taxation under this Deed satisfies the entitlement of the person to any benefit in respect of the amount rolled over, transferred or paid.

### **8.4 Active Super successor fund transfer**

- (a) In this clause 8.4, unless the contrary intention appears:

**Continuing Member** means each member and other beneficiary of the Fund immediately before the Transfer Time.

**Prior Instruction** means a notice, authorisation, direction, nomination or election or other information or act of like effect, of binding or discretionary effect that:

- (a) was in effect in relation to a Transferred Member's benefit in Active Super immediately prior to the Transfer Time; and
  - (b) has been provided by the Active Super Trustee to the Trustee,
- and includes a death benefit nomination provided to the Active Super Trustee pursuant to regulation 6.17A of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) in respect of which paragraphs (a) and (b) of this definition are satisfied.
- (b) With effect from the Transfer Time, each Transferred Member is admitted as a Member or other beneficiary of the Fund and allocated:
    - (i) if they were a Member or other beneficiary of Division A or P of Active Super, or a pensioner holding an account based pension in Division F of Active Super, in either case immediately before the Transfer Time, to the Accumulation and Pension Division; and
    - (ii) if they were a Member or other beneficiary of Division B, C or D of Active Super, or a pensioner holding a non-account based pension in Division F of Active Super, in either case immediately before the Transfer Time, to the Active Super Defined Benefit Division.
  - (c) The obligation of the Active Super Trustee to pay a pension to a Transferred Member under the Active Super trust deed immediately before the Transfer Time is assumed by the Trustee, and continues under the Accumulation and Pension Division and / or the Active Super Defined Benefit Division (as appropriate) from the Transfer Time.
  - (d) The Trustee must, with effect at the Transfer Time, allocate each Continuing Member to the Accumulation and Pension Division and / or the Vision Super Defined Benefit Division (as appropriate).
  - (e) Notwithstanding any other provision of this Deed, any special arrangements in respect of benefits that applied under the Active Super trust deed immediately prior to the Transfer Time and which the Active Super Trustee has provided to the Trustee before the Transfer Time will continue to apply, with any necessary changes, under this Deed from the Transfer Time.
  - (f) The Trustee must comply with and/or recognise (as applicable) each Prior Instruction and, to that end, each Prior Instruction must be treated by the Trustee as if it had been provided to the Trustee (rather than to the Active Super Trustee).
  - (g) A person who was a reversionary beneficiary for the purposes of the Active Super trust deed immediately before the Transfer Time is a reversionary beneficiary for the purposes of the Accumulation and Pension Division and / or the Active Super Defined Benefit Division (as appropriate), unless and until another nomination permitted by the Trustee is made.

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## **9 Benefits**

### **9.1 Payment of benefits**

- (a) Members and other beneficiaries of the Fund are entitled to benefits in accordance with the applicable Schedule.

- (b) Apart from clause 9.1(a), nothing in this clause 9 applies to the Active Super Defined Benefit Division.
- (c) If a benefit may be paid to a Member or other beneficiary under Superannuation Law, the Trustee may pay all or part of that benefit as a lump sum to the Member upon receiving a request from the Member for payment in a form determined by the Trustee from time to time.
- (d) If Superannuation Law requires the Trustee to pay a benefit to a Member or other beneficiary, the Trustee must pay the Member or other beneficiary a lump sum benefit equal to their Account Balance or apply an amount equal to their Account Balance to provide an annuity or pension.

## **9.2 Retained benefits**

- (a) Subject to the Schedules, the Trustee may defer payment of all or part of a benefit if the Member entitled to it requests.
- (b) If the Trustee considers it necessary under Superannuation Law to preserve any part of a benefit that would otherwise be payable to or in respect of a Member, the Trustee must retain that part of the benefit in the Fund, in which case, the Trustee may transfer the Member to another superannuation product in the Fund under clause 8.2.
- (c) Any part of a benefit retained under rules 9.2(a) or (b) remains credited to the appropriate Benefit Account until payment. If the Member dies before the benefit is paid in full, the Trustee must pay the remainder of the benefit as a Death Benefit.
- (d) The Trustee must pay a Death Benefit in respect of a Member in accordance with the applicable Schedule.

## **9.3 Provision of benefits at particular ages**

- (a) If, in the opinion of the Trustee, a benefit must be paid or commence to be paid from the Fund to or in respect of a Member upon the Member attaining a particular age or upon the occurrence of a particular event or circumstance (notwithstanding that there is no actual termination or interruption of employment) in order to satisfy Superannuation Law:
  - (i) the Trustee must pay or commence payment of that benefit subject to such conditions as are necessary to satisfy Superannuation Law; and
  - (ii) subject to any contrary agreement between the Trustee and the Employer, for the purposes of determining the amount of or eligibility for payment of any benefit payable pursuant to this Deed in respect of an event or circumstances occurring or arising after the date the benefit is paid or commences to be paid, that Member must be treated for all intents and purposes under this Deed as if that Member had never previously been an Employee or a Member.
- (b) If, in the opinion of the Trustee, a benefit may be paid or commence to be paid from the Fund in respect of a Member upon the Member attaining a particular age or upon the occurrence of a particular event or circumstance (notwithstanding that there is no actual termination or interruption of employment) without causing a breach of Superannuation Law:
  - (i) in the case of an Employed Member:

- (A) the Employer and the Trustee may agree that the Trustee may pay or commence payment of that benefit; and
  - (B) subject to any contrary agreement between the Trustee and the Employer, for the purposes of determining the amount of or eligibility for payment of any benefit payable pursuant to this Deed in respect of an event or circumstance occurring or arising after the date the benefit is paid or commenced to be paid, that Member must be treated for all intents and purposes under this Deed as if that Member had never previously been an Employee or a Member; or
- (ii) in any other case:
- (A) the Trustee may pay or commence payment of that benefit; and
  - (B) for the purposes of determining the amount of or eligibility for payment of any benefit payable pursuant to this Deed in respect of an event or circumstance occurring or arising after the date the benefit is paid or commenced to be paid, that Member must be treated for all intents and purposes under this Deed as if that Member had never previously been a Member.

#### **9.4 Beneficiary under disability**

If it appears to the Trustee that a Member or other beneficiary is under a legal disability or is unable for any reason to satisfactorily deal with an amount otherwise payable to the Member or other beneficiary from the Fund, the Trustee may pay or apply the whole or part of any amount payable to the Member or other beneficiary for or towards the maintenance, education, advancement or otherwise for the benefit of the Member or other beneficiary in any form and manner and subject to any conditions determined by the Trustee, including by way of payment to a person who, in the opinion of the Trustee:

- (a) is a trustee for the Member or other beneficiary, including a trustee of a separate trust established by the Trustee upon the trusts and with the powers determined by the Trustee;
- (b) is a spouse, child, parent or guardian of the Member or other beneficiary; or
- (c) has custody or care (or the financial expense of custody or care) of the Member or other beneficiary.

#### **9.5 Proof of qualification for benefits**

- (a) In paying a benefit, the Trustee may act on:
  - (i) any reasonable proofs or presumptions whether or not they are strictly legal proofs or presumptions; and
  - (ii) any authorisation or direction given by or on behalf of a Member.
- (b) Without limiting clause 9.5(a), a Member's or other beneficiary's entitlement to a benefit from the Fund is contingent upon:

- (i) the Trustee being notified of that person's claim or intention to make a claim in respect of that benefit in writing or another manner or form reasonably satisfactory to the Trustee; and
  - (ii) the availability to the Trustee of all information, evidence and proofs required by the Trustee in order to be fully satisfied as to that person's existence, identity and whereabouts, and that person's entitlement or continued entitlement to receive that benefit.
- (c) Without limiting clause 9.5(b):
- (i) the Trustee may suspend consideration of a Member's or other beneficiary's claim to or payment of a benefit until all required information, evidence and proofs become available to the satisfaction of the Trustee; and
  - (ii) whether or not any action has been taken to identify, locate, contact or advise a claimant or potential claimant, if no person has notified the Trustee of a claim or intention to make a claim in respect of a particular benefit under the Vision Super Defined Benefit Division within 6 months after:
    - (A) in the case of a Death Benefit, the date of death of the Member or other beneficiary of the Vision Super Defined Benefit Division;
    - (B) in the case of a benefit arising on the disablement of a Member of the Vision Super Defined Benefit Division, the date the Member ceased to be an Employee; or
    - (C) in any other case, the date determined or allowed by the Trustee either generally or in any particular case,

that benefit will be transferred to the Accumulation and Pension Division until a claim is made, further instructions given or the required proof is received.

## **9.6 Release authorities**

- (a) If the Trustee receives a release authority in respect of a Member or other beneficiary, the Trustee must pay an amount from the Fund in respect of that Member or other beneficiary in accordance with Superannuation Law.
- (b) Subject to Superannuation Law, the Trustee may adjust any amount, benefit or entitlement that a Member or other beneficiary has in the Fund in order to give effect to a payment under clause 9.6(a).

## **9.7 Minimum benefit**

- (a) Subject to clause 9.7(b), the benefit payable to or in respect of a Member from the Fund shall not be less than the Member's SG Benefit, if any, but before increasing any benefit in order to give effect to this clause 9.7 or in the course of doing so, the Trustee after obtaining the advice of the Actuary may require an undertaking from an Employer that it shall contribute to the Fund such additional amounts or rates of contribution and at such times as the Actuary shall calculate. If any undertaking required by the Trustee as aforesaid is not given or, having been given, is not fulfilled to the Trustee's satisfaction, the Trustee may refuse or cease to give effect to this clause 9.7(a).



- (b) Clause 9.7(a) does not apply to or in respect of Transferred Members or any person who was a Member of division I of the Fund immediately before the Transfer Time.

## **9.8 Other benefit rules**

- (a) The Trustee will determine the relevant rate of interest or investment performance for the purposes of the whole or any of any particular provision of this Deed for all or part of the period between the date the benefit becomes payable from the Fund until the date it is paid.
- (b) No person is entitled to require payment from the Fund except in accordance with the express terms of this Deed.
- (c) The Trustee must not recognise any purported assignment of a benefit.
- (d) Subject to the Schedules, the Trustee may, on such terms and conditions as it determines, apply all or part of any benefit payable to or for the benefit of a Member or other beneficiary to purchase an annuity or pension from a third party for the benefit of that person.
- (e) Subject to the Schedules, the Trustee may, on such terms and conditions as it determines from time to time, apply some or all of a person's Death Benefit in the form of a pension.
- (f) The receipt of a person to whom a benefit is paid by the Trustee is a complete discharge to the Trustee, and the Trustee is not bound to see to the application of that amount.

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## **10 Investment Options**

### **10.1 Establishment of Investment Options**

The Trustee:

- (a) must establish one or more Investment Options, each with a distinct investment strategy;
- (b) must, on and subject to such terms and conditions as the Trustee determines, offer Members and other beneficiaries the ability to select one or more of those Investment Options for investment of their Benefit Account (if any);
- (c) may invest other accounts, reserves and amounts in one or more Investment Options;
- (d) may make available an Investment Option only in one superannuation product, Division or Sub-Division or in two or more superannuation products, Divisions or Sub-Divisions;
- (e) must identify the portion of the assets and liabilities of the Fund attributable to each Investment Option and, for the avoidance of doubt:
  - (i) the assets identified as attributable to the same Investment Option made available in two or more superannuation products, Divisions or Sub-Divisions; and
  - (ii) the assets identified as attributable to different Investment Options,

may be in the same underlying portfolio or portfolios of assets;

- (f) so far as practicable, must invest the portion of the assets of the Fund attributable to an Investment Option in accordance with the investment strategy determined by the Trustee for the time being for that Investment Option; and
- (g) may determine whether an Investment Option is unitised or non-unitised.

## **10.2 Valuation of Investment Options**

- (a) The Trustee:
  - (i) must value each Investment Option at least once each month; and
  - (ii) may value one or more Investment Options more regularly, or at other times, as the Trustee determines.
- (b) At the time of valuing an Investment Option, the Trustee must determine the net asset value of each Investment Option on a fair and equitable basis after taking into consideration any factors that the Trustee considers to be appropriate.

## **10.3 Investment Option rules**

The Trustee may make rules, and adopt policies or procedures, in relation to:

- (a) the range and number of available Investment Options, including the maximum number of such Investment Options that may be selected by and maintained concurrently for a Member or other beneficiary or group of Members or other beneficiaries;
- (b) whether, when and how the wishes of Members, other beneficiaries or Employers, as the case requires, concerning the application by the Trustee of contributions, roll overs, transfers and other receipts of the Fund to Investment Options, may be advised to the Trustee; and
- (c) such other matters concerning the application of contributions, roll overs, transfers and other receipts of the Fund to Investment Options, withdrawals from Investment Options and the operation of Investment Options, as the Trustee considers to be appropriate including the order of allocation of amounts to Investment Options and the order of withdrawal of amounts from Investment Options.

## **10.4 Switching**

The Trustee must, on and subject to such terms and conditions as the Trustee determines from time to time, permit a Member or other beneficiary with a Benefit Account to elect to switch all or part of their Benefit Account balance from one Investment Option to another.

## **10.5 Changes to Investment Options**

Despite any other provision of this Deed, but subject to Superannuation Law, the Trustee may with or without the consent of Members or other beneficiaries of the Fund:

- (a) vary the terms and conditions that apply to an Investment Option;

- (b) combine two or more Investment Options;
- (c) close (temporarily or permanently) or restructure an Investment Option;
- (d) split any Investment Option into two or more Investment Options or terminate an Investment Option and, in either case, reallocate Members and other beneficiaries and their benefits to the Investment Option (or Investment Options) which the Trustee considers appropriate.

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## **11 Unitisation**

### **11.1 Division of Investment Options into Units**

The Trustee may, if it thinks necessary or desirable, divide one or more:

- (a) Investment Options; and
- (b) underlying portfolios,

into Units and allocate those Units to Benefit Accounts, other Investment Options and underlying portfolios, other accounts, reserves and amounts as applicable, and unitisation will replace the Declared Rate, Agreed Rate (as defined in Part 3 of Schedule B) or other rate of interest where determined by the Trustee from time to time.

### **11.2 Unitisation rules**

The Trustee may adopt rules from time to time in relation to:

- (a) the Unit Prices of Units (including separate “buy” and “sell” prices, the amounts to include in the calculation of Unit Prices and the timing and frequency of unit pricing); and
- (b) any other matters which the Trustee determines to be necessary or appropriate to administer or maintain unitisation.

### **11.3 Calculation by reference to Unit Price**

Where this Deed refers to the balance, amount or a benefit amount, or the amount standing to the credit of an account or reserve maintained for the purposes of the Fund and the relevant balance, amount, benefit amount, account or reserve is unitised, it is taken to be a reference to the balance, amount, benefit amount, account or reserve calculated by reference to the number of Units allocated to the balance, amount, benefit amount, account or reserve and the relevant Unit Price (and a reference in this Deed to the crediting or debiting of investment earnings at the Declared Rate or Agreed Rate (if positive or negative, respectively) shall be a reference to the allocation of the relevant investment earnings by a change in the relevant Unit Price).

### **11.4 Unit Prices**

The Trustee may determine different Unit Prices to apply to Units for different Investment Options.

### **11.5 Other powers in relation to unitisation**

The Trustee may do anything that the Trustee determines is reasonably required to administer and maintain unitisation.

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## **12 Accounts and reserves**

### **12.1 Accounts and audit**

- (a) The Trustee must appoint an auditor of the Fund. The Trustee may remove the auditor and appoint another person as auditor. Each appointment of an auditor will be on terms determined by the Trustee.
- (b) The Trustee must prepare financial statements for the Fund for each Financial Year, however, will not do so for any Division or Sub-Division unless required by Superannuation Law.
- (c) The Trustee must ensure that, for each Financial Year (and if the Trustee considers it necessary or desirable at any other interval in the Financial Year), the auditor:
  - (i) audits the accounts and records of the Fund; and
  - (ii) certifies the results of each audit in writing to the Trustee, within the time specified by Superannuation Law.
- (d) Notwithstanding the above, the Trustee must maintain any records and accounts specified in this Deed and may maintain any other records and accounts which the Trustee may consider to be necessary or desirable.

### **12.2 Actuarial investigations**

If required by Superannuation Law, the Trustee must arrange for actuarial investigations of the Fund, a Division, a Sub-Division or a sub-fund to be conducted in accordance with Superannuation Law.

### **12.3 Administration Reserve**

- (a) The Trustee must maintain an Administration Reserve for the Fund.
- (b) The Administration Reserve may be credited with amounts as considered appropriate by the Trustee.
- (c) The Trustee may apply amounts held in the Administration Reserve as it considers appropriate.

### **12.4 Operational Risk Financial Requirement Reserve**

- (a) The Trustee must maintain an Operational Risk Financial Requirement Reserve for the Fund. The Trustee may divide the Operational Risk Financial Requirement Reserve into two or more sub-reserves, any of which may be attributable to one or more Divisions.
- (b) The Operational Risk Financial Requirement Reserve (and any sub-reserve) may be credited with amounts as considered appropriate by the Trustee.
- (c) The Trustee may only apply amounts held in the Operational Risk Financial Requirement Reserve (and any sub-reserve):
  - (i) to satisfy a liability of the Trustee relating to the Fund or for any other purpose permitted by Superannuation Law; and

- (ii) to the extent the balance of the Operational Risk Financial Requirement Reserve exceeds the amount required, in the Trustee's opinion, to satisfy the operational risk financial requirement, in any way the Trustee determines.

## 12.5 Other reserves

The Trustee may establish and maintain one or more other reserves and may:

- (a) allocate such amounts to those reserves as it determines from time to time; and
- (b) apply the balance of those reserves for the purpose or purposes determined by the Trustee from time to time.

## 12.6 Benefit Accounts

- (a) Where permitted by a Schedule, the Trustee may establish and maintain a Benefit Account for each superannuation product held by a Member or other beneficiary of the Fund. Where required by a Schedule, the Trustee must establish and maintain a Benefit Account for each superannuation product held by a Member or other beneficiary of the Fund.

- (b) The Trustee may divide a Benefit Account into sub-accounts.

- (c) There shall be credited to a Benefit Account for a Member or other beneficiary (**Relevant Beneficiary**):

- (i) contributions paid to the superannuation product by the Relevant Beneficiary, their Employer or another person for the benefit of the Relevant Beneficiary;
- (ii) any amounts transferred to the superannuation product in respect of the Relevant Beneficiary from another superannuation product in the Fund;
- (iii) any amount rolled over or transferred to the Fund from an Approved Benefit Arrangement or the Commissioner of Taxation in respect of the Relevant Beneficiary and which the Trustee determines to credit to the Benefit Account of the superannuation product;
- (iv) any amounts the Trustee determines to credit to the Benefit Account because of a valid family law arrangement or a valid contributions splitting arrangement;
- (v) to the extent that the Benefit Account is calculated by reference to an Investment Option that is not unitised, interest at the Declared Rate (if positive);
- (vi) to the extent that the Benefit Account is calculated by reference to an Investment Option that is unitised, increases in value of the units in the Investment Option;
- (vii) any insured benefits paid to the Trustee by an Insurer in respect of the death or disability (other than a temporary disability benefit) of the Relevant Beneficiary; and
- (viii) any other amounts that the Trustee considers appropriate,

and there shall be debited to the Benefit Account:

- (ix) any amounts which the Trustee may determine to debit in respect of Tax, fees, expenses, insurance premiums and other liabilities;
- (x) any amounts transferred from the superannuation product in respect of the Relevant Beneficiary to another superannuation product in the Fund;
- (xi) any amount rolled over or transferred from the Fund to an Approved Benefit Arrangement or the Commissioner of Taxation in respect of the Relevant Beneficiary and which the Trustee determines to debit to the Benefit Account;
- (xii) any benefit paid from the Benefit Account to or in respect of the Relevant Beneficiary;
- (xiii) any amounts the Trustee determines to debit to the Benefit Account because of a valid family law arrangement or a valid contributions splitting arrangement;
- (xiv) to the extent that the Benefit Account is calculated by reference to an Investment Option that is not unitised, interest at the Declared Rate (if negative);
- (xv) to the extent that the benefit Account is calculated by reference to an Investment Option that is unitised, decreases in value of the units in the Investment Option; and
- (xvi) any other amounts that the Trustee considers appropriate.

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## **13 Trustee**

### **13.1 Nature**

The Trustee must be a constitutional corporation (within the meaning of the SIS Act) and hold an RSE Licence and an Australian financial services licence.

### **13.2 Retirement and removal as trustee**

- (a) This clause 13.2 is subject to Schedule C.
- (b) The Trustee may retire as trustee of the Fund by a written instrument of retirement made, or entered into, by the Trustee, subject to the appointment of a new Trustee under clause 13.3. The Trustee's retirement takes effect on the date specified in the written instrument of retirement, subject to that date being at least 90 days after the date on which the instrument is made, or entered into, by the Trustee. The Trustee must give at least 80 days' prior written notice of its retirement to the Employers, although any non-compliance with this notice requirement does not affect the validity of its retirement.
- (c) The Trustee ceases to be trustee of the Fund on the earlier of:
  - (i) the date its retirement under clause 13.2(b) takes effect;
  - (ii) the date it becomes a disqualified person under Superannuation Law;

- (iii) the date it ceases hold an RSE Licence or Australian financial services licence; and
- (iv) the date the Trustee is removed from office under Superannuation Law.

### 13.3 Appointment of new Trustee

Subject to Schedule C, where the Trustee retires or is removed from office, the Trustee must appoint a replacement Trustee in writing.

### 13.4 Rights to remuneration – Trustee and directors

- (a) Subject to clauses 13.4(b) to 13.4(i):
  - (i) the Trustee is entitled to charge as remuneration a reasonable fee from the Fund; and
  - (ii) each director of the Trustee is entitled to charge as remuneration a reasonable fee in respect of his or her office of director from the Fund,

as determined by the Trustee from time to time.
- (b) At and from the Transfer Time, the entitlements to charge fees under clause 13.4(a) are (in the aggregate) capped in respect of Transferred Members who transferred to the Fund from Division F of Active Super (**Division F Transferred Members**) at the amount equal to the aggregate of:
  - (i) 3% per annum of the net assets of the Fund reasonably attributable to the Division F Transferred Members;
  - (ii) the portion of amounts that directors of the Trustee would be entitled to receive from the Fund in respect of the office of director, but which are not and will not be received from the Fund, that is reasonably attributable to the Division F Transferred Members; and
  - (iii) the portion of the amount calculated in accordance with clauses 13.4(d) to 13.4(g) (and defined in clause 13.4(h)(i) as the 'Additional Component') that is reasonably attributable to the Division F Transferred Members.
- (c) At and from the Transfer Time, the entitlements to charge fees under clause 13.4(a) are (in the aggregate) capped in respect of Transferred Members who transferred to the Fund from Divisions A, B, C and D of Active Super (**Division A - D Transferred Members**) at the amount equal to the aggregate of:
  - (i) the portion of costs and expenses of the Trustee (including, for the avoidance of doubt, the cost of fixed asset acquisitions and income tax payable by the Trustee in its personal capacity, but excluding the cost of a criminal, civil or administrative penalty incurred in relation to a contravention of a law of the Commonwealth) incurred directly or indirectly in connection with its activities as trustee of the Fund, but which the Trustee does not and will not recover under clause 16.1, that is reasonably attributable to the Division A - D Transferred Members;

- (ii) the portion of amounts that directors of the Trustee would be entitled to receive from the Fund in respect of the office of director, but which are not and will not be received from the Fund, that is reasonably attributable to the Division A - D Transferred Members; and
  - (iii) the portion of the amount calculated in accordance with clauses 13.4(d) to 13.4(g) (and defined in clause 13.4(h)(i) as the 'Additional Component') that is reasonably attributable to the Division A - D Transferred Members.
- (d) Subject to clause 13.4(e), the Additional Component is, at any time, an amount equal to 0.04% per annum of the net assets of the Fund attributable to Transferred Members, at that time, calculated:
- (i) for the financial year in which the Transfer Time falls, as at Transfer Time; and
  - (ii) for each subsequent financial year, as at the end of the previous financial year.
- (e) Despite anything in clauses 13.4(b) to 13.4(g):
- (i) the Trustee may not charge a fee relating to any proportion of the Additional Component where the Trustee determines that, in the event of such proportion being charged, the Trustee Capital would exceed the greater of:
    - (A) 0.08% of the net assets of the Fund attributable to Transferred Members as at the applicable date; and
    - (B) such maximum amount (if any) of Trustee Capital (by whatever name known) as Superannuation Law may specify or as a Superannuation Authority may permit, recommend, request or direct the Trustee to hold; and
  - (ii) the Trustee may determine in its absolute discretion to reduce, waive, suspend or postpone the Additional Component (or any part of it) and, subject to clause 13.4(e)(i), to cease such reduction, waiver, suspension or postponement.
- (f) The Trustee must, as soon as practicable after the end of each Review Period (and in any event no later than six months after the end of the Review Period):
- (i) consider whether the Additional Component remains fair and reasonable; and
  - (ii) in the event that the Trustee considers that the Additional Component is no longer fair and reasonable:
    - (A) determine what amount would, in its opinion, be fair and reasonable; and
    - (B) amend this Deed by adjusting the figures in clause 13.4(d) and/or 13.4(e)(i)(A) to accord with the determination in clause 13.4(f)(ii)(A).
- (g) For the purposes of the Trustee's determination in clause 13.4(f)(ii)(A), the Trustee:



- (i) if it determines that the Additional Component is no longer fair and reasonable, must have regard to the advice of an appropriately qualified independent consultant when making that determination; and
  - (ii) may have regard to the Transferred Members' share of the amount which the Trustee reasonably considers necessary to appropriately compensate the Trustee for acting as trustee of the Fund and/or the Transferred Members' share of the amount which the Trustee reasonably considers necessary to appropriately compensate the Trustee for the personal financial risk it might incur in connection with its role as trustee of the Fund.
- (h) For the purposes of clauses 13.4(d) to 13.4(g), a reference to:
- (i) **Additional Component** is to a component of the Trustee's remuneration in respect of Transferred Members calculated as referred to in clauses 13.4(b)(iii) and 13.4(c)(iii);
  - (ii) **Review Period** is:
    - (A) the period from the Transfer Time to 30 June 2027; and
    - (B) thereafter, each successive period of three financial years; and
  - (iii) **Trustee Capital** is to the total value of net tangible assets of the Trustee in its personal capacity as calculated in accordance with Australian accounting standards attributable to the Transferred Members.
- (i) The Trustee must not satisfy any liability for an amount of a criminal, civil or administrative penalty incurred by the Trustee or any of its directors in relation to a contravention of a law of the Commonwealth from personal financial resources held by or otherwise available to the Trustee, to the extent that:
- (i) those personal financial resources have been funded from or are otherwise attributable to remuneration charged by the Trustee to or in respect of:
    - (A) the benefits of any Transferring Member; or
    - (B) without limiting paragraph (i)(A), the portion of the assets of the Fund attributable to the Active Super Defined Benefit Division;
  - (ii) the contravention occurred before the Transfer Time;
  - (iii) the conduct giving rise to the contravention does not concern preparing for or receiving the transfer of benefits of Transferring Members into the Fund at the Transfer Time; and
  - (iv) the penalty was or is incurred no later than the date that is five years after the Transfer Time

### 13.5 Family law fees

- (a) Subject to the Schedules, the Trustee may charge:

- (i) a Member;
- (ii) any other beneficiary; or
- (iii) any other person as permitted by Superannuation Law,

a fee, of an amount determined by the Trustee either generally or in any particular case in relation to matters undertaken by the Trustee concerning a valid family law arrangement.

- (b) In relation to a fee charged in accordance with clause 13.5(a), the Trustee may recover the fee from or in relation to the relevant person in any manner as determined by the Trustee.

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## **14 Powers of the Trustee**

### **14.1 Absolute discretion**

- (a) Subject to Superannuation Law, the Trustee has in the exercise or non-exercise or partial exercise of each power exercisable by the Trustee an absolute and uncontrolled discretion and is not bound to give any person a reason for or explanation of the exercise, non-exercise or partial exercise of that power. The powers conferred on the Trustee by this Deed are additional to and not in substitution for the powers exercisable by the Trustee at law.
- (b) Subject to Superannuation Law, the Trustee and any of its officers may exercise individually or jointly a power or discretion even though that person has another interest in the result of the exercise or may benefit from it, owes other duties in respect of it or is an Employee, a Member or another beneficiary.

### **14.2 Powers of the Trustee**

- (a) The Trustee:
  - (i) has complete management and control of all proceedings, matters and things in connection with the Fund;
  - (ii) may exercise all the powers of a natural person beneficially owning the assets of the Fund;
  - (iii) may do all acts and things which the Trustee considers necessary, desirable or expedient for the proper administration, maintenance and preservation of the Fund or in order to:
    - (A) perform its duties; or
    - (B) fulfil its obligations under this Deed and Superannuation Law.
- (b) The Trustee's powers under clause 14.2(a) include:
  - (i) appointing or removing an agent, adviser, service provider, nominee or Representative;
  - (ii) giving receipts and discharges;

- (iii) instituting, conducting, defending, abandoning and settling legal proceedings;
- (iv) referring claims or disputes to arbitration, conciliation or mediation;
- (v) compromising any claim;
- (vi) making and giving receipts, releases and other discharges for monies payable to the Fund and for the claims and demands of the Fund;
- (vii) compounding and allowing time for payment or satisfaction of any debts due and of any claims or demands by or against the Trustee in relation to the Fund;
- (viii) giving any guarantee, undertaking or indemnity;
- (ix) self-insuring any risks;
- (x) insuring any risks with a third party and deduct premiums from the Fund to pay for such insurance;
- (xi) acting as an underwriter;
- (xii) making rules and adopting procedures for the calculation and rounding off of contributions and benefits, for the crediting or debiting of interest to a benefit which is paid after the date it becomes payable and for any other matters which the Trustee may consider appropriate for the convenient administration of the Fund;
- (xiii) providing for and transferring liability for any Tax;
- (xiv) obtaining and acting on the advice or opinion of a Qualified Adviser in relation to any matter or question;
- (xv) electing to be bound by any legislation;
- (xvi) marketing, promoting and advertising the Fund as the Trustee sees fit; and
- (xvii) doing anything which is not prohibited by Superannuation Law.

### **14.3 Investment managers**

The Trustee may appoint any person to manage investments of the Fund. The appointment must be in writing on terms which the Trustee considers appropriate.

### **14.4 Delegation**

The Trustee may:

- (a) delegate any of its powers, duties and discretions to any person in such manner and on such terms as the Trustee considers appropriate; and
- (b) vary or revoke any delegation given in its absolute discretion.

## **14.5 Authorisations**

- (a) The Trustee may treat a written or oral authorisation purported to be given by a person as given by that person.
- (b) The Trustee may act on any proofs or presumptions which it considers satisfactory whether or not they are legal proofs or presumptions.

## **14.6 Investments**

- (a) The Trustee may invest Fund assets in any investments the Trustee considers appropriate.
- (b) The Trustee may:
  - (i) mix investments with investments of other people or trusts; and
  - (ii) vary, replace, encumber and deal with the investments,as if it were dealing with its own property.
- (c) The Trustee must invest in a manner which is consistent with Superannuation Law.
- (d) The Trustee may make a loan or give financial assistance to a person.
- (e) The Trustee may value the Fund assets at the times and in the manner in which the Trustee considers appropriate.

## **14.7 Borrowing**

Subject to Superannuation Law, the Trustee may borrow or raise money up to any amount and may secure payment or repayment in any manner which it thinks fit.

## **14.8 Taxation**

The Trustee may take any actions which the Trustee considers appropriate in taking account of any Tax, including:

- (a) reducing or otherwise adjusting the amount of any benefit payable from a Division other than the Active Super Defined Benefit Division; and
- (b) establishing reserves and making provisions in the accounts of the Fund to relevant governmental authorities.

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# **15 Administration**

## **15.1 Expenses**

- (a) The Trustee is entitled to pay from the Fund or reimburse itself from the Fund for all expenses incurred in connection with the Fund or the Trustee, except to the extent a Schedule otherwise provides.
- (b) Subject to the Trustee's consent, an Employer may be reimbursed from the Fund in respect of any Fund expenses paid by that Employer.

## **15.2 Confidentiality**

- (a) Subject to clauses 15.2(b) and (c), except to the extent reasonably necessary in the operation, management and administration of the Fund, the Trustee, the chief executive officer, each investment manager and each employee, delegate and Representative of the Trustee must treat as confidential all information regarding the Fund, Members, other beneficiaries, Employers and their Employees which becomes known to that person in connection with the operation, management and administration of the Fund.
- (b) The Trustee may give to any related body corporate of the Trustee (where 'related body corporate' has the same meaning as in the Corporations Act, as if section 48(2) of the Corporations Act did not apply), and the related body corporate may receive, information about any Member or other person who might benefit from the Fund, whether or not that information is confidential or held by the Trustee as a fiduciary.
- (c) The related body corporate may use that information in the ordinary course of its business provided it complies with law.

## **15.3 Dispute resolution**

If Superannuation Law requires, the Trustee must take reasonable steps to ensure that arrangements are in force under which:

- (a) any person entitled to a benefit from the Fund may inquire into, or complain about, the operation or management of the Fund in relation to that person; and
- (b) inquiries or complaints will be considered and dealt with within the applicable period as specified by Superannuation Law.

## **15.4 Notices**

Any notice or other written communication in connection with the Fund is given to a person if it is:

- (a) handed to the person;
- (b) delivered to the person's last known address;
- (c) posted by ordinary post from within Australia to the person's last known address;
- (d) sent by email to the person at the email address notified by the person, their employer or a Prior Trustee to the Trustee; or
- (e) sent by any other communication method used by the Trustee and notified to the person.

## **15.5 Binding effect**

Each Employer, Member and other beneficiary is bound by this Deed.

## **15.6 Governing law**

The Fund and this Deed are governed by, and this Deed is to be construed in accordance with, the law of Victoria.

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## **16 Liability and indemnity**

### **16.1 Indemnification of Trustee and directors**

The Trustee and each director of the Trustee, each former director of the Trustee and each former director of the Local Authorities Superannuation Board under the 1988 Act is exempted from liability, and is to be indemnified out of the Fund, in respect of any liability (including any cost, loss, damage or claim) caused or incurred in any manner (including by negligence) in connection with the office of Trustee or director, as the case may be, to the maximum extent permissible under Superannuation Law.

### **16.2 Limits on indemnification of Trustee**

The Trustee's right of indemnity under clause 16.1 is subject to the following:

- (a) the Trustee is not entitled to be indemnified from Fund assets for any amount expended out of the capital of the Trustee managed and maintained by the Trustee to cover the operational risk of the Fund (**Operational Risk**);
- (b) the Trustee is not entitled to be indemnified from Fund assets that do not form part of the Operational Risk Financial Requirement Reserve in relation to any amount that relates to Operational Risk without first exhausting the Operational Risk Financial Requirement Reserve and any other financial resources managed and maintained by the Trustee to cover Operational Risk.

### **16.3 Limit on Trustee's liability**

Except to the extent that the Trustee cannot be exempted from personal liability under Superannuation Law, the Trustee is not required to make any payment (in respect of a benefit or otherwise) except out of the Fund or be liable to any greater extent than the moneys and property comprising the Fund.

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## **17 Amendment of Deed**

### **17.1 Power to amend**

- (a) Subject to the Schedules and clause 17.1(b), the Trustee may, by deed poll, alter, add to or repeal all or any of the provisions of this Deed, including this clause 17.
- (b) An alteration, addition or repeal shall not take effect if the SIS Act would otherwise be contravened.

### **17.2 Date of effect**

An alteration, addition or repeal may take effect from a date before or after the time it is made and, if no date is specified, it takes effect from the date of the deed poll.

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## **18 Termination of the Fund, a Division or a Sub-Division**

### **18.1 Termination of a Division or Sub-Division**

If a Division, or a Sub-Division of the Vision Super Defined Benefit Division, terminates, the Trustee must, prior to the application of the relevant portion of the

assets of the Fund in accordance with the applicable Schedule, allocate to the Division or Sub-Division (as relevant), as it considers to be fair and reasonable, any part of the portion of the assets of the Fund that is attributable to the Administration Reserve, the Operational Risk Financial Requirement Reserve or any other reserve that is not specific to a particular Division or Sub-Division.

## **18.2 Winding up the Fund**

The Fund must be wound up if, at any time, there are no Members or other beneficiaries in the Fund and, in the opinion of the Trustee, all benefits which could become payable from the Fund have been paid.

## **18.3 Application of Fund assets on winding up of the Fund**

On the winding up of the Fund:

- (a) any moneys and other assets then remaining in the Fund attributable to or in respect of the products known as Vision Super Personal, Vision Super Income Stream (commutable and non-commutable) and Vision Super Market Linked Pensions (commutable and non-commutable) must (after payment of expenses) be realised, and the proceeds must be distributed in respect of those products as determined by the Trustee;
- (b) any moneys and other assets then remaining in the Fund attributable to or in respect of any other products or interests must (after payment of expenses) be realised, and the proceeds must be distributed among the Employers who contributed to the Fund in respect of those other products or interests as determined by the Trustee after obtaining the advice of the Actuary.

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## **19 Compliance with Superannuation Law**

- (a) Any matters (including standards) required by Superannuation Law to be included in the governing rules of regulated superannuation funds, from time to time, form part of this Deed whether or not they are explicitly stated in this Deed.
- (b) However, if:
  - (i) a matter (including a standard) is no longer required to be included; or
  - (ii) the Superannuation Authority does not require it to be complied with,then the matter ceases to be included by this clause 19.
- (c) In the event of any inconsistency or conflict between Superannuation Law and this Deed, the Trustee must act or refrain from acting in order to comply with Superannuation Law. This clause 19 applies notwithstanding anything to the contrary contained in this Deed.
- (d) If, under Superannuation Law, the Trustee has a power if this Deed includes a particular provision, that particular provision is deemed to be included in this Deed if the Trustee exercises that power for so long as it is required by Superannuation Law to be included in this Deed.
- (e) The Trustee has all the powers necessary to comply with Superannuation Law and, notwithstanding anything else in this Deed, the Trustee must:

- (i) do, or cause to be done, any matter or thing necessary in order to satisfy Superannuation Law; and
- (ii) refrain from doing, and take all reasonable steps to prevent an Employer, Member or other beneficiary doing, any matter or thing which would cause a breach of or non-compliance with Superannuation Law,

but the Trustee is not liable for a failure to do so if and to the extent that, under Superannuation Law, the Trustee is relieved from a liability to which the Trustee would otherwise be subject or that might otherwise be imposed on the Trustee under Superannuation Law because of that failure.

- (f) If this Deed contains a provision which is, or which requires the Trustee to act in a manner which is, inconsistent with Superannuation Law, then, to the extent of the inconsistency, the Trustee must comply with Superannuation Law and the provision is taken, by force of this clause 19(f), to be excluded from this Deed or modified so as to comply with Superannuation Law. This clause 19 applies notwithstanding anything to the contrary contained in this Deed.
- (g) If a provision of this Deed would otherwise be invalid in part or in whole because it subjects the Trustee to direction by another person then the provision is taken not to subject the Trustee to direction by that person but to give the Trustee the power to treat such a direction as a request and in its discretion agree to act in a manner consistent with it.
- (h) If a provision of this Deed would otherwise be invalid in part or in whole because it permits a person to exercise a discretion without the consent of the Trustee, that provision is taken to require the Trustee's consent for the exercise of the discretion.
- (i) If a provision of this Deed is void or voidable or unenforceable or illegal, but would not be void or voidable or unenforceable or illegal if it were read down and it is capable of being read down, it shall be read down accordingly.
- (j) If, notwithstanding clause 19(i), a provision of this Deed is void or voidable or unenforceable or illegal and the provision would not be void or voidable or unenforceable or illegal if a word or words or the whole provision (as the case may be) were omitted, that word or those words or the whole provision (as the case may be) is or are hereby severed and the remainder of this Deed shall have full force and effect.
- (k) If a doubt or dispute arises as to the meaning or effect of an applicable requirement of a Superannuation Law, or there is a conflict between applicable requirements of Superannuation Law, the Trustee may resolve that doubt, dispute or conflict in the manner the Trustee considers appropriate.



# Schedule A Additional rules for the Accumulation and Pension Division

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## A.1 Application and interpretation

### A.1.1 Application of Schedule A

The provisions of this Schedule A relate only to Members of the Accumulation and Pension Division of the Fund.

### A.1.2 Definitions

In this Schedule A, unless the contrary intention appears:

**Account-Based Pension** means a pension which complies with the standards of an account based pension set out in Superannuation Law and, in particular, either regulation 1.06(4) or regulation 1.06(9A)(a) of the SIS Regulations.

**Continuation Member** means a Member who is not a Transferred Member or an SG Member.

**Dependant** has the meaning given in the SIS Act.

**Disability** has the same meaning as that term has for the time being and from time to time in any policy of insurance applicable to a Member or, if there is no policy of insurance applicable to a Member:

- (a) in relation to an SG Member means, the permanent inability of the Member due to a continuing or recurring injury, disease or infirmity to perform his or her duties or any other duties for which he or she is suited by education, training or experience or for which he or she would be suited as a result of retraining, as determined by the Trustee on the basis of reports provided by at least two legally qualified medical practitioners appointed by the Trustee;
- (b) in relation to a Continuation Member, means the Member suffers an injury or sickness and, because of that injury or sickness, the Trustee determines on the basis of reports provided by at least two legally qualified medical practitioners appointed by the Trustee that the Member is permanently unable to perform at least two of the five activities of daily living, listed below, without assistance:
  - (i) bathing and showering;
  - (ii) dressing and undressing;
  - (iii) eating and drinking;
  - (iv) using the toilet to maintain personal hygiene; and
  - (v) getting in and out of bed, a chair, a wheelchair or moving from place to place by walking, by wheelchair or with a walking aid; and

- (c) in relation to a Member who is not an SG Member or a Continuation Member, permanent incapacity (as defined in the SIS Regulations).

**Division** means the Accumulation and Pension Division.

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

**Market Linked Pension** means a pension which complies with the standards of a market linked pension set out in Superannuation Law and, in particular, regulation 1.06(8) of the SIS Regulations.

**Member** means a Member of the Accumulation and Pension Division.

**MySuper Product Member** means, in respect of a MySuper Product in the Division, a Member who holds an interest in the MySuper Product.

**Nominated Beneficiary** means, with respect to a Member or other beneficiary, one or more Dependants or the legal personal representative nominated on that Member's or other beneficiary's last effective Valid Nomination Form to receive any Death Benefit that becomes payable from the Division.

**Non-Commutable Account-Based Pension** means an Account-Based Pension that meets the standards for a transition to retirement income stream (as defined in the SIS Regulations).

**Pension** means:

- (a) an Account-Based Pension;
- (b) a Non-Commutable Account-Based Pension;
- (c) a Market Linked Pension; and
- (d) a Term Pension.

**Pension Commencement Date** the date a Pension commences to be paid in respect of a Member from the Division.

**Reversionary Beneficiary** means the Dependant of a Member or other beneficiary entitled to a Pension who is nominated by the Member or other beneficiary in accordance with and pursuant to clauses A.8 or A.9 of this Schedule A to continue to receive the Pension after the death of the Member and, in respect of a Transferred Member, has a meaning affected by clause 8.4(g) of the Deed.

**SG Member** means an Employed Member (other than a Transferred Member) in respect of whom contributions are (or would be, if the Employed Member were receiving any applicable earnings) made by an Employer to ensure that there is not an individual superannuation guarantee shortfall in respect of the Member in terms of the *Superannuation Guarantee (Administration) Act 1992* (Cth), or any other Member (other than a Transferred Member) as determined by the Trustee either generally or in any particular case.

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

**Term Pension** means a pension which complies with the standards of a life expectancy pension set out in Superannuation Law and, in particular, regulation 1.06(7) of the SIS Regulations.

**Valid Nomination Form** means a nomination form which has been signed by the Member or other beneficiary in accordance with procedures determined by the Trustee and which is valid under Superannuation Law.

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## **A.2 Membership and products**

### **A.2.1 Products in this Division**

- (a) The Trustee may offer one or more superannuation products from this Division with different product features and different terms and conditions. Subject to the Deed and Superannuation Law, the Trustee can change the product features and terms and conditions of a superannuation product with or without the consent of Members or other beneficiaries.
- (b) The Trustee may close (temporarily or permanently) or terminate a superannuation product without Member or other beneficiary consent.

### **A.2.2 Admission**

An Eligible Person will become a Member of the Division if:

- (a) the Trustee has admitted that person to the Fund; and
- (b) the person applied and been accepted for a superannuation product offered in the Division or is otherwise issued a superannuation product in the Division.

### **A.2.3 Member re-joining Fund**

If, having previously ceased to be a Member because they ceased to be an Employee, a person again becomes an Employee, then during and in respect of the period after the date of again becoming an Employee that person must be treated for all intents and purposes under this Schedule A as if that person had never previously been a Member.

### **A.2.4 Disability assessment procedure**

If the Trustee initially determines that an SG Member who has applied for a Disability benefit does not satisfy the applicable definition of Disability, the Member has the right to require the Trustee to review its initial determination and to obtain a further report from a registered medical practitioner mutually agreed upon by the Trustee and the Member.

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## **A.3 MySuper Products**

### **A.3.1 Characteristics of a MySuper Product**

The Trustee may offer a class of beneficial interest in the Division as a MySuper Product and any such MySuper Product must have the following characteristics:

- (a) a single diversified investment strategy must be adopted in relation to the assets of the Fund, to the extent that the assets are attributed to the MySuper Product;
- (b) all applicable MySuper Product Members must be entitled to access the same options, benefits and facilities;

- (c) amounts must be attributed to all applicable MySuper Product Members in a way that does not stream gains or losses that relate to any assets of the Fund to only some of those Members, except that, if a lifecycle investment strategy is adopted as the single diversified investment strategy for the MySuper Product, gains or losses from different asset classes of the Fund may be streamed to different subclasses of the Members:
  - (i) on the basis, and only on the basis, of the age of the Members;
  - (ii) on the basis of the age of the Members and other factors prescribed by Superannuation Law; or
  - (iii) on the basis of the age of the Members and other factors in circumstances prescribed by Superannuation Law;
- (d) the same process must be adopted in attributing amounts to applicable MySuper Product Members in relation to their interest in the MySuper Product, except to the extent that a different process is necessary to allow for fee subsidisation by an Employer or to comply with the fee cap on low balances under section 99G of the SIS Act;
- (e) where the Trustee allows fee subsidisation by Employers, that subsidisation must not favour one applicable MySuper Product Member who is an Employee of a subsidising Employer over another applicable MySuper Product Member who is also an Employee of the subsidising Employer;
- (f) no limit may be imposed on the source or kinds of contributions made by or on behalf of the applicable MySuper Product Members (including any roll-overs or transfers in respect of those Members) unless it is a limitation of a prescribed kind or is permitted or required by Superannuation Law;
- (g) a beneficial interest in the MySuper Product cannot be replaced with a beneficial interest in another class within the Fund unless the applicable MySuper Product Member:
  - (i) consents in writing to the replacement no more than 30 days before it occurs; or
  - (ii) has died and the interest is replaced with a beneficial interest of another class in the Fund of a kind, and in the circumstances, prescribed by Superannuation Law;
- (h) a beneficial interest in the MySuper Product cannot be replaced with a beneficial interest in an Approved Benefit Arrangement unless:
  - (i) the replacement is permitted, or is required, under a law of the Commonwealth; or
  - (ii) the applicable MySuper Product Member consents in writing to the replacement no more than 30 days before it occurs;
- (i) to the extent that a portion of the assets of the Fund are attributed to beneficial interests in the MySuper Product, a pension is not payable out of that portion of those assets by the Trustee upon satisfaction of a condition of release in respect of preserved benefits and restricted non-preserved benefits as prescribed by Superannuation Law, unless the payment relates to a benefit payable under a policy of insurance

where the applicable MySuper Product Member has ceased work due to ill-health (whether physical or mental);

- (j) no MySuper Product Member is precluded from holding a beneficial interest of another class in the Fund because of that fact;
- (k) no Member is precluded from holding the MySuper Product because the Member holds a beneficial interest of another class in the Fund; and
- (l) where the MySuper Product is, or is to be, authorised under section 29TB of the SIS Act (**Large Employer MySuper Product**):
  - (i) an Employer must be specified as a large employer (as defined in the SIS Act) in relation to the Fund who is relevant to that Large Employer MySuper Product (and, in the case of the Large Employer MySuper Product to which applicable Transferred Members are admitted, the Employer so specified is Blacktown City Council);
  - (ii) a Member is not entitled to hold the Large Employer MySuper Product unless the person is:
    - (A) an Employee or former Employee of the specified large employer;
    - (B) an Employee or former Employee of an associate of the specified large employer; or
    - (C) a relative or Dependant of an Employee or former Employee mentioned in clauses A.3.1(l)(ii)(A) or (B) of this Schedule A;
  - (iii) where the specified large employer or an associate of the specified large employer contributes to the Fund or would, apart from a temporary cessation of contributions, contribute to the Fund for an Employee of the specified large employer, any Employee of the specified large employer who is not a defined benefit member of the Fund may hold the Large Employer MySuper Product; and
  - (iv) where the specified large employer or an associate of the specified large employer contributes to the Fund or would, apart from a temporary cessation of contributions, contribute to the Fund for an Employee of an associate of the specified large employer, any Employee of that associate who is not a defined benefit member of the Fund may hold the Large Employer MySuper Product.

### **A.3.2 Number of MySuper Products**

- (a) Subject to Superannuation Law, the Trustee may issue more than one MySuper Product from the Division.
- (b) Any new MySuper Product issued by the Trustee must have the characteristics listed in clause A.3.1 of this Schedule A in relation to that type of MySuper Product.

### **A.3.3 Fees for MySuper Products**

In relation to fees charged in respect of a MySuper Product, the Trustee:

- (a) may only charge fees of a kind prescribed in the SIS Act; and
- (b) must otherwise comply with Superannuation Law, including the charging rules contained in the SIS Act.

#### **A.3.4 Categorisation of MySuper Product Members**

The Trustee must record which Members are MySuper Product Members and the MySuper Product in which hold they hold an interest.

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### **A.4 Benefit Accounts**

The Trustee must establish and maintain a Benefit Account in respect of each superannuation product issued in the Division to a Member or other beneficiary.

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### **A.5 Employer contributions**

#### **A.5.1 Making Employer contributions**

- (a) Each Employer must contribute to the Division in respect of an SG Member:
  - (i) the amount necessary to fund the Member's SG Benefit; and
  - (ii) any additional amount which the Employer may determine either generally or in any particular case.
- (b) Subject to clause A.5.1(a) of this Schedule A, an Employer may contribute such additional amounts to the Division in respect of an Employee as the Employer determines.

#### **A.5.2 Termination of Employer contributions**

Subject to clauses 4 and 19 of the Deed, an Employer who contributes to the Division in respect of Members may after giving at least 60 days prior written notice to the Trustee and either generally or in respect of any person or persons named or described in that notice (or then or thereafter falling within a group or class of persons described in that notice):

- (a) terminate all or any of its payments in respect of the Division; or
- (b) reduce or suspend all or any of its payments in respect of the Division to the extent specified in that notice and either indefinitely or for the period specified,

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

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### **A.6 Benefits**

#### **A.6.1 Benefits: restrictions and adjustments**

- (a) Unless otherwise determined by the Trustee, any benefit payable from the Division to a Member or other beneficiary in respect of which the Trustee seeks to effect, or effects, insurance must be reduced to the extent to which:

- (i) for any reason the insurer fails to provide insurance on the insurer's standard terms for standard lives; or
- (ii) for any reason the insurer:
  - (A) fails to provide or increase insurance;
  - (B) reduces or terminates insurance;
  - (C) limits or restricts insurance or the circumstances in which insurance proceeds will become payable; or
  - (D) refuses to consider, defers or denies a claim in whole or in part.

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

- (b) If an event provided for in clause A.6.1(a) of this Schedule A occurs in relation to insurance sought or effected, the Trustee is not bound to seek alternative insurance with the same or another Insurer. If the Trustee decides to seek alternative insurance, the Trustee may limit that search to the Insurer or Insurers determined by the Trustee.
- (c) Unless otherwise determined by the Trustee, the amount, time for and basis of payment of all or part of a benefit in respect of which insurance has been effected must be adjusted in the manner and to the extent necessary to take account of the terms and conditions upon which insurance proceeds are payable.
- (d) If, during the first two years of membership of the Fund, a Member (other than a Transferred Member) in Vision Super Saver, or Vision Super - Super Saver Australian Services Union dies or suffers Disability as a direct consequence of a medical condition:
  - (i) which was, in the opinion of the Trustee after obtaining the advice of a medical practitioner, pre-existing at the commencement of membership; and
  - (ii) in respect of which a contract of insurance is not available at reasonable costs,

the Member has no cover under the Fund.
- (e) Cover for insurance will only be maintained in respect of a Member for so long as sufficient moneys remain in the Member's Benefit Account to pay the relevant premium. If at any time the Member's Benefit Account is not sufficient to pay the relevant premium, then cover will cease to be maintained from that time in respect of the Member.

## **A.6.2 Payment of Death Benefits**

- (a) Any benefit payable from the Division on or after the death of a Member or other beneficiary is payable:
  - (i) to the Member's or other beneficiary's Nominated Beneficiary (if applicable); or

- (ii) in accordance with clause A.6.2(b) of this Schedule A if there is no Valid Nomination Form in respect of the Member or other beneficiary or if payment in accordance with clause A.6.2(a)(i) of this Schedule A cannot otherwise be made.
- (b) Subject to clauses A.6.2(a) and (c) of this Schedule A, any benefit payable from the Division on or after the death of a Member or other beneficiary which under this Schedule A is not expressed to be payable to or for the benefit of some other specified person or persons must be paid or applied by the Trustee to or for the benefit of one or more of:
- (i) the Member's or other beneficiary's Dependants; and
  - (ii) the Member's or other beneficiary's legal personal representatives,
- to the exclusion of the other or others of them and in the form, manner, proportions and subject to the conditions determined by the Trustee.
- (c) If after such inquiries and such period as the Trustee considers appropriate, the Trustee is unable to identify a Dependant or legal personal representative of a deceased Member or other beneficiary to its satisfaction, the Trustee may pay or apply the benefit otherwise payable in any other manner permissible under Superannuation Law.

### **A.6.3 Death or Disability benefits – SG Members**

If:

- (a) an SG Member dies while an Employed Member;
- (b) an SG Member ceases Gainful Employment because of Disability; or
- (c) within 120 days of an SG Member ceasing to be an Employee, the Member becomes disabled to the extent that the Member would have been entitled to a Disability benefit if the Member had remained an Employed Member, subject to any conditions determined by the Trustee from time to time either generally or in any particular case,

there is payable to or in respect of the Member a lump sum benefit of an amount equal to the Member's Account Balance.

### **A.6.4 Death or disability benefits – other Members**

- (a) On the death of a Member (other than an SG Member) or other beneficiary, a Death Benefit is payable in respect of the Member equal to their Account Balance.
- (b) On a Member (other than an SG Member) suffering permanent incapacity (as defined in the SIS Regulations), a lump sum benefit is payable to the Member or as the Member directs upon receiving a request from the Member using a form determined by the Trustee from time to time. The amount of the benefit payable is equal to the Member's Account Balance (or such lesser amount as requested).

### **A.6.5 Terminal medical condition**

- (a) If a terminal medical condition (as defined in the SIS Regulations) exists in relation to a Member, there is payable to the Member, if the Member so requests using a form determined by the Trustee from time to time, a



lump sum benefit of an amount equal to the Member's Account Balance (or such lesser amount as requested).

- (b) If a Member dies before all or any part of a benefit payable under clause A.6.5(a) of this Schedule A has been paid, the Trustee shall pay or apply the balance of such benefit as if it were a Death Benefit.

#### **A.6.6 Temporary disablement benefits**

- (a) The Trustee may, at the request of a Member, take out insurance (**Policy**) in respect of the Member's temporary disablement (as defined in the SIS Regulations).
- (b) If a benefit becomes payable under the Policy, the Trustee must pay the Member such part of the proceeds of the Policy paid by the insurer which relate to the Member after deduction of any such amounts that the Trustee considers appropriate having regard to the terms of the Policy and the administration of the Fund.

#### **A.6.7 Other benefits**

Subject to Superannuation Law, a Member or other beneficiary is entitled to a lump sum benefit on request using a form determined by the Trustee from time to time equal to their Account Balance (or such lesser amount requested).

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### **A.7 Pension Rules - General**

- (a) The capital supporting a Pension cannot be added to by way of contribution, roll over or transfer after the Pension has commenced.
- (b) A Pension is transferrable to another person only on the death of the person receiving the Pension (Member or Reversionary Beneficiary, as the case may be). A Member must not use the capital value of his or her Pension or the income from it as security for a borrowing.
- (c) Notwithstanding any other provision of this Schedule A, a pension provided by this Division must comply with Superannuation Law for pension benefits of the kind provided by the Division. To the extent a pension standard in regulation 1.06 of the SIS Regulations for a pension provided by this Division is not expressly included in this Schedule A, the pension standard is deemed to be included in this Schedule A.

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### **A.8 Rules for Account-Based Pensions and Non-Commutable Account-Based Pensions**

#### **A.8.1 Pension rules**

Subject to Superannuation Law, a Member is entitled to an Account-Based Pension or a Non-Commutable Account-Based Pension, as agreed with the Trustee or as otherwise determined by the Trustee, in accordance with this clause A.8.

#### **A.8.2 Changes to Pension terms**

Subject to Superannuation Law, the Trustee may:

- (a) on the request of a Member or Reversionary Beneficiary; or

- (b) in its absolute discretion,

alter the terms of an Account-Based Pension or a Non-Commutable Account-Based Pension payable to, or in respect of, the Member or Reversionary Beneficiary, from a date determined by the Trustee.

### **A.8.3 Pension Commencement Date**

- (a) The Trustee may allow a Member to nominate the Pension Commencement Date for each Account-Based Pension and Non-Commutable Account-Based Pension payable in respect of the Member.
- (b) The Pension Commencement Date must not be later than the date necessary to comply with Superannuation Law.
- (c) If the Trustee allows a Member to nominate the Pension Commencement Date for an Account-Based Pension or Non-Commutable Account-Based Pension payable in respect of the Member and the Member does not nominate a Pension Commencement Date that complies with Superannuation Law as it relates to that Pension:
- (i) the Trustee may commence to pay the Pension with effect from a Pension Commencement Date that complies with Superannuation Law as it relates to that Pension;
  - (ii) if the Trustee is unable to identify a Pension Commencement Date that complies with Superannuation Law, the Trustee may commence to pay a different Account-Based Pension or Non-Commutable Account-Based Pension (**New Pension**) with effect from a Pension Commencement Date that complies with Superannuation Law as it relates to the New Pension; or
  - (iii) the Trustee may transfer the Member and the Member's Benefit Account to another superannuation product.

### **A.8.4 Frequency of pension payments**

- (a) Subject to Superannuation Law, the Trustee must make Account-Based Pension and Non-Commutable Account-Based Pension payments with such frequency and at such intervals and times as may be agreed between the Trustee and the Member or Reversionary Beneficiary or as otherwise determined under clause A.8.4(d) of this Schedule A.
- (b) Subject to Superannuation Law, the Trustee may alter the frequency with which Account-Based Pension and Non-Commutable Account-Based Pension payments are to be made:
- (i) at any time the Trustee considers appropriate; or
  - (ii) at any time agreed upon between the Member or Reversionary Beneficiary and the Trustee.
- (c) Except as otherwise agreed between the Trustee and the Member or Reversionary Beneficiary, the frequency of payment of an Account-Based Pension or Non-Commutable Account-Based Pension to a Member or Reversionary Beneficiary who was transferred to the Fund under a successor fund transfer is, immediately after the transfer, the frequency of payment to the Member or Reversionary Beneficiary

immediately prior to their transfer to the Fund, as advised to the Trustee by the Prior Trustee.

- (d) If at any time the frequency of the Account-Based Pension or Non-Commutable Account-Based Pension payments have not been agreed upon by the Trustee and the Member or Reversionary Beneficiary, the Trustee may determine the frequency of payment and must ensure that at least one Account-Based Pension and Non-Commutable Account-Based Pension payment is made during each Financial Year.
- (e) Notwithstanding any agreement with the Member or Reversionary Beneficiary to the contrary, the Trustee must ensure that at least one Account-Based Pension and Non-Commutable Account-Based Pension payment is made to the Member or Reversionary Beneficiary during each Financial Year.

#### **A.8.5 Amount of pension payments**

- (a) Subject to clauses A.8.5(b) to (f) of this Schedule A, the Trustee may allow a Member or Reversionary Beneficiary to nominate the value of Account-Based Pension or Non-Commutable Account-Based Pension payments to be paid under an Account-Based Pension or Non-Commutable Account-Based Pension during a Financial Year.
- (b) The sum of the Account-Based Pension payments in each Financial Year or part of a Financial Year must not be less than the minimum limits set out in Superannuation Law in relation to the Account-Based Pension, provided such payments do not exceed any value determined by the Trustee. In the event that such payments fall outside such limits, the Trustee may, without notice, make such adjustment to the value of all or some of the Account-Based Pension payments as the Trustee considers necessary to ensure that their sum does fall within the limits required under this clause A.8.5.
- (c) The sum of the Non-Commutable Account-Based Pension payments in each Financial Year or part of a Financial Year must not be less than the minimum limits set out in Superannuation Law in relation to the Non-Commutable Account-Based Pension and must not be greater than the maximum limits set out in Superannuation Law in relation to the Non-Commutable Account-Based Pension. In the event that such payments fall outside such limits, the Trustee may, without notice, make such adjustment to the value of all or some of the Non-Commutable Account-Based Pension payments as the Trustee considers necessary to ensure that their sum does fall within the limits required under this clause A.8.5.
- (d) If a Member or Reversionary Beneficiary does not nominate a value within the limits required under clauses A.8.5(b) and (c) of this Schedule A within such period as determined by the Trustee, the Trustee must either:
  - (i) make the Account-Based Pension or Non-Commutable Account-Based Pension payments for the current Financial Year calculated according to any previous agreement between the Trustee and Member or Reversionary Beneficiary; or
  - (ii) in the absence of any such agreement, make the Account-Based Pension or Non-Commutable Account-Based Pension payments at the minimum limit required to be paid under clauses A.8.5(b) or (c) of this Schedule A (as applicable).

- (e) Except as otherwise agreed between the Trustee and the Member or Reversionary Beneficiary, the annual amount of an Account-Based Pension or Non-Commutable Account-Based Pension payable to a Member or Reversionary Beneficiary who was transferred to the Fund under a successor fund transfer is, immediately after the transfer, the annual amount payable to the Member or Reversionary Beneficiary immediately prior to their transfer to the Fund, as advised to the Trustee by the Prior Trustee.
- (f) The Trustee may at any time and without prior notice to the Member or Reversionary Beneficiary adjust the value of Account-Based Pension or Non-Commutable Account-Based Pension payments to such Member to a level that complies with Superannuation Law.

#### **A.8.6 Reversionary Beneficiaries**

- (a) The Trustee may approve such form, adopt such procedures and impose such terms, conditions and restrictions in connection with the nomination of a Reversionary Beneficiary as the Trustee determines from time to time which must be complied with by a Member in order for a nomination to be valid and effective. The Trustee may impose such terms, conditions and restrictions in connection with the payment of an Account-Based Pension or Non-Commutable Account-Based Pension on the death of the Member to a Reversionary Beneficiary as the Trustee determines from time to time which must be complied with.
- (b) A Reversionary Beneficiary nomination ceases to be valid and effective upon the earlier of the following events:
  - (i) on receipt by the Trustee from the Member of a replacement, conflicting or inconsistent notice of a Reversionary Beneficiary or Valid Nomination Form; and
  - (ii) any other event determined by the Trustee from time to time.
- (c) Upon the death of a Member in receipt of an Account-Based Pension or Non-Commutable Account-Based Pension who has given a Reversionary Beneficiary nomination which is valid and effective at the Member's death, the Trustee must, subject to Superannuation Law and any terms and conditions of payment determined pursuant to clause A.8.6(a) of this Schedule A, continue to pay the Account-Based Pension or Non-Commutable Account-Based Pension to the Reversionary Beneficiary until the earlier of:
  - (i) the balance of the Benefit Account is exhausted or decreases to a value determined by the Trustee;
  - (ii) the death of the Reversionary Beneficiary;
  - (iii) the benefit is no longer permitted by Superannuation Law to be paid in the form of an Account-Based Pension or Non-Commutable Account-Based Pension; or
  - (iv) as determined by the Trustee in accordance with Superannuation Law,

in which case, the balance (if any) of the Benefit Account must be paid as a lump sum.

### **A.8.7 Commutation**

- (a) Subject to clause A.8.7(d) of this Schedule A and Superannuation Law, the Trustee may, on the request of a Member or Reversionary Beneficiary, commute to a lump sum, the whole or any part of his or her Account-Based Pension or Non-Commutable Account-Based Pension.
- (b) Subject to clause A.8.7(d) of this Schedule A, on the commutation of the whole of an Account-Based Pension or Non-Commutable Account-Based Pension, subject to Superannuation Law, the Trustee must pay a lump sum benefit to or for the benefit of the Member or Reversionary Beneficiary equal to the balance of his or her Benefit Account as at the date of commutation.
- (c) Subject to clause A.8.7(d) of this Schedule A, on the commutation of part of an Account-Based Pension or Non-Commutable Account-Based Pension, subject to Superannuation Law, the Trustee must pay a lump sum benefit to the Member or Reversionary Beneficiary from his or her Benefit Account equal to the amount requested up to the balance of the Benefit Account as at the date of commutation.
- (d) The Trustee must commute all or any part of an Account-Based Pension or Non-Commutable Account-Based Pension that is being paid to a Member or a Reversionary Beneficiary where required by Superannuation Law.

### **A.8.8 Cessation of pension**

- (a) An Account-Based Pension or Non-Commutable Account-Based Pension will cease to be payable on the earlier of:
  - (i) the balance of the Benefit Account is exhausted or decreases to a value determined by the Trustee;
  - (ii) the death of the Member, with no valid Reversionary Beneficiary nomination;
  - (iii) the benefit is no longer permitted by Superannuation Law to be paid in the form of an Account-Based Pension or Non-Commutable Account-Based Pension (as applicable); or
  - (iv) as determined by the Trustee in accordance with Superannuation Law.
- (b) Any balance of the Member's Benefit Account at the date determined under clause A.8.7(a) of this Schedule A shall be paid as soon as practicable thereafter.

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## **A.9 Rules for Market Linked Pensions**

### **A.9.1 Pension rules**

- (a) Subject to Superannuation Law, a Member is entitled to a Market Linked Pension, as agreed with the Trustee or as otherwise determined by the Trustee, in accordance with this clause A.9.
- (b) If a Market Linked Pension reverts, it must not have a reversionary component greater than 100% of the benefit that was payable before the reversion.

## **A.9.2 Changes to Pension terms**

Subject to Superannuation Law, the Trustee may:

- (a) on the request of a Member or Reversionary Beneficiary; or
- (b) in its absolute discretion,

alter the terms of a Market Linked Pension payable to, or in respect of, the Member or Reversionary Beneficiary, from a date determined by the Trustee.

## **A.9.3 Frequency of pension payments**

- (a) Subject to Superannuation Law, the Trustee must make Market Linked Pension payments with such frequency and at such intervals and times as may be agreed between the Trustee and the Member or Reversionary Beneficiary or as otherwise determined under clause A.9.3(d) of this Schedule A.
- (b) Subject to Superannuation Law, the Trustee may alter the frequency with which Market Linked Pension payments are to be made:
  - (i) at any time the Trustee considers appropriate; or
  - (ii) at any time agreed upon between the Member or Reversionary Beneficiary and the Trustee.
- (c) Except as otherwise agreed between the Trustee and the Member or Reversionary Beneficiary, the frequency of payment of a Market Linked Pension to a Member or Reversionary Beneficiary who was transferred to the Fund under a successor fund transfer is, immediately after the transfer, the frequency of payment to the Member or Reversionary Beneficiary immediately prior to their transfer to the Fund, as advised to the Trustee by the Prior Trustee.
- (d) If at any time the frequency of the Market Linked Pension payments has not been agreed upon by the Trustee and the Member or Reversionary Beneficiary, the Trustee must ensure that at least one Market Linked Pension payment is made during each Financial Year.
- (e) Notwithstanding any agreement with the Member or Reversionary Beneficiary to the contrary, the Trustee must ensure that at least one Market Linked Pension payment is made to the Member or Reversionary Beneficiary during each Financial Year.

## **A.9.4 Amount of pension payments**

- (a) Subject to clauses A.9.4(b) to (e) of this Schedule A, the Trustee may allow a Member or Reversionary Beneficiary to nominate the value of Market Linked Pension payments to be paid under a Market Linked Pension during a Financial Year provided that the varied amount is within the limits permitted by Superannuation Law or, if Superannuation Law permits, determined by the Trustee in accordance with Superannuation Law.
- (b) The sum of the Market Linked Pension payments in each Financial Year or part of a Financial Year must be within the limits set out in Superannuation Law in relation to the Market Linked Pension, provided such payments do not exceed any value determined by the Trustee. In the event that such payments fall outside such limits, the Trustee may, without notice, make such adjustment to the value of all or some of the

Market Linked Pension payments as the Trustee considers necessary to ensure that their sum does fall within the limits required under this clause A.9.4.

- (c) If a Member or Reversionary Beneficiary does not nominate a value within the limits required under clause A.9.4(b) of this Schedule A within such period as determined by the Trustee, the Trustee must either:
  - (i) make the Market Linked Pension payments for the current Financial Year calculated according to any previous agreement between the Trustee and Member or Reversionary Beneficiary; or
  - (ii) in the absence of any such agreement, make the Market Linked Pension payments at the minimum limit required to be paid under clause A.9.4(b) of this Schedule A.
- (d) Except as otherwise agreed between the Trustee and the Member or Reversionary Beneficiary, the annual amount of a Market Linked Pension payable to a Member or Reversionary Beneficiary who was transferred to the Fund under a successor fund transfer is, immediately after the transfer, the annual amount payable to the Member or Reversionary Beneficiary immediately prior to their transfer to the Fund, as advised to the Trustee by the Prior Trustee.
- (e) The Trustee may at any time and without prior notice to the Member or Reversionary Beneficiary adjust the value of Market Linked Pension payments to such Member to a level that complies with Superannuation Law.

#### **A.9.5 Reversionary Beneficiaries**

- (a) The Trustee may approve such form, adopt such procedures and impose such terms, conditions and restrictions in connection with the nomination of a Reversionary Beneficiary as the Trustee determines from time to time which must be complied with by a Member in order for a nomination to be valid and effective. The Trustee may impose such terms, conditions and restrictions in connection with the payment of a Term Allocated Account-Based Pension on the death of the Member to a Reversionary Beneficiary as the Trustee determines from time to time which must be complied with.
- (b) A Reversionary Beneficiary nomination ceases to be valid and effective upon the earlier of the following events:
  - (i) on receipt by the Trustee from the Member of a replacement, conflicting or inconsistent notice of a Reversionary Beneficiary or Valid Nomination Form; and
  - (ii) any other event determined by the Trustee from time to time.
- (c) Upon the death of a Member in receipt of a Market Linked Pension who has given a Reversionary Beneficiary nomination which is valid and effective at the Member's death, the Trustee must, subject to Superannuation Law and any terms and conditions of payment determined pursuant to clause A.9.6(a) of this Schedule A, continue to pay the Market Linked Pension to the Reversionary Beneficiary until the earlier of:
  - (i) the balance of the Benefit Account is exhausted or decreases to a value determined by the Trustee;

- (ii) the death of the Reversionary Beneficiary;
- (iii) the benefit is no longer permitted by Superannuation Law to be paid in the form of a Market Linked Pension; or
- (iv) as determined by the Trustee in accordance with Superannuation Law,

in which case, the balance (if any) of the Benefit Account must be paid as a lump sum.

#### **A.9.6 Commutation**

- (a) Subject to clause A.9.6(d) of this Schedule A and Superannuation Law, the Trustee may, on the request of a Member or Reversionary Beneficiary, commute to a lump sum, the whole or any part of his or her Market Linked Pension.
- (b) Subject to clause A.9.6(d) of this Schedule A, on the commutation of the whole of a Market Linked Pension, subject to Superannuation Law, the Trustee must pay a lump sum benefit to or for the benefit of the Member or Reversionary Beneficiary equal to the balance of his or her Benefit Account as at the date of commutation.
- (c) Subject to clause A.9.6(d) of this Schedule A, on the commutation of part of a Market Linked Pension, subject to Superannuation Law, the Trustee must pay a lump sum benefit to the Member or Reversionary Beneficiary from his or her Benefit Account equal to the amount requested up to the balance of the Benefit Account as at the date of commutation.
- (d) The Trustee must commute all or any part of a Market Linked Pension that is being paid to a Member or a Reversionary Beneficiary where required by Superannuation Law.

#### **A.9.7 Cessation of pension**

- (a) A Market Linked Pension will cease to be payable on the earlier of:
  - (i) the balance of the Benefit Account is exhausted or decreases to a value determined by the Trustee;
  - (ii) the death of the Member, with no valid Reversionary Beneficiary nomination;
  - (iii) the expiry of the period of the Pension; and
  - (iv) as determined by the Trustee in accordance with Superannuation Law.
- (b) Any balance of the Member's Benefit Account at the date determined under clause A.9.7(a) of this Schedule A shall be paid as soon as practicable thereafter.



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## **A.10 Rules for Term Pensions**

### **A.10.1 Pension rules**

- (a) Subject to Superannuation Law, a Member is entitled to a Term Pension, as agreed with the Trustee or as otherwise determined by the Trustee, in accordance with this clause A.10.
- (b) If a Term Pension reverts, it must not have a reversionary component greater than 100% of the benefit that was payable before the reversion.
- (c) A Term Pension does not have a residual capital value.

### **A.10.2 Changes to Pension terms**

Subject to Superannuation Law, the Trustee may on the request of a Member or Reversionary Beneficiary alter the terms of a Term Pension payable to, or in respect of, the Member or Reversionary Beneficiary, from a date determined by the Trustee.

### **A.10.3 Frequency of pension payments**

- (a) Subject to Superannuation Law, the Trustee must make Term Pension payments with such frequency and at such intervals and times as may be agreed between the Trustee and the Member or Reversionary Beneficiary or as otherwise determined under clause A.10.3(d) of this Schedule A.
- (b) Subject to Superannuation Law, the Trustee may alter the frequency with which Term Pension payments are to be made:
  - (i) at any time the Trustee considers appropriate; or
  - (ii) at any time agreed upon between the Member or Reversionary Beneficiary and the Trustee.
- (c) If at any time the frequency of the Term Pension payments has not been agreed upon by the Trustee and the Member or Reversionary Beneficiary, the Trustee must ensure that at least one Term Pension payment is made during each Financial Year.
- (d) Notwithstanding any agreement with the Member or Reversionary Beneficiary to the contrary, the Trustee must ensure that at least one Term Pension payment is made to the Member or Reversionary Beneficiary during each Financial Year.

### **A.10.4 Amount of pension payments**

- (a) Subject to clause A.10.4(d) of this Schedule A, the total amount of pension payments in the first year of the Term Pension (not taking commuted amounts into account) is a fixed amount agreed with the Member prior to the Pension commencing.
- (b) Subject to clause A.10.4(d) of this Schedule A, the Trustee may allow a Member or Reversionary Beneficiary to nominate the value of Term Pension payments to be paid under a Term Pension during a subsequent Financial Year provided that the total amount of pension payments in each subsequent Financial Year of the Term Pension (not taking commuted amounts into account) must:

- (i) be at least equal to the total amount of pension payments in the immediately prior Financial Year of the Term Pension; and
  - (ii) not exceed the amount set out in the Superannuation Law.
- (c) Subject to clause A.10.4(d) of this Schedule A, if a Member or Reversionary Beneficiary does not nominate the value of Term Pension payments to be paid in a subsequent Financial Year within such period as determined by the Trustee, the Trustee must pay an amount equal to the total amount of pension payments in the immediately prior Financial Year of the Term Pension.
- (d) The total amount of payments to be made in a year in accordance with clauses A.10.4(a) or (b) of this Schedule A may be varied only:
- (i) to allow commutation to pay a superannuation contributions surcharge;
  - (ii) to allow an amount to be paid under a payment split and reasonable fees in respect of the payment split to be charged; or
  - (iii) to allow commutation in order to comply with section 136-80 in Schedule 1 of the *Taxation Administration Act 1953* (Cth).

#### **A.10.5 Reversionary Beneficiaries**

- (a) The Trustee may approve such form, adopt such procedures and impose such terms, conditions and restrictions in connection with the nomination of a Reversionary Beneficiary as the Trustee determines from time to time which must be complied with by a Member in order for a nomination to be valid and effective. The Trustee may impose such terms, conditions and restrictions in connection with the payment of a Term Pension on the death of the Member to a Reversionary Beneficiary as the Trustee determines from time to time which must be complied with.
- (b) A Reversionary Beneficiary nomination ceases to be valid and effective upon the earlier of the following events:
- (i) on receipt by the Trustee from the Member of a replacement, conflicting or inconsistent notice of a Reversionary Beneficiary or Valid Nomination Form; and
  - (ii) any other event determined by the Trustee from time to time.
- (c) Upon the death of a Member in receipt of a Term Pension who has given a Reversionary Beneficiary nomination which is valid and effective at the Member's death, the Trustee must, subject to Superannuation Law and any terms and conditions of payment determined pursuant to clause A.10.6(a) of this Schedule A, continue to pay the Term Pension to the Reversionary Beneficiary until the earlier of:
- (i) the death of the Reversionary Beneficiary;
  - (ii) the expiry of the term of the Term Pension,
- in which case, the balance (if any) of the Term Pension must be paid as a lump sum.

### **A.10.6 Commutation and transfer**

- (a) Subject to clause A.10.6(d) of this Schedule A and Superannuation Law, the Trustee may, on the request of a Member or Reversionary Beneficiary, commute to a lump sum, the whole or any part of his or her Term Pension.
- (b) Subject to clause A.10.6(d) of this Schedule A, on the commutation of the whole of a Term Pension, subject to Superannuation Law, the Trustee must pay a lump sum benefit to or for the benefit of the Member or Reversionary Beneficiary equal to the balance of his or her Benefit Account as at the date of commutation.
- (c) Subject to clause A.10.6(d) of this Schedule A, on the commutation of part of a Term Pension, subject to Superannuation Law, the Trustee must pay a lump sum benefit to the Member or Reversionary Beneficiary from his or her Benefit Account equal to the amount requested up to the balance of the Benefit Account as at the date of commutation.
- (d) The Trustee must commute all or any part of a Term Pension that is being paid to a Member or a Reversionary Beneficiary where required by Superannuation Law.
- (e) A Term Pension cannot be transferred to a person except as permitted by Superannuation Law.

### **A.10.7 Cessation of pension**

- (a) A Term Pension will cease to be payable on the earlier of:
  - (i) The death of the Member, with no valid Reversionary Beneficiary nomination; and
  - (ii) the expiry of the term of the Term Pension.
- (b) Any balance of the Member's Term Pension at the date determined under clause A.10.7(a) of this Schedule A shall be paid as soon as practicable thereafter.

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## **A.11 Termination of the Division**

If:

- (a) there are no Members or other beneficiaries remaining in the Division but there are still Members or other beneficiaries in any other Division of the Fund; and
- (b) in the opinion of the Trustee, all benefits which could become payable with respect to the Division have been paid,

then the Division must be terminated and any money or assets remaining in the accounts of the Fund with respect to the Division (after payment of the expenses of the Division) must be realised and distributed as determined by the Trustee.

# Schedule B Additional Rules for the Vision Super Defined Benefit Division

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## B.1 Application and interpretation

### B.1.1 Application of Schedule B

The provisions of this Schedule B relate only to Members of the Vision Super Defined Benefit Division.

### B.1.2 Definitions

In this Schedule B, unless the contrary intention appears:

**Division** means the Vision Super Defined Benefit Division.

**Pre-Retirement Pension** means an Account-Based Pension (as defined in Schedule A) paid as a transition to retirement income stream.

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## B.2 Termination of Employer Contributions to the Division

- (a) Subject to clauses 4 and 19 of the Deed and to clause B.2(b) of this Schedule B, an Employer which contributes or is liable to contribute in respect of a Member of the Division may, after giving at least 60 days prior written notice to the Trustee and obtaining Trustee approval, either generally or in respect of any person or persons named or described in that notice (or then or thereafter falling within a group or class of persons described in that notice):
  - (i) terminate all or any of its payments in respect of the Division; or
  - (ii) reduce or suspend all or any of its payments in respect of the Division to the extent specified in that notice, either indefinitely or for the period specified.
- (b) Notwithstanding clause 4.5 of the Deed, an Employer in respect of which there is, at the relevant time, an Unfunded Liability Amount may not terminate, reduce or suspend all or any of its payments in respect of the Fund.

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## B.3 Termination of the Division

If:

- (a) there are no Members or beneficiaries remaining in the Division but there are Members or beneficiaries in other divisions of the Fund; and
- (b) in the opinion of the Trustee, all benefits which could become payable with respect to the Division have been paid,

then the Division is terminated and any money or assets remaining in the accounts of the Fund with respect the Division (after payment of the expenses of the Division) must be realised and distributed as determined by the Trustee.

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## B.4 Benefit Accounts

Subject to this Schedule B, the Trustee may establish and maintain a Benefit Account in respect of each Member and other beneficiary of this Division.

## Part 1 – Rules for Former LAS Defined Benefit Members under 1988 Act Sub-Division

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### B.1 Application and Interpretation

#### B.1.1 Application of Part 1 of Schedule B

The provisions of this Part 1 of Schedule B relate only to Members of the Former LAS Defined Benefit Members under 1988 Act Sub-Division of the Division.

#### B.1.2 Definitions

In this Part 1, unless the contrary intention appears:

**1958 Act** means the *Local Authorities Superannuation Act 1958* (Vic).

**Adjusted Final Salary** means the lesser of:

- (a) the Salary of a Member immediately before any benefits become payable to that Member; or
- (b) the greater of:
  - (i) the Member's average Salary over the year immediately before the benefits became payable (or over any lesser period of time for which that person was a Member); or
  - (ii) the sum referred to in paragraph (b)(i) multiplied by:

$$\frac{A+B}{2B} \text{ where:}$$

"A" is the Average Weekly Earnings Index most recently published by the Australian Bureau of Statistics before the benefits become payable; and

"B" is the Average Weekly Earnings Index published by the Australian Bureau of Statistics one year prior to the Average Weekly Earnings Index taken into account under "A",

and:

- (iii) the sum that would have been calculated on the date immediately prior to 28 September 2012, had the benefits

become payable on that date, in accordance with the definition of Adjusted Final Salary in this clause B.1.2 (or a corresponding provision of the Trust Deed) in effect immediately prior to 28 September 2012.

For the purposes of calculating the Adjusted Final Salary of any Member whose Salary decreases before that person ceases to be a Member, the Trustee may:

- (c) determine a notional Adjusted Final Salary for that Member; or
- (d) make such other arrangements so as not to reduce the Member's accrued benefit.

**Authority** means an entity which:

- (a) is an Employer who is not a Part 1 Employer and who has an Employee who is for the time being categorised as a Member of this Sub-Division; or
- (b) was an "Authority" for the purposes of section 3(1) of the 1988 Act as set forth in Annexure 4 to this Part 1,

and, in relation to an Employee, means the Authority in respect of which the Employee is for the time being an Employee.

**Declared Rate** means the rate of interest (which may be positive or negative) determined by the Trustee after having regard to the income of the Fund or of any particular investment portfolio within the Fund or any other matter considered relevant by the Trustee, in respect of any period for the purposes of the whole or any particular provision of the Deed and without limiting the preceding words but subject to any conditions determined by the Trustee, for the purposes of the whole or any particular provision of the Deed:

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

**Disability** in relation to a Member, means the permanent inability of the Member before the age of 60 years due to a continuing or recurring injury, disease or infirmity:

- (a) to perform his or her duties as an Employee; and
- (b) to perform any other duties for which he or she is suited by education, training or experience or for which he or she would be suited as a result of retraining,

as determined by the Trustee on the basis of reports provided by at least two registered medical practitioners appointed by the Trustee.

**Disability Beneficiary** means a Member in respect of whom the Trustee has approved a benefit under clauses B.5.4 or B.5.5 of this Part 1 of Schedule B.

**Ill Health** means a continuous or recurring impairment of the health of a Member which is due to a physical or mental incapacity, bodily injury, illness or disease, which in the opinion of the Trustee:

- (a) is not a Disability; and

- (b) is likely to be adversely affected if the Member continues to perform his or her present duties as an Employee; and
- (c) does not preclude the Member from seeking alternative employment; and
- (d) has not been incurred or inflicted for the purpose of obtaining a benefit.

**Member** means a person who is a Member of this Sub-Division under clause B.2 of this Part 1 of Schedule B and who is not a Pensioner.

**Old Benefits** means in relation to a Member:

- (a) in the case of retirement other than retirement through Disability:
  - (i) a yearly pension which is calculated by dividing an amount nominated by the member (**Amount**, and subject to any minimum pension amount determined by the Trustee) by the appropriate factor from the following Table:

**TABLE**

Age of Member in completed years	Factor
65	12.0
64	12.1
63	12.2
62	12.3
61	12.4
60	12.6
59	12.8
58	13.0
57	13.2
56	13.4
55	13.6

(with age to be calculated in years and completed months, and interpolation of factors as required),

where the **Amount** is:

- (A) if clause B.9.3(c) of this Part 1 of Schedule B does not apply, not greater than 50% of the Member's benefit calculated under clause B.5.2 of this Part 1 of Schedule B; or
- (B) if clause B.9.3(c) of this Part 1 of Schedule B does apply:
  - (I) subject to paragraph (a)(i)(B)(II), not greater than 50% of the Member's benefit calculated under clause B.5.2 of this Part 1 of Schedule B before the adjustment is made under clause B.9.3(c) of this Part 1 of Schedule B; or
  - (II) if the benefit calculated under clause B.5.2 of this Part 1 of Schedule B after the adjustment is made under clause B.9.3(c) of this Part 1 of

Schedule B (**adjusted benefit**) would be less than 50% of the benefit that otherwise would have been calculated under clause B.5.2 of this Part 1 of Schedule B (before the adjustment is made under clause B.9.3(c) of this Part 1 of Schedule B), 100% of the adjusted benefit; and

- (ii) if paragraph (a)(i)(B)(II) does not apply, a lump sum equal to the remainder of the benefit calculated under clause B.5.2 of this Part 1 of Schedule B (adjusted under clause B.9.3(c) of this Part 1 of Schedule B, if applicable), not converted to pension pursuant to paragraph (a)(i); and
- (b) in the case of retirement due to Disability:
- (i) a lump sum calculated by reference to Annexure 1 of this Part 1; and
  - (ii) a yearly pension which is 0.8333 per cent of the Member's Salary for each year for which the Member was contributing to the Fund including prospective years to the age of 65 years (but not exceeding a total of 40 years),

subject to a reduction by the Trustee of either of the amounts referred to in paragraphs (a)(i) or (ii) by an amount determined in accordance with Annexure 2 and Annexure 3 of this Part 1, if the Member's most recent medical classification under the 1958 Act was not the top classification and subject to a reduction under clause B.9.3(c) of this Part 1 of Schedule B, if applicable.

**Part 1 Employer** means an Employer who is not an Authority but is approved by the Trustee to participate in this Sub-Division.

**Pensioner** means a person who is receiving a pension (but not including a Pre-Retirement Pension) under this Part 1 of Schedule B.

**Post 93 Membership** in relation to a Member, means, prior to attaining age 65, the number of years on and after 1 July 1993 (with each additional day counting as a fraction of the year) for which that Member:

- (a) was a "contributor" under the 1988 Act; and
- (b) is an Employed Member on and after 1 July 1998.

**Post 93 Service Fraction** means in relation to the period of a Member's Post 93 Membership, the Member's Service for that period divided by the number of years (with each additional day counting as a fraction of the year) in that period.

**Pre-Retirement Pension Accrued Benefit** means the amount of a Member's accrued benefit under this Part 1 which (after having first transferred to the Accumulation and Pension Division all amounts in any accounts maintained for the Member in this Sub-Division, including an account maintained for purposes of clause B.5.11 of this Part 1 of Schedule B and any Benefit Account under Schedule A) the Member elects to transfer to the Accumulation and Pension Division for the purpose of establishing an Account-Based Pension (as defined in Schedule A) and which the Trustee approves for that purpose.

**Retrenchment** means, in respect of a Member, ceasing to be an Employee before attaining the age of 55 years in circumstances where the Authority has certified in writing to the Trustee that retrenchment has occurred.



**Salary** means the annual rate, computed as determined by the Trustee on the basis of a year, of pecuniary emoluments payable periodically and regularly to a Member for the performance of the duties of his or her grade of employment but does not include payments:

- (a) for overtime or in the form of bonuses; or
- (b) for travelling allowances or incidental expenses; or
- (c) of a temporary character,

and if a Member's Salary is decreased in any year, the Member, the Employer and the Trustee may agree to maintain the Member's Salary at the previous higher level.

**Service** in relation to a Member, means, prior to attaining age 65:

- (a) the number of years (with each additional day counting as a fraction of the year) for which that Member:
  - (i) was a "contributor" under the 1988 Act; and
  - (ii) is an Employed Member on and after 1 July 1998,

adjusted to take into account any period of part-time employment, unpaid maternity leave, or other leave without pay by a proportionate reduction reflecting the basis on which that Member was employed; and

- (b) if a Member is at any one time an Employee with respect to more than one Authority, that Member is to be treated as if he or she were an Employee for the longest period for which he or she continued to be an Employee of any of those Authorities.

**Sub-Division** means this Former LAS Defined Benefit Members under 1988 Act Sub-Division.

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## **B.2 Member**

A person who:

- (a) was a member of the 1988 Fund immediately before the repeal of the 1988 Act and whose benefits would have been determined under part 7 of the 1988 Act; or
- (b) was a "pensioner" under the 1988 Act; or
- (c) transfer to Part 1 from Part 2 or Part 3; or
- (d) is an Employee of a Part 1 Employer; and

is for the time being categorised as a Member.

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## **B.3 Administration and Procedures**

### **B.3.1 Authority to notify Trustee of changes with respect to Employees**

Subject to clause 4.6(a) of the Deed, an Authority must notify the Trustee of any of the following events within 14 days after the date of that event:

- (a) a person becoming an Employee;
- (b) the resignation, retirement, dismissal or death of a Member;
- (c) a change of address or the conditions of employment or the Salary or the position of a Member.

### **B.3.2 Medical examinations and classification**

- (a) The Trustee may classify Members as Grade A, Grade B, Grade C or Grade D for the purposes of death and Disability benefits under clauses B.5.3 and B.5.4 of this Part 1 of Schedule B, respectively.
- (b) The Trustee may at any time:
  - (i) reassign a Member to another grade from a specific date; and
  - (ii) make any necessary adjustments to the Member's benefits.

### **B.3.3 Interruptions to employment**

- (a) If a person:
  - (i) ceases to be an Employee but within two months again becomes an Employee of another Employer who is either an Authority or Part 1 Employer under this Part 1 of Schedule B; and
  - (ii) any benefits paid to the Member as a result of ceasing to be an Employee are repaid to the Trustee within the time specified by the Trustee,then the person will be regarded as having remained an Employee and continued as a Member during the period of cessation.
- (b) If the person does not repay the entire benefit within the time specified by the Trustee, the Trustee may recover the outstanding amount of the benefit (and any interest on that amount) as a debt.

### **B.3.4 Re-employment of retrenched persons**

If a Member who ceased to be an Employee because of Retrenchment again becomes an Employee and a Member within two years after Retrenchment, that Member may repay to the Trustee all or part of any benefits received by him or her, and after repayment of those benefits, the Trustee must credit the Member with the number of years of Service which the Actuary considers to be the appropriate number represented by the amount repaid.

### **B.3.5 Disability assessment procedure**

If the Trustee initially determines that a Member who has applied for a Disability benefit does not satisfy the definition of Disability, the Member has the right to require the Trustee to review its initial determination and to obtain a further report from a registered medical practitioner mutually agreed upon by the Trustee and the Member.

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## B.4 Contributions

### B.4.1 Member contribution rates

A Member must contribute to this Sub-Division at a rate equal to 6 per cent of Salary.

### B.4.2 Length of contribution period

- (a) A Member must cease to contribute to this Sub-Division on the earliest of the dates on which that Member:
- (i) attains the age of 65 years;
  - (ii) becomes entitled to the maximum retirement benefit specified in clause B.5.2(d) of this Part 1 of Schedule B; or
  - (iii) ceases to be an Employee.
- (b) Except where the Trustee is prohibited by the SIS Act from accepting contributions during any period in which the Member is on parental leave or leave without pay:
- (i) the Member and the Authority are not required to pay any contributions for the period of the parental leave or leave without pay, but the Trustee may on application allow such contributions; and
  - (ii) with respect to a Member on leave without pay:
    - (A) the Member may elect to continue to contribute to this Sub-Division at a rate equal to:
      - (I) 2 per cent of Salary; or
      - (II) such other percentage of Salary as is determined by the Trustee on the advice of an Actuary,  
  
in which event that Member's death and Disability benefits will continue during that period of leave and for this purpose:
        - (III) such benefits will be calculated as if the Member had continued to contribute to this Sub-Division at the same rate at which he or she was contributing immediately before the period of leave commenced; and
        - (IV) **Salary** will be the Member's Salary immediately before the period of leave commenced; and
    - (B) the Trustee must adjust any benefit that is ultimately payable from this Sub-Division to the Member to take into account any contributions which were payable under clause B.4.2(b)(ii)(A) of this Part 1 of Schedule B but not paid.

### **B.4.3 Payment of contributions**

- (a) An Authority must pay to this Sub-Division, within 21 days after the date or dates specified by the Trustee, the contributions due under clause 6 of the Deed.
- (b) The Authority must pay the contributions in respect of an Employee until the Authority notifies the Trustee that that person is no longer an Employee.
- (c) If an Authority fails to pay or is late in paying any amount due, the Trustee may require the Authority to pay:
  - (i) the amount of the contribution which is unpaid or overdue; and
  - (ii) interest at a rate determined by the Trustee from time to time.
- (d) In respect of any interest referred to in clause B.4.3(c) of this Part 1 of Schedule B:
  - (i) the Trustee may recover that interest in the same manner as it may recover any contributions;
  - (ii) the Authority which is required to pay that interest must not charge it to the Employee in respect of whom it is due; and
  - (iii) the Trustee may waive the payment of any or all of the interest by the Authority.
- (e) An Authority which has paid any contribution in respect of an Employee may deduct the amount of that contribution for which the Employee is liable under clause B.4.1 of this Part 1 of Schedule B by regular equal instalments from any regular payments of Salary or other sums due to the Employee from the Authority.

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## **B.5 Benefits**

### **B.5.1 Old Benefits**

- (a) Subject to clause B.5.1(c) of this Part 1 of Schedule B, a Member who was a "contributor" to the 1988 Fund on or before 25 May 1988 may elect to receive Old Benefits in lieu of the corresponding benefit otherwise provided under this clause B.5, which election must be made no later than six months after the date the Member ceases to be an Employee and must be made in accordance with the procedures determined by the Trustee.
- (b) Any pension elected under this clause B.5.1 will be paid in accordance with clause B.6 of this Part 1 of Schedule B.
- (c) If a Member:
  - (i) continues as an Employee on and after attaining the age of 65 years;
  - (ii) would be eligible to elect to receive Old Benefits under clause B.5.1(a) of this Part 1 of Schedule B if the Member had ceased to be an Employee; and

- (iii) makes an election to receive a benefit under clause B.5.2(a)(ii) of this Part 1 of Schedule B,

the Member must at the time of making the election under clause B.5.2(a)(ii) of this Part 1 of Schedule B also elect whether the Member wishes to receive Old Benefits in lieu of the corresponding benefit otherwise provided under this clause B.5.

- (d) If a Member elects to receive Old Benefits under clause B.5.1(c) of this Part 1 of Schedule B, the benefit payable to the Member pursuant to the election under clause B.5.2(a)(ii) of Part 1 of this Schedule B will be:
  - (i) the lump sum portion of the Old Benefit (under paragraph (a)(ii) of the definition of Old Benefit); and
  - (ii) the pension portion of the Old Benefit (under paragraph (a)(i) of the definition of Old Benefit).

## **B.5.2 Benefit on retirement**

- (a) Subject to clause 8.2(b) of the Deed, to Schedule A and to clauses B.5.1, B.5.2(d) and B.9.3 of this Part 1 of Schedule B:
  - (i) subject to clause B.5.2(a)(ii) of this Part 1 of Schedule B, a Member who ceases to be an Employee on or after attaining the age of 55 years, when no benefit is payable under clauses B.5.3, B.5.4, B.5.5, B.5.6, B.5.7, B.5.8 and B.5.9 of this Part 1 of Schedule B, is entitled to receive a lump sum retirement benefit from this Sub-Division calculated under this clause B.5.2; and
  - (ii) subject to Superannuation Law (and notwithstanding clause 9.3(b)), if a Member who is an Employee and has attained the age of 65 years would be entitled to a benefit under clause B.5.2(a)(i) of this Part 1 of Schedule B if the Member had ceased to be an Employee, then:
    - (A) that Member may elect to receive a lump sum retirement benefit from this Sub-Division calculated under this clause B.5.2 (notwithstanding that the Member remains an Employee); and
    - (B) for purposes of determining the amount of or eligibility for payment of a benefit under this Part 1 in respect of an event or circumstance occurring or arising after the date the benefit is paid pursuant to this clause B.5.2(a)(ii), the Member will be treated as if he or she had never previously been an Employee or a Member.
- (b) For the Member's period of Service until 1 July 1993, the retirement benefit of a Member is 21 per cent of the Adjusted Final Salary for each year of Service.
- (c) For the period of Service on and after 1 July 1993, the retirement benefit of a Member is 18.5 per cent of the Member's Adjusted Final Salary for each year of Service during which the Member has contributed 6 per cent of Salary to this Sub-Division.

- (d) The retirement benefit of a Member for any purpose other than clause B.5.3 of this Part 1 of Schedule B must not exceed the Member's Adjusted Final Salary multiplied by:

$$\frac{ACM}{1} + \left[ \frac{(8.4 - ACM)}{1} x \frac{18.5}{21} \right]$$

where **ACM** is the multiple determined in accordance with clause B.5.2(b) of this Part 1 of Schedule B.

- (e) A benefit under this clause B.5.2 does not continue to accrue after the Member attains 65 years of age. If a Member continues as an Employee after attaining 65 years of age, without limiting clause B.5.1(d) of this Part 1 of Schedule B, the Member must become a Member of the Accumulation and Pension Division and any post age 65 benefit will be provided for that Member in Schedule A.

### **B.5.3 Benefit on death before retirement**

- (a) Subject to clauses B.5.1, B.5.3(b), B.5.3(f) and B.9.3 of this Part 1 of Schedule B, on the death of a Member before attaining age 65, the Trustee must pay to the Member's legal personal representative a lump sum equal to the sum of:
- (i) the Member's retirement benefit calculated under clause B.5.2 of this Part 1 of Schedule B as if the Member's date of death were the date of the Member's retirement and the death occurred prior to 1 July 1993; and
  - (ii) 21 per cent of the Adjusted Final Salary of the Member multiplied by the number of years from the date of death until the Member would have attained the age of 60 years.
- (b) If the deceased Member's medical classification is not the top classification, the sum referred to in clause B.5.3(a)(ii) of this Part 1 of Schedule B may be reduced by the Trustee on the basis of medical classification by the percentage specified as follows:
- |         |     |
|---------|-----|
| Grade B | 30% |
| Grade C | 60% |
| Grade D | 90% |
- (c) The Member's legal personal representative must make a statutory declaration and produce any other evidence required by the Trustee to establish that legal personal representative's entitlement to the benefit under this clause B.5.3.
- (d) Payment under clause B.5.3(a) of this Part 1 of Schedule B is valid with respect to any claim against the Trustee by any other persons claiming an interest in relation to the deceased Member, but does not affect any right of those persons to recover the whole or any part of the payment from the legal personal representative.
- (e) A written acknowledgment of receipt of a payment under clause B.5.3(a) of this Part 1 of Schedule B is a release to the Trustee from any obligation to pay any further amounts in respect of the deceased Member.

- (f) For the purposes of clause B.5.3(a) of this Part 1 of Schedule B, the retirement benefit of a Member must not exceed a maximum of 8.4 times the Adjusted Final Salary of the Member.

#### **B.5.4 Benefit on retirement through Disability**

- (a) Subject to Schedule A and to clauses B.5.1, B.5.7 and B.9.3 of this Part 1 of Schedule B, if the Trustee is reasonably satisfied that a Member ceases to be an Employee because of Disability, the Member is entitled to have a Disability benefit calculated as a lump sum equal to the sum of:
- (i) the Member's retirement benefit calculated in accordance with clause B.5.2 of this Part 1 of Schedule B, as if the Member's date of ceasing to be an Employee due to Disability were the date of the Member's retirement; and
  - (ii) 21 per cent of the Adjusted Final Salary of the Member multiplied by the number of years from the date of ceasing to be an Employee until the Member would attain the age of 60 years,
- and credited to a Disability Beneficiary account together with any benefits from an additional benefits contract under clause B.5.11 of this Part 1 of Schedule B.
- (b) If, on application by a Member or an Authority or a Part 1 Employer at any time before, or within 6 months after, the Member ceased to be an Employee, the Trustee is reasonably satisfied that the person was suffering from a Disability on or before the date on which that Member ceased to be an Employee, that person becomes a Disability Beneficiary.
- (c) The Trustee must keep a Disability Beneficiary account for each Disability Beneficiary and must credit to that account:
- (i) any amounts referred to in clause B.5.4(a) of this Part 1 of Schedule B; and
  - (ii) interest on the amounts in the account at a rate determined from time to time by the Trustee; and
  - (iii) any other amounts determined by the Trustee on the advice of the Actuary.
- (d) Any payment to the Disability Beneficiary under this clause B.5.4 must be debited against the Disability Beneficiary's account.
- (e) The Trustee may make payments from a Disability Beneficiary's account to the Disability Beneficiary (or any other person as the Trustee thinks fit on the Beneficiary's behalf) in instalments or in a single payment.
- (f) When the Disability Beneficiary's account balance is zero, the Trustee is discharged from any liability to make further payments to the Beneficiary.
- (g) When a Disability Beneficiary attains the age of 65 years, he or she is entitled to receive any balance in his or her Disability Beneficiary account.
- (h) If a Disability Beneficiary dies before attaining the age of 65 years, that Disability Beneficiary's legal personal representative is entitled to receive any balance in the Disability Beneficiary's account.

- (i) The Trustee may at any time review a Disability Beneficiary's medical condition to determine if the Beneficiary is still suffering from a Disability.
- (j) If the Trustee determines under clause B.5.4(i) of this Part 1 of Schedule B that the Disability Beneficiary is no longer suffering from a Disability, it may:
  - (i) reduce the existing benefits; or
  - (ii) discontinue the existing benefits,
 but a determination to reduce the existing benefits does not take effect for a period of 3 months after the date of the determination.
- (k) For the purposes of clause B.5.4(a) of this Part 1 of Schedule B, the retirement benefit of a Member must not exceed a maximum of 8.4 times the Adjusted Final Salary of the Member.

### **B.5.5 Temporary Disability benefit**

- (a) This clause B.5.5 applies if the Trustee determines that a Member who has applied to retire on the ground of Disability is likely to substantially recover from injury, disease or infirmity.
- (b) The Trustee is to pay the Member a benefit calculated in accordance with clause B.5.4 of Part 1 of this Schedule B for a limited period not exceeding 2 years from the date that the Trustee makes a determination under clause B.5.5(a) of this Part 1 of Schedule B and clauses B.5.4(a), (c) and (d) of this Part 1 of Schedule B apply accordingly.
- (c) The annual amount of the Temporary Disability benefit payable to the Member during the limited period must not exceed the annual rate determined by dividing the opening balance in the Disability Beneficiary's account under clause B.5.4 of this Part 1 of Schedule B by 12 (or such other denominator as the Trustee may determine either generally or in any particular case as permitted by Superannuation Law). This annual rate will then be paid in monthly instalments.
- (d) The Trustee must within 12 months of making its determination under clause B.5.5(a) of this Part 1 of Schedule B conduct a review to determine whether:
  - (i) clause B.5.5.(a) of this Part 1 of Schedule B still applies;
  - (ii) the Member is suffering from a Disability and may retire on the ground of Disability;
  - (iii) the Member is suffering from Ill Health and may retire on the ground of Ill Health; or
  - (iv) the Member is not suffering from Disability or Ill Health.
- (e) If clause B.5.5(d)(i) of this Part 1 of Schedule B applies, the Trustee must conduct a further review not later than 2 months before the expiry of the limited period.
- (f) If clause B.5.5(d)(ii) of this Part 1 of Schedule B applies, the Member is entitled to a benefit under clause B.5.4 of this Part 1 of Schedule B calculated on the balance of his or her Disability Beneficiary's account as at the date the review is determined.



- (g) If clause B.5.5(d)(iii) of this Part 1 of Schedule B applies, the Member is entitled to a benefit equal to the lesser of the amount calculated in accordance with clause B.5.6 of this Part 1 of Schedule B or the amount of the Disability Beneficiary's account as at the date of retirement.
- (h) If clause B.5.5(d)(iv) of this Part 1 of Schedule B applies, the Member ceases to be entitled to a benefit under this clause B.5.5.
- (i) If the Member fails to comply with a requirement by the Trustee to attend a medical examination or to provide information required by the Trustee so as to determine whether the Member is still suffering from a Disability or is Gainfully Employed, the Trustee may by notice in writing to the Member suspend payment of the benefit under this clause B.5.5.
- (j) If the Member has not complied with a requirement under clause B.5.5(i) of this Part 1 of Schedule B within 30 days of being served with a notice of suspension, the Trustee may by further notice in writing to the Member cancel payment of the benefit.
- (k) The Trustee may at a further review determine that:
  - (i) the Member is suffering from a Disability and may retire on the ground of Disability;
  - (ii) the Member is suffering from Ill Health and may retire on the ground of Ill Health; or
  - (iii) the Member is not suffering from Disability or Ill Health.
- (l) If clause B.5.5(k)(i) of this Part 1 of Schedule B applies, the Member is entitled to a benefit under clause B.5.4 of this Part 1 of Schedule B calculated on the balance of his or her Disability Beneficiary's account as at the date the review is determined.
- (m) If clause B.5.5(k)(ii) of this Part 1 of Schedule B applies, the Member is entitled to a benefit equal to the lesser of the amount calculated in accordance with clause B.5.6 of this Part 1 of Schedule B or the amount of the Disability Beneficiary's account as at the date of retirement.
- (n) If clause B.5.5(k)(iii) of this Part 1 of Schedule B applies, the Member ceases to be entitled to a benefit under this clause B.5.5.

#### **B.5.6 Benefit on retirement due to Ill Health**

- (a) Subject to Schedule A, if a Member ceases to be an Employee because of Ill Health, the Member is entitled to a lump sum benefit equal to the Member's retirement benefit calculated under clause B.5.2 of this Part 1 of Schedule B.
- (b) A Member does not cease to be an Employee on the ground of Ill Health unless the Trustee considers that Ill Health was the reason for the cessation.

#### **B.5.7 Traumatic bodily injury**

If a Member:

- (a) suffers any injury considered by the Trustee to be traumatic bodily injury; and

(b) within 6 months after having suffered that injury (or such longer period as the Trustee determines either generally or specifically for the purposes of this clause B.5.7):

- (i) dies; or
- (ii) becomes entitled to receive Disability benefits under clause B.5.4 of this Part 1 of Schedule B,

the Member must be treated by the Trustee as if he or she is in the top medical classification of Members for the purposes of the payment of benefits under this clause B.5.7.

### **B.5.8 Benefit on Retrenchment**

Subject to Schedule A, a Member who ceases to be an Employee due to Retrenchment is entitled to a lump sum benefit equal to the amount of the retirement benefit of that person calculated under clause B.5.2 of this Part 1 of Schedule B.

### **B.5.9 Benefit on resignation**

(a) Subject to Schedule A and to clause B.9.3 of this Part 1 of Schedule B, if a Member ceases to be an Employee due to resignation when no other benefit is payable under this Part 1, he or she is entitled to a lump sum benefit equal to the Member's Adjusted Final Salary multiplied by the sum of the following amounts:

- (i)  $15\% \times S$ ;
- (ii)  $13.5\% \times \text{PSF} \times (M^1 - M^2)$ ; and
- (iii)  $9\% \times M^2 \times \text{PSF}$ ,

where:

**S** is the Member's period of Service until 1 July 1993;

**PSF** is Post 93 Service Fraction;

**M<sup>1</sup>** is Post 93 Membership; and

**M<sup>2</sup>** is:

- (1) if the Member's period of Membership immediately prior to resignation was at least five years, five; or
- (2) if the Member's period of Membership immediately prior to resignation was less than five years, the period of Membership immediately prior to resignation.

(b) In respect of a Member classified under the 1958 Act as Class 3, the Trustee, on the advice of an Actuary, may approve the payment of benefits additional to those set forth in clause B.5.9(a) of this Part 1 of Schedule B.

### **B.5.10 Deferred retirement benefit**

(a) A Member who resigns before attaining age 55 may instead of the benefit in clause B.5.9 of this Part 1 of Schedule B choose to accept a deferred retirement benefit equal to the sum of:

- (i) the retirement benefit calculated under clause B.5.2 of this Part 1 of Schedule B; and
  - (ii) interest on the amount of that retirement benefit from the date on which that benefit falls due until the date it is paid.
- (b) Clause B.5.10(a) of this Part 1 of Schedule B applies (subject to clause B.5.10(d) of this Part 1 of Schedule B) unless a Member chooses to accept a deferred retirement benefit under clause B.5.10(c) of this Part 1 of Schedule B.
- (c) A Member who resigns before attaining age 55 may instead of the benefit in clause B.5.9 of this Part 1 of Schedule B choose to accept a deferred retirement benefit equal to the retirement benefit calculated under clause B.5.2 of this Part 1 of Schedule B. Periodically or otherwise, the Trustee may, in its absolute discretion, adjust this deferred retirement benefit by the Declared Rate (whether positive or negative).
- (d) A Member who has chosen to accept a deferred retirement benefit under clause B.5.10(a) of this Part 1 of Schedule B may, at any later time (**Changeover Time**), choose instead to accept a deferred retirement benefit equal to the amount calculated in respect of the Member at the Changeover Time under clause B.5.10(a) of this Part 1 of Schedule B (**New Deferred Retirement Benefit**). Periodically or otherwise, the Trustee may, in its absolute discretion, adjust the New Deferred Retirement Benefit by the Declared Rate (whether positive or negative).
- (e) A Member who chooses to accept the New Deferred Retirement Benefit under clause B.5.10(d) of this Part 1 of Schedule B shall, on and from the Changeover Time:
  - (i) have his or her entitlements under clause B.5.10(a) of this Part 1 of Schedule B extinguished; and
  - (ii) have his or her entitlements determined in accordance with clause B.5.10(d) of this Part 1 of Schedule B.
- (f) The benefit in clauses B.5.10(a), (c) or (d) of this Part 1 of Schedule B (as applicable) is not payable before the Member attains the age of 55 years unless:
  - (i) the Member becomes subject to a Disability approved by the Trustee; or
  - (ii) the Member dies before attaining the age of 55 years; or
  - (iii) in any other circumstances determined by the Trustee so long as it is not prohibited by Superannuation Law.
- (g) If a Member entitled to a benefit under clauses B.5.10(a), (c) or (d) of this Part 1 of Schedule B dies before attaining the age of 55 years, the legal personal representative of that Member is entitled to receive from this Sub-Division a lump sum benefit equal to the amount of the benefit to which the deceased Member would have been entitled.

#### **B.5.11 Additional benefits contracts with interest**

- (a) An Authority and a Member may agree, subject to the Trustee's approval, to provide for the payment of additional contributions in respect

of that Member so as to provide extra benefits to that Member under this clause B.5.11.

- (b) This clause B.5.11 applies unless an Authority, the Member and the Trustee agree to provide for the payment of additional contributions in respect of a Member under and in accordance with clause B.5.12 of this Part 1 of Schedule B.
- (c) Subject to clause B.5.11(d) of this Part 1 of Schedule B:
  - (i) the Trustee must keep an interest bearing account for each Member with an additional benefits contract, and interest must be added to the account as determined by the Trustee;
  - (ii) the Trustee must credit any Authority contributions and Member contributions less any Tax payable on those contributions to the Member's interest bearing account; and
  - (iii) when the Member becomes entitled to a benefit under any other clause of this Part 1 (excluding clause B.5.12), the Member is entitled to the balance of the interest bearing account (as well as any interest to the date of termination).
- (d) A Member who has entered an agreement with an Authority in accordance with clause B.5.11(a) of this Part 1 of Schedule B, may, at any later time (**Changeover Time**), choose instead to transfer the amount standing to the Member's credit in the interest bearing account as at the Changeover Time to an account established under clause B.5.12 of this Part 1 of Schedule B, in which case:
  - (i) the Member's entitlements under this clause B.5.11 are extinguished on and from the Changeover Time; and
  - (ii) the Member's entitlements on and from the Changeover Time will be determined in accordance with clause B.5.12(b) of this Part 1 of Schedule B.
- (e) Subject to any conditions determined by the Trustee from time to time either generally or in any particular case, a Member to whom this clause B.5.11 applies may at any time elect to transfer the amount standing to the Member's credit to a Benefit Account established under the Accumulation and Pension Division, or to another Sub-Division of the Division, in which case the additional contributions will be paid in accordance with the applicable provisions of Schedule A (or other Part of this Schedule B) and the Member's entitlements under this clause B.5.11 are extinguished on and from the time of the transfer.

#### **B.5.12 Additional benefits contracts with the Declared Rate**

- (a) An Authority and a Member may agree, subject to the Trustee's approval, to provide for the payment of additional contributions in respect of that Member so as to provide extra benefits to that Member under this clause B.5.12.
- (b) If this clause B.5.12 applies to a Member:
  - (i) the Trustee must keep an account for each such Member;
  - (ii) the Trustee must credit any Authority contributions, any Member contributions and any amount under clause B.5.11(d) of this

Part 1 of Schedule B less any Tax payable on those contributions or on that amount to the Member's account;

- (iii) periodically or otherwise, the Trustee may, at its absolute discretion, adjust the Member's account by the Declared Rate (whether positive or negative); and
  - (iv) when the Member becomes entitled to a benefit under any other clause of this Part 1 (excluding clause B.5.11 of this Part 1 of Schedule B), the Member is entitled to the balance of the account.
- (c) Subject to any conditions determined by the Trustee from time to time either generally or in any particular case, a Member to whom this clause B.5.12 applies may at any time elect to transfer the amount standing to the Member's credit to a Benefit Account established under the Accumulation and Pension Division, or to another Sub-Division of the Division, in which case the additional contributions will be paid in accordance with the applicable provisions of Schedule A (or other Part of this Schedule B) and the Member's entitlements under this clause B.5.12 are extinguished on and from the time of the transfer.

#### **B.5.13 Payment of benefits**

Subject to Schedule A, if a lump sum benefit to which a Member or other person is entitled is not paid within 14 days from the date the entitlement arose, interest must be added to the benefit at the rate calculated from time to time by the Trustee from the date the entitlement arose until the lump sum benefit is paid.

#### **B.5.14 General powers of the Trustee in respect of benefits**

The Trustee has power for the purposes of this Part 1:

- (a) to provide any benefits under this Part 1 in the form of lump sum payments, annuities, pensions or retiring allowances; and
- (b) to carry out any acts, matters or things which are incidental to the matters referred to in clause B.5.14(a) of this Part 1 of Schedule B.

#### **B.5.15 Discretion to compensate for detriment**

- (a) In relation to benefits payable under this Part 1, if the Trustee is satisfied that the reduction in benefits effective from 1 July 1993 has resulted in a detriment to a Member, the Trustee may take such steps as the Trustee considers necessary to compensate for that detriment.
- (b) For the purpose of clause B.5.15(a) of this Part 1 of Schedule B:
  - (i) **detriment** means receiving a lesser amount of after-tax benefit than would have been received if:
    - (A) the benefit accrual rates in clauses B.5.2 and B.5.9 of this Part 1 of Schedule B had not been reduced effective from 1 July 1993;
    - (B) the benefit had been classified for the purposes of the Tax Act as an untaxed benefit; and
    - (C) tax had applied in accordance with the rates of tax and the basis for its assessment under the Tax Act as at

1 July 1993 in respect of a benefit that becomes payable to a person aged 55 years or more; and

- (ii) **untaxed benefit** means there is no “taxed element” as defined in the Tax Act.

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## **B.6 Pensions (other than Pre-Retirement Pensions)**

### **B.6.1 Application**

If a Member has made an election under clause B.5.1 of this Part 1 of Schedule B, this clause B.6 applies to the payment of that pension and, subject to the Trustee’s absolute discretion, all pensions payable under this clause B.6 shall be paid in accordance with the provisions of Superannuation Law concerning the payment of “pensions” as defined in the SIS Act.

### **B.6.2 Retirement pensions**

A retirement pension shall be payable until the Pensioner dies.

### **B.6.3 Death of Pensioner**

- (a) On the death of a Pensioner, there shall be payable to the Spouse of the deceased Pensioner:

- (i) if the Spouse was the Spouse of the deceased Pensioner before the retirement of the deceased Pensioner, during the life of the Spouse a pension equal to two-thirds of the pension payable to the deceased Pensioner at the time of death;

- (ii) in respect of each Child of the Spouse or of the deceased Pensioner:

(A) who are under the age of eighteen years; or

(B) who are not less than eighteen years of age and not more than 25 years of age and who, in the opinion of the Trustee, are full-time students,

a pension at the rate of \$1085 per annum (as at 1 July 1998).

- (b) Where a pension in respect of any Child is payable to a Spouse, the pension shall, if the Spouse dies, be payable at the rate of \$2170 per annum (as at 1 July 1998) in respect of each Child.

- (c) On the death of a Pensioner who has no Spouse, if the Pensioner leaves Children of himself or of his Spouse:

- (i) who are under the age of eighteen years; or

- (ii) who are not less than eighteen years of age and not more than 25 years and who in the opinion of the Trustee are full-time students,

there shall be paid to such person as the Trustee directs on behalf of the Children a pension at the rate of \$2170 per annum (as at 1 July 1998) in respect of each Child.

- (d) One amount only shall be payable as pension in respect of any Child who would otherwise be entitled to a pension in respect of more than one Pensioner.
- (e) Any money payable in respect of a Child may, at the discretion of the Trustee, be paid to such person as the Trustee directs on behalf of and for the benefit of the Child or expended by the Trustee for the benefit of the Child.
- (f) A person shall not be entitled to receive at any one time more than one pension as the Spouse of a deceased Pensioner (but any person who is entitled to a pension as the Spouse of more than one deceased Pensioner shall be entitled to receive whichever of the pensions is the greater).
- (g) Where a person becomes the Spouse of a Pensioner after the Pensioner's retirement, a pension shall not be payable to that Spouse on the death of the Pensioner, but a pension shall be payable if:
  - (i) the Pensioner was at the time the person became a Spouse receiving a Disability retirement pension and the person became a Spouse before the Pensioner attained the age of 60 years; or
  - (ii) the person became a Spouse three years or more before the death of the Pensioner or such other period of time as the Trustee determines, having regard to Superannuation Law.
- (h) Where a Spouse is entitled to a pension by the operation of clause B.6.3(g)(ii) of this Part 1 of Schedule B and the Spouse was more than five years younger than the Pensioner, the pension payable to the Spouse shall be reduced to the value of the pension that in the opinion of an Actuary is the actuarial equivalent of the value of the pension that would have been payable if the Spouse was five years younger than the deceased Pensioner.

#### B.6.4 Payment of pensions

- (a) For purposes of this clause B.6, the following words have the following meanings:

**Consumer Price Index** means all groups consumer price index number for the weighted average of eight capital cities published by the Australian Bureau of Statistics in respect of the June quarter and the December quarter for each year.

**Financial Year** means a period of twelve months ending on 30 June.

**Financial Half Year** means a period of six months ending on 30 June or 31 December.

**Prescribed Proportion** in relation to a prescribed half year means:

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

where:

**A** is the Consumer Price Index number for the prescribed half year; and

**B** is the Consumer Price Index number for the quarter ended 31 December 1996 or the highest Consumer Price Index number in the half years between that quarter and the Prescribed Half Year (whichever is higher) and where the Prescribed Proportion consists of or includes a fraction of a whole number, it shall be deemed to have been calculated in accordance with this clause B.6.4 if it is calculated to the nearest one hundredth part.

**Prescribed Half Year** means the half year ended 31 December 1996 and any subsequent half year ending on 31 December or 30 June in which the Consumer Price Index is higher than the highest Consumer Price Index in or since the half year ended 31 December 1996.

- (b) Pensions under this clause B.6 shall be payable in fortnightly instalments or at any other frequency as determined by the Trustee either generally or in any particular case.
- (c) In order to ascertain the amount of an instalment, the annual pension shall be divided by 26.
- (d) Any pension to which a Pensioner or the Spouse or Child of a deceased Pensioner is entitled under this clause B.6 shall:
  - (i) if it is then payable, be increased on the payment of the first instalment of pension in the month of June or December by an amount equal to one-sixth of the prescribed proportion of the pension that person is receiving under this clause B.6 for every whole month or part of a month during which that person was entitled to the pension during the preceding Financial Half Year; and
  - (ii) if for any reason it is not then payable, be notionally so increased as if it is then payable.
- (e)
  - (i) Where a Pensioner becomes employed by an Authority (excluding the circumstance in which the Pensioner has remained an Employee beyond the age of 65 years and is receiving a pension as a result of clause B.5.1(d) of this Part 1 of Schedule B while remaining an Employee), any pension payable shall be reduced by the amount by which the remuneration from the Authority together with the pension exceeds the current equivalent of the pensioner's salary on retirement.
  - (ii) For this purpose "current equivalent of salary on retirement" means the salary as determined by the Trustee as being equivalent to the salary payable to the Pensioner immediately prior to retirement, adjusted for any increases.
- (f)
  - (i) The Trustee may determine that a Pensioner may, within the period of three months immediately prior to attaining the age of 70 years, apply in writing to convert part of the fortnightly pension entitlement to an equivalent entitlement by way of a lump sum payment as determined by the Trustee on the advice of an Actuary and the proportion of the pension which may be converted shall be determined by the Trustee.



- (ii) Where a Pensioner applies under clause B.6.4(f)(i) of this Part 1 of Schedule B and the application is approved by the Trustee, the Pensioner shall be entitled to the lump sum payment and the pension shall be reduced by the amount of the pension entitlement converted to a lump sum.
- (iii) Any application under clause B.6.4(f)(i) of this Part 1 of Schedule B shall apply only in relation to that part of the entitlement of the pension which relates to the pension that would be payable after becoming entitled to the lump sum payment until death.
- (iv) A Pensioner shall not be entitled to make more than one application under clause B.6.4(f)(i) of this Part 1 of Schedule B.

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## **B.7 Transfers from Other Sub-Divisions**

### **B.7.1 Transfers from the City of Melbourne Superannuation Fund Sub-Division**

- (a) If a Member of the Former Member of the City of Melbourne Superannuation Fund Sub-Division ceases to be an Employee of an Employer in the Former Member of the City of Melbourne Superannuation Fund Sub-Division so as to become an Employee of an Authority (as listed in Annexure 4 to this Part 1):
  - (i) including the Melbourne City Council or an Employer under Part 2 of this Schedule B; but
  - (ii) excluding:
    - (A) Citywide Solutions Pty Ltd ACN 006 960 085; or
    - (B) a wholly owned subsidiary of the Melbourne City Council established for the sole purpose of providing services to the City of Melbourne; or
    - (C) a wholly owned company in which all the equity capital is held and continues to be held by the Melbourne City Council and another Council or Councils having contiguous boundaries with the City of Melbourne and which is established for the sole purpose of providing services to all of those Councils,

the Employee will become a Member of this Sub-Division and the special benefit provisions in paragraph (b) shall apply.

- (b) The Member's resignation benefit under clause B.5.9 of this Part 1 of Schedule B and retirement benefit under clause B.5.2 of this Part 1 of Schedule B must be calculated as if the Member had been a Member of this Sub-Division for the period in which he or she was a Member of the Former Member of the City of Melbourne Superannuation Fund Sub-Division, but with respect to the period in the Former Member of the City of Melbourne Superannuation Fund Sub-Division up to the date of commencement as a Member of this Sub-Division the benefit must be calculated in accordance with the relevant provisions of Part 2 of Schedule B which benefit must then be converted by the Actuary into the corresponding benefit under this Part 1 of Schedule B.

## **B.7.2 Transfers from the Former Members of the Melbourne Water Corporation Employees' Superannuation Fund Sub-Division**

- (a) If a Member of the Former Members of the Melbourne Water Corporation Employees' Superannuation Fund Sub-Division ceases to be an Employee of an Employer in the Former Members of the Melbourne Water Corporation Employees' Superannuation Fund Sub-Division so as to become an Employee of an Authority (as listed in Annexure 4 to this Part 1) other than Melbourne Parks and Waterways, the Employee will become a Member of this Sub-Division and the special benefit provisions in paragraph (b) will apply.
- (b) The Member's resignation benefit under clause B.5.9 of this Part 1 of Schedule B and retirement benefit under clause B.5.2 of this Part 1 of Schedule B must be calculated as if the Member had been a Member of this Sub-Division for the period in which he or she was a Member of the Former Members of the Melbourne Water Corporation Employees' Superannuation Fund Sub-Division, but with respect to the period in the Former Member of the Melbourne Water Corporation Employees' Superannuation Fund Sub-Division up to the date of commencement as a Member of this Sub-Division the benefit must be calculated in accordance with the relevant provisions of Part 3 of this Schedule B which benefit must then be converted by the Actuary into the corresponding benefit under Part 1 of this Schedule B.

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## **B.8 Adjustments for Valid Family Law Arrangements**

Notwithstanding anything to the contrary in this Part 1, the Trustee may:

- (a) adjust a benefit payable to or in respect of a Member or Pensioner under this Part 1; or
- (b) make an adjustment in respect of a benefit which will become payable to or in respect of a Member or Pensioner under this Part 1,

to the extent, and in any manner, as permitted by Superannuation Law to take account of a valid family law arrangement.

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## **B.9 Non-Commutable Account-Based Pensions**

### **B.9.1 Definition**

In this clause B.9, Non-Commutable Account-Based Pension has the meaning given in Schedule A.

### **B.9.2 Application to receive a Non-Commutable Account-Based Pension**

Subject to:

- (a) any rules, terms and conditions that the Trustee may determine;
- (b) obtaining the prior written approval of the Member's Employer; and
- (c) the requirements of Superannuation Law,

a Member may apply to the Trustee to receive a Non-Commutable Account-Based Pension from the Accumulation and Pension Division and the Trustee may approve the Member's application.

### **B.9.3 Transfer to the Accumulation and Pension Division and adjustment of benefits**

- (a) This clause B.9.3 applies in respect of a Member who is approved by the Trustee to receive a Non-Commutable Account-Based Pension.
- (b) The Member's Pre-Retirement Pension Accrued Benefit will (together with amounts from any accounts maintained for the Member in the Fund) be transferred to a Benefit Account in respect of the Member under the Accumulation and Pension Division and will be paid as a Non-Commutable Account-Based Pension in accordance with Schedule A.
- (c) If a benefit becomes payable to or in respect of a Member under this Part 1 (including if the Member becomes entitled to elect to receive Old Benefits in accordance with clause B.5.1 of this Part 1 of Schedule B), then, notwithstanding any other provision of this Schedule B, the relevant benefit will be reduced by an adjustment to the Member's period of Service (or by any other manner of adjustment) as determined by the Trustee on the advice of the Actuary so as to take into account the Member's Pre-Retirement Pension Accrued Benefit which was transferred to a Benefit Account in accordance with clause B.9.3(b) of this Part 1 of Schedule B.

## Annexure 1 of Part 1 - Old Benefits - Disability Lump Sum

The old lump sum Disability benefit for a Member is calculated by multiplying the Adjusted Final Salary by the Benefit Salary Multiple obtained for the age last birthday when the Member commenced membership of the Fund.

<i>Age</i>	<i>Benefit Salary Multiple</i>	<i>Age</i>	<i>Benefit Salary Multiple</i>
65	-	39	2.86
64	0.11	38	2.97
63	0.22	37	3.08
62	0.33	36	3.19
61	0.44	35	3.30
60	0.55	34	3.41
59	0.66	33	3.52
58	0.77	32	3.63
57	0.88	31	3.74
56	0.99	30	3.85
55	1.10	29	3.96
54	1.21	28	4.07
53	1.32	27	4.18
52	1.43	26	4.29
51	1.54	25	4.40
50	1.65	24	4.40
49	1.76	23	4.40
48	1.87	22	4.40
47	1.98	21	4.40
46	2.09	20	4.40
45	2.20	19	4.40
44	2.31	18	4.40
43	2.42	17	4.40
42	2.53	16	4.40
41	2.64	15	4.40
40	2.75		

## Annexure 2 of Part 1 - Old Benefits - Disability Lump Sum Reduction

The percentage reduction is calculated by deducting from 100 the figure obtained by adding the figure from column (1) under the heading of the appropriate Medical Class for the age last birthday when the Member commenced in the Fund plus the figure obtained from column (2) for the age last birthday when the Member commenced in the Fund multiplied by the number of complete years the Member was in the Fund at the age of becoming a Disability Beneficiary.

Age	2A (1)	2A ADJ (2)	2B (1)	2B ADJ (2)	2C (1)	2C ADJ (2)	2D+3 (1)	2D+3+ ADJ (2)
64	100.00		100.00		100.00		100.00	
63	88.70	11.30	82.70	17.30	76.70	23.30	65.00	35.00
62	82.80	8.60	73.90	13.05	64.80	17.60	55.00	22.50
61	79.10	6.97	68.40	10.53	57.60	14.13	50.00	16.67
60	76.60	5.85	64.70	8.83	52.60	11.85	45.00	13.75
59	75.40	4.92	62.90	7.42	50.20	9.96	43.00	11.40
58	74.20	4.30	61.10	6.48	47.70	8.72	41.00	9.83
57	72.90	3.87	59.20	5.83	45.30	7.81	39.00	8.71
56	71.70	3.54	57.40	5.33	42.90	7.14	37.00	7.88
55	70.50	3.28	55.50	4.94	40.40	6.62	35.00	7.22
54	69.90	3.01	54.70	4.53	39.40	6.06	34.00	6.60
53	69.30	2.79	53.90	4.19	38.30	5.61	33.00	6.09
52	68.80	2.60	53.10	3.91	37.20	5.23	32.00	5.67
51	68.20	2.45	52.20	3.68	36.10	4.92	31.00	5.31
50	67.60	2.31	51.40	3.47	35.10	4.64	30.00	5.00
49	67.30	2.18	50.80	3.28	34.40	4.37	29.50	4.70
48	66.90	2.07	50.30	3.11	33.70	4.14	29.00	4.44
47	66.50	1.97	49.80	2.95	33.00	3.94	28.50	4.21
46	66.20	1.88	49.20	2.82	32.30	3.76	28.00	4.00
45	65.80	1.80	48.70	2.70	31.60	3.60	27.50	3.82
44	65.50	1.73	48.20	2.59	31.00	3.45	27.00	3.65
43	65.20	1.66	47.80	2.49	30.40	3.31	26.50	3.50
42	64.90	1.60	47.30	2.40	29.80	3.19	26.00	3.36
41	64.60	1.54	46.90	2.31	29.20	3.08	25.50	3.24
40	64.30	1.49	46.40	2.23	28.70	2.97	25.00	3.13
39	64.00	1.44	46.00	2.16	28.10	2.88	24.50	3.02
38	63.70	1.40	45.60	2.09	27.60	2.78	24.00	2.92
37	63.40	1.36	45.10	2.03	27.00	2.70	23.50	2.83
36	63.10	1.32	44.70	1.97	26.40	2.63	23.00	2.75
35	62.80	1.28	44.30	1.92	25.90	2.56	22.50	2.67
34	62.50	1.25	43.90	1.87	25.40	2.49	22.00	2.60
33	62.30	1.22	43.50	1.82	24.90	2.42	21.50	2.53
32	62.00	1.19	43.10	1.78	24.40	2.36	21.00	2.47
31	61.80	1.16	42.70	1.74	23.90	2.31	20.50	2.41
30	61.50	1.13	42.30	1.70	23.40	2.25	20.00	2.35
29	61.20	1.11	41.90	1.66	22.90	2.20	19.50	2.30
28	61.00	1.08	41.60	1.62	22.40	2.16	19.00	2.25
27	60.70	1.06	41.20	1.59	21.90	2.11	18.50	2.20
26	60.50	1.04	40.80	1.56	21.50	2.07	18.00	2.16
25	60.20	1.02	40.40	1.53	21.00	2.03	17.50	2.12
24	60.00	1.00	40.10	1.50	20.70	1.98	17.00	2.08
23	59.80	0.98	39.80	1.47	20.30	1.94	16.50	2.04
22	59.60	0.96	39.60	1.44	20.00	1.90	16.00	2.00
21	59.40	0.94	39.30	1.41	19.60	1.87	15.50	1.97
20	59.20	0.93	39.00	1.39	19.30	1.83	15.00	1.93

<i>Age</i>	2A (1)	2A ADJ (2)	2B (1)	2B ADJ (2)	2C (1)	2C ADJ (2)	2D+3 (1)	2D+3+ ADJ (2)
19	59.00	0.91	38.80	1.36	18.90	1.80	14.50	1.90
18	58.90	0.89	38.50	1.34	18.60	1.77	14.00	1.87
17	58.70	0.88	38.30	1.31	18.30	1.74	13.50	1.84
16	58.60	0.86	38.00	1.29	18.00	1.71	13.00	1.81
15	58.40	0.85	37.80	1.27	17.70	1.68	12.50	1.79

## Annexure 3 of Part 1 - Disability Pension Reduction

1. The percentage reduction is calculated by deducting from 100 the figure shown under the appropriate Medical Class for the age last birthday of the Member at the date of becoming a Disability Beneficiary.
2. If the Member was classified Class 2B, Class 2C, Class 2D or Class 3 under the 1958 Act and had been a member of the Fund for less than 4 years and was under the age of 55 at the date of becoming a Disability Beneficiary, the reduction will be 100%.
3. If a Member was classified Class 2B, Class 2C, Class 2D or Class 3 under the 1958 Act and had been a member of the Fund for less than 2 years and had attained the age of 55 at the date of becoming a Disability Beneficiary, the reduction will be 100%.
4. Where the percentage from the Schedule, or in consequence of the operation of paragraphs 2 or 3 is zero the Member will be entitled to an additional lump sum payment of 8.75% of Adjusted Final Salary multiplied by the number of days the Member was a member of the Fund and divided by 365.

Age	Class 2A	Class 2B	Class 2C	Class 2D	Class 3
64	100.00	66.66	66.66	66.66	66.66
63	100.00	66.66	66.66	66.66	66.66
62	100.00	66.66	66.66	66.66	66.66
61	100.00	66.66	66.66	66.66	66.66
60	100.00	66.66	66.66	66.66	66.66
59	100.00	66.66	66.66	66.66	66.66
58	100.00	66.66	66.66	66.66	66.66
57	100.00	66.66	66.66	66.66	66.66
56	100.00	66.66	66.66	66.66	66.66
55	100.00	66.66	66.66	66.66	66.66
54	100.00	66.66	66.66	00.00	66.66
53	100.00	66.66	66.66	00.00	00.00
52	100.00	66.66	66.66	00.00	00.00
51	100.00	66.66	66.66	00.00	00.00
50	100.00	66.66	66.66	00.00	00.00
49	100.00	66.66	66.66	00.00	00.00
48	100.00	66.66	66.66	00.00	00.00
47	100.00	66.66	66.66	00.00	00.00
46	100.00	66.66	66.66	00.00	00.00
45	100.00	66.66	66.66	00.00	00.00
44	100.00	66.66	66.66	00.00	00.00
43	100.00	66.66	66.66	00.00	00.00
42	100.00	66.66	66.66	00.00	00.00
41	100.00	66.66	66.66	00.00	00.00
40	100.00	66.66	66.66	00.00	00.00
39	100.00	66.66	66.66	00.00	00.00
38	100.00	66.66	66.66	00.00	00.00
37	100.00	66.66	66.66	00.00	00.00
36	100.00	66.66	66.66	00.00	00.00
35	100.00	66.66	66.66	00.00	00.00
34	100.00	66.66	66.66	00.00	00.00
33	100.00	66.66	66.66	00.00	00.00
32	100.00	66.66	66.66	00.00	00.00
31	100.00	66.66	66.66	00.00	00.00
30	100.00	66.66	66.66	00.00	00.00

Age	Class 2A	Class 2B	Class 2C	Class 2D	Class 3
29	100.00	66.66	66.66	00.00	00.00
28	100.00	66.66	66.66	00.00	00.00
27	100.00	66.66	66.66	00.00	00.00
26	100.00	66.66	66.66	00.00	00.00
25	100.00	66.66	66.66	00.00	00.00
24	100.00	66.66	66.66	00.00	00.00
23	100.00	66.66	66.66	00.00	00.00
22	100.00	66.66	66.66	00.00	00.00
21	100.00	66.66	66.66	00.00	00.00
20	100.00	66.66	66.66	00.00	00.00
19	100.00	66.66	66.66	00.00	00.00
18	100.00	66.66	66.66	00.00	00.00
17	100.00	66.66	66.66	00.00	00.00
16	100.00	66.66	66.66	00.00	00.00
15	100.00	66.66	66.66	00.00	00.00



## Annexure 4 of Part 1 - Authorities for purposes of section 3(1) of the 1988 Act as at 1 July 1998

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Andersons Creek Public Cemetery  
Ararat Cemetery Trust  
Ballarat General Cemetery  
Benalla Cemetery Trust  
Bendigo Cemeteries Trust  
Boroondara Cemetery Trust  
Box Hill Public Cemetery  
Brighton General Cemetery Trust  
Burwood Cemetery Trust  
Castlemaine Cemetery Trust  
Cheltenham Cemetery Trust  
Colac General Cemetery Trust  
Eltham Public Cemetery  
Emerald Cemetery Trust  
Fawkner Crematorium and Memorial Park  
Geelong Cemeteries Trust  
Hamilton Public Cemetery Trust  
Hazelwood Cemetery Trust  
Heathcote Cemetery Trust  
Horsham Public Cemetery Trust  
Lilydale Cemetery Trust  
Maddingley- Cemetery Trust  
Melbourne Chevra Kadisha  
Mildura Cemetery Trust  
Pleasant Creek Public Cemetery  
Queenscliff Cemetery Trust  
Rye Cemetery Trust  
Sale Public Cemetery  
Shepparton Public Cemetery Trust  
St Arnaud Public Cemetery  
Stratford Cemetery Trust  
Templestowe Cemetery Trust  
The Trustees of Memorial Park  
Tower Hill Cemetery Trust  
Traralgon Cemetery Trust  
Trustees of Necropolis Springvale  
Warragul Cemetery Trust  
Warnambool General Cemetery

Yarram New Cemetery Trust

Carringbush Regional Library  
Casey Cardinia Library Corporation  
Central Highlands Regional Library  
Corangamite Regional Library Service  
Eastern Regional Library  
Echuca Regional Library  
Geelong Regional Library Corporation  
Glenelg Regional Library Corporation  
Goulburn Valley Regional Library Corporation  
High Country Library Corporation  
Hume Moonee Valley Regional Library Corporation  
North Central Goldfields Library  
Swan Hill Regional Library  
Upper Goulburn Regional Library  
Upper Murray Regional Library  
West Gippsland Regional Library Corporation  
Whitehorse Manningham Regional Library  
Wimmera Regional Library Corporation  
Yarra Plenty Regional Library  
Yarra-Melb Regional Library Corporation

Alpine Shire Council  
Banyule City Council  
Bass Coast Shire Council  
Baw Baw Shire Council  
Bayside City Council  
Brimbank City Council  
Buloke Shire Council  
Campaspe Shire Council  
Cardinia Shire Council  
Casey City Council  
Central Goldfields Shire Council  
City of Ballarat  
City of Boroondara  
City of Greater Bendigo City  
City of Greater Geelong  
City of Hobsons Bay  
City of Port Phillip  
City of Stonnington

City of Yarra  
Colac Otway Shire Council  
Corangamite Shire Council  
Darebin City Council  
Delatite Shire Council  
East Gippsland Shire Council  
Frankston City Council  
Gannawarra Shire Council  
Glen Eira City Council  
Glenelg Shire Council  
Golden Plains Shire Council  
Greater Dandenong City Council  
Greater Shepparton City Council  
Hepburn Shire Council  
Hindmarsh Shire Council  
Horsham Rural City Council  
Hume City Council  
Indigo Shire Council  
Kingston City Council  
Knox City Council  
La Trobe Shire Council  
Loddon Shire Council  
Macedon Ranges Shire Council  
Manningham City Council  
Maribyrnong City Council  
Maroondah City Council  
Melbourne City Council  
Melton Shire Council  
Mildura Rural City Council  
Mitchell Shire Council  
Moirā Shire Council  
Monash City Council  
Moonee Valley City Council  
Moreland City Council  
Mornington Peninsula Shire Council  
Mount Alexander Shire Council  
Moyne Shire Council  
Murrindindi Shire Council  
Nillumbik Shire Council  
Northern Grampians Shire  
Pyrenees Shire Council

Queenscliffe Borough Council  
Rural City of Ararat  
Rural City of Wangaratta  
Shire of Moorabool  
South Gippsland Shire Council  
Sthn Grampians Shire Council  
Strathbogie Shire Council  
Surf Coast Shire Council  
Swan Hill Rural City Council  
Towong Shire Council  
Warrnambool City Council  
Wellington Shire Council  
West Wimmera Shire Council  
Whitehorse City Council  
Whittlesea City Council  
Wodonga Rural City Council  
Wyndham City Council  
Yarra Ranges Shire Council  
Yarriambiack Shire Council

Ballarat Regional Board Planning & Development  
Baw Baw Shire Quarry  
Bullock Creek Improvement Trust  
Bundoora Park Committee of Management Inc  
Eastern Regional Waste Management Group  
Geelong Performing Arts Centre Trust  
Local Authorities Superannuation Board  
Melbourne Market Authority  
Municipal Association of Victoria  
Northern Region Commission  
Phillip Island Nature Park Inc  
Purchasing Victoria Co-op Ltd  
Southern Eastern Regional Waste Management  
Strathdownie Drainage Trust  
Swan Hill Pioneer Settlement  
Victorian Arts Centre Trust  
Victorian Dairy Industry Authority  
Yarra Bend Park Trust  
Avoca River Management Board  
Barwon Regional Water Authority  
Central Gippsland Regional Water

Central Highlands Regional Water  
Coliban Region Water Authority  
Corangamite Catchment Management Authority  
East Gippsland Catchment Management Authority  
East Gippsland Regional Water  
First Mildura Irrigation Trust  
Gippsland and Southern Rural Water Authority  
Glenelg Hopkins Catchment Mgt Authority  
Glenelg Regional Water Authority  
Goulburn Murray Rural Water  
Goulburn Valley Region Water Authority  
Grampians Region Water Authority  
Lower Murray Region Water Authority  
Merri Creek Management Committee  
Mid Goulburn Broken Waterways  
North East Catchment Management Authority  
North East Region Water Authority  
Portland Coast Region Water Authority  
South Gippsland Region Water Authority  
South West Water Authority  
Sunraysia Rural Water Authority  
Upper Goulburn Waterways Authority  
West Gippsland Catchment Management Authority  
Western Regional Water Authority  
Westernport Regional Water Authority  
Wimmera Mallee Rural Water

## Part 2 – Former Members of the City of Melbourne Superannuation Fund Sub-Division

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### B.1 Application and Interpretation

#### B.1.1 Application

The provisions of this Part 2 of Schedule B relate only to Members of the Former Member of the City of Melbourne Superannuation Fund Sub-Division of the Division.

#### B.1.2 Definitions

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

**Annual Pay** means in relation to a Member at any particular date the annual rate of ordinary time earnings for his or her usual job or employment at that date as determined in accordance with the standard procedures laid down from time to time by the Council and approved by the Trustee and suitably endorsed by it or for and on its behalf for the purposes of identifying those standard procedures as being those in force at the relevant date of determination provided that in the event that a Member's salary or wage is reduced for any reason the Member and the Trustee may agree in writing that the Member's Annual Pay in force at the date of the reduction shall continue to be the Member's Annual Pay for the purposes of this Part 2.

**Associated Employer** means any person which was admitted to participation in the Previous Fund as an Associated Employer and which has not ceased to participate in this Sub-Division and includes any person which replaces or succeeds such an Associated Employer.

**Council** means the Council of the City of Melbourne or any other relevant Employer.

**Date of Disablement** means in relation to a Member who becomes Totally and Permanently Disabled or Temporarily Totally Disabled the later of:

- (a) the date determined by the Trustee to be that on which the Member last ceased to be actively employed by the Employer; or
- (b) the date determined by the Trustee to be that on which the illness or injury which the Trustee, acting on evidence satisfactory to it considers was the primary cause of such disablement, commenced or occurred,

or, in any case, such other date (if any) as the Trustee may expressly declare to be the Member's Date of Disablement.

**Declared Rate** means such rate of interest (which may be positive or negative) as may be determined in accordance with the applicable requirements of Superannuation Law by the Trustee, after obtaining the advice of the Actuary, in respect of any period for the purposes of the whole or any particular provision of this Part 2 and, without limiting the generality of the foregoing, the Trustee may prospectively determine a Declared Rate on an interim basis in respect of a particular period and for a particular purpose, and may subsequently and retrospectively determine a Declared Rate on a final or declared basis in respect of that period and for that purpose.

**Final Average Pay** means the average Annual Pay of the Member over the period of one year immediately preceding the earlier of the date on which the Member ceases to be an Employee and the Normal Retirement Date provided that if the period of the Member's Fund Membership which precedes the earlier of the aforesaid dates is of a duration of less than one year, then the average of the Member's Annual Pay over the said period of the Member's Fund Membership shall be used.

**Final Average Indexed Pay** means the Final Average Pay of the Member increased in accordance with movements in the Price Index.

**Fund Membership** means:

- (a) in relation to a Member who is not a Previous Officers' Fund Member, the most recent uninterrupted period during which the Member has been an Employee (including the period which counted for purposes of the 1988 Fund) and includes in the case of a Member who was formerly covered by the R.A.S. Scheme the most recent period of his or her Service completed prior to 1 July 1986 together with in the case of such a Member who was a Member on 1 July 1986 and whose most recent period during which he or she has been an Employee is at least ten years such further periods prior to 1 July 1986 that would have been taken into account for the purposes of determining his or her benefits under the R.A.S. Scheme had the R.A.S. Scheme continued in force; or
- (b) in relation to a Previous Officers' Fund Member, the most recent uninterrupted period during which the Member has been an Employee but excluding any such period preceding the date on which the Member last became a member of the Previous Officers' Fund,

where the relevant period is measured in years with each additional day counting as a fraction of the year.

**Interim Deed** means the Interim Trust Deed by which the Previous Fund was originally established dated 22 May 1986 as amended.

**Member** means a person who is a Member of this Sub-Division and who is not a Pensioner.

**Normal Retirement Date** means the date on which a Member attains the age of 65 years.

**Pre-Retirement Pension Accrued Benefit** means the amount of a Member's accrued benefit under this Part 2 which (after having first transferred to the Accumulation and Account -based Pension Division all amounts in any accounts maintained for the Member in this Sub-Division, including an account maintained for purposes of clause B.4.5 of this Part 2 of Schedule B and any Benefit Account under Schedule A) the Member elects to transfer to the Accumulation and Pension Division for the purpose of establishing an Account Based Pension (as defined in Schedule A) and which the Trustee approves for that purpose.

**Preserved Benefit** means in relation to a Member the Preserved Benefit specified in whichever of the subsequent parts of this Part 2 is applicable to the Member.

**Previous Fund** means the City of Melbourne Superannuation Subplan of the 1988 Fund in effect immediately prior to the repeal of the 1988 Act.

**Previous Officers' Fund** means the City of Melbourne Officers' Superannuation Fund governed by a set of Rules adopted by the Council on 21 August 1984.

**Previous Officers' Fund Member** means a Member who was a member (thereunder described as an "Officer") of the Previous Officers' Fund on 30 June 1986.

**Previous Officers' Fund Rules** means the Rules by which the Previous Officers' Fund was governed immediately prior to 1 July 1986.

**Price 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 or, if such index shall cease to be published or in the opinion of the Trustee such Index no longer appropriately reflects general price movements, then such other index reflecting general price movements as the Trustee may from time to time select shall be used in substitution therefor.

**R.A.S. Scheme** means the Retirement Gratuity Scheme operated for certain Employees of the Council prior to 1 July 1986.

**Recognised Scheme** means a scheme or arrangement (excluding the Fund) which has governmental or legislative or trade union support or recognition or which is established or maintained pursuant to or in connection with an industrial agreement or like arrangement or undertaking (whether or not an Employer is a party to such agreement, arrangement or undertaking).

**Retrenchment** means in relation to a Member ceasing to be an Employee in circumstances where the Employer certifies to the Trustee in a form acceptable to the Trustee that:

- (a) the termination was for one or more of the following reasons -
  - (i) that the Member's employment or position is no longer necessary; or
  - (ii) that the work for which the Member was engaged or which was subsequently allotted to the Member is finished or is about to finish (except in the case of the expiration of a contracted period of employment or the completion of a contracted task); or
  - (iii) that the quantity of work which the Member is qualified or competent to perform has diminished and has rendered necessary a reduction in the staff of the Employer; and
- (b) the Member was not offered an alternative position with the Employer which the Employer considers to be reasonably comparable (though not necessarily equivalent) to the position which the Member holds at the time retrenchment is contemplated,

and **Retrenched** shall have a corresponding meaning provided that an Employee shall in any event be deemed to have been retrenched if in the opinion of the Trustee that Employee voluntarily terminated his or her employment in anticipation of retrenchment.

**Service** means in relation to a Member the continuous period as an Employee with one or more Employers, whether concurrently or successively and, for the purpose of determining the Member's length of Service, Service means the most recent uninterrupted period during which the Member has been an Employee together with, in the case of a Member who was formerly covered by the R.A.S. Scheme and who was a member of the Previous Fund or a Previous Officers' Fund Member on 1 July 1986 and whose most recent period during which he or she has been an Employee is at least ten years, such further periods prior to 1 July 1986 that would have been taken into account for the purposes of determining his or her benefits under the R.A.S. Scheme had the R.A.S. Scheme



continued in force provided that, unless otherwise determined by the Council with the written approval of the Trustee, employment with an Associated Employer before the date as at which it becomes an Associated Employer shall not count as Service.

**Sub-Division** means this Former Members of the City of Melbourne Superannuation Fund Sub-Division.

**Temporary Total Disablement** in relation to a Member:

- (a) shall have the same meaning as is given to those words or what the Trustee considers to be the corresponding word or words for the purposes of any policy of insurance effected or acquired by the Trustee pursuant to the Deed and under which insurance is or may become payable in the event of the disablement of any Member or group of Members, and (unless otherwise agreed between the Trustee and the Council in any particular case) any determination by the relevant Insurer as to whether or not a Member is so disabled in terms of such policy shall be final and binding on the Trustee, the Member and all other interested persons for the purposes of the Deed provided that, notwithstanding the provisions of any such policy, a Member shall not be classified as meeting this definition unless the Member has been continually absent from active employment for not less than three months provided further that if there is more than one such policy in force, the Trustee shall determine which of such policies shall apply for this purpose; and
- (b) if at the relevant time there is no such policy in force or in any other circumstances agreed between the Trustee and the Council, Temporary Total Disablement shall mean disablement (not amounting to Total and Permanent Disablement) due to an illness or injury as a result of which:
  - (i) the Member has been continuously absent from active employment for not less than three months; and
  - (ii)
    - (A) if the Member has been continuously absent from active employment for less than twenty seven months (or such other period, if any, as may be agreed between the Trustee and the Council from time to time either generally or in any particular case), in the opinion of the Trustee after consideration of information and advice satisfactory to it, the Member is incapacitated to such an extent as to render the Member unable, for the time being, to resume work in the Member's former occupation; or
    - (B) if the Member has been continuously absent from active employment for a period greater than that provided for in paragraph (i), in the opinion of the Trustee after consideration of information and advice satisfactory to it, the Member is incapacitated to such an extent as to render the Member unable, for the time being, to engage in any Gainful Employment for which the Member is reasonably qualified by education, training or experience,

provided always that, unless otherwise agreed between the Trustee and the Council from time to time either generally or in any particular case, Temporary Total Disablement shall not include disablement arising as a result of an illness

or injury which, in the opinion of the Trustee after consideration of information and advice satisfactory to it, has been inflicted, incurred or aggravated for the purpose of obtaining a benefit, and **Temporarily Totally Disabled** shall have a corresponding meaning.

**Total and Permanent Disablement** in relation to a Member means disablement due to an illness or injury as a result of which:

- (a) the Member has been continuously absent from employment for a period of at least six months (or such lesser period as the Trustee may determine either generally or in any particular case); and
- (b) in the opinion of the Trustee after consideration of information and advice satisfactory to it, the Member is incapacitated to such an extent as to render the Member unlikely ever to engage or work for reward in any occupation for which the Member is reasonably qualified by education, training or experience,

and **Totally and Permanently Disabled** shall have a corresponding meaning provided that, if the Trustee pursuant to the Deed has effected a policy of insurance under which insurance is or may become payable in the event of the disablement of any Member or group of Members and the circumstances in which the disablement insurance is or would have been payable under any such policy are in the opinion of the Trustee similar to Total and Permanent Disablement defined as aforesaid, then the Trustee may determine that the meaning of Total and Permanent Disablement shall in respect of the Member be modified in the manner and to the extent necessary (as determined by the Trustee) to ensure that the Member shall only be considered to be Totally and Permanently Disabled in the same circumstances as disablement insurance is or would have been payable in respect of any Member under such policy.

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## **B.2 Administration and Procedures**

### **B.2.1 Transfer out of Fund while still an Employee**

Notwithstanding clause 8.1 of the Deed, while a Member is an Employee with the consent of the Member and the Council, the Trustee may pay or transfer to or towards an Approved Benefit Arrangement an amount agreed or determined and in a manner agreed between the Trustee and the Council but not exceeding an amount advised by the Actuary to the Trustee as being the Member's Equitable Share.

### **B.2.2 Transfer of employment from one Employer to another**

Subject to clause B.7.1 of Part 1 of Schedule B, if a Member transfers as an Employee of one Employer under this Part 2 to become an Employee of another Employer under this Part 2, the Member shall notwithstanding anything expressed or implied to the contrary in this Part 2 remain a member of this Sub-Division and that transfer shall not be deemed to be a cessation of employment or Service for the purposes of this Part 2. At the discretion of the Council any break in Service which the Council may determine to be trivial shall not be regarded as a cessation of employment or Service but the period of such a break shall not be included as a period of Service or Fund Membership for the purposes of this Part 2.

### **B.2.3 Special arrangements**

The Council, after consulting the Actuary and with the agreement of the Employee or Member concerned, may admit an Employee to membership or vary the terms of a Member's membership subject to such special terms and

conditions as to benefits, contributions or otherwise as the Council thinks fit. Any such agreement shall be evidenced in writing (in one or more documents) by, and shall be subject to the approval of, the Trustee and each such agreement shall for the purposes of this Part 2 be deemed to form part of this Part 2.

#### **B.2.4 Temporary cessation of employment and leave without pay**

- (a) If a Member ceases to be an Employee in circumstances in which it is reasonable to expect that cessation will only be of a temporary nature and that the Member will again become an Employee, the Trustee may allow the Member to continue as a member of this Sub-Division subject to such conditions as may be agreed upon by the Trustee, the Member and the Employer.
- (b) If any Member is granted leave of absence without pay by an Employer, the Member shall continue to be a member of this Sub-Division on such conditions as are determined by the Trustee and approved by the Council.

#### **B.2.5 Part-time employment**

Notwithstanding anything expressed or implied to the contrary in this Part 2, if a Member is or becomes an Employee in a part-time capacity, that Member shall contribute to this Sub-Division for the period that he or she is an Employee in a part-time capacity (subject to the provisions of clause B.3.1 of Part 2 of Schedule B) and benefits shall be secured for and in respect of the Member during and in respect of that period on a basis determined by the Trustee after obtaining the advice of the Actuary and the Trustee may in like manner re-determine and adjust that basis in the event that the Member's part-time hours change or the Member becomes an Employee in a full-time capacity.

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### **B.3 Member Contributions**

#### **B.3.1 Member contributions**

- (a) Subject to the other provisions of this clause B.3.1 each Member shall contribute to this Sub-Division the amounts and in the manner specified in whichever of the subsequent parts of this Part 2 is applicable to that Member.
- (b) Member shall be deemed to have expressly authorised the Employer to deduct any contributions which the Member is liable to pay pursuant to this clause B.3.1 from the Member's remuneration from that Employer whenever that remuneration is paid. Any amount so deducted by an Employer shall be held by that Employer upon trust for the Fund to be paid to this Sub-Division in the manner and at the times determined by the Trustee.
- (c) Unless otherwise provided in whichever of the subsequent parts of this Part 2 is applicable to the Member, no contributions shall be payable by a Member after the Member ceases to be an Employee or, in any case, after the Normal Retirement Date.
- (d) Subject where applicable to the other provisions of this clause B.3.1, a Member may (with the approval of the Trustee and subject to such special terms and conditions as the Trustee shall think fit to impose) from time to time contribute to this Sub-Division by deduction from remuneration or otherwise, amounts additional to those the Member is making or is required to make pursuant to clause B.3.1(a) of Part 2 of

Schedule B and any contributions so made shall be applied for the benefit of the Member pursuant to clause B.4.5 of Part 2 of Schedule B.

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## **B.4 Benefits**

### **B.4.1 Retirement benefits**

(a) Unless whichever of the subsequent parts of this Part 2 is applicable to the Member specifies to the contrary, subject to Schedule A and to clause B.9.2 of Part 2 of Schedule B, if a Member ceases to be an Employee:

(i) on the Normal Retirement Date; or

(ii) on or after the attainment of the age of 55 years but prior to the Normal Retirement Date,

there shall be paid to the Member from this Sub-Division the lump sum retirement benefit specified in whichever of the subsequent parts of this Part 2 is applicable to the Member.

(b) If a Member continues as an Employee after the Normal Retirement Date then, subject to Schedule A and to clause B.9.2 of Part 2 of this Schedule B:

(i) subject to clause B.4.1(b)(ii) of Part 2 of Schedule B, upon the Member's subsequent retirement as an Employee there shall be paid to the Member from this Sub-Division the lump sum retirement benefit which would have been payable pursuant to clause B.4.1(a) of Part 2 of Schedule B if the Member had retired on the Normal Retirement Date together with interest thereon for the period from the Normal Retirement Date to the Member's actual date of retirement at the Declared Rate; and

(ii) subject to Superannuation Law (and notwithstanding clause 9.3 of the Deed), if:

(A) the Member has attained the Normal Retirement Date and would be entitled to a benefit under clause B.4.1(a) of Part 2 of Schedule B if the Member had ceased to be an Employee,

then:

(B) that Member may elect to receive a lump sum retirement benefit from this Sub-Division calculated under clause B.4.1(a) of Part 2 of Schedule B (notwithstanding that the Member remains an Employee) together with interest thereon for the period from the Normal Retirement Date to the date of payment at the Declared Rate; and

(C) for purposes of determining the amount of or eligibility for payment of a benefit under this Part 2 in respect of an event or circumstance occurring or arising after the date the benefit is paid pursuant to this clause B.4.1(b)(ii), the Member will be treated as if he or she had never previously been an Employee or a Member.

#### **B.4.2 Death benefits**

- (a) Upon the death of a Member while an Employee prior to the Normal Retirement Date, there shall be payable from this Sub-Division in accordance with and subject to the provisions of clause B.4.7 of Part 2 of Schedule B the lump sum benefit specified in whichever of the subsequent parts of this Part 2 is applicable to the Member.
- (b) Upon the death of a Member while an Employee on or after the Normal Retirement Date, there shall be payable in accordance with and subject to clause B.4.7 of Part 2 of Schedule B the lump sum benefit which would have been payable pursuant to the relevant provisions of clauses B.4.1(a) or (b) of Part 2 of Schedule B if the Member had retired as an Employee on the date of the Member's death.
- (c) Upon the death of a Member in respect of whom there has been secured a Preserved Benefit under this Sub-Division, there shall be payable from this Sub-Division in accordance with and subject to clauses B.4.7 and B.9.2 of Part 2 of Schedule B the lump sum benefit specified in whichever of the subsequent provisions of this Part 2 is applicable to the Member.

#### **B.4.3 Total and Permanent Disablement benefits**

- (a) Subject to Schedule A, upon a Member ceasing to be an Employee before the Normal Retirement Date as a result of the Member becoming Totally and Permanently Disabled, there shall be paid to the Member from this Sub-Division the lump sum benefit specified in whichever of the subsequent parts of this Part 2 is applicable to the Member.
- (b) Subject to Schedule A, if a Member in respect of whom there has been secured a Preserved Benefit under this Sub-Division retires from regular employment before attaining the age of 55 years in circumstances which in the opinion of the Trustee would have constituted Total and Permanent Disablement if the Member had been an Employee, there shall be paid to the Member from this Sub-Division the lump sum benefit specified in whichever of the subsequent parts of this Part 2 is applicable to the Member.

#### **B.4.4 Benefits on leaving employment**

Subject to Schedule A, upon a Member ceasing to be an Employee before the Normal Retirement Date otherwise than as provided in clauses B.4.1, B.4.2 or B.4.3 of this Part 2 of Schedule B, there shall be paid to that Member from or secured in respect of that Member under this Sub-Division the benefits specified in whichever of the subsequent parts of this Part 2 is applicable to the Member.

#### **B.4.5 Additional benefits for additional voluntary contributions**

- (a) Subject to Schedule A, upon a Member ceasing to be an Employee for any reason including death or Total and Permanent Disablement, there shall be paid to or in respect of the Member in addition to any other benefits to which the Member is entitled under this Part 2, a lump sum benefit equal to the balance of the Benefit Account.
- (b) The Trustee must cause a Benefit Account to be maintained in respect of each Member who makes contributions pursuant to clause B.3.1(d) of this Part 2 of Schedule B.

#### **B.4.6 Alternative forms of benefits**

- (a) Subject to clause B.7 of Part 2 of Schedule B a person who is entitled to receive a lump sum benefit pursuant to any provision of this Part 2 may apply to the Trustee to exchange all or any part of such lump sum benefit for a pension benefit payable to such persons as the Trustee shall approve and, if such application is approved, shall either:
  - (i) pay such pension benefit direct from this Sub-Division the amount of which and the terms and conditions of which shall be determined by the Trustee after obtaining the advice of the Actuary; or
  - (ii) arrange for the provision of such pension benefit by applying the aforesaid lump sum benefit in purchasing from an Insurer or from such other organisation as the Trustee shall decide an annuity policy or contract providing for payment of an annuity on such terms and conditions as are approved by the Trustee and after application of the lump sum benefit or part thereof as aforesaid neither the person entitled thereto nor any other person claiming through or under the first mentioned person shall have any further claim on this Sub-Division or the Trustee or any Employer in respect thereof.
- (b) If in accordance with the terms and conditions applicable to any such pension benefit payable from this Sub-Division pursuant to clause B.4.6(a)(i) of Part 2 of Schedule B an amount is payable after the death of any person such amount shall be payable by the Trustee subject to and in accordance with clause B.4.7 of Part 2 of Schedule B unless the terms and conditions on which that benefit was granted provide otherwise.
- (c) A person in receipt of a pension under this Part 2 may apply to the Trustee to commute all or any part of that pension for a lump sum benefit and if the Trustee approves that application (and it is confirmed that the Trustee is empowered to reject in total or in part such application without giving any reason therefor), that person shall be paid a lump sum benefit in exchange for the amount of the pension so commuted. The amount of any such lump sum benefit shall be determined by the Trustee after consulting the Actuary.
- (d) Notwithstanding the provisions of clause B.4.6(c) of Part 2 of Schedule B, the commutation of any pension payable shall be made in accordance with any applicable requirement of a Superannuation Law and the Trustee may take such action as it sees fit to ensure compliance including, without limitation, adjusting the amounts or terms of payment of benefits in such manner, to such extent and by way of such arrangements as the Trustee considers appropriate and any decision by the Trustee for the purposes of this clause B.4.6 of Part 2 of Schedule B shall be final and binding on all interested persons.
- (e) Subject to the Trustee's absolute discretion, all pensions payable under this Part 2 shall be paid in accordance with the provisions of Superannuation Law concerning the payment of "pensions" as defined in the SIS Act.

#### **B.4.7 Payment of lump sum death benefits**

- (a) Lump sum benefits payable on the death of a Member while an Employee shall be applied by the Trustee to or for the benefit of such one or more of:

- (i) the Member's Dependants; and
- (ii) the Member's legal personal representatives,

to the exclusion of the other or others of them and in such form, manner, proportions and subject to such conditions as the Trustee determines.

- (b) The receipt of a Dependant or legal personal representative (**Beneficiary** for purposes of this clause B.4.7) shall be a complete discharge to the Trustee in respect of the amount paid to that person and the Trustee is not bound to see to the application thereof.
- (c) Without prejudice to the foregoing, if a Beneficiary dies before the whole of a benefit which is payable to that Beneficiary has been paid, the amount of the unpaid benefit shall be paid or applied in accordance with clause B.4.7(a) of Part 2 of Schedule B as if the Beneficiary was a Member at the date of death.

#### **B.4.8 Augmentation of benefits**

The Council may direct the Trustee to augment the amount of any benefit otherwise payable or to be provided under this Part 2 and the Council may direct the Trustee to rescind or discontinue all or any part of such augmentation. The Trustee shall act on such a direction provided that, before augmenting any benefit pursuant to such a direction, the Trustee may require an undertaking from an Employer that it shall contribute to this Sub-Division such additional amounts or rates of contribution and at such times as the Trustee (after consulting the Actuary) shall determine. If any undertaking required by the Trustee as aforesaid is not given or, having been given is not fulfilled to the Trustee's satisfaction, the Trustee may refuse to proceed with or discontinue the augmentation to which the undertaking relates.

#### **B.4.9 Recognised Schemes**

- (a) If during the continuance of this Sub-Division any Recognised Scheme which provides any benefit which is similar in kind, effect or intent to a benefit provided by this Sub-Division for (inter alia) Members or their Dependants is introduced or improved (and in this regard a Recognised Scheme in existence prior to the establishment of the Previous Fund shall be deemed to be improved if during the continuance of this Sub-Division any Employer commences contributing towards that Recognised Scheme) and if any Employer pays either directly or indirectly any portion of the contributions, premiums or other costs of such Recognised Scheme or improvement, the Council may not more than 12 months after the date of such introduction or improvement give written notice to the Trustee of its intention from a date on or not more than 12 months after the date of such introduction or improvement to reduce the benefits provided by this Sub-Division for all or any of the Members or their Dependants to an extent not exceeding the extent of the benefits provided for such Members or their Dependants under the Recognised Scheme pursuant to such introduction or improvement provided that, if the benefits provided under this Sub-Division are of a different form or nature from the benefits provided under the Recognised Scheme, the maximum extent to which the benefits provided under this Sub-Division may be reduced by the Council pursuant to this clause B.4.9 shall be determined by the Actuary. Such determination shall be communicated by the Actuary to the Council and the Trustee in writing.
- (b) In the event of a reduction in the benefits provided by this Sub-Division pursuant to clause B.4.9(a) of Part 2 of Schedule B, any Members obliged to contribute to such Recognised Scheme shall be relieved of

their obligation to contribute to this Sub-Division to the extent (if any) determined by the Actuary not exceeding the extent of the contributions or additional contributions which they are required to pay under the Recognised Scheme pursuant to the introduction or improvement in respect of which benefits have been reduced. Any such determination shall be communicated by the Actuary to the Council and the Trustee in writing and Members shall be advised by the Trustee of the extent of the relief granted to them.

- (c) Any such reduction in benefits and contributions shall be evidenced by a deed or other written instrument executed or made by the Trustee with the consent of the Council altering, varying or making additions to or deletions from this Part 2 for the time being in force. Notwithstanding anything expressed or implied to the contrary in this Part 2, any alteration, variation, addition or deletion made by such deed or instrument shall be valid and binding on the Council, the Associated Employers, the Trustee, the Members and all other interested persons.

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## **B.5 Contributions and Benefits for those Members who are not Previous Officers' Fund Members**

### **B.5.1 Application of this clause B.5**

- (a) The provisions of this clause B.5 shall apply to and in respect of every Member of this Sub-Division who:
  - (i) was a member of the 1988 Fund immediately before the repeal of the 1988 Act by virtue of section 53F of the 1988 Act (excluding those members to whom section 53FA of the 1988 Act applied prior to 1 July 1998); but
  - (ii) is not a Previous Officers' Fund Member.
- (b)
  - (i) Unless otherwise agreed between the Council and the Trustee, the period during which the Member is classified as a Member in respect of whom the provisions of this clause B.5 apply or in respect of whom clause 2 of the Previous Fund deed applied shall not be included for the purposes of determining the benefits to be provided in respect of the Member under any other clause of this Part 2 which applies to the Member.
  - (ii) The benefit provided for and in respect of the Member under this clause B.5 shall be in addition to any benefit to be provided for and in respect of the Member under any other clause of this Part 2 which applies to the Member except to the extent (if any) that the benefit provided for in this clause B.5 is included in any benefit payable under such other clause.

### **B.5.2 Definitions**

In this clause B.5, unless the contrary intention appears or the context requires otherwise:

**Accrued Benefit Multiple** means in relation to a Member at any date a multiple determined in accordance with the following formulae:



$$(a) \quad 0.09 \times FM_p + .02 \times (FM_{1p} + 2FM_{2p} + 3FM_{3p} + 4FM_{4p} + 5FM_{5p} + 6FM_{6p} + 7FM_{7p} + 8FM_{8p} + 9FM_{9p})$$

plus:

$$(b) \quad 0.0775 \times FMA + .0175 \times (FM_{1a} + 2FM_{2a} + 3FM_{3a} + 4FM_{4a} + 5FM_{5a} + 6FM_{6a} + 7FM_{7a} + 8FM_{8a} + 9FM_{9a})$$

provided that in no circumstances and at no date shall the Accrued Benefit Multiple be greater than the Maximum Accrued Benefit Multiple of that Member at that date.

**Accrued Retirement Benefit** means in relation to a Member at any date the product of the Accrued Benefit Multiple and the Member's Final Average Pay.

**Contribution Rate Options** means, in relation to this clause B.5, 0%, 1%, 2%, 3%, 4%, 5%, 6%, 7%, 8% and 9%.

**FM** means in relation to a Member at any date the period of the Member's Fund Membership completed up to that date.

**FMA** means in relation to a Member at any date the period of the Member's Fund Membership on or after 1 July 1993.

**FMP** means in relation to a Member at any date the period of the Member's Fund Membership completed prior to 1 July 1993.

**FM<sub>1a</sub>, FM<sub>2a</sub>, FM<sub>3a</sub>, FM<sub>4a</sub>, FM<sub>5a</sub>, FM<sub>6a</sub>, FM<sub>7a</sub>, FM<sub>8a</sub> and FM<sub>9a</sub>** means in relation to a Member at any date those periods of the Member's Fund Membership completed on or after 1 July 1993 during which the Member's rate of contribution has been, respectively, 1%, 2%, 3%, 4%, 5%, 6%, 7%, 8% and 9%.

**FM<sub>1p</sub>, FM<sub>2p</sub>, FM<sub>3p</sub>, FM<sub>4p</sub>, FM<sub>5p</sub>, FM<sub>6p</sub>, FM<sub>7p</sub>, FM<sub>8p</sub> and FM<sub>9p</sub>** means in relation to a Member at any date those periods of the Member's Fund Membership completed on or after 1 July 1993 during which the Member's rate of contribution has been, respectively, 1%, 2%, 3%, 4%, 5%, 6%, 7%, 8% and 9%.

**Former Accrued Retirement Benefit** means the Accrued Retirement Benefit applying in relation to a Member determined pursuant to the equivalent provisions to this clause B.5 that were in force pursuant to the governing rules of the Previous Fund immediately prior to 1 July 1993 as if those provisions had remained in force on and after 1 July 1993.

**Maximum Accrued Benefit Multiple** means in relation to a Member at any date a multiple determined in accordance with the following formula:

$$A + \frac{(M - A) \times 18.25}{21.00}$$

where:

**M** means the Maximum Accrued Benefit Multiple applying in relation to a Member determined pursuant to the equivalent provisions to this clause B.5 that were in force pursuant to the governing rules of the Previous Fund immediately prior to 1 July 1993 as if those provisions had remained in force on and after 1 July 1993;

**A** means the Accrued Benefit Multiple at 1 July 1993 applying in relation to a Member determined pursuant to the equivalent provisions to this clause B.5 that were in force pursuant to the

governing rules of the Previous Fund immediately prior to 1 July 1993.

**Preserved Benefit** means in relation to a Member the benefit determined pursuant to the relevant provisions of clause B.5.8 of Part 2 of Schedule B.

**Rate of Contribution** means in relation to a Member at any date the percentage rate determined pursuant to the relevant provisions of clause B.5.3 of Part 2 of Schedule B then being used to determine the contributions paid to this Sub-Division by the Member.

### **B.5.3 Contribution by Members**

- (a) The amount of contributions paid by a Member for the purposes of clause B.3.1(a) of Part 2 of Schedule B shall, subject to the other relevant provisions of that clause, be calculated as the product of the Rate of Contribution selected by the Member pursuant to clause B.5.3(b) of Part 2 of Schedule B and the Member's Annual Pay.
- (b) A Member may by written advice to the Trustee at any time elect to change his or her Rate of Contribution by nominating, subject to clause B.5.3(c) of Part 2 of Schedule B, another of the Contribution Rate Options which he or she wishes to contribute.
- (c) If the Accrued Benefit Multiple of the Member is equal to or greater than the Maximum Accrued Benefit Multiple, then the Member's Rate of Contribution shall be reduced to the minimum extent necessary to ensure that the Member's Accrued Benefit Multiple shall not exceed the Maximum Accrued Benefit Multiple.
- (d) If a Member elects pursuant to clause B.5.3(b) of Part 2 of Schedule B a Rate of Contribution higher than that permitted under clause B.5.3(c) of Part 2 of Schedule B, then the Trustee shall deem the Member to have elected the highest permitted Rate of Contribution and shall advise the Member accordingly.
- (e) If a Member does not advise the Trustee pursuant to clause B.5.3(b) of Part 2 of Schedule B, then the Trustee shall deem the Member to have advised it that the Member's Rate of Contribution is to continue unchanged.

### **B.5.4 Retirement benefits**

Upon a Member ceasing to be an Employee as provided in clause B.4.1(a) of Part 2 of Schedule B, the lump sum retirement benefit for the purposes of that clause shall be equal to the Accrued Retirement Benefit at the date the Member ceased to be an Employee provided that in the case of a Member who is retiring prior to the Normal Retirement Date but after age 55, then in lieu of receiving immediate payment of the aforesaid benefit, the Member may elect to have secured under this Sub-Division a Preserved Benefit payable:

- (a) at any time upon the request of the Member in writing to the Trustee after the Member has retired as an Employee (and for this purpose a Member who at the Normal Retirement Date has not made such a request shall be deemed to have requested payment at the Normal Retirement Date); or
- (b) on the Member's death,

whichever is the first to occur and of an amount equal to the Accrued Retirement Benefit at the date the Member ceases to be an Employee accumulated up to the date of payment with interest at the Declared Rate.

### B.5.5 Death benefits

Upon the death of such a Member while an Employee prior to the Normal Retirement Date the lump sum benefit for the purposes of clause B.4.2(a) of Part 2 of Schedule B shall be an amount equal to the lesser of a lump sum equal to 8.4 times the Member's Final Average Pay at the date of the death and an amount determined in the manner following:

- (a) in the case of a Member whose death occurs not later than the date of attainment of the age of 60 years, an amount equal to the sum of:
- (i) the Former Accrued Retirement Benefit determined as at the date of death; and
  - (ii) an amount equal to the product of the Member's Final Average Pay and a multiple determined from the following Table according to the Member's age at the date of death:

Table

Age in years at the Date of Death	Multiple	Age in years at the Date of Death	Multiple
Less than 20	8.40	40	4.20
20	8.40	41	3.99
21	8.19	42	3.78
22	7.98	43	3.57
23	7.77	44	3.36
24	7.56	45	3.15
25	7.35	46	2.94
26	7.14	47	2.73
27	6.93	48	2.52
28	6.72	49	2.31
29	6.51	50	2.10
30	6.30	51	1.89
31	6.09	52	1.68
32	5.88	53	1.47
33	5.67	54	1.26
34	5.46	55	1.05
35	5.25	56	0.84
36	5.04	57	0.63
37	4.83	58	0.42
38	4.62	59	0.21
39	4.41	60	0.00

provided that for the purposes of this Table where the Member's age (in the case of a Member who is over the age of 20 years) is not an exact number of years, the multiple shall be obtained from the Table by linear interpolation; and

- (b) in the case of a Member whose death occurs on or after the date of attainment of the age of 60 years, an amount equal to the Accrued Retirement Benefit determined as at the date of death.

## B.5.6 Total and Permanent Disablement benefits

Upon a Member ceasing to be an Employee before the Normal Retirement Date as a result of Total and Permanent Disablement, the lump sum benefit for the purposes of clause B.4.3(a) of Part 2 of Schedule B shall be an amount determined in the manner set out in clause B.5.5 of Part 2 of Schedule B as if the Member had died on the Date of Disablement and, for the purposes of this clause B.5.6, the proviso to clause B.5.5 of Part 2 of Schedule B shall apply provided that, for the purpose of clause B.5.5(a)(i) of Part 2 of Schedule B, the reference to “the Former Accrued Retirement Benefit” shall be taken to be a reference to “the Accrued Retirement Benefit”.

## B.5.7 Benefits on Temporary Total Disablement

- (a) Subject to this Part 2, if a Member becomes Temporarily Totally Disabled while an Employee before the Normal Retirement Date:
- (i) an income benefit shall become payable to the Member subject to the following provisions of this clause B.5.7; and
  - (ii) while that income benefit is payable no benefit shall become payable to or in respect of the Member under any other provision of this Part 2 otherwise than as provided for in this clause B.5.7.
- (b) The annual amount of the income benefit shall be 70% of the Member's Annual Pay at the Date of Disablement, reduced (unless the Council determines otherwise) by:
- (i) any compensation benefit which is or becomes payable or which may reasonably become payable in respect of the Member under any workers compensation, transport accident compensation or similar scheme having government support or recognition or which is maintained by the Employer, to the extent that such compensation benefit is attributable to an injury, illness or accident giving rise to the income benefit;
  - (ii) any income received from the Employer pursuant to a sick leave entitlement, to the extent that such income is attributable to an injury, illness or accident giving rise to the income benefit; and
  - (iii) any reward due to the Member in respect of any work carried out by the Member (whether for the Employer or otherwise) while the Member is entitled to receive the income benefit,

provided that, if such a compensation benefit or any such reward is payable in a different manner or form to the income benefit, the income benefit shall be reduced on the basis determined by the Trustee after obtaining the advice of the Actuary.

- (c) The income benefit shall be payable by monthly instalments. The income benefit shall commence to be payable on the date as at which the Member is determined to have become Temporarily Totally Disabled (**admission date**), with the first instalment falling due on the first day of the month coincident with or next following the admission date. Unless a later cessation date is agreed between the Trustee and the Council, the income benefit shall cease to be payable on the date (**cessation date**) which is the earliest to occur of the following:
- (i) the date as at which the Member ceases to satisfy the definition of Temporary Total Disablement;

- (ii) the date as at which the Member is determined to have become Totally and Permanently Disabled;
- (iii) the date of the Member's death;
- (iv) the Member's Normal Retirement Date; or
- (v) the day after the admission date which falls immediately after:
  - (A) a continuous period of 24 months from the admission date; or
  - (B) a total of 24 months as a result of the same or a related illness or injury where the periods of such disablement occurred within 6 months (or such lesser period as the Council may determine) of each other,

with the last instalment falling due on the first day of the month coincident with or next following the cessation date. The first and last instalments shall each be a proportionate amount having regard to the number of days for which the income benefit was payable in the previous month.

- (d) If the Trustee has obtained insurance for all or part of the benefit payable under this clause B.5.7, and an instalment benefit continues to be payable under such insurance in respect of a Member after the income benefit has ceased to be payable under this clause:
  - (i) the Trustee shall continue to pay to the Member a benefit which in the Trustee's opinion is consistent with the continued insurance benefit; and
  - (ii) with the approval of the Council, the Trustee may deem the Member to continue to be Temporarily Totally Disabled for the purpose of this clause B.5.7 and in receipt of an income benefit for the whole or part of the period during which such an insurance benefit continues to be paid to the Member hereunder.
- (e) If the Member continues or returns as an Employee when the income benefit ceases, the Member's Fund Membership shall continue and this Part 2 shall continue to apply to and in respect of the Member.
- (f) If the Member does not continue or return as an Employee when the income benefit ceases, there shall be payable to or in respect of the Member from this Sub-Division a benefit determined in accordance with the relevant other provisions of this Part 2 on the date as at which the income benefit ceased to be payable provided that, insofar as payment of all or part of a benefit under another relevant provision of this Part 2 depends upon an Employer granting an approval or exercising a Power, it will still be necessary to ascertain whether the Employer grants such approval or is prepared to exercise such Power.
- (g) For the purposes of the whole or any particular provision of this Part 2, in the case of a Member who is entitled to receive an income benefit under this clause B.5.7:
  - (i) the Member shall be deemed to have remained as an Employed Member during the whole of the period for which the income benefit is payable and during any deferment or waiting period for

that benefit (the aggregate of such periods being hereinafter referred to as the **Disability Period**);

- (ii) during the Disability Period the Member's Annual Pay shall be deemed to be equal to the Member's Annual Pay immediately before the Date of Disablement or such greater amount as may be determined by the Council; and
  - (iii) the Council may waive the whole or any part of the contributions otherwise payable by the Member during the whole or any part of the Disability Period; and
  - (iv) the Council may deem the whole or any part of any contributions waived as provided in paragraph (c) to have been paid by the Member.
- (h) If during payment of the income benefit the Trustee determines that a payment under this clause B.5.7(h) is appropriate and that to make such a payment would not, in the opinion of the Trustee, cause the Fund to be in breach of or to fail to comply with any applicable requirement under Superannuation Law, the Trustee with the approval of the Council may pay or apply from this Sub-Division for or in respect of the Member an amount or amounts not exceeding in the aggregate:
- (i) the minimum lump sum benefit (if any) which would have been payable from this Sub-Division if the Member had voluntarily ceased to be an Employee in good health and without the consent or approval of the Employer on the date of such payment from this Sub-Division; or
  - (ii) such greater amount (if any) as the Council may determine but not exceeding the amount determined by the Trustee (after obtaining the advice of the Actuary) to be the Member's Equitable Share,

provided that, unless otherwise agreed between the Trustee and the Council, any benefit which later becomes payable from this Sub-Division in respect of the Member (other than the income benefit) shall be adjusted in such manner and to such extent as the Trustee, after obtaining the advice of the Actuary, considers appropriate and equitable to take account of any payments made pursuant to this clause B.5.7(h).

- (i) If the Trustee effects or seeks to effect insurance with an Insurer in respect of any income benefit which might become payable from this Sub-Division pursuant to this clause B.5.7 in respect of a person or group of persons and:
- (i) that Insurer refuses to provide or increase insurance in respect of a person on its standard terms; or
  - (ii) that Insurer for any reason whatever fails to provide, increase or maintain or reduces, terminates or withholds insurance or does not admit or defers the whole or part of a claim,

then, unless otherwise agreed between the Trustee and the Council, the benefits in respect of which insurance has been or would have otherwise been effected shall be reduced to the extent to which insurance has not been effected on standard terms or has otherwise not been obtained, increased or maintained or has been reduced, terminated or withheld or such a claim has been deferred or not admitted, and the Trustee may adjust any affected benefit in such manner as the Trustee, after

obtaining the advice of the Actuary, considers appropriate in effecting such a reduction.

### B.5.8 Benefits on leaving employment

Upon such a Member ceasing to be an Employee as provided in clause B.4.4 of Part 2 of Schedule B, the benefits to be provided for the purposes of that clause shall be:

(a) a lump sum benefit payable immediately equal to the greater of:

(i) an amount equal to:

(A) in the case of a Member whose AGE is less than or equal to 50 years, an amount calculated in accordance with the formula:

$$ABM_5 \times FAP + C_5$$

or:

(B) in the case of a Member whose AGE is more than 50 years but less than 55 years, an amount calculated in accordance with the formula:

$$\frac{[(ABM_5 \times FAP + C_5) \times (55 - AGE) + (ABM \times FAP) \times (AGE - 50)]}{5}$$

and:

(ii) an amount equal to the total of the contributions (if any) paid by the Member to this Sub-Division and to the Previous Fund (excluding contributions made pursuant to clause B.3.1(d) of Part 2 of Schedule B) accumulated up to the date the Member ceased to be an Employee with interest at the Declared Rate,

provided that if the Member ceased to be an Employee by reason of Retrenchment the benefit shall be increased to an amount equal to the Accrued Retirement Benefit provided further that for the purposes of determining the formulae hereinbefore specified:

**AGE** in relation to a Member is the Member's age in years (with each additional day counting as a fraction of the year) at the date on which the Member ceased to be an Employee;

**ABM** is the Accrued Benefit Multiple at the date on which the Member ceased to be an Employee;

**ABM<sub>5</sub>** is the Accrued Benefit Multiple as at the date 5 years prior to the date on which the Member ceased to be an Employee;

**FAP** is the Member's Final Average Pay; and

**C<sub>5</sub>** is an amount equal to the total contributions (if any) paid by the Member to this Sub-Division and to the Previous Fund (excluding contributions made pursuant to clause B.3.1(d) of Part 2 of Schedule B) during the period commencing 5 years prior to the date on which the Member ceased to be an Employee and the date on

which he or she became a Member, whichever is the later, and ending on the date he or she ceased to be an Employee accumulated up to the date the Member ceased to be an Employee with interest at the Declared Rate; or

(b) if at the date the Member ceases to be an Employee the Accrued Benefit Multiple is equal to or greater than 0.375, the Member may in lieu of taking the immediate payment specified in clause B.5.8(a) of this Part 2 of Schedule B elect to have a Preserved Benefit secured under this Sub-Division payable:

(i) at any time upon the request of the Member in writing to the Trustee after the Member has ceased to be an Employee (and for this purpose a Member who at the Normal Retirement Date has not made such a request shall be deemed to have requested payment at the Normal Retirement Date); or

(ii) on the Member's death,

whichever is the first to occur, of an amount equal to the amount specified in clause B.5.8(a) of this Part 2 of Schedule B, accumulated up to the date of payment with interest at the Declared Rate, provided that the benefit payable in the case of a Member:

(A) who requests payment at any time on or after the attainment of the age of 55 years (and for this purpose a Member who at the Normal Retirement Date has not made such a request shall be deemed to have requested payment on the Normal Retirement Date); or

(B) who dies; or

(C) who prior to the attainment of the age of 55 years requests payment and satisfies the Trustee that he or she has retired from Gainful Employment in circumstances similar to Total and Permanent Disablement as provided in clause B.4.3(b) of Part 2 of Schedule B; or

(D) who requests payment at any time (and for this purpose a Member who at the Normal Retirement Date has not made such a request shall be deemed, to have requested payment on the Normal Retirement Date) having ceased to be an Employee of the Employer by reason of Retrenchment,

shall not be less than an amount determined in accordance with the formula:

$$ABM \times FAIP$$

where:

**ABM** is the Accrued Benefit Multiple at the date on which the Member ceased to be an Employee; and

**FAIP** is the Member's Final Average Indexed Pay.



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## **B.6 Contributions and Benefits for Previous Officers' Fund Members**

### **B.6.1 Application of this clause B.6**

- (a) The provisions of this clause B.6 shall apply to and in respect of every Member who:
- (i) was a member of the 1988 Fund immediately before the repeal of the 1988 Act by virtue of section 53F of the 1988 Act (excluding those members to whom section 53FA of the 1988 Act applied prior to 1 July 1998); but
  - (ii) is a Previous Officers' Fund Member.
- (b)
- (i) Unless otherwise agreed between the Council and the Trustee, the period during which the Member is classified as a Member in respect of whom the provisions of this clause B.6 apply or in respect of whom clause 3 of the Previous Fund's trust deed applied shall not be included for the purposes of determining the benefits to be provided in respect of the Member under any other clause of this Part 2 which applies to the Member.
  - (ii) The benefit provided for and in respect of the Member under this clause B.6 shall be in addition to any benefit to be provided for and in respect of the Member under any other clause of this Part 2 which applies to the Member except to the extent (if any) that the benefit provided for in this clause B.6 is included in any benefit payable under such other clause.

### **B.6.2 Definitions**

In this clause B.6, unless the contrary intention appears or the context requires otherwise:

**Accrued Benefit Multiple** means in relation to a Member at any date a multiple determined in accordance with the provisions of clause B.6.8 of Part 2 of Schedule B and the expression **ABM** shall be taken, whenever it appears in this clause B.6, to mean the same.

**Accrued Retirement Benefit** means in relation to a Member at any date the product of the Accrued Benefit Multiple and the Member's Final Average Pay.

**Age 60 Female** means a female Previous Officers' Fund Member whose "Normal Retiring Age" under the Previous Officers' Fund Rules was her 60th birthday.

**Contribution Rate Options** means in relation to this clause B.6, 0%, 1%, 2%, 3%, 4%, 5%, 6%, 7%, 8% and 9%.

**FAP** and **FAIP** shall mean in relation to a Member at any date, respectively, the Final Average Pay and Final Average Indexed Pay wherever those expressions appear in this clause B.6.

**FM** means in relation to a Member at any date the period of the Member's Fund Membership completed up to that date.

**Former Accrued Retirement Benefit** means the Accrued Retirement Benefit applying in relation to a Member determined pursuant to the equivalent provisions to this clause B.6 that were in force pursuant to the governing rules of the Previous Fund immediately prior to 1 July 1993 as if those provisions had remained in force on and after 1 July 1993.

**Ill Health** means inability (which in the opinion of the Trustees is due to injury disease or infirmity but does not constitute Disablement) of an Officer to continue in the employment of the Council either in his appointed position or in some other capacity offered to him by the Council which in the opinion of the Trustees would be suitable and appropriate having regard to his station in life his previous standing in the employment of the Council and the nature of his ill health.

**Maximum Accrued Benefit Multiple** means in relation to a Member at any date a multiple determined in accordance with the provisions of clause B.6.4 of Part 2 of Schedule B.

**Periodic Accrued Benefit Multiple** means in relation to a Member a multiple determined for each Stable Period for which the Member remained in the Fund in accordance with whichever of the following formulas is applicable:

- (a) if on the last date of the aforesaid Stable Period the Member had completed less than 30 years Fund Membership, the sum of:
- (i)  $[0.23 - 2 \times (\text{SCR} - \text{ROC})] \times k_1$ ;
  - (ii)  $[0.22 - 2 \times (\text{SCR} - \text{ROC})] \times k_2$ ; and
  - (iii)  $[0.19125 - 1.75 \times (\text{SRC} - \text{ROC})] \times k_3$

where:

- k<sub>1</sub>** is the period of the Stable Period less the period of the Stable Period referred to in **k<sub>2</sub>** and **k<sub>3</sub>**; and
- k<sub>2</sub>** is the period of the Stable Period on and after 1 September 1987 but prior to 1 July 1993; and
- k<sub>3</sub>** is the period of the Stable Period on or after 1 July 1993,

provided that if the Periodic Accrued Benefit Multiple calculated under paragraph (iii) above for any Stable Period determined on the basis provided above is greater than  $0.19 \times k_3$ , and the ROC is greater than the SCR, it shall be taken to be  $0.19 \times k_3$ ;

- (b) if on the first date of the aforesaid Stable Period the Member had completed 30 years or more Fund Membership, the sum of:
- (i)  $[0.09 + 2 \times \text{ROC}] \times k_4$ ; and
  - (ii)  $[0.0775 + 1.75 \times \text{ROC}] \times k_5$ , limited to  $0.19 \times k_5$  if ROC is less than or equal to 6.5%,

where:

- k<sub>4</sub>** is the length of the Stable Period less the period of the Stable Period referred to in **k<sub>2</sub>**;
- k<sub>5</sub>** is the length of the Stable Period on or after 1 July 1993.

**Preserved Benefit** means in relation to a Member the benefit determined pursuant to the relevant provisions of clause B.6.12 of Part 2 of Schedule B.

**Rate of Contribution** means in relation to a Member at any date the percentage rate determined pursuant to the relevant provisions of clause B.6.7 of Part 2 of Schedule B then being used to determine the contributions paid to this Sub-Division by the Member and the expression “**ROC**” shall be taken wherever it appears in this clause B.6 to mean the same.

**R.A.S. Benefit** means in relation to a Member at any date the amount equal to the product of the Member’s RAS Multiple and the Member’s FAP as at that date.

**R.A.S. Multiple** means in relation to a Member at any date the multiple determined in respect of the Member pursuant to the provisions of clause B.6.6 of Part 2 of Schedule B and the expression **RASM** shall be taken wherever it appears in this clause B.6 to mean the same.

**Stable Period** means the period of the Member’s Fund Membership falling prior to 1 July 1987 or any period on or after 1 July 1987 during which the Member’s Standard Contribution Rate and Rate of Contribution did not change.

**Standard Contribution Rate** means in relation to a Member at any date the percentage contribution rate determined pursuant to the provisions of clause B.6.3 of Part 2 of Schedule B and the expression **SCR** shall be taken wherever it appears in this clause B.6 to mean the same.

### **B.6.3 Determination of the Standard Contribution Rate**

- (a) The Standard Contribution Rate in respect of a Member at any date prior to 1 July 1987 shall, subject to clause B.6.3(c) of Part 2 of Schedule B, be equal to the rate of contribution determined to be payable by that Member pursuant to the Previous Officers’ Fund Rules as at that date.
- (b) Subject to clause B.6.3(c) of Part 2 of Schedule B, the Standard Contribution Rate in respect of such a Member shall be recalculated each 1 July occurring after 1 July 1987 and shall, subject to clause B.6.3(c) of Part 2 of Schedule B, be determined according to the following formula:

$$\frac{SCR_0 \times AP_0 + (kx(AP_1 - AP_0))}{AP_1}$$

where:

**SCR<sub>0</sub>** is the Standard Contribution Rate determined as at the later of 1 July 1987 or the 1 July immediately preceding the date of calculation;

**AP<sub>1</sub>** is the Member’s Annual Pay on the date of calculation;

**AP<sub>0</sub>** is the Member’s Annual Pay as at 1 July last preceding the date of calculation; and

**k** is the factor taken from the Table set out below according to the Member’s age on his or her birthday last preceding 1 July on which the determination is being made:

Table	
Age	Factor
16 - 26	6.0
27 - 30	7.0
31 - 35	8.0
36 - 64	9.0

- (c) The Standard Contribution Rate determined at any date on or after 1 July 1986 shall be:
- (i) reduced to 7.25% for the period prior to 1 September 1987 if but for the operation of this clause B.6.3 it would be higher;
  - (ii) reduced to 6.5% for the period on or after 1 September 1987 if but for the operation of this clause B.6.3 it would be higher;
  - (iii) 0.00% in the case of a Member who at the date of determination has completed at least 30 years Fund Membership.

#### B.6.4 Determination of Maximum Accrued Benefit Multiple

The Maximum Accrued Benefit Multiple means in relation to a Member at any date a multiple determined in accordance with the following formula:

$$A + \frac{(M - A) \times 18.25}{21.00}$$

where:

- M** means the Maximum Accrued Benefit Multiple applying in relation to a Member determined pursuant to the equivalent provisions to this clause B.6 that were in force pursuant to the governing rules of the Previous Fund immediately prior to 1 July 1993 as if those provisions had remained in force on and after 1 July 1993;
- A** means the Accrued Benefit Multiple at 1 July 1993 applying in relation to a Member determined pursuant to the equivalent provisions to this clause B.6 that were in force pursuant to the governing rules of the Previous Fund **immediately** prior to 1 July 1993.

#### B.6.5 Determination of R.A.S. Multiple

The R.A.S. Multiple for a Member at any date shall be a multiple equal to .09 for each year of Service completed prior to the earlier of:

- (a) the date on which the Member's Fund Membership commenced; and
- (b) the date on which the RAS Multiple is being determined.

#### B.6.6 Contributions by Members

- (a) The amount of contributions paid by a Member for the purposes of clause B.3.1(a) of Part 2 of Schedule B shall, subject to the other relevant provisions of that clause, be calculated as the product of the Rate of Contribution selected by the Member pursuant to clause B.6.6(b) of Part 2 of Schedule B and the Member's Annual Pay.

- (b) A Member may by written advice to the Trustee at any time nominate from the options set out in clause B.6.6(c) of Part 2 of Schedule B the Rate of Contribution that the Member wishes to contribute.
- (c) The Rates of Contribution which a Member may nominate are:
  - (i) any of the Contribution Rate Options; or
  - (ii) 2.25% if the Member has completed 30 years' Fund Membership; or
  - (iii) the Standard Contribution Rate,

provided that if the Accrued Benefit Multiple of the Member is greater than the Maximum Accrued Benefit Multiple, then the Member may only nominate a Rate of Contribution of 0%, provided further that if the Accrued Benefit Multiple is equal to the Maximum Accrued Benefit Multiple the Member may not nominate a Rate of Contribution higher than a rate determined by the Trustee to ensure that Member's Accrued Benefit Multiple does not exceed the Maximum Accrued Benefit Multiple.
- (d) If the Rate of Contribution a Member has nominated pursuant to clause B.6.6(b) of Part 2 of Schedule B is higher than that permitted pursuant to clause B.6.6(c) of Part 2 of Schedule B, then the Trustee shall deem the Member to have elected the highest permitted Rate of Contribution pursuant to clause B.6.6(c) of Part 2 of Schedule B and shall advise the Member accordingly.
- (e) Subject to clause B.6.6(c) of Part 2 of Schedule B, if a Member does not advise the Trustee pursuant to clause B.6.6(b) of Part 2 of Schedule B, then the Trustee shall deem the Member to have nominated that his or her Rate of Contribution is to continue unchanged provided that if the Member was contributing at the Standard Contribution Rate the Trustee shall deem the Member to have nominated that he or she wishes to continue contributing at the Standard Contribution Rate.

### **B.6.7 Accrued Benefit Multiple**

The Accrued Benefit Multiple of a Member at the relevant date of determination shall be equal to the sum of the Member's Periodic Accrued Benefit Multiples at that date provided that in no circumstances shall the Accrued Benefit Multiple be greater than the Maximum Accrued Benefit Multiple less the RAS Multiple of the Member.

### **B.6.8 Retirement benefits**

Upon the retirement of a Member as an Employee as provided in clause B.4.1(a) of Part 2 of Schedule B, the lump sum retirement benefit for the purposes of that clause shall be equal to the sum of:

- (a) the Accrued Retirement Benefit determined as at the date the Member retired as an Employee; and
- (b) the R.A.S. Benefit,

provided that in the case of a Member who is retiring prior to the Normal Retirement Date, then, in lieu of receiving immediate payment of the benefit, the Member may elect to have secured under this Sub-Division a Preserved Benefit payable:

- (c) at any time upon the request of the Member in writing to the Trustee after the Member has retired as an Employee (and for this purpose a Member who at the Normal Retirement Date has not made such a request shall be deemed to have requested payment at the Normal Retirement Date); or
- (d) on the Member's death,

whichever is first to occur, and of an amount equal to the sum of the amounts in paragraphs (a) and (b) accumulated up to the date of payment with interest at the Declared Rate.

### B.6.9 Death benefits

- (a) Subject to clause B.6.9(b) of Part 2 of Schedule B upon the death of a Member while an Employee prior to the Normal Retirement Date, the benefit under clause B.4.2(a) of Part 2 of Schedule B shall be an amount equal to the sum of the R.A.S. Benefit and:
  - (i) in the case of a Member whose death occurs not later than the date of attainment of the age of 60 years, an amount equal to the sum of:
    - (A) the Former Accrued Retirement Benefit determined as at the date of death; and
    - (B) an amount equal to the product of the Member's Final Average Pay and a multiple determined from the following Table according to the Member's age at the date of death:

Table			
Age in years at the Date of Death	Multiple	Age in years at the Date of Death	Multiple
Less than 20	8.40	40	4.20
20	8.40	41	3.99
21	8.19	42	3.78
22	7.98	43	3.57
23	7.77	44	3.36
24	7.56	45	3.15
25	7.35	46	2.94
26	7.14	47	2.73
27	6.93	48	2.52
28	6.72	49	2.31
29	6.51	50	2.10
30	6.30	51	1.89
31	6.09	52	1.68
32	5.88	53	1.47
33	5.67	54	1.26
34	5.46	55	1.05
35	5.25	56	0.84
36	5.04	57	0.63
37	4.83	58	0.42
38	4.62	59	0.21
39	4.41	60	0.00

provided that, for the purposes of this Table where the Member's age in the case of a Member who is over the age of 20 years is

not an exact number of years, the multiple shall be obtained from the Table by linear interpolation; or

- (ii) in the case of a Member whose death occurs on or after the date of attainment of the age of 60 years an amount equal to the Former Accrued Retirement Benefit determined as at the date of death,

provided that in no case shall the benefit payable pursuant to this clause B.6.9 exceed the product of 8.4 and the Member's Final Average Pay.

- (b) In the case of a Member who joined the Previous Fund prior to 31 August 1984, and who is survived by a Spouse or Dependant, the benefit shall never be less than the sum of the R.A.S. Benefit and the greater of:
  - (i) 4 times the Member's Annual Pay at the date of the Member's death; and
  - (ii) the total of the Member's contributions to the Fund, the Previous Fund and the Previous Officers' Fund multiplied by a factor determined from column 4 of Annexure A to this Part 2 according to the period of the Member's Fund Membership.

#### **B.6.10 Total and Permanent Disablement benefits**

- (a) Subject to clause B.6.10(b) of Part 2 of Schedule B, upon the retirement of a Member as an Employee before the Normal Retirement Date as a result of his or her Total and Permanent Disablement the benefit under clause B.4.3(a) of Part 2 of Schedule B shall, subject to the other provisions of that clause be an amount determined in the manner set out in clause B.6.9(a) of Part 2 of Schedule B, provided that for the purposes of clause B.6.9(a)(i)(A) of Part 2 of Schedule B the reference to the "Former Accrued Retirement Benefit" shall be taken to be a reference to the "Accrued Retirement Benefit".
- (b) The benefit determined under clause B.6.10(a) of Part 2 of Schedule B will never be less than the sum of:
  - (i) an amount equal to the total of the Member's contributions to the Previous Fund and to the Previous Officers' Fund prior to 1 July 1993 multiplied by a factor determined from column 4 of Annexure A to this Part 2 according to the period of the Member's Fund Membership; and
  - (ii) the total of the Member's contributions to the Previous Fund and the Fund after 30 June 1993 multiplied by a factor determined from column 5 of Annexure A to this Part 2 according to the period of the Member's Fund Membership; and
  - (iii) the R.A.S. Benefit.

#### **B.6.11 Benefits on Temporary Total Disablement**

- (a) Subject to the Deed, if a Member becomes Temporarily Totally Disabled while an Employee before the Normal Retirement Date:
  - (i) an income benefit shall become payable to the Member subject to the following provisions of this clause B.6.11; and

- (ii) while that income benefit is payable no benefit shall become payable to or in respect of the Member under any other provision of this Part 2 otherwise than as provided for in this clause B.6.11.
- (b) The annual amount of the income benefit shall be 70% of the Member's Annual Pay at the Date of Disablement, reduced (unless the Council determines otherwise) by:
- (i) any compensation benefit which is or becomes payable or which may reasonably become payable in respect of the Member under any workers compensation, transport accident compensation or similar scheme having government support or recognition or which is maintained by the Employer, to the extent that such compensation benefit is attributable to an injury, illness or accident giving rise to the income benefit;
  - (ii) any income received from the Employer pursuant to a sick leave entitlement, to the extent that such income is attributable to an injury, illness or accident giving rise to the income benefit; and
  - (iii) any reward due to the Member in respect of any work carried out by the Member (whether for the Employer or otherwise) while the Member is entitled to receive the income benefit,

provided that, if a compensation benefit or any reward is payable in a different manner or form to the income benefit, the income benefit shall be reduced on the basis determined by the Trustee after obtaining the advice of the Actuary.

- (c) The income benefit shall be payable by monthly instalments. The income benefit shall commence to be payable on the date as at which the Member is determined to have become Temporarily Totally Disabled (**admission date**), with the first instalment falling due on the first day of the month coincident with or next following the admission date. Unless a later cessation date is agreed between the Trustee and the Council, the income benefit shall cease to be payable on the date (**cessation date**) which is the earliest to occur of the following:
- (i) the date as at which the Member ceases to satisfy the definition of Temporary Total Disablement;
  - (ii) the date as at which the Member is determined to have become Totally and Permanently Disabled;
  - (iii) the date of the Member's death;
  - (iv) the Member's Normal Retirement Date; and
  - (v) the day after the admission date which falls immediately after:
    - (A) a continuous period of 24 months from the admission date; or
    - (B) a total of 24 months as a result of the same or a related illness or injury where the periods of such disablement occurred within 6 months (or such lesser period as the Council may determine) of each other,

with the last instalment falling due on the first day of the month coincident with or next following the cessation date. The first and last



instalments shall each be a proportionate amount having regard to the number of days for which the income benefit was payable in the previous month.

- (d) If the Trustee has obtained insurance for all or part of the benefit payable under this clause B.6.11 and an instalment benefit continues to be payable under such insurance in respect of a Member after the income benefit has ceased to be payable under this clause B.6.11:
  - (i) the Trustee shall continue to pay to the Member a benefit which in the Trustee's opinion is consistent with the continued insurance benefit; and
  - (ii) with the approval of the Council, the Trustee may deem the Member to continue to be Temporarily Totally Disabled for the purpose of this clause B.6.11 and in receipt of an income benefit for the whole or part of the period during which such an insurance benefit continues to be paid to the Member hereunder.
- (e) If the Member continues or returns as an Employee when the income benefit ceases, the Member's Fund Membership shall continue and the Deed shall continue to apply to and in respect of the Member.
- (f) If the Member does not continue or return as an Employee when the income benefit ceases, there shall be payable to or in respect of the Member from this Sub-Division a benefit determined in accordance with the relevant other provisions of this Part 2 on the date as at which the income benefit ceased to be payable provided that, insofar as payment of all or part of a benefit under another relevant provision of this Part 2 depends upon an Employer granting an approval or exercising a Power, it will still be necessary to ascertain whether the Employer grants such approval or is prepared to exercise such Power.
- (g) For the purposes of the whole or any particular provision of this Part 2, in the case of a Member who is entitled to receive an income benefit under this clause B.6.11:
  - (i) the Member shall be deemed to have remained as an Employed Member during the whole of the period for which the income benefit is payable and any deferment or waiting period for that benefit (the aggregate of such periods being hereinafter referred to as the **Disability Period**);
  - (ii) during the Disability Period the Member's Annual Pay shall be deemed to be equal to the Member's Annual Pay immediately before the Date of Disablement or such greater amount as may be determined by the Council;
  - (iii) the Council may waive the whole or any part of the contributions otherwise payable by the Member during the whole or any part of the Disability Period; and
  - (iv) the Council may deem the whole or any part of any contributions waived as provided in paragraph (iii) to have been paid by the Member.
- (h) If during payment of the income benefit the Trustee determines that a payment under this clause B.6.11(h) is appropriate and that to make such a payment would not, in the opinion of the Trustee, cause the Fund to be in breach of or to fail to comply with any applicable requirement

under Superannuation Law, the Trustee with the approval of the Council may pay or apply from this Sub-Division for or in respect of the Member an amount or amounts not exceeding in the aggregate:

- (i) the minimum lump sum benefit (if any) which would have been payable from this Sub-Division if the Member had voluntarily ceased to be an Employee in good health and without the consent or approval of the Employer on the date of such payment from this Sub-Division; or
- (ii) such greater amount (if any) as the Council may determine but not exceeding the amount determined by the Trustee (after obtaining the advice of the Actuary) to be the Member's Equitable Share,

provided that, unless otherwise agreed between the Trustee and the Council, any benefit which later becomes payable from this Sub-Division in respect of the Member (other than the income benefit) shall be adjusted in such manner and to such extent as the Trustee, after obtaining the advice of the Actuary, considers appropriate and equitable to take account of any payments made pursuant to this clause B.6.11(h).

- (i) If the Trustee effects or seeks to effect insurance with an Insurer in respect of any income benefit which might become payable from this Sub-Division pursuant to this clause B.6.11 in respect of a person or group of persons and:
  - (i) that Insurer refuses to provide or increase insurance in respect of a person on its standard terms; or
  - (ii) that Insurer for any reason whatever fails to provide increase or maintain or reduces terminates or withholds insurance or does not admit or defers the whole or part of a claim, then, unless otherwise agreed between the Trustee and the Council, the benefits in respect of which insurance has been or would have otherwise been effected shall be reduced to the extent to which insurance has not been effected on standard terms or has otherwise not been obtained, increased or maintained or has been reduced, terminated or withheld or such a claim has been deferred or not admitted, and the Trustee may adjust any affected benefit in such manner as the Trustee, after obtaining the advice of the Actuary, considers appropriate in effecting such a reduction.

#### **B.6.12 Benefits on leaving employment**

- (a) Upon a Member ceasing to be an Employee by reason of Retrenchment, the benefit payable from this Sub-Division for the purposes of clause B.4.4 of Part 2 of Schedule B shall be a lump sum equal to the sum of:
  - (i) the greater of:
    - (A) the Member's Accrued Retirement Benefit; and
    - (B) the sum of:
      - (I) an amount equal to the total of the Member's contributions to the Previous Fund and to the Previous Officers' Fund prior to 1 July 1993 multiplied by a factor determined from column 4

of Annexure A to this Part 2 according to the period of the Member's Fund Membership; and

- (II) the total of the Member's contributions to the Previous Fund and the Fund after 30 June 1993 multiplied by a factor determined from column 5 of Annexure A to this Part 2 according to the period of the Member's Fund Membership; and

(ii) an amount equal to RASM x FAP.

(b) Upon a Member ceasing to be an Employee as provided in clause B.4.4 of Part 2 of Schedule B, but not due to Retrenchment, the benefit to be provided from this Sub-Division for the purposes of clause B.4.4 of Part 2 of Schedule B shall be a lump sum equal to the sum of:

(i) the greater of:

(A) an amount equal to:

- (I) in the case of a Member whose "AGE" is less than or equal to 50 years, an amount calculated in accordance with the formula:

$$ABM_5 \times FAP + C_5$$

or:

- (II) in the case of a Member whose "AGE" is more than 50 years but less than 55 years, an amount calculated in accordance with the formula:

$$\frac{(ABM_5 \times FAP + C_5) \times (55 - AGE) + (ABM \times FAP) \times (AGE - 50)}{5}$$

and:

(B) the sum of:

- (I) the total of the Member's contributions to the Previous Fund and Previous Officers' Fund prior to 1 July 1993 multiplied by a factor determined from column 2 of Annexure A to this Part 2 according to the period of the Member's Fund Membership; and
- (II) the total of the Member's contributions to the Previous Fund and the Fund after 30 June 1993 multiplied by a factor determined from column 3 of Annexure A to this Part 2 according to the period of the Member's Fund Membership; and

(ii) an amount equal to RASM x FAP,

and for the purposes of this formula:

**AGE** in relation to a Member is the Member's age in years (with each additional day counting as a fraction of the year) at the date on which the Member ceased to be an Employee;

**ABM<sub>5</sub>** is the Accrued Benefit Multiple as at the date 5 years prior to the date on which the Member ceased to be an Employee; and

**C<sub>5</sub>** is an amount equal to the total contributions (if any) paid by the Member to the Fund or the Previous Fund (excluding contributions made pursuant to clause 3.1(d) of the Deed) during the period commencing 5 years prior to the date on which the Member ceased to be an Employee and the date on which he or she became a Member, whichever is the later, and ending on the date the Member ceased to be an Employee, accumulated up to the date the Member ceased to be an Employee with interest at the Declared Rate.

(c) If the case of an Age 60 Female who has attained the age of 50 years but has not attained the age of 55 years at the time she ceases to be an Employee the benefit payable under this clause B.6.12 shall never be less than an amount determined by the Trustee on the advice of the Actuary to be equivalent to the net liability of this Sub-Division in respect of the Member at the date of ceasing to be an Employee.

(d) Upon a Member ceasing to be an Employee by reason of Ill Health, the benefit payable from this Sub-Division for the purposes of clause B.4.4 of Part 2 of Schedule B shall be a lump sum equal to the sum of:

(i) the greater of:

(A) an amount equal to:

(I) in the case of a Member whose "AGE" is less than or equal to 50 years, an amount calculated in accordance with the formula:

$$ABM_5 \times FAP + C_5$$

or:

(II) in the case of a Member whose "AGE" is more than 50 years but less than 55 years, an amount calculated in accordance with the formula:

$$\frac{(ABM_5 \times FAP + C_5) \times (55 - AGE) + (ABM_5 \times FAP) \times (AGE - 50)}{5}$$

and:

(B) the sum of:

(I) the total of the Member's contributions to the Previous Fund and Previous Officers' Fund prior to 1 July 1993 multiplied by a factor determined from column 4 of Annexure A to this Part 2 according to the period of the Member's Fund Membership; and

(II) the total of the Member's contributions to the Previous Fund and the Fund after 30 June 1993 multiplied by a factor determined from column 5 of Annexure A to this Part 2 according to the period of the Member's Fund Membership; and

- (ii) an amount equal to  $RASM \times FAP$ ,

and for the purposes of this formula:

**AGE** in relation to a Member is the Member's age in years (with each additional day counting as a fraction of the year) at the date on which the Member ceased to be an Employee;

**ABM<sub>5</sub>** is the Accrued Benefit Multiple as at the date 5 years prior to the date on which the Member ceased to be an Employee; and

**C<sub>5</sub>** is an amount equal to the total contributions (if any) paid by the Member to the Fund or the Previous Fund (excluding contributions made pursuant to clause B.3.1(d) of Part 2 of Schedule B during the period commencing 5 years prior to the date on which the Member ceased to be an Employee and the date on which he or she became a Member, whichever is the later, and ending on the date the Member ceased to be an Employee, accumulated up to the date the Member ceased to be an Employee with interest at the Declared Rate.

- (e) If at the date the Member ceases to be an Employee the Accrued Benefit Multiple is equal to or greater than 0.375, the Member may in lieu of taking the immediate payment specified in clause B.6.12 of Part 2 of Schedule B elect to have a Preserved Benefit secured in respect of him under this Sub-Division payable:

- (i) at any time upon the request of the Member in writing to the Trustee after the Member has ceased to be an Employee (and for this purpose a Member who at the Normal Retirement Date has not made such a request shall be deemed to have requested payment at the Normal Retirement Date); or

- (ii) on the Member's death;

whichever is the first to occur, and of an amount equal to the amount specified in clause B.6.12(b)(i) of Part 2 of Schedule B accumulated up to the date of payment with interest at the Declared Rate, provided that the benefit payable in the case of a Member:

- (iii) who requests payment at any time on or after the attainment of the age of 55 years (and for this purpose a Member who at the Normal Retirement Date has not made such a request shall be deemed to have requested payment on the Normal Retirement Date); or

- (iv) who dies; or

- (v) who prior to the attainment of the age of 55 years requests payment and satisfies the Trustee that he or she has retired from Gainful Employment in circumstances similar to Total and Permanent Disablement as provided in clause B.4.3(b) of Part 2 of Schedule B; or

- (vi) who requests payment at any time (and for this purpose a Member who at the Normal Retirement Date has not made such a request shall be deemed to have requested payment on the Normal Retirement Date) having ceased to be an Employee by reason of Retrenchment,

shall not be less than an amount determined in accordance with the formula:

$$ABM \times FAIP + RASM \times FAIP$$

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## **B.7 Guarantee for Previous Officers' Fund Members**

- (a) Notwithstanding anything expressed or implied to the contrary in this Part 2 and in particular in clauses B.4.6 and B.4.9 of Part 2 of Schedule B but subject to clauses B.7(b) and B.9.2 of Part 2 of Schedule B, in respect of a Previous Officers' Fund Member:
- (i) any benefit payable to or in respect of that Previous Officers' Fund Member shall not be less than would have been paid had the Member continued in membership of the Previous Officers' Fund; and
  - (ii) where, in the opinion of the Trustee, a provision of this Part 2 (when applied to or in respect of a Previous Officers' Fund Member who joined the Previous Officers' Fund prior to 21 August 1984) would, when compared with the action permitted under a corresponding provision of the Previous Officers' Fund Rules, be detrimental to that Member had he or she continued in membership of the Previous Officers' Fund then the Trustee shall decide what, if any, action to take.
- (b) In the event that any dispute arises as to whether, or as to the manner in which, this clause B.7 shall apply to or in respect of a Member or group of Members, the Trustee shall seek the advice of the Actuary who in framing his or her advice shall have regard to all circumstances which the Actuary believes are relevant. The Trustee shall make a decision having regard to the Actuary's advice and any other factors which the Trustee determines to be relevant, and the Trustee's decision shall be final and binding on the Employer, the Trustee, the Member and any other interested persons.

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## **B.8 Adjustments for Valid Family Law Arrangements**

Notwithstanding anything to the contrary in this Part 2, the Trustee may:

- (a) adjust a benefit payable to or in respect of a Member under this Part 2; or
- (b) make an adjustment in respect of a benefit which will become payable to or in respect of a Member under this Part 2,

to the extent, and in any manner, as permitted by Superannuation Law to take account of a valid family law arrangement.

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## **B.9 Pre-Retirement Pensions**

### **B.9.1 Application to receive Pre-Retirement Pension**

Subject to:

- (a) any rules, terms and conditions that the Trustee may determine;
- (b) obtaining the prior written approval of the Member's Employer; and

- (c) the requirements of Superannuation Law,

a Member may apply to the Trustee to receive a Pre-Retirement Pension and the Trustee may approve the Member's application.

**B.9.2 Transfer to the Accumulation and Pension Division and adjustment of benefits**

- (a) This clause B.9.2 applies in respect of a Member who is approved by the Trustee to receive a Pre-Retirement Pension.
- (b) The Member's Pre-Retirement Pension Accrued Benefit will (together with amounts from any accounts maintained for the Member in the Fund) be transferred to a Benefit Account in respect of the Member under the Accumulation and Pension Division and will be paid as a Non-Commutable Account-Based Pension in accordance with Schedule A.
- (c) If a benefit becomes payable to or in respect of a Member under this Part 2, then, notwithstanding any other provision of this Schedule B, the relevant benefit will be reduced by an adjustment to the Member's period of Service or Fund Membership (or by any other manner of adjustment) as determined by the Trustee on the advice of the Actuary so as to take into account the Member's Pre-Retirement Pension Accrued Benefit which was transferred to a Benefit Account in accordance with clause B.9.2(b) of Part 2 of this Schedule B.

## Annexure A of Part 2

Column 1 Fund Membership	Column 2 Resignation factor (pre 93)	Column 3 Resignation factor (post 93)	Column 4 Retrenchment factor (pre 93)	Column 5 Retrenchment factor (post 93)
0	1.03	1.03	3.09	2.78
1	1.06	1.06	3.18	2.86
2	1.09	1.08	3.27	2.93
3	1.12	1.11	3.36	3.01
4	1.15	1.13	3.45	3.09
5	1.18	1.16	3.54	3.16
6	1.33	1.29	3.63	3.24
7	1.49	1.42	3.72	3.32
8	1.65	1.56	3.81	3.39
9	1.83	1.71	3.93	3.50
10	2.03	1.88	4.05	3.60
11	2.24	2.06	4.20	3.72
12	2.47	2.25	4.35	3.85
13	2.68	2.43	4.47	3.95
14	2.91	2.63	4.59	4.06
15	3.14	2.82	4.71	4.16
16	3.38	3.03	4.83	4.26
17	3.63	3.24	4.95	4.36
18	3.87	3.44	5.07	4.46
19	4.15	3.68	5.19	4.57
20	4.43	3.92	5.31	4.67
21	4.50	3.98	5.40	4.74
22	4.58	4.05	5.49	4.82
23	4.65	4.11	5.58	4.90
24	4.73	4.18	5.67	4.97
25	4.80	4.23	5.76	5.05
26	4.88	4.30	5.85	5.13
27	4.95	4.36	5.94	5.20
28	5.03	4.43	6.03	5.28
29	5.10	4.49	6.12	5.36
30	5.18	4.56	6.21	5.43
31	5.25	4.62	6.30	5.51
32	5.33	4.69	6.39	5.59
33	5.40	4.74	6.48	5.66
34	5.48	4.81	6.57	5.74
35	5.58	4.90	6.69	5.84
36	5.68	4.98	6.81	5.94
37	5.78	5.07	6.93	6.05
38	5.88	5.15	7.05	6.15
39	5.98	5.24	7.17	6.25
40	6.08	5.32	7.29	6.35



## Part 3 – Former Members of the Melbourne Water Corporation Employees’ Superannuation Fund

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### B.1 Application and Interpretation

#### B.1.1 Application

The provisions of this Part 3 of Schedule B relate only to Members of the Former Members of the Melbourne Water Corporation Employees’ Superannuation Fund Sub-Division of the Division.

#### B.1.2 Definitions

In this Part 3, unless the contrary intention appears:

**Agreed Rate** means a rate or rates of interest determined by the Trustee from time to time as being fair and reasonable for application under this Part 3.

**Agreements Scheme** means in relation to each person to whom the provisions of clause B.4.2 of Part 3 of Schedule B apply, the individual agreement made under seal and entered into by that person with the Board, as varied by any subsequent resolution, order or decision of the Board or where the context so requires means collectively all such agreements entered into with the Board.

**Annual Salary** means in relation to a Member at any particular date the annual rate of the Member’s Salary as at that date.

**Approved Superannuation Agreement** means in relation to a Member, any agreement entered into by the Board under which the Board agrees to pay contributions to this Sub-Division and which is ratified by a decision handed down by the Commission or such other agreement not necessarily ratified or requiring ratification by the Commission which the Board shall declare to be an Approved Superannuation Agreement for the purposes of this Part 3.

**Board** means the Melbourne Water Corporation.

**Commission** means as the case requires either:

- (a) the Australian Conciliation and Arbitration Commission established under the *Australian Conciliation and Arbitration Act 1904*; or
- (b) any industrial commission established under the law of any State or Territory of the Commonwealth of Australia;

which expression shall include any body, organisation or commission established as successor thereto.

**Contributor** means a person who joined the WIS Fund prior to 1 September 1987 and includes a former employee of the Board in receipt of a pension under the Former Regulations and any other person whom the Board declares to be a Contributor for the purposes of this Part 3.

**Expense Allowance** means an allowance payable to a Member which is designated as an expense allowance or an expense of office allowance or which is granted in respect of expenses which are normally and properly incurred by a Member in carrying out the duties of his or her office.

**Final Salary** means in relation to a Member, the Member's Annual Salary at the date on which the Member ceases to be an Employee.

**Former Regulations** means the *Melbourne and Metropolitan Board of Works Superannuation Scheme Regulations* (S.R.270 of 1981).

**Fund Membership** means the sum of the following periods:

- (a) in relation to an Employee who became a Contributor prior to 1 January 1983, the Employee's period of Service;
- (b) in relation to an Employee who became a Contributor on or after 1 January 1983, the most recent uninterrupted period during which the Employee has been a Contributor and an Employee; or
- (c) in relation to any other Employee, the most recent uninterrupted period of Service completed subsequent to 1 September 1987 as a member of the WIS Fund; and
- (d) in relation to any Employee who became a member of the 1988 Fund by virtue of section 53G of the 1988 Act, the most recent uninterrupted period of Service under the 1988 Fund; and
- (e) in relation to any Employee who became a member of the Fund after the repeal of the 1988 Act, the most recent uninterrupted period of Service since that date,

where the relevant period is measured in years with each additional day counting as a fraction of the year.

**Gratuity Scheme** means the Gratuity Scheme operated by the Board and in force prior to 1 September 1987.

**Member** means a person who is a Member of this Sub-Division and who is not a Pensioner.

**New Basis Member** means a person to whom Sub-Division B of the WIS Fund Regulations applied immediately prior to the repeal of the 1988 Act.

**Old Basis Member** means a person to whom Sub-Division C of the WIS Fund Regulations applied immediately prior to the repeal of the 1988 Act.

**Partial Disablement** means in relation to a Member having become in the opinion of the Trustee unable through injury or illness or general failure of health (such injury, illness or general failure of health not amounting to Total and Permanent Disablement) to continue his or her normal occupation as an Employee and for whom the Employer considers there is no suitable alternative work available in its employment.

**Pre-Retirement Pension Accrued Benefit** means the amount of a Member's accrued benefit under this Part 3 which (after having first transferred to the Accumulation and Pension Division all amounts in any accounts maintained for the Member in this Sub-Division or Schedule A) the Member elects to transfer to the Accumulation and Pension Division for the purpose of establishing an Account Based Pension (as defined in Schedule A) and which the Trustee approves for that purpose.

**Previous Fund** means as the case requires either:

- (a) the Provident Fund; or

- (b) the Gratuity Scheme.

**Previous Fund Member** means a Member who was admitted to the WIS Fund on 1 September 1987 and who on the day immediately prior to 1 September 1987 was a member of a Previous Fund.

**Previous Fund Membership** means in relation to a Member who immediately prior to becoming a member of the WIS Fund:

- (a) was a member of the Provident Fund but has not been a member of the Gratuity Scheme, the most recent uninterrupted period during which the Member was a member of the Provident Fund completed immediately before the Member became a member of the WIS Fund; or
- (b) was a member of the Gratuity Scheme, the most recent uninterrupted period during which the Member was a member of the Gratuity Scheme completed immediately before the Member became a member of the WIS Fund; or
- (c) was a member of the Provident Fund but prior to becoming a member of the Provident Fund was a member of the Gratuity Scheme, the sum of:
- (i) the most recent uninterrupted period during which the Member was a member of the Gratuity Scheme completed immediately before the Member last became a member of the Provident Fund; and
  - (ii) the most recent uninterrupted period during which the Member was a member of the Provident Fund completed immediately before the Member became a member of the WIS Fund,

except that, where any of the aforesaid periods are concurrent with any periods of Fund Membership then any such concurrent periods shall be excluded for the purposes of determining a Member's period of Previous Fund Membership.

**Prior Scheme** means and includes any scheme (save and except a Previous Fund) whereby the Board has in exercise of the powers conferred upon it by section 42(3) of the *Melbourne and Metropolitan Board of Works Act 1958*, or any previous corresponding enactment, made provision for the granting and payment of superannuation allowances or pensions.

**Provident Fund** means the Melbourne and Metropolitan Board of Works Provident Fund as constituted by the *Melbourne and Metropolitan Board of Works Provident Fund Regulations* (S.R. 463 of 1980).

**Salary** means in relation to a Member, the actual salary of the Member from time to time determined by the Commission or the Employer (as applicable) and includes:

- (a) allowances (where applicable) which are included to make up the all purpose rate of pay for the classification or class of work of the Member, such as industry or construction allowances, state incremental payments, service grants and fixed amounts included in the Member's salary to compensate for overtime and weekend duty worked as part of normal hours and/or availability; plus
- (b) in the case of a Member classified by the Employer as a permanent shift worker, an allowance of 10 per cent of the rate of pay determined by the Commission or the Employer (as applicable), for the classification or class of work carried out by that Member,

but shall not include any Expense Allowance. If the Member's Salary is reduced at any time by the Employer, the Trustee and the Member may agree that the Member's Salary immediately prior to the reduction shall continue to be the Member's Salary for the purposes of this Part 3 during the period when the Member's actual Salary is less than the Salary immediately prior to the reduction.

**Service** means, in relation to a Member, the most recent uninterrupted period during which the Member has been an Employee.

**Sub-Division** means this Former Members of the Melbourne Water Corporation Employees' Superannuation Fund Sub-Division.

**Temporary Disablement** means in relation to a Member having been absent from employment as an Employee through illness or injury, such illness or injury being in the opinion of the Trustee sufficiently serious as to render the Member unlikely for the time being to continue his or her normal occupation as an Employee.

**Total and Permanent Disablement** means in relation to a Member having ceased to be an Employee through illness or injury, such illness or injury being in the opinion of the Trustee sufficiently serious as to render the Member unlikely ever to resume work in or attend to any gainful occupation for which the Member is reasonably suited by education, training or experience.

**WIS Fund** means the **Water Industry Superannuation Fund** established initially pursuant to the *Melbourne and Metropolitan Board of Works Employees' Superannuation Fund Regulations*.

**WIS Fund Regulations** means the regulations governing the WIS Fund in effect on 12 October 1995.

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## **B.2 Administration and Procedures**

### **B.2.1 Temporary cessation of employment and leave without pay**

- (a) If any Member ceases to be an Employee in circumstances in which it is reasonable to expect that the cessation will only be of a temporary nature and that the Member will again become an Employee of the Employer, the Trustee may, with the consent of the Board and of the Member, continue that Member's membership of this Sub-Division subject to such conditions as may be agreed upon by the Trustee, the Board and the Member.
- (b) If any Member is granted leave without pay by the Employer, the Member shall continue his or her membership of this Sub-Division on such conditions as are determined by the Employer and approved by the Trustee.

### **B.2.2 Part-time employment**

Notwithstanding anything contained in this Part 3, if a Member is or becomes an Employee in a part-time capacity, that Member shall contribute during the period that he or she is an Employee in a part-time capacity and benefits shall be secured for and in respect of the Member during and in respect of that period on a basis determined by the Board and approved by the Trustee after obtaining the advice of the Actuary, and the Board may in like manner re-determine or adjust that basis in the event that the Member's part-time hours change or the Member becomes an Employee in a full-time capacity.

### **B.2.3 Transfer from one Employer to another**

Subject to clause B.7.2 of Part 1 of this Schedule B, if a Member transfers as an Employee of one Employer under this Part 3 to become an Employee of another Employer under this Part 3, then that transfer shall not be deemed to constitute a cessation of employment for the purposes of an entitlement to any benefit under this Part 3 provided that the Trustee shall arrange for the Actuary to make a further determination of an amount in respect of the transfer (if considered appropriate by the Actuary) for the purposes of the Employer accounts referred to in clause B.3.2 of this Part 3 of Schedule A.

### **B.2.4 Special transfer rules**

If an Employer establishes or has established another superannuation fund which a Member or group or class of Members is eligible to join or if that Employer contributes to or is obliged to contribute to an Approved Benefit Arrangement on behalf of or with respect to a Member or group or class of Members then the Trustee may, in either case without the need to obtain the Member's consent (unless such consent is required by Superannuation Law), pay or transfer to or towards that Approved Benefit Arrangement such amount in respect of the Member or group or class of Members as is determined by the Trustee on the advice of the Actuary provided that any transfer under this clause B.2.4 shall not substantially prejudice the value of the rights secured for or in respect of any Member by contributions paid to the Fund, a Prior Scheme, a Previous Fund and the WIS Fund prior to the date on which the transfer occurs.

### **B.2.5 Payment of death benefits**

- (a) Except where otherwise provided in this Part 3, benefits payable on the death of a Member shall be paid to or applied by the Trustee to or for the benefit of such one or more of:
- (i) the Member's Dependants; or
  - (ii) the Member's legal personal representatives,
- to the exclusion of the other or others of them and in such form, manner, proportions and subject to such conditions as the Trustee determines.
- (b) The receipt of a Dependant or legal personal representative (**Beneficiary** for purposes of this clause B.2.5) shall be a complete discharge to the Trustee in respect of the amount paid to that person and the Trustee is not bound to see to the application thereof.
- (c) Unless otherwise determined by the Trustee, if a Beneficiary dies before the whole of a benefit which is payable to that Beneficiary has been paid, the amount of the unpaid benefit shall be paid or applied in accordance with clause B.2.5(a) as if the Beneficiary was a Member when he or she died.

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## **B.3 Employer Contributions**

### **B.3.1 Employer contributions**

Each Employer shall contribute to this Sub-Division:

- (a) an amount equal to twice the contributions paid by each Member; plus
- (b) such contributions as the Employer is bound to pay pursuant to any Approved Superannuation Agreement; plus

- (c) an amount equal to the contribution determined pursuant to clause 5 of the Deed.

### **B.3.2 Employer accounts**

- (a) The Trustee must establish and maintain a separate account for each Employer or group of Employers as the case may be and may establish sub-accounts in relation to each Employer account if considered appropriate.
- (b) For the purposes of this clause B.3.2, the Trustee may make collective determinations for any group of Employers who consent to be regarded as related Employers.
- (c) Each Employer account, or account in respect of a group of Employers, maintained for the purposes of this clause B.3.2 is to be allocated with:
  - (i) an initial amount as determined by the Actuary as the Employer's share of this Sub-Division as at the date that the Employer is admitted as an Employer of this Sub-Division or, with respect to an Employer who had an "Employer account" in the 1988 Fund immediately prior to 1 July 1998, that Employer account balance at that date;
  - (ii) any further amount determined by the Actuary for the purposes of clause B.2.3 of Part 3 of Schedule B;
  - (iii) all amounts received by the Trustee from another fund or benefit arrangement in respect of any Member employed by the Employer;
  - (iv) all contributions received by the Trustee made by or on behalf of the Members employed by the Employer; and
  - (v) the amount (whether positive or negative) earned on the investment of the Employer's share of this Sub-Division after deduction of any Fund expenses relevant to that Employer account,and is to be debited with:
  - (vi) all benefits paid to or in respect of Members who are employed by that Employer; and
  - (vii) all amounts transferred out of this Sub-Division in respect of a Member in accordance with this Part 3.

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## **B.4 Benefits**

### **B.4.1 Discretion to compensate for detriment**

- (a) In relation to benefits payable under clause B.5 of Part 3 of Schedule B, if the Trustee is satisfied that the reduction in benefits effective from 1 July 1993 has resulted in a detriment to a Member, the Trustee may take such steps as the Trustee considers necessary to compensate for that detriment.
- (b) For the purpose of clause B.4.1(a) of Part 3 of Schedule B:

- (i) **detriment** means receiving a lesser amount of after-tax benefit than would have been received if:
  - (A) the “Accrued Benefit Multiple” in clause B.5.2 of Part 3 of Schedule B had not been reduced effective from 1 July 1993; and
  - (B) the benefit had been classified for the purposes of the Tax Act as an untaxed benefit; and
  - (C) tax had applied in accordance with the rates of tax and the basis for its assessment under the Tax Act as at 1 July 1993 in respect of a benefit that becomes payable to a person aged 55 years or more; and
- (ii) **untaxed benefit** means there is no “taxed element” as defined in the Tax Act.

#### **B.4.2 Rights under Agreements Scheme**

Notwithstanding anything contained in this Part 3 (other than clause B.4.4), in no event shall any benefit payable to or in respect of a Member from this Sub-Division who was formerly covered by the Agreements Scheme be payable in less favourable circumstances or be less in amount than would have applied had it been payable in accordance with the terms and conditions governing the Agreements Scheme and in the event that the Trustee is of the opinion that in relation to a particular Member a benefit would be payable in less favourable circumstances or be less in amount as aforesaid then the Trustee shall take such action as it considers appropriate in order to rectify the situation including where necessary paying benefits of amounts and in circumstances not otherwise provided for under this Part 3.

#### **B.4.3 Application to receive Pre-Retirement Pension**

Subject to:

- (a) any rules, terms and conditions that the Trustee may determine;
- (b) obtaining the prior written approval of the Member’s Employer; and
- (c) the requirements of Superannuation Law,

a Member may apply to the Trustee to receive a Pre-Retirement Pension and the Trustee may approve the Member’s application.

#### **B.4.4 Transfer to the Accumulation and Pension Division and adjustment of benefits**

- (a) This clause B.4.4 applies in respect of a Member who is approved by the Trustee to receive a Pre-Retirement Pension.
- (b) The Member’s Pre-Retirement Pension Accrued Benefit will (together with amounts from any accounts maintained for the Member in this Sub-Division) be transferred to a Benefit Account in respect of the Member under the Accumulation and Pension Division and will be paid as a Non-Commutable Account-Based Pension in accordance with Schedule A.
- (c) If a benefit becomes payable to or in respect of a Member under this Part 3, then, notwithstanding any other provision of this Schedule B, the relevant benefit will be reduced by an adjustment to the Member’s period

of Service or Fund Membership (or by any other manner of adjustment) as determined by the Trustee on the advice of the Actuary so as to take into account the Member's Pre-Retirement Pension Accrued Benefit which was transferred to a Benefit Account in accordance with clause B.4.4(b) of Part 3 of this Schedule B.

## B.5 Contributions and Benefits for New Basis Members

### B.5.1 Application

- (a) The provisions of this clause B.5 shall apply to and in respect of each and every member of this Sub-Division who:
- (i) was a New Basis Member immediately before the repeal of the 1988 Act; or
  - (ii) is a member of this Sub-Division of the Fund who is for the time being categorised under this clause B.5.
- (b) This clause B.5 shall be subject to clauses B.1 to B.4 of Part 3 of this Schedule B. Unless inconsistent with the context or subject matter, this clause B.5 shall be read to the entire exclusion of clause B.6 of Part 3 of this Schedule B.

### B.5.2 Definitions

In this clause B.5, unless the contrary intention appears or the context requires otherwise:

**Accrued Benefit Multiple** means in relation to a Member at any particular date the multiple which is the sum of:

- (a) the multiple determined according to the following formula for the period of Fund Membership to 30 June 1993:

$$\frac{(SM_0 \times 8 + SM_{2.5} \times 14 + SM_5 \times 20 + SM_{7.5} \times 26)}{1200}$$

where:

$SM_0$ ,  $SM_{2.5}$ ,  $SM_5$  and  $SM_{7.5}$  mean periods calculated in months of the Member's Fund Membership after 1 September 1987 up to and including 30 June 1993 during which the Member's rate of contribution to the WIS Fund was respectively 0%, 2.5%, 5% or 7.5% of Salary; and

- (b) the multiple determined according to the following formula for the period of Fund Membership on and after 1 July 1993:

$$\frac{(SM_0 \times 7 + SM_{2.5} \times 12.25 + SM_5 \times 17.5 + SM_{7.5} \times 22.75)}{1200}$$

where:

$SM_0$ ,  $SM_{2.5}$ ,  $SM_5$  and  $SM_{7.5}$  mean periods calculated in months of the Member's Fund Membership after 30th June 1993 during which the Member's rate of contribution to the WIS Fund or the Fund (as applicable) was respectively 0%, 2.5%, 5% or 7.5% of Salary;

- (c) the Gratuity Scheme Multiple;



- (d) the Past Fund Multiple;
- (e) the Provident Fund Multiple; and
- (f) the Special Additional Multiple.

**Accrued Retirement Benefit** means in relation to a Member at any particular date, the product of the Member's Final Salary and the Accrued Benefit Multiple.

**Changeover Date** means in relation to a Transferred Existing Member the date on which that Member's contributions and benefits commenced to be determined in accordance with Section B of the WIS Fund Regulations.

**Combined Fund Membership** means in relation to a Member, the sum of:

- (a) the period of the Member's Fund Membership; and
- (b) the period of the Member's Previous Fund Membership.

**Existing Fund Accumulation** means in relation to a Transferred Existing Member, the sum of:

- (a) the amount standing to the credit of the Member's Contributor Fund Account as at 1 September 1987 as defined in and established pursuant to regulation 15 of the Former Regulations;
- (b) an amount equal to three times the contributions made by the Member to the WIS Fund on and after 1 September 1987 pursuant to clause B.6.3 of Part 3 of this Schedule B except that a Member who, but for the clauses B.6.3(b) or (c) of Part 3 of this Schedule B would have been liable to contribute to the WIS Fund in excess of the maximum rate of contribution specified in that clause, shall be deemed to have contributed to this Sub-Division at the rate which he or she would have been liable to contribute had the said maximum rate not applied;
- (c) an amount equal to three times the contributions made by the Member to the Fund and the WIS Fund on and after 1 September 1987 pursuant to clause B.5.3 of Part 3 of this Schedule B; and
- (d) compound interest at the Agreed Rate for the period from 1 September 1987 in relation to the amount specified in paragraph (a) and from the date of receipt into the Fund or the WIS Fund, as applicable, of the contributions in relation to the amounts specified in paragraphs (b) and (c), up to in each case the date on which the Member ceases to be an Employee.

**Gratuity Scheme Multiple** means in relation to a Member, the multiple calculated by multiplying one-twelfth of 0.05 by the number of months in the Member's period of membership of the Gratuity Scheme which are included in the period of the Member's Previous Fund Membership.

**Maximum Benefit** means an amount equal to the product of the Members' Final Salary and:

$$A + \frac{(B-A) \times 17.5}{20}$$

where:

**A** is the accrued multiple at 30 June 1993; and

**B** is the maximum fund multiple at 30 June 1993.

**Past Fund Multiple** means in relation to a Transferred Existing Member the multiple according to the following formula:

$$\frac{LS_{60xt}}{FSxn} + AM$$

where:

**LS<sub>60</sub>** is the lump sum determined by the Trustee as that which the Member could have exchanged for the annual pension to which the Member would have been entitled under the Former Regulations had the Member retired at the age of 60 years except that for the purposes of determining that pension the period of Fund Membership which the Member would have completed at the age of 60 years shall be used;

**FS** is the Member's Final Salary;

**t** is the number of months in the period of Fund Membership completed up to the Changeover Date;

**n** is the number of months in the period of Fund Membership which the Member would have completed had the Member continued as a Member and an Employee up to the date of attainment of the age of 60 years; and

**AM** is the lesser of 0.7 and the multiple determined according to the following formula:

$$\frac{0.02 \times t}{12}$$

where **t** has the meaning ascribed to it above.

**Provident Fund Multiple** means in relation to a Member a multiple equal to the sum of:

- (a) one-twelfth of 0.11 multiplied by the number of months in the Member's period of Previous Fund Membership during which the Member's rate of contribution to the Provident Fund was 2.5% of wage; and
- (b) one-twelfth of 0.14 multiplied by the number of months in the Member's period of Previous Fund Membership during which the Member's rate of contribution to the Provident Fund was 5% of wage.

**Short Term Employee** means any Employee appointed pursuant to sections 21, 25A or 41 of the *Melbourne and Metropolitan Board of Works Act 1958* and whose appointment is for a fixed period not exceeding 5 years.

**Special Additional Multiple** means:

- (a) in relation to a Member who was a member of the WIS Fund on 1 September 1987, the multiple (if any) determined by the Trustee at that date as being the Member's Special Additional Multiple; and

- (b) in relation to any Member in respect of whom a transfer into the Fund or the WIS Fund is, or was, effected subsequent to 1 September 1987, the multiple determined by the Trustee to take account of that transfer.

**Transferred Existing Member** means a person who elected prior to 1 March 1988 to become a member of the WIS Fund to whom Section B of the WIS Fund Regulations would apply.

### **B.5.3 Member contributions**

- (a) Subject to the other provisions of this clause B.5.3, each Member shall contribute to this Sub-Division a percentage of Salary at the date the contribution is due, the percentage being:
- (i) 0%, 2.5% or 5%; or
  - (ii) 0%, 2.5%, 5% or 7.5%, in the case of a Transferred Existing Member; or
  - (iii) 0%, 2.5% or 5% in the case of a person who is not a Transferred Existing Member, or 7.5% where that person:
    - (A) immediately before 1 September 1987 was an Employee; and
    - (B) has an Accrued Benefit Multiple of less than one twelfth of 0.20 for each month of Service,
- whichever the Member selects.
- (b) A Member may by written notice to the Trustee in a form determined or approved by the Trustee elect to change his or her rate of contribution by nominating another of the rates specified in paragraph (a) and such nomination shall be made at any time and shall become effective from the date of payment of the Member's Salary following the date of the change.
- (c) Notwithstanding anything contained in paragraph (b), a Member's rate of contribution shall be and shall remain 0% if:
- (i) without payment of further contributions by the Member, the Member's Accrued Retirement Benefit at the date on which the Member would have attained the age of 60 years would exceed the Maximum Benefit; or
  - (ii) the Member's Accrued Retirement Benefit exceeds the Maximum Benefit.
- (d) Subject to paragraph (d):
- (i) a Member who does not select a rate of contribution pursuant to paragraph (a) shall:
    - (A) in the case of a Member who was a member of the Provident Fund, be deemed to have selected the rate of contribution he or she was contributing to the Provident Fund immediately prior to 1 September 1987; or
    - (B) in the case of any other Member (including a Member who was a member of the Gratuity Scheme) be deemed

to have selected a rate of contribution of 0% of Salary;  
or

- (ii) in any case where a Member does not notify any change in his or her rate of contribution as provided for under paragraph (b), the Trustee shall deem that Member to have notified the Trustee that the Member's rate of contribution is to continue unchanged.

#### **B.5.4 Retirement and Partial Disablement benefits**

Subject to clause B.4.4 of Part 3 of this Schedule B and Schedule A, if a Member ceases to be an Employee other than in circumstances provided in clauses B.5.5 or B.5.6 of Part 3 of this Schedule B:

- (a) at any time on or after the attainment of the age of 55 years; or
- (b) at any time prior to the attainment of the age of 55 years on account of Partial Disablement,

there shall be paid to the Member from this Sub-Division a lump sum benefit equal to the Member's Accrued Retirement Benefit as at the date the Member ceased to be an Employee. However, the lump sum benefit shall not in any event exceed the Maximum Benefit.

#### **B.5.5 Death benefit**

Subject to clause B.4.4 of Part 3 of this Schedule B, if a Member dies while an Employee, there shall be paid from this Sub-Division, in respect of the Member in accordance with the provisions of clause B.2.5 of Part 3 of this Schedule B a lump sum benefit equal to the greater of:

- (a) the sum of:
  - (i) the Member's Accrued Retirement Benefit calculated on the basis applicable at 30 June 1993 at the date of death; and
  - (ii) if the Member's death occurs before the attainment of the age of 60 years, an amount determined according to the following formula:

$$\frac{FS \times F \times PFM}{12}$$

where:

**FS** is the Member's Final Salary;

**F** is 0.20 or, in the case of a Member whose rate of contribution immediately prior to the date of death was 7.5 per cent, 0.26; and

**PFM** is the number of months between the date of death of the Member and the date on which the Member would have attained the age of 60 years; and

- (b) in the case of a Previous Fund Member who was formerly a member of the Provident Fund, an amount determined according to the following formula:

$$FS \times DBM$$

where:

**FS** is the Member's Final Salary; and

**DBM** is the multiple which would have been used to determine the Member's retirement benefit under the Provident Fund had the Member continued after 1 September 1987 as a member of the Provident Fund until the attainment of the age of 65 years, but calculated assuming the Member's rate of contribution in force on the day prior to 1 September 1987 would have continued unaltered.

However, the aforesaid lump sum benefit shall not in any event exceed the Maximum Benefit.

### **B.5.6 Total and Permanent Disablement benefit**

Subject to Schedule A and to clause B.4.4 of Part 3 of this Schedule B, if a Member ceases to be an Employee on account of Total and Permanent Disablement, there shall be paid to the Member from this Sub-Division a lump sum benefit of an amount equal to the greater of:

(a) the sum of:

(i) the Member's Accrued Retirement Benefit at the date of cessation an Employee; and

(ii) if the Member's death occurs before the attainment of the age of 60 years, an amount determined according to the following formula:

$$\frac{FS \times F \times PFM}{12}$$

where:

**FS** is the Member's Final Salary;

**F** is 0.20 or, in the case of a Member whose rate of contribution immediately prior to the date of cessation of employment was 7.5 per cent, 0.26; and

**PFM** is the number of months between the date of death of the Member and the date on which the Member would have attained the age of 60 years; and

(b) in the case of a Previous Fund Member who was formerly a member of the Provident Fund, an amount determined according to the following formula:

$$FS \times DBM$$

where:

**FS** is the Member's Final Salary; and

**DBM** is the multiple which would have been used to determine the Member's retirement benefit under the Provident Fund had the Member continued after 1 September 1987 as a member of the Provident Fund until the attainment of the age of 65 years, but calculated assuming the Member's rate of contribution in force on the day prior to 1 September 1987 would have continued unaltered.

However, the aforesaid lump sum benefit shall not in any event exceed the Maximum Benefit applicable at 30 June 1993.

### **B.5.7 Temporary Disablement benefit**

- (a) If Member becomes Temporarily Disabled while an Employee and prior to the attainment of the age of 60 years, an income benefit (**Income Benefit**) shall be payable to the Member from this Sub-Division in accordance with this clause B.5.7.
- (b) The Income Benefit shall be a monthly amount equal to one-twelfth of 70 per cent of the Member's Annual Salary from time to time and shall commence to be payable from the date which the Employer notifies the Trustee as being that on which the Member's right to any sick leave entitlements relating to the Member's conditions of employment with the Employer has expired. The Trustee shall reduce the Income Benefit by the monthly equivalent of any sum paid or payable to the Member under any provision for workers compensation, sick leave or what the Trustee considers to be similar payments, but only to ensure, so far as is practicable, that the amount of the Income Benefit when aggregated with such payments shall not exceed one-twelfth of 100 per cent of the Member's Annual Salary from time to time.
- (c) The Income Benefit shall be paid by equal monthly instalments on the last day of each month or as soon as practicable thereafter and where necessary, pro-rata instalments shall be paid.
- (d) The Income Benefit shall terminate on the first to occur of:
  - (i) the death of the Member;
  - (ii) the date on which the Member ceases to be an Employee;
  - (iii) the date on which the Member becomes Totally and Permanently Disabled; or
  - (iv) the day immediately following the date on which the equivalent of 24 monthly instalments of the Income Benefit have been received by the Member.
- (e) Without derogating in any way from the provisions contained in paragraph (d), if the Member:
  - (i) engages in remunerative employment with the Employer or any other organisation or person; or
  - (ii) in the opinion of the Trustee, is or becomes able to engage in any remunerative employment,

the Trustee may reduce or suspend the Income Benefit to such extent and for such period as the Trustee sees fit or may permanently discontinue the income Benefit.

### **B.5.8 Retrenchment benefit**

Subject to Schedule A and to clause B.4.4 of Part 3 of this Schedule B, if a Member ceases to be an Employee and the Employer certifies to the Trustee that such cessation is due to retrenchment there shall be paid to the Member from this Sub-Division a lump sum benefit equal to the Member's Accrued Retirement Benefit as at the date the Member ceased to be an Employee. However, the aforesaid lump sum benefit shall not in any event exceed the Maximum Benefit.

### B.5.9 Cessation of employment for other reasons

- (a) Subject to Schedule A, if a Member ceases to be an Employee in circumstances in which a benefit is not payable under any other provision of this clause B.5, there shall be paid to the Member from this Sub-Division, subject to clause B.5.10 of Part 3 of this Schedule B, a lump sum benefit calculated in accordance with whichever of the succeeding paragraphs are applicable to the Member.
- (b) If the Member's period of Combined Fund Membership is less than 5 years, the sum of:
- (i) the total of the contributions paid by the Member to the Fund and WIS Fund on and after 1 September 1987; and
  - (ii) in the case of a Transferred Existing Member an amount equal to:
    - (A) the total of the contributions paid by the Member to the Provident Fund accumulated with interest in accordance with the provisions of the Provident Fund up to the commencement of the Member's Fund Membership and thereafter with compound interest at the rate of 5 per cent per annum calculated with quarterly rests up to 1 September 1987; plus
    - (B) the total of the contributions paid by the Member to the WIS Fund prior to 1 September 1987 accumulated with compound interest at the rate of 5 percent per annum calculated with quarterly rests up to 1 September 1987; and
  - (iii) in the case of a Previous Fund Member, the total of the contributions paid by the Member to the Provident Fund during the period of Previous Fund Membership accumulated with interest up to 1 September 1987 in accordance with the provisions of the Provident Fund; and
  - (iv) compound interest at the Agreed Rate for the period from, the date of receipt into the Fund in relation to contributions specified in paragraph (i) above and from 1 September 1987 in relation to the amount specified in paragraphs (b)(ii) or (iii) above, up to in each case the date on which the Member ceases to be an Employee.
- (c) If the Member's period of Combined Fund Membership is at least 5 years, but less than 20 years, the greater of:
- (i) an amount determined according to the following formula:

$$FS \times (ABM_5 + MCR_5)$$

where:

**FS** is the Member's Final Salary;

**ABM<sub>5</sub>** is the Member's Accrued Benefit Multiple as at the date 5 years prior to the date on which the Member ceased to be an Employee; and

**MCR<sub>5</sub>** is five times the average percentage rate of contribution made by the Member in the period of 5 years prior to the date on which the Member ceased to be an Employee, such average being based on:

- (i) the percentage rates of contributions made by the Member to the Fund or the WIS Fund, as applicable, during the period of Fund Membership which is contained in the said period of 5 years; and
- (ii) the percentage rates of contributions made by the Member to the Provident Fund during the period of Previous Fund Membership which is contained in the said period of 5 years,

provided that in the case of a Transferred Existing Member then, for any period of Fund Membership prior to the Changeover Date for which percentage rates of contributions are required for the purposes of this expression, the percentage rate of contribution of the Member effective on the day immediately prior to the Changeover Date shall be used; and

- (ii) an amount calculated in accordance with the provisions of clause B.5.9(b) of Part 3 of this Schedule B.

- (d) If the Member's period of Combined Fund Membership is at least 20 years, but less than 25 years, an amount determined according to the following formula:

$$EFB + \frac{t(ARB - EFB)}{60}$$

where:

**EFB** is an amount calculated in accordance with paragraph (c);

**t** is the number of months by which the Member's period of Combined Fund Membership exceeds 240; and

**ARB** is the Member's Accrued Retirement Benefit at the date on which the Member ceased to be an Employee.

- (e) If the Member has attained the age of 50 years but the Member's period of Combined Fund Membership is less than 25 years, an amount determined according to the following formula:

$$NRB + \frac{n(ARB - NRB)}{t}$$

where:

**NRB** is an amount calculated in accordance with whichever of paragraphs (b), (c) or (d) are applicable to the Member;

**n** is the number of months which the Member has completed as an Employee since the attainment of the age of 50 years;

**t** is the lesser of 60 and the number of months which the Member would have completed as an Employee on the attainment of the age of 55 years; and



**ARB** is the Member's Accrued Retirement Benefit at the date on which the Member ceased to be an Employee.

- (f) If Member's period of Combined Fund Membership is at least 25 years, an amount equal to the Member's Accrued Retirement Benefit as at the date on which the Member ceased to be an Employee.

### **B.5.10 Minimum benefits**

Notwithstanding anything contained in this Part 3 (except for clause B.4.4):

- (a) the benefit payable to a Short Term Employee who ceases to be an Employee shall not be less than the Accrued Retirement Benefit at the date on which the Member ceased to be an Employee;
- (b) the benefit payable to a Transferred Existing Member who is retired by the Employer before the attainment of the age of 55 years for any cause other than dismissal for misconduct, shall not be less than the Existing Fund Accumulation;
- (c) the benefit payable to a Previous Fund Member who was a member of the Provident Fund and who is retired by the Employer before the attainment of the age of 55 years for any cause other than dismissal for misconduct, shall not be less than the Accrued Retirement Benefit at the date on which the Member ceased to be an Employee.

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## **B.6 Contributions and Benefits for Old Basis Members**

### **B.6.1 Application**

- (a) The provisions of this clause B.6 shall apply to and in respect of each and every member of this Sub-Division who was an Old Basis Member immediately before the repeal of the 1988 Act.
- (b) This clause B.6 shall be subject to clauses B.1 to B.4 of Part 3 of this Schedule B. Unless inconsistent with the context or subject matter this clause B.6 shall be read to the entire exclusion of clause B.5 of Part 3 of this Schedule B.

### **B.6.2 Definitions**

In this clause B.6, unless the contrary intention appears or the context requires otherwise:

**Accrued Benefit Multiple** means in relation to a Member at any particular date the multiple which is the sum of:

- (a) the multiple determined according to the following formula:

$$\frac{LS_{55} \times t}{FS \times n} + AM$$

where:

**LS<sub>55</sub>** is the lump sum determined by the Trustee as that which the Member could have exchanged for the annual pension to which the Member would have been entitled under clause B.6.6(b) of Part 3 of this Schedule B had the Member retired at the age of 55 years except that for the purposes of determining that

pension the period of Fund Membership which the Member would have completed at the age of 55 years shall be used;

- FS** is the Member's Final Salary;
- t** is the number of months of Fund Membership completed;
- n** is the number of months of Fund Membership which the Member would have completed had the Member continued as a Member and an Employee up to the date of attainment of the age of 55 years; and
- AM** is the lesser of 0.7 and the multiple determined according to the following formula:

$$\frac{0.02 \times t}{12}$$

where **t** has the meaning ascribed to it above;

- (b) the Gratuity Scheme Multiple;
- (c) the Provident Fund Multiple; and
- (d) the Special Additional Multiple.

**Accrued Retirement Benefit** means at the date on which the Member ceased to be an Employee:

- (a) in relation to a Member who had attained the age of 55 years, the sum of:
- (i) an amount equal to one-twelfth of 2 per cent of the Member's Final Salary for each month of Fund Membership, subject to a maximum of 0.7 times the Member's Final Salary; and
- (ii) the amount which the Member could have received pursuant to clause B.6.13(a) of Part 3 of this Schedule B, if at the date of determination the Member had commuted the pension to which the Member was entitled under clause B.6.6 of Part 3 of this Schedule B; or
- (b) in relation to a Member who has not attained the age of 55 years, the sum of:
- (i) an amount equal to one-twelfth of 2 per cent of the Member's Final Salary for each month of Fund Membership, subject to a maximum of 0.7 times the Member's Final Salary; and
- (ii) an amount determined according to the following formula:

$$LS_{55} \times \frac{t}{n}$$

where:

- LS<sub>55</sub>** is the amount which would have been payable to the Member pursuant to clause B.6.13(a) of Part 3 of this Schedule B had the Member continued as a Member and an Employee up to the date of attainment of the age of 55 years and retired on that date and elected to commute the pension to which the Member would

have been entitled under clause B.6.6(b) of Part 3 of this Schedule B;

- t** is the number of months in the period of the Member's Credited Fund Membership completed up to the date the Member ceased to be an Employee; and
- n** is the number of months in the period of Credited Fund Membership which the Member would have completed had the Member continued as a Member and an Employee up to the date of attainment of the age of 55 years.

**Age Election** means in relation to a Member, an election made pursuant to clause B.6.15 of Part 3 of this Schedule B.

**Annexure A, Annexure B, Annexure C and Annexure D** means respectively the Annexures set forth in the Appendix to this Part 3.

**Combined Fund Membership** has the same meaning as in clause B.5 of Part 3 of this Schedule B.

**Credited Fund Membership** means the period of the Member's Fund Membership plus any additional period which the Board may declare to be Fund Membership for the purposes of the whole or any particular clause of this Part 3.

**Existing Fund Accumulation** means in relation to a Member the sum of:

- (a) the amount standing to the credit of the Member's Contributor Fund Account as at 1 September 1987 as defined in and established pursuant to regulation 15 of the Former Regulations; and
- (b) an amount equal to three times the contributions made by the Member to the Fund and the WIS Fund, as applicable, on and after 1 September 1987 pursuant to clause B.6.3 of Part 3 of this Schedule B except that a Member who, but for clauses B.6.3(b) or (c) of Part 3 of this Schedule B, would have been liable to contribute to the Fund or the WIS Fund, as applicable, in excess of the maximum rate of contribution specified in that paragraph, shall be deemed to have contributed to the Fund or the WIS Fund, as applicable, at the rate which he or she would have been liable to contribute had the said maximum rate not applied; and
- (c) compound interest at the Agreed Rate for the period from 1 September 1987 in relation to the amount specified in paragraph (a) above and from the date of receipt into the Fund or the WIS Fund, as applicable, of the contributions in relation to the amount specified in paragraph (b) above, up to in each case the date on which the Member ceases to be an Employee.

**Gratuity Scheme Multiple** has the same meaning as in clause B.5 of Part 3 of this Schedule B.

**Normal Retirement Date** means:

- (a) for a Member who has joined the WIS Fund or the Fund on or after 1 January 1983, the date of the attainment of the age of 60 years;
- (b) for a Member who has joined the WIS Fund or a Prior Scheme on or after 1 January 1973 but before 1 January 1983 and before the date of attainment of the age of 45 years, the date of attainment of the age of 60 years;

- (c) for a Member who has joined the WIS Fund or a Prior Scheme on or after 1 January 1973 but before 1 January 1983 and on or after the date of attainment of the age of 45 years, the date of attainment of the age of 65 years;
- (d) for a Member who has joined a Prior Scheme before 1 January 1973 and before the attainment of the age of 45 years, the date of attainment of the age of 60 years or 65 years as elected by the Member and communicated to the Board in writing not later than 31 March 1973;
- (e) for a Member who has joined a Prior Scheme before 1 January 1973 but on or after the date of attainment of the age of 45 years, the date of attainment of the age of 65 years;
- (f) for a Member who comes within the meaning of paragraphs (c), (d) or (e) and who has made an Age Election, the date of attainment of the age of 60 years.

**Provident Fund Multiple** has the same meaning as in clause B.5 of Part 3 of this Schedule B.

**Special Additional Multiple** has the same meaning as in clause B.5 of Part 3 of this Schedule B.

### **B.6.3 Member contributions**

- (a) Subject to the other provisions of this clause B.6.3, the rate of contribution of each Member shall be determined in the following manner:
  - (i) in the case of a Member admitted to the WIS Fund before 1 January 1983, the initial contribution and any additional contribution of the Member shall be calculated pursuant to Annexure A, where the Normal Retirement Date of the Member is the date of attainment of the age of 60 years and pursuant to Annexure B where the Normal Retirement Date of the Member is the date of attainment of the age of 65 years;
  - (ii) in the case of a Member who commenced contributing to the WIS Fund prior to the commencement date of the Former Regulations, the initial contribution rate shall be (and be deemed to be) that which was the Member's contribution rate immediately prior to that date, and in the case of a Member who commenced contributing on or after that date but prior to 1 January 1983, the initial contribution rate shall be that determined by reference to whichever of Annexure A or Annexure B has application and having regard to the amount of the pension to be secured to the Member at the Normal Retirement Date, the Member's age and sex;
  - (iii) in respect of any increase in the Salary of a Member who commenced contributing to the WIS Fund before 1 January 1983 and whose Normal Retirement Date on that date was the date of attainment of the age of 60 years, there shall be added to the contributions previously made by the Member such further amount as shall in relation to such increase be determined by reference to Annexure A;
  - (iv) in respect of any increase in the Salary of a Member who commenced contributing to the WIS Fund before 1 January 1983 and whose Normal Retirement Date on that date

was the date of attainment of the age of 65 years and who subsequently made or makes an Age Election, there shall be added:

- (A) if any increase in the Salary occurs between 1 January 1983 and the date on which the Age Election became operative, to the contribution previously made by the Member prior to that increase, a further amount which shall in relation to that increase be determined by reference to Annexure A; and
  - (B) if any increase in Salary occurs subsequent to the date on which the Age Election became operative, to the contributions previously made by the Member prior to that increase, a further amount as shall in relation to that increase be determined by reference to Annexure B;
- (v) in respect of any increase in the Salary of a Member who commenced contributing to the WIS Fund before 1 January 1983 and whose Normal Retirement Date is the date of attainment of the age of 65 years, there shall be added to the contribution previously made by the Member such further amount as shall in relation to that increase be determined by reference to Annexure B; and
- (vi) in respect of a Member admitted to the Fund or the WIS Fund, as applicable, on or after 1 January 1983, the contribution shall be a percentage of the Salary of the Member, such percentage being determined by reference to Annexure D having regard to the age of the Member at his or her birthday coinciding with or immediately preceding the date on which the Member was admitted to the Fund or WIS Fund, as applicable.
- (b) Notwithstanding anything contained in this clause B.6, and without affecting any benefit conferred upon a Member under this Part 3, the maximum rate of contribution payable by a Member is:
- (i) 9 per cent of Salary where the Member has completed less than 30 years of Fund Membership; or
  - (ii) 8 per cent of Salary where the Member has completed 30 or more years of Fund Membership.
- (c) The contributions of a Member shall in any event cease:
- (i) on the completion of 40 years of Fund Membership; or
  - (ii) on the Normal Retirement Date,
- whichever is the earlier.

#### **B.6.4 Retirement on the Normal Retirement Date**

Subject to Schedule A and to clause B.4.4 of Part 3 of this Schedule B, if a Member ceases to be an Employee on the Normal Retirement Date, there shall be paid to the Member:

- (a) a lump sum benefit of an amount equal to one-twelfth of 2 per cent of the Member's Final Salary for each month of Fund Membership subject to a maximum of 0.7 times the Member's Final Salary; and

- (b) by equal monthly instalments for five years certain and for the Member's subsequent lifetime, a pension of an annual amount equal to:
- (i) in the case of a Member who joined the Fund or WIS Fund, as applicable, on or after 1 January 1983, one-twelfth of two and one third per cent of the Member's Final Salary multiplied by the number of months of Credited Fund Membership (not exceeding 360 months) the Member completed at the date of retirement; or
  - (ii) in the case of a Member who joined the WIS Fund prior to 1 January 1983, an amount equal to a percentage of the Member's Final Salary, the percentage being determined from Annexure C according to the number of years of Credited Fund Membership completed by the Member at the date of retirement,

reduced in the following manner in the case of a Member who has made an Age Election:

- (c) if the Age Election became operative prior to 1 April 1986, by one-quarter of the difference between:
- (i) the annual amount of the pension calculated in the manner provided in paragraph (ii); and
  - (ii) the annual amount of the pension which would have been payable on the date of attainment of the age of 60 years pursuant to clause B.6.6 of Part 3 of this Schedule B as if the Member's Normal Retirement Date had remained the date of attainment of the age of 65 years,

and for the purposes of determining the amount specified in subparagraphs (i) and (ii), the Member's Annual Salary at the date the Member's Age Election became operative shall be used in lieu of the Member's Final Salary at the date of retirement;

- (d) if the Member's Age Election became or becomes operative on or after 1 April 1986, by such amount as the Board and the Trustee shall determine but in any event not less than the amount calculated in the manner provided in paragraph (c),

provided that if the Member became a member of a Prior Scheme before 1 July 1975 and had elected pursuant to the regulations then in force to contribute for less than a full pension entitlement, then the annual amount of pension shall be reduced to a proportion of that amount, the proportion being that portion for which the Member had elected to contribute pursuant to the aforesaid regulations.

### **B.6.5 Retirement after the Normal Retirement Date**

- (a) Subject to Schedule A and to clauses B.4.4 and B.6.5(b) of Part 3 of this Schedule B, if a Member ceases to be an Employee after the Normal Retirement Date, there shall be paid to the Member a lump sum benefit equal to the sum of:
- (i) an amount equal to one-twelfth of 2 per cent of the Member's Final Salary for each month of Fund Membership, subject to a maximum of 0.7 times the Member's Final Salary; and
  - (ii) an amount determined according to the following formula:

$$\frac{LS_{NRD}}{AS_{NRD}} \times FS$$

where:

**LS<sub>NRD</sub>** is the amount which would have been payable to the Member on the Normal Retirement Date pursuant to clause B.6.13(a) of Part 3 of this Schedule B had the Member commuted the pension to which the Member was entitled under clause B.6.13(b)(i) of Part 3 of this Schedule B;

**AS<sub>NRD</sub>** is the Member's Annual Salary at the Normal Retirement Date; and

**FS** is the Member's Final Salary.

- (b) A Member may elect to substitute an annual pension for the lump sum specified in clause B.6.6(b)(ii) of Part 3 of this Schedule B, the amount of which shall be determined by the Trustee acting on the advice of the Actuary, but shall in no event be less than an amount determined according to the following formula:

$$\frac{AP_{NRD}}{AS_{NRD}} \times FS$$

where:

**AP<sub>NRD</sub>** is the annual pension which the Member would have received under clause B.6.4(b) of Part 3 of this Schedule B had the Member ceased to be an Employee on the Normal Retirement Date; and

**AS<sub>NRD</sub>** and **FS** shall have the meanings ascribed to them in clause B.6.5(a)(ii) of Part 3 of this Schedule B.

### **B.6.6 Retirement before the Normal Retirement Date**

If a Member ceases to be an Employee before the Normal Retirement Date, other than in the circumstances provided in clauses B.6.7, B.6.8 or B.6.9 of Part 3 of this Schedule B, at any time on or after the attainment of the age of 55 years, there shall be paid to the Member (subject to Schedule A and to clauses B.4.4 and B.6.6(c) of Part 3 of this Schedule B):

- (a) a lump sum benefit of an amount equal to one-twelfth of 2 per cent of the Member's Final Salary for each month of Fund Membership, subject to a maximum of 0.7 times the Member's Final Salary; and
- (b) by equal monthly instalments for five years certain and for the Member's subsequent lifetime a pension of an annual amount equal to:
- (i) in the case of a Member whose Normal Retirement Date is the date of attainment of the age of 65 years and who is at least 60 years of age, an amount calculated in the manner provided in clause B.6.4(b) of Part 3 of this Schedule B but taking into account only Credited Fund Membership completed at the date the Member ceases to be an Employee and reduced by 0.079365 per cent in respect of each complete month by which the Member's date of retirement precedes the date on which the Member would have attained the age of 65 years; or

- (ii) in the case of a Member who:
  - (A) has attained the age of 55 years but not the age of 60 years; and
  - (B) has not made an Age Election:
    - (I) an amount determined according to the following formula:

$$ASP \times \frac{t}{n}$$

where:

**ASP** is

(a1) in the case of a Member whose Normal Retirement Date is the date of attainment of the age of 60 years, a pension calculated in the manner provided in clause B.6.4 of Part 3 of this Schedule B had the Member continued as an Employee until the date of attainment of the age of 60 years; or

(a2) in the case of a Member whose Normal Retirement Date is the date of attainment of the age of 65 years, a pension calculated in the manner provided in paragraph (b)(i) above had the Member continued as an Employee until the date of attainment of the age of 60 years;

**t** is the number of months of Credited Fund Membership completed at the date of the Member's retirement; and

**n** is the number of months of Credited Fund Membership which the Member would have completed had the Member continued as an Employee until the date of attainment of the age of 60 years,

reduced by:

- (II) an amount determined in the manner following:
  - (a1) in the case of a Member whose Normal Retirement Date is the date of attainment of the age of 60 years, one-twelfth of 5 per cent of the amount specified in paragraph (I) for each complete month by which the date of the Member's retirement precedes the Normal Retirement Date; or



- (a2) in the case of a Member whose Normal Retirement Date is the date of attainment of the age of 65 years, one-twelfth of 7 per cent of the amount specified in paragraph (I) for each complete month by which the date of the Member's retirement precedes the date of attainment of the age of 60 years,

provided that the annual amount of the pension pursuant to this clause B6.6 shall not in any event be less than the annual amount of the pension which the Actuary certifies has a commuted value equal to:

- (a2.1) in the case of a Member whose Normal Retirement Date is the date of attainment of the age of 60 years and the date from which the Member's period of Credited Fund Membership is measured is before the date of attainment of the age of 20 years, the Member's Final Salary at the date of retirement multiplied by a factor determined in accordance with the following formula:

$$7.70 - \frac{.01(AE - 180)(720 - AR)}{144} - \frac{.14(720 - AR)}{12}$$

where:

**AE** is the Member's age at the day from which the Member's period of Credited Fund Membership is measured, calculated in months; and

**AR** is the Member's age at the date of retirement, calculated in months;

or

- (a2.2) in the case of a Member whose Normal Retirement Date is the date of attainment of the age of 60 years and the date from which the Member's period of Credited Fund Membership is measured is on or after the date of attainment of the age of 20 years, one-twelfth of 19.25 per cent of the Member's Final Salary multiplied by the number of months of Credited Fund Membership;

or

- (a2.3) in the case of a Member whose Normal Retirement Date is the date of attainment of the age of 65 years:

(a2.3.1) if the Member became an Employee before attaining the age of 20 years, 95.238 per cent of the amount calculated in the manner provided in paragraph (a2.1) of this proviso; or

(a2.3.2) if the Member became an Employee on or after attaining the age of 20 years, 95.238 per cent of the amount calculated in the manner provided in paragraph (a2.2) of this proviso; or

(a2.3.3) in the case of a Member who:

(a2.3.3.1) has attained the age of 55 years but not the age of 60 years; and

(a2.3.3.2) has made an Age Election,

an amount calculated in the manner provided in paragraph (a2.3.2) and for this purpose the Member shall be deemed to have been a Member whose Normal Retirement Date has throughout the whole period of the Member's Credited Fund Membership been the date of attainment of the age of 60 years,

reduced by:

(a2.3.3.2.1) if the Member's Age Election became operative prior to 1 April 1986, one-quarter of the difference between:

(a2.3.3.2.1.1) the annual amount of the pension calculated in the manner provided in this paragraph (a2.3.3); and

(a2.3.3.2.1.2) the annual amount of the pension which would have been payable pursuant to the relevant provisions

of paragraph (a2.3.2) if the Normal Retirement Date had remained the date of the attainment of the age of 65 years,

and for the purposes of determining the amounts specified in paragraphs (a2.3.3.2.1.1) and (a2.3.3.2.1.2) the Member's Annual Salary at the date the Member's Age Election became operative shall be used in lieu of the Member's Final Salary at the date of retirement;

or

(a2.3.3.2.2) if the Member's Age Election became operative on or after 1 April 1986, by such amount as the Board and the Trustee shall determine but in any event not less than the amount calculated in the manner provided in paragraph (a2.3.3.2.1);

and

- (c) if a Member elects pursuant to clause B.6.13(a) of Part 3 of this Schedule B to commute the pension payable under paragraph (b) then the sum of the lump sum payable pursuant to such commutation and the amount under paragraph (a) shall not in any event be less than the lump sum which would have been payable to the Member under clauses B.6.12(e) or (f) of Part 3 of this Schedule B (as applicable) had the Member ceased to be an Employee on the attainment of the age of 55 years.

#### **B.6.7 Death benefit**

Subject to clause B.4.4 of Part 3 of this Schedule B, if a Member dies while an Employee, there shall be paid from this Sub-Division in respect of the Member, in accordance with the provisions of clause B.2.5 of Part 3 of this Schedule B, a lump sum benefit equal to:

- (a) if the death of the Member occurs on or prior to the Normal Retirement Date the greater of:
- (i) an amount equal to:

- (A) if the Member's death occurs on the Normal Retirement Date, an amount calculated in the manner provided in clause B.6.4 of Part 3 of this Schedule B, assuming in the case of the pension specified thereunder that the Member had elected pursuant to clause B.6.13(a) of Part 3 of this Schedule B to commute that pension to a lump sum; or
  - (B) if the Member's death occurs prior to the Normal Retirement Date, the Member's Accrued Retirement Benefit; and
- (ii) four times the Member's Final Salary; or
- (b) if the death of the Member occurs after the Normal Retirement Date, an amount equal to the lump sum benefit which would have been payable pursuant to clause B.6.5 of Part 3 of this Schedule B if the Member had otherwise ceased to be an Employee under that paragraph on the date of death,

provided that the aforesaid lump sum benefit shall not in any event be less than the greater of:

- (c) the Member's Existing Fund Accumulation at the date of death; and
- (d) an amount equal to:
  - (i) in the case of a Member whose death occurs prior to the attainment of the age of 55 years, an amount calculated in accordance with the provisions of clause B.6.12 of Part 3 of this Schedule B; or
  - (ii) in the case of a Member whose death occurs on or after the attainment of the age of 55 years, an amount calculated pursuant to clause B.6.12(e) of Part 3 of this Schedule B or clause B.6.12(b) of Part 3 of this Schedule B (as applicable) had the Member ceased to be an Employee on the attainment of the age of 55 years.

#### **B.6.8 Total and Permanent Disablement benefit**

Subject to Schedule A, if a Member ceases to be an Employee on account of Total and Permanent Disablement, there shall be paid to the Member from this Sub-Division a lump sum benefit of an amount equal to that which would have been payable pursuant to clause B.6.7 of Part 3 of this Schedule B, if the Member had died on the date the Member ceased to be an Employee.

#### **B.6.9 Partial Disablement benefit**

Subject to Schedule A, if a Member ceases to be an Employee on account of Partial Disablement there shall be paid to the Member from this Sub-Division a lump sum benefit equal to the Member's Accrued Retirement Benefit provided that the aforesaid lump sum benefit shall not in any event be less than:

- (a) in the case of a Member who ceases to be an Employee prior to the attainment of the age of 55 years, an amount calculated in accordance with the provisions of clause B.6.12 of Part 3 of this Schedule B; or
- (b) in the case of a Member who ceases to be an Employee on or after the attainment of the age of 55 years, an amount calculated pursuant to clauses B.6.12(e) or (f) of Part 3 of this Schedule B (as applicable) had

the Member ceased to be an Employee on the attainment of the age of 55 years.

#### **B.6.10 Temporary Disablement benefit**

- (a) If a Member becomes Temporarily Disabled while an Employee and prior to the attainment of the age of 60 years, an income benefit (**Income Benefit**) shall be payable to the Member from this Sub-Division in accordance with this clause B.6.10.
- (b) The Income Benefit shall be a monthly amount equal to one twelfth of 70 per cent of the Member's Annual Salary from time to time and shall commence to be payable from the date which the Employer notifies the Trustee as being that on which the Member's right to any sick leave entitlement relating to the Member's conditions of employment with the Employer has expired. The Trustee shall reduce the Income Benefit calculated as aforesaid by the monthly equivalent of any sum paid or payable to the Member under any provision for workers compensation, sick leave or what the Trustee considers to be similar payments, but only to ensure, so far as is practicable, that the amount of the Income Benefit when aggregated with such payments shall not exceed one-twelfth of 100 per cent of the Member's Annual Salary from time to time.
- (c) The Income Benefit shall terminate on the first to occur of:
  - (i) the death of the Member;
  - (ii) the date on which the Member ceases to be an Employee;
  - (iii) the date on which the Member becomes Totally and Permanently Disabled; or
  - (iv) the day immediately following the date on which the equivalent of 24 monthly instalments of the Income Benefit have been received by the Member.
- (d) Without derogating in any way from the provisions contained in paragraph (c), if the Member:
  - (i) engages in remunerative employment with the Employer or any other organisation or person; or
  - (ii) in the opinion of the Trustee, is or becomes able to engage in any remunerative employment,

the Trustee may reduce or suspend the Income Benefit to such extent and for such period as the Trustee sees fit or may permanently discontinue the Income Benefit.

#### **B.6.11 Retrenchment benefit**

Subject to Schedule A, if a Member ceases to be an Employee and the Employer certifies to the Trustee that such cessation is due to retrenchment, there shall be paid to the Member from this Sub-Division a lump sum benefit equal to the Member's Accrued Retirement Benefit provided that the aforesaid lump sum benefit shall not in any event be less than:

- (a) in the case of a Member who ceases to be an Employee prior to the attainment of the age of 55 years, an amount calculated in accordance with the provisions of clause B.6.12 of Part 3 of this Schedule B; or

- (b) in the case of a Member who ceases to be an Employee on or after the attainment of the age of 55 years, an amount calculated pursuant to clauses B.6.12(e) or (f) of Part 3 of this Schedule B (as applicable) had the Member ceased to be an Employee on the attainment of the age of 55 years.

#### **B.6.12 Cessation of employment for other reasons**

- (a) Subject to Schedule A and to clause B.4.4 of Part 3 of this Schedule B, if a Member ceases to be an Employee in circumstances in which a benefit is not payable under any other provision of this clause B.6, there shall be paid to the Member from this Sub-Division, subject to clause B.6.12(g) of Part 3 of this Schedule B, a lump sum benefit calculated in accordance with whichever of the succeeding paragraphs are applicable to the Member.

- (b) If the Member's period of Combined Fund Membership is less than 10 years, the sum of:

- (i) the total of the contributions paid by the Member to the Fund or the WIS Fund, as applicable, on and after 1 September 1987; and
- (ii) an amount equal to:
- (A) the total of the contributions paid by the Member to the Provident Fund during the period of Previous Fund Membership accumulated with interest in accordance with the provisions of the Provident Fund up to the commencement of the Member's Fund Membership and thereafter with compound interest at the rate of 5 per cent per annum calculated with quarterly rests up to 1 September 1987; plus
- (B) the total of the contributions paid by the Member to the WIS Fund prior to 1 September 1987 accumulated with compound interest at the rate of 5 per cent per annum calculated with quarterly rests up to 1 September 1987; and
- (iii) compound interest at the Agreed Rate for the period from, the date of receipt into the Fund or the WIS Fund, as applicable, in relation to contributions specified in paragraph (b)(i) above and from 1 September 1987 in relation to the amount specified in paragraph (b)(ii) above, up to in each case the date on which the Member ceases to be an Employee.

- (c) If the Member's period of Combined Fund Membership is at least 10 years, but less than 20 years, the greater of:

- (i) an amount determined according to the following formula:

$$FS \times (ABM_{10} + MCR_{10})$$

where:

**FS** is the Member's Final Salary;

**ABM<sub>10</sub>** is the Member's Accrued Benefit Multiple as at the date 10 years prior to the date on which the Member ceased to be an Employee; and

**MCR<sub>10</sub>** is ten times the average percentage rate of contribution made by the Member in the period of 10 years prior to the date on which the Member ceased to be an Employee, such average being based on:

- (A) the percentage rates of contributions made by the Member to the Fund or the WIS Fund, as applicable, during the period of Fund Membership which is contained in the said period of 10 years; and
- (B) the percentage rates of contributions made by the Member to the Provident Fund during the period of Previous Fund Membership which is contained in the said period of 10 years, provided that for the said period of Fund Membership for which percentage rates of contributions are required for the purposes of this expression, the percentage rate of contribution of the Member effective on the day immediately prior to the date on which the Member ceased to be an Employee shall be used; and

(ii) an amount calculated in accordance with the provisions of paragraph (b) above.

(d) If the Member's period of Combined Fund Membership is at least 20 years, but less than 30 years, an amount determined according to the following formula:

$$EFB + \frac{t}{120}(ABM \times FS - EFB)$$

where:

**EFB** is an amount calculated in accordance with paragraph (c);

**t** is the number of months by which the Member's period of Combined Fund Membership exceeds 240;

**ABM** is the Member's Accrued Benefit Multiple at the date on which the Member ceased to be an Employee; and

**FS** is the Member's Final Salary.

(e) If the Member has attained the age of 50 years but the Member's period of Combined Fund Membership is less than 30 years, an amount determined according to the following formula:

$$NRB + \frac{n}{t}(ABM \times FS - NRB)$$

where:

**NRB** is an amount calculated in accordance with whichever of paragraphs (b), (c) or (d) is applicable to the Member;

**n** is the number of months which the Member has completed as an Employee since the attainment of the age of 50 years;

**t** is the lesser of 60 and the number of months which the Member would complete as an Employee on the attainment of the age of 55 years;

**ABM** is the Member's Accrued Benefit Multiple at the date on which the Member ceased to be an Employee; and

**FS** is the Member's Final Salary.

- (f) If the Member's period of Combined Fund Membership is at least 30 years, an amount equal to the product of the Member's Final Salary and the Member's Accrued Benefit Multiple at the date on which the Member ceased to be an Employee.
- (g) Notwithstanding anything contained in this clause B.6.12, the lump sum benefit payable to a Member who is retired by the Employer before the Normal Retirement Date for any cause other than dismissal for misconduct and is not entitled to a benefit under any other clause of this Part 3 shall be subject to a minimum amount equal to the Member's Existing Fund Accumulation determined as at the date on which the Member ceased to be an Employee.

### **B.6.13 Commutation and variation of pensions**

- (a) The Trustee, at the request in writing of a person who is in receipt of or entitled to receive payments in respect of any pension payable pursuant to this Part 3 (other than the Income Benefit specified in clause B.6.10) (**Beneficiary** for purposes of this clause B.6.13 and of clause B.6.14 of Part 3 of this Schedule B), may in its absolute discretion commute the whole of any such pension for a lump sum benefit and the Trustee shall pay the amount of any such lump sum benefit to that person in lieu of and in full satisfaction of the payments in respect of the pension so commuted. The amount of any lump sum benefit payable pursuant to this paragraph shall be determined by the Trustee on the advice of the Actuary.
- (b) Subject to such conditions as the Trustee shall determine, a Member may at the time of ceasing to be an Employee elect to substitute for any pension to which the Member is entitled under this Part 3:
- (i) a pension payable to the Member by equal monthly instalments for ten years certain and for the Member's subsequent lifetime; or
- (ii) a pension payable to the Member during the joint lifetime of the Member and the Member's Spouse and to the survivor of them during the lifetime of such survivor.

Any such substituted pension shall be of such amount as shall be certified by the Actuary to be the equivalent in value of the pension which but for the provisions of this paragraph (b) would otherwise have been payable to the Member.

- (c) Notwithstanding anything contained in this clause B.6.13:
- (i) the payment of any pension or annuity; and
- (ii) the commutation of any pension payable, shall comply with any applicable requirement of a Superannuation Law and the Trustee may take such action as it sees fit to ensure such compliance including adjusting the amount or terms of payment



of benefits in such manner, to such extent and by way of such arrangements as the Trustee considers appropriate and any decision by the Trustee for the purposes of this clause B.6.13 shall be final and binding on all interested persons.

#### **B.6.14 Terms and conditions for payment of pensions**

- (a) All pensions payable under this Part 3 (including an Income Benefit payable under clause B.6.10) shall be paid by equal monthly instalments on the last day of each month or as soon as practicable thereafter and where necessary, pro rata instalments shall be paid.
- (b) Upon the death of a Beneficiary during a period described in clauses B.6.4, B.6.5, B.6.6 and B.6.13 of Part 3 of this Schedule B as a period certain, the monthly instalments of pension for the balance of that period shall be paid in such manner as the Trustee may determine to the Dependants of the Beneficiary or to the legal personal representatives of the Beneficiary in accordance with clause B.2.5 of Part 3 of this Schedule B.
- (c) Notwithstanding anything contained in this Part 3, if the Trustee is of the opinion that by reason of a Beneficiary's illness or infirmity it is desirable that the pension which is payable to the Beneficiary should be applied in whole or in part in payment of hospital, medical or like expenses or for the maintenance of the Beneficiary or of any Dependant of the Beneficiary, the Trustee may in its absolute discretion apply such pension or part thereof accordingly and any such application shall be deemed to be payment to the Beneficiary of the pension or the part thereof so applied.
- (d) Subject to the Trustee's absolute discretion, all pensions payable under this Part 3 shall be paid in accordance with the provisions of Superannuation Law concerning the payment of "pensions" as defined in the SIS Act.

#### **B.6.15 Age election**

A Member whose Normal Retirement Date is the date of attainment of the age of 65 years may at any time, in writing to the Trustee, elect that his or her Normal Retirement Date shall be the date of attainment of the age of 60 years and any such election shall be irrevocable and shall become operative from the date it is received by the Trustee.

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### **B.7 Adjustments for Valid Family Law Arrangements**

Notwithstanding anything to the contrary in this Part 3, the Trustee may:

- (a) adjust a benefit payable to or in respect of a Member under this Part 3;  
or
- (b) make an adjustment in respect of a benefit which will become payable to or in respect of a Member under this Part 3,

to the extent, and in any manner, as permitted by Superannuation Law to take account of a valid family law arrangement.

# Appendix to Part 3 - Annexures A to D

## Annexure A of Part 3

Fortnightly contributions from Member for pension of \$100 per annum commencing on the date of attainment of the age of 60 years.

Age Next Birthday	Contributions		Age Next Birthday	Contributions	
	Males	Females		Males	Females
16	0.05	0.03	40	0.40	0.35
17	0.05	0.04	41	0.43	0.38
18	0.06	0.05	42	0.47	0.41
19	0.06	0.05	43	0.51	0.45
20	0.07	0.06	44	0.56	0.5
21	0.08	0.06	45	0.61	0.56
22	0.09	0.07	46	0.67	0.63
23	0.10	0.08	47	0.74	0.71
24	0.11	0.09	48	0.83	0.81
25	0.12	0.1	49	0.93	0.92
26	0.13	0.11	50	1.04	1.04
27	0.14	0.12			
28	0.15	0.13	Exact Age		
29	0.17	0.14	50	1.10	1.10
30	0.18	0.15	51	1.25	1.25
31	0.20	0.17	52	1.46	1.46
32	0.21	0.18	53	1.70	1.73
33	0.23	0.19	54	2.03	2.09
34	0.25	0.21	55	2.51	2.63
35	0.27	0.23	56	3.20	3.44
36	0.29	0.25	57	4.37	4.82
37	0.31	0.27	58	6.71	7.58
38	0.34	0.29	59	13.73	15.62
39	0.37	0.32	60	14.06	16.10

NOTE: For ages over 50 contributions are based on the rates shown, but allowing for age in years and months (to the next higher month).

## Annexure B of Part 3

Fortnightly contributions from Member for pension of \$100 per annum payable by monthly instalments for five years certain and subsequent lifetime and commencing on the date of attainment of age of 65 years.

- *(Contributions are shown in dollars and cents)*
- *Completed Years of Credited Fund Membership at attainment of age 65 years*

Age next Birthday	Males 15 and less than 20	Males 20 and less than 25	Males 25 and less than 30	Males 30 and over	Females
16				0.04	0.02
17					0.03
18				0.05	0.03
19				0.05	0.03
20				0.05	0.04
21				0.06	0.04
22				0.07	0.05
23				0.07	0.05
24				0.08	0.06
25				0.08	0.06
26				0.09	0.07
27				0.10	0.07
28				0.11	0.08
29				0.11	0.09
30				0.12	0.09
31				0.13	0.10
32				0.14	0.11
33				0.15	0.12
34				0.16	0.13
35				0.17	0.14
36			0.20	0.19	0.15
37			0.21	0.20	0.16
38			0.23	0.22	0.18
39			0.24	0.23	0.19
40			0.26	0.25	0.21
41		0.29	0.28	0.27	0.22
42		0.31	0.30	0.29	0.24
43		0.33	0.32	0.31	0.26
44		0.36	0.35	0.34	0.29
45		0.39	0.38	0.37	0.31
46	0.43	0.42	0.41	0.40	0.34

<b>Age next Birthday</b>	<b>Males 15 and less than 20</b>	<b>Males 20 and less than 25</b>	<b>Males 25 and less than 30</b>	<b>Males 30 and over</b>	<b>Females</b>
47	0.47	0.45	0.44	0.43	0.37
48	0.51	0.49	0.48	0.47	0.41
49	0.56	0.54	0.52	0.51	0.45
50	0.61	0.59	0.57	0.56	0.50
51	0.67	0.65	0.63	0.62	0.55
52	0.73	0.71	0.69	0.68	0.61
53	0.81	0.79	0.77	0.76	0.69
54	0.90	0.87	0.85	0.84	0.78
55	1.01	0.98	0.96	0.95	0.89
Exact Age					
55	1.06	1.03	1.01	1.00	0.95
56	1.21	1.18	1.15	1.14	1.09
57	1.38	1.35	1.32	1.31	1.28
58	1.61	1.57	1.54	1.53	1.52

<b>Age next Birthday</b>	<b>Males 15 and less than 20</b>	<b>Males 20 and less than 25</b>	<b>Males 25 and less than 30</b>	<b>Males 30 and over</b>	<b>Females</b>
59	1.91	1.87	1.84	1.83	1.85
60	2.33	2.29	2.26	2.24	2.32
61	2.95	2.91	2.88	2.86	3.02
62	3.99	3.95	3.92	3.90	4.21
63	6.06	6.01	5.98	5.96	6.60
64	12.28	12.23	12.20	12.18	13.82
65	12.41	12.41	12.41	12.41	12.46

NOTE: For ages over 55, contributions are based on the rates shown but allowing for age in years and months (to the next higher month).

## Annexure C of Part 3

### Pension Percentages for Member

Years of Credited Fund Membership	Pension Percentage	Years of Credited Fund Membership	Pension Percentage
1	3.5	16	53.667
2	7	17	54.833
3	10	18	56
4	14	19	57.167
5	17.5	20	58.333
6	21	21	59.5
7	24.5	22	60.667
8	28	23	61.883
9	31.5	24	63
10	35	25	64.167
11	38.5	26	65.333
12	42	27	66.5
13	45.5	28	67.667
14	49	29	68.833
15	52.5	30 or more	70.000

NOTE: For the purposes of this Annexure C, the period of Credited Fund Membership shall be calculated in years and months and where the period of Credited Fund Membership is not an exact number of years, the Pension Percentage shall be obtained from the Annexure by linear interpolation.

## Annexure D of Part 3

Contribution rates for Members who join the Fund, the 1988 Fund or the WIS Fund, as applicable, on or after 1 January 1983 shall be as follows:

Age at Birthday coinciding with or immediately preceding date of joining Fund	Contribution Rate Percent	Age at Birthday coinciding with or immediately preceding date of joining Fund	Contribution Rate Percent
19	4.00	41	7.1
20	4.20	42	7.2
21	4.40	43	7.3
22	4.60	44	7.4
23	4.80	45	7.5
24	5.00	46	7.60
25	5.25	47	7.70
26	5.50	48	7.80
27	5.75	49	7.90
28	6.00	50	8.00
29	6.25	51	8.10
30	6.50	52	8.20
31	6.50	53	8.30
32	6.60	54	8.40
33	6.60	55	8.50
34	6.70	56	8.60
35	6.70	57	8.70
36	6.80	58	8.80
37	6.80	59	8.90
38	6.90		
39	6.90		
40	7.00		

NOTE: The application of this Annexure D is subject to the Member's contribution rate not exceeding the maximum rates specified in clause B.6.3.

## Part 4 - Miscellaneous Members

All benefit accruals and benefit entitlements that a “port authority employee” (formerly being a member of the Transport Superannuation Fund, the State Superannuation Fund (Revised Division) or the Port of Melbourne Authority Superannuation Scheme, as applicable) had under the 1988 Fund pursuant to section 120 of the *Port Services Act 1995* (Vic) shall under this Schedule B continue to have the same status, operation and effect as they would have had if the 1988 Act had not been repealed except that the Trustee may adjust the benefit accruals and benefit entitlements to the extent, and in any manner, as permitted by Superannuation Law to take account of a valid family law arrangement.



## ACTUARY'S CERTIFICATE

I, \_\_\_\_\_, being a Fellow of the Institute of Actuaries of Australia, HEREBY CERTIFY that the alterations and additions to and the repeal of the provisions of the Trust Deed of the Local Authorities Superannuation Fund made by the Amending Deed to which this certificate is annexed will not adversely alter a Beneficiary's right or claim to accrued benefits or the amount of those accrued benefits as at the date of the amendment in any manner prohibited by the *Superannuation Industry (Supervision) Act 1993*.

# Schedule C Additional Rules for the Active Super Defined Benefit Division

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## 1. Application and interpretation

### 1.1 Application of these Division Rules

The provisions of these Division Rules relate only to Beneficiaries of the Active Super Defined Benefit Division of the Fund.

### 1.2 Definitions

In these Division Rules, unless the contrary intention appears:

**Accounts** means one or more accounts established and maintained by the Trustee in accordance with these Division Rules whether such account is referred to as an account or a reserve.

**Active Super** means Local Government Super (ABN 28 901 371 321).

**Active Super Trust Deed** means the trust deed for Active Super dated 30 June 1997 (as amended) and, unless the contrary intention appears, as in force immediately before the Transfer Time.

**Active Super Trustee** means LGSS Pty Limited (ABN 68 078 003 497).

**Actuary** means for any particular purpose under these Division Rules the person nominated by the Trustee from time to time, either generally or for that particular purpose, being:

- (a) a Fellow or Accredited Member of the Institute of Actuaries of Australia (or of any body which succeeds that Institute) or any other person recognised by that body or its successor as being qualified to provide actuarial advice and reports in relation to a superannuation fund (a qualified actuary);
- (b) a partnership of which one of the partners is a qualified actuary; or
- (c) a body corporate which employs or engages a qualified actuary for the purpose of providing actuarial advice.

**Administration Act** means the *Superannuation Administration Act 1996* (NSW).

**Appointed Day** means the date of commencement of the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Amendment Regulation 1999* (NSW).

**Approved Benefit Arrangement** means a fund or benefit arrangement other than the Fund (including a superannuation fund or an annuity), being a fund or benefit arrangement to which money or property may be paid or transferred from the Fund, or from which money or property may be received into the Fund, without causing the Fund to cease to be a complying superannuation fund for purposes of the Tax Act.

**Beneficiary** means:

- (a) a Member;
- (b) a Deferred or Preserved Member;
- (c) a Pensioner; and
- (d) any other person who is transferred to the Fund under the LASF Transfer Regulation and allocated to the Division.

**Benefit** means any amount payable or which may become payable to or in respect of a Beneficiary from the Division.

**Benefit Account** means an account established and maintained under clause 12.6 of the Deed.

**Contribution** means any amount paid to the Division by or on behalf of an Employer or a Member and includes any amount transferred to the Division in respect of a Beneficiary.

**Contributor** has the meaning given in rule 1.2 of the Sub Division B Rules or rule 1.2.1 of the Sub Division D Rules, as relevant in the particular circumstances.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Cbus Super** means the Construction and Building Unions Superannuation Fund (ABN 75 493 363 262).

**Cbus Super Pool B Sub-Division** means the 'Pool B Sub-Division' as defined in Section 2 to the trust deed for Cbus Super.

**Cbus Super Pool B Sub-Division Employer** means an employer responsible for making contributions for the benefit of an employee in connection with Annexure 1, Annexure 2 or Annexure 3 of the Cbus Super Pool B Sub-Division.

**Deed** means the trust deed governing the Fund (including the Schedules to the trust deed and these Division Rules), as amended from time to time.

**Deferred or Preserved Member** means a Member who has a Benefit which in accordance with the applicable Sub-Division Rules is deferred or preserved.

**Defined Benefit** means a Benefit defined, wholly or in part, by reference to either or both of the following:

- (a) the amount of:
  - (i) the Member's salary at a particular date, being the date of the termination of the Member's employment or of the Member's retirement or an earlier date; or
  - (ii) the Member's salary averaged over a period before retirement; or
- (b) a specified amount,

but does not include such a Benefit which is only payable on the death or disability of a Beneficiary.

**Dependant** has the meaning given in the SIS Act.

**Division** means the Active Super Defined Benefit Division of the Fund identified in clause 2.1(a)(iii) of the Deed and to which these Division Rules apply.

**Division Rules** means the rules set out in this Schedule C and includes the Sub-Division Rules set out in Parts 1 to 4 of this Schedule C.

**Due Date** means any date for payment of contributions agreed to between the Trustee and the Employer and otherwise fourteen days after the end of the month in which salary or wages the subject of contributions to the Division were paid to the Employee.

**Election** means an election under clause 11 of these Division Rules to exercise a Transfer Option.

**Elector** means a person eligible to exercise a Transfer Option under clause 11 of these Division Rules.

**Employee** has the meaning given in the SIS Act.

**Employer** means any person who has been admitted to participation in the Division, and includes a transferred employer under the LASF Transfer Regulation, but does not include any person who has ceased to be an Employer in the Division in accordance with these Division Rules. When used in relation to an Employee or Beneficiary it means the Employer or former Employer of that person.

**Employer Reserve** means each employer reserve created under rule 2.4 of the Sub-Division B Rules, rule 2.2 of the Sub-Division C Rules or rule 2.4 of the Sub-Division D Rules.

**Family Law Act** means the *Family Law Act 1975* (Cth) and the regulations thereunder.

**Family Law Order** means a court order issued under the Family Law Act.

**Family Law Spouse Amount** means the amount of the payment split determined in accordance with a Family Law Order, Superannuation Agreement or Flag Lifting Agreement and the applicable Sub-Division Rules.

**Flag** means a “payment flag” as defined in section 90XD of the Family Law Act.

**Flag Lifting Agreement** has the meaning ascribed to that term in section 90XD of the Family Law Act.

**Fund** means the Local Authorities Superannuation Fund (ABN 24 496 637 884) continued and maintained under the Deed.

**Income Tax Acts** means the Tax Act, the *Income Tax Rates Act 1986* (Cth) and any other Act relating to the imposition, collection and administration of Tax and any regulations made under those Acts.

**Industrial Relations Commission** means the Industrial Relations Commission of New South Wales in court session.

**Insured Benefit** means a death or disability Benefit or annuity Benefit (or part of such a Benefit) where the entitlement to the Benefit (or part of the Benefit) is determined by the terms of an insurance policy other than an insurance policy the purpose of which is to protect the Division or the Trustee in respect of the Division’s liability to pay a Benefit, but does not include any Benefit or part of a Benefit payable from a Benefit Account to, or in respect of, a Beneficiary on the death or disability of the Beneficiary.

**Investment Life Policies** means the policy or policies issued by Challenger Life Company Limited that provide for payment of benefits in respect of Murrumbidgee Irrigation Members.

**LASF Transfer Regulation** means the regulation made under the Administration Act, including sections 127B, 128, 128A and 129, to facilitate a successor fund transfer of members and benefits from Active Super to the Fund.

**LGSS** means the superannuation scheme known at the LGSS Transfer Day as the “Local Government Superannuation Scheme”, known subsequently as “Local Government Super” and known at the Transfer Time as “Active Super”.

**LGSS Transfer Day** means 1 July 1997.

**LGSS Transfer Regulation** means the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997 (NSW)*, the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Amendment Regulation 1997 (NSW)* and any other Regulation made under section 128 of the Administration Act (as it stood at the time) in relation to the transfer of employers or members to LGSS.

**Member** means a person who:

- (a) has been admitted to membership of the Division;
- (b) was a “Member” (as defined in the Active Super Trust Deed) of Division B, C or D of Active Super immediately before the Transfer Time; and
- (c) has not ceased to be a Member in accordance with these Division Rules.

**Minister** means the Minister responsible for the administration of the Administration Act, which, as at the Transfer Time, is the Treasurer of New South Wales.

**Murrumbidgee Irrigation** means Murrumbidgee Irrigation Limited, its administrators, successors and permitted assigns.

**Murrumbidgee Irrigation Account** means the account established by the Trustee to record the entitlement to:

- (a) that part of the portion of the assets of the Fund that is referable to Contributions made by Murrumbidgee Irrigation, whether to Active Super or to the Division, as adjusted in accordance with the provisions of the Active Super Trust Deed and/or the applicable Sub-Division Rules for earnings, administration costs, Tax, benefits for those Members for whom Murrumbidgee Irrigation has the liability under the applicable Sub-Division Rules and anything else provided for in the applicable Sub-Division Rules where it is referable to Murrumbidgee Irrigation; and
- (b) that part of the Contributors Reserve in Sub-Division D that is attributable to Contributors who are or were employees of Murrumbidgee Irrigation for whom Murrumbidgee Irrigation has the liability under the Sub-Division D Rules.

**Murrumbidgee Irrigation Member** means a person who was a “Murrumbidgee Irrigation Member” of Active Super immediately before the Transfer Time and who has not ceased to be a Murrumbidgee Irrigation Member.

**Nominated Beneficiary** means, with respect to a Member or other beneficiary, one or more Dependants or the legal personal representative nominated on that Member's or other beneficiary's last effective Valid Nomination Form to receive any Death Benefit that becomes payable from the Division.

**Non-Member Spouse** has the meaning ascribed to that term in section 90XD of the Family Law Act.

**Operational Risk Financial Requirement Sub-Reserve** means the sub-reserve established and maintained in accordance with clause 4.4 of these Division Rules.

**Operative Time** has the meaning ascribed to it in section 90XD of the Family Law Act.

**Pensioner** means a person who:

- (a) has been admitted to membership of the Division;
- (b) either:
  - (i) was a "Pensioner" (as defined in the Active Super Trust Deed) of Division B, C or D of Active Super, or the holder of a non-account based pension under Division F of Active Super, immediately before the Transfer Time; or
  - (ii) who has become entitled to receive a pension under the applicable Sub-Division Rules after the Transfer Time, and
- (c) has not ceased to be a Pensioner in accordance with these Division Rules.

**Police Superannuation Scheme** means the superannuation scheme established under the *Police Regulation Superannuation Act 1906* (NSW).

**Pool B** means the superannuation fund that was known as the Energy Industries Superannuation Scheme Pool B (ABN 64 322 090 181).

**Relevant Date** has the meaning ascribed to that term in regulation 3 of the *Family Law (Superannuation) Regulations 2001* (Cth).

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993* (Cth).

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

**Splittable Payment** has the meaning as ascribed to that term in section 90XD of the Family Law Act.

**Spouse** has the meaning given to that term in the SIS Act.

**State Authorities Non-contributory Superannuation Scheme** means the superannuation scheme established under the *State Authorities Non-contributory Superannuation Act 1987* (NSW).

**State Authorities Superannuation Scheme** means the superannuation scheme established under the *State Authorities Superannuation Act 1987* (NSW).

**State Superannuation Scheme** means the superannuation scheme established under the *Superannuation Act 1916* (NSW).

**STC Employer** means an employer responsible for making contributions under a superannuation scheme of which SAS Trustee Corporation is trustee.

**Sub-Division** means a Sub-Division of the Division, as established under clause 2 of these Division Rules.

**Sub-Division B Rules** means the rules set out in Part 1 of these Division Rules.

**Sub-Division C Rules** means the rules set out in Part 2 of these Division Rules.

**Sub-Division D Rules** means the rules set out in Part 3 of these Division Rules.

**Sub-Division F Rules** means the rules set out in Part 4 of these Division Rules.

**Sub-Division Rules** means the rules governing each Sub-Division established by the Trustee under these Division Rules and set out in Parts 1 – 4 of these Division Rules.

**Superannuation Agreement** has the meaning ascribed to that term in section 90XD of the Family Law Act.

**Superannuation Authority** means the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, the Commissioner of Taxation or any other government authority responsible for administering the laws or any other rules governing superannuation funds or the availability of concessions under the Tax Act to superannuation funds.

**Superannuation Contributions Surcharge** means the *Superannuation Contribution Surcharge imposed under the Superannuation Contributions Impositions Act 1997* (Cth).

**Superannuation Guarantee Charge Acts** means the *Superannuation Guarantee Charge Act 1992* (Cth) and the *Superannuation Guarantee (Administration) Act 1992* (Cth) and any other Act relating to the imposition, collection and administration of the superannuation guarantee charge and any regulations made under the foregoing Acts.

**Superannuation Guarantee Shortfall** has the meaning ascribed to that term in the *Superannuation Guarantee (Administration) Act 1992* (Cth).

**Superannuation Interest** has the meaning ascribed to that term in section 90XD of the Family Law Act.

**Superannuation Law** means:

- (a) the SIS Act, the Corporations Act, the Tax Act, the Family Law Act, the LASF Transfer Regulation or any other law or any requirement imposed by the Superannuation Authority which must be satisfied by the Trustee or the Fund in order to qualify for the maximum available concessions under the Tax Act, secure or better secure a concession or benefit for the Fund or avoid a penalty, detriment or disadvantage for the Fund, the Trustee or a Member or other beneficiary of the Fund; and
- (b) any other present or future law of the Commonwealth of Australia or any state or territory of Australia or any other jurisdiction or non-binding statement from a Superannuation Authority which the Trustee determines to be a Superannuation Law for the purposes of the Fund or the Deed.

**Tax** means a governmental impost (including a tax, duty or levy) which is or might become payable in connection with the Fund, income of the Fund,

payment or transfer of money or property to or from the Fund, the Deed or anything done or which may be done under the Deed, including any surcharge, duty or levy payable in respect of a Member that must be paid or collected by the Trustee or the Fund in relation to the Deed.

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth) and/or the *Income Tax Assessment Act 1997* (Cth), as applicable.

**Transfer Option** means a transfer option exercised in accordance with clause 11 of these Division Rules.

**Transferee Scheme** means the superannuation scheme to which a person elects to transfer in accordance with clause 11 of these Division Rules.

**Transferor Scheme** means the superannuation scheme from which a person elects to transfer in accordance with clause 11 of these Division Rules.

**Transfer Time** means 12:00:01am on 1 March 2025 or such other time and/or date as may be agreed in writing by the Trustee and the Active Super Trustee.

**Transferred Member** means each member and other beneficiary of Divisions B, C or D of Active Super, or a pensioner holding a non-account based pension in Division F of Active Super, in each case immediately before the Transfer Time.

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

**Valid Nomination Form** means a nomination form which has been signed by the Member or other beneficiary in accordance with procedures determined by the Trustee and which is valid under Superannuation Law.

### 1.3 Definitions in the LASF Transfer Regulation

In these Division Rules and in any document issued by the Trustee under these Division Rules, unless the contrary intention appears, the terms defined in the LASF Transfer Regulation shall have the same meaning as they have in the LASF Transfer Regulation.

### 1.4 Payment in respect of a Beneficiary

In these Division Rules, unless the contrary intention appears, a payment in respect of a Beneficiary includes a payment or transfer of assets from the Division in satisfaction of any obligation to or in respect of a Beneficiary and, without limitation, includes a payment or transfer of assets:

- (a) to or for the benefit of a Beneficiary;
- (b) to or for the benefit of another person specified in the Sub-Division Rules applying to the Beneficiary.

### 1.5 Interpretation

In these Division Rules unless the context otherwise requires:

- (a) a reference to the Deed or any other document includes any variation, supplement or replacement of any of them and terms that are incorporated by reference into them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re enactments or replacements of any of them;



- (c) the singular includes the plural and vice versa;
- (d) a word or phrase includes other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;
- (e) a power to appoint includes a power to vary or cancel the appointment;
- (f) amend includes delete or replace;
- (g) the use of the word "includes" or "including" when introducing a list of items or providing an example of the scope of an expression or rule does not exclude a reference to other items of the same class or limit the scope of that expression or rule;
- (h) person includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated association or an authority;
- (i) a reference to a power of approval includes a power to withhold or revoke approval, and any appointment to an office or position under the Deed, which requires the continued approval of the Trustee or (subject to clause 19 of the Deed) an Employer, ceases on revocation of that approval;
- (j) headings are for convenience only and do not affect interpretation; and
- (k) a reference to a "portion of the assets of the Fund" or similar does not require the Trustee to segregate the assets of the Fund between Divisions or Sub-Divisions.

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## **2. The Division**

### **2.1 Establishment of the Division**

Pursuant to clause 2.1 of the Deed, with effect from the Transfer Time, the Fund consists of three Divisions, including the Active Super Defined Benefit Division.

### **2.2 Initial Sub-Divisions**

Beneficiaries of the Division are grouped into Sub-Divisions. At and from the Transfer Time, the Division consists of the following Sub-Divisions:

- (a) Sub-Division B, which is governed by the Sub-Division B Rules;
- (b) Sub-Division C, which is governed by the Sub-Division C Rules;
- (c) Sub-Division D, which is governed by the Sub-Division D Rules; and
- (d) Sub-Division F, which is governed by the Sub-Division F Rules.

### **2.3 Transferred Employers and Members**

- (a) The Trustee must, with effect at the Transfer Time, and subject to paragraph (b), allocate each Employer (where applicable) and Beneficiary admitted to participate in the Division to the Sub-Division which corresponds to the "Division" (as this term was defined in the Active Super Trust Deed) in Active Super in which they participated immediately before the Transfer Time. Any Beneficiary who may be incorrectly allocated to a particular Sub-Division may be re-allocated to the correct Sub-Division.

- (b) The Trustee must not admit to Sub-Division F anyone who did not hold a non-account based pension in Division F of Active Super immediately before the Transfer Time. Anyone who held an account based pension in Division F of Active Super immediately before the Transfer Time must be admitted, instead, to the Accumulation and Pension Division of the Fund.

## **2.4 Assets attributable to the Division**

The Trustee must ensure that, as at the Transfer Time, the assets of the Fund attributable to the Division are of at least the same aggregate value as the aggregate value of the assets of Active Super received by or on behalf of the Trustee that were, immediately before the Transfer Time, attributable to Divisions B, C and D of Active Super or to the non-account based pensions in Division F of Active Super.

## **2.5 Establishment and operation of the Murrumbidgee Irrigation Account**

- (a) The Trustee must establish the Murrumbidgee Irrigation Account, and determine the portion of the assets of the Fund (including the benefit of the Investment Life Policies) that are attributable to the Murrumbidgee Irrigation Account.
- (b) The Murrumbidgee Irrigation Account is only to be applied for the purposes of paying Benefits to Members or Contributors of the Sub-Divisions who have accrued benefits in the Sub-Divisions because of employment by Murrumbidgee Irrigation and will not be available to meet any liabilities in respect of benefits payable to other Contributors or Members of the Sub-Divisions.
- (c) If any Member or Contributor of the Sub-Divisions employed by Murrumbidgee Irrigation ceases employment with Murrumbidgee Irrigation and commences employment with another Employer, the Member's share of the Murrumbidgee Irrigation Account will be transferred to such other reserves of the Sub-Divisions as is appropriate and the member will cease to have any right to payment out of the Murrumbidgee Irrigation Account.
- (d) The Benefits of Members or Contributors whose entitlements are payable out of the Murrumbidgee Irrigation Account may not be increased without the written consent of Murrumbidgee Irrigation unless such increase is required by Superannuation Law.
- (e) Once there are no Members or Contributors who have any right to payment of Benefits out of the Murrumbidgee Irrigation Account, any surplus in the Murrumbidgee Irrigation Account may be applied to meet any Contributions payable by Murrumbidgee Irrigation, and if there are no Contributions payable by Murrumbidgee Irrigation, then applied to meet any liabilities in respect of the Sub-Divisions.

## **2.6 Investment Life Policies**

The Investment Life Policies and the payment thereunder will form part of the Murrumbidgee Irrigation Account and will not be held on any separate trust for the Murrumbidgee Irrigation Members.

## **2.7 New Sub-Divisions**

The Trustee may not establish other Sub-Divisions in the Division without the approval of the Minister.

## 2.8 Beneficial interest in Sub-Division

Each Beneficiary is entitled to have the portion of the assets of the Fund attributable to the Sub-Division under which the person is a Beneficiary applied to provide the Benefit to which that person is entitled under the applicable Sub-Division Rules but that shall not:

- (a) entitle the Beneficiary other than as provided for in these Division Rules or permitted by law to:
  - (i) interfere with the rights or powers of the Trustee in respect of the Sub-Division or the Division;
  - (ii) exercise any rights, powers or privileges in respect of any portion of the assets of the Fund attributable to the Sub-Division or the Division; or
  - (iii) require the transfer to such Beneficiary of any part of the portion of the assets of the Fund attributable to the Sub-Division or the Division; or
- (b) confer any interest in any particular part of the portion of the assets of the Fund attributable to the Sub-Division of the Division.

## 2.9 Membership of more than one Sub-Division

A Beneficiary may be a Beneficiary of more than one Sub-Division and, where the Employer so requires it, a Beneficiary shall be a Beneficiary of more than one Sub-Division.

## 2.10 Sub-Divisions B, C and D

Other than by the admission of Beneficiaries pursuant to the LASF Transfer Regulation to:

- (a) Sub-Division B;
- (b) Sub-Division C; or
- (c) Sub-Division D,

those Sub-Divisions are closed to new Beneficiaries and no new Beneficiaries shall be admitted to any of those Sub-Divisions, subject to the following exceptions:

- (d) admission in accordance with clause 11 of these Division Rules; and
- (e) a Member under Sub-Division D who was entitled to elect under section 2C of the *State Authorities Superannuation Act 1987* (NSW) to contribute to the fund established under that Act may elect to cease to be a Member of Sub-Division D and become a Member of Sub-Division B.

## 2.11 Sub-Division F

Other than by the admission of applicable Beneficiaries from Division F of Active Super at the Transfer Time, Sub-Division F is closed to new Beneficiaries.

## **2.12 Transfers**

Subject to clause 10 of these Division Rules, the Trustee may not transfer a Member or other beneficiary of the Division to another Division of the Fund, or a Member or other beneficiary of a Sub-Division to another Sub-Division of the Division, without their prior written consent.

## **2.13 Protection of Transferred Members**

Subject to any contrary provision of the SIS Act, to the extent that these Division Rules do not include provisions to ensure that as at the Transfer Time, a right that a Transferred Member had under Active Super is not removed or restricted:

- (a) these Division Rules are deemed to include such provisions;
- (b) the Trustee may rectify these Division Rules to include such provisions;  
and
- (c) the Trustee shall apply these Division Rules as if any provision required to ensure this was so incorporated in these Division Rules.

## **2.14 Application of Division Rules**

Any right, entitlement or obligation including any Benefit in respect of a transferred employer or Transferred Member which is granted, imposed or calculated by reference to any date or period of time shall be granted, imposed or calculated from the date or by reference to the period which that right, entitlement or obligation was granted, imposed or calculated prior to the Transfer Time under or in accordance with the Active Super Trust Deed.

## **2.15 No increase of rights**

Notwithstanding any other provision in these Division Rules, the Deed and these Division Rules are not to be taken to increase or create any rights which a Transferred Member or transferred employer had or did not have under the Active Super Trust Deed and the Trustee shall apply the Deed and these Division Rules on that basis.

## **2.16 Superannuation Law to Prevail**

Notwithstanding any of the provisions of this clause 2, the Trustee may apply and administer these Division Rules in a manner and to the extent that they comply with the requirements of Superannuation Law, and where Superannuation Law prohibits the doing of any act or thing or requires the doing of any act or thing then notwithstanding the requirements of these Division Rules the Trustee may refuse to do that act or thing or do that act or thing as the case requires.

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# **3. The Trustee**

## **3.1 Accumulation and Pension Division**

If the Trustee intends to pay all the benefits of all Members and other beneficiaries from the Accumulation and Pension Division, without the consent of the Members and other beneficiaries, to a “successor fund” (within the meaning of the SIS Regulations) pursuant to clause 8.3(c) of the Deed, the Trustee must notify the Minister of the proposed change at least 90 days prior to the date on which the transfer is intended to occur.

### **3.2 Change of trustee of the Fund - generally**

Subject to clause 3.3 of these Division Rules, if the Trustee intends to retire as trustee of the Fund pursuant to clause 13.2(b) of the Deed:

- (a) the Trustee must notify the Minister of the Trustee's intention to vacate the office of trustee at least 120 days prior to the day on which the retirement is to occur;
- (b) the Trustee must consult with the Minister for the purposes of enabling the Minister to satisfy themselves that the replacement trustee is of good standing and repute and that there are no potential material adverse matters affecting the rights and entitlements of the members and other beneficiaries of, or the assets of the Fund attributable to, the Division, in connection with the retirement of the Trustee; and
- (c) in the event the Minister identifies and subsequently notifies the Trustee of any potential material adverse matter affecting the rights and entitlements of the members and other beneficiaries of, or the assets of the Fund attributable to, the Division, in connection with the retirement of the Trustee, the Trustee must take into account such material adverse matter when making its determination whether the retirement of the Trustee is in the best financial interests of the members and other beneficiaries of the Fund.

### **3.3 Change of trustee of the Fund – related body corporate**

Notwithstanding clause 3.2 of these Division Rules, if the office of Trustee becomes vacant or the Trustee retires by reason of a corporate reconstruction undertaken by the Trustee and the replacement trustee is a related body corporate of the Trustee or otherwise part of a group of related entities to which the Trustee belongs or belonged, the Trustee must notify the Minister of its intention to retire at least 90 days prior to the date on which the vacancy or retirement is to occur.

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## **4. Powers and Duties of the Trustee**

### **4.1 Appointment of Actuary**

The Trustee may from time to time appoint as Actuary to the Division a person satisfying any requirements specified in Superannuation Law, on such terms as the Trustee thinks fit. The Trustee may remove any Actuary it has appointed and appoint another person as Actuary to the Division. The Trustee may instruct the Actuary to perform such actuarial investigations in relation to the Division or any Sub-Division as it considers necessary or desirable.

### **4.2 Transfer Regulation**

The Trustee shall do all things considered by it as necessary or convenient to comply with any provision of the LASF Transfer Regulation and without limitation the Trustee shall do all things required to be done by it by the LASF Transfer Regulation.

### **4.3 Accounts**

Subject to Superannuation Law, the Trustee may establish and maintain such accounts within the Division as are, in the Trustee's opinion, necessary or convenient for the operation or administration of the Division or any Sub-Division of the Division. The Trustee may:

- (a) credit to any account any amount that is required or permitted by or under these Division Rules or the applicable Sub-Division Rules to be credited to it; and
- (b) debit to any account any amount that is required or permitted by or under these Division Rules or the applicable Sub-Division Rules to be debited to it,

and the Trustee may designate those accounts as Benefit Accounts, reserve accounts or by such other titles as the Trustee may determine.

#### **4.4 Operational Risk Financial Requirement Reserve Sub-Reserve**

The Trustee must establish and maintain a sub-reserve for the Division and must deal with the reserve in the following manner:

- (a) amounts credited to the sub-reserve for the Division:
  - (i) such amounts as agreed in writing, prior to the Transfer Time, with the Active Super Trustee or otherwise as these Division Rules may require to be credited; or
  - (ii) such other amounts as the Trustee may from time to time consider appropriate; and
- (b) amounts to be debited to the sub-reserve for the Division:
  - (i) such amounts as these Division Rules may require to be debited; or
  - (ii) such amounts as the Trustee may from time to time consider or determine to be an amount referable to an operational risk of the Division or otherwise payable in accordance with the Trustee's operational risk financial requirement strategy.

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## **5. Information to Minister**

### **5.1 Generally**

Subject to any duties of confidentiality or other legal obligations owed by the Trustee to a third party, the Trustee must furnish to the Minister the following information in relation to Sub-Divisions B, C and D:

- (a) on request or on an annual basis, as determined by the Minister:
  - (i) all participation agreements (or other such documents) dealing with or governing the participation of an Employer in Sub-Divisions B, C and D, including funding of the superannuation benefits to which members or other beneficiaries are or may be entitled from those Sub-Divisions;
  - (ii) actuarial reviews and actuarial reports issued dealing with Sub-Divisions B, C and D;
  - (iii) funding and solvency certificates issued in respect of Sub-Divisions B, C and D;

- (iv) the funding and contribution policy applied by the Trustee in respect of Sub-Divisions B, C and D, setting out the required Employer contributions to those Sub-Divisions;
  - (v) the planned investment strategy for the relevant investment options, the current investment performance on those options, and any investment report(s) provided to or prepared by the Trustee concerning the portion of the assets of the Division attributable to Sub-Divisions B, C and D; and
  - (vi) subject to section 1017C(4) of the Corporations Act, any information the Trustee is required to provide to an employer-sponsor under sections 1017C(3) and 1017C(5) of that Act; and
- (b) on request by the Minister, and in any event within 30 days of the occurrence of:
- (i) an Employer entering into a participation agreement which has not otherwise been provided to the Minister, that participation agreement;
  - (ii) any material adverse change on the part of the Trustee which impacts its ability to pay the benefits of members and other beneficiaries of Sub-Divisions B, C and D from the portion of the assets of the Division attributable to those Sub-Divisions, information about that material adverse change;
  - (iii) any complaint from a member or other beneficiary of Sub-Divisions B, C or D not resolved within 90 days of receipt of the complaint, information about that complaint; and
  - (iv) any requirement on the part of the Trustee to report a breach of its Australian Financial Service or Registrable Superannuation Entity licence conditions to a Superannuation Authority, a copy of such report, but only to the extent that it relates to Sub-Divisions B, C or D,

but such information should not include information relating to an individual Beneficiary without that Beneficiary's consent.

## 5.2 Specific circumstances

In the event the Minister becomes aware of a matter which, acting reasonably, causes the Minister to form a view that the Trustee may not be appropriately discharging all of its duties to the members and other beneficiaries of Sub-Divisions B, C and D, or relating to the portion of the assets of the Division attributable to those Sub-Divisions, the Minister may:

- (a) seek information from time to time from the Trustee relating to:
  - (i) the experience of members and other beneficiaries of Sub-Divisions B, C and D;
  - (ii) any matter concerned with the requirement of the Trustee to act in the best financial interests of members and other beneficiaries of Sub-Divisions B, C and D;
  - (iii) contributions which participating employers are required to make or which it is recommended that a participating employer make to Sub-Divisions B, C and D and any omission on the part of a

participating employer to make the required or recommended contributions, and employer funding of superannuation benefits of members and other beneficiaries of Sub-Divisions B, C and D generally;

- (iv) the planned investment strategy, the current return on investments, and any investment report(s) provided to or prepared by the Trustee concerning the portion of the assets of the Division attributable to Sub-Divisions B, C and D;
  - (v) the net defined benefit liabilities or assets (as applicable) attributable to Sub-Divisions B, C and D and any valuation of the portion of the assets of the Division attributable to those Sub-Divisions; and
  - (vi) any change contemplated by clauses 3.1, 3.2 or 3.3 of these Division Rules; and
- (b) make written representations to the Trustee concerning the matters referred to above,

and the Trustee must provide the information so requested (subject to any duties of confidentiality or other legal obligations owed by the Trustee to a third party), and consider and respond to the representations made by the Minister, within 30 days of receipt of the request for information and/or the Ministerial representations (as applicable).

### 5.3 Confidentiality

If the Trustee considers that information which it would otherwise be required to provide to the Minister under clause 5.1 or 5.2 is subject to a duty of confidentiality or other legal obligation owed by the Trustee to a third party, the Trustee must:

- (a) provide to the Minister a written description of the nature and extent of the applicable duty or obligation (to the extent that that information is not itself confidential); and
- (b) use its reasonable endeavours to request that the applicable duty or obligation be waived by the relevant third party in the circumstances.

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## 6. Excess amount

Where the value of the portion of the assets of the Fund attributable to the Division, a part of the Division or an account established under these Division Rules in respect of a particular Employer (**Employer's reserve**) is more than the value of the portion of the liabilities of the Fund attributable to the Division, the part of the Division or the Employer's reserve (as the case may be) (**excess amount**), the Trustee may, on the advice of the Actuary, apply the excess amount to reduce Contributions otherwise payable by an Employer or, with the consent of the Minister and on the advice of the Actuary, determine to apply all or part of the excess amount for any purpose agreed by the Trustee and the Minister and in accordance with Superannuation Law.

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## 7. Liability of Trustee



### **7.1 Liability for acts or omission**

The Trustee shall not be liable to a Beneficiary nor to any person whatsoever in connection with the Division to an extent greater than the portion of the assets of the Fund attributable to the Division.

### **7.2 Information provided to Trustee**

For the purposes of administering these Division Rules, the Trustee shall be entitled to rely upon information provided to it by an Employer or Beneficiary or any other person acting at the request of or on behalf of an Employer or Beneficiary. The Trustee shall be indemnified by the Employer or Beneficiary who provided the information or at whose request or on whose behalf the information was provided in relation to any loss, damage or expense incurred by the Trustee arising as a result of any such information proving to be incorrect or misleading.

### **7.3 Trustee not obliged to pay**

Subject to Superannuation Law and the obligations under the Deed, except in the case of dishonesty or unless the Trustee has failed to show the degree of care and diligence required of a trustee having regard to the powers, authorities and discretions conferred on the Trustee by the Deed or these Division Rules, in no event is the Trustee bound to make any payment to any person in connection with the Division or liable to any person in connection with the Division to any greater extent than the portion of the assets of the Fund attributable to the Division.

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## **8. Employers and Members**

### **8.1 Initial Employers**

As at the Transfer Time, each transferred employer in the Schedule to the LASF Transfer Regulation shall be:

- (a) an Employer; and
- (b) bound by the terms of the Deed and these Division Rules.

A transferred employer must, not later than 6 months after the date of transfer, execute such documents as the Trustee may reasonably require for the purposes of administering the Division.

### **8.2 Application to become Employer**

An authority, body or other entity:

- (a) referred to in or established under an Act specified in Section 1 of Annexure A to these Division Rules or described in Section 2 of Annexure A;
- (b) which is wholly owned or controlled by a transferred employer or an Employer of the Division or by any two or more of those persons; or
- (c) approved, or within a class approved, by the Minister,

may make written application to the Trustee to become an Employer of the Division. The application shall be in the form and contain the information and such terms required by the Trustee. The Trustee may accept the duly executed

application. On acceptance, the person shall become an Employer of the Division and participate in such Sub-Division or Sub-Divisions as the Trustee determines.

For the avoidance of doubt, nothing in this clause 8.2 purports to limit or otherwise affect the operation of the LASF Transfer Regulation, under which a transferred employer is taken to be an Employer, is bound by the Deed and these Division Rules and has an obligation to make payments and contributions to the Division in accordance with the Deed and these Division Rules.

### **8.3 Executive Officer**

An Employer may nominate an Employee as an “eligible person” for the purposes of the definition of “Executive Officer” in the applicable Sub-Division Rules and the employee will only be eligible to be nominated as such if the person satisfies the following:

- (a) has the skills and responsibilities and receives a salary equivalent to or greater than the Executive Band of the *Local Government (State) Award 2023* (NSW); and
- (b) is on a fixed term contract of employment.

### **8.4 Members bound by Deed and Division Rules**

Every person being or becoming a Member of the Division and all persons claiming through them shall be deemed to have approved of and to be bound by the Deed and these Division Rules.

### **8.5 Ceasing to be Employee**

Each Employer shall promptly give written notice to the Trustee upon a Member ceasing to be an Employee. If any Member is transferred in the Member's employment from one Employer of the Division to another Employer of the Division then for the purposes of the Division the Member shall notwithstanding any other provision of these Division Rules be deemed not to have ceased to be an Employee unless the Trustee determines that the Member has ceased to be an Employee for the purpose of these Division Rules.

### **8.6 Ceasing to be Beneficiary**

Unless otherwise provided in the applicable Sub-Division Rules, a person shall cease to be a Beneficiary of the Division upon the earlier of:

- (a) the payment of the whole of the Beneficiary's Benefit to or in respect of the Beneficiary;
- (b) the transfer of the whole of the Beneficiary's Benefit to another Division of the Fund;
- (c) the transfer of the whole of the Beneficiary's Benefit to another Approved Benefit Arrangement in accordance with clause 10.4 of these Division Rules;
- (d) the payment of part of the Beneficiary's Benefit to or in respect of a Beneficiary and the transfer of the balance of the Beneficiary's Benefit to another Approved Benefit Arrangement in accordance with clause 10.4 of these Division Rules;
- (e) the Beneficiary ceasing to be entitled to a Benefit.

## **8.7 Beneficiaries to provide information**

Every Beneficiary shall submit:

- (a) a member application in a form approved by the Trustee (other than in the case of a person who is a Transferred Member);
- (b) the name of the person, date of birth, address, and date of commencement of employment;
- (c) if required, any evidence of health and completed and signed statements as to health required in connection with any insured benefit; and
- (d) details of the person's membership of any other superannuation investment and any other information the Trustee determines to be reasonably necessary to assist in the administration of the Division or determination of the Members' Benefits.

## **8.8 Employers to provide information**

- (a) An Employer, at the Transfer Time or otherwise on joining the Division, shall supply such information concerning its Employees eligible to join the Division as the Trustee may reasonably determine.
- (b) An Employer must, as and when requested by the Trustee, give to the Trustee all information in the Employer's possession or under the Employer's control which may be reasonably necessary for the operation, management and administration of the Division.
- (c) Each Employer shall give to the Trustee clear information as to the entitlement to contributions made by the Employer to the Division.

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# **9. Contributions**

## **9.1 Limit of Contributions**

Employers and Members shall make contributions in accordance with these Division Rules or any other arrangement agreed by the Trustee but the Trustee may refuse to accept any Contribution which may, in the opinion of the Trustee, jeopardise the status of the Fund as a complying superannuation fund.

## **9.2 Authority to deduct Member Contributions**

Each Member authorises its Employer to deduct Contributions due by the Member (if any) from the Member's remuneration and to pay those moneys to the Division on behalf of the Member.

## **9.3 Late Contributions**

The Trustee may charge collection costs and interest at a reasonable rate as determined from time to time by the Trustee on any amount not paid by an Employer on or before the Due Date.

## **9.4 Additional Contributions**

An Employer or Member may make such additional Contributions to a Sub-Division if permitted by the applicable Sub-Division Rules as the Trustee may from time to time agree. Those Contributions shall be applied by the Trustee as the Employer or Member, as the case may be, directs and as agreed by the Trustee. The Trustee may require that a particular Employer shall make

additional contributions in respect of some or all of its Employees or former Employees (or former Employees of a predecessor Employer) who are Beneficiaries and the Employer shall comply with that requirement.

## **9.5 Refund of payments**

If any moneys paid to the Division will or may jeopardise the status of the Fund as a complying superannuation fund or, in the opinion of the Trustee, have been paid by mistake (whether of law or of fact), the Trustee may refund those moneys to the person who paid them to the Division. Subject to the applicable Sub-Division Rules, the Trustee shall not be liable to pay any interest, or account for any earnings or compensate the person who paid those moneys in any way and a person shall not be deemed to have become an Employer or a Member merely by reason of the receipt by the Trustee of those moneys.

## **9.6 Acceptance of assets**

The Trustee may agree to accept the transfer of an asset by an Employer as a Contribution to a Sub-Division. The amount of the Contribution shall be the value of the asset to be transferred as agreed between the Trustee and the Employer, and it shall be applied by the Trustee as a Contribution by or in respect of the Member to whom it relates.

## **9.7 Contributions holiday**

The Trustee shall determine as required by the applicable Sub-Division Rules from time to time on the advice of the Actuary and in accordance with those Sub-Division Rules, the Contributions to be made by Employers. The Trustee may, on the advice of the Actuary and in accordance with clause 6 of these Division Rules, permit an Employer or class of Employers to reduce its Contributions otherwise required to be paid under the applicable Sub-Division Rules in respect of all or some of the Employers' Beneficiaries for such time and subject to such conditions as the Trustee on the advice of the Actuary, determines.

## **9.8 Contributions Tax**

If any part of the excess amount referred to in clause 6 of these Division Rules is applied to reduce the Contributions otherwise payable under the applicable Sub-Division Rules by an Employer, the Trustee may debit the Benefit Account of that Employer's Members by an amount equal to the Tax at the rate of Tax specified, at the time the amount is applied, as payable on those Contributions, or at such lesser rate as the Trustee on the advice of the Actuary may determine, as if it had been paid by the Employer directly to the Division.

## **9.9 Surcharge**

9.9.1 Where the Trustee is required to make any payment in satisfaction of any tax, surcharge, levy or other similar amount calculated by reference to the salary, income or other financial circumstances of a Beneficiary (the **Liable Beneficiary**) the Trustee shall adjust the Benefits or Benefit Accounts of that Liabe Beneficiary to reflect the cost to the Division of the payment made including any cost of funding that payment.

9.9.2 A Beneficiary may, at any time, lodge with the Trustee an election to pay amounts to the Division in respect of the Superannuation Contributions Surcharge payable in respect of the Beneficiary and:

(a) payments may be made on a periodic or a single payment basis;

- (b) an election is to specify the amounts to be paid and the manner in which payment is to be made;
- (c) a Beneficiary may, at any time, lodge with the Trustee an election to vary or revoke an election under this clause 9.9;
- (d) an election under this clause 9.9 is to be in a form approved by the Trustee for the purposes of this clause;
- (e) an election under this clause 9.9 remains in force until a subsequent election under this clause takes effect.

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## **10. Roll-overs and transfers to and from other funds**

### **10.1 Roll-overs and transfers in**

The Trustee may accept into a Sub-Division:

- (a) moneys or assets from another Approved Benefit Arrangement under an arrangement with the trustee, employer or member or members of that Approved Benefit Arrangement where the member or members of that Approved Benefit Arrangement are Beneficiaries of the Sub-Division;
- (b) a superannuation lump sum or employment termination payment of a person under an arrangement between that person and the Trustee where that person is a Beneficiary of the Sub-Division; and
- (c) moneys or assets from another Sub-Division where the Member or Members intend to become a Beneficiary or Beneficiaries of the Sub-Division, and the amount of the moneys or the value of the assets transferred shall be applied by the Trustee in accordance with the arrangements relating to the transfer as agreed by the Trustee, and in accordance with Superannuation Law.

### **10.2 Non-acceptance of roll-overs and transfers in**

- (a) The Trustee may, in its absolute discretion and without being required to give any reason, decline to accept into the Division from:
  - (i) another Approved Benefit Arrangement, any transfer or payment of moneys; or
  - (ii) a person, any superannuation lump sum or employment termination payment.
- (b) The Trustee may, in its absolute discretion and without being required to give any reason, decline to make any transfer or payment from one Sub-Division to another Sub-Division.

### **10.3 Transfer In – LASF Transfer Regulation**

The Trustee must accept into the Division, Beneficiaries, Employers and assets on such terms as may be set out in the LASF Transfer Regulation.

### **10.4 Roll-overs and transfers out**

- (a) In addition to any entitlement under the Sub-Division F Rules for a Beneficiary of Sub-Division F to roll over or transfer a Benefit, where a Beneficiary of Sub-Division F is or becomes eligible for membership of

another Approved Benefit Arrangement then with the consent of the Beneficiary if that consent is required by Superannuation Law, the Trustee may, subject to the Sub-Division F Rules and such conditions as the Trustee may decide, roll over or transfer all or part of the Beneficiary's Benefit to such other Approved Benefit Arrangement.

- (b) A Member in Sub-Division B, C or D may request the Trustee to roll over or transfer the Beneficiary's Benefit to another Approved Benefit Arrangement and, if the Beneficiary's Employer consents to the transfer, the Trustee may, subject to the applicable Sub-Division Rules and such other conditions as it may decide, roll over or transfer the Beneficiary's Benefit to such other Approved Benefit Arrangement.
- (c) Notwithstanding any other provision of this Deed, the Trustee may pay all or part of a Beneficiary's Benefit under the Division, without the Beneficiary's consent, to a 'successor fund' (within the meaning of the SIS Regulations) (**successor fund**), together with such other amount or amounts as the Trustee may determine. The consent of the Minister:
  - (i) is required in respect of the payment or transfer of a Benefit of a Beneficiary of Sub-Division B, C or D to a successor fund; and
  - (ii) is not required in respect of the payment or transfer of a Benefit of a Beneficiary of Sub-Division F to a successor fund.

## **10.5 Receipt from trustees of another fund**

Where an amount is paid to the trustee of an Approved Benefit Arrangement pursuant to this clause 10, the receipt given by the provider of the Approved Benefit Arrangement (including in the case of an annuity effected in respect of a Member, the body providing that annuity) in respect of the amount paid is a full discharge to the Trustee of all its obligations to or in respect of the Beneficiary under these Division Rules and the Trustee shall not be in any way responsible for or liable in respect of the application or disposal of such money by such trustee or other person.

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## **11. Mobility between schemes**

### **11.1 Eligible Employees and Contributors**

The following persons are eligible to exercise a Transfer Option:

- (a) a Category 1 Elector - that is, a person who, on the Appointed Day, was a contributor to the State Superannuation Scheme or the State Authorities Superannuation Scheme or the Police Superannuation Scheme or Division B or D of Pool B and who, in accordance with clause 11.2 of these Division Rules, is taken to have transferred employment;
- (b) a Category 2 Elector - a person who, on the Appointed Day, was a contributor to Division B or D of Active Super and who, in accordance with clause 11.3 of these Division Rules, is taken to have transferred employment;
- (c) a Category 3 Elector - a person who, on the Appointed Day, held deferred Benefits in both the State Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme or in both Division C and D of Pool B in relation to the same period of employment and who, in accordance with clause 11.4 of these Division Rules, is taken to have transferred employment;

- (d) a Category 4 Elector - a person who, on the Appointed Day, held deferred Benefits in both the State Authorities Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme or in both Division B and C of Pool B in relation to the same period of employment and who, in accordance with clause 11.5 of these Division Rules, is taken to have transferred employment;
- (e) a Category 5 Elector - a person who, on the Appointed Day, held deferred Benefits in each of Divisions B and C of Active Super in relation to the same period of employment and who, in accordance with clause 11.6 of these Division Rules, is taken to have transferred employment; and
- (f) a Category 6 Elector - a person who, on the Appointed Day, held deferred Benefits in each of Divisions C and D of Active Super in relation to the same period of employment and who, in accordance with clause 11.7 of these Division Rules, is taken to have transferred employment.

### **11.2 Contributors to State Superannuation Scheme or State Authorities Superannuation Scheme or the Cbus Super Pool B Sub-Division**

A person who is a Category 1 Elector is taken to have transferred employment if:

- (a) the person has ceased, on or after the Appointed Day, to be a contributor to the State Superannuation Scheme or to the State Authorities Superannuation Scheme or the Police Superannuation Scheme or under Annexure 1 or Annexure 3 of the Cbus Super Pool B Sub-Division; and
- (b) within 3 months after ceasing to be a contributor to that scheme, the person has become an employee of an Employer.

### **11.3 Contributors to the Division**

A person who is a Category 2 Elector is taken to have transferred employment if:

- (a) the person has ceased, on or after the Appointed Day, to be a contributor to Sub-Divisions B or D, and
- (b) within 3 months after ceasing to be such a contributor, the person has become an employee of an STC Employer or a Cbus Super Pool B Sub-Division Employer.

### **11.4 Holders of deferred Benefits in the State Superannuation Scheme and State Authorities Non-contributory Superannuation Scheme or the Cbus Super Pool B Sub-Division**

A person who is a Category 3 Elector is taken to have transferred employment if:

- (a) within the Prescribed Time after the person's Benefits in the State Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme or under Annexure 2 and Annexure 3 of the Cbus Super Pool B Sub-Division were deferred, the person has become an employee of an Employer, and
- (b) the person has thereafter remained an employee of that employer, or been employed by a succession of Employers or STC Employers or Cbus Super Pool B Sub-Division Employers (or any combination), with no break in service longer than the Prescribed Time.

In this clause 11.4, the **Prescribed Time** means the time allowed for the purposes of section 38C(2) of the *Superannuation Act 1916* (NSW).

#### **11.5 Holders of deferred Benefits in State Authorities Superannuation Scheme and State Authorities Non-contributory Superannuation Scheme or the Cbus Super Pool B Sub-Division**

A person who is a Category 4 Elector is taken to have transferred employment if:

- (a) within the Prescribed Time after the person's Benefits in the State Authorities Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme or under Annexure 1 and Annexure 2 of the Cbus Super Pool B Sub-Division were deferred, the person has become an employee of an Employer, and
- (b) the person has thereafter remained an employee of that employer, or been employed by a succession of Employers or STC Employers or Cbus Super Pool B Sub-Division Employers (or any combination), with no break in service longer than the Prescribed Time.

In this clause 11.5, the **Prescribed Time** means the time allowed for the purposes of section 30(2) of the *State Authorities Superannuation Act 1987* (NSW).

#### **11.6 Holders of deferred Benefits in Sub-Divisions B and C**

A person who is a Category 5 Elector is taken to have transferred employment if:

- (a) within the Prescribed Time after the person's Benefits in Sub-Divisions B and C were deferred, the person has become an employee of an STC Employer or a Cbus Super Pool B Sub-Division Employer, and
- (b) the person has thereafter remained an employee of that employer, or been employed by a succession of Employers or STC Employers or Cbus Super Pool B Sub-Division Employers (or any combination), with no break in service longer than the Prescribed Time.

In this clause 11.6, the **Prescribed Time** means the time allowed for the purposes of section 30(2) of the *State Authorities Superannuation Act 1987* (NSW).

#### **11.7 Holders of deferred Benefits in Sub-Divisions C and D**

A person who is a Category 6 Elector is taken to have transferred employment if:

- (a) within the Prescribed Time after the person's Benefits in Sub-Divisions C and D were deferred, the person has become an employee of an STC Employer or a Cbus Super Pool B Sub-Division Employer; and
- (b) the person has thereafter remained an employee of that employer, or been employed by a succession of Employers or STC Employers or Cbus Super Pool B Sub-Division Employers (or any combination), with no break in service longer than the Prescribed Time.

In this clause 11.7, the **Prescribed Time** means the time allowed for the purposes of section 38C(2) of the *Superannuation Act 1916* (NSW).



### **11.8 Manner and form of exercising option**

An Election to exercise a Transfer Option is to be given in writing to the trustee of the Transferee Scheme, using a form approved by that Trustee.

### **11.9 Provision of Information**

- (a) An Elector must provide such information as may be required to complete the election form, being information that the trustees of the Transferor Scheme or Transferee Scheme may reasonably require to give effect to the Election.
- (b) Either trustee is entitled to require the other to provide information (including members' files) reasonably necessary to give effect to the Election.
- (c) The Trustee is entitled to require an Employer, under a scheme for which it is trustee, to provide such information as may be reasonably necessary to the Trustee in order to give effect to the Election.

### **11.10 Time within which option may be exercised**

- (a) An Election by a Category 1 or 2 Elector who, in accordance with clauses 11.2 or 11.3 of these Division Rules, is taken to have transferred employment must be made within 3 months after the transfer of employment.
- (b) An Election by a Category 3, 4, 5 or 6 Elector who, in accordance with clauses 11.4, 11.5, 11.6 or 11.7 of these Division Rules, is taken to have transferred employment, must be made within 12 months after the transfer of employment.
- (c) An Election takes effect when the election form, duly completed, is received by the trustee of the Transferee Scheme.
- (d) However, an Election does not take effect if an Elector has applied for a payment of a benefit (including a deferred benefit) under the Transferor Scheme before the Election is received by the trustee of the Transferee scheme.
- (e) Despite any other provision in this clause 11, where the Division is the Transferee Scheme the Trustee may allow an Elector an additional period not exceeding 12 months, in which to make an Election to transfer to the Division if the Trustee thinks it appropriate in the circumstances.

### **11.11 Amounts transferable on exercise of option**

- (a) On exercise by a person of a Transfer Option in which the Division is the Transferor Scheme, there is payable by the Trustee to the trustee of the Transferee Scheme:
  - (i) a superannuation lump sum calculated in accordance with clause 11.12 of these Division Rules; and
  - (ii) the difference between:
    - (A) the sum of the primary and supplementary amounts calculated in accordance with clauses 11.13 and 11.14 of these Division Rules; and

- (B) the superannuation lump sum referred to in paragraph (a)(i).
- (b) It is the duty of the Trustee to ensure that the payments prescribed by this clause 11.11 are duly made and credited to the appropriate accounts for the employee concerned in the Transferee Scheme.

#### 11.12 Superannuation lump sum

- (a) For a Category 1 or 2 Elector, the superannuation lump sum is the amount that would have been immediately payable to the person, in accordance with the applicable Sub-Division Rules, on the person's resignation from his or her employment.
- (b) For a Category 3 Elector, the superannuation lump sum is the sum of:
  - (i) the amount that would have been payable if, on the date the election takes effect, the person had elected to take the benefit payable under section 52I of the *Superannuation Act 1916* (NSW) or sub-clause 16.11 of Annexure 3 of the Cbus Super Pool B Sub-Division; and
  - (ii) the amount of benefit to which the person was entitled on that date under the *State Authorities Non-contributory Superannuation Act 1987* (NSW) or Annexure 2 of the Cbus Super Pool B Sub-Division.
- (c) For a Category 4 Elector, the superannuation lump sum is the sum of:
  - (i) the amount that would have been payable if, on the date the election takes effect, the person had elected to take the benefit payable under section 43(7) of the *State Authorities Superannuation Act 1987* (NSW) or sub-clause 5.10(l) of Annexure 1 of the Cbus Super Pool B Sub-Division; and
  - (ii) the amount of benefit to which the person was entitled on that date under the *State Authorities Non-contributory Superannuation Act 1987* (NSW) or Annexure 2 of the Cbus Super Pool B Sub-Division.
- (d) For a Category 5 Elector, the superannuation lump sum is the sum of:
  - (i) the amount of Benefit to which the person would have been entitled under rule 6.14.12 of the Sub-Division B Rules if the person had resigned from employment and had, on the date the election takes effect, made any necessary election under that Sub-Division; and
  - (ii) the amount of Benefit to which the person was entitled on that date under the Sub-Division C Rules.
- (e) For a Category 6 Elector, the superannuation lump sum is the sum of:
  - (i) the amount of cash termination Benefit to which the person would have been entitled under rule 16.11 of the Sub-Division D Rules if the person had resigned from employment and had, on the date the election takes effect, made any necessary election under that Sub-Division; and
  - (ii) the amount of Benefit to which the person was entitled on that date under the Sub-Division C Rules.

### **11.13 Primary amount**

- (a) For a Category 1, 3 or 4 Elector, the primary amount is the amount determined by SAS Trustee Corporation or the trustee of Cbus Super, as applicable, on actuarial advice to be the value of the person's accrued Benefit in the State Authorities Superannuation Scheme or State Superannuation Scheme or under Annexure 1 or Annexure 3 of the Cbus Super Pool B Sub-Division, as the case may be, at the time of the Election.
- (b) For a Category 2, 5 or 6 Elector, the primary amount is the amount determined by the Trustee on actuarial advice to be the value of the person's accrued Benefit in Sub-Divisions B or D, as the case may be, at the time of the Election.

### **11.14 Supplementary amount**

- (a) For a Category 1, 3 or 4 Elector, the supplementary amount is the amount of benefit to which the person was entitled under the *State Authorities Non-contributory Superannuation Act 1987* (NSW) or Annexure 2 of the Cbus Super Pool B Sub-Division on the date the election takes effect.
- (b) For a Category 2, 5 or 6 Elector, the supplementary amount is the amount of Benefit to which the person was entitled under the Sub-Division C Rules on the date the election takes effect.

### **11.15 Duty of trustees to persons eligible to make Election**

- (a) It is the duty of the Trustee under an Election made by an eligible person to transfer to the Division, to establish the person as a member of or contributor to the Division.
- (b) An Elector transferring from the State Authorities Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme or from Annexure 1 and Annexure 2 of the Cbus Super Pool B Sub-Division is to be established in Sub-Divisions B and C.
- (c) An Elector transferring from the State Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme or from Annexure 2 and Annexure 3 of the Cbus Super Pool B Sub-Division is to be established in Sub-Divisions C and D.
- (d) An Elector transferring from the Police Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme is to be established in Sub-Divisions B and C.

### **11.16 Trustees to determine rights of person transferring**

- (a) The Trustee is to determine with actuarial advice, the rights of the Elector in the Division.
- (b) Regard must also be had to any rights the Elector had in the Transferor Scheme and the rights established in Sub-Divisions B and C or Sub-Divisions C and D must be as near as possible to them.
- (c) In particular, the Trustee is to take into account the following:
  - (i) the person's accrued Benefits in the Transferor Scheme, as certified by the trustee of that scheme;

- (ii) the Benefits that the person could have accrued by normal retirement age in the Transferor Scheme;
  - (iii) the person's employment status (including salary and whether full-time or part-time) in the Division, on commencement or recommencement of membership of Sub-Divisions B or D; and
  - (iv) the amounts being transferred to the Division by the Transferor Scheme.
- (d) In the case of a Category 3, 4, 5 or 6 Elector, the Trustee must also take into account:
- (i) the period of employment with any employer responsible for making contributions under either the Transferor or Transferee Scheme, in the period between the date the Benefit was deferred and the date that the person again becomes a member of the Transferee Scheme; and
  - (ii) any employer contributions made by any such employer to any complying superannuation fund in respect of the person during that period.

#### **11.17 Automatic accrual of certain rights**

- (a) A person who, by election, joins or rejoins Sub-Division D is taken to have met the medical requirements of rule 3 of the Sub-Division D Rules.
- (b) A person who was covered for Additional Benefits in the State Authorities Superannuation Scheme or under Annexure 1 of the Cbus Super Pool B Sub-Division and who, by election, joins or rejoins Sub-Division B is taken to have submitted an application for Additional Benefit cover under rule 4.2.1 of the Sub-Division B Rules and the Trustee is taken to have approved that application.
- (c) A person who was a contributor to the Police Superannuation Scheme on the appointed day and who, by election, joins Sub-Division B is taken to have submitted an application for Additional Benefit cover under rule 4.2.1 of the Sub-Division B Rules and the Trustee is taken to have approved that application.
- (d) Additional Benefit cover imputed by clauses 11.17(b) or (c) of these Division Rules may be revoked in accordance with the applicable Sub-Division Rules.

#### **11.18 Effect of transfers and appeal rights**

- (a) On the election taking effect, and subject to any appeal rights in this clause 11.18, the person who makes the election ceases to have any entitlements, rights and obligations under the scheme from which the person transferred to the extent to which the member is transferred.
- (b) The rights of appeal available to an Elector before a Transfer Option takes effect continue to apply in respect of matters arising before that option takes effect and any matters as to payment from the Transferor Scheme.
- (c) An elector who transfers to the Division has, in respect of any determination by the Trustee as to the elector's rights on transfer to Sub-Divisions B and C or Sub-Divisions C and D, the same rights of

appeal as in respect of a determination by the Trustee under the Deed and these Division Rules.

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## **12. Benefits**

### **12.1 Compliance with Superannuation Law**

The payment of Benefits shall be subject to Superannuation Law and the Trustee shall not be required to pay a Benefit to a Beneficiary, Dependant, legal personal representative or any other person other than in accordance with Superannuation Law.

### **12.2 Compulsory payment of Benefit**

If the Trustee is required to pay a Benefit at or by a certain time by Superannuation Law or is otherwise required to pay a Benefit by Superannuation Law then notwithstanding any provision in the applicable Sub-Division Rules or the fact that a claim has not been made under this clause 12, the Trustee may pay the Benefit to or in respect of a Beneficiary in accordance with Superannuation Law, less any deduction that is required to be made in respect of any Taxes.

### **12.3 Treatment of certain Benefits**

Subject to the applicable Sub-Division Rules, if any Benefit (or part of any Benefit) otherwise payable to a Beneficiary is unable to be paid in cash by reason of Superannuation Law then the Benefit may be transferred to another Division or Approved Benefit Arrangement elected by the Beneficiary and approved by the Trustee.

### **12.4 Payment of Benefits**

Subject to the applicable Sub-Division Rules, the Trustee may pay the Benefit to or in respect of a Beneficiary by way of lump sum, pension or by purchase of an annuity and otherwise in accordance with the Sub-Division Rules applicable to the Beneficiary.

### **12.5 Place and manner of payment**

- (a) Subject to these Division Rules, Benefits shall be payable at the place and in the manner as determined or approved of by the Trustee and the Trustee may make payment electronically, or by cheque or cause an insurer to make payment electronically or to draw and pay by cheque on behalf of the Trustee and the Trustee or insurer may mail the cheque to the payee at the last address known to the Trustee of that payee.
- (b) Notwithstanding any other provision of these Division Rules, a Beneficiary shall not be entitled to be paid a Benefit until the Trustee has:
  - (i) in the case of clause 12.2 of these Division Rules, determined to pay a Benefit; or
  - (ii) in any other case, received a claim from an Employer or Beneficiary (as the case may be) together with such other information as the Trustee may require,

and in the case where any Insured Benefit is payable, the insurer under an insurance policy has determined to accept and pay the claim.

## **12.6 Proofs**

Whenever it is necessary for the Trustee to decide questions of fact the Trustees may act upon such proofs or presumptions as it considers satisfactory whether or not they are strictly legal proofs or legal presumptions.

## **12.7 Payment of Benefit conditional upon evidence**

The Trustee may suspend payment of a Benefit until all information and evidence required by the Trustee is received from the Employer, the Beneficiary or the person to whom the Benefit is to be paid and in particular the Trustee may require any person to whom a Benefit is to be paid to satisfy the Trustee that the person is entitled to receive the Benefit in accordance with Superannuation Law.

## **12.8 Discharge of Trustee**

The receipt of a person to whom a Benefit is paid shall absolutely discharge the Trustee in respect of the Benefit paid to that person and the Trustee is not bound to see to the application of that Benefit.

## **12.9 Legal disability of person**

If it appears to the Trustee that a Beneficiary or other person to whom a Benefit would otherwise be payable is under any legal disability or is unable for any reason whatsoever to satisfactorily deal with such Benefit the Trustee may pay or apply the whole or part of any such Benefit in one or more of the following ways:

- (a) to any Dependant of the Beneficiary or other person;
- (b) for or towards the maintenance, education, advancement or otherwise for the benefit of the Beneficiary, other person or any Dependant of the Beneficiary or other person in such form and manner and subject to such terms and conditions as the Trustee thinks fit; and
- (c) without limiting paragraph (b), to a person who appears to the Trustee to be a trustee or is willing to act as trustee for or a parent or guardian of or to have for the time being the care or custody of the Beneficiary or other person or to have the financial expense of the care or custody of the Beneficiary or other person.

## **12.10 Trustee not obliged**

The Trustee is not obliged to have recourse to clause 12.9 of these Division Rules or to consider whether recourse should be had to clause 12.9 notwithstanding that the Trustee may have actual notice of any legal disability of the Beneficiary or other person.

## **12.11 Claim for Benefits**

Upon the Trustee being satisfied that a claim for an Insured Benefit has arisen, the Trustee shall, as soon as practicable, lodge a claim with the insurer in relation to that Beneficiary and upon receiving payment of such Insured Benefit the Trustee shall promptly pay such Benefit to or in respect of the Beneficiary or cause the insurer to pay the Benefit to or in respect of the Beneficiary.

## **12.12 Notice of claim**

An Employer or Beneficiary shall promptly advise the Trustee of any event which would entitle a Beneficiary to receive a Benefit in such form as is required by the Trustee.

### **12.13 Trustee may require proof of continued employment**

The Trustee may by notice in writing to a Beneficiary (other than a Pensioner) require the Beneficiary to provide evidence satisfactory to it that the Beneficiary is gainfully employed to a level required under Superannuation Law or is otherwise not entitled to be paid a Benefit and if the Beneficiary has reached an age at which a Benefit is payable and the Trustee is not satisfied that the Beneficiary is gainfully employed to a level required under Superannuation Law or is otherwise prohibited from receiving a Benefit then the Trustee may pay the Benefit to the Beneficiary as if that Beneficiary had become entitled to it on the date of payment.

### **12.14 Deferral of Benefit payment**

Where the Trustee must dispose of any portion of the assets of the Fund attributable to the Division and convert them to cash in order to pay a Benefit, the Trustee may delay payment of the Benefit for such period as the Trustee sees fit in order to reasonably facilitate the orderly disposal of those assets.

### **12.15 Maximum liability of Trustee**

Notwithstanding any other provision of these Division Rules, the Trustee shall not be required to make any payment from the Division in excess of portion of the assets of the Fund attributable to the Division nor shall any Employer or Beneficiary bear any liability for such excess.

### **12.16 Discharge by Commissioner of Taxation**

The receipt of the Commissioner of Taxation in respect of the Benefit of a Beneficiary paid to the Commissioner of Taxation shall absolutely discharge the Trustee in respect of the Benefit of that Beneficiary and the Beneficiary shall cease to have any rights against the Division.

### **12.17 Payment of death benefits**

- (a) Any benefit payable from the Division on or after the death of a Member or other beneficiary is payable:
  - (i) to the Member's or other beneficiary's Nominated Beneficiary (if applicable); or
  - (ii) in accordance with clause 12.17(b) of these Division Rules if there is no Valid Nomination Form in respect of the Member or other beneficiary or if payment in accordance with clause 12.17(a)(i) of these Division Rules cannot otherwise be made.
- (b) Subject to clause 12.17(a) of these Division Rules, any benefit payable from the Division on or after the death of a Beneficiary which under these Division Rules is not expressed to be payable to or for the benefit of some other specified person or persons must be paid or applied by the Trustee to or for the benefit of one or more of:
  - (i) the Member's or other beneficiary's Dependants; and
  - (ii) the Member's or other beneficiary's legal personal representatives,

to the exclusion of the other or others of them and in the form, manner, proportions and subject to the conditions determined by the Trustee.

- (c) If after such inquiries and such period as the Trustee considers appropriate, the Trustee is unable to identify a Dependant or legal personal representative of a deceased Member or other beneficiary to its satisfaction, the Trustee may pay or apply the benefit otherwise payable in any other manner permissible under Superannuation Law.

#### **12.18 Competing claims for Spouses' Benefits**

- (a) If a Benefit would be payable to more than one person because:
  - (i) a deceased Contributor, Member or pensioner; or
  - (ii) a deceased former Contributor, Member or pensioner, has left more than one Spouse, then, despite any other provision of these Division Rules:
    - (iii) the Benefit is payable in accordance with a determination made by the Trustee, and not otherwise; and
    - (iv) the total amount of Benefit payable to those persons at any time is not to exceed the amount of Benefit that would be payable if there were only one Spouse.
- (b) For the purposes of paragraph (a), the Trustee may determine in relation to a Benefit:
  - (i) that the Benefit is not payable to such of the persons concerned as it specifies;
  - (ii) that the amount of the Benefit is to be apportioned between the persons concerned in such manner as it specifies; or
  - (iii) to pay part or all of the Benefit to the legal personal representative of the deceased Beneficiary.

#### **12.19 Benefit not part of estate**

A Benefit payable on the death of a Beneficiary is not an asset in the Beneficiary's estate, unless it is paid to the estate.

#### **12.20 Loss of rights, privileges or benefits**

If a person is entitled to exercise a right or enjoy a privilege or benefit under the applicable Sub-Division Rules and, without having exercised the right or enjoyed the privilege or benefit, the person ceases to be entitled to do so, the person may exercise the right or enjoy the privilege or benefit if the Trustee determines (whether subject to conditions or otherwise) that it is just and equitable for the person to do so and gives its consent to the exercise or enjoyment by the person of the right, privilege or benefit.

#### **12.21 Financial hardship**

The Trustee may determine, and vary:

- (a) a minimum Benefit Account balance which must remain in a Sub-Division after payment of an amount to a Beneficiary on the grounds of severe financial hardship; and



- (b) any criteria for eligibility for payment on the grounds of severe financial hardship.

## **12.22 Reduction in Pensions and Benefits to offset Tax**

12.22.1 Whenever:

- (a) a right to a Benefit under the Division accrues to or in respect of a Beneficiary or where a Family Law Order, a Superannuation Agreement or a Flag Lifting Agreement applies, and
- (b) the Trustee has paid or is liable to pay an amount of Superannuation Contributions Surcharge in respect of contributions, notional contributions or allocated surplus amounts that are referable to the Beneficiary,

the Trustee must, subject to clauses 9.9 and 12.22.2 of these Division Rules, make a determination reducing the employer-financed portion of that Benefit by the amount of debt (including accrued interest) owed for Superannuation Contributions Surcharge in respect of the Beneficiary, less any payments made by the Beneficiary towards reduction of the debt.

12.22.2 Clause 12.22.1 of these Division Rules does not authorise the reduction of a Benefit as a result of a liability for Superannuation Contributions Surcharge where the benefit is of a kind the Trustee has determined should not be the subject of the reduction.

## **12.23 Commutation of pensions for adjustment of benefits**

12.23.1 If a determination reducing a Benefit that may be taken in the form of a pension is made under clause 12.22 of these Division Rules, the Trustee may, at its discretion and with the consent of the Beneficiary concerned, commute part of the pension to a lump sum for the purposes of payment to the Trustee of the amount of the reduction.

12.23.2 Commutation of part of a pension under this clause 12.23:

- (a) does not affect any other right that the Beneficiary has to commute the pension under the Division, and
- (b) is not to be taken into account for the purpose of determining whether, and to what extent, any such other right may be exercised, and
- (c) is to be done on a basis determined by the Trustee for the purposes of this clause 12.23.

12.23.3 The Trustee may obtain actuarial advice for the purpose of determining the basis on which part of a pension is to be commuted under this clause 12.23.

12.23.4 This clause 12.23 has effect despite any other provision of these Division Rules.

## **12.24 Payment of benefits – Family Law Act requirements**

12.24.1 Where a person is a Member of the Division, their Non-Member Spouse may direct the Trustee to open a separate account within the Accumulation and Pension Division or else rollover the entitlement to another Approved Benefit Arrangement. In the absence of any direction, the Trustee shall establish a separate account within the Accumulation and Pension Division for the Non-Member Spouse.

- 12.24.2 The Trustee shall reduce the Member's Superannuation Interest in accordance with the provisions set out in the rules of the Member's Sub-Divisions.
- 12.24.3 The Trustee shall comply with any Family Law Order made in accordance with the Family Law Act terminating the operation of a Splittable Payment.
- 12.24.4 If the Non-Member Spouse dies after the Operative Time for a payment split:
- (a) the payment split nevertheless continues to operate;
  - (b) the payment split then operates in favour of the legal personal representative of the deceased Non-Member Spouse and is binding on that legal personal representative; and
  - (c) the legal personal representative has all the rights the deceased Non-Member Spouse would have had in respect of the payment split, including the right to serve a waiver notice under the Family Law Act.
- 12.24.5 The Trustee shall calculate the value of a Family Law Spouse Amount in respect of a Member's Superannuation Interest in accordance with the rules applying to the Member's Sub-Divisions, as amended from time to time.
- 12.24.6 The Trustee may adjust a benefit amount for investment earnings from the Operative Time to the day before the transfer date if a Superannuation Interest is not split until after the Operative Time.
- 12.24.7 The Trustee may charge or recover from a person, including a Member and Non-Member Spouse, such fees and costs in relation to any Family law dealings, unless prohibited by law.
- 12.24.8 The Trustee shall not be liable for any loss or damage suffered by any person because of things done (or not done) by the Trustee in good faith in reliance on:
- (a) any document served on the Trustee for the purposes of this clause 12.24; or
  - (b) a Family Law Order.

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## **13. Other superannuation schemes**

### **13.1 Prescribed Agreements and Awards**

If with the intention of complying with any requirement to provide any superannuation benefits required under any prescribed agreement or award, an Employer or Member makes Contributions to any Sub-Division then:

- (a) the Employer or Member must satisfy him, her or itself that the payment of the Contribution and the terms of the Division meet the requirements of any such prescribed agreement or award;
- (b) the Trustee shall not be liable to the Employer, the Member or any of the Employer's Members for any failure of those Contributions or the Sub-Division to which they are applied to satisfy the requirements of any such prescribed agreement or award; and
- (c) if the Employer or Member notifies the Trustee that the payment of the Contributions to the Sub-Division is in breach of any such prescribed agreement or award then the Trustee may refuse to accept any further Contributions paid in that regard and may transfer the Benefit or part of the Benefit that has arisen from those Contributions to an Approved

Benefit Arrangement that complies with the requirements of the relevant prescribed agreement or award in accordance with the provisions of clause 10 of these Division Rules.

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## **14. Rules**

### **14.1 Inconsistency**

If any Sub-Division Rules are inconsistent with any other provisions of these Division Rules then the provisions of these Division Rules shall prevail unless those Sub-Division Rules expressly provide to the contrary.

### **14.2 Express provision in Sub-Division Rules**

A provision in any Sub-Division Rules that deals with the same matter as another provision in these Division Rules shall not be taken to limit the other provision in these Division Rules unless it does so expressly.

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## **15. Amendment**

### **15.1 Amendments**

Subject to clause 15.2 of these Division Rules, the Trustee may, with the consent of the Minister, at any time by deed poll, amend, add to, delete or replace all or any of the provisions contained in these Division Rules, including the provisions of this clause, and the amendment, addition to, deletion or replacement may be retrospective or take effect on a specified date.

### **15.2 Amendment not to reduce Benefits**

No amendment shall be made under clause 15.1 of these Division Rules which would have the effect of adversely altering a Beneficiary's right or claim to accrued Benefits or the amount of those accrued Benefits unless such amendment is permitted by Superannuation Law.

### **15.3 Actuary's advice**

In determining whether or not the effect specified in clause 15.2 of these Division Rules will occur the Trustee may rely on the advice of the appointed Actuary (if any).

### **15.4 Sub-Division F**

Subject to clause 15.6 of these Division Rules, the Trustee may, in its absolute discretion, exercise its powers in clause 15.1 of these Division Rules without requiring the consent of the Minister, to amend, add to, delete or replace all or any of the provisions of these Division Rules insofar as they apply to Sub-Division F (other than an amendment, addition, deletion or replacement provision which would provide for Defined Benefits).

### **15.5 Sub-Divisions B, C and D**

Subject to clause 15.6 of these Division Rules, the Trustee may, in its absolute discretion, exercise its powers in clause 15.1 of these Division Rules without requiring the consent of the Minister, to amend, add to, delete or replace all or any of the provisions of these Division Rules insofar as they apply to Sub-Division B, C or D (other than an amendment, addition, deletion or replacement provision which would improve any Defined Benefit).

### **15.6 Overriding restriction**

Notwithstanding clauses 15.1 to 15.5 of these Division Rules, the Trustee is not permitted to make any amendment, addition, deletion or replacement in respect of clauses 2.7, 3.1, 3.2, 3.3, 5.1, 6, 8.2, 10.4(c), 15.1, 17 and 18 of these Division Rules without the consent of the Minister, except insofar as any of those clauses may apply to Sub-Division F.

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## **16. Superannuation Law**

For the avoidance of doubt, clause 19 of the Deed applies to these Division Rules as if set out in full in these Division Rules, as if references in clause 19 of the Deed to "this Deed" were references to "these Division Rules" and with any other necessary changes.

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## 17. Termination of the Division or a Sub-division

### 17.1 Termination of Division

If:

- (a) the Trustee determines that it has become impracticable or inexpedient to continue the Division; or
- (b) there are no Employers who are responsible to make contributions to the Division and the Trustee determines that it is not likely that any person will apply to become an Employer,

the Trustee may, with the consent of the Minister, terminate the Division from a date agreed between the Trustee and the Minister (**Termination Date**).

### 17.2 Consequences of termination

On and from the Termination Date the Trustee shall not:

- (a) admit further Employees to membership of the Division; and
- (b) accept any further Contributions (other than those due on or prior to the Termination Date) and all outstanding Contributions shall be paid forthwith.

### 17.3 Payments on termination

Upon termination of the Division, the Trustee shall make such provision out of the portion of the assets of the Fund attributable to the Division as is necessary to provide for the following in the following order of priority:

- (a) Tax, whether or not assessed or presently payable, to the extent attributable to the Division;
- (b) the portion of the costs and expenses of the Fund attributable to the Division (including fees charged as remuneration under clause 13.4 of the Deed), including those incurred or to be incurred by the Trustee in connection with the termination of the Division;
- (c) Benefits which became payable prior to the Termination Date;
- (d) in the case of Sub-Divisions B to D:
  - (i) Benefits which would be payable to each Deferred Member had the Deferred Member's Benefit become payable at the Termination Date; and
  - (ii) an amount equal to the Benefit which would be payable to each Member in accordance with the applicable Sub-Division Rules if the Member's employment was terminated by the Employer on that date or such greater amount as the Trustee with the consent of the Minister may determine; and
- (e) the Trustee shall continue to hold the portion of the assets of the Fund attributable to the Sub-Divisions on trust for the Beneficiaries and the Sub-Divisions in accordance with these Division Rules until all Benefits have been paid, and any assets remaining shall thereupon be applied as the Trustee, with the consent of the Minister (in the case of Sub-Divisions B to D), may determine.

#### **17.4 Surplus**

If after making the provisions set forth in clause 17.3 of these Division Rules, the Trustee is of the opinion that the value of the portion of the assets of the Fund attributable to the Division exceeds the value of the liabilities then the excess amount may be applied by the Trustee for any of the following purposes:

- (a) to be repaid to an Employer;
- (b) in increasing the provisions made for Beneficiaries of the Division as at the Termination Date;
- (c) to be paid to the State of New South Wales;
- (d) for such other purposes as the Trustee and Minister may agree.

#### **17.5 Payment of Benefits on termination**

The Benefits payable on termination of the Division shall be in such form and be provided through such arrangements as the Trustee and the Employer shall determine including by way of transfer to an Approved Benefit Arrangement nominated by the Employer as the fund to which it will be making contributions in respect of Members after the Termination Date. Each Beneficiary shall accept the Benefits allotted by the Trustee in full discharge of all claims in respect of the Division and shall have no further claim whatsoever in relation to the Division. Any decision by the Trustee in relation to the amount or method of payment of any such Benefits shall be final. In the absence of any agreement with the Employer as to the Approved Benefit Arrangement to which a Beneficiary's Benefit should be transferred, the Trustee may transfer the Benefit to a successor fund.

#### **17.6 Termination of a Sub-Division**

- (a) In the case of Sub-Division F, if the Trustee determines that it has become impracticable or inexpedient to continue Sub-Division F, the Trustee may terminate Sub-Division F from a date determined by the Trustee (**Termination Date**). If Sub-Division F is to be terminated, the provisions of clauses 17.2 and 17.3 of these Division Rules apply as though references to the "Division" were references to the "Sub-Division".
- (b) In the case of Sub-Divisions B, C or D, if the Trustee determines that it has become impracticable or inexpedient to continue a Sub-Division, the Trustee may, with the consent of the Minister, terminate that Sub-Division from a date agreed between the Trustee and the Minister (**Termination Date**). If any of Sub-Divisions B, C or D is to be terminated, the provisions of clauses 17.2 and 17.3 of these Division Rules apply as though references to the "Division" were references to the "Sub-Division".

#### **17.7 Termination of participation of Employer on occurrence of certain events**

If any of the following events occur, the Trustee may, by notice to an Employer, terminate the participation of that Employer in a Sub-Division:

- (a) if the Employer with the consent of the Minister and the Trustee terminates its Contributions to that Sub-Division;
- (b) the Employer ceases to carry on business or is placed in liquidation; or

- (c) if there cease to be any Members employed by that Employer in that Sub-Division and the Trustee considers it appropriate to terminate the participation of that Employer.

### **17.8 Termination procedures**

On termination of participation by an Employer in a Sub-Division pursuant to clause 17.7 of these Division Rules:

- (a) the Trustee after consultation with the Employer shall specify a date (**Retirement Date**) upon which the Employer shall retire;
- (b) the Employer shall immediately pay all arrears, if any, of Contributions up to the Retirement Date;
- (c) Benefits which have become payable on or before the Retirement Date shall continue to be payable out of that Sub-Division; and
- (d) the Trustee after obtaining the advice of the Actuary shall certify what part of the portion of the assets of the Fund attributable to that Sub-Division, including arrears, if any, of Contributions still to be made pursuant to clause 17.8(b) of these Division Rules, is properly attributable to Members who were in the employ of the Employer at the Retirement Date.

### **17.9 Consequences of termination of participation of an Employer**

In the case of Sub-Divisions B, C and D, upon the termination of an Employer's participation in the Division, the Trustee shall notify all Members employed by that Employer (**Out-Going Members**) and from the date of that notice, the Out-Going Members shall cease to be entitled to contribute to the Division without the consent of the Trustee.

### **17.10 Provision for Out-Going Members**

The Trustee shall appropriate in respect of each Out-Going Member an amount equal to the Benefit which would be payable to the Member in accordance with the appropriate Sub-Division Rules if the Member's employment was terminated by the Employer on that date or such greater amount as the Trustee may determine (**Appropriated Amount**).

### **17.11 Payment of Appropriated Amount**

The Trustee shall pay or apply the Appropriated Amount in respect of each Out-Going Member to the Accumulation and Pension Division or to another Approved Benefit Arrangement, in either case with the consent of the Out-Going Member, or as otherwise permitted by Superannuation Law.

### **17.12 No further claims**

An Out-Going Member to whom an Appropriated Amount has been paid or applied under clause 17.11 of these Division Rules shall have no right or claim against the Division.

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## **18. Payments to Employers**

### **18.1 Payment of surplus or reserve amounts**

Subject to clause 18.2 of these Division Rules, no amount shall be paid to an Employer under these Division Rules other than in compliance with Superannuation Law.

### **18.2 Payment for services rendered**

The Trustee may pay an amount to an Employer in respect of services rendered by it in connection with the management or operation of the Division.

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## **19. Elections and applications**

### **19.1 Making an election or application**

An election or application required to be made to the Trustee under these Division Rules must, unless the Trustee determines otherwise, be in writing and signed by the person making it.

### **19.2 Timing of election or application**

An election or application under these Division Rules is validly made if it is received at the registered office of the Trustee:

- (a) if a day is specifically prescribed by or under these Division Rules or rules of the Trustee for the receipt of an election or application of that class, not later than on that day; or
- (b) in any other case not later than at the end of the period of 2 months that next succeeds the vesting of the right to make the election or application.

### **19.3 The Trustee may accept late election or application**

The Trustee may, subject to such terms and conditions as it may impose, accept an election or application which is not received at the registered office of the Trustee within the time prescribed by or under these Division Rules or rules of the Trustee if the Trustee is satisfied that, in all the circumstances, it is desirable that the election or application should be accepted. If the Trustee accepts a late election or application, the Trustee may deal with it as if it had been received within the time prescribed.

### **19.4 When an election or application takes effect**

An election or application under these Division Rules takes effect:

- (a) if under these Division Rules or rules of the Trustee, a day is specifically prescribed for the taking effect of an election of the same class, on that day; or
- (b) in any other case, on a day determined by the Trustee.



### **19.5 Amendment or revocation of election or application**

An election or application under these Division Rules may, with the approval of the Trustee, be amended or revoked subject to such conditions as the Trustee may impose, which may include conditions as to:

- (a) in the case of an amendment of an election or application, the day or days on which, or the manner in which, the amendment is to take effect; and
- (b) in the case of revocation of an election or application, the day on which the revocation is to take effect.

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## **20. Governing law**

These Division Rules shall be governed by and construed in accordance with the laws of Victoria.

# Annexure A

## Section 1

A body constituted or taken to be constituted, under the *Local Government Act 1993* as a council or county council.

## Section 2

Australian Red Cross Lifeblood (formerly Australian Red Cross Blood Service).

Civic Risk Mutual Ltd.

Illawarra Shoalhaven Joint Organisation.

Local Government and Shires Association of New South Wales (operating under the name Local Government NSW).

Local Government Procurement Pty Ltd.

Murrumbidgee Irrigation Limited.

New South Wales Local Government, Clerical, Administrative, Energy, Airlines & Utilities Union (operating under the name United Services Union).

NSW Rural Fire Service.

Any other entity which, immediately before the Transfer Time, was making, or was liable to make, contributions to Division B, C or D of Active Super, including where any such liability was, at the time, prospective or contingent, and notwithstanding that the amount of any such liability was not, at the time, ascertainable or ascertained.

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## Part 1 – Rules for Sub-Division B (SASS)

### 1. Application and interpretation

#### 1.1 Application of these Sub-Division B Rules

The provisions of these Sub-Division B Rules relate only to Beneficiaries of Sub-Division B of the Division.

#### 1.2 Definitions

In these Sub-Division B Rules, unless the contrary intention appears:

**180 Point Member** means a Contributor who has 180 benefit points.

**Additional Benefit** has the meaning given by rule 6.1 of these Sub-Division B Rules.

**Annual Leave** has the same meaning as that term is used in:

- (a) the *Local Government (State) Award 2023* (NSW);
- (b) any enterprise bargaining agreement governing a Contributor's entitlement to paid annual leave; or
- (c) any other agreement or legislation governing a Contributor's entitlement to paid annual leave.

**Applicable Benefit Levy** means the levy that, in order to attract the Additional Benefit for a Contributor, is paid under these Sub-Division B Rules by transfer from the Benefit Account under rule 4.4.2(b) of these Sub-Division B Rules.

**Applicable Contribution Period** has the meaning given by rule 6.1 of these Sub-Division B Rules.

**Attributed Salary**, in relation to a Contributor at any time, means:

- (a) where the Contributor is a Full-Time Employee at that time, the Salary of the Contributor at that time; or
- (b) where the Contributor is a Part-Time Employee at that time, the Salary that would be payable to the Contributor at that time if employed as a Full-Time Employee.

**Chief Executive Officer** means:

- (a) a 'chief executive officer' or 'chief executive' within the meaning of the Government Sector Employment Act 2013 (NSW); or
- (b) an employee (not being an officer referred to in paragraph (a)) of an authority specified in Schedule 1 of the *First State Superannuation Act 1992* (NSW), being an employee who holds an office designated by the Director-General (or equivalent) of the Premier's Department (or equivalent) as the office of a chief executive officer.

**Contribution Period** means a named month or such other period as may be determined by the Trustee.

**Contributor** means an Employee whose election to contribute to this Sub-Division has taken effect and includes, in any event, anyone who was a “Contributor” under Division B of Active Super immediately before the Transfer Time.

**Contributor-Financed Benefit**, in relation to a Benefit payable to, or in relation to, a Contributor, means the balance at credit in the Contributor's Benefit Account at the time the Benefit is paid.

**Contributor's Benefit Account** means the Benefit Account established and maintained under rule 2.2 in respect of the Contributor.

**Deferred Benefit**, in relation to a Contributor, means a Benefit for which the Contributor has made provision under rule 6.10, 6.14 or 6.15 or deferred under the Superannuation Guarantee Charge Acts.

**Discharge**, in relation to a Contributor, means the cessation of the Contributor's employment expressed by the Employer to be on the ground that the period, or successive periods, for which the Contributor was employed has or have ended.

**Dismissal** means the termination by an Employer of the employment of a Contributor with the Employer, but does not include Retrenchment or Discharge or a Retirement on the grounds of incapacity in circumstances which entitle the Employee to a Benefit.

**Early Retirement Age** means the age of 58 years.

**Eligible Salary Sacrifice Contributor** means a Contributor whose Employer has agreed to pay contributions by way of salary sacrifice to this Sub-Division and includes, in any event, anyone who was an “Eligible Salary Sacrifice Contributor” under Division B of Active Super immediately before the Transfer Time.

**Employer-Financed Benefit** in relation to a Benefit payable to, or in relation to, a Contributor, means so much of the Benefit as is paid from the Employer reserve.

**Employer Reserve** means the reserve referred to in rule 2.4 of these Sub-Division B Rules.

**Entry Date**, in relation to a Contributor, means the date as at which the Contributor's election to contribute to the fund established under the *State Authorities Superannuation Act 1987* (NSW) took effect, that election being:

- (a) the only such election made by the Contributor; or
- (b) where the Contributor has made more than one such election, the later or latest of those elections.

**Executive Officer** means a contributor who is:

- (a) a Chief Executive Officer;
- (b) a Senior Executive Officer;
- (c) an office holder nominated for the purposes of section 11A of the *Statutory and Other Offices Remuneration Act 1975* (NSW); or
- (d) such other person as is nominated by the Employer in accordance with clause 8.3 of the Division Rules.

**Exit Date**, in relation to a Contributor, means the date on which the Contributor ceases employment with an Employer, that cessation of employment being:

- (a) the only such cessation of employment of the Contributor; or
- (b) where there has been more than one such cessation of employment of the Contributor, the later or latest of those cessations of employment.

**Full-Time Employee** means an Employee whose Salary Ratio is equal to 1.

**Leave Payments** means:

- (a) payments in excess of full pay for Long Service Leave;
- (b) payments in exchange for giving up or reducing Long Service Leave entitlements;
- (c) payments in exchange for giving up or reducing Sick Leave entitlements; and
- (d) payments in exchange for giving up or reducing Annual Leave entitlements.

**Long Service Leave** has the same meaning as that term is used in:

- (a) the *Local Government (State) Award 2023 (NSW)*;
- (b) any enterprise bargaining agreement governing a Contributor's entitlement to long service leave; or
- (c) any other agreement governing a Contributor's entitlement to long service leave.

**Maximum Benefit Points** has the meaning given by rule 6.1 of these Sub-Division B Rules.

**Part-Time Employee** means an Employee whose Salary Ratio is less than 1 but at least 0.1.

**Prospective Benefit Points** has the meaning given by rule 6.1 of these Sub-Division B Rules.

**Reserve** means an Account.

**Resign** means cease to be employed by an Employer, but does not include:

- (a) Retrenchment, Discharge or Dismissal; or
- (b) ceasing to be employed because of death; or
- (c) ceasing to be employed on the privatisation of an Employer; or
- (d) ceasing to be employed on the grounds of incapacity in circumstances which entitle the Employee to a Benefit.

**Retire** means cease (otherwise than by reason of death) in any manner to be employed by an Employer on or after reaching the Early Retirement Age.

**Retrenchment**, in relation to a Contributor, means the termination of the employment of the Contributor with an Employer where the employment is expressed by the Employer to be:

- (a) compulsorily terminated by the Employer on the ground that:
  - (i) the Employer no longer requires the Contributor's services and, on termination of the Contributor's employment, does not propose to fill the Contributor's position;
  - (ii) the work that the Contributor was engaged to perform has been completed; or
  - (iii) the amount of work that the Employer requires to be performed has diminished and, due to that fact, it has become necessary to reduce the number of Employees employed by the Employer; or
- (b) terminated as a result of the acceptance by the Contributor of an offer by the Employer of terms of Retrenchment made on a ground specified in paragraph (a).

**Salary**, in relation to a Contributor, means Salary of the Contributor, determined in accordance with rules 1.3 or 1.4 of these Sub-Division B Rules and expressed as an annual rate.

**Salary Ratio**, in relation to a Contributor at any time during a Contribution Period, means the number ascertained by dividing the Salary of the Contributor at the commencement of the Contribution Period by the Attributed Salary of the Contributor at that commencement.

**Salary Sacrifice Amount** means an amount in lieu of Contributions due by an Eligible Salary Sacrifice Contributor from the Contributor's remuneration to this Sub-Division.

**Senior Executive Officer** means:

- (a) a 'senior executive' within the meaning of the *Government Sector Employment Act 2013* (NSW); or
- (b) an employee (not being an officer referred to in paragraph (a)) of an authority specified in Schedule 1 of the *First State Superannuation Act 1992* (NSW), being an employee who holds an office designated by the Director-General (or equivalent) of the Premier's Department (or equivalent) as the office of a senior executive officer.

**Sick Leave** has the same meaning as that term is used in:

- (a) the *Local Government (State) Award 2023* (NSW);
- (b) any enterprise bargaining agreement governing a Contributor's entitlement to sick leave; or
- (c) any other agreement governing a Contributor's entitlement to sick leave.

**Sub-Division** means this Sub-Division B of the Division.

**Superannuation Year** means the year commencing on 1 April 1988 and each subsequent year commencing on 1 April.

## 1.3 Definition of Salary

### 1.3.1 Contributors employed under an award or industrial agreement

For the purposes of these Sub-Division B Rules, **Salary**, in relation to a Contributor (other than an Executive Officer or a Contributor on an individual

contract (including an individual on an award regulated contract)) who is a Contributor employed under an award or registered industrial agreement means the sum of:

- (a) the monetary remuneration payable to the Contributor in the Contributor's capacity as Contributor, as reported to the Trustee from time to time by the Contributor's Employer (excluding any allowances or Leave Payments); plus
- (b) the amount of any allowances (including shift allowances) actually paid during the 12 months immediately preceding the date on which the Salary is calculated and which are taken to be 'ordinary time earnings' for the purposes of the Superannuation Guarantee Charge Acts; plus
- (c) the amount of any weekly workers' compensation payments which are to be taken as 'ordinary time earnings' for the purposes of the Superannuation Guarantee Charge Acts; plus
- (d) the value of the 'private use' component of a motor vehicle provided by the Contributor's Employer (if any); plus
- (e) the value of any child care facilities provided by the Contributor's Employer; plus
- (f) the amount of any voluntary employer (salary sacrifice) superannuation contributions; plus
- (g) the value of any other salary sacrifice arrangements and any associated fringe benefits tax payable on such other arrangements.

**1.3.2 Contributors employed on individual contracts (including those on award regulated contracts)**

For the purposes of these Sub-Division B Rules, Salary, in relation to a Contributor (other than an Executive Officer or a Contributor to whom rule 1.3.1 of these Sub-Division B Rules applies) who is a Contributor employed on an individual contract basis (including an individual on an award regulated contract) means:

- (a) the Contributor's total salary package; less
- (b) the assessed annual cost to the Employer for providing benefits under the Division as determined by the Trustee.

1.3.3 If a Contributor is on secondment to another Employer, the Salary of the Contributor for the purposes of these Sub-Division B Rules is the Salary paid or payable to the Contributor by the other Employer.

1.3.4 The Employer may, by notice in writing to the Trustee, declare unconditionally, or subject to conditions, that rule 1.3.5 of these Sub-Division B Rules applies:

- (a) to a Contributor specified in the order who is on secondment but not to another Employer; and
- (b) generally during the period of that secondment, or during such period as is specified in the order, being, in either case, a period commencing before, on or after the date of the order.

1.3.5 During the period in which this rule 1.3.5 is declared pursuant to rule 1.3.4 of these Sub-Division B Rules to apply to a Contributor on secondment, the Contributor's Salary shall, for the purposes of these Sub-Division B Rules, be

that paid or payable in respect of the employment to which he or she is seconded.

1.3.6 In this rule 1.3:

**shift allowance** means an allowance paid to an Employee in respect of shift work performed by the Employee, and includes amounts paid as penalty rates.

**value** or **amount** means the amount or value specified by the Employer as forming part of the Contributor's total remuneration package, and if not specified by the Employer in the case of a benefit that requires a value, the value of the arrangement or contribution referred to for fringe benefits tax purposes.

**weekly workers compensation**, in relation to a Contributor, means weekly payments of compensation under the *Workers Compensation Act 1987* (NSW) (or the provisions of the *Workers Compensation Act 1926* (NSW) as applied by that Act) payable to the Contributor because the Contributor is partially incapacitated for work through injury.

## 1.4 Salary of Executive Officers

1.4.1 For the purposes of these Sub-Division B Rules, the Salary of an Executive Officer is the Salary as last nominated or changed in accordance with this rule 1.4.

1.4.2 An amount of Salary for the purposes of these Sub-Division B Rules must be nominated to an Executive Officer's Employer by the officer, on, or as soon as practicable after, being appointed as an Executive Officer. An amount may also be nominated to the officer's Employer by the officer on, or as soon as practicable after, being reappointed, or appointed to another position, as an Executive Officer.

1.4.3 The amount nominated is to be not less than the monetary remuneration payable to the Executive Officer at the date of nomination and not more than the total value of the remuneration package paid to the officer (less the cost of providing the Employer's Contributions to superannuation and any performance-related incentive payment).

1.4.4 If an Executive Officer fails to nominate an amount of Salary within 28 days of first being appointed as an Executive Officer or within such further period as the Trustee may allow, the officer is taken to have nominated an amount of Salary that is equal to the monetary remuneration payable to the officer at the end of the applicable period.

1.4.5 An Executive Officer may, from time to time, by notice to the officer's Employer elect to reduce the amount of Salary nominated under this rule 1.4, but not so that the amount is less than the monetary remuneration payable to the officer at the date of the election.

1.4.6 An Executive Officer may, from time to time, by notice to the officer's Employer elect to increase the amount of Salary nominated under this rule 1.4, but not so as to increase the amount nominated by a percentage of that amount that is more than the percentage by which the remuneration package of the officer has increased since the amount of Salary was last nominated or changed.

1.4.7 An Employer must notify the Trustee of a nomination or election under this rule 1.4. Any such nomination or election takes effect on the date of notification to the Trustee or on such other date as the Trustee may determine with the consent of the Executive Officer concerned.



1.4.8 Nothing in this rule 1.4 requires the nominated amount of Salary to be increased if, because of a variation in the remuneration package of an Executive Officer or in the proportions of the remuneration package comprising monetary remuneration and employment benefits of the officer, the amount of Salary as last nominated or changed for the purposes of this rule 1.4 is less than the monetary remuneration of the officer.

1.4.9 In this rule, the **monetary remuneration** payable to an Executive Officer is:

- (a) if the officer is a Chief Executive Officer or Senior Executive Officer, the monetary remuneration payable in accordance with the *Government Sector Employment Act 2013* (NSW); or
- (b) if the officer is an office holder nominated for the purposes of section 11A of the *Statutory and Other Offices Remuneration Act 1975* (NSW), the remuneration payable to the officer as reduced under that section by the cost of employment benefits provided to the officer; or
- (c) if the person is nominated by the Employer in accordance with clause 8.3 of the Division Rules, the monetary remuneration payable to the officer.

For the purposes these Sub-Division B Rules, the monetary remuneration of an Executive Officer excludes any Leave Payments.

## **1.5 Secondment of Employee otherwise than to Employer**

1.5.1 The Employer may, by notice in writing to the Trustee, declare unconditionally or subject to conditions that rule 1.5.2 of these Sub-Division B Rules applies:

- (a) to a Contributor specified in the order who is on secondment but not to another Employer; and
- (b) generally during the period of that secondment, or during such period as is specified in the order being, in either case, a period commencing before, on or after the date of the order.

1.5.2 During the period in which this rule 1.5.2 is declared under rule 1.5.1 of these Sub-Division B Rules to apply to a Contributor, the Employer specified in the declaration shall be deemed to be the Employer from whose employment the Contributor is seconded.

## **1.6 Part-Time employment with more than one Employer**

Where a Contributor is in Part-Time Employment with more than one Employer at the same time, these Sub-Division B Rules apply to the Contributor separately in relation to each such employment as if, in relation to each such employment, the Contributor were a different person.

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# **2. Maintenance and Administration of this Sub-Division**

## **2.1 Payments in and out of this Sub-Division**

2.1.1 The Trustee shall cause to be attributed to the Division, in respect of this Sub-Division:

- (a) Contributions or payments made by Employers and Employees;

- (b) investment performance of assets attributable to this Sub-Division (if positive);
- (c) money borrowed for the purposes of this Sub-Division; and
- (d) any other amounts payable to the Trustee in respect of this Sub-Division.

2.1.2 The Trustee shall cause to be attributed to the Division, in respect of this Sub-Division:

- (a) administration fees and costs incurred in respect of this Sub-Division;
- (b) any Tax payable that is attributable to this Sub-Division;
- (c) investment performance of assets attributable to this Sub-Division (if negative)
- (d) the Benefits payable under these Sub-Division B Rules; and
- (e) any other amounts payable by the Trustee (or to the Trustee in its personal capacity) in respect of or attributable to this Sub-Division.

## **2.2 Contributors' Benefit Accounts**

2.2.1 The Trustee shall establish and maintain within this Sub-Division a separate Benefit Account for each Contributor.

2.2.2 Without limiting clause 12.6(c) of the Deed, there shall be credited to a Contributor's Benefit Account, contributions made by the Contributor.

2.2.3 Without limiting clause 12.6(c) of the Deed, there shall be debited to a Contributor's Benefit Account:

- (a) where the Contributor is covered for the Additional Benefit, the amount of the Additional Benefit Levy;
- (b) such part of the amount of any Benefit paid to the Contributor as comprises the Contributor-Financed Benefit;
- (c) any amount transferred in relation to the Contributor from this Sub-Division to the Accumulation and Pension Division.

## **2.3 Additional Benefit Reserve**

2.3.1 The Trustee shall establish and maintain an Additional Benefit Reserve.

2.3.2 Without limiting clause 12.5 of the Deed, there shall be credited to the Additional Benefit Reserve the amounts debited under rule 2.2.3(a) of these Sub-Division B Rules.

2.3.3 Without limiting clause 12.5 of the Deed, there shall be credited to the Additional Benefit Reserve the amounts debited under rule 2.4.3(c) of these Sub-Division B Rules.

2.3.4 Without limiting clause 12.5 of the Deed, there shall be debited to the Additional Benefit Reserve the amount of any Additional Benefits paid by the Trustee.

## **2.4 Reserves for Employers**

2.4.1 The Trustee shall establish and maintain in respect of this Sub-Division a separate employer reserve, or separate employer reserves, as the case may be.

2.4.2 Without limiting clause 12.5 of the Deed, there shall be credited to such an employer reserve:

- (a) the Contributions made by the Employer or Employers to whom the reserve relates; and
- (b) the investment performance of assets attributable to the employer reserve (if positive).

2.4.3 Without limiting clause 12.5 of the Deed, there shall be debited to the employer reserve:

- (a) the amount of the Employer-Financed Benefits (but excluding any part of any Additional Benefit) included in the amount of any Benefit paid to, or in relation to, a Contributor who, immediately before the Benefit became payable, was an Employee of the Employer or an Employer to whom the reserve relates;
- (b) the investment performance of assets attributable to the employer reserve (if negative); and
- (c) where the Contributor is covered for the Additional Benefit, an amount determined by the Trustee, after seeking actuarial advice, from time to time in respect of the Employer or an Employer to whom the reserve relates.

2.4.4 The Trustee may, after obtaining actuarial advice, adjust the amount credited to an employer reserve by crediting or debiting an amount, if it appears to the Trustee appropriate to do so because of a change in the constitution or nature of an Employer.

2.4.5 Rule 2.4.4 of these Sub-Division B Rules does not apply to a change in the constitution or nature of an Employer because of a Government privatisation initiative.

## **2.5 Salary Sacrifice**

The Trustee will deal with a Salary Sacrifice Amount as follows:

- (a) credit the Salary Sacrifice Amount to the Contributor's Benefit Account.
- (b) the Contributor's Contribution obligation shall be reduced by the amount of the Salary Sacrifice Amount less any Tax attributable to that Salary Sacrifice Amount.

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## **3. Other accounts and reserves**

The Trustee may establish and maintain in respect of this Sub-Division such other accounts and reserves as, in the opinion of the Trustee, are necessary or convenient for the administration of this Sub-Division and these Sub-Division B Rules.

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## 4. Contributions by Employees

### 4.1 Closure of the Division to new Contributors

- 4.1.1 Except as provided in rule 4.1.2 and 4.1.3 of these Sub-Division B Rules, an Employee is not entitled to make an election to contribute under this Sub-Division.
- 4.1.2 An Employee who resumes employment as an Employee in the circumstances set out in rule 4.13 of these Sub-Division B Rules, may make an application under that rule and may resume Contributions.
- 4.1.3
- (a) An Employee who has elected under rule 5.11 of Schedule 2 of the Active Super Trust Deed to make provision for a Deferred Benefit before the Transfer Time, or who so elects under rule 6.15 of these Sub-Division B Rules on or after the Transfer Time, is entitled to elect to contribute under this Sub-Division.
  - (b) An Employee who has elected under Division 3B of Part 4 of the *Superannuation Act 1916* (NSW) or under Part 17 of Schedule 4 of the Active Super Trust Deed prior to the Transfer Time to defer a Benefit, or who so elects under rule 16 of the Sub-Division D Rules after the Transfer Time, is entitled to elect to contribute under this Sub-Division.
  - (c) The election to contribute under this Sub-Division must be made at the same time as the Employee elects to make provision for a Deferred Benefit or to defer a Benefit.
  - (d) Despite paragraph (c), an Employee who elected to make provision for a Deferred Benefit or to defer a Benefit before the Transfer Time may elect to contribute under this Sub-Division at any time within 3 months after the Transfer Time.
- 4.1.4 An election under rules 4.1.2 or 4.1.3 of these Sub-Division B Rules shall:
- (a) be in a form approved by the Trustee for the purposes of this rule 4.1;
  - (b) specify the rate at which the Employee desires, subject to these Sub-Division B Rules, to contribute under this Sub-Division, being the rate of 1, 2, 3, 4, 5, 6, 7, 8 or 9 per cent of the Employee's Salary; and
  - (c) be supported by a certificate by the Employee's Employer that is in a form approved by the Trustee.
- 4.1.5 The certificate referred to in rule 4.1.4(c) of these Sub-Division B Rules must state:
- (a) the date of birth of the Employee;
  - (b) the Salary (and, in the case of a Part-Time Employee, the Attributed Salary) of the Employee;
  - (c) that the Employer has no reason to believe that the Employee will not continue to be an Employee within the meaning of these Sub-Division B Rules for at least 1 year from the date of the certificate; and
  - (d) such other matters as the Trustee considers necessary or convenient for the purposes of this rule 4.1.

- 4.1.6 A failure to comply with rule 4.1.4(b) of these Sub-Division B Rules does not invalidate an election and, in the event of such a failure, the form of election shall be deemed to specify a rate of 1%.
- 4.1.7 An election made by an Employee under rules 4.1.2 or 4.1.3 of these Sub-Division B Rules is ineffective if, at the time the election would take effect, the Employee would be of or above the age of 70 years.
- 4.1.8 An election made by an Employee under rules 4.1.2 or 4.1.3 of these Sub-Division B Rules (other than an election referred to in rule 4.1.6 of these Sub-Division B Rules) takes effect not later than the first day of the second Contribution Period after that in which the election is received in the office of the Trustee, but, if an Employee makes a subsequent election under rule 4.9 of these Sub-Division B Rules, ceases to be in force immediately before the subsequent election takes effect.
- 4.1.9 If the Trustee approves, an Employee may, before an election made under this rule 4.1 takes effect, vary the election.
- 4.1.10 If a Contributor to another Approved Benefit Arrangement would become (but for being such a Contributor) entitled to elect to contribute under this Sub-Division by reason of a change of work category or for any other reason:
  - (a) the Contributor shall be deemed not to be a contributor to the other Approved Benefit Arrangement for the purposes of making the election;
  - (b) the Contributor may make the election on condition that the Trustee approves an application made by the person under rule 4.2 of these Sub-Division B Rules to be covered for the Additional Benefit; and
  - (c) the election takes effect as at a date determined by the Trustee.

## **4.2 Additional Benefit**

- 4.2.1 An Employee under the Early Retirement Age may lodge with the Trustee an application to be covered for the Additional Benefit.
- 4.2.2 Such an application may be made:
  - (a) by an Employee who is not a Contributor at the time the Employee makes an election under rule 4.1 of these Sub-Division B Rules; or
  - (b) except to the extent that rules 4.5 or 4.6.6 of these Sub-Division B Rules otherwise provides at any time by a Contributor.
- 4.2.3 Such an application shall:
  - (a) be in a form approved by the Trustee for the purposes of this rule 4.2; and
  - (b) be accompanied by such documents, evidence and information as the Trustee may require for the purposes of this rule 4.2.

## **4.3 Medical examination**

- 4.3.1 This rule 4.2 applies to an application made under rule 4.2 of these Sub-Division B Rules by a person to be covered for the Additional Benefit.
- 4.3.2 The Trustee may require the applicant:

- (a) to submit to such medical examinations as may be required by the Trustee; and
- (b) to provide such medical reports, evidence and information as are specified by the Trustee.

4.3.3 Where the applicant:

- (a) fails, in the opinion of the Trustee, to pass a medical examination to which the applicant has submitted in accordance with a requirement under this rule 4.3; or
  - (b) fails to comply with a requirement under this rule 4.3,
- the Trustee shall refuse the application.

4.3.4 For the purpose of deciding whether or not to approve the application, the Trustee:

- (a) may, under rule 4.3.2 of these Sub-Division B Rules, require the applicant to submit to further medical examinations or provide further medical reports; and
- (b) may obtain such evaluations of medical examinations or medical reports as it thinks fit.

#### **4.4 Approval of application**

4.4.1 If the Trustee approves an application made under rule 4.2 of these Sub-Division B Rules:

- (a) the Trustee shall appoint the day on and from which the applicant's cover for the Additional Benefit is to commence and shall notify the applicant accordingly; and
- (b) the applicant becomes, and remains, liable for payment of the Additional Benefit Levy in accordance with rule 4.4.2 of these Sub-Division B Rules.

4.4.2 Payment by a Contributor of the Additional Benefit Levy:

- (a) shall commence on a date appointed by the Trustee and shall be made at a rate determined by the Trustee and at times so determined;
- (b) shall be effected by transfer from the Contributor's Benefit Account; and
- (c) shall cease when the Contributor no longer has available to be taken into account any Prospective Benefit Points.

#### **4.5 Refusal of application**

If an application made under rule 4.2 of these Sub-Division B Rules is refused, the applicant may not again make such an application before the expiration of:

- (a) the period of 3 years that next succeeds the refusal; or
- (b) in a particular case such shorter period as the Trustee may decide.

## **4.6 Revocation of approval**

- 4.6.1 If, after approving an application made under rule 4.2 of these Sub-Division B Rules, the Trustee forms the opinion that, in relation to the application, or to a medical examination of the applicant, an untrue statement was made and that its approval would not have been given had the untrue statement not been made, the Trustee shall, subject to this rule 4.6, revoke the approval.
- 4.6.2 For the purpose of deciding whether or not, in relation to an application or a medical examination of an applicant, it is of the opinion referred to in rule 4.6.1 of these Sub-Division B Rules, the Trustee may, if it thinks fit, require the applicant, within a time specified by the Trustee or within such further time as the Trustee may allow, to provide information, or to undergo a medical examination, or to provide medical reports, as specified by the Trustee.
- 4.6.3 On the expiration of the time, or further time, referred to in rule 4.6.2 of these Sub-Division B Rules, the Trustee may, whether or not the requirement so referred to is complied with, proceed to decide whether or not it is of the opinion referred to in rule 4.6.1 of these Sub-Division B Rules.
- 4.6.4 If the applicant fails to comply with a requirement under rule 4.6.2 of these Sub-Division B Rules, the Trustee may revoke the approval.
- 4.6.5 An approval may be revoked whether it relates to a Contributor or a former Contributor and the revocation has effect as if the Contributor or former Contributor had never been entitled to the cover.
- 4.6.6 If, under rules 4.6.1 or 4.6.4 of these Sub-Division B Rules, the Trustee revokes its approval of an application:
- (a) the applicant (if a Contributor) ceases to be covered for the Additional Benefit and ceases to be liable to pay the Additional Benefit Levy;
  - (b) the applicant (if a Contributor) is disqualified for 3 years from again applying to be covered for the Additional Benefit; and
  - (c) the amount of any Additional Benefit Levy paid by the applicant (whether a Contributor or a former Contributor) before revocation of the approval is not recoverable.

## **4.7 Liability to contribute**

- 4.7.1 Where an Employee is a Contributor under this Sub-Division or where an election under rules 4.1.2 or 4.1.3 of these Sub-Division B Rules takes effect, the person who made the election becomes, and remains, liable to pay under this Sub-Division the Contributions prescribed by this rule 4 and, except as provided by rules 4.9, 4.10, 4.11 and 5.5 of these Sub-Division B Rules, to pay those Contributions in respect of successive Contribution Periods:
- (a) commencing with the Contribution Period in which the Contributor's Entry Date occurs; and
  - (b) ending with the last complete Contribution Period ending on or before the Contributor's Exit Date.
- 4.7.2 A Contributor's Contributions under this Sub-Division are payable to the Trustee by the Employer by which the Contributor is employed at such times as the Trustee may require. The Employer is entitled to deduct those Contributions from any amount or amounts that may become payable by the Employer to the Contributor, whether as Salary or otherwise.

4.7.3 The Trustee may, in a particular case, charge interest calculated on a daily basis at a rate determined by the Trustee on a Contribution under this Sub-Division for any period during which the Contribution remains unpaid after the time allowed for payment and any such interest:

- (a) shall be paid to the Trustee by the Employer in default; and
- (b) is not chargeable against any Employee.

#### **4.8 Salary basis for Contributions**

A Contributor's Contributions under this Sub-Division during a Superannuation Year shall be based on the Salary paid to the Contributor by his or her Employer at the rate applicable as at:

- (a) 31 December last preceding the commencement of the Superannuation Year; or
  - (b) the Contributor's Entry Date,
- whichever is the later.

#### **4.9 Variations of Contribution rate**

4.9.1 A Contributor may, during the period that commences at the beginning of a Superannuation Year and ends on the next succeeding 31 December or such later date as the Trustee may approve, lodge with the Trustee an election to vary the rate per cent of the Contributor's Salary to be paid under this Sub-Division.

4.9.2 An election under rule 4.9.1 of these Sub-Division B Rules:

- (a) shall be in a form approved by the Trustee for the purposes of this rule 4.9;
- (b) shall specify the varied rate per cent (being 1, 2, 3, 4, 5, 6, 7, 8 or 9 per cent) of the Contributor's Salary to be paid under this Sub-Division; and
- (c) takes effect on 1 April next succeeding receipt of the election in the office of the Trustee.

4.9.3 Where the nature of the employment of a Contributor changes from Full-Time to Part-Time or from Part-Time to Full-Time, or the amount of time worked Part-Time by a Contributor changes, the amount of the Contributor's Contribution under this Sub-Division in respect of the Contribution Period during which the change operates, and each succeeding Contribution Period until varied in accordance with these Sub-Division B Rules, is the amount calculated by multiplying by the Contributor's Salary Ratio at the commencement of the period the amount of the Contribution that would be payable on the basis of the Contributor's Attributed Salary last applicable for the purpose of calculating Contributions under this Sub-Division.

4.9.4 Except as provided by rule 4.9.3 of these Sub-Division B Rules or to the extent that the Trustee upon the application of a Contributor otherwise directs, a reduction in the Salary of the Contributor below that upon which his or her Contributions are based does not, until the beginning of the Superannuation Year that next succeeds the reduction, affect the amount of the Contribution that the Contributor is required to pay under this Sub-Division.

4.9.5 Except in the case of a Contributor who applies for a direction of the Trustee under rule 4.9.4 of these Sub-Division B Rules, where a Contributor's Attributed Salary is reduced as a consequence of the Contributor's ill-health or in



circumstances considered by the Contributor to be special, the Contributor may apply to the Trustee in a form that:

- (a) is approved by the Trustee for the purposes of this rule 4.9.5; and
- (b) is accompanied by such evidence of the cause of the reduction in Salary as the Trustee requires,

for the application of rule 4.9.6 of these Sub-Division B Rules to the Contributor.

4.9.6 Where the Trustee approves an application by a Contributor under rule 4.9.5 of these Sub-Division B Rules, the Attributed Salary of the Contributor shall, for the purposes of these Sub-Division B Rules, be deemed to be the same as the Contributor's Attributed Salary immediately before the reduction until:

- (a) the beginning of the Superannuation Year that next succeeds a 31 December as at which the Contributor's Attributed Salary is equal to or greater than his or her Attributed Salary immediately before the reduction; or
- (b) the Trustee's approval is revoked on the application of the Contributor, whichever first occurs.

4.9.7 Subject to rule 4.10 of these Sub-Division B Rules, an election that takes effect under this rule 4.9 remains in force until a further election made under this rule 4.9 takes effect.

#### **4.10 Variations of Contribution rate in certain circumstances**

4.10.1 Despite rule 4.9.1 of these Sub-Division B Rules, if:

- (a) the Trustee is satisfied that a continuation of a Contributor's rate of Contribution under this Sub-Division would result in financial hardship for the Contributor; or
- (b) a Contributor has accrued:
  - (i) if the Contributor is a former member of the State Public Service Superannuation Fund – 162 benefit points less any reduction calculated under rule 7 of these Sub-Division B Rules; or
  - (ii) in any other case – 180 benefit points less any reduction calculated under rule 7 of these Sub-Division B Rules;

the Trustee may accept at any time an election under that rule 4.9.1 of these Sub-Division B Rules to reduce, as from a date determined by the Trustee having regard to the circumstances of the Contributor, the rate per cent of the Contributor's Salary to be paid under this Sub-Division.

4.10.2 Despite rule 4.9.1 of these Sub-Division B Rules, an election referred to in rule 4.10.1 of these Sub-Division B Rules may specify as the varied rate the rate of 0 per cent.

4.10.3 During a period when a rate of 0 per cent is in force, no Contributions are payable by the Contributor.

4.10.4 After an election referred to in rule 4.10.1 of these Sub-Division B Rules is accepted by the Trustee, the Trustee shall refund any resulting excess of Contributions made by the Contributor under this Sub-Division after the date determined by the Trustee for commencement of the new rate.

4.10.5 The Trustee's acceptance of an election for a rate of 0 per cent shall be given for a limited period or periods.

#### **4.11 Contributions during leave without pay and other matters**

4.11.1 In this rule 4.11:

**leave without pay** means a period of leave from employment with an Employer (otherwise than on secondment as referred to in rule 1.3.3 of these Sub-Division B Rules) during which the Contributor is not entitled to receive payment of Salary from the Employer.

**prescribed leave** means leave without pay during which the Contributor on leave is absent from employment with an Employer:

- (a) pursuant to a grant of sick leave;
- (b) for a period during which the Contributor receives periodic payments under an Act relating to workers' compensation;
- (c) pursuant to a grant of maternity leave;
- (d) pursuant to an agreement with the Employer for the secondment of the Contributor to employment that is not employment with an Employer;
- (e) to enable the Contributor to perform union duties unless, in a particular case, the Employer certifies that this paragraph is not to apply;
- (f) to enable the Contributor to perform duties that the Employer certifies to be in the interests of the Employer or the State;
- (g) on service with the naval, military or air forces of the Commonwealth; or
- (h) in circumstances approved by the Trustee for the purposes of this rule 4.11.

4.11.2 A Contributor who takes leave without pay that is prescribed leave is liable to make Contributions under this Sub-Division in respect of the Contribution Periods occurring wholly or partly while on prescribed leave.

4.11.3 However, a Contributor who takes a single period of prescribed leave that is sick leave or maternity leave is not liable to make Contributions under this Sub-Division in respect of any Contribution Periods during the period of leave occurring wholly or partly more than 2 years after the period of leave commences.

4.11.4 A Contributor who takes leave without pay that is not prescribed leave:

- (a) is liable to make Contributions under this Sub-Division in respect of:
  - (i) a Contribution Period that begins before but finishes after the start of that leave; and
  - (ii) a Contribution Period that begins before but finishes after the end of that leave; and
- (b) is not liable or entitled to make Contributions under this Sub-Division in respect of:
  - (i) a Contribution Period that begins on the first day of that leave and finishes before the end of that leave; or

- (ii) a Contribution Period that, having begun after the start of that leave, finishes on the last day of that leave; or
- (iii) a Contribution Period that falls between a Contribution Period referred to in paragraphs (a)(i) or (b)(i) and a Contribution Period referred to in paragraphs (a)(ii) or (b)(ii) (whichever is relevant).

4.11.5 For the purposes of these Sub-Division B Rules, a Contributor who is employed by an Employer for less than 10 hours a week for a single period of more than 2 years is not liable to make Contributions under this Sub-Division in respect of any Contribution Periods occurring wholly or partly more than 2 years after the period commences and while the Contributor is so employed for less than 10 hours a week.

4.11.6 A Contributor liable to make Contributions under rules 4.11.2 or 4.11.4 of these Sub-Division B Rules shall pay, in accordance with directions given by the Trustee, such Contributions as would have been deducted from the Salary of the Contributor in accordance with rule 4.7 of these Sub-Division B Rules if the Contributor had continued to be paid Salary by the Employer during the Contribution Period or periods concerned at the rate at which the Contributor would have been paid but for being on leave without pay.

4.11.7 A Contribution Period in respect of which a Contributor is not liable to make Contributions under the Division under this rule 4.11 is not an Applicable Contribution Period in relation to the Contributor.

#### **4.12 Leave without pay – special matter**

4.12.1 A Contributor, who is not required to contribute to this Sub-Division merely because the Contributor is on authorised leave without pay as an employee, is entitled to remain a Contributor to this Sub-Division even though the Contributor is not contributing to the Division.

4.12.2 This rule 4.12 applies to a Contributor only if:

- (a) the leave is for the purpose of raising children of whom the Contributor is a parent, or for whom he or she has assumed the responsibility of a parent; and
- (b) he or she has been on that leave for less than seven years consecutively; and
- (c) he or she has a statutory or contractual right to resume employment at the end of the leave.

4.12.3 In this rule 4.12, **authorised leave** means leave approved by the Contributor's Employer, or leave authorised by an agreement certified, or an award made, by a tribunal or body having the authority to do so under a law of New South Wales or the Commonwealth.

#### **4.13 Resumption of Contributions after break in employment**

4.13.1 This rule 4.13 applies to a Contributor where the employment of the Contributor with an Employer:

- (a) ceases in circumstances entitling the Contributor to be paid a Benefit under rule 6.2 of these Sub-Division B Rules;
- (b) ceases in circumstances entitling the Contributor to be paid a Benefit under rule 6.5 of these Sub-Division B Rules;

- (c) ceases in circumstances entitling the Contributor to be paid a Benefit under rule 6.6 of these Sub-Division B Rules but the Contributor does not elect to make provision for a Deferred Benefit; or
- (d) ceases in circumstances entitling the Contributor to be paid a Benefit under rule 6.8 of these Sub-Division B Rules,

and the Contributor has not made an application for payment of the Benefit.

- 4.13.2 If a Contributor to whom this rule 4.13 applies resumes employment as an Employee (with the same or any other Employer) within three months of the end of the last Contribution Period in which the previous employment ceased, the Contributor may apply to the Trustee to have the Contribution Periods since the last Contribution Period recognised as Applicable Contribution Periods.
- 4.13.3 If the Trustee approves an application under rule 4.13.2 of these Sub-Division B Rules, the Contribution Periods approved in the application shall be deemed to be Applicable Contribution Periods in relation to the Contributor as an Employee of the Employer with whom the Contributor resumed employment.
- 4.13.4 If a Contributor to whom this rule 4.13 applies resumes employment as an Employee (with the same or any other Employer) before the end of the Contribution Period in which the previous employment ceased, the Contributor may apply to the Trustee to have the Contribution Period recognised as an Applicable Contribution Period.
- 4.13.5 If the Trustee approves an application under rule 4.13.4 of these Sub-Division B Rules, the Contribution Period shall be deemed to be an Applicable Contribution Period in relation to the Contributor as an Employee of the Employer with whom the Contributor resumed employment.

#### **4.14 Contributor eligible for membership of Accumulation and Pension Division**

- 4.14.1 When a Contributor who is an Executive Officer becomes eligible to become a member of the Accumulation and Pension Division, the Contributor must:
  - (a) elect to continue to contribute to this Sub-Division; or
  - (b) elect to make provision for a Benefit provided by rule 6.14.10 of these Sub-Division B Rules.
- 4.14.2 If a Contributor fails to make an election under rule 4.14.1 of these Sub-Division B Rules within 2 months of being required to make that election, the Contributor, for the purposes of this rule 4.14, is to be taken to have elected to continue to contribute under this Sub-Division.
- 4.14.3 Nothing in these Sub-Division B Rules prevents a Contributor who elects to continue to contribute under this Sub-Division from also contributing to the Accumulation and Pension Division or another Approved Benefit Arrangement and such a Contributor is entitled to Benefits in accordance with these Sub-Division B Rules despite being a member of that Division or other fund.
- 4.14.4 If a Contributor elects to continue to contribute under this Sub-Division, the Contributor may, at any time thereafter while being eligible to become a member of the Accumulation and Pension Division or being a member of the Accumulation and Pension Division, elect to make provision for a Benefit provided by rule 6.14.10 of these Sub-Division B Rules.
- 4.14.5 A Contributor who elects, under this rule 4.14, to make provision for a Benefit provided by rule 6.14.10 of these Sub-Division B Rules:

- (a) is entitled to make provision for the Benefit even though he or she is not entitled to a Benefit (including any interest paid by the Trustee) of or exceeding the amount prescribed for the purposes of rule 6.14.1 of these Sub-Division B Rules; and
- (b) is not entitled to a Benefit payable under any other provision of these Sub-Division B Rules; and
- (c) is not entitled to elect to take the Benefit provided by rule 6.14.12 of these Sub-Division B Rules; and
- (d) may elect at any time before the Benefit is paid to have the Benefit paid to the credit of the Contributor in the Accumulation and Pension Division, if the Contributor is a member or is eligible to become a member of that Division.

4.14.6 If a Contributor makes an election under rule 4.14.5(d) of these Sub-Division B Rules:

- (a) the Contributor is entitled to be paid the Benefit provided by rule 6.14.10 of these Sub-Division B Rules, but only in accordance with this rule 4.14.6; and
- (b) the Trustee must, as soon as practicable thereafter, pay the amount of the Benefit to which the Contributor is entitled to the Accumulation and Pension Division; and
- (c) the Trustee must credit the amount to the account established or to be established for the person in the Accumulation and Pension Division.

4.14.7 If a Contributor makes an election under rules 4.14.1(b) or 4.14.4 of these Sub-Division B Rules within 12 months after being:

- (a) appointed as a Chief Executive Officer or Senior Executive Officer; or
- (b) nominated as an office holder for the purposes of section 11A of the *Statutory and Other Offices Remuneration Act 1975 (NSW)*,

the Salary of the Contributor, for the purposes of determining the amount of the Benefit to which the election relates, is to be taken to be his or her salary immediately before that appointment or nomination took effect.

#### **4.15 Transfer of Contributors under Public Authorities Superannuation Act 1985**

An application under rule 4.2 of these Sub-Division B Rules may, subject to that rule, be made at any time by an Employee who, pursuant to rule 3.14.3 of Schedule 2 of the Active Super Trust Deed, became a Contributor to Active Super.

#### **4.16 Transferred Members - PSESS Election**

4.16.1 A person:

- (a) who was a member of Division E of Active Super or who is an Executive Officer who is a member of the Accumulation and Pension Division;
- (b) who had a benefit transferred under regulation 7(b) of the LGSS Transfer Regulation; and
- (c) is employed by an Employer,

is entitled to elect at any time to make provision for Benefits provided for by rule 6.14.10 of these Sub-Division B Rules.

- 4.16.2 If the person makes an election under this rule, then rules 4.14.5 and 4.14.6 of these Sub-Division B Rules apply to that Benefit.

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## **5. Contributions by Employers**

### **5.1 Contributions by Employer**

- 5.1.1 If a Contributor is employed by an Employer, the Employer must pay under this Sub-Division Contributions at a rate determined by the Trustee on the advice of the Actuary, at such times as the Trustee may require.
- 5.1.2 In determining the Contributions payable by an Employer, the Trustee is to have regard to the amount required to meet the full costs of the liabilities under these Sub-Division B Rules of all Employers.
- 5.1.3 The Trustee may require any such Employer to pay under this Sub-Division additional Contributions for a specified period if it appears to the Trustee that there is insufficient money in the reserve for Employers to meet the Employers' liabilities under these Sub-Division B Rules.
- 5.1.4 The Trustee may request the Actuary to value the Employer contribution cost of 180 Point Members as a separate class of members and determine a percentage contribution rate for a 180 Point Member, at such times as the Trustee may request.

### **5.2 Employer may be required to make further payments in certain cases**

- 5.2.1 Whenever it appears to the Trustee that there is insufficient money in an Employer Reserve or there are insufficient assets referable to the Employer:
- (a) to pay the Employer-Financed Benefit that is due or will become due to or in respect of a Contributor or former Contributor under these Sub-Division B Rules; or
  - (b) to pay any other amounts that are payable from that reserve or those assets,

the Trustee may require the Contributor's Employer or former Employer, by notice in writing, to pay under this Sub-Division an amount equal to the amount of the insufficiency.

- 5.2.2 If an Employer fails to pay an amount required to be paid under this rule 5.2 within 14 days after being notified of the requirement, the amount becomes an amount owing under this Sub-Division and the Trustee may recover that amount accordingly.

### **5.3 Power of the Trustee to adjust employer reserves**

Whenever it appears to the Trustee that, because of a change of circumstances, it would be appropriate to adjust the amount that is currently standing to the credit or debit of an Employer Reserve so as to reflect the change of circumstances, the Trustee may adjust that reserve by crediting or debiting that reserve with a specified amount of money and correspondingly debiting or crediting one or more other Employer Reserves.

## 5.4 Transfers of credits between Employers of Transferred Contributors

5.4.1 In this rule 5.4:

**transferred contributor** means a Contributor who ceases to be employed by an Employer and becomes employed by another Employer and who does not apply for payment of a Benefit under these Sub-Division B Rules in respect of the former employment.

**transfer value** in relation to a transferred contributor, means an amount equal to the Benefit that would have been payable if the transferred contributor, on becoming employed by the new Employer, had elected to make provision for a Deferred Benefit under rule 6.14.1 of these Sub-Division B Rules and the Benefit provided by rule 6.14.10(b) of these Sub-Division B Rules had thereupon become payable.

5.4.2 If the Trustee maintains a separate Employer reserve for each Employer, the Trustee shall debit the Employer reserve of the former Employer with the transfer value referable to a transferred contributor and shall credit the employer reserve of the new Employer with that value.

## 5.5 Acceptance of Contributions

5.5.1 The Trustee may determine that it must not accept Contributions by or in respect of an Employee. The period during which Contributions may not be made is not an Applicable Contribution Period.

5.5.2 An Employee is not entitled to contribute to this Sub-Division, and the Trustee is not to accept the contribution to this Sub-Division by an Employee, unless the Employee is under 70 years of age.

5.5.3 The Contributor is not entitled to accrue Benefit Points after attaining the age of 70 years.

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## 6. Benefits

### 6.1 Definitions

For the purposes of these Sub-Division B Rules:

**Accrued Benefit Points**, in relation to a Contributor at the Contributor's Exit Date, means:

- (a) the Maximum Benefit Points for the Contributor; or
- (b) if the number ascertained by adding together all the contributed points figures for the Contributor is less than the Maximum Benefit Points for the Contributor, that lesser number.

**Additional Benefit**, in relation to a Contributor, means the amount calculated in accordance with the formula:

$$L = S \times P \times 0.04$$

where:

**L** represents the amount to be ascertained;

**S** represents the higher of the Contributor's Final Salary or the Contributor's Final Average Salary; and

**P** represents the Prospective Benefit Points for the Contributor at the Contributor's Exit Date.

**Applicable Contribution Period**, in relation to a Contributor, means a Contribution Period that occurs during the period that commences on the Contributor's Entry Date and ends on the Contributor's final contribution date, except where the Contributor was not liable to contribute in respect of that Contribution Period because it occurred during leave without pay.

**average contribution rate per cent**, in relation to a Contributor at the Contributor's Exit Date, means the lesser of:

- (a) 6 per cent; and
- (b) the rate per cent calculated in accordance with the formula:

$$R = \frac{S}{N}$$

where:

**R** represents the rate per cent to be ascertained;

**S** represents the sum of the rates per cent of Salary at which the Contributor was liable to pay a Contribution for each Applicable Contribution Period for the Contributor; and

**N** represents the number of those Applicable Contribution Periods.

**contributed points figure**, in relation to a Contributor, means the figure that, in relation to each Applicable Contribution Period for the Contributor, is calculated in accordance with the formula:

$$F = \frac{P \times R}{N}$$

where:

**F** represents the figure to be ascertained;

**P** represents the rate per cent of Salary at which the Contributor elected to pay the Contribution for that Contribution Period;

**R** represents the Salary Ratio applicable to the Contributor on the first day of that Contribution Period; and

**N** represents the number of Contribution Periods in a year.

**Final Average Salary**, in relation to a Contributor, means the average of the Attributed Salaries paid or payable to the Contributor at the rates applicable:

- (a) on the Contributor's Exit Date;
- (b) on 31 December last preceding the Contributor's Exit Date; and
- (c) on 31 December last preceding the 31 December referred to in paragraph (b).

**final contribution date**, in relation to a Contributor, means the last day in respect of which the Contributor is liable to contribute under the Division.



**Final Salary**, in relation to a Contributor, means the rate of Attributed Salary paid or payable to the Contributor on the Contributor's Exit Date.

**Maximum Benefit Points**, in relation to a Contributor at the Contributor's Exit Date, means:

- (a) 180; or
- (b) if the number ascertained by the formula:

$$M = \frac{6 \times S}{N}$$

where:

**M** represents the number to be ascertained;

**S** represents the sum of the Salary Ratios for the Contributor in respect of each Applicable Contribution Period for the Contributor; and

**N** represents the number of Contribution Periods in a year,

is less than 180, the number so ascertained; or

- (c) if a Benefit is provided for by rule 6.14.10 of these Sub-Division B Rules, and the number determined by the application of paragraphs (a) or (b), whichever is applicable, when added to the Accrued Benefit Points provided for by rule 6.14.10 of these Sub-Division B Rules (**Total Number**) exceeds 180, the number in paragraph (a) or (b), whichever is applicable, reduces by the number by which the Total Number exceeds 180.

**Prospective Benefit Points**, in relation to a Contributor at the Contributor's Exit Date, means:

- (a) the number calculated in accordance with the formula:

$$P = \frac{C \times R \times S}{N}$$

where:

**P** represents the number to be ascertained;

**C** represents the Contributor's average contribution rate per cent;

**R** represents the Salary Ratio applicable to the Contributor's Exit Date;

**S** represents the number of Applicable Contribution Periods for the Contributor that would occur during the period that commences immediately after the Contributor's final contribution date and ends immediately before the Early Retirement Age; and

**N** represents the number of Contribution Periods in a year; or

- (b) if it is a lesser number than that calculated under paragraph (a), the number of Benefit points that, when added to the number of the Contributor's Accrued Benefit Points at the Exit Date, would produce a number equal to the Maximum Benefit Points that would have been

attributable to the Contributor if Contributions had continued at the average contribution rate per cent, the Salary Ratio had remained constant until the Exit Date and the Exit Date had immediately preceded the Early Retirement Age.

## **6.2 Benefit at or after early Retirement or on death at or after Early Retirement Age**

6.2.1 The Benefit provided by this rule 6.2 is payable by the Trustee when a Contributor Retires from employment with an Employer on or after reaching the Early Retirement Age or dies during employment with an Employer on or after reaching that age and is so payable:

- (a) where the Benefit becomes payable on the Contributor retiring, to the Contributor; or
- (b) where the Benefit becomes payable on the death of the Contributor, in accordance with clause 12.17 of the Division Rules.

6.2.2 The Benefit provided by this rule 6.2 is an amount equal to the sum of:

- (a) the amount of the Contributor-Financed Benefit; and
- (b) an amount of Employer-Financed Benefits calculated in accordance with the formula:

$$E = F \times A \times 0.025$$

where:

**E** represents the amount to be ascertained;

**F** represents the Contributor's Final Average Salary; and

**A** represents the Accrued Benefit Points for the Contributor at the Contributor's Exit Date.

6.2.3 If the Trustee makes a determination under rule 6.16 of these Sub-Division B Rules in relation to a Benefit to be provided by this rule 6.2, the amount of that Benefit is reduced by the amount specified in the Trustee's determination.

## **6.3 Benefit on death before Early Retirement Age**

6.3.1 The Benefit provided by this rule 6.3 is payable by the Trustee where a Contributor dies before attaining the Early Retirement Age during employment with an Employer and is so payable in accordance with clause 12.17 of the Division Rules.

6.3.2 The Benefit provided by this rule 6.3 in relation to a Contributor is an amount equal to the sum of:

- (a) the amount of the Contributor-Financed Benefit;
- (b) an amount of Employer-Financed Benefits calculated in accordance with the formula:

$$E = S \times A \times 0.025$$

where:

- E** represents the amount to be ascertained;
- S** represents the higher of the Contributor's Final Salary or the Contributor's Final Average Salary; and
- A** represents the Accrued Benefit Points for the Contributor at the Contributor's Exit Date; and

(c) where an approval under rule 4.2 of these Sub-Division B Rules is in force, the amount of the Additional Benefit.

6.3.3 If the Trustee makes a determination under rule 6.16 of these Sub-Division B Rules in relation to a Benefit to be provided by this rule 6.3, the amount of that Benefit is reduced by the amount specified in the Trustee's determination.

#### **6.4 Benefit on total and permanent invalidity before Early Retirement Age**

6.4.1 The Benefit provided by this rule 6.4 is payable by the Trustee to a Contributor where, before attaining the Early Retirement Age, the Contributor ceases to be employed by an Employer and the Trustee is satisfied:

- (a) that the Contributor's cessation of employment was due, directly or indirectly, to the permanent physical or mental incapacity of the Contributor (not caused by any act or default of the Contributor intended to produce that incapacity); and
- (b) that the Contributor is, when the Contributor ceases to be employed by the Employer, permanently unable, by reason of that incapacity, to be engaged, or to be employed, in any remunerative occupation in which, in the opinion of the Trustee, it would otherwise be reasonable to expect the Contributor to engage.

6.4.2 The Benefit provided by this rule 6.4 is an amount equal to the sum of:

- (a) the amount of the Contributor-Financed Benefit;
- (b) an amount of Employer-Financed Benefits calculated in accordance with the formula:

$$E = S \times A \times 0.025$$

where:

- E** represents the amount to be ascertained;
- S** represents the higher of the Contributor's Final Salary or the Contributor's Final Average Salary; and
- A** represents the Accrued Benefit Points for the Contributor at the Contributor's Exit Date; and

(c) where an approval under rule 4.2 of these Sub-Division B Rules is in force, the amount of the Additional Benefit.

6.4.3 The Trustee is entitled to rely on a certificate by an Employer as to any matter mentioned in rule 6.4.1(a) of these Sub-Division B Rules if it thinks fit.

6.4.4 If the Trustee makes a determination under rule 6.16 of these Sub-Division B Rules in relation to a Benefit to be provided by this rule 6.4, the amount of that Benefit is reduced by the amount specified in the Trustee's determination.

## **6.5 Benefit on partial and permanent invalidity before Early Retirement Age**

6.5.1 The Benefit provided by this rule 6.5 is payable by the Trustee to a Contributor where, before attaining the Early Retirement Age, the Contributor ceases to be employed by an Employer and the Trustee is satisfied:

- (a) that the Contributor's cessation of employment was due, directly or indirectly, to the permanent physical or mental incapacity of the Contributor (not caused by any act or default of the Contributor intended to produce that incapacity); and
- (b) that the Contributor is, when the Contributor ceases to be employed by the Employer, permanently unable, by reason of that incapacity, to perform the duties that the Contributor was required to perform before the Contributor suffered the incapacity.

6.5.2 The Benefit provided by this rule 6.5 for a Contributor is an amount equal to the sum of:

- (a) the amount of the Contributor-Financed Benefit; and
- (b) an amount of Employer-Financed Benefits calculated in accordance with the formula:

$$E = S \times A \times 0.025$$

where:

**E** represents the amount to be ascertained;

**S** represents the higher of the Contributor's Final Salary or the Contributor's Final Average Salary; and

**A** represents the Accrued Benefit Points for the Contributor at the Contributor's Exit Date.

6.5.3 The Trustee is entitled to rely on a certificate by an Employer as to any matter mentioned in rule 6.5.1 of these Sub-Division B Rules if it thinks fit.

6.5.4 If the Trustee makes a determination under rule 6.16 of these Sub-Division B Rules in relation to a Benefit to be provided by this rule 6.5, the amount of that Benefit is reduced by the amount specified in the Trustee's determination.

## **6.6 Benefit on Resignation, Dismissal or Discharge before Early Retirement Age**

6.6.1 The Benefit provided by this rule 6.6 is payable by the Trustee to a Contributor:

- (a) if, before attaining the Early Retirement Age, the Contributor, having Resigned, or having been Dismissed or Discharged, from employment with an Employer elects under rule 6.14.1 of these Sub-Division B Rules to take that Benefit and no other Benefit is payable under these Sub-Division B Rules; or
- (b) if the amount of that Benefit is less than \$200.

6.6.2 The Benefit provided by this rule 6.6 for a Contributor for whom the period commencing on Entry Date and ending on Exit Date is 10 years or more is an amount equal to the sum of:

- (a) the amount of the Contributor-Financed Benefit; and
- (b) an amount of Employer-Financed Benefit calculated in accordance with the formula:

$$W = V \times R \times \frac{A}{Y} \times 0.025$$

where:

- W** represents the amount to be ascertained;
- V** represents the period (expressed in years with any fractional part of a year being calculated on a basis of complete Contribution Periods) that commenced on the Contributor's Entry Date and ended on the Contributor's Exit Date;
- R** represents the amount of the Contributor-Financed Benefit;
- A** represents the Accrued Benefit Points for the Contributor at the Contributor's Exit Date; and
- Y** represents the number ascertained by adding together all the Contributor's contributed points figures calculated in relation to the Contributor for the Applicable Contribution Periods for the Contributor.

6.6.3 If the Trustee makes a determination under rule 6.16 of these Sub-Division B Rules in relation to a Benefit to be provided by this rule 6.6, the amount of that Benefit is reduced by the amount specified in the Trustee's determination.

6.6.4 The Benefit provided by this rule 6.6 for a Contributor for whom the period commencing on Entry Date and ending on Exit Date is less than 10 years is the amount of the Contributor-Financed Benefit.

6.6.5 Notwithstanding anything elsewhere contained in these Sub-Division B Rules where, on a Contributor ceasing employment with an Employer, the Benefit calculated by applying this rule 6.6 is greater than the Benefit otherwise payable to the Contributor, the Contributor will be entitled to the Benefit calculated under this rule 6.6 in lieu of the Benefit that would otherwise be payable.

## **6.7 Purchase of Non-Commutable Account-Based Pension**

6.7.1 A Contributor may apply to have an amount transferred to the Accumulation and Pension Division to be applied in purchase of a Non-Commutable Account-Based Pension and such amount shall be debited to the Contributor's Benefit Account.

6.7.2 The Trustee may make rules concerning who is eligible to apply for a Non-Commutable Account-Based Pension, transfer of amounts to the Accumulation and Pension Division including the minimum and maximum amounts that may be transferred, but in any event, the maximum amount that may be transferred to the Accumulation and Pension Division shall not exceed the amount of the Contributor-Financed Benefit.

## **6.8 Benefit on Retrenchment before Early Retirement Age**

6.8.1 The Benefit provided by this rule 6.8 is payable by the Trustee to a Contributor if, before attaining the Early Retirement Age:

- (a) the Contributor is Retrenched; and

- (b) no other Benefit is payable under these Sub-Division B Rules; and
- (c) the Trustee is provided with a certificate from the Contributor's Employer confirming that the Contributor has been retrenched and specifying the ground for the Retrenchment.

6.8.2 The Benefit provided by this rule 6.8 for a Contributor is an amount equal to the sum of:

- (a) the Contributor-Financed Benefit; and
- (b) an amount of Employer-Financed Benefit calculated in accordance with the formula:

$$E = S \times A \times 0.025$$

where:

- E** represents the amount to be ascertained;
- S** represents the higher of the Contributor's Final Salary or the Contributor's Final Average Salary; and
- A** represents the Accrued Benefit Points for the Contributor at the Contributor's Exit Date.

6.8.3 If the Trustee makes a determination under rules 6.16 or 6.17 of these Sub-Division B Rules in relation to a Benefit to be provided by this rule 6.8, the amount of that Benefit is reduced by the amount specified in the Trustee's determination.

## **6.9 Benefit on attaining 70**

6.9.1 A Contributor who attains 70 years of age must be paid any Benefit to which the Contributor would be entitled on Retirement at that age but may elect to defer the whole of the Benefit. A Contributor may, within three months of being notified by the Trustee of their entitlements under this rule 6.9, elect that rule 6.9.2 of these Sub-Division B Rules apply.

6.9.2 In the case of a Contributor who had attained 70 years of age on or before 1 July 2011, or who elects under rule 6.9.1 of these Sub-Division B Rules that this rule 6.9 apply, that Contributor may elect at any time to be paid the Benefit or to make an election to defer the Benefit.

6.9.3 An Employee may elect, at any time on or after attaining 65 years and before attaining 70 years:

- (a) to be paid any Benefit to which the Employee is entitled at the time of the election, or
- (b) to defer the whole of the Benefit,

even though the Employee is not Retired.

6.9.4 The Trustee is to adjust the amount of a Benefit payable under this rule 6.9, having regard to any adjustment of a Contributor's Account.

6.9.5 If an amount is deferred under this rule 6.9, it is payable in the same way as a Benefit under rule 6.14 of these Sub-Division B Rules.

6.9.6 A person paid a Benefit under this rule is not entitled:

- (a) to any further Benefit under this Sub-Division in respect of the same period of service, or
- (b) to contribute to this Sub-Division or to accrue any further Benefits under this Sub-Division.

### **6.10 Deferral of Benefit on Retrenchment before Early Retirement Age**

6.10.1 A Contributor who becomes entitled to be paid a Benefit under rule 6.8 of these Sub-Division B Rules may elect:

- (a) to take the Benefit as provided by that rule 6.8; or
- (b) to defer a Benefit calculated in the same way as the Benefit provided by that rule 6.8.

6.10.2 The provisions of rule 6.14 of these Sub-Division B Rules (except rule 6.14.10) apply in relation to a Benefit deferred under this rule 6.10 in the same way as they apply in relation to a Benefit deferred under rule 6.14.

### **6.11 Compulsory preservation of Benefits**

The Trustee must, when a Benefit becomes payable under these Sub-Division B Rules (including a Benefit provided by rules 6.10, 6.14 or 6.15 of these Sub-Division B Rules, preserve all or so much of the Benefit as is required to be preserved so as to be consistent with Superannuation Law.

### **6.12 Payment of compulsorily preserved Benefit**

6.12.1 The whole or part of a Benefit preserved under rule 6.11 of these Sub-Division B Rules is payable by the Trustee in the circumstances in which the whole or part of a Benefit may be paid under Superannuation Law.

6.12.2 The whole or part of a Benefit preserved under rule 6.11 of these Sub-Division B Rules must be paid by the Trustee, if it is required to be paid under Superannuation Law.

6.12.3 The Benefit is payable:

- (a) unless the former Contributor has died, to the former Contributor, or
- (b) if the former Contributor has died, in accordance with clause 12.17 of the Division Rules.

### **6.13 Preserved Benefits**

6.13.1 Any amounts preserved by the Trustee under rule 6.11 of these Sub-Division B Rules may be preserved in such funds, accounts or reserves as the Trustee determines, including in the Accumulation and Pension Division.

6.13.2 Any such preserved amounts payable by the Trustee under rule 6.11 of these Sub-Division B Rules are to be paid from the appropriate fund, account or reserve referred to in this rule 6.13 of these Sub-Division B Rules.

### **6.14 Deferred Benefit**

6.14.1 A Contributor who Resigns, or is Dismissed or Discharged, from employment with an Employer before attaining the Early Retirement Age may elect to take the Benefit provided by rule 6.6 of these Sub-Division B Rules or (if that Benefit,

including any interest paid by the Trustee, is not less than \$200) to make provision for a Benefit provided by this rule 6.14.

- 6.14.2 A Contributor who becomes entitled to be paid a Benefit under rule 6.5 of these Sub-Division B Rules may elect to take the Benefit provided by rule 6.5 of these Sub-Division B Rules or (if that Benefit, including interest paid by the Trustee, is not less than \$200) elect to defer the whole or a part of that Benefit.
- 6.14.3 The provisions of this rule 6.14 (except rule 6.14.10 of these Sub-Division B Rules) apply in relation to the whole or a part of a Benefit deferred under rule 6.14.2 of these Sub-Division B Rules in the same way as they apply in relation to a Benefit deferred under this rule 6.14.
- 6.14.4 A Contributor who is under 65 years of age may, instead of taking the Benefit payable under rule 6.2 of these Sub-Division B Rules, elect to make provision for a Benefit provided by this rule 6.14 (but only if that Benefit, including any interest paid by the Trustee, is not less than \$200).
- 6.14.5 Where an election to make provision for a Benefit provided by this rule 6.14 made by a Contributor under rules 6.14.1 or 6.14.4 of these Sub-Division B Rules takes effect, a Benefit is not payable to, or in relation to, the Contributor under any provision of these Sub-Division B Rules other than this rule 6.14.
- 6.14.6 A Contributor who, being entitled to make an election under rules 6.14.1 or 6.14.4 of these Sub-Division B Rules, does not make such an election before the end of a period of 90 days from the date the Benefit becomes payable, or such longer period as the Trustee may allow, is taken to have elected to have made provision for a Benefit provided by this rule 6.14.
- 6.14.7 The Benefit provided by rules 6.9 or 6.14.10 of these Sub-Division B Rules must be paid by the Trustee:
- (a) if the former member:
    - (i) elected under rule 6.14.1 of these Sub-Division B Rules, or is taken under rule 6.14.6 of these Sub-Division B Rules to have elected, to defer the Benefit; and
    - (ii) attains the Early Retirement Age; and
    - (iii) applies to the Trustee in writing for payment of the Benefit; or
  - (b) if the former member:
    - (i) elected under rules 6.9 or 6.14.4 of these Sub-Division B Rules to defer the Benefit; and
    - (ii) applies to the Trustee in writing for payment of the Benefit; or
  - (c) if the former member dies without making an application for payment of the Benefit; or
  - (d) except in the case of a Benefit provided under rules 6.9 or 6.14.4 of these Sub-Division B Rules, on the Trustee being satisfied that the former Member is incapable, from infirmity of body or mind, of being employed in any remunerative occupation in which, in the opinion of the Trustee, it would otherwise be reasonable to expect the former member to engage; or
  - (e) on the Trustee being satisfied that the former member has retired from the workforce and the former member applies for the Benefit.



6.14.8 Subject to rule 6.14.7 of these Sub-Division B Rules, the Benefit provided by rule 6.14.10 of these Sub-Division B Rules is payable:

- (a) except where the Contributor has died, to the Contributor; or
- (b) if the Contributor has died, in accordance with clause 12.17 of the Division Rules.

6.14.9 The Benefit provided by rule 6.14.12 of these Sub-Division B Rules is payable to a Contributor by the Trustee if:

- (a) the Contributor has elected to take that Benefit; and
- (b) the election takes effect before the Benefit provided by rule 6.14.10 of these Sub-Division B Rules becomes payable to or in respect of the Contributor.

6.14.10 Subject to rule 6.14.11 of these Sub-Division B Rules, the Benefit provided by this rule 6.14.10 is an amount equal to the sum of:

- (a) the Contributor-Financed Benefit at Exit Date; and
- (b) an amount of Employer-Financed Benefits calculated in accordance with the formula:

$$E = F \times A \times 0.025 \times K^n$$

where:

- E** represents the amount to be ascertained;
- F** represents the Contributor's Final Average Salary;
- A** represents the Accrued Benefit Points for the Contributor at the Contributor's Exit Date;
- K** represents a discount factor determined by the Trustee after seeking actuarial advice; and
- n** represents the period (expressed in years with any fractional part of a year being calculated on the basis of complete Contribution Periods) between the Contributor's age at Exit Date and the Early Retirement Age,

as adjusted under rule 6.14.14 of these Sub-Division B Rules.

6.14.11 For the purposes of calculating the Benefit provided under rule 6.14.10 of these Sub-Division B Rules in the case of a Contributor who has attained the Early Retirement Age, "K" in the formula in rule 6.14.10 of these Sub-Division B Rules is to equal 1.

6.14.12 The Benefit provided by this rule 6.14.12 is an amount equal to the amount of the Benefit under rules 6.6 or 6.8 of these Sub-Division B Rules that would have been payable to the Contributor at the Contributor's Exit Date if the Contributor had not made the election under rule 6.14.1 of these Sub-Division B Rules, as adjusted under rule 6.14.14 of these Sub-Division B Rules.

6.14.13 If the Trustee makes a determination under rule 6.16 of these Sub-Division B Rules in relation to a Benefit to be provided by this rule 6.14, the amount of that Benefit is reduced by the amount specified in the Trustee's determination.

- 6.14.14 The Trustee is to adjust the amount of a Benefit payable under this rule 6.14, having regard to any adjustment of a Contributor's Account under the Division Rules.
- 6.14.15 A Contributor (other than a Contributor who is eligible to become or who is a member of the Accumulation and Pension Division in accordance with rule 4.14 of these Sub-Division B Rules) who becomes a Contributor to another Approved Benefit Arrangement while employed by the same Employer:
- (a) is required to make provision for a Benefit provided by this rule 6.14 despite anything to the contrary in rule 6.14.1 of these Sub-Division B Rules;
  - (b) shall be deemed to have elected under rule 6.14.1 of these Sub-Division B Rules to make provision for that Benefit on becoming a Contributor to that other Approved Benefit Arrangement; and
  - (c) is not entitled to elect to take the Benefit provided by rule 6.14.12 of these Sub-Division B Rules while employed by that same Employer.
- 6.14.16 Rules 6.14.17 to 6.14.19 of these Sub-Division B Rules have effect with respect to Contributors who are transferred as a consequence of a Government initiative (other than a Government privatisation initiative) or who, while remaining with their existing Employer, elect or are required to become Contributors to another superannuation scheme.
- 6.14.17 Transferred Contributors or Contributors electing or required to join another Approved Benefit Arrangement
- (a) Rules 6.14.17 to 6.14.19 of these Sub-Division B Rules apply:
    - (i) to Contributors:
      - (A) who are employed in an area of an Employer's activities that is, or is to be, transferred to another Employer who is not, in respect of the Contributor, an Employer under these Sub-Division B Rules; and
      - (B) who have elected or are required to transfer to the employment of that other Employer; and
      - (C) whose transfer of employment is determined by the Trustee to be a transfer of employment to which rules 6.14.17 to 6.14.19 of these Sub-Division B Rules apply; and
    - (ii) to Contributors:
      - (A) who, while remaining with their existing Employer, have elected or are required to become Contributors to another Approved Benefit Arrangement; and
      - (B) whose transfer to that Fund is determined by the Trustee to be a transfer of superannuation coverage to which rules 6.14.17 to 6.14.19 of these Sub-Division B Rules apply.
  - (b) Rules 6.14.17 to 6.14.19 of these Sub-Division B Rules do not apply to Contributors transferred as a consequence of a Government privatisation initiative.

**6.14.18 Contributor entitled to Deferred Benefit despite having contributed less than the prescribed amount**

A Contributor to whom rules 6.14.17 to 6.14.19 of these Sub-Division B Rules apply is entitled to make provision for a Deferred Benefit even though he or she is not entitled to a Benefit of or exceeding the amount prescribed for the purposes of rule 6.14.1 of these Sub-Division B Rules.

**6.14.19 Contributor entitled to immediate payment of Deferred Benefit (including employer-financed component)**

- (a) A Contributor to whom rules 6.14.17, 6.14.18 or 6.14.19 of these Sub-Division B Rules applies and who elects to make provision for a Deferred Benefit is entitled to be paid the Benefit provided by rule 6.14.10 of these Sub-Division B Rules on ceasing to be a Contributor, despite anything to the contrary in this rule 6.14.
- (b) A Deferred Benefit is payable under this rule 6.14.19 if, and only if:
  - (i) the Trustee is satisfied that the Benefit will be applied to the credit of the Contributor in another Approved Benefit Arrangement; and
  - (ii) any requirements specified by the Trustee with respect to the payment of the Benefit are complied with.

**6.15 Deferral of Benefit for Contributors in certain circumstances**

6.15.1 This rule 6.15 applies to a Contributor:

- (a) who, as a result of a single reduction of Salary, has undergone a reduction of 20% or more in Attributed Salary; and
- (b) whose Employer certifies the matter referred to in paragraph (a).

6.15.2 The fact that a person undergoes more than one Attributed Salary reduction of 20% or more does not mean that the person ceases to be a person to whom this rule 6.15 applies.

6.15.3 In this rule 6.15, **Exit Date**, in relation to an Employee to whom this rule 6.15 applies, means the day immediately preceding the day of the reduction in Attributed Salary in relation to which the Employee makes an election under rule 6.15.4 of these Sub-Division B Rules.

6.15.4 A Contributor to whom this rule 6.15 applies may elect to make provision for a Benefit under rule 6.14 of these Sub-Division B Rules.

6.15.5 An Employee may make only one election under this rule 6.15 but the election may relate to any single reduction in Attributed Salary of 20% or more (not just the first reduction that occurs).

6.15.6 The Benefit is deferred from the Exit Date.

6.15.7 The initial value of a Deferred Benefit is to be calculated in accordance with rule 6.14 of these Sub-Division B Rules as if the Contributor had ceased employment.

6.15.8 If a Contributor has attained the Early Retirement Age before the Exit Date, for the purpose of calculating the value of the Employer-Financed Benefits to be preserved under rule 6.15.1 of these Sub-Division B Rules, "K" in the formula in rule 6.14.10(b) of these Sub-Division B Rules is to equal one.

6.15.9 A Benefit deferred under this rule 6.15 may only be paid in accordance with rule 6.14 of these Sub-Division B Rules and then only if the person in respect of whom the Benefit is payable has ceased employment or has died.

## **6.16 Power of the Trustee to reduce Benefits to offset certain Tax liabilities**

6.16.1 Whenever:

- (a) a right to a Benefit under these Sub-Division B Rules accrues to or in respect of a Contributor or former Contributor; and
- (b) the Trustee has paid or is liable to pay Tax in respect of Employers' Contributions under this Sub-Division; and
- (c) a portion of that Tax is referable to the Employer-financed portion of that Benefit,

the Trustee must, subject to rule 6.16.2 of these Sub-Division B Rules;

- (d) calculate the amount necessary to offset the Trustee's liability to pay Tax so far as it is referable to the Employer-financed portion of that Benefit; and
- (e) accordingly make a determination reducing the Employer-financed portion of that Benefit by the amount so calculated.

6.16.2 Rule 6.16.1 of these Sub-Division B Rules does not authorise the reduction of a Benefit, unless:

- (a) the Benefit is of a kind set out in rule 6.16.3 of these Sub-Division B Rules; and
- (b) the reduction is calculated in accordance with the method set out in rule 6.16.4 of these Sub-Division B Rules.

6.16.3

- (a) Subject to paragraph (b), the kinds of Benefits referred to in this rule 6.16 are Benefits provided under rules 6.2, 6.4, 6.5, 6.6, 6.8 or 6.14 of these Sub-Division B Rules.
- (b) A Benefit arising as the result of the death of a person may be reduced by the Trustee to offset Tax liabilities under this Sub-Division only as provided by rule 6.16.5 of these Sub-Division B Rules.
- (c) In this rule 6.16, **continuous contributory service**, in relation to a Contributor, means the period beginning with the Contributor's Entry Date and ending with the Contributor's Exit Date.

6.16.4

- (a) Reduction for rule 6.2 of these Sub-Division B Rules:
  - (i) If a Benefit, other than a Benefit arising as the result of the death of the Contributor, becomes payable under rule 6.2, the reduction in Benefit is the amount calculated in accordance with the formula set out in paragraph (ii).
  - (ii) For the purposes of paragraph (i), the formula is

$$R = A \times \frac{B}{C} \times 0.025 \times F \times 0.15$$

where:

- R** represents the amount of the reduction;
- A** represents the Accrued Benefit Points for the Contributor at the Contributor's Exit Date;
- B** represents the period in days of continuous contributory service that began on 1 July 1988;
- C** represents the period in days of continuous contributory service for the Contributor;
- F** represents the Contributor's Final Average Salary.

(b) Reduction for rules 6.4 and 6.5 of these Sub-Division B Rules:

- (i) If a Benefit becomes payable under rules 6.4 or 6.5 of these Sub-Division B Rules, the reduction in Benefit is the amount calculated in accordance with the formula set out in paragraph (ii).
- (ii) For the purposes of paragraph (i), the formula is:

$$R = A \times \frac{B}{C} \times 0.025 \times S \times 0.15$$

where:

- R** represents the amount of the reduction;
- A** represents the Accrued Benefit Points for the Contributor at the Contributor's Exit Date;
- B** represents the period in days of continuous contributory service that began on 1 July 1988;
- C** represents the period in days of continuous contributory service for the Contributor;
- S** represents the higher of the Contributor's Final Salary or the Contributor's Final Average Salary.

(c) Reduction for rule 6.6 of these Sub-Division B Rules:

- (i) If:
  - (A) a Benefit becomes payable under rule 6.6 of these Sub-Division B Rules; and
  - (B) the Contributor's period of continuous contributory service is 10 years or more,

the reduction in Benefit is the amount calculated in accordance with the formula set out in paragraph (ii).

- (ii) For the purposes of paragraph (i), the formula is:

$$R = T \times C \times \frac{A}{Y} \times 0.025 \times 0.15$$

where:

- R** represents the amount of the reduction;
- T** represents the period (expressed in years, with any fractional part of a year being calculated on the basis of complete contribution periods) that commenced on 1 July 1988 or the Contributor's Entry Date (whichever last occurred) and ended on the Contributor's Exit Date;
- C** represents the amount of the Contributor-Financed Benefit payable under rule 6.6.2(a) of these Sub-Division B Rules;
- A** represents the Accrued Benefit Points for the Contributor at the Contributor's Exit Date;
- Y** represents the number ascertained by adding together all of the Contributor's contributed points figures calculated in relation to the Contributor for the Applicable Contribution Periods for the Contributor.

- (iii) A benefit payable under rule 6.6 of these Sub-Division B Rules is not to be reduced if the Contributor's period of continuous contributory service is less than 10 years.

(d) Reduction for rule 6.8 of these Sub-Division B Rules:

- (i) If a Benefit becomes payable under rule 6.8 of these Sub-Division B Rules, the reduction in Benefit is the amount calculated in accordance with the formula set out in paragraph (ii).
- (ii) For the purposes of paragraph (i), the formula is:

$$R = A \times \frac{B}{C} \times 0.025 \times S \times 0.15$$

where:

- R** represents the amount of the reduction;
- A** represents the Accrued Benefit Points for the Contributor at the Contributor's Exit Date;
- B** represents the period in days of continuous contributory service that began on 1 July 1988;
- C** represents the period in days of continuous contributory service for the Contributor;
- S** represents the higher of the Contributor's Final Salary or the Contributor's Final Average Salary; and

(e) Reduction for rule 6.14 of these Sub-Division B Rules:

- (i) If a Contributor elects to make provision for a Deferred Benefit under rule 6.14 of these Sub-Division B Rules, the reduction in

Benefit is the amount calculated in accordance with the formula set out in paragraph (ii).

(ii) For the purposes of paragraph (i), the formula is:

$$R = A \times \frac{B}{C} \times 0.025 \times F \times K^n \times 0.15$$

where:

- R** represents the amount of the reduction;
- A** represents the Accrued Benefit Points for the Contributor at the Contributor's Exit Date;
- B** represents the period in days of continuous contributory service that began on 1 July 1988;
- C** represents the period in days of continuous contributory service for the Contributor;
- F** represents the Contributor's final average salary;
- K** represents the discount factor determined by the Trustee for the purposes of rule 6.14.10(b) of these Sub-Division B Rules;
- n** represents the period between the Contributor's age at his or her Exit Date and the Early Retirement Age, the period being expressed in years with any fractional part of a year being calculated on the basis of complete contribution periods.

#### 6.16.5 Transferred Contributors: Reduction of Benefits

(a) If a "Transferred Contributor", or any other person, having a right to do so, elects under rule 19.1, to take a pension Benefit, then, subject to subparagraph (c), the reduction in Benefit referred to in this rule 6.16 is the amount calculated in accordance with the formula set out in paragraph (b).

(b) For the purposes of paragraph (a), the formula is:

$$R = \frac{B}{C} \times 0.15 \times P$$

where:

- R** represents the amount of the reduction;
- B** represents the period in days of continuous contributory service that began on 1 July 1988;
- C** represents the period in days of continuous contributory service for the Transferred Contributor concerned;
- P** represents:
- (i) the proportion of the pension that is attributable to Accrued Benefit Points and that, but for this rule 6.16.5, would be payable under rules 19.3, 19.4, 19.5 or 19.6 of

these Sub-Division B Rules to that Transferred Contributor; or

- (ii) if that Transferred Contributor has died, the proportion of the pension that is attributable to Accrued Benefit Points and that, but for this provision, would be payable under clause 44 of that Regulation to the Spouse of that Contributor.
- (c) If, in accordance with rule 19.1 of these Sub-Division B Rules, the Transferred Contributor or other person referred to in paragraph (a) elects to convert to a pension Benefit only a portion of the Benefit points of the Transferred Contributor, the Benefit to be derived from the Benefit points remaining after conversion is subject to reduction in accordance with the relevant provisions of this rule 6.16 that apply to that Benefit.
- (d) If the Benefit of a Transferred Contributor within the meaning of the *State Authorities Superannuation (State Public Service Superannuation Scheme Transfer) Regulation 1989* is required to be reduced in accordance with a formula set out in rules 6.16.4(a), (b), (d) or (e) of these Sub-Division B Rules, the multiple "0.025" specified in the formula is, in relation to the Contributor, to be read as the multiple "0.03".

## **6.17 Compliance with superannuation guarantee legislation**

- 6.17.1 The Trustee must, after obtaining actuarial advice, determine what the minimum employer-financed benefit would have to be to ensure that there is no Superannuation Guarantee Shortfall.
- 6.17.2 An employer-financed benefit provided by an Employer is, despite any other provision of the Division Rules or these Sub-Division B Rules, not to be less than the minimum Benefit determined under rule 6.17.1 of these Sub-Division B Rules. The Benefit that would otherwise be payable under these Sub-Division B Rules is increased to the extent necessary for the purposes of complying with this rule 6.17.
- 6.17.3 The amount of any increase in Benefit is to be debited by the Trustee from the appropriate Employer reserve established under the Division Rules.
- 6.17.4 In this rule 6.17, **employer-financed benefit** means the sum of the employer-financed benefit under these Sub-Division B Rules, any 'Basic Benefit' under Sub-Division C of the Division and any employer-financed benefit of a kind provided by Sub-Division C.

## **6.18 Payment or release of benefit on the grounds of severe financial hardship and compassion**

- 6.18.1 The Trustee may, on the application of a Contributor, or former Contributor who has a deferred benefit under this Sub-Division, pay the person a Benefit:
  - (a) on the grounds of the person's severe financial hardship and the person satisfies guidelines for payment a Benefit established by Superannuation Law;
  - (b) on compassionate grounds and the member has satisfied the requirements established by Superannuation Law.
- 6.18.2 The amount of the Benefit:
  - (a) is not to exceed the amount permitted to be paid on the applicable ground;



- (b) in the case of a former Contributor is not to exceed the amount of the Benefit that would be payable to the former Contributor under rule 6.14.12 if the former Contributor elected to be paid such a benefit; and
- (c) in the case of a Contributor is not to exceed the amount of the Contributor-Financed Benefit accrued at the time of payment.

6.18.3 If a Benefit is paid to a person under rule 6.18.1 of these Sub-Division B Rules, and the person subsequently becomes entitled to another Benefit under this Sub-Division, the Trustee must make a determination reducing the amount of the subsequent Benefit to take into account any Benefits previously paid under rule 6.18.1 of these Sub-Division B Rules.

## 6.19 Notional account

Whenever an Employer-Financed Benefit is calculated by reference to the Contributor Financed Benefit, the Trustee will cause to be calculated a notional Contributor Financed Benefit equal to the amount debited to the Contributor's Benefit Account that is applied in purchase of a Non-Commutable Account-Based Pension in the Accumulation and Pension Division, adjusted for the Trustee's estimate of earnings that such amount would have earned had it not been debited to the Contributor's Benefit Account. A Contributor has no right to or entitlement to payment of such amount and such amount is only to be used in the calculation of the Contributor-Financed Benefit to enable the calculation of the Employer-Financed Benefit.

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## 7. Superannuation Interest under the Family Law Act

Where a Family Law Order, a Superannuation Agreement or Flag Lifting Agreement applies, the value of the Non-Member Spouse's entitlement shall be calculated in accordance with the valuation methodology set out by the Actuary from time to time in accordance with the Family Law Act, and the Contributor's Superannuation Interest is reduced in accordance with the valuation methodology set out by the Actuary from time to time in accordance with the Family Law Act.

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## 8. Special provisions relating to Hunter District Water Board employees

### 8.1 Definitions

In this rule 8:

**Employee** means an Employee of the Hunter Water Board.

**notional accumulation**, in relation to a Transferred HW Contributor, means an amount equal to the sum of:

- (a) the amount transferred to the State Authorities Superannuation Fund under clause 5(4)(b) of the *State Authorities (Hunter District Water Board Employee's Provident Fund Transfer) Regulation 1990* (NSW) in respect of the Contributor from sub-Accounts 3 and 4 of the Provident Fund, as specified in clause A8.1a of the Trust Deed; and
- (b) in respect of each Applicable Contribution Period from and including 1 July 1990, an amount equal to whichever is the smaller of the following:

- (i) 0.85 of 6% of the Salary of that Contributor, multiplied by the Salary Ratio of that Contributor in respect of that period, based on the rate of Salary determined under rule 3.8 of Schedule 2 of the Active Super Trust Deed or rule 4.8 of these Sub-Division B Rules in respect of that period; or
- (ii) 0.85 of 1.5 times the Contributions paid or payable by that Contributor in that period,

together with interest at a rate or rates determined by the Trustee, but reduced by an amount or amounts calculated in such a manner as the Trustee determines in respect of the costs of administering this Sub-Division and such other charges (if any) as are determined by the Trustee.

**Trust Deed** means the Hunter District Water Board Employees' Provident Fund Trust Deed.

**Transferred HW Contributor** means an Employee who was deemed to be a 'contributor' (as that term is defined in the *State Authorities Superannuation Act 1987* (NSW)) to the State Authorities Superannuation Fund by reason of clause 5 of the *State Authorities Superannuation (Hunter District Water Board Employees Provident Fund Transfer) Regulation 1990* (NSW).

## 8.2 Application of certain definitions to Transferred HW Contributor

- 8.2.1 For the purposes of applying these Sub-Division B Rules to a Transferred HW Contributor, the Contributor's Entry Date is to be taken to be the date or, if more than one, the latest date on which the Transferred Contributor commenced employment with the Hunter Water Board.
- 8.2.2 For the purposes of applying rule 6.1 of these Sub-Division B Rules to a Transferred HW Contributor, that Contributor's average contribution rate per cent referred to in the definition of Prospective Benefit Points is to be construed in such a way as to exclude from calculation any period which occurred before 1 July 1990.
- 8.2.3 In relation to a Transferred HW Contributor, the definition **Accrued Benefit Points** in rule 6.1 of these Sub-Division B Rules is to be construed as if the reference in that definition to contributed points figures included a reference to the number of transferred benefit points for the Contributor calculated in accordance with rule 8.3.
- 8.2.4 For the purposes of applying the definition of **Final Average Salary** in rule 6.1 of these Sub-Division B Rules to a Transferred HW Contributor, that definition is to be read as if the Contributor had become a new Contributor on 1 July 1990.

## 8.3 Benefit points to be credited to a Transferred HW Contributor

- 8.3.1 A Transferred HW Contributor is, in respect of his or her service before 1 July 1990, entitled to the number of transferred benefit points calculated in accordance with the following formula:

$$P = \frac{E}{0.025 \times W}$$

where:

**P** represents the initial points credit; and

**E** represents the amount relating to the Contributor which was credited to the appropriate employer reserve in the State Authorities Superannuation Fund in accordance with clause 5(5)(c) of the *State Authorities Superannuation (Hunter District Water Board Employees' Provident Fund Transfer) (Savings and Transitional) Regulation 1990* (NSW) from sub-Accounts 3 and 4 of the Hunter District Water Board Employees' Provident Fund, as specified in clause A8.1a of the Trust Deed; and

**W** represents the Contributor's annual Salary at 1 July 1990.

8.3.2 The Trustee may round off the number of a Transferred HW Contributor's accrued transferred benefit points to not less than one decimal place, as it thinks fit.

#### **8.4 Minimum Benefits for Transferred HW Contributors on death or invalidity**

8.4.1 This rule 8.4.1 applies to a Transferred HW Contributor who:

- (a) is not eligible to apply for the Additional Benefit; or
- (b) does not make an application for Additional Benefit coverage under rule 4.2 of these Sub-Division B Rules; or
- (c) makes an application for such Additional Benefit coverage but the application is refused.

8.4.2 If a Benefit under:

- (a) rule 6.3 of these Sub-Division B Rules; or
- (b) rule 6.4 of these Sub-Division B Rules; or
- (c) rule 6.5 of these Sub-Division B Rules,

would have become payable to or in respect of a Transferred HW Contributor to whom this rule 8.4.2 applies if the words "before attaining the Early Retirement Age" had been omitted from the rule concerned, the employer-financed benefit is to be not less than the amount determined under rule 8.4.3 of these Sub-Division B Rules.

8.4.3 The amount to be determined for the purposes of rule 8.4.2 of these Sub-Division B Rules is the sum of:

- (a) the notional accumulation; and
- (b) the amount calculated in accordance with the following formula:

$$A = 1.95 \times M \times W$$

where:

**A** represents the amount to be calculated; and

**M** represents the number of months of the Transferred HW Contributor's contributory service up to 65 years of age, divided by 12; and

**W** represents the Transferred HW Contributor's Final Salary divided by 52.2.

8.4.4 If a Transferred HW Contributor to whom this rule 8.4 applies has been assigned a medical classification of 1B under clause A10.1c of the Trust Deed, the Benefit payable under rule 8.4.2 of these Sub-Division B Rules in relation to a Benefit under rules 6.4 or 6.5 of these Sub-Division B Rules is the sum of:

- (a) the notional accumulation; and
- (b) the amount calculated in accordance with the following formula:

$$A = 0.75 \times P$$

where:

**A** represents the amount to be calculated; and

**P** represents the amount calculated in accordance with rule 8.4.3(b) of these Sub-Division B Rules.

## **8.5 Benefit for Transferred HW Contributors on Resignation, Dismissal or Discharge before Early Retirement Age**

8.5.1 If a Benefit under rule 6.6 of these Sub-Division B Rules becomes payable to a Transferred HW Contributor, the Employer-Financed Benefit is not to be less than the amount determined under rule 8.5.2 of these Sub-Division B Rules.

8.5.2 The amount to be determined for the purposes of rule 8.5.1 of these Sub-Division B Rules is the amount calculated in accordance with the following formula:

$$B = S \times E$$

where:

**B** represents the amount to be ascertained; and

**S** represents the lesser of 1.0 and the product of 0.025 times the number of complete years of service; and

**E** represents the notional accumulation as at the date of Resignation.

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## **9. Special Provisions relating to Contributors transferred from the State Public Service Superannuation Fund**

### **9.1 Application**

9.1.1 This rule 9.1 applies to Employees who were deemed to be a 'contributor' (as that term is defined in the *State Authorities Superannuation Act 1987* (NSW)) to the State Authorities Superannuation Fund by reason of clause 4 of the *State Authorities Superannuation (State Public Service Superannuation Scheme Transfer) Regulation 1989* (NSW).

9.1.2 A person to whom rule 9.1.1 of these Sub-Division B Rules applies is referred to in this rule 9.1 as a **Transferred SPS Contributor**.

### **9.2 Transferred SPS Contributors**

9.2.1 If a Transferred SPS Contributor was, immediately before 1 April 1989, covered for the supplementary benefit in accordance with section 13 of the *State Public*

*Service Superannuation Act 1985* (NSW) (supplementary benefit), that Contributor:

- (a) is taken to be covered for the Additional Benefit under these Sub-Division B Rules; and
- (b) is required to pay the Additional Benefit Levy as provided by rule 4.4.2 of these Sub-Division B Rules as if that Contributor had lodged with the Trustee an application under rule 4.2 of these Sub-Division B Rules and that application had been approved by the Trustee.

9.2.2 If immediately before 1 April 1989, any allowance or other kinds of remuneration were treated as Salary for the purposes of the *State Public Service Superannuation Act 1985* (NSW) in relation to a Transferred SPS Contributor, they continue to be treated as Salary for the purposes of these Sub-Division B Rules, but only as regards that Contributor.

### 9.3 Application of Definitions

9.3.1 For the purpose of applying the definition of **Accrued Benefit Points** in rule 6.1 of these Sub-Division B Rules to a Transferred SPS Contributor, that definition is to be read as if the reference in it to contributed points figures included a reference to the total of the contributed points figures calculated in relation to that Contributor under the *State Public Service Superannuation Act 1985* (NSW) on 31 March 1989.

9.3.2 For the purpose of applying the definition of **contributed points figure** in rule 6.1 of these Sub-Division B Rules to a Transferred SPS Contributor, that definition is to be read as if the reference in that definition to Applicable Contribution Periods included a reference to applicable superannuation periods as defined by section 25 of the *State Public Service Superannuation Act 1985* (NSW).

9.3.3 For the purpose of applying the definition of **Early Retirement Age** in rule 1.2 of these Sub-Division B Rules to a Transferred SPS Contributor, the age of 55 years is applicable.

9.3.4 For the purpose of applying these Sub-Division B Rules to a Transferred SPS Contributor, such a Contributor's Entry Date is to be taken to be the date that was regarded as the Entry Date applicable to the Transferred SPS Contributor under the *State Public Superannuation Act 1985* (NSW).

9.3.5 For the purpose of applying the definition of **Final Average Salary** in rule 6.1 of these Sub-Division B Rules to a Transferred SPS Contributor, that definition is to be read as if the Transferred SPS Contributor had become a new Contributor on 1 April 1989.

9.3.6 For the purpose of applying the definition of **Maximum Benefit Points** in rule 6.1 of these Sub-Division B Rules to a Transferred SPS Contributor, a reference to the number 180 in paragraph (a) of that definition:

- (a) in respect of a Transferred SPS Contributor aged 55 years or less, is to be taken to be a reference to the number 162; and
- (b) in respect of a Transferred SPS Contributor aged more than 55 years but less than 58 years, is to be taken to be a reference to the number calculated in accordance with the following formula:

$$162 + \frac{(6 \times Z)}{N}$$

where:

**Z** represents the sum of the Salary Ratios for the Transferred SPS Contributor in respect of each Applicable Contribution Period for the Transferred SPS Contributor occurring since reaching 55 years of age; and

**N** represents the number of contribution periods in a year.

#### **9.4 Employer-Financed Benefits for Transferred SPS Contributors**

If:

- (a) in any case an Employer-Financed Benefit is payable to or in respect of a Transferred SPS Contributor; and
- (b) provision is made in these Sub-Division B Rules for that Benefit to be calculated utilising the multiple 0.025,

the multiple 0.03 is to be substituted for that multiple, except in relation to a Benefit provided by rule 6.6 of these Sub-Division B Rules.

#### **9.5 Qualifying period for Retrenchment Benefit for Transferred SPS Contributor**

9.5.1 This rule 9.5 applies to a Transferred SPS Contributor who:

- (a) was a Contributor to the State Public Service Superannuation Fund and the Public Authorities Superannuation Fund for a continuous period; and
- (b) was a person required by the *Public Authorities Superannuation Act 1985* (NSW) to make provision for a preserved benefit under that Act in respect of employment by an Employer within the meaning of that Act on becoming a Contributor to the State Public Service Superannuation Fund.

9.5.2 In ascertaining the entitlement of a Transferred SPS Contributor referred to in rule 9.5.1 of these Sub-Division B Rules to a Benefit under rule 6.8 of these Sub-Division B Rules which is subject to the Contributors satisfying a requirement as to the duration of the period that has elapsed from the Contributor's Entry Date to his or her date of exit, the period is to be taken to include any period during which he or she was a contributor to the Public Authorities Superannuation Fund.

#### **9.6 Payment on Retrenchment of a Benefit preserved under the Public Authorities Superannuation Act 1985**

For the purpose of establishing the entitlement of a Transferred SPS Contributor referred to in rule 9.5 of these Sub-Division B Rules to payment out of a preserved benefit under section 32 of the *Public Authorities Superannuation Act 1985* (NSW), a reference in subsection (3) of that section to the Public Service Superannuation Fund is to be read as a reference to the State Authorities Superannuation Fund.

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## 10. Special Provisions for Insurance Policy Holders and former Local Government Provident Fund Contributors under the Local Government and Other Authorities (Superannuation) Act 1927

### 10.1 Interpretation

#### 10.1.1 In this rule 10:

**current insurance policy**, in relation to a person, means an insurance policy in force in respect of that person that:

- (a) was effected by or in respect of that person or accepted by the Local Government Superannuation Board or its successor under Part 2 of the earlier Act; and
- (b) is kept in force by the payment of the premiums under section 6 of that Act.

**earlier Act** means the *Local Government and Other Authorities (Superannuation) Act 1927* (NSW).

**former fixed rate provident fund contributor** means a person who was, immediately before becoming a Transferred LGI Contributor, a Contributor to the Provident Fund but who did not contribute to that fund as a result of having made a request under section 7C(1) or (3) of the earlier Act.

**former variable provident fund contributor** means a person who was, immediately before becoming a Transferred LGI Contributor, a Contributor to the Provident Fund by virtue of having contributed to the fund as a result of having made a request under section 7C(1) or (3) of the earlier Act.

**Provident Fund** means the Local Government Provident Fund established under section 8 of the earlier Act.

**transfer day** means 1 May 1990.

**Transferred LGI Contributor** means a person who became a 'contributor' (as that term is defined in the *State Authorities Superannuation Act 1987* (NSW)) to the State Authorities Superannuation Fund by virtue of clauses 4(1) or 5(1) of the *State Authorities (Closed Local Government Schemes Transfer) Regulation 1990* (NSW).

10.1.2 In relation to a Transferred LGI Contributor, the definition of **Accrued Benefit Points** in rule 6.1 of these Sub-Division B Rules is to be construed as if the reference in that definition to contributed points figures included a reference to the number of transferred benefit points for the Contributor calculated in accordance with rules 10.2 or 11.2 of these Sub-Division B Rules as the case requires.

10.1.3 For the purpose of applying the definition of **Prospective Benefit Points** in rule 6.1 of these Sub-Division B Rules to a Transferred LGI Contributor, the reference in that definition to **applicable contribution periods** is to be construed in such a way as to exclude from calculation any of the Contributor's service that occurred before the transfer day.

10.1.4 For the purposes of this rule 10, a **Contributor's Entry Date** is to be taken to be the date on which the Transferred LGI Contributor last became subject to the provisions of the earlier Act.

## 10.2 Definition of notional accumulation for the purposes of this rule 10

10.2.1 For the purposes of this rule 10, **notional accumulation** in relation to a Transferred LGI Contributor who is a former holder of a current insurance policy or a former Contributor to the Provident Fund, means an amount equal to the sum of:

- (a) the amounts credited to the appropriate Employer reserve; and
- (b) in respect of each Applicable Contribution Period since the transfer day, the amount determined in accordance with rule 10.2.2 of these Sub-Division B Rules,

together with interest at a rate or rates determined by the Trustee, less:

- (c) an amount or amounts, calculated in such manner as the Trustee may determine, in respect of the costs of administering this Sub-Division; and
- (d) such other charges as may be determined by the Trustee.

10.2.2 The amount referred to in paragraph (b) of the definition of **notional accumulation** in rule 10.2.1 of these Sub-Division B Rules is the lesser of the following:

- (a) 0.85 of the Contributions paid or payable by the Transferred LGI Contributor; and
- (b) in the case of a Transferred LGI Contributor who is a former holder of a current insurance policy or a former fixed rate Provident Fund Contributor, an amount calculated in accordance with the formula set out in rule 10.2.3 of these Sub-Division B Rules or, in the case of a Transferred LGI Contributor who is a former variable rate Provident Fund Contributor, an amount calculated in accordance with the formula set out in rule 10.2.4 of these Sub-Division B Rules.

10.2.3 For the purpose of rule 10.2.2(b) of these Sub-Division B Rules, the formula in relation to a Transferred LGI Contributor who is a former holder of a current insurance policy or a former fixed rate Provident Fund Contributor is:

$$A = \frac{(0.85 \times S)}{100} \times SR$$

where:

**A** represents the amount to be calculated; and

**S** represents the Salary of the Transferred LGI Contributor, based on the rate of salary determined under rule 4.8 of these Sub-Division B Rules in respect of the Applicable Contribution Period concerned; and

**SR** represents the Salary Ratio of that Contributor in respect of that period.

10.2.4 For the purpose of rule 10.2.2(b) of these Sub-Division B Rules, the formula in relation to a Transferred LGI Contributor who is a former variable rate Provident Fund Contributor is as follows:

$$A = \frac{(4.25 \times S)}{100} \times SR$$



where:

- A** represents the amount to be calculated; and
- S** represents the Salary of the Transferred LGI Contributor, based on the rate of salary determined under rule 4.8 of these Sub-Division B Rules in respect of the Applicable Contribution Period concerned; and
- SR** represents the Salary Ratio of that Contributor in respect of that period.

### **10.3 Minimum Benefit for Transferred LGI Contributors who were formerly holders of current insurance policies or Provident Fund Contributors**

10.3.1 The Employer-Financed Benefit is to be not less than the notional accumulation if any of the Benefits specified in rule 10.3.2 of these Sub-Division B Rules which becomes payable to a Transferred LGI Contributor who is a former holder of a current insurance policy or a former Contributor to the Provident Fund.

10.3.2 The following Benefits are specified for the purposes of rule 10.3.1 of these Sub-Division B Rules:

- (a) a Benefit under rule 6.2 of these Sub-Division B Rules; or
- (b) a Benefit under rule 6.3 of these Sub-Division B Rules; or
- (c) a Benefit under rule 6.4 of these Sub-Division B Rules; or
- (d) a Benefit under rule 6.5 of these Sub-Division B Rules; or
- (e) a Benefit under rule 6.6 of these Sub-Division B Rules.

10.3.3 However, if the Employer-Financed Benefit payable to or in respect of a Transferred LGI Contributor referred to in rule 10.3.1 of these Sub-Division B Rules would, but for this rule 10.3.3, be reduced by the operation of rule 10.4 of these Sub-Division B Rules, then that Benefit is to be not less than the notional accumulation.

### **10.4 Benefit to be adjusted in certain circumstances**

10.4.1 This rule 10.4.1 applies to a Transferred LGI Contributor who is a former holder of a current insurance policy or a former Contributor to the Provident Fund and who, in the opinion of the Trustee, has received or will receive:

- (a) in the case of a Transferred LGI Contributor whose service was terminated, or who died, before 1 July 1993 – a gratuity under section 97 of the *Local Government Act 1919* (NSW); or
- (b) in the case of a Transferred LGI Contributor whose service is terminated, or who dies, on or after that date – a similar gratuity, being a gratuity paid or to be paid by the council as an act of grace on the death or termination of service of an Employee of the council and calculated by reference to the period of the Employee's service with the council.

10.4.2 If the Employer-financed Benefit payable in respect of a Transferred LGI Contributor to whom this provision applies is determined without reference to the notional accumulation of that Contributor, the Trustee must deduct from the Employer-Financed Benefit otherwise payable under these Sub-Division B Rules

the amount determined in accordance with rule 10.4.3 of these Sub-Division B Rules.

10.4.3 For the purpose of rule 10.4.2 of these Sub-Division B Rules, the amount is an amount calculated in accordance with the formula set out in rule 10.4.4 of these Sub-Division B Rules, if greater than 0, otherwise the amount is 0.

10.4.4 The formula referred to in rule 10.4.3 of these Sub-Division B Rules is as follows:

$$A = (G + E) - M$$

where:

- A** represents the amount to be calculated; and
- G** represents the amount referred to in rule 10.4.1 as the gratuity payable to or in respect of the Transferred LGI Contributor;
- E** represents the Employer-Financed Benefit that would be payable under these Sub-Division B Rules but for this rule 10.4.4; and
- M** represents the Employer-Financed Benefit that would have been payable to the Transferred LGI Contributor concerned if the employer-financed benefit had been based on the Maximum Benefit Points for that Contributor.

10.4.5 An amount payable under rule 10.4.2 of these Sub-Division B Rules is payable from the appropriate reserve.

10.4.6 If the Employer-Financed Benefit payable is reduced by the operation of rule 10.4.2 of these Sub-Division B Rules, the number of Accrued Benefit Points for the Transferred LGI Contributor is to be taken to have been reduced in proportion to the amount by which the Benefit was reduced.

10.4.7 If the Employer-Financed Benefit payable is reduced by the operation of rule 10.4.2 of these Sub-Division B Rules, the number of Accrued Benefit Points for a Transferred LGI Contributor to whom this rule 10.4.7 applies is to be taken to have been reduced in proportion to the amount by which the Benefit was reduced.

## **10.5 Debiting of reserves – Transferred LGI Contributors who were formerly holders of current insurance policies or Provident Fund Contributors**

Whenever the Trustee pays a Benefit in accordance with rule 10.3 of these Sub-Division B Rules to a Transferred LGI Contributor, the Trustee must debit the appropriate employer reserve with the difference between the amount of the Benefit paid and the amount that, but for rule 10.3 of these Sub-Division B Rules, would have been paid under these Sub-Division B Rules.

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# **11. Special Provisions for Former Benefits Fund Contributors under the Local Government and Other Authorities (Superannuation) Act 1927**

## **11.1 Definitions**

11.1.1 In this rule 11:

**Benefits Fund** means the Superannuation Benefits Fund established under section 15S of the earlier Act.

**earlier Act** means the *Local Government and Other Authorities (Superannuation) Act 1927* (NSW).

**transfer day** means 1 May 1990.

**Transferred LGS Contributor means** a person who became a 'contributor' (as that term is defined in the *State Authorities Superannuation Act 1987* (NSW)) to the State Authorities Superannuation Fund by virtue of clause 6(1) of the *State Authorities (Closed Local Government Schemes Transfer) Regulation 1990* (NSW).

- 11.1.2 In relation to a Transferred Contributor, the definition of **Accrued Benefit Points** in rule 6.1 of these Sub-Division B Rules is to be construed as if the reference in that definition to contributed points figures included a reference to the number of transferred benefit points for the Contributor calculated in accordance with rule 11.3 of these Sub-Division B Rules.
- 11.1.3 For the purpose of applying the definition of **Prospective Benefit Points** in rule 6.1 of these Sub-Division B Rules to a Transferred Contributor, the reference in that definition to Applicable Contribution Periods is to be construed in such a way as to exclude from calculation any of the Contributor's service that occurred before the transfer day.
- 11.1.4 For the purposes of this rule 11, a **Contributor's Entry Date** is to be taken to be the date on which the Transferred Contributor last became subject to the provisions of the earlier Act.

## **11.2 Definition of notional accumulation for the purposes of this rule 11**

11.2.1 For the purposes of this rule 11:

**notional accumulation**, in relation to a Transferred Contributor who is a former Contributor to the Benefits Fund, means an amount equal to the sum of:

- (a) the amounts credited to the appropriate employer reserve; and
- (b) in respect of each Applicable Contribution Period ending on or after the transfer day, the lesser of:
  - (i) an amount calculated in accordance with the formula set out in rule 11.2.2 of these Sub-Division B Rules; and
  - (ii) an amount equal to 1.275 times the Contributions paid or payable by the Contributor,

together with interest at a rate or rates determined by the Trustee, but reduced by an amount or amounts calculated in such manner as the Trustee may determine in respect of the costs of administering this Sub-Division and such other charges as may be determined by the Trustee.

11.2.2 For the purpose of paragraph (b)(i) of the definition of **notional accumulation** in rule 11.2.1 of these Sub-Division B Rules, the formula in relation to a Transferred LGS Contributor who is a former Contributor to the Benefits Fund is as follows:

$$A = \frac{(4.4625 \times S)}{100} \times SR$$

where:

- A** represents the amount to be calculated; and
- S** represents the Salary of the Transferred LGS Contributor, based on the rate of salary determined under rule 4.8 of these Sub-Division B Rules in respect of the Applicable Contribution Period concerned; and
- SR** represents the Salary Ratio of that Contributor in respect of that period.

### **11.3 Minimum Benefit for Transferred LGS Contributors who were formerly Benefits Fund Contributors**

11.3.1 The Employer-Financed Benefit is to be not less than the notional accumulation:

- (a) if:
- (i) a Benefit under rule 6.2 of these Sub-Division B Rules; or
  - (ii) a Benefit under rule 6.5 of these Sub-Division B Rules,
- becomes payable to or in respect of a Transferred LGS Contributor who was formerly a Contributor to the Benefits Fund; or
- (b) if a Transferred LGS Contributor who was formerly a Contributor to the Benefits Fund is not qualified for the Additional Benefit and:
- (i) a Benefit under rule 6.3 of these Sub-Division B Rules; or
  - (ii) a Benefit under rule 6.4 of these Sub-Division B Rules,
- becomes payable to or in respect of the Contributor.

11.3.2 However, if the Employer-Financed Benefit payable to or in respect of a Transferred LGS Contributor referred to in rule 11.3.1 of these Sub-Division B Rules would, but for this rule 11.3.2, be reduced by the operation of rule 11.5 of these Sub-Division B Rules, then that Benefit is to be not less than the notional accumulation.

### **11.4 Minimum Benefit for certain specially qualified Transferred LGS Contributors who were formerly Benefits Fund Contributors**

11.4.1 The Employer-Financed Benefit is to be not less than the amount determined under rule 11.4.2 of these Sub-Division B Rules, if:

- (a) a Benefit under rule 6.3 of these Sub-Division B Rules; or
  - (b) a Benefit under rule 6.4 of these Sub-Division B Rules,
- becomes payable to or in respect of a Transferred LGS Contributor who was formerly a Contributor to the Benefits Fund and who:
- (c) becomes covered for the Additional Benefit under rule 4.4 of these Sub-Division B Rules; or
  - (d) by virtue of clause 4(6) or 6(6) of the *State Authorities Superannuation (Closed Local Government Schemes Transfer) Regulation 1990 (NSW)*, was taken at the Transfer Day to be covered for the Additional Benefit.

11.4.2 The amount to be determined for the purposes of rule 11.4.1 of these Sub-Division B Rules is the sum of:

- (a) the notional accumulation; and
- (b) the amount calculated in accordance with the following formula:

$$A = M \times S$$

where:

**A** represents the amount to be calculated; and

**M** represents the number under the heading "Multiplier of Salary" in the table following, opposite the age specified in years in that table that was the age of the Transferred LGS Contributor concerned at that Contributor's Exit Date;

Age in years at Exit Date	Multiplier of Salary	Age in years Exit Date	Multiplier Salary
20, or under 20	6.0	40	2.50
21	5.8	41	2.35
22	5.6	42	2.20
23	5.4	43	2.05
24	5.2	44	1.90
25	5.0	45	1.75
26	4.8	46	1.60
27	4.6	47	1.45
28	4.4	48	1.30
29	4.2	49	1.15
30	4.0	50	1.00
31	3.85	51	0.9
32	3.70	52	0.8
33	3.55	53	0.7
34	3.40	54	0.6
35	3.25	55	0.5
36	3.10	56	0.4
37	2.95	57	0.3
38	2.80	58	0.2
39	2.65	59	0.1
		60, or over 60	0

**S** represents:

- (a) if the Transferred LGS Contributor concerned contributed at the rate of 1% of his or her Salary – two-sevenths of his or her Final Salary; or
- (b) if that Contributor contributed at the rate of 2% of his or her Salary – four-sevenths of his or her Final Salary; or
- (c) if that Contributor contributed at the rate of 3% of his or her Salary – six-sevenths of his or her Final Salary;
- (d) if that Contributor contributed at a rate exceeding 3% of his or her Salary – his or her Final Salary.

11.4.3 In rule 11.4.2 of these Sub-Division B Rules, a reference to a rate, in relation to a Transferred LGS Contributor referred to in rule 11.4.1 of these Sub-Division B Rules, is a reference to the rate at which the Contributor last elected to contribute, or is taken to have last elected to contribute, immediately before the Benefit became payable.

## **11.5 Benefit to be adjusted in certain circumstances**

11.5.1 This rule 11.5 applies to a Transferred LGS Contributor who is a former Contributor to the Benefits Fund and who, in the opinion of the Trustee, has received:

- (a) in the case of a Transferred LGS Contributor whose service was terminated, or who died, before 1 July 1993 – a gratuity under section 97 of the *Local Government Act 1919* (NSW); or
- (b) in the case of a Transferred LGS Contributor whose service is terminated, or who dies, on or after that date – a similar gratuity, being a gratuity paid or to be paid by the council as an act of grace on the death or termination of service of an Employee of the council and calculated by reference to the period of the Employee's service with the council.

11.5.2 If the employer-financed benefit payable in respect of a Transferred LGS Contributor to whom this rule 11.5 applies is determined without reference to the notional accumulation of the Contributor, the Trustee must deduct from the Employer-Financed Benefit otherwise payable under these Sub-Division B Rules the amount determined in accordance with rule 11.5.3 of these Sub-Division B Rules.

11.5.3 For the purpose of rule 11.5.2 of these Sub-Division B Rules, the amount is an amount calculated in accordance with the formula set out in rule 11.5.4 of these Sub-Division B Rules, if greater than 0, otherwise the amount is 0.

11.5.4 The formula referred to in rule 11.5.3 of these Sub-Division B Rules is as follows:

$$A = (G + E) - M$$

where:

- A** represents the amount to be calculated;
- G** represents the amount referred to in rule 11.5.1 of these Sub-Division B Rules as the gratuity payable to or in respect of the Transferred LGS Contributor;
- E** represents the Employer-Financed Benefit that would be payable but for this rule 11.5.4 of these Sub-Division B Rules; and
- M** represents the employer-financed benefit that would have been payable to or in respect of the Transferred LGS Contributor concerned if the Employer-financed Benefit had been based on the Maximum Benefit Points for that Contributor.

11.5.5 If the Employer-Financed Benefit payable is reduced by the operation of rule 11.5.2 of these Sub-Division B Rules, the number of Accrued Benefit Points for a Transferred LGS Contributor to whom this rule 11.5.5 applies is to be taken to have been received in proportion to the amount by which the Benefit was reduced.

## **11.6 Debiting of reserves – Transferred LGS Contributors who were formerly Benefits Fund Contributors**

11.6.1 Whenever the Trustee pays a Benefit in accordance with rule 11.3 of these Sub-Division B Rules to or in respect of a Transferred LGS Contributor who is a former Contributor to the Benefits Fund, the Trustee must debit the appropriate employer reserve with the difference between the amount of the Benefit paid and the amount that, but for rule 11.3 of these Sub-Division B Rules, would have

been payable to or in respect of the Contributor under these Sub-Division B Rules.

11.6.2 Whenever the Trustee pays a Benefit in accordance with rule 11.4 of these Sub-Division B Rules in respect of a Transferred LGS Contributor who is a former Contributor to the Benefits Fund, the Trustee must:

- (a) debit the Additional Benefit Reserve with the amount of the Additional Benefit which would have been payable in respect of the Contributor if an Additional Benefit had been paid under these Sub-Division B Rules; and
- (b) debit the remainder to the appropriate Employer reserve.

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## 12. Special Provisions for Certain Former Local Government Scheme Contributors employed under Industrial Awards etc.

### 12.1 Definitions and Application

12.1.1 This rule 12.1 applies to an Employee within the meaning of the earlier Act who, immediately before the transfer day, was a Contributor to the Benefits Fund.

12.1.2 For the purposes of this rule 12:

**earlier act** means the *Local Government and Other Authorities (Superannuation) Act 1927* (NSW).

**relevant award or agreement** means an award or industrial agreement which was in force under the *Industrial Arbitration Act 1940* (NSW) immediately before 12 April 1990 and which is binding on Employees to whom this rule 12 applies and their respective Employees.

**supplementary benefit** means the amount (if any) by which the refund to an Employer under section 15Y(1)(b) of the earlier Act exceeds the amount of the Employer-Financed Benefit payable under the provisions of these Sub-Division B Rules.

**transfer day** means 1 May 1990.

### 12.2 Supplementary payments to Employees to whom this rule 12 applies

12.2.1 If the Trustee is satisfied that an Employee to whom this rule 12 applies is entitled to a Benefit payable under a relevant award or agreement, the Trustee must pay to the Employee the lesser of:

- (a) the amount prescribed by the award or agreement; and
- (b) the amount of the supplementary benefit.

12.2.2 The Trustee must also pay the amount of the supplementary Benefit to an Employee to whom this rule 12 applies if the Employee, having reached 55 but not having reached 58 years of age, has Retired from the service of Energy Australia on or after the date of transfer to Division B of Active Super, and the Trustee is satisfied that the Employee:

- (a) was employed by the Sydney County Council on 31 March 1977 and continued until Retirement to be employed by that Council and, where appropriate, by Sydney Electricity and Energy Australia; and

- (b) was continuously a contributor to the Benefits Fund from and including 31 March 1997 to 1 May 1990; and
- (c) was continuously a 'contributor' (as that term is defined in the *State Authorities Superannuation Act 1987* (NSW)) to the State Authorities Superannuation Fund from and including 1 May 1990 to and including the date of transfer to Division B of Active Super; and
- (d) was continuously a 'Contributor' to Division B of Active Super from the date of transfer to Active Super to and including the Transfer Time; and
- (e) was continuously a Contributor to this Sub-Division to and including the date of Retirement.

### **12.3 Additional Benefit for certain Sydney Electricity Employees**

12.3.1 A further Additional Benefit, determined in accordance with rule 12.3.3 of these Sub-Division B Rules, is payable to or in respect of an Employee to whom this rule 12 applies if:

- (a) the Employee was employed by Sydney County Council on 31 March 1977 and has since continued to be employed by that Council and its successors, Sydney Electricity and Energy Australia; and
- (b) the Employee was continuously a Contributor to the Benefits Fund from and including 31 March 1977 to 1 May 1990 and has continuously been a 'contributor' (as that term is defined in the *State Authorities Superannuation Act 1987* (NSW)) to the State Authorities Superannuation Fund from and including that day; and
- (c) the Employee is covered or (because of the *State Authorities Superannuation (Closed Local Government Schemes Transfer) Regulation 1990* (NSW)) was at the date of transfer to Division B of Active Super taken to be covered for an Additional Benefit under the State Authorities Superannuation Act which Benefit now applies under the corresponding provision of these Sub-Division B Rules; and
- (d) a relevant Benefit becomes payable to or in respect of the Employee.

12.3.2 A Benefit is a relevant Benefit if:

- (a) it is a Benefit payable under rules 6.3 or 6.4 of these Sub-Division B Rules; or
- (b) it is a Benefit payable under rule 6.2 of these Sub-Division B Rules and the Trustee is satisfied that a Benefit would have been payable under rules 6.3 or 6.4 of these Sub-Division B Rules had the Early Retirement Age been 60 rather than 55 years of age.

12.3.3 A further Additional Benefit payable under this rule 12.3.3 is to be calculated as follows:

$$A = (M \times S) - AB$$

where:

- A** represents the amount to be determined;
- M** represents the number under the heading "Multiplier of Salary" in the table contained in rule 11.4.2 of these Sub-Division B Rules opposite the



age specified in years in that table that was the age of the Employee at the Employee's Exit Date;

**S** represents:

- (a) if the Employee contributed at the rate of 1% of Salary – two-sevenths of the Employee's Final Salary; or
- (b) if the Employee contributed at the rate of 2% of Salary – four-sevenths of that Employee's Final Salary; or
- (c) if the Employee contributed at the rate of 3% of Salary – six-sevenths of the Employee's Final Salary; or
- (d) if the Employee contributed at a rate exceeding 3% of Salary – the Employee's Final Salary; and

**AB** represents the amount of any Additional Benefit payable to the Employee under rule 6 of these Sub-Division B Rules.

12.3.4 In rule 12.3.3 of these Sub-Division B Rules, **rate** means the rate at which the Employee concerned last elected or is taken to have last elected to contribute immediately before the relevant Benefit became payable.

12.3.5 This rule 12.3 applies to persons who are Employees to whom rule 12 of these Sub-Division B Rules applies, or were Employees to whom Part 10 of Division B of the Active Super Trust Deed applied at any time on or after the LGSS Transfer Day.

## **12.4 Debiting of accounts – payment of supplementary Benefits**

12.4.1 Whenever the Trustee makes a payment in accordance with rule 12.3 of these Sub-Division B Rules, the Trustee must debit the appropriate Employer reserve with the amount of the payment.

12.4.2 An Additional Benefit paid under rule 12.3 of these Sub-Division B Rules is to be regarded as an **Additional Benefit** for the purposes of these Sub-Division B Rules and the Trustee must debit the amount of that Benefit to the Additional Benefits Reserve.

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## **13. Miscellaneous Provisions relating to Local Government Employees**

### **13.1 Early Retirement Age – female Contributors and Sydney County Council employees**

13.1.1 For the purposes of the definition of **Early Retirement Age** in rule 1.2, the Early Retirement Age is 55 years:

- (a) in relation to a female Transferred LGS Contributor who, immediately before 1 May 1990, was a Contributor to the Benefits Fund; and
- (b) in relation to a Transferred LGS Contributor who, immediately before 1 May 1990, was an employee of the Sydney County Council.

13.1.2 Rule 13.1.1 of these Sub-Division B Rules does not have effect in relation to a male Transferred LGS Contributor referred to in rule 13.1.1(b) of these Sub-Division B Rules unless the Contributor has, at the Contributor's Exit Date, completed 20 years or more service with the Sydney County Council or its

successors, Sydney Electricity and Energy Australia, in terms of the industrial award that was applicable to the Contributor immediately before 1 May 1990.

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## 14. Special Provisions for Transferred PAS Contributors

### 14.1 Definitions

14.1.1 In rules 14 to 20 of these Sub-Division B Rules:

**Board** means the SAS Trustee Corporation established under the Administration Act.

**earlier Act** means the *Public Authorities Superannuation Act 1985* (NSW).

**earlier Fund** means the Public Authorities Superannuation Fund established in accordance with the earlier Act.

**new Fund** means the State Authorities Superannuation Fund established by the Board in accordance with the *Superannuation Administration Act 1987* (NSW) and when referred to in these Sub-Division B Rules includes Division B of Active Super and this Sub-Division.

**pension** means a pension payable under rules 14 to 20 of these Sub-Division B Rules.

**Transferred PAS Contributor** means a person who became a 'contributor' (as that term is defined in the *State Authorities Superannuation Act 1987* (NSW)) to the new Fund by virtue of clause 3 of Schedule 3 of the *State Authorities Superannuation Act 1987* (NSW).

### 14.2 Transferred PAS Contributors

14.2.1 If, immediately before 1 April 1988, a Transferred PAS Contributor was, in accordance with section 12 of the earlier Act, covered for the Additional Benefit, that Contributor:

- (a) shall be taken at the date of transfer to this Sub-Division to be covered for the Additional Benefit under these Sub-Division B Rules; and
- (b) shall pay the Additional Benefit Levy as required by rule 4.4.2 of these Sub-Division B Rules as if that Contributor had lodged with the Trustee an application under rule 4.2 which had been approved by the Trustee.

14.2.2 If, immediately before 1 April 1988, any allowances or other kinds of remuneration were treated as Salary for the purposes of the earlier Act in relation to a Transferred PAS Contributor, they shall continue to be treated as Salary for the purposes of these Sub-Division B Rules, but only as regards that Contributor.

### 14.3 Application of certain definitions to Transferred PAS Contributor

14.3.1 For the purpose of applying the definition of **Accrued Benefit Points** in rule 6.1 of these Sub-Division B Rules to a Transferred PAS Contributor, that definition shall be construed as if the reference in it to contributed points figures included a reference to the total of the contributed points figures calculated in relation to that Contributor under the earlier Act on 31 March 1988 but multiplied by 0.72.

14.3.2 For the purposes of applying the *State Authorities Superannuation Act 1987* (NSW) and these Sub-Division B Rules to a Transferred PAS Contributor, such a

Contributor's Entry Date shall be taken to be the date that was regarded as the Entry Date applicable to the Transferred PAS Contributor under the earlier Act.

- 14.3.3 For the purpose of applying the definition of **contributed points figure** in rule 6.1 of these Sub-Division B Rules to a Transferred PAS Contributor, that definition shall be construed as if the reference in that definition to Applicable Contribution Periods included a reference to applicable months as defined by section 24 of the earlier Act, but with the result derived from the formula for those months multiplied by 0.72.
- 14.3.4 In applying the calculation of **Prospective Benefit Points** in rule 6.1 of these Sub-Division B Rules to a Transferred PAS Contributor, that calculation shall be subject to a minimum value of 0.7 multiplied by the number of Prospective Benefit Points that would have been calculated under that Act if the Early Retirement Age had been 60 years.

#### **14.4 Adjustment of Benefit where broken service recognised**

- 14.4.1 This rule 14.4 applies to a Transferred PAS Contributor in respect of whom an order has been in force under the *New South Wales Retirement Benefits Regulation 1983* (NSW) at any time with respect to one or more periods of employment of that Contributor which occurred before 1 July 1985.
- 14.4.2 If a Transferred PAS Contributor to whom this rule 14.4 applies has received an allowance with respect to a period of employment to which an order under the *New South Wales Retirement Benefits Regulation 1983* (NSW) has been in force, the Employer-Financed Benefit payable under these Sub-Division B Rules to or in respect of the Transferred PAS Contributor shall be reduced by the following amount in respect of each such period:

$$J = S \times \frac{A}{W}$$

where:

- J** represents the amount by which the Employer-financed Benefit is to be reduced;
- S** represents the amount of the Transferred PAS Contributor's Salary, as used in the calculation of the Benefit payable to or in respect of the Transferred PAS Contributor under these Sub-Division B Rules;
- A** represents the amount of the allowance received by the Transferred PAS Contributor; and
- W** represents the annual wages of the Transferred PAS Contributor, as determined by the Board, immediately before the allowance became payable to the Transferred PAS Contributor.

- 14.4.3 In this rule 14.4, **allowance**, in relation to a Transferred PAS Contributor, means such part of the amount of a Benefit that has been paid to the Transferred PAS Contributor from an Approved Benefit Arrangement as, in the opinion of the Trustee, represents the employer-financed component of the Benefit.

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## 15. Special Conditions for Former Local Government Pension Fund Contributors

### 15.1 Definitions

15.1.1 In this rule 15:

**applicable month** has the meaning that that expression had under section 24 of the earlier Act.

**former Act** means the *Local Government and Other Authorities (Superannuation Act) 1927* (NSW).

**former Fund** means the Local Government Pension Fund established under the former Act.

**guaranteed pension points**, in relation to a Transferred LGP Contributor, means a number of points which is the greater of 0 and the number determined by the formula:

$$S = (2/3 \times P) + (1/4 \times A) - (1/3 \times B) - R$$

where:

- S** represents the number of guaranteed pension points to be calculated;
- P** represents the number of Prospective Benefit Points which would have been calculated under these Sub-Division B Rules if the age for early retirement had been 65 years;
- A** represents the number of Accrued Benefit Points calculated as if 1 April 1988 were the Transferred LGP Contributor's Exit Date;
- B** represents the number of Accrued Benefit Points at the Transferred LGP Contributor's Exit Date; and
- R** represents the number of prospective benefit points calculated in respect of the Transferred LGP Contributor in accordance with rule 6.1 of these Sub-Division B Rules as modified by rule 14.3.4 of these Sub-Division B Rules.

**notional accumulation** in relation to a Transferred LGP Contributor who became a Contributor to the former Fund under section 15AO, 15AP or 15AQ of the former Act, means an amount equal to the sum of:

- (a) the amount credited to the general reserve or the special reserve of the former Fund under section 15AO(3), 15AP(9) or 15AQ(10) of the former Act in respect of that Contributor;
- (b) in respect of each Superannuation Year during the period beginning with the date on which that Contributor became a Contributor to the former Fund and ending with 30 June 1985, an amount equal to:
- (i) 5.25% of the Salary of that Contributor, based on the rate of Salary determined under section 15AV of the former Act in respect of that superannuation year; or
- (ii) 1.5 times the Contributions paid or payable by that Contributor in that Superannuation Year under the former Act,

whichever is the less;

- (c) in respect of each applicable month in relation to that Contributor under the earlier Act, an amount equal to:
- (i) 5.25% of the Salary of that Contributor, multiplied by the Salary Ratio of that Contributor in respect of that month as determined by the Board, based on the rate of Salary determined under section 6 of the earlier Act in respect of that month; or
  - (ii) 1.5 times the Contributions paid or payable by that Contributor in that month under the earlier Act,

whichever is the less; and

- (d) in respect of each Applicable Contribution Period since 1 April 1988, an amount equal to:
- (i) 5.25% of the Salary of that Contributor, multiplied by the Salary Ratio of that Contributor in respect of that period, based on the rate of Salary determined under rule 4.8 of these Sub-Division B Rules in respect of that period; or
  - (ii) 1.5 times the Contributions paid or payable by that Contributor under the *State Authorities Superannuation Act 1987* (NSW),

whichever is the less, together with interest at a rate or rates determined by the Trustee, but reduced by an amount or amounts calculated in such manner as the Trustee may determine in respect of the costs of administering the scheme and such other charges as may be determined by the Trustee.

**Transferred LGP Contributor** means a person who has become a 'contributor' (as that term is defined in the *State Authorities Superannuation Act 1987* (NSW)) to the new Fund by virtue of clause 3 of Schedule 3 to the *State Authorities Superannuation Act 1987* (NSW) after having become a 'contributor' to the earlier Fund by virtue of the operation of Schedule 6 to the earlier Act.

## 15.2 Application of the definition of Prospective Benefit Points to Transferred LGP Contributor

For the purpose of applying rule 6.1 of these Sub-Division B Rules to a Transferred LGP Contributor, that Contributor's average contribution rate per cent referred to in the definition of **Prospective Benefit Points** in that rule shall be construed in such a way as to exclude from calculation any period which occurred before the date when the Transferred LGP Contributor last became a contributor under Part IIID of the former Act.

## 15.3 Benefit to be adjusted in certain circumstances

15.3.1 This rule 15.3 applies to a Transferred LGP Contributor who, in the opinion of the Board, has received, or will receive:

- (a) in the case of a Transferred LGI Contributor whose service was terminated, or who died, before 1 July 1993 - a gratuity under section 97 of the *Local Government Act 1919* (NSW); or
- (b) in the case of a Transferred LGI Contributor whose service is terminated, or who dies, on or after that date - a similar gratuity, being a gratuity paid or to be paid by the council as an act of grace on the death or

termination of service of an Employee of the council and calculated by reference to the period of the Employee's service with the council.

15.3.2 Where the employer-financed Benefit payable in respect of a Transferred LGP Contributor to whom this rule 15.3 applies is determined without reference to the notional accumulation of that Contributor, the amount determined in accordance with rule 15.3.3 of these Sub-Division B Rules shall be deducted from the Employer-Financed Benefit otherwise payable under these Sub-Division B Rules.

15.3.3 For the purposes of rule 15.3.2 of these Sub-Division B Rules, the amount is:

- (a) 0; or
- (b) an amount calculated in accordance with the formula set out in rule 15.3.4 of these Sub-Division B Rules,

whichever is the greater.

15.3.4 The formula referred to in rule 15.3.3 of these Sub-Division B Rules is as follows:

$$A = (G + E) - M$$

where:

- A** represents the amount to be calculated;
- G** represents the amount referred to in rule 15.3.1 of these Sub-Division B Rules as the gratuity payable to or in respect of the Transferred LGP Contributor;
- E** represents the Employer-Financed Benefit that would be payable but for this rule 15.3; and
- M** represents the Employer-Financed Benefit that would have been payable to the Transferred LGP Contributor concerned if the Employer-financed Benefit had been based on the Maximum Benefit Points for that Contributor.

15.3.5 If the Employer-Financed Benefit payable is reduced by the operation of rule 15.3.2 of these Sub-Division B Rules, the number of Accrued Benefit Points for the Transferred LGP Contributor shall be taken to have been reduced in proportion to the amount by which the Benefit was reduced.

## **15.4 Additional Benefit for qualified Transferred LGP Contributors**

15.4.1 This rule 15.4 applies to a Transferred LGP Contributor who:

- (a) becomes covered for the Additional Benefit under the *State Authorities Superannuation Act 1987* (NSW) or these Sub-Division B Rules; or
- (b) by virtue of rule 14.2 of these Sub-Division B Rules, is taken at the date of transfer to this Sub-Division to be covered for that Additional Benefit.

15.4.2 If:

- (a) a Benefit becomes payable under rules 6.3 or 6.4 of these Sub-Division B Rules to or in respect of a Transferred LGP Contributor to whom this rule 15.4 applies; or
- (b) a Benefit is paid under rule 6.2 of these Sub-Division B Rules and the Trustee is satisfied that a Benefit would have been payable under

rules 6.3 or 6.4 of these Sub-Division B Rules if the Early Retirement Age had been 60 years,

the lump sum Benefit calculated in accordance with the formula specified in rule 15.4.3 of these Sub-Division B Rules is payable to or in respect of that Contributor.

15.4.3 The formula referred to in rule 15.4.2 of these Sub-Division B Rules is as follows:

$$L = \frac{S}{100} \times (P - R)$$

where:

**L** represents the amount to be calculated;

**S** represents the Transferred LGP Contributor's Final Salary;

**P** represents the number of Prospective Benefit Points which would have been calculated under rule 14.3.4 of these Sub-Division B Rules if the Early Retirement Age had been 65 years; and

**R** represents the number of prospective benefit points which would have been calculated under rule 14.3.4.

15.4.4 If, in applying the formula specified in rule 15.4.3 of these Sub-Division B Rules, P is not more than R, no lump sum is payable.

## **15.5 Minimum Benefit for qualified Transferred LGP Contributors**

15.5.1 In this rule 15.5, a reference to an Employer-Financed Benefit includes a lump sum Benefit payable under rule 15.4 of these Sub-Division B Rules.

15.5.2 This rule 15.5 applies to a Transferred LGP Contributor who:

- (a) becomes covered for the Additional Benefit under these Sub-Division B Rules; or
- (b) by virtue of rule 14.2 of these Sub-Division B Rules, is taken to be covered for that Additional Benefit,

and who in either case became a Contributor to the former Fund under sections 15AO, 15AP or 15AQ of the former Act.

15.5.3 If:

- (a) a Benefit becomes payable under rules 6.3 or 6.4 of these Sub-Division B Rules to or in respect of a Transferred LGP Contributor to whom this rule 15.5 applies and no election is made under rules 15.9 or 15.10 of these Sub-Division B Rules; or
- (b) a Benefit is paid under rule 6.2 of these Sub-Division B Rules and the Board is satisfied that a Benefit would have been payable under rules 6.3 or 6.4 of these Sub-Division B Rules if the Early Retirement Age had been 60 years,

the Employer-Financed Benefit in respect of that Contributor shall be not less than the amount determined in accordance with rule 15.5.4 of these Sub-Division B Rules.

15.5.4 For the purposes of rule 15.5.3 of these Sub-Division B Rules, the amount referred to in that rule is the sum of:

- (a) the notional accumulation; and
- (b) the amount calculated in accordance with the following formula:

$$A = M \times S$$

where:

**A** represents the amount to be calculated;

**M** represents the number under the heading **Multiplier of Salary** in rule 21 of these Sub-Division B Rules opposite the age specified in years in rule 21 of these Sub-Division B Rules that was the age of the Transferred LGP Contributor at that Contributor's Exit Date; and

**S** represents:

- (i) if the Transferred LGP Contributor contributed to the new Fund at the rate of 1% of Salary - two-sevenths of that Contributor's Final Salary;
- (ii) if the Transferred LGP Contributor contributed to the new Fund at the rate of 2% of Salary – four-sevenths of that Contributor's Final Salary;
- (iii) if the Transferred LGP Contributor contributed to the new Fund at the rate of 3% of Salary - six-sevenths of that Contributor's Final Salary; or
- (iv) if the Transferred LGP Contributor contributed to the new Fund at a rate exceeding 3% of Salary - that Contributor's Final Salary.

15.5.5 In rule 15.5.4 of these Sub-Division B Rules, a reference to a rate, in relation to a Transferred LGP Contributor, is a reference to the rate at which the Contributor last elected or is taken to have last elected to contribute immediately before the Benefit became payable.

15.5.6 If a Benefit becomes payable to a Transferred LGP Contributor to whom this rule 15.5 applies, the Employer-Financed Benefit in respect of that Contributor shall be not less than the notional accumulation.

15.5.7 If:

- (a) a Benefit becomes payable under rule 6.2 of these Sub-Division B Rules to or in respect of a Transferred LGP Contributor to whom this rule applies;
- (b) no election is made under rule 15.8 of these Sub-Division B Rules; and
- (c) the Employer-Financed Benefit would, but for the operation of this rule 15.5.7, be reduced by the operation of rule 15.3 of these Sub-Division B Rules,

the Employer-Financed Benefit in respect of the person shall be not less than the notional accumulation.



## **15.6 Minimum Benefit for Transferred LGP Contributors not qualified**

15.6.1 This rule 15.6 applies to a Transferred LGP Contributor other than one who:

- (a) becomes covered for the Additional Benefit under these Sub-Division B Rules; or
- (b) is taken, by virtue of rule 14.2 of these Sub-Division B Rules, to be covered for that Additional Benefit,

and who in either case became a Contributor to the former Fund under sections 15AO, 15AP or 15AQ of the former Act.

15.6.2 If:

- (a) a Benefit becomes payable in respect of a Transferred LGP Contributor to whom this rule 15.6 applies under rule 6.3 of these Sub-Division B Rules; and
  - (b) no election is made under rule 15.10 of these Sub-Division B Rules,
- the Employer-Financed Benefit in respect of that Contributor shall be not less than the notional accumulation.

15.6.3 If a Benefit under:

- (a) rule 6.4 of these Sub-Division B Rules; or
- (b) rule 6.5 of these Sub-Division B Rules,

becomes payable to a Transferred LGP Contributor to whom this rule 15.6 applies, the Employer-Financed Benefit in respect of that Contributor shall be not less than the notional accumulation.

15.6.4 If:

- (a) a Benefit becomes payable to or in respect of a Transferred LGP Contributor to whom this rule 15.6 applies under rule 6.2 of these Sub-Division B Rules;
- (b) no election is made under rule 15.8 of these Sub-Division B Rules; and
- (c) the Employer-Financed Benefit would, but for the operation of this rule 15.6.4, be reduced by the operation of rule 15.3 of these Sub-Division B Rules,

the Employer-Financed Benefit in respect of that Contributor shall be not less than the notional accumulation.

## **15.7 Debiting of accounts**

15.7.1 Whenever the Trustee pays a Benefit in accordance with rules 15.4 or 15.5 of these Sub-Division B Rules, the Trustee shall:

- (a) debit the Additional Benefit Reserve established under these Sub-Division B Rules with the amount of the Additional Benefit which would have been payable if an Additional Benefit had been paid under these Sub-Division B Rules; and
- (b) debit the remainder to the appropriate Employer reserve.

- 15.7.2 Whenever the Trustee pays a Benefit in accordance with rule 15.6 of these Sub-Division B Rules, the Board shall debit the appropriate Employer reserve with the difference between the amount of the Benefit so paid and the amount that, but for that rule, would have been paid under these Sub-Division B Rules.

## **15.8 Pension rights exit after age 60**

- 15.8.1 A Transferred LGP Contributor who, having attained 60 years of age on or before the Contributor's Exit Date, Retires and thereby becomes entitled to be paid the Benefit provided by rule 6.2 of these Sub-Division B Rules may elect to convert to a pension in accordance with rule 19.4 of these Sub-Division B Rules benefit points to which the Transferred LGP Contributor is entitled.
- 15.8.2 The benefit points to which the election referred to in rule 15.8.1 of these Sub-Division B Rules relates are the Transferred LGP Contributor's Accrued Benefit Points.
- 15.8.3 Those benefit points which the Transferred LGP Contributor does not elect to convert to a pension shall be applied towards payment of a lump sum in accordance with rule 6.2 of these Sub-Division B Rules.

## **15.9 Pension rights: total and permanent invalidity**

15.9.1 If:

- (a) a Transferred LGP Contributor becomes entitled to be paid the Benefit provided by rule 6.4 of these Sub-Division B Rules; or
- (b) a Transferred LGP Contributor Retires and thereby becomes entitled to be paid the Benefit provided by rule 6.2 of these Sub-Division B Rules and the Trustee is satisfied that that Contributor would have been entitled to be paid the Benefit provided by rule 6.4 of these Sub-Division B Rules if the Early Retirement Age had been 60 years,

that Contributor may elect to convert to a pension in accordance with rule 19.6 of these Sub-Division B Rules benefit points to which that Contributor is entitled.

- 15.9.2 The benefit points to which the election referred to in rule 15.9.1 of these Sub-Division B Rules relates are the Transferred LGP Contributor's Accrued Benefit Points, Prospective Benefit Points and guaranteed pension points.
- 15.9.3 If the Transferred LGP Contributor does not elect to convert all of the benefit points specified in rule 15.9.2 of these Sub-Division B Rules into a pension, the proportion of Accrued Benefit Points and Prospective Benefit Points which was not so converted shall be applied to the payment of a lump sum in accordance with rules 6.2 or 6.4 of these Sub-Division B Rules, as the case may require.

## **15.10 Pension rights death**

15.10.1 If the Spouse of a deceased Transferred LGP Contributor becomes entitled to be paid:

- (a) the Benefit provided by rule 6.2 of these Sub-Division B Rules; or
- (b) the Benefit provided by rule 6.3 of these Sub-Division B Rules,

that Spouse may elect to convert to a pension in accordance with rule 19.7 of these Sub-Division B Rules the benefit points to which that Contributor was entitled at death.

- 15.10.2 The benefit points in respect of which an election under rule 15.10.1 of these Sub-Division B Rules may be made are the Accrued Benefit Points, Prospective Benefit Points and guaranteed pension points which would have accrued in respect of the Transferred LGP Contributor had the Contributor become entitled to a Benefit under rule 6.4 of these Sub-Division B Rules.
- 15.10.3 If the Spouse of the Transferred LGP Contributor does not elect to convert into a pension all of the benefit points referred to in rule 15.10.2 of these Sub-Division B Rules, the proportion of Accrued Benefit Points and Prospective Benefit Points which has not been so converted shall be applied towards the payment of a lump sum in accordance with rules 6.2 or 6.4 of these Sub-Division B Rules, as the case may require.

### 15.11 Payment of pensions

- 15.11.1 Subject to rule 15.11.2 of these Sub-Division B Rules, a pension is payable to or in respect of a former Transferred LGP Contributor in accordance with rules 19 and 20 of these Sub-Division B Rules.
- 15.11.2 If a Transferred LGP Contributor or a former Transferred LGP Contributor dies leaving a dependent child, a pension is, subject to rule 19.9 of these Sub-Division B Rules, payable in accordance with rule 19 of these Sub-Division B Rules.

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## 16. Special Conditions for former Retirement Fund Contributors

### 16.1 Definitions

In this rule 16:

**former Act** means the *New South Wales Retirement Benefits Act 1972* (NSW).

**Transferred RF Contributor** means a person who has become a 'contributor' (as that term is defined in the *State Authorities Superannuation Act 1987* (NSW)) to the new Fund by virtue of clause 3 of Schedule 3 of the *State Authorities Superannuation Act 1987* (NSW) after having become a 'contributor' to the earlier Fund by virtue of Schedule 7 of the earlier Act.

### 16.2 Application of certain definitions to Transferred RF Contributor

- 16.2.1 For the purpose of applying the definition of **Prospective Benefit Points** in rule 6.1 of these Sub-Division B Rules to a Transferred RF Contributor, the reference in that definition to Applicable Contribution Periods shall be construed as including any period occurring before that Contributor's Entry Date where that period would have been taken into account in calculating a Benefit payable to that Contributor under the former Act:
- (a) if the Benefit had become payable immediately before 1 April 1988; and
  - (b) if the former Act had then been in force.
- 16.2.2 For the purpose of applying the definition of **average contribution rate per cent** in rule 6.1 of these Sub-Division B Rules to a Transferred RF Contributor, that definition shall be construed as if a reference in it to the sum of rates per cent of Salary at which a Contributor was liable to pay a Contribution for a Contribution Period were a reference to the sum of Benefit points accrued by the Transferred RF Contributor.

### 16.3 Contribution rates

- 16.3.1 A Transferred RF Contributor may contribute to this Sub-Division at a rate of Contribution which is not 1, 2, 3, 4, 5, 6, 7, 8 or 9 per cent of the Transferred RF Contributor's Salary, but no such Contributor may contribute to that Fund more than 9 per cent of his or her Salary.
- 16.3.2 A Transferred RF Contributor who does not, before 31 December in any year, make an election under rule 4.9 of these Sub-Division B Rules shall be taken to have made such an election specifying, in accordance with rule 4.9.2(b) of these Sub-Division B Rules, a rate equal to the rate which applied in respect of that Contributor on that date.
- 16.3.3 A Transferred RF Contributor referred to in rule 16.3.1 of these Sub-Division B Rules who wishes to make an election under rule 4.9 of these Sub-Division B Rules may make that election by specifying the number of benefit points to be accrued for a Superannuation Year.
- 16.3.4 An election made in accordance with rule 16.3.3 of these Sub-Division B Rules shall be taken to specify a rate per cent of the Transferred RF Contributor's Salary sufficient to increase by the number of benefit points specified in the election the Accrued Benefit Points for the Superannuation Year concerned.

### 16.4 Adjustment of points accrual: persons under age 59 and 11 months

- 16.4.1 This rule 16.4 applies to a Transferred RF Contributor who, on 1 April 1986, had not attained the age of 59 years and 11 months and who, on 1 April in any succeeding Superannuation Year, has not attained that age.
- 16.4.2 In this rule 16.4, **adjusted points limit** means the number calculated in accordance with the following formula:

$$A = \frac{((L \times 1.8) + 0.7) \times 9}{2.5}$$

where:

- A** represents the adjusted points limit to be determined; and
- L** represents one ninth of the maximum number of benefit points for which the Transferred RF Contributor could have contributed in accordance with rule 7 of Schedule 7 to the earlier Act in the Superannuation Year which commenced on 1 April 1987.

- 16.4.3 For the purposes of this rule 16.4, but subject to rules 16.4.4 and 16.4.5 of these Sub-Division B Rules, for each 1% of Salary contributed to the new Fund by a Transferred RF Contributor for the Superannuation Year that commences on 1 April 1988, and each successive Superannuation Year, the number of benefit points accrued is:
- (a) the number of points specified in Schedule 2 of the *State Authorities Superannuation (Transitional Provisions) Regulation 1988* (NSW); or
- (b) the number of points that is equal to one-ninth of the adjusted points limit for the Transferred RF Contributor,

whichever is the greater.

- 16.4.4 The maximum number of Benefit points that may be accrued in any Superannuation Year by the application of rule 16.4.3(a) of these Sub-Division B Rules is 9.

16.4.5 The maximum number of Benefit points that may be accrued in any Superannuation Year by the application of rule 16.4.3(b) of these Sub-Division B Rules is the adjusted points limit for the Transferred RF Contributor concerned.

**16.5 Adjustment of points accrual: persons aged over 59 years and 11 months**

16.5.1 This rule 16.5 applies to a Transferred RF Contributor who had attained the age of 59 years and 11 months on 1 April 1986.

16.5.2 The adjusted points limit for a Transferred RF Contributor to whom this rule 16.5 applies shall be calculated in accordance with the following formula:

$$L = \frac{(N \times 1-8) + 0.7}{2.5}$$

where:

**L** represents the adjusted points limit to be calculated; and

**N** represents the number of benefit points accrued by the Transferred RF Contributor in accordance with rule 7 of Schedule 7 to the earlier Act in the Superannuation Year which commenced on 1 April 1987.

16.5.3 A Transferred RF Contributor to whom this rule 16.5 applies is required to contribute the percentage of Salary determined in accordance with rule 16.5.4 of these Sub-Division B Rules in order to accrue 1 benefit point.

16.5.4 The percentage of Salary required to be contributed under rule 16.5.3 of these Sub-Division B Rules is whichever of the following is the smaller:

(a) 1; or

(b) the number calculated by the following formula:

$$K = \frac{C}{L}$$

where:

**K** represents the number to be calculated;

**C** represents the Transferred RF Contributor's Contribution rate per cent as at 31 March 1988; and

**L** represents the adjusted points limit calculated in accordance with rule 16.5.2 of these Sub-Division B Rules.

16.5.5 The maximum number of benefit points that may be accrued in any Superannuation Year by the operation of rule 16.5.4(b) of these Sub-Division B Rules is:

(a) the adjusted points limit for the Transferred RF Contributor; or

(b) 9,

whichever is the greater.

16.5.6 A Transferred RF Contributor to whom this rule applies whose Contribution rate per cent on 31 March 1988 is 0 shall be taken to have a Contribution rate per

cent of 1 and the Trustee may make such arrangements as it thinks fit in relation to the deduction of Contributions for such a Contributor.

## **16.6 Pension rights exit after age 60**

16.6.1 A Transferred RF Contributor who, having attained 60 years of age on or before that Contributor's Exit Date, Retires and thereby becomes entitled to be paid the Benefit provided by rule 6.2 of these Sub-Division B Rules may elect to convert to a pension in accordance with:

- (a) rule 19.3 of these Sub-Division B Rules; or
- (b) rule 19.4 of these Sub-Division B Rules,

benefit points to which that Contributor is entitled.

16.6.2 The benefit points to which the election referred to in rule 16.6.1 of these Sub-Division B Rules relates are the Transferred RF Contributor's Accrued Benefit Points.

16.6.3 Those benefit points which the Transferred RF Contributor does not elect to convert to a pension shall be applied to payment of a lump sum in accordance with rule 6.2 of these Sub-Division B Rules.

## **16.7 Pension rights: total and permanent invalidity**

16.7.1 If:

- (a) a Transferred RF Contributor becomes entitled to be paid the Benefit provided by rule 6.4 of these Sub-Division B Rules; or
- (b) a Transferred RF Contributor Retires and thereby becomes entitled to be paid the Benefit provided by rule 6.2 of these Sub-Division B Rules and the Trustee is satisfied that that Contributor would have been entitled to be paid the Benefit provided by rule 6.4 of these Sub-Division B Rules if the Early Retirement Age had been 60 years,

that Contributor may elect to convert to a pension in accordance with:

- (c) rule 19.5 of these Sub-Division B Rules; or
- (d) rule 19.6 of these Sub-Division B Rules,

benefits points to which he or she is entitled.

16.7.2 The benefit points to which the election referred to in rule 16.7.1 of these Sub-Division B Rules relates are the Transferred RF Contributor's Accrued Benefit Points and Prospective Benefit Points.

16.7.3 If the Transferred RF Contributor does not elect to convert all of the benefit points specified in rule 16.7.2 of these Sub-Division B Rules into a pension, the proportion of Accrued Benefit Points and Prospective Benefit Points which was not so converted shall be applied towards the payment of a lump sum benefit in accordance with rules 6.2 or 6.4 of these Sub-Division B Rules, as the case may require.

## **16.8 Pension rights: death**

16.8.1 If the Spouse of a deceased Transferred RF Contributor becomes entitled to be paid:

- (a) the Benefit provided by rule 6.2 of these Sub-Division B Rules; or
- (b) the Benefit provided by rule 6.3 of these Sub-Division B Rules,

that Spouse may elect to convert to a pension in accordance with rule 19.7 of these Sub-Division B Rules the Benefit points to which that Contributor was entitled at death.

16.8.2 The benefit points in respect of which an election under rule 16.8.1 of these Sub-Division B Rules may be made are the Accrued Benefit Points and Prospective Benefit Points which would have accrued to the Transferred RF Contributor had that Contributor become entitled to a Benefit under rule 6.4 of these Sub-Division B Rules.

16.8.3 If the Spouse of a Transferred RF Contributor does not elect to convert to a pension all of the benefit points referred to in rule 16.8.2 of these Sub-Division B Rules, the proportion of Accrued Benefit Points and Prospective Benefit Points which has not been so converted shall be applied towards the payment of a lump sum benefit in accordance with rules 6.2 or 6.3 of these Sub-Division B Rules, as the case may require.

## **16.9 Payment of pensions**

A pension is payable to or in respect of a former Transferred RF Contributor in accordance with rules 19 and 20 of these Sub-Division B Rules.

## **16.10 Minimum Benefit in certain cases**

16.10.1 If the amount of a Benefit that would, but for this rule 16.10, be payable under:

- (a) rule 6.3 of these Sub-Division B Rules;
- (b) rule 6.4 of these Sub-Division B Rules; or
- (c) rule 6.5 of these Sub-Division B Rules,

to or in respect of a Transferred RF Contributor would be less than a lump sum benefit calculated in respect of that Contributor in accordance with rule 16.10.2 of these Sub-Division B Rules, the Trustee shall, instead of paying the first-mentioned Benefit, pay that lump sum benefit to that Contributor or, if the case so requires, to such person as would have been entitled under rule 6.3 of these Sub-Division B Rules to the first-mentioned Benefit.

16.10.2 The lump sum Benefit referred to in rule 16.10.1 of these Sub-Division B Rules shall be calculated in accordance with the following formula:

$$Z = \frac{A}{30} \times (10 + \frac{N}{12})$$

where:

- Z** represents the lump sum Benefit to be calculated;
- A** represents the Final Salary for the Transferred RF Contributor concerned; and

- N** represents the number of periods for that Contributor which would have been Applicable Contribution Periods for that Contributor if:
- (a) the *State Authorities Superannuation Act 1987* (NSW), Division B of Active Super or these Sub-Division B Rules had been in force at that Contributor's Entry Date; and
  - (b) that Contributor had become a contributor or Contributor (as applicable) under the *State Authorities Superannuation Act 1987* (NSW), Division B of Active Super or these Sub-Division B Rules on that date.

16.10.3 Whenever the Trustee pays a Benefit in accordance with this rule 16.10, it shall:

- (a) debit the Additional Benefit Reserve with the amount of the Additional Benefit which would have been payable if an Additional Benefit had been paid under these Sub-Division B Rules; and
- (b) debit the remainder to the appropriate employer reserve.

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## 17. Special Provisions for Former Transport Fund Contributors

### 17.1 Definitions

In this rule 17:

**former Act** means the *Transport Employees Retirement Benefits Act 1967* (NSW).

**Transferred TF Contributor** means a person who has become a 'contributor' (as that term is defined in the *State Authorities Superannuation Act 1987* (NSW)) to the new Fund by virtue of clause 3 of Schedule 3 of the *State Authorities Superannuation Act 1987* (NSW) after having become a 'contributor' to the earlier Fund by virtue of the *Public Authorities Superannuation (Transport Retirement Fund Closure) Regulation 1986* (NSW).

### 17.2 Application of certain definitions to Transferred TF Contributors

17.2.1 For the purpose of applying the definition of **Prospective Benefit Points** in rule 6.1 of these Sub-Division B Rules to a Transferred TF Contributor, the reference in that definition to Applicable Contribution Periods shall be construed as including any period occurring before that Contributor's Entry Date where that period would have been taken into account in calculating a Benefit payable to that Contributor under the *New South Wales Retirement Benefits Act 1972* (NSW) if:

- (a) the Benefit had become payable immediately before 1 April 1988;
- (b) that Contributor had been entitled to a Benefit under the *State Authorities Superannuation Act 1987* (NSW), Division B of Active Super or these Sub-Division B Rules; and
- (c) the *State Authorities Superannuation Act 1987* (NSW), Division B of Active Super or these Sub-Division B Rules had been in force at the relevant time.

17.2.2 For the purpose of applying the definition of **average contribution rate per cent** in rule 6.1 of these Sub-Division B Rules to a Transferred TF Contributor, that



definition shall be construed as if a reference in it to the sum of the rates per cent of Salary at which a Contributor was liable to pay a Contribution for a Contribution Period were a reference to the sum of benefit points accrued by the Transferred TF Contributor.

### **17.3 Pension rights: exit after age 60**

17.3.1 A Transferred TF Contributor who, having attained 60 years of age on or before the Contributor's Exit Date, Retires and thereby becomes entitled to be paid the Benefit provided by rule 6.2 of these Sub-Division B Rules may elect to convert to a pension in accordance with:

- (a) rule 19.3 of these Sub-Division B Rules; or
- (b) rule 19.4 of these Sub-Division B Rules,

benefit points to which that Contributor is entitled.

17.3.2 The benefit points in respect of which an election may be made under rule 17.3.1 of these Sub-Division B Rules are the Transferred TF Contributor's Accrued Benefit Points.

17.3.3 Those benefit points which the Transferred TF Contributor does not elect to convert to a pension shall be applied towards payment of a lump sum benefit in accordance with rule 6.2 of these Sub-Division B Rules.

### **17.4 Pension rights: total and permanent invalidity**

17.4.1 If:

- (a) a Transferred TF Contributor becomes entitled to be paid the Benefit provided by rule 6.4 of these Sub-Division B Rules; or
- (b) a Transferred TF Contributor retires and thereby becomes entitled to be paid the Benefit provided by rule 6.2 of these Sub-Division B Rules and the Trustee is satisfied that a Benefit would have been payable to that Contributor under rule 6.4 of these Sub-Division B Rules if the Early Retirement Age had been 60 years,

that Contributor may elect to convert to a pension in accordance with:

- (c) rule 19.5 of these Sub-Division B Rules; or
- (d) rule 19.6 of these Sub-Division B Rules,

benefit points to which that Contributor is entitled.

17.4.2 The benefit points to which the election referred to in rule 17.4.1 of these Sub-Division B Rules relates are the Transferred TF Contributor's Accrued Benefit Points and Prospective Benefit Points.

17.4.3 If the Transferred TF Contributor concerned does not elect to convert all of the benefit points specified in rule 17.4.2 of these Sub-Division B Rules into a pension, the proportion of Accrued Benefit Points and Prospective Benefit Points which was not so converted shall be applied towards the payment of a lump sum benefit in accordance with rule 6.2 or 6.4 of these Sub-Division B Rules, as the case may require.

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## 18. Special Provisions for Certain Former Local Government Scheme Contributors

### 18.1 Definitions

18.1.1 In this rule 18:

**applicable month** has the meaning that that expression had under section 24 of the earlier Act.

**former Act** means the *Local Government and Other Authorities (Superannuation) Act 1927* (NSW).

**notional accumulation**, in relation to a Transferred LGA Contributor, means an amount equal to the sum of:

- (a) the amounts credited to the appropriate employer reserve established under the former fund in accordance with rule 6(3) of the *Public Authorities Superannuation (Closed Local Government Schemes Transfer) Regulation 1986* (NSW) in respect of that Contributor;
- (b) in respect of each applicable month in relation to that Contributor under the earlier Act, an amount equal to:
  - (i) 5.25% of the Salary of that Contributor, multiplied by the Salary Ratio of that Contributor in respect of that month as determined by the Trustee, based on the rate of Salary determined under section 6 of the earlier Act in respect of that month; or
  - (ii) 1.5 times the Contributions paid or payable by that Contributor in that month under the earlier Act,

whichever is the less; and

- (c) in respect of each Applicable Contribution Period since 1 April 1988, an amount equal to:
  - (i) 5.25% of the Salary of that Contributor, multiplied by the Salary Ratio of that Contributor in respect of that period, based on the rate of salary determined under rule 4.8 of these Sub-Division B Rules in respect of that period; or
  - (ii) 1.5 times the Contributions paid or payable by that Contributor under these Sub-Division B Rules,

whichever is the less, together with interest at a rate or rates determined by the Trustee, but reduced by an amount or amounts calculated in such manner as the Trustee may determine in respect of the costs of administering the scheme and such other charges as may be determined by the Trustee.

**Transferred LGA Contributor** means a person who has become a 'contributor' (as that term is defined in the *State Authorities Superannuation Act 1987* (NSW)) to the new Fund by virtue of clause 3 of Schedule 3 of the *State Authorities Superannuation Act 1987* (NSW) after having become a 'contributor' to the earlier Fund by virtue of the *Public Authorities Superannuation (Closed Local Government Schemes Transfer) Regulation 1986* (NSW).

## 18.2 Application of certain definition to Transferred LGA Contributors

For the purpose of applying the definition of **Prospective Benefit Points** in rule 6.1 of these Sub-Division B Rules to a Transferred LGA Contributor, the reference in that definition to **Applicable Contribution Period** shall be construed in such a way as to exclude from calculation any service which occurred before that Contributor's date of transfer to the earlier Fund under the *Public Authorities Superannuation (Closed Local Government Schemes Transfer) Regulation 1986* (NSW).

## 18.3 Benefit to be adjusted in certain circumstances

The provisions of rule 15.3 of these Sub-Division B Rules apply to a Transferred LGA Contributor as if that Contributor were a Transferred LGA Contributor to whom rule 15 of these Sub-Division B Rules applies if the Transferred LGA Contributor, in the opinion of the Trustee, has received or will receive:

- (a) in the case of a Transferred LGA Contributor whose service was terminated, or who died, before 1 July 1993 - a gratuity under section 97 of the *Local Government Act 1919* (NSW), or
- (b) in the case of a Transferred LGA Contributor whose service is terminated, or who dies, on or after that date - a similar gratuity, being paid or to be paid by the council as an act of grace on the death or termination of service of an Employee of the council and calculated by reference to the period of the Employee's service with the council.

## 18.4 Minimum Benefit for qualified Transferred LGA Contributors

18.4.1 This rule 18.4 applies to a Transferred LGA Contributor who:

- (a) was, immediately before becoming a Contributor to the earlier Fund, a Contributor to the Superannuation Benefits Fund established under section 15S of the former Act; and
- (b) becomes covered for the Additional Benefit under the *State Authorities Superannuation Act 1987* (NSW), Division B of Active Super or these Sub-Division B Rules or, by virtue of rule 14.2 of these Sub-Division B Rules, is taken to be covered for that Additional Benefit.

18.4.2 If a Benefit under:

- (a) rule 6.3 of these Sub-Division B Rules; or
- (b) rule 6.4 of these Sub-Division B Rules,

becomes payable to or in respect of a Transferred LGA Contributor to whom this rule 18.4 applies, the Employer-Financed Benefit shall be not less than the amount determined under rule 18.4.3 of these Sub-Division B Rules.

18.4.3 The amount to be determined for the purposes of rule 18.4.2 of these Sub-Division B Rules is the sum of:

- (a) the notional accumulation; and
- (b) the amount calculated in accordance with the following formula:

$$A = M \times S$$

where:

- A** represents the amount to be calculated;
- M** represents the number under the heading "Multiplier of Salary" in rule 21 of these Sub-Division B Rules opposite the age specified in years in rule 21 of these Sub-Division B Rules that was the age of the Transferred LGA Contributor concerned at that Contributor's Exit Date; and
- S** represents:
- (i) if the Transferred LGA Contributor contributed to the new Fund at the rate of 1% of Salary - two-sevenths of the Transferred LGA Contributor's Final Salary;
  - (ii) if the Transferred LGA Contributor contributed to the new Fund at the rate of 2% of Salary - four-sevenths of the Transferred LGA Contributor's Final Salary;
  - (iii) if the Transferred LGA Contributor contributed to the new Fund at the rate of 3% of Salary - six-sevenths of the Transferred LGA Contributor's Final Salary; or
  - (iv) if the Transferred LGA Contributor contributed to the new fund at a rate exceeding 3% of Salary - the Transferred LGA Contributor's Final Salary.

18.4.4 In rule 18.4.3 of these Sub-Division B Rules, a reference to a **rate**, in relation to a Transferred LGA Contributor, is a reference to the rate at which the Contributor last elected or is taken to have last elected to contribute immediately before the Benefit became payable.

## 18.5 Debiting of accounts

Whenever the Trustee pays a Benefit in accordance with rule 18.4 of these Sub-Division B Rules, the Trustee shall:

- (a) debit the Additional Benefit Reserve with the amount of the Additional Benefit which would have been payable if an Additional Benefit had been paid under these Sub-Division B Rules; and
- (b) debit the remainder to the appropriate employer reserve.

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## 19. Pensions

### 19.1 Election by Transferred Contributor to take pension Benefit

19.1.1 An election by a Transferred Contributor or the Spouse of a Transferred Contributor to take a pension Benefit under rules 14 to 21 of these Sub-Division B Rules shall:

- (a) be in a form approved by the Trustee;
- (b) be signed by that Contributor or Spouse, as the case requires;
- (c) specify such matters and be accompanied by such information as the Trustee may require;

- (d) specify the proportion of benefit points to be converted to a pension, the proportion being the same for each class of benefit points which may be so converted; and
- (e) be lodged at the office of the Trustee within the period of 3 months (or such extended period as the Trustee may in special circumstances allow) that immediately follows that Contributor's Exit Date or, if the case requires, the day on which that Contributor died.

19.1.2 The Trustee is entitled to act on the information provided in accordance with rule 19.1.1 of these Sub-Division B Rules.

## **19.2 Payment of pension Benefit**

19.2.1 If a Transferred Contributor has elected to take a pension benefit under rules 14 to 21 of these Sub-Division B Rules, that Benefit shall be calculated with effect from that Contributor's Exit Date and is payable in equal fortnightly instalments.

19.2.2 If the Spouse of a deceased Transferred Contributor has elected to take a pension Benefit under rules 14 to 21 of these Sub-Division B Rules, that Benefit shall be calculated with effect from the date of death of that Contributor and is payable in equal fortnightly instalments.

## **19.3 Employer-financed pension: normal retirement without reversion**

19.3.1 When an election is made by a Transferred Contributor to take the pension Benefit provided by this rule 19.3, the pension shall be calculated in accordance with the following formula:

$$P = S \times C \times 0.002778 \times (1 - 0.025 \times T)$$

where:

**P** represents the annual pension payable;

**S** represents the Transferred Contributor's Final Average Salary;

**C** represents the number of Benefit points to which the election relates; and

**T** represents the number of whole years by which that Contributor's Exit Date precedes the date of his or her 65th birthday.

19.3.2 For the purposes of symbol "T" in rule 19.3.1 of these Sub-Division B Rules, a fraction of a year which does not form part of a whole year counts as a whole year.

## **19.4 Employer-financed pension: normal retirement with reversion**

When an election is made by a Transferred Contributor to take the pension Benefit provided by this rule 19.4, the pension shall be calculated in accordance with the following formula:

$$P = S \times C \times 0.002223 \times (1 - 0.025 \times T)$$

where:

**P, S, C** and **T** have the same meanings as in rule 19.3 of these Sub-Division B Rules.

## 19.5 Employer-financed pension: invalidity without reversion

When an election is made by a Transferred Contributor to take the pension Benefit provided by this rule 19.5, the pension shall be calculated in accordance with the following formula:

$$P = S \times C \times 0.002778$$

where:

**P** and **C** have the same meanings as in rule 19.3 of these Sub-Division B Rules;  
and

**S** represents the Transferred Contributor's Final Salary.

## 19.6 Employer-financed pension: invalidity with reversion

When an election is made by a Transferred Contributor to take the pension benefit provided by this rule 19.6, the pension shall be calculated in accordance with the following formula:

$$P = S \times C \times 0.002223$$

where:

**P** and **C** have the same meanings as in rule 19.3 of these Sub-Division B Rules;  
and

**S** represents the Transferred Contributor's Final Salary.

## 19.7 Employer-financed pension: Spouse

When an election is made by the Spouse of a deceased Transferred Contributor to take the pension benefit provided by this rule 19.7, the pension shall be calculated in accordance with the following formula:

$$P = S \times C \times 0.002223 \times 0.625$$

where:

**P** and **C** have the same meanings as in rule 19.3 of these Sub-Division B Rules;  
and

**S** represents:

- (a) the Transferred Contributor's Final Average Salary if that Contributor died after attaining the age of 60 years; or
- (b) the Transferred Contributor's Final Salary if that Contributor died before attaining that age.

## 19.8 Duration of pensions

19.8.1 If a pension under rules 19.4 or 19.6 of these Sub-Division B Rules is payable:

- (a) that pension is payable during the lifetime of the Transferred Contributor;  
and
- (b) on the death of that Contributor, a pension is payable to the Spouse of that Contributor for life at an annual rate equal to 62.5% of the annual

rate of pension that was payable to that Contributor immediately before that death.

19.8.2 If a pension under rules 19.3 or 19.5 of these Sub-Division B Rules is payable, that pension is payable only during the lifetime of the Transferred Contributor concerned.

19.8.3 If a pension under rule 19.7 of these Sub-Division B Rules is payable, that pension is payable only during the lifetime of the Spouse of the Transferred Contributor concerned.

19.8.4 In this rule 19.8:

**spouse**, in relation to a pension payable under rules 19.4, 19.6 or 19.7 of these Sub-Division B Rules, means the person who was the Spouse of the Transferred Contributor concerned at the time when the election to take the pension was made.

## 19.9 Pensions in respect of children and orphans

19.9.1 In this rule 19.9:

**dependent child**, in relation to a deceased Transferred LGP Contributor, means:

- (a) a child of that Contributor who has not attained 16 years of age; or
- (b) a child of that Contributor, who has attained 16 years of age but not 25 years of age and who is, in the opinion of the Trustee, receiving full-time education at a school, college or university and not ordinarily employed or engaged in working for remuneration,

and who in either case was, in the opinion of the Trustee, wholly or substantially financially dependent on the Transferred LGP Contributor immediately before that Contributor's death.

**notional pension**, in relation to the Spouse of a deceased Transferred LGP Contributor or pensioner, means:

- (a) where the Spouse is entitled to receive the pension provided by rules 19.4 or 19.6 of these Sub-Division B Rules, the pension that would have been payable to the deceased if he or she had elected to take the pension so provided and had lived; or
- (b) where the Spouse is entitled to receive the pension provided by rule 19.7 of these Sub-Division B Rules, the pension that would have been payable to the deceased if he or she had suffered total and permanent invalidity instead of death and had elected to take the pension provided by rule 19.6 of these Sub-Division B Rules.

**pensioner** means a person entitled to receive a pension payable in accordance with rules 15.8, 15.9 or 15.10 of these Sub-Division B Rules.

**Transferred LGP Contributor** has the same meaning as in rule 15 of these Sub-Division B Rules.

19.9.2 The provisions of this rule 19.9 apply to the Spouse of a deceased pensioner in the same way as they apply to the Spouse of a deceased Transferred LGP Contributor.

19.9.3 If a Transferred LGP Contributor or a pensioner dies leaving a dependent child, the Trustee shall:

- (a) in respect of the child, pay a pension to the Spouse of that deceased Contributor or pensioner or the guardian of the child; or
  - (b) if the Trustee thinks fit, expend the pension for the benefit of the child in such manner as it may determine.
- 19.9.4 A pensioner in respect of whom there exists a notional pension is entitled to only so much of the pension or pensions under rule 19.9.3 of these Sub-Division B Rules as would, when added to the pensioner's actual pension, not exceed that notional pension.
- 19.9.5 A pension payable under rule 19.9.3 of these Sub-Division B Rules ceases to be payable in respect of a child when the child ceases to be a dependent child.
- 19.9.6 Subject to any periodical adjustment effected as a result of the operation of rule 20 of these Sub-Division B Rules the rate of pension payable under rule 19.9.3 of these Sub-Division B Rules in respect of a child is:
- (a) if a parent of the child is living, a fortnightly amount of \$58.86; or
  - (b) in any other case, a fortnightly amount of \$139.76.

## 19.10 Definitions

In this rule 19 (other than rule 19.9), **Transferred Contributor** means, as the case requires, a Transferred PAS Contributor, a Transferred LGP Contributor, a Transferred RF Contributor, a Transferred TF Contributor or a Transferred LGA Contributor.

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## 20. Periodic Adjustment of Pensions

### 20.1 Definitions

20.1.1 In this rule 20:

**adjustment date**, in relation to an adjustment period, means the first day of the pension pay period that ends on the first pension pay day in the October that next follows that adjustment period.

**adjustment percentage**, in relation to an adjustment period, means, subject to rule 20.3.2 of these Sub-Division B Rules, the percentage for that period calculated in accordance with rule 20.3 of these Sub-Division B Rules.

**adjustment period** means:

- (a) the period of 6 months beginning on 1 January 1989; or
  - (b) the period of 12 months beginning on 1 July 1989; or
  - (c) the period of 12 months beginning on 1 July in any subsequent year,
- as the case requires.

**December quarter** means the quarter commencing on 1 October in each year.

**index number** in relation to a June quarter, means the number for that June quarter appearing in the Consumer Price Index (All Groups Index) for Sydney published by the Commonwealth Statistician under applicable Commonwealth law.



**June quarter** means the quarter commencing on 1 April in each year.

**quarter**, in relation to a year, means the period of 3 months commencing on 1 January, 1 April, 1 July or 1 October in that year.

20.1.2 If a pension is to be adjusted under this rule 20 by reference to the adjustment percentage for an adjustment period, a reference (however expressed) in this rule 20 to adjusting the pension is a reference to:

- (a) where the adjustment percentage is calculated in accordance with the formula set out in rule 20.3.1(a) of these Sub-Division B Rules, increasing the pension; or
- (b) where the adjustment percentage is calculated in accordance with the formula set out in rule 20.3.1(b) of these Sub-Division B Rules, reducing the pension.

## **20.2 Restriction on automatic adjustment of pension**

20.2.1 If the Trustee is of the opinion that an increase in accordance with this rule 20 in the pension payable to a person would prejudicially affect that person as regards some advantageous situation in which, but for being so affected, that person would be placed, the Trustee may:

- (a) determine not to pay the amount of the increase; or
- (b) determine to pay a specified increase of a lesser amount; or
- (c) determine to decrease the pension to a specified amount.

20.2.2 A determination made under rule 20.2.1 of these Sub-Division B Rules has effect according to its tenor, and once the determination has had effect a person is not entitled to be paid or to recover any amount that would have been payable but for the determination.

20.2.3 A determination made under rule 20.2.1 of these Sub-Division B Rules must be disregarded in calculating a pension payable to the Spouse of a deceased pensioner to whom the determination relates but such a determination may be made in relation to the pension so calculated.

## **20.3 Calculation of adjustment percentage**

20.3.1 For the purposes of the definition of **adjustment percentage** in rule 20.1 of these Sub-Division B Rules, the percentage for an adjustment period is to be calculated:

- (a) if, in relation to the adjustment period beginning on 1 January 1989, the index number for the June quarter in that period was greater than the index number for the immediately preceding December quarter or, if in relation to the adjustment period beginning on 1 July 1989 or 1 July in any subsequent year, the index number for the June quarter was greater than the index number for the immediately preceding June quarter in accordance with the following formula:

$$P = \frac{100 (C - L)}{L}; \text{ or}$$

- (b) if, in relation to the adjustment period beginning on 1 January 1989, the index number for the June quarter in that period was less than the index number for the immediately preceding December quarter or, if in relation to the adjustment period beginning on 1 July 1989 or 1 July in any

subsequent year, the index number for the June quarter was less than the index number for the immediately preceding June quarter in accordance with the following formula:

$$P = \frac{100 (L - C)}{L}$$

where, in the case of either formula:

- P** represents the percentage to be obtained; and
- C** represents the index number for the June quarter in the adjustment period concerned; and
- L** represents the index number for the immediately preceding December quarter or the immediately preceding June quarter, as the case requires.

20.3.2 There is to be no adjustment percentage for an adjustment period if:

- (a) the percentage calculated for that period in accordance with this rule 20.3 is less than 1.1%; or
- (b) the index number for the June quarter in that period is the same as the index number for the immediately preceding June quarter.

20.3.3 If there is to be no adjustment percentage for an adjustment period, then, for the purposes of calculating the percentage for the next adjustment period:

- (a) the index number for the June quarter in the first-mentioned period is to be taken to have not been published; and
- (b) the index number for that quarter is to be taken to be the same as the index number for the June quarter in the last year for which there was an adjustment percentage.

20.3.4 If at any time, whether before, on or after 1 January 1989, the Commonwealth Statistician has published, or publishes in respect of a particular June quarter an index number in substitution for an index number previously published by him or her in respect of that quarter, then, for the purposes of this rule 20 the publication of the later index number must be disregarded.

20.3.5 Despite rule 20.3.4 of these Sub-Division B Rules, if at any time after 1 January 1989 the Commonwealth Statistician has changed the reference base for the Consumer Price Index (All Groups Index) for Sydney, then, for the purposes of the application of this rule 20 (after the change takes place), regard must be had only to index numbers published in terms of the new reference base.

## **20.4 Adjustment of pensions: general cases**

20.4.1 Subject to this rule 20, if there is an adjustment percentage for a particular adjustment period, the pension payable on the adjustment date for that period to a person to whom this rule 20.4 applies is adjusted, on and from that adjustment date, by that percentage.

20.4.2 This rule 20.4 applies:

- (a) to a person who last became a pensioner on or before the first day of that particular adjustment period concerned; and
- (b) to a person who is the Spouse of a deceased pensioner, where that deceased pensioner last became a pensioner on or before the first day

of the particular adjustment period concerned and died before the adjustment date for that period.

## **20.5 Adjustment of pensions: partial adjustment**

20.5.1 This rule 20.5 applies:

- (a) to a person who last became a pensioner during the period beginning with the first day of the particular adjustment period concerned and ending with 31 March next following; and
- (b) to a person who is the Spouse of a deceased pensioner, where that deceased pensioner last became a pensioner during the period beginning with the first day of the particular adjustment period concerned and ending with 31 March next following and died before the adjustment date for that adjustment period.

20.5.2 Subject to this rule 20 if there is an adjustment percentage for a particular adjustment period, the pension payable on the adjustment date for that period to a person to whom this rule 20.5 applies is adjusted, on and from that adjustment date, by the percentage calculated in accordance with the formula set out in rule 20.5.3 of these Sub-Division B Rules.

20.5.3 The formula referred to in rule 20.5.2 of these Sub-Division B Rules is:

- (a) where the adjustment period is the adjustment period beginning on 1 January 1989;

$$A = P \times \frac{Q}{2}$$

- (b) where the adjustment period is the adjustment period beginning on 1 July 1989 or on 1 July in any subsequent year:

$$A = P \times \frac{Q}{4}$$

where, in the case of either formula:

- A** represents the percentage by which the pension is to be adjusted; and
- P** represents the adjustment percentage for the particular adjustment period; and
- Q** represents the number of whole quarters of the particular adjustment period, being the whole quarters after, and (if applicable) the whole quarter on the first day of which:
  - (i) in the case of a person referred to in rule 20.5.1(a) of these Sub-Division B Rules the person last become a pensioner; or
  - (ii) in the case of a person referred to in rule 20.5.1(b) of these Sub-Division B Rules the deceased Spouse of that person last became a pensioner.

## 20.6 Minimum amount to which pensions may be reduced

Irrespective of anything in this rule 20:

- (a) a pension (other than a pension payable to a person by virtue of that person being the Spouse of a pensioner) must not be reduced below the fortnightly amount that would have been payable but for this rule 20 and
- (b) a pension payable to a person by virtue of that person being the Spouse of a pensioner must not be reduced below the fortnightly amount that would have been payable by reference to the pension that would have been payable to the former pensioner but for this rule 20.

## 20.7 Calculation of percentages

If a percentage that is calculated under this rule 20 is or includes a fraction of one-tenth of 1%, then:

- (a) if the fraction is less than one-half of one-tenth the fraction is to be disregarded; and
- (b) if the fraction is not less than one-half of one-tenth the fraction is to be treated as one-tenth.

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## 21. Scale for calculating additional death benefits and additional disablement benefits

Age in years at Exit Date	Multiplier of Salary	Age in year at Exit Date	Multiplier of Salary
20, or under 20	6.0	40	2.50
21	5.8	41	2.35
22	5.6	42	2.20
23	5.4	43	2.05
24	5.2	44	1.90
25	5.0	45	1.75
26	4.8	46	1.60
27	4.6	47	1.45
28	4.4	48	1.30
29	4.2	49	1.15
30	4.0	50	1.00
31	3.85	51	0.9
32	3.70	52	0.8
33	3.55	53	0.7
34	3.40	54	0.6
35	3.25	55	0.5
36	3.10	56	0.4
37	2.95	57	0.3
38	2.80	58	0.2
39	2.65	59	0.1
		60, or over 60	0

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## 22. Other contributors transferred under the Transfer Regulations

- 22.1.1 In respect of those transferred contributors transferred to Active Super pursuant to clause 11 of the LGSS Transfer Regulation, the Benefits of those members (where they become Members of this Sub-Division) shall be determined in accordance with the provisions of the Acts and Regulations set out in rule 22.1.2 of these Sub-Division B Rules below insofar as they apply to each of those members.
- 22.1.2 The Acts and Regulations referred to in rule 22.1.1 of these Sub-Division B Rules are:
- (a) the *New South Wales Retirements Benefits Act 1972* (NSW);
  - (b) the *Local Government & Other Authorities (Superannuation) Act 1927* (NSW);
  - (c) the *Public Authorities Superannuation Act 1985* (NSW);
  - (d) the *Transport Employees Retirement Benefits Act 1967* (NSW); and
  - (e) Parts 2, 3 and 6 of the *State Authorities Superannuation (Transitional Provisions) Regulation 1988* (NSW).

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## Part 2 – Rules for Sub-Division C (SANCS)

### 1. Application and interpretation

#### 1.1 Application of these Sub-Division C Rules

The provisions of these Sub-Division C Rules relate only to Beneficiaries of Sub-Division C of the Division.

#### 1.2 Definitions

In these Sub-Division C Rules, unless the contrary intention appears:

**180 Point Member** means a Contributor to Sub-Division B who has 180 benefit points.

**Annual Leave** has the same meaning as that term is used in:

- (a) the *Local Government (State) Award 2023* (NSW);
- (b) any enterprise bargaining agreement governing a Member's entitlement to paid annual leave; or
- (c) any other agreement or legislation governing a Member's entitlement to paid annual leave.

**Attributed Salary**, in relation to a Member at any time, means:

- (a) where the Member is a Full-Time Employee at that time, the Salary of the Member at that time, or
- (b) where the Member is a Part-Time Employee at that time, the Salary that would be payable to the Member at that time if employed as a Full-Time Employee.

**Basic Benefit** means the Basic Benefit referred to in rule 4.2 of these Sub-Division C Rules.

**Chief Executive Officer** means:

- (a) a 'chief executive officer' or 'chief executive' within the meaning of the *Government Sector Employment Act 2013* (NSW); or
- (b) an employee (not being an officer referred to in paragraph (a)) of an authority specified in Schedule 1 of the *First State Superannuation Act 1992* (NSW), being an employee who holds an office designated by the Director-General (or equivalent) of the Premier's Department (or equivalent) as the office of a chief executive officer.

**Contribution Period** means a named month or such other period as may be determined by the Trustee in relation to any class of persons or circumstances.

**Co-contribution Amount** means the Contributions made by the Government and, at the Transfer Time, means the 'Co-contribution Amount' under Division C of Active Super immediately before the Transfer Time.

**Co-contribution Member** means a Member in respect of whom the Trustee receives a Co-contribution Amount and includes, in any event, anyone who was a 'Co-contribution Member' under Division C of Active Super immediately before the Transfer Time.

**Executive Officer** means an Employee who is:

- (a) a Chief Executive Officer, or
- (b) a Senior Executive Officer,
- (c) an office holder nominated for the purposes of section 11A of the *Statutory and Other Offices Remuneration Act 1975* (NSW); or
- (d) such other person as is nominated by the Employer in accordance with clause 8.3 of the Division Rules.

**Exit Date**, in relation to a Member, means the day on which the Member ceases employment with an Employer, that cessation of employment being:

- (a) the only such cessation; or
- (b) where there has been more than one such cessation of employment of the Member, the later or latest of those cessations of employment.

**Final Average Salary**, in relation to a Member, means the average of the Attributed Salaries paid or payable to the Member at the rates applicable:

- (a) on the Member's Exit Date;
- (b) on 31 December (or such other date as the Trustee may determine) last preceding the Member's Exit Date; and
- (c) on 31 December (or such other date as the Trustee may determine) last preceding the date referred to in paragraph (b).

**Final Salary**, in relation to a Member, means the rate of Attributed Salary paid or payable to the Member on the Member's Exit Date.

**Full-Time Employee** means a Member whose Salary Ratio is 1.

**Leave Payments** means:

- (a) payments in excess of full pay for Long Service Leave;
- (b) payments in exchange for giving up or reducing Long Service Leave entitlements;
- (c) payments in exchange for giving up or reducing Sick Leave entitlements; and
- (d) payments in exchange for giving up or reducing Annual Leave entitlements.

**Long Service Leave** has the same meaning as that term is used in:

- (a) the *Local Government (State) Award 2023* (NSW);
- (b) any enterprise bargaining agreement governing a Member's entitlement to long service leave; or
- (c) any other agreement governing a Member's entitlement to long service leave.

**Member** means a person who is a Member of this Sub-Division pursuant to clause 2.3 of the Division Rules and who has not ceased to be such a Member in accordance with the Division Rules.

**Other Contributions Account** means the Benefit Account established and maintained pursuant to rule 2.3 of these Sub-Division C Rules.

**Part-Time Employee** means a Member whose Salary Ratio is less than 1 but at least 0.1.

**Resign**, in relation to a Member, means cease to be employed by an Employer before reaching the age of 55 years, otherwise than on account of:

- (a) death, or
- (b) invalidity, where the Trustee is satisfied:
  - (i) that the ceasing to be employed was due, directly or indirectly to the permanent physical or mental incapacity of the Member (not caused by any act or default of the Member intended to produce that incapacity); and
  - (ii) that the Member is permanently unable, by reason of that incapacity, to be engaged in, or to be employed in, any remunerative occupation in which, in the opinion of the Trustee, it would otherwise be reasonable to expect the Member to engage.

**Retire** means cease (otherwise than by reason of death) in any manner to be employed by an Employer on or after reaching the age of 55 years.

**Retrenchment**, in relation to a Member, means the termination of the employment of the Member with an Employer where the employment is expressed by the Employer to be:

- (a) compulsorily terminated by the Employer on the ground that:
  - (i) the Employer no longer requires the Member's services and, on termination of the Member's employment, does not propose to fill the Member's position; or
  - (ii) the work that the Member was engaged to perform has been completed; or
  - (iii) the amount of work that the Employer requires to be performed has diminished and, due to that fact, it has become necessary to reduce the number of persons employed by the Employer; or
- (b) terminated as a result of the acceptance by the Member of an offer by the Employer of terms of retrenchment made on a ground specified in paragraph (a).

**Salary**, in relation to a Member, means Salary of the Member, determined in accordance with rules 1.3 or 1.4 of these Sub-Division C Rules and expressed as an annual rate.

**Salary Ratio**, in relation to a Member at any time during a Contribution Period, means the number ascertained by dividing the Salary of the Member at the commencement of that Contribution Period by the Attributed Salary of the Member at that commencement.



**Senior Executive Officer** means:

- (a) a 'senior executive' within the meaning of the *Government Sector Employment Act 2013* (NSW); or
- (b) an employee (not being an officer referred to in paragraph (a)) of an authority specified in Schedule 1 of the *First State Superannuation Act 1992* (NSW), being an employee who holds an office designated by the Director-General (or equivalent) of the Premier's Department (or equivalent) as the office of a senior executive officer.

**Sick Leave** has the same meaning as that term is used in:

- (a) the *Local Government (State) Award 2023* (NSW);
- (b) any enterprise bargaining agreement governing a Member's entitlement to sick leave; or
- (c) any other agreement governing a Member's entitlement to sick leave.

**Sub-Division** means this Sub-Division C of the Division.

**Superannuation Contribution Rate** means the minimum amount payable to a superannuation fund in respect of an Employee that is sufficient to avoid an individual superannuation guarantee shortfall, within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (Cth), in respect of the Employee.

## 1.3 Definition of Salary

### 1.3.1 Members employed under an award or industrial agreement

For the purposes of these Sub-Division C Rules, **Salary**, in relation to a Member (other than an Executive Officer or a Member on an individual contract (including an individual on an award regulated contract)) who is a Member employed under an award or registered industrial agreement means the sum of:

- (a) the monetary remuneration payable to the Member in the Member's capacity as Member, as reported to the Trustee from time to time by the Member's Employer (excluding any allowances or Leave Payments); plus
- (b) the amount of any allowances (including shift allowances) actually paid during the 12 months immediately preceding the date on which the Salary is calculated and which are taken to be 'ordinary time earnings' for the purposes of the Superannuation Guarantee Charge Acts; plus
- (c) the amount of any weekly workers' compensation payments which are to be taken as 'ordinary time earnings' for the purposes of the Superannuation Guarantee Charge Acts; plus
- (d) the value of the 'private use' component of a motor vehicle provided by the Member's Employer (if any); plus
- (e) the value of any child care facilities provided by the Member's Employer; plus
- (f) the amount of any voluntary employer (salary sacrifice) superannuation contributions; plus

- (g) the value of any other salary sacrifice arrangements and any associated fringe benefits tax payable on such other arrangements.

### 1.3.2 **Members employed on individual contracts (including those on award regulated contracts)**

For the purposes of these Sub-Division C Rules, **Salary**, in relation to a Member (other than an Executive Officer or a Member to whom rule 1.3.1 of these Sub-Division C Rules applies) who is also a Member employed on an individual contract basis (including an individual on an award regulated contract) means:

- (a) the Member's total salary package; less
- (b) the assessed annual cost to the Employer for providing benefits under the Division as determined by the Trustee.

1.3.3 If a Member is on secondment to another Employer, the Salary of the Member for the purposes of these Sub-Division C Rules is the Salary paid or payable to the Member by the other Employer.

1.3.4 The Employer may by notice in writing to Trustee determine, unconditionally or subject to conditions, that rule 1.3.5 of these Sub-Division C Rules applies:

- (a) to a particular Member who is on secondment but not to another Employer; and
- (b) generally during the period of that secondment, or during such other period as is determined, being, in either case, a period commencing before, on or after the date of the determination.

1.3.5 During the period in which this rule 1.3.5 is declared pursuant to rule 1.3.4 of these Sub-Division C Rules to apply to a Member on secondment, the Member's Salary shall, for the purposes of these Sub-Division C Rules, be that paid or payable in respect of the employment to which he or she is seconded.

1.3.6 In this rule 1.3:

**shift allowance** means an allowance paid to a Member in respect of shift work performed by the Member, and includes amounts paid as penalty rates.

**value** or **amount** means the amount or value specified by the Employer as forming part of the Member's total remuneration package, and if not specified by the Employer in the case of a benefit that requires a value, the value of the arrangement or contribution for fringe benefits tax purposes.

**weekly workers compensation**, in relation to a Member, means weekly payments of compensation under the *Workers Compensation Act 1987* (NSW) (or the provisions of the *Workers Compensation Act 1926* (NSW) as applied by that Act) payable to the Member because the Member is partially incapacitated for work through injury.

## 1.4 **Salary of Executive Officers**

1.4.1 For the purposes of these Sub-Division C Rules, the Salary of an Executive Officer is the salary as last nominated or changed in accordance with this rule 1.4.

1.4.2 An amount of Salary for the purposes of these Sub-Division C Rules must be nominated to an Executive Officer's Employer by the officer, on, or as soon as practicable after, being appointed as an Executive Officer. An amount may also

be nominated to the Employer by the officer on, or as soon as practicable after, being reappointed, or appointed to another position, as an Executive Officer.

- 1.4.3 The amount nominated is to be not less than the monetary remuneration payable to the Executive Officer at the date of nomination and not more than the total value of the remuneration package paid to the officer (less the cost of providing Employer's contributions to superannuation and any performance-related incentive payment).
- 1.4.4 If an Executive Officer fails to nominate an amount of Salary within 28 days of first being appointed as an Executive Officer or within such further period as the Trustee may allow, the officer is taken to have nominated an amount of Salary that is equal to the monetary remuneration payable to the officer at the end of the applicable period.
- 1.4.5 An Executive Officer may, from time to time, by notice to the officer's Employer elect to reduce the amount of Salary nominated under this rule 1.4, but not so that the amount is less than the monetary remuneration payable to the officer at the date of the election.
- 1.4.6 An Executive Officer may, from time to time, by notice to the officer's Employer elect to increase the amount of Salary nominated under this rule 1.4, but not so as to increase the amount nominated by a percentage of that amount that is more than the percentage by which the remuneration package of the officer has increased since the amount of Salary was last nominated or changed.
- 1.4.7 An Employer must notify the Trustee of a nomination or election under this rule 1.4. Any such nomination or election takes effect on the date of notification to the Trustee or on such other date as the Trustee may determine with the consent of the Executive Officer concerned.
- 1.4.8 Nothing in this rule 1.4 requires the nominated amount of salary to be increased if, because of a variation in the remuneration package of an Executive Officer or in the proportions of the remuneration package comprising monetary remuneration and employment Benefits of the officer, the amount of Salary as last nominated or changed for the purposes of this rule 1.4 is less than the monetary remuneration of the officer.
- 1.4.9 In this rule 1.4, the monetary remuneration payable to an Executive Officer is:
- (a) if the officer is a Chief Executive Officer or Senior Executive Officer, the monetary remuneration payable in accordance with the *Government Sector Employment Act 2013* (NSW); or
  - (b) if the officer is an office holder nominated for the purposes of section 11A of the *Statutory and Other Officer's Remuneration Act 1975* (NSW), the remuneration payable to the officer as reduced under that section by the cost of employment benefits provided to the officer; or
  - (c) if the person is nominated by the Employer in accordance with clause 8.3 of the Division Rules, the monetary remuneration payable to the officer.
- 1.4.10 For the purposes these Sub-Division C Rules, the monetary remuneration of an Executive Officer excludes any Leave Payments.

## **1.5 Determination of Eligible Service**

- 1.5.1 The eligible service accrued by a Member for any day is such proportion of a day as is equal to the Salary Ratio of the Member on that day.

- 1.5.2 A Member who is on leave without pay that is not prescribed leave has a Salary Ratio of 0 in respect of that leave.
- 1.5.3 A continuous period of leave without pay is not to be regarded as leave without pay for the purposes of this rule 1.5 if the period is not prescribed leave and the period is 5 days or less.
- 1.5.4 For the purposes of rules 1.5.2 and 1.5.3 of these Sub-Division C Rules:

**leave without pay**, in relation to a Member, means a period of leave from employment with an Employer (otherwise than on secondment as referred to in rule 1.3 of these Sub-Division C Rules) during which the Member is not entitled to receive payment of Salary from the Employer.

**prescribed leave**, in relation to a Member, means leave without pay during which the Member on leave is absent from employment with an Employer:

- (a) because of a grant of sick leave; or
- (b) for a period during which the Member receives periodic payments under an Act providing compensation for workers' injuries; or
- (c) because of a grant of maternity leave; or
- (d) under an agreement with the Employer for the secondment of the Member to employment that is not employment with a person who is not an Employer within the meaning of these Sub-Division C Rules; or
- (e) for the purpose of enabling the Member to perform trade union duties unless, in a particular case, the Employer certifies to the Trustee in writing that this paragraph is not to apply; or
- (f) for the purpose of enabling the Member to perform duties that the Employer certifies to the Trustee in writing to be in the interests of the Employer or the State; or
- (g) while on service with the naval, military or air forces of the Commonwealth; or
- (h) in other circumstances decided by the Trustee for the purposes of this rule 1.5.

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## **2. Maintenance and Administration of this Sub-Division**

### **2.1 Establishment and maintenance of funds**

2.1.1 The Trustee shall cause to be attributed to the Division, in respect of this Sub-Division:

- (a) contributions made by Employers;
- (b) investment performance of assets attributable to this Sub-Division (if positive);
- (c) money borrowed for the purposes of this Sub-Division; and
- (d) any other amounts payable to the Trustee in respect of this Sub-Division.

- 2.1.2 The Trustee shall cause to be attributed to the Division, in respect of this Sub-Division:
- (a) administration fees and costs incurred in respect of this Sub-Division;
  - (b) investment performance of assets attributable to this Sub-Division (if negative);
  - (c) any Tax payable that is attributable to this Sub-Division;
  - (d) the Benefits payable under these Sub-Division C Rules; and
  - (e) any other amounts payable by the Trustee (or to the Trustee in its personal capacity) in respect of or attributable to this Sub-Division.

## **2.2 Reserves for Employers**

- 2.2.1 The Trustee shall establish and maintain in respect of this Sub-Division a separate employer reserve, or separate employer reserves, as the case may be.
- 2.2.2 Without limiting clause 12.5 of the Deed, there shall be credited to such employer reserve the Contributions made by the Employer or Employers to whom the reserve relates.
- 2.2.3 Without limiting clause 12.5 of the Deed, there shall be debited to such employer reserve, the amount of any Benefit paid to, or in relation to, a Member who, immediately before the Benefit became payable, was an Employee of the Employer or an Employer to whom the reserve relates.
- 2.2.4 The Trustee may, after obtaining actuarial advice, adjust the amount credited to an employer reserve by crediting or debiting an amount, if it appears to the Trustee appropriate to do so because of a change in the constitution or nature of an Employer.
- 2.2.5 Rule 2.2.4 of these Sub-Division C Rules does not apply to a change in the constitution or nature of an Employer because of a Government privatisation initiative.

## **2.3 Co-contributions and other contribution amounts**

- 2.3.1 The Trustee shall establish a separate reserve in relation to co-contributions and other contributions and, within that reserve, a Benefit Account as an **Other Contributions Account** in respect of each Member.
- 2.3.2 Without limiting clause 12.6(c) of the Deed, the Trustee shall credit to each Other Contributions Account:
- (a) the Co-contribution Amount in relation to each Co-contribution Member; and
  - (b) any other amounts or contributions in respect of the Member; and
  - (c) any contributions made by an Employer in respect of a 180 Point Member under rule 3.1.5 of these Sub-Division C Rules.
- 2.3.3 Without limiting clause 12.6(c) of the Deed, the Trustee shall debit from each Other Contributions Account:
- (a) element "C" of the Basic Benefit payable under these Sub-Division C Rules in relation to the Member; and

- (b) any amount transferred in relation to the Member from this Sub-Division to the Accumulation and Pension Division.

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### **3. Contributions by Employers**

#### **3.1 Contributions**

- 3.1.1 If an Employee is employed by an Employer, the Employer must pay at such times as the Trustee may require, Contributions at a rate determined by the Trustee.
- 3.1.2 The rate is to be determined by the Trustee after obtaining actuarial advice.
- 3.1.3 In determining the contributions payable by an Employer, the Trustee is to have regard to the amount required to meet the full costs of the liabilities under these Sub-Division C Rules of all Employers.
- 3.1.4 The Trustee may require any such Employer to pay into the fund additional Contributions for a specified period if it appears to the Trustee that there is insufficient money in the reserve for Employers to meet the Employers' liabilities under these Sub-Division C Rules.

#### **3.1.5 Sub-Division B Employer contribution obligations**

If an Employee is a 180 Point Member employed by an Employer, the Employer must pay, at such times as the Trustee may require, contributions calculated as follows:

(a)  $C = S \times R$ ,

where:

**C** represents the contribution to be ascertained;

**S** represents the Salary of the 180 Point Member Employee;

**R** represents the rate to be applied, which is calculated as follows:

$$R = SG - F,$$

where

**SG** represents the Superannuation Contribution Rate for the applicable period;

**F** represents the rate of the Employer contribution cost for a 180 Point Member as determined by the Actuary in accordance with rule 5.1.4 of the Sub-Division B Rules; or

- (b) if the Trustee determines that R, as calculated in rule 3.1.5(a) of these Sub-Division C Rules, should not apply for a period, R for the purposes of rule 3.1.5(a) will be 6.50%.

### 3.2 Acceptance of contributions

The Trustee may determine, for the purposes of Superannuation Law, that it must not accept contributions by or in respect of a Member. The period during which such Contributions may not be made is not included as eligible service for the purposes of calculating the Basic Benefit.

### 3.3 Transfer of Members

The Trustee shall determine the value of the Basic Benefit at the date of cessation of employment with a former Employer and shall if the Trustee has separate employer reserves:

- (a) debit the Employer reserve of the former Employer with that value; and
- (b) credit the Employer reserve of the new Employer with that value.

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## 4. Benefits

### 4.1 Definitions

#### 4.1.1 In this rule 4:

**Final Average Salary**, in relation to a Member, means the average of the Attributed Salaries paid or payable to the Member at the rates applicable:

- (a) on the Member's Exit Date;
- (b) on 31 December (or such other date as the Trustee may determine) last preceding the Member's Exit Date; and
- (c) on 31 December (or such other date as the Trustee may determine) last preceding the date referred to in paragraph (b).

**Final Salary**, in relation to a Member, means the rate of Attributed Salary paid or payable to the Member on the Member's Exit Date.

#### 4.1.2 Different dates may be determined by the Trustee for the purposes of the definition of Final Average Salary in rule 4.1.1 of these Sub-Division C Rules, so as to apply differently according to different classes of Members.

### 4.2 Basic Benefit

#### 4.2.1 The Basic Benefit provided by these Sub-Division C Rules for a Member is an amount equal to the amount calculated in accordance with the formula:

$$B = (0.03 \times F \times Y) + C$$

where:

**B** represents the amount to be ascertained;

**F** represents:

- (a) in the case of the Member's death or Retrenchment, or the Member ceasing to be employed because of physical or mental incapacity, before reaching the age of 55 years the Member's Final Salary; or
- (b) in any other case the Member's Final Average Salary;

- Y** represents the years of eligible service on a daily basis, commencing on or after 1 April 1988; and
- C** represents the amount standing in the Other Contributions Account on the Member's Exit Date.

4.2.2 If the Trustee makes a determination under rule 4.7 of these Sub-Division C Rules in relation to a Basic Benefit to be provided by this rule 4.2, the amount of that Benefit is reduced by the amount specified in the Trustee's determination.

4.2.3 For the purpose of determining the amount of a Basic Benefit provided by rule 4.5 of these Sub-Division C Rules that becomes payable in respect of a person within 12 months after the person:

- (a) has been appointed as a Chief Executive Officer or Senior Executive Officer; or
- (b) has been nominated as an office holder for the purposes of section 11A of the *Statutory and Other Officer's Remuneration Act 1975* (NSW),

the person's Salary is taken to be his or her salary as a Member immediately before the appointment or nomination took effect.

### **4.3 Benefit immediately payable**

4.3.1 The Basic Benefit in respect of a person is payable by the Trustee when:

- (a) the person has satisfied a condition of release which does not have a nil cashing restriction – by transfer of the amount to the Accumulation and Pension Division; or
- (b) the person has satisfied a condition of release which has a nil cashing restriction; or
- (c) the person has produced to the Trustee written approval of APRA for payment of the Benefit; or
- (d) the Trustee has given approval for payment of the Benefit under guidelines established by APRA.

4.3.2 The Basic Benefit in respect of a person is payable by the Trustee if the person becomes eligible under an Approved Benefit Arrangement for a Benefit that is of the same kind as a Benefit provided by these Sub-Division C Rules and the Trustee has been requested to pay the Benefit to the Approved Benefit Arrangement.

4.3.3 The Basic Benefit in respect of a former Member is payable:

- (a) unless the former Member has died, in accordance with rule 4.3.2 of these Sub-Division C Rules or, subject to Superannuation Law, to the former Member; or
- (b) if the former Member has died, in accordance with clause 12.17 of the Division Rules.

4.3.4 For the purposes of the payment under rule 4.3.1(c) these Sub-Division C Rules of a Benefit on compassionate grounds or on the grounds of severe financial hardship, the Trustee may only pay the Benefit if the Trustee is satisfied that the circumstances are such that a Benefit would be payable on the grounds of severe financial hardship or compassionate grounds as the case may be.



- 4.3.5 If a person has been paid a benefit on compassionate grounds or on the grounds of severe financial hardship and the person subsequently becomes entitled to another Benefit under this Sub-Division, the Trustee must reduce the amount of the subsequent benefit to take into account the Benefit previously paid and associated loss of earnings to the Division.

#### **4.4 Benefit on attaining 65**

- 4.4.1 A person who attains 65 years of age may elect to be paid the Basic Benefit to which the person would be entitled on retirement at that age or may elect to defer the whole of the Benefit.
- 4.4.2 If an amount is deferred under this rule 4.4, it is payable in the same way as a Benefit under rule 4.5 of these Sub-Division C Rules.
- 4.4.3 A person to whom this rule 4.4 applies is not entitled to any other Benefit under these Sub-Division C Rules in respect of the same period of service, or to be paid or defer a Benefit under this rule 4.4 more than once.

#### **4.5 Benefit to be Deferred**

- 4.5.1 The Basic Benefit in respect of a person must be deferred by the Trustee if the Benefit is not otherwise payable under these Sub-Division C Rules.
- 4.5.2 The Basic Benefit must also be deferred by the Trustee when a Member becomes eligible under another Approved Benefit Arrangement for a Benefit that is of the same kind as a Benefit provided by these Sub-Division C Rules and the Trustee has not been requested to pay the Benefit to another Approved Benefit Arrangement.
- 4.5.3 The Basic Benefit deferred under this rule 4.5 must be paid by the Trustee when:
- (a) the person has satisfied a condition of release which has a nil cashing restriction; or
  - (b) the person has produced to the Trustee written approval of APRA for payment of the benefit; or
  - (c) otherwise where the Trustee is required to pay the Benefit under Superannuation.
- 4.5.4 The Basic Benefit in respect of a former Member is payable:
- (a) unless the former Member has died, in accordance with rule 4.3.2 of these Sub-Division C Rules or, subject to Superannuation Law, to the former Member; or
  - (b) if the former Member has died, in accordance with clause 12.17 of the Division Rules.

#### **4.6 Deferral of Benefit for Members in certain circumstances**

- 4.6.1 This rule 4.6 applies to a Member:
- (a) who, as a result of a single reduction of Salary, has undergone a reduction of 20% or more in Attributed Salary; and
  - (b) whose Employer certifies the matter referred to in paragraph (a).

- 4.6.2 The fact that a person undergoes more than one Attributed Salary reduction of 20% or more does not mean that the person ceases to be a person to whom this rule 4.6 applies.
- 4.6.3 In this rule 4.6, **exit date**, in relation to a Member to whom this rule 4.6 applies, means the day immediately preceding the day of the reduction in Attributed Salary in relation to which the Member makes an election under rule 4.6.4 of these Sub-Division C Rules.
- 4.6.4 A Member to whom this rule 4.6 applies may elect to defer his or her Benefit under these Sub-Division C Rules in accordance with this rule 4.6.
- 4.6.5 A Member may make only one election under this rule 4.6 but the election may relate to any single reduction in Attributed Salary of 20% or more (not just the first reduction that occurs).
- 4.6.6 The Benefit is deferred from the exit date.
- 4.6.7 The value of a deferred Benefit in respect of a Member to whom this rule 4.6 applies is to be calculated in accordance with rule 4.2 of these Sub-Division C Rules as if the Member had ceased employment.
- 4.6.8 A Benefit deferred under this rule 4.6 may only be paid in accordance with rule 4.5 of these Sub-Division C Rules.

#### **4.7 Power of the Trustee to reduce Benefits to offset certain Tax liabilities**

Whenever:

- (a) a right to a Benefit accrues to or in respect of a Member or former Member; and
- (b) the Trustee has paid or is liable to pay Tax in respect of Employers' contributions under this Sub-Division; and
- (c) a portion of that Tax is referable to that Benefit,

the Trustee must, subject to rule 4.8.1 of these Sub-Division C Rules:

- (d) calculate the amount necessary to offset the Trustee's liability to pay Tax so far as it is referable to that Benefit; and
- (e) accordingly, make a determination reducing the Benefit by the amount so calculated.

#### **4.8 Benefit Reduction Provisions**

##### **4.8.1 Prescription of Benefits**

- (a) The kinds of Benefits to which rule 4.7 of these Sub-Division C Rules applies are the Benefits provided by rules 4.1 and 4.5 of these Sub-Division C Rules.
- (b) The Benefits referred to in paragraph (a) do not include a Benefit payable as a result of the death of a Member.

#### 4.8.2 Reduction of Basic Benefit - ordinary cases

- (a) Whenever the Basic Benefit:
- (i) is payable under rule 4.3 of these Sub-Division C Rules in respect of a Member; or
  - (ii) is preserved in respect of a Member in accordance with rule 4.5,
- the reduction in Benefit prescribed for the purposes of rule 4.7 of these Sub-Division C Rules is the amount calculated in accordance with the formula set out in paragraph (b).
- (b) For the purposes of paragraph (a), the formula is:
- $$R = 0.03 \times F \times Z \times 0.15$$
- where:
- R** represents the amount of the reduction;
- F** represents:
- (a) in the case of the Member's resignation or retirement – the Member's Final Average Salary; or
  - (b) in any other case - the Member's Final Salary;
- Z** represents the Member's years of eligible service calculated on a daily basis, commencing on or after 1 July 1988.
- (c) This rule 4.8.2 does not apply if the Basic Benefit is payable as a result of the death of a person who was, immediately before death, a Member.

#### 4.9 Purchase of Non-Commutable Account-Based Pension

- 4.9.1 A Member may apply to have an amount transferred to the Accumulation and Pension Division to be applied in purchase of a Non-Commutable Account-Based Pension and such amount shall be debited to the Other Contributions Account.
- 4.9.2 The Trustee may make rules concerning transfer of amounts to the Accumulation and Pension Division including the minimum and maximum amounts that may be transferred, but in any event, the maximum amount that may be transferred to the Accumulation and Pension Division shall not exceed the net amount standing to the credit of the Other Contributions Account.

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### 5. Superannuation interest under the Family Law Act

Where a Family Law Order, a Superannuation Agreement or Flag Lifting Agreement applies, the value of the Non-Member Spouse's entitlement shall be calculated in accordance with the valuation methodology set out by the Actuary from time to time in accordance with the Family Law Act, and the Member's Superannuation Interest is reduced in accordance with the valuation methodology set out by the Actuary from time to time in accordance with the Family Law Act.

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## Part 3 – Rules for Sub-Division D (SSS)

### 1. Application and interpretation

#### 1.1 Application of Sub-Division D Rules

The provisions of these Sub-Division D Rules relate only to Beneficiaries of Sub-Division D of the Division.

#### 1.2 Definitions

1.2.1 In these Sub-Division D Rules, unless the contrary intention appears:

**Abandoned Unit**, in relation to a Member, means:

- (a) a unit of pension which the Member has, in accordance with these Sub-Division D Rules, elected to abandon;
- (b) a unit of pension in respect of which the Member is not to contribute, or has ceased contributing by reason of electing, in accordance with these Sub-Division D Rules, to reduce the number of units of pension in respect of which the Member is to contribute;
- (c) a unit of pension in respect of which the Member has, in accordance with these Sub-Division D Rules, elected not to contribute; or
- (d) a unit of pension the Contributions for which are refunded to the Member or the Member's Spouse under rule 9.2.3 of these Sub-Division D Rules;

but does not include a unit of pension to which an election under rule 6.1.2 of these Sub-Division D Rules relates.

**Annual Adjustment Day** in relation to a contributor, means the day determined to be the Contributor's Annual Adjustment Day under rule 4.2 of these Sub-Division D Rules.

**Annual Leave** has the same meaning as that term is used in:

- (a) the *Local Government (State) Award 2023* (NSW);
- (b) any enterprise bargaining agreement governing a Contributor's entitlement to paid annual leave; or
- (c) any other agreement or legislation governing a Contributor's entitlement to paid annual leave.

**Annual Review Day**, in relation to a Contributor, means the day determined to be the Contributor's Annual Review Day under rule 4.2 of these Sub-Division D Rules.

**Appointed Day** means 14 February 1966.

**Chief Executive Officer** means:

- (a) a 'chief executive officer' or 'chief executive' within the meaning of the *Government Sector Employment Act 2013* (NSW); or
- (b) an employee (not being an officer referred to in paragraph (a)) of an authority specified in Schedule 1 of the *First State Superannuation*

*Act 1992 (NSW)*, being an employee who holds an office designated by the Director-General (or equivalent) of the Premier's Department (or equivalent) as the office of a chief executive officer.

**Child** means a child who has not attained the age of 18 years and, without limiting the operation of any applicable New South Wales law, includes an ex-nuptial or adopted child (whether or not the adoption took place in Australia).

**Contribution Period** means a four-weekly period commencing on and including a date specified in Column 2 of rule 1.7 of these Sub-Division D Rules and ending on and including the date specified opposite thereto in Column 3 of that rule.

**Contributor** means a Member and includes a person who has elected to take the benefit of rule 16 of these Sub-Division D Rules, but does not include a Member while exempted from contributing under this Sub-Division and includes, in any event, anyone who was a 'Contributor' under Division D of Active Super immediately before the Transfer Time.

**Contributors' Reserve** means the reserve for Contributors' Contributions established and maintained under rule 2.2.1(a) of these Sub-Division D Rules.

**Contributory Unit** means a unit of pension other than a Reduced Value Unit, an Abandoned Unit or a reserve unit of pension under rule 11.7 of these Sub-Division D Rules.

**De Facto Relationship** has the meaning given to that expression by the Family Law Act.

**De Facto Spouse**, in relation to a person, means a person who is in a De Facto Relationship with the first person.

**Discharged** has the meaning given to that expression by rule 12.6.2 of these Sub-Division D Rules.

**Dismissed** has the meaning given to that expression by rule 12.9 of these Sub-Division D Rules.

**Eligible Salary Sacrifice Contributor** means a Contributor whose Employer has agreed to pay contributions by way of salary sacrifice to this Sub-Division and includes, in any event, anyone who was an 'Eligible Salary Sacrifice Contributor' under Division D of Active Super immediately before the Transfer Time.

**Employer Reserve** means a reserve referred to in rule 2.2.1(b) of these Sub-Division D Rules.

**Entry Payment Day**, in relation to a Member, means that Member's Entry Payment Day for the purposes of the *Superannuation Act 1916 (NSW)*.

**Executive Officer** means a Contributor who is:

- (a) a Chief Executive Officer;
- (b) a Senior Executive Officer;
- (c) an office holder nominated for the purposes of section 11A of the *Statutory and Other Offices Remuneration Act 1975 (NSW)*; or
- (d) such other person as is nominated by the Employer in accordance with clause 8.3 of the Division Rules.

**Exit Day**, in relation to a Member, means the last day on which the Member is, in the opinion of the Trustee, an Employee, whether he or she is an Employee for the whole or part only of that day.

**Financial Year** means the year commencing 1 July.

**Leave Payments** means:

- (a) payments in excess of full pay for Long Service Leave;
- (b) payments in exchange for giving up or reducing Long Service Leave entitlements;
- (c) payments in exchange for giving up or reducing Sick Leave entitlements; and
- (d) payments in exchange for giving up or reducing Annual Leave entitlements.

**Long Service Leave** has the same meaning as that term is used in:

- (a) the *Local Government (State) Award 2023* (NSW);
- (b) any enterprise bargaining agreement governing a Contributor's entitlement to long service leave; or
- (c) any other agreement governing a Contributor's entitlement to long service leave.

**Maturity Age** means:

- (a) in the case of a Member who, being a female Contributor, elected to contribute at the rate prescribed for retirement at the age of 55 years, that age; or
- (b) in the case of any other Member, the age of 60 years.

**Part-time Employee** means a person appointed by an Employer to a position certified to the Trustee by the Employer not to be a full-time position, having regard to the number of hours per week for which the person is required to work in that position.

**Prescribed** means under the *Superannuation Act 1916* (NSW) or, if no such prescription has been made, after the LGSS Transfer Day and before the Transfer Time means as determined from time to time by the Active Super Trustee, and after the Transfer Time means as determined from time to time by the Trustee.

**Prescribed Age** means:

- (a) in the case of a Member who, being a female Contributor, elected to contribute at the rate prescribed for retirement at the age of 50 years, that age; or
- (b) in the case of any other Member, the age of 55 years.

**Reduced Value Unit** means a Reduced Value Unit allocated under rule 14.1 of these Sub-Division D Rules.

**Relieving Allowance** means an allowance paid to the holder of an office or position for performing any or all of the duties of another office or position, without being appointed to that other office or position on a permanent basis.

**Reserve** means an Account.

**Resigned** has the meaning given to that expression by rule 12.10 of these Sub-Division D Rules.

**Retrenched** has the meaning given to that expression by rule 12.6.1 of these Sub-Division D Rules.

**Salary**, in relation to a Contributor, means Salary of the Contributor, determined in accordance with rules 1.3 or 1.4 of these Sub-Division D Rules and expressed as an annual rate.

**Salary Sacrifice Amount** means an amount in lieu of Contributions due by an Eligible Salary Sacrifice Contributor from the Contributor's remuneration to the Division.

**Senior Executive Officer** means:

- (a) a 'senior executive' within the meaning of the *Government Sector Employment Act 2013* (NSW); or
- (b) an employee (not being an officer referred to in paragraph (a)) of an authority specified in Schedule 1 of the *First State Superannuation Act 1992* (NSW), being an employee who holds an office designated by the Director-General (or equivalent) of the Premier's Department (or equivalent) as the office of a senior executive officer.

**Service** means service under, or employment by, one or more Employers.

**Sick Leave** has the same meaning as that term is used in:

- (a) the *Local Government (State) Award 2023* (NSW);
- (b) any enterprise bargaining agreement governing a Contributor's entitlement to sick leave; or
- (c) any other agreement governing a Contributor's entitlement to sick leave.

**State Superannuation Scheme** means the superannuation scheme established under the *Superannuation Act 1916* (NSW).

**Sub-Division** means this Sub-Division C of the Division.

**Superannuation Guarantee Shortfall** has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992* (Cth).

- 1.2.2 A person who is an Employee and a Contributor does not cease to be a Contributor just because at any time the person is paid at hourly, daily, weekly or fortnightly rates, or by piece-work.
- 1.2.3 For the purposes of these Sub-Division D Rules, the salary group within which a Salary falls is the Salary group in the scale in section 12(1) of the *Superannuation Act 1916* (NSW) in which the Salary would fall if the scale were extended to express the unit entitlement for that Salary as provided by rule 11.1.1 of these Sub-Division D Rules.

- 1.2.4 For the purposes of these Sub-Division D Rules, the number of Abandoned Units of pension that a person has at a particular time after 28 November 1972 is the number (if any) by which:
- (a) the number of units of pension that, pursuant to rule 11.1.1 of these Sub-Division D Rules, is appropriate for a Salary equal to that person's Salary at that time,  
  
exceeds:
  - (b) the number of units of pension in respect of which pension would be paid:
    - (i) if the person had reached the age entitling the person to Retire under rule 13.1.1 of these Sub-Division D Rules and had so retired; and
    - (ii) if any contributions under rule 9.2, 11.3 or 11.5 of these Sub-Division D Rules outstanding at that time in respect of any of those units of pension had been paid.
- 1.2.5 A reference in these Sub-Division D Rules to a pension payable to a person who is a Spouse is a reference to a pension payable under rule 13.6, 13.7 or 16.7 to the person in the person's capacity as a Spouse.
- 1.2.6 A reference in these Sub-Division D Rules (except in rules 13.11 and 13.25.2 of these Sub-Division D Rules) to a Child in respect of whom a pension is payable (being a pension payable at a rate determined in accordance with rules 22.2 or 22.3 of these Sub-Division D Rules) includes a reference to a student in respect of whom a pension is payable under rules 13.24 or 16.10 of these Sub-Division D Rules at that rate.
- 1.2.7 Where, under these Sub-Division D Rules, any period is required to be expressed as a fractional part of a year, the period shall be expressed as a fractional part of 365.25 days.

### **1.3 Salary of Executive Officers**

- 1.3.1 For the purposes of these Sub-Division D Rules, the **Salary** of an Executive Officer is the Salary as last nominated or changed in accordance with this rule 1.3.
- 1.3.2 An amount of Salary for the purposes of these Sub-Division D Rules must be nominated to an Executive Officer's Employer by the officer, on, or as soon as practicable after, being appointed as an Executive Officer. An amount may also be nominated to the officer's Employer by the officer on, or as soon as practicable after, being reappointed, or appointed to another position, as an Executive Officer.
- 1.3.3 The amount nominated is to be not less than the monetary remuneration payable to the Executive Officer at the date of nomination and not more than the total value of the remuneration package paid to the officer (less the cost of providing Employer's contributions to superannuation and any performance-related incentive payment).
- 1.3.4 If an Executive Officer fails to nominate an amount of Salary within 28 days of first being appointed as an Executive Officer or within such further period as the Trustee may allow, the officer is taken to have nominated an amount of Salary that is equal to the monetary remuneration payable to the officer at the end of the applicable period.



- 1.3.5 An Executive Officer may, from time to time, by notice to the officer's Employer elect to reduce the amount of Salary nominated under this rule 1.3, but not so that the amount is less than the monetary remuneration payable to the officer at the date of the election.
- 1.3.6 An Executive Officer may, from time to time, by notice to the officer's Employer elect to increase the amount of Salary nominated under this rule 1.3, but not so as to increase the amount nominated by a percentage of that amount that is more than the percentage by which the remuneration package of the officer has increased since the amount of Salary was last nominated or changed.
- 1.3.7 An Employer must notify the Trustee of a nomination or election under this rule 1.3. Any such nomination or election takes effect on the date of notification to the Trustee or on such other date as the Trustee may determine with the consent of the Executive Officer concerned.
- 1.3.8 Nothing in this rule 1.3 requires the nominated amount of Salary to be increased if, because of a variation in the remuneration package of an Executive Officer or in the proportions of the remuneration package comprising monetary remuneration and employment benefits of the officer, the amount of Salary as last nominated or changed for the purposes of this rule 1.3 is less than the monetary remuneration of the officer.
- 1.3.9 In this rule 1.3, the **monetary remuneration** payable to an Executive Officer is:
- (a) if the officer is a Chief Executive Officer or Senior Executive Officer, the monetary remuneration payable in accordance with the *Government Sector Employment Act 2013* (NSW); or
  - (b) if the officer is an office holder nominated for the purposes of section 11A of the *Statutory and Other Offices Remuneration Act 1975* (NSW), the remuneration payable to the officer as reduced under that section by the cost of employment benefits provided to the officer; or
  - (c) if the person is nominated by the Employer in accordance with clause 8.3 of the Division Rules, the monetary remuneration payable to the officer.
- 1.3.10 For the purposes these Sub-Division D Rules, the monetary remuneration of an Executive Officer excludes any Leave Payments.

## **1.4 Definition of Salary**

### **1.4.1 Contributors employed under an award or industrial agreement**

For the purposes of these Sub-Division D Rules, **Salary**, in relation to a Contributor (other than an Executive Officer or a Contributor on an individual contract (including an individual on an award regulated contract)) who is a Contributor employed under an award or registered industrial agreement means the sum of:

- (a) the monetary remuneration payable to the Contributor in the Contributor's capacity as Contributor, as reported to the Trustee from time to time by the Contributor's Employer (excluding any allowances or Leave Payments); plus
- (b) the amount of any allowances (including shift allowances) actually paid during the 12 months immediately preceding the date on which the Salary is calculated and which are taken to be 'ordinary time earnings' for the purposes of the Superannuation Guarantee Charge Acts; plus

- (c) the amount of any weekly workers' compensation payments which are to be taken as 'ordinary time earnings' for the purposes of the Superannuation Guarantee Charge Acts; plus
- (d) the value of the 'private use' component of a motor vehicle provided by the Contributor's Employer (if any); plus
- (e) the value of any child care facilities provided by the Contributor's Employer; plus
- (f) the amount of any voluntary employer (salary sacrifice) superannuation contributions; plus
- (g) the value of any other salary sacrifice arrangements and any associated fringe benefits tax payable on such other arrangements.

#### 1.4.2 **Contributors employed on individual contracts (including those on award regulated contracts)**

For the purposes of these Sub-Division D Rules, **Salary**, in relation to a Contributor (other than an Executive Officer or a Contributor to whom rule 1.4.1 applies) who is also a Contributor employed on an individual contract basis (including an individual on an award regulated contract) means:

- (a) the Contributor's total salary package; less
- (b) the assessed annual cost to the Employer for providing benefits under the Division as determined by the Trustee.

#### 1.4.3 In this rule 1.4:

**shift allowance** means an allowance paid to an Employee in respect of shift work performed by the Employee, and includes amounts paid as penalty rates.

**value** or **amount** means the amount or value specified by the Employer as forming part of the Contributor's total remuneration package, and if not specified by the Employer in the case of a benefit that requires a value, the value of the arrangement or contribution for fringe benefits tax purposes.

**weekly workers compensation**, in relation to a Contributor, means weekly payments of compensation under the *Workers Compensation Act 1987* (NSW) (or the provisions of the *Workers Compensation Act 1926* (NSW) as applied by that Act) payable to the Contributor because the Contributor is partially incapacitated for work through injury.

#### 1.4.4 Any allowances or other kinds of remuneration treated as Salary immediately before the commencement of this rule 1.4 in relation to a Contributor shall continue to be treated as Salary for the purposes of these Sub-Division D Rules, but only in relation to that Contributor.

### 1.5 **Certain Persons not entitled to Contribute**

#### 1.5.1 Notwithstanding any other provision of these Sub-Division D Rules (except rule 1.5.3 of these Sub-Division D Rules), a person is not required or entitled to commence contributing to this Sub-Division.

#### 1.5.2 Rule 1.5.1 applies of these Sub-Division D Rules, subject to rule 1.5.3 of these Sub-Division D Rules, to a person who was previously a Contributor to the State Superannuation Scheme, whether before or after 1 July 1985.

1.5.3 Rule 1.5.1 of these Sub-Division D Rules does not apply to:

- (a) a person to whom subrule 1.4.1 of Schedule 4 of the Active Super Trust Deed did not apply immediately before the Transfer Time;
- (b) a person who was, immediately before 1 July 1985, an Employee but was not contributing to the State Superannuation Scheme, being a person to whom rule 1.6 of these Sub-Division D Rules applies and who elects to become a Contributor to this Sub-Division in accordance with that rule 1.6;
- (c) a person who makes an election under rule 13.21 of these Sub-Division D Rules and complies with that rule; or
- (d) a person who is re-employed by an Employer under rule 15.4.1 of these Sub-Division D Rules after the restoration of the person's health.

## **1.6 Existing Employees who may elect to contribute to Sub-Division**

1.6.1 Except as provided by rule 1.6.2 of these Sub-Division D Rules, this rule 1.6 applies to a person:

- (a) who was, immediately before 1 July 1985, an Employee but was not contributing to the State Superannuation Scheme; and
- (b) who would, but for section 1A of the *Superannuation Act 1916* (NSW), have been required or entitled, subject to the provisions of that Act, to contribute to the State Superannuation Scheme.

1.6.2 This rule 1.6 does not apply to:

- (a) a person exempted from contributing to the State Superannuation Scheme under section 10T of the *Superannuation Act 1916* (NSW); or
- (b) a person who was, under section 10D of the *Superannuation Act 1916* (NSW), treated by the State Authorities Superannuation Board as if he or she were not an Employee.

1.6.3 (a) A person to whom this rule 1.6 applies may elect to contribute to this Sub-Division if:

- (i) before 1 July 1985, the Employer of the person had notified the State Authorities Superannuation Board that the person was an Employee; or
- (ii) on or before 31 December 1985:
  - (A) the Employer of the person notified the State Authorities Superannuation Board that the person was an Employee; or
  - (B) the person lodges at the office of the Trustee a certificate signed by or on behalf of his or her Employer stating that the person is an Employee.

- (b) Where, within the period of 28 days after a person to whom this rule 1.6 applies was given notice by the State Authorities Superannuation Board that the Employee of the person notified the State Authorities Superannuation Board that the person is an Employee, the person did not make an election referred to in rule 1.6.3(a) of these Sub-Division D Rules or apply to the State Authorities Superannuation Board to be

excluded from the provisions of this rule 1.6, the person shall be deemed to have directed that the notification given by the Employer be regarded as an election referred to in rule 1.6.3(a) of these Sub-Division D Rules.

- (c) Where, immediately before 1 July 1985, a person was an Employee but was, under section 10C of the *Superannuation Act 1916* (NSW), being treated by the State Authorities Superannuation Board as if he or she were not an Employee, the person may elect to contribute to this Sub-Division only if:
- (i) the person had not attained the Maturity Age before that day or, if the person had attained that age, has not served for at least 10 years with any one or more Employers;
  - (ii) on or before 30 September 1985 the person lodged a request with his or her Employer that arrangements be made for the person to submit himself or herself to a prescribed medical examination (as defined in section 10A of the *Superannuation Act 1916* (NSW)); and
  - (iii) the person submits himself or herself to the examination arranged pursuant to that request and, in the opinion of the Trustee, passes that examination.
- (d) A person who would, but for rule 1.5 of these Sub-Division D Rules, be required or entitled, subject to the provisions of these Sub-Division D Rules, to contribute to this Sub-Division and who makes an election in accordance with this rule 1.6 shall, upon the election taking effect, be so required or entitled to contribute to this Sub-Division.
- (e) Rule 1.6.3(d) of these Sub-Division D Rules ceases to apply in respect of a person to whom this rule 1.6 applies if, pursuant to rule 3.2 of these Sub-Division D Rules, the Trustee treats the person as if the person had not been an Employee and rule 1.6.3(d) of these Sub-Division D Rules shall not thereafter apply in respect of that person.
- 1.6.4 (a) Where a Contributor to the State Public Service Superannuation Fund or the Public Authorities Superannuation Fund becomes a Contributor to this Sub-Division in accordance with an election made under this rule 1.6, the Contributor shall, for the purposes of the *State Public Service Superannuation Act 1985* (NSW) or the *Public Authorities Superannuation Act 1985* (NSW), as the case requires, be deemed to have Resigned from employment with an Employer.
- (b) Where a Contributor to the Public Authorities Superannuation Fund (being a person entitled to make an election under this rule 1.6) does not become a Contributor to this Sub-Division in accordance with such an election, section 12(7) of the *State Public Service Superannuation Act 1985* (NSW) applies to the Contributor.

## 1.7 Four-weekly Contribution Periods

Column 1	Column 2	Column 3
Period No.	Commencing Date	Terminating Date
1.	1st July	28th July
2.	29th July	25th August

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Period No.</b>	<b>Commencing Date</b>	<b>Terminating Date</b>
3.	26th August	22nd September
4.	23rd September	20th October
5.	21st October	17th November
6.	18th November	15th December
7.	16th December	12th January
8.	13th January	9th February
9.	10th February	9th March
10	10th March	6th April
11.	7th April	4th May
12.	5th May	1st June
13.	2nd June	30th June

## **2. Maintenance and Administration of this Sub-Division**

### **2.1 Payments under Sub-Division**

2.1.1 The Trustee shall cause to be attributed to the Division, in respect of this Sub-Division:

- (a) Contributions or payments made by Employers and Members under this Sub-Division;
- (b) investment performance of assets attributable to this Sub-Division (if positive);
- (c) subject to Superannuation Law, money borrowed for the purposes of this Sub-Division; and
- (d) any other amounts payable to the Trustee in respect of this Sub-Division.

2.1.2 The Trustee shall cause to be attributed to the Division, in respect of this Sub-Division:

- (a) the administration fees and costs incurred in respect of this Sub-Division;
- (b) Benefits payable under these Sub-Division D Rules;
- (c) investment performance of assets attributable to this Sub-Division (if negative);
- (d) amounts in repayment of money borrowed for the purposes of this Sub-Division;
- (e) any Tax payable that is attributable to this Sub-Division; and

- (f) any other amounts payable by the Trustee (or to the Trustee in its personal capacity) in respect of or attributable to this Sub-Division.

## **2.2 The Trustee required to establish certain reserves within this Sub-Division**

2.2.1 The Trustee shall establish and maintain in respect of this Sub-Division the following reserves:

- (a) a reserve for Contributors' contributions;
- (b) in relation to Employers, a reserve or reserves as the case may be.

2.2.2 The Trustee may also establish and maintain in respect of this Sub-Division such other reserves and such accounts as, in its opinion, are necessary or convenient for the proper management of this Sub-Division and administration of these Sub-Division D Rules.

## **2.3 Contributors' Reserve**

2.3.1 Without limiting clause 12.5 of the Deed, the Trustee must ensure that there is credited to the Contributors' Reserve the contributions that Contributors make to this Sub-Division.

2.3.2 Without limiting clause 12.5 of the Deed, the Trustee must ensure that there is debited to the Contributors' Reserve the portion of any Benefit payable to or in respect of a Contributor from the Contributors' Reserve in accordance with rule 13.15.2(a) of these Sub-Division D Rules.

## **2.4 Employer Reserves**

2.4.1 Whenever an Employer makes a contribution under this Sub-Division in respect of a Contribution Period, the Trustee must ensure that the contribution is credited to the appropriate Employer Reserve.

2.4.2 Without limiting clause 12.5 of the Deed, the Trustee must ensure that there is debited to the appropriate Employer Reserve:

- (a) the portion of any Benefit payable to or in respect of a Contributor in accordance with rule 13.15.2(b) of these Sub-Division D Rules; and
- (b) any other amounts to the extent the Trustee considers them to be properly attributable to the reserve.

## **2.5 Adjustment of reserves and accounts for interest etc.**

2.5.1 Whenever appropriate, but subject to clause 11 of the Deed, the Trustee must fix a rate of interest for the purposes of rule 2.5.2 of these Sub-Division D Rules after having regard to:

- (a) the income in respect of this Sub-Division;
- (b) any Tax in respect of the investment of assets held to provide Benefits under this Sub-Division; and
- (c) such other matters as it considers relevant.

2.5.2 Whenever appropriate, the Trustee must adjust each of the reserves and accounts established under this rule 2 by applying the rate of interest that is currently fixed under rule 2.5.1 of these Sub-Division D Rules.

- 2.5.3 The Trustee may fix a rate of interest for the purpose only of enabling specific reserves or accounts to be adjusted.

## **2.6 Source of administration costs payments**

The administration costs payable in respect of this Sub-Division are to be debited to the Employer Reserves and such other reserves (the Contributors' Reserve excepted) and accounts in the Division as the Trustee considers appropriate.

## **2.7 Funds, accounts and reserves generally**

2.7.1 The Trustee must:

- (a) credit to this Sub-Division or, as the case may be, to the appropriate reserve or account any amount that is required by or under the Deed, Division Rules or Sub-Division D Rules to be debited to this Sub-Division or to that reserve or account; and
- (b) debit to this Sub-Division or to the appropriate reserve or account any amount that is required by the Deed, Division Rules or Sub-Division D Rules to be debited to this Sub-Division or to that reserve or account.

2.7.2 The Trustee may:

- (a) credit to this Sub-Division or, as the case may be, to the appropriate reserve or account any amount that is permitted by or under the Deed, Division Rules or Sub-Division D Rules to be credited to this Sub-Division or to that reserve or account; and
- (b) debit to this Sub-Division or to the appropriate reserve or account any amount that is permitted by or under the Deed, Division Rules or Sub-Division D Rules to be debited to this Sub-Division or to that reserve or account.

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# **3. Medical Examination of Contributors**

## **3.1 Medical Examination**

3.1.1 The Trustee may require a person to undergo a medical examination.

3.1.2 A person shall submit to a medical examination as soon as practicable after the person has been required to undergo such an examination.

## **3.2 Failure etc. to undergo medical examination**

3.2.1 Where a person submits to a medical examination and, in the opinion of the Trustee, fails to pass the examination, the Trustee shall, subject to this rule 3.2, treat the person as if the person had not, for the period of the person's employment, been an Employee and, if the person is still an Employee, as if the person were not an Employee.

3.2.2 Where a person is being treated by the Trustee under rule 3.2.1 of these Sub-Division D Rules as if the person were not an Employee and the person subsequently passes a medical examination:

- (a) the Trustee shall cease treating the person in that way pursuant to rule 3.2.1 of these Sub-Division D Rules as from the time when, in the opinion of the Trustee, the person so passed the examination; and

- (b) if at that time the person would, apart from this rule 3.2, have been an Employee, the Trustee shall treat him or her as if the person had become an Employee at that time.

3.2.3 Where:

- (a) a person has been required to submit to a medical examination; and
- (b) the Trustee forms the opinion that the person refused or wilfully neglected to submit to the examination,

the Benefit payable on the person ceasing, or, as the case may be, having ceased, to be an Employee (whether by reason of his or her death or in any other circumstances except those referred to in rule 12.1 of these Sub-Division D Rules) shall be that which would be payable if the person had Resigned and elected under rule 13.20 of these Sub-Division D Rules to take the benefit of rule 13.18 of these Sub-Division D Rules and no pension or other Benefit shall be payable to the person or to, or in respect of, any other person as a consequence of the person so ceasing or having ceased to be an Employee.

3.2.4 Where the Trustee forms the opinion referred to in rule 3.2.3 of these Sub-Division D Rules in relation to a person and the person subsequently submits to a medical examination and, in the opinion of the Trustee, passes the examination:

- (a) rule 3.2.3 of these Sub-Division D Rules does not apply to the person in respect of the person ceasing to be an Employee; and
- (b) any pension or other Benefit payable as a result of the person ceasing to be an Employee shall be calculated as if the person had become a Contributor from the time when, in the opinion of the Trustee the person so passed the examination.

3.2.5 Except as provided by rule 3.2.6 of these Sub-Division D Rules, where an Employee who, in the opinion of the Trustee, did not submit to a medical examination as required by rule 3.1.2 of these Sub-Division D Rules, being an Employee who is not a person to whom rule 3.2.3 of these Sub-Division D Rules applies, ceases to be an Employee (whether by reason of death or in any other circumstances), the Trustee shall treat the person as if the person had not, for the period of the person's employment, been an Employee.

3.2.6 Rule 3.2.5 of these Sub-Division D Rules does not apply in respect of a person:

- (a) who, in the opinion of the Trustee, did not submit to a medical examination; and
- (b) in respect of whom, but for this rule 3.2.6, rule 3.2.5 of these Sub-Division D Rules would apply,

where the Trustee is of the opinion, having regard to such evidence as is available to it, that the person would have passed a medical examination.

### **3.3 Suppressed or misleading information**

3.3.1 This rule 3.3 applies to a person if the person was medically examined at a medical examination and the examining medical practitioner, at any time after a report is made with respect to the examination, forms the opinion that the person suppressed information, or gave misleading information, in connection with the examination and that, as a result, the report would have been different if all information, or correct information, in that connection had been given.



- 3.3.2 The Trustee may require a person to whom this rule 3.3 applies to undergo a medical examination.
- 3.3.3 The Trustee may, in relation to a person to whom this rule 3.3 applies (whether or not the person has undergone a medical examination in accordance with a requirement under rule 3.3.2 of these Sub-Division D Rules):
- (a) treat the person for the purposes of these Sub-Division D Rules in such manner; and
  - (b) take such action,
- as will, in the opinion of the Trustee, result in the person, and the person's Spouse and children, as the case may require, being placed, as nearly as possible, in the position under these Sub-Division D Rules that they would be or would have been placed at all relevant times had all the information, or correct information, been given as referred to in rule 3.3.1 of these Sub-Division D Rules.
- 3.3.4 The action which the Trustee may take under rule 3.3.3 of these Sub-Division D Rules may include any or all of the following:
- (a) discontinuing or varying the rate of any pension;
  - (b) paying the whole or any part of a lump sum;
  - (c) refunding all or any contributions made to this Sub-Division;
  - (d) recovering the whole or part of any pension paid or any amount paid by reason of a commutation of pension.

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## 4. Contributions

### 4.1 Definitions

- 4.1.1 In this rule 4, except in so far as the context or subject-matter otherwise indicates or requires:

**half-year** means a period of 6 months:

- (a) commencing on and including 1<sup>st</sup> January and ending on and including 30<sup>th</sup> June; or
- (b) commencing on and including 1<sup>st</sup> July and ending on and including 31<sup>st</sup> December.

**relevant period**, in relation to an Employee, means the half-year in which the Employee's birthday does not fall.

- 4.1.2 In this rule 4, a reference:

- (a) to the number of units of pension for which the annual cost is equal to a particular amount includes a reference to the largest number of units of pension for which the annual cost is less than that amount; and
- (b) to the annual cost to a person for a unit of pension:
  - (i) where the contributions in respect of the unit are required to be made by the person in accordance with the tables of

contributions fixed by or under these Sub-Division D Rules, is a reference to an amount equal to 13 of those contributions; or

- (ii) where contributions in respect of the unit are required to be made by the person by instalments under rule 9.2 of these Sub-Division D Rules is a reference to an amount equal to 13 of those instalments.

## **4.2 Determination of Annual Review Day and Annual Adjustment Day**

4.2.1 The Trustee shall, in respect of a Contributor, determine:

- (a) a day in each relevant period to be the Contributor's Annual Review Day; and
- (b) a day in each relevant period to be the Contributor's Annual Adjustment Day.

4.2.2 A Contributor's Annual Adjustment Day for a relevant period may be the same as, or later than, but not earlier than, the Contributor's Annual Review Day for that period.

4.2.3 A Contributor may not have more than one Annual Review Day, nor more than one Annual Adjustment Day, in a relevant period.

## **4.3 General provisions as to determinations under this rule 4**

4.3.1 The Trustee may amend or revoke a determination under this rule 4.

4.3.2 A determination may be made under this rule 4 so as to apply to a specified Employee or a specified class of Employees.

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# **5. Liability of Employees to Contribute**

## **5.1 Requirement to contribute**

Subject to the Division Rules and these Sub-Division D Rules, every Employee who is a Member of this Sub-Division shall contribute to this Sub-Division in accordance with these Sub-Division D Rules.

## **5.2 Salary Sacrifice**

The Trustee shall credit as a Contribution by the Contributor an amount equal to the Salary Sacrifice Amount less any Tax attributable to that Salary Sacrifice Amount.

## **5.3 Existing Contributors and Employees**

5.3.1 An Employee who was contributing to the State Superannuation Scheme on 12<sup>th</sup> January 1977 shall, subject to rule 6.1 of these Sub-Division D Rules, contribute, and continue to do so, to this Sub-Division for the number of units of pension for which, and at the rate for each such unit at which, the Employee was required to contribute on that date or at such other rates as may from time to time be fixed by or under these Sub-Division D Rules.

5.3.2 Where:

- (a) a Contributor's first Annual Adjustment Day under the *Superannuation Act 1916* (NSW) fell before 31<sup>st</sup> December 1977;

- (b) the Contributor contributed to the State Superannuation Scheme in respect of an additional number of units of pension as on and from that adjustment day; and
- (c) the Contributor was a Contributor to the State Superannuation Scheme at 12<sup>th</sup> January 1977,

the Contributor shall, for the purposes of rule 13.3 of these Sub-Division D Rules, be deemed to have commenced contributing for those units as from 13<sup>th</sup> January 1976, or the day on which the Contributor became a Contributor, whichever is the later.

#### **5.4 Commencement of contributions**

A person who became a Contributor to the State Superannuation Scheme on or after 13<sup>th</sup> January 1977 shall contribute to this Sub-Division in accordance with these Sub-Division D Rules by reference to the rate of Salary actually being paid to the person on his or her entry review date (as determined under the State Superannuation Scheme).

#### **5.5 Increase of contributions: Annual Review Days**

5.5.1 Subject to the Division Rules and these Sub-Division D Rules, where the number of units of pension that, pursuant to rule 11.1.1 of these Sub-Division D Rules, is appropriate for the Salary actually being paid to a Contributor (including a Contributor referred to in rule 5.3 of these Sub-Division D Rules) on the Contributor's Annual Review Day in any half-year is higher than the aggregate of:

- (a) the number of units of pension (if any) for which the Contributor is contributing at that time;
- (b) the number of units of pension (if any) for which the Contributor has completed contributing; and
- (c) the number of the Contributor's Abandoned Units (if any),

the Contributor shall, as on and from the Contributor's Annual Adjustment Day in that half-year, contribute to this Sub-Division in respect of the additional number of units of pension in accordance with these Sub-Division D Rules.

5.5.2 On a Contributor's Annual Review Day in any half-year:

- (a) if the annual cost to the Contributor for the units of pension for which contributions are payable by the Contributor is not less than an amount representing 6% of the annual Salary of the Contributor at the rate actually being paid, the additional units of pension referred to in rule 5.5.1 of these Sub-Division D Rules are optional units of pension; and
- (b) if:
  - (i) the annual cost to the Contributor for the units of pension or which contributions are payable by the Contributor is less than an amount representing 6% of the annual Salary of the Contributor at the rate actually being paid; and
  - (ii) the number of additional units of pension referred to in rule 5.5.1 of these Sub-Division D Rules is in excess of the number for which the annual cost to the Contributor is equal to the shortfall under paragraph (b)(i),

the excess additional units of pension are optional units of pension.

5.5.3 A Contributor may, within 2 months after the Contributor's Annual Review Day in any half-year, elect to abandon any 1 or more of the optional units of pension in respect of which, but for the election, the Contributor, would be required by this rule 5.5 to commence contributing to this Sub-Division.

5.5.4 Where a Contributor entitled to make an election under rule 5.5.3 of these Sub-Division D Rules dies without making such an election before the expiration of the period within which, but for the Contributor's death, the Contributor could have made the election, the Contributor's Spouse may, before the expiration of that period, make the election.

## **5.6 Abandoned Units to be taken up if contributions fall below 6% of Salary**

5.6.1 On a Contributor's Annual Review Day, if the Contributor has Abandoned Units and the annual cost to the Contributor for the units of pension for which contributions are payable by the Contributor is less than an amount representing 6% of the annual Salary of the Contributor at the rate actually being paid:

- (a) where there are no additional units of pension as referred to in rule 5.5.1 of these Sub-Division D Rules, the Contributor shall take up the lesser of all of the Abandoned Units and the number of Abandoned Units for which the annual cost is equal to the shortfall; or
- (b) where there are additional units of pension as so referred to but the annual cost to the Contributor for the additional units is less than the shortfall, the Contributor shall take up the lesser of all of the Abandoned Units and the number of Abandoned Units for which the annual cost is equal to the balance of the shortfall.

5.6.2 Where, under this rule 5.6, a Contributor is required to take up an Abandoned Unit which the Contributor had on the Contributor's Annual Review Day in any half-year:

- (a) the Contributor shall commence to contribute for the unit as from the Contributor's Annual Adjustment Day in that half-year; and
- (b) the unit ceases to be an Abandoned Unit as from the Annual Adjustment Day.

## **5.7 Limitation on increase in contribution by certain Contributors**

5.7.1 This rule 5.7 applies to a Contributor on an Annual Review Day of the Contributor if:

- (a) the Contributor's Entry Payment Day was before 1 July 1985;
- (b) the Contributor has any Abandoned Units; and
- (c) the number of units of pension for which contributions are payable by the Contributor on the Annual Review Day is less than the number for which the annual cost is equal to an amount representing 6% of the annual Salary of the Contributor at the rate actually being paid on the net preceding Annual Review Day of the Contributor.

5.7.2 On an Annual Review Day on which this rule 5.7 applies to a Contributor, rules 5.5 and 5.6 of these Sub-Division D Rules shall be construed, in their application to the Contributor on that day, as if references in those rules to 6% were references to the minimum prescribed percentage referred to in rule 5.7.3 of these Sub-Division D Rules.

5.7.3 For the purpose of rule 5.7.2 of these Sub-Division D Rules, the **minimum prescribed percentage** in relation to a Contributor on an Annual Review Day is the lesser of:

- (a) the sum of:
  - (i) 1%; and
  - (ii) the percentage, on the next preceding Annual Review Day, of the annual Salary of the Contributor at the rate actually being paid at that preceding Annual Review Day that represents the amount that is equal to the annual cost to the Contributor for the units of pension for which contributions were payable by the Contributor on the Annual Adjustment Day of the Contributor next following that preceding Annual Review Day; and
- (b) 6%.

## **5.8 Increase of contributions: Exit Days**

5.8.1 Subject to the Division Rules and these Sub-Division D Rules, where the number of units of pension that, pursuant to rule 11.1.1 of these Sub-Division D Rules, is appropriate for the Salary actually being paid to a Contributor on the Contributor's Exit Day is higher than the aggregate of:

- (a) the number of units of pension (if any) for which the Contributor is contributing at that time;
- (b) the number of units of pension (if any) for which the Contributor has completed contributing; and
- (c) the number of the Contributor's Abandoned Units (if any),

the former Contributor or the former Contributor's Spouse shall, within one month after the Contributor's Exit Day, or within such further period as the Trustee may, in special circumstances, allow, contribute to this Sub-Division in respect of the additional number of units of pension in accordance with these Sub-Division D Rules.

5.8.2 On a Contributor's Exit Day:

- (a) if the annual cost to the Contributor for the units of pension for which contributions are payable by the Contributor is not less than an amount representing 6% of the annual Salary of the Contributor at the rate actually being paid, the additional units of pension referred to in rule 5.8.1 of these Sub-Division D Rules are optional units of pension; and
- (b) if:
  - (i) the annual cost to the Contributor for the units of pension for which contributions are payable by the Contributor is less than an amount representing 6% of the annual Salary of the Contributor at the rate actually being paid; and
  - (ii) the number of additional units of pension referred to in rule 5.8.1 of these Sub-Division D Rules is in excess of the number for which the annual cost is equal to the shortfall under paragraph (b)(i),

the excess additional units of pension are optional units of pension.

- 5.8.3 A Contributor may, within 1 month after the Contributor's Exit Day, elect to abandon any 1 or more of the optional units of pension in respect of which, but for the election, the Contributor would be required by this rule 5.8 to make a contribution to this Sub-Division.
- 5.8.4 Where a person entitled to make an election under rule 5.8.3 of these Sub-Division D Rules dies without making such an election before the expiration of the period within which, but for the Contributor's death, the Contributor could have made the election, the person's Spouse may, before the expiration of that period, make the election.
- 5.8.5 This rule 5.8 does not apply to or in respect of a former Contributor unless:
- (a) the former Contributor or the former Contributor's Spouse is entitled to a pension under these Sub-Division D Rules (other than a pension under rule 13.4 of these Sub-Division D Rules) consequent on the former Contributor's ceasing to be an Employee; or
  - (b) the former Contributor elects to take the benefit of rule 13.16 of these Sub-Division D Rules.

## **5.9 No contributions for more than appropriate number of units**

Except in the circumstances specified in rule 6 of these Sub-Division D Rules and except in consequence of an approval under section 13A of the *Superannuation Act 1916* (NSW) (as in force at any time before 13th January 1977), an Employee shall not contribute in respect of a number of units of pension that is greater than the number that, pursuant to rule 11.1.1 of these Sub-Division D Rules, is appropriate for his or her Salary.

## **5.10 Cessation of contributions**

An Employee is not entitled to contribute to this Sub-Division and the Trustee is not to accept a contribution to this Sub-Division offered by an Employee after the Employee attains 70 years of age.

## **5.11 Exemptions from contributing**

A person who was exempted from contributing to the State Superannuation Scheme on or before 30 June 1994 is exempted from contributing to this Sub-Division.

## **5.12 Consequences of exemption**

Where a person is exempted under these Sub-Division D Rules from contributing to this Sub-Division, neither he or she, nor any other person claiming through him or her, is entitled to any Benefit under these Sub-Division D Rules, but the contributions (if any) paid by the person so exempted shall be refunded.

## **5.13 Leave without pay – special matter**

- 5.13.1 A Contributor who is not required to contribute to this Sub-Division merely because the Contributor is on authorised leave without pay as an employee, is entitled to remain a Contributor to this Sub-Division even though the Contributor is not contributing to this Sub-Division.
- 5.13.2 Rule 5.13.1 of these Sub-Division D Rules applies to a Contributor only if:

- (a) the leave is for the purposes of raising children of whom the Contributor is a parent, or for whom he or she has assumed the responsibilities of a parent, and
  - (b) he or she has been on that leave for less than seven years consecutively, and
  - (c) he or she has a statutory or contractual right to resume employment at the end of the leave.
- 5.13.3 Rules 11.3.1 and 11.3.2 of these Sub-Division D Rules apply to a Contributor, and to the period of leave of the Contributor, during any period during which rule 5.13.1 of these Sub-Division D Rules applies to the Contributor.
- 5.13.4 In this rule 5.13, **authorised leave** means leave approved by the Contributor's employer, or leave authorised by an agreement certified, or an award made, by a tribunal or body having the authority to do so under a law of New South Wales or the Commonwealth.

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## 6. Decreases in Salary or Unit Entitlement

### 6.1 Decrease in Salary

- 6.1.1 Where the Salary of a Contributor is reduced, the Contributor shall continue to contribute for any units of pension that are in excess of the number of units that is, pursuant to rule 11.1.1 of these Sub-Division D Rules, appropriate to the Contributor's Salary as reduced.
- 6.1.2 Where the Salary of a Contributor is reduced (whether before, on or after 13<sup>th</sup> January 1977) and the Salary as reduced is actually paid as from a date after 12<sup>th</sup> January 1977, the Contributor may, within 2 months after the date on which the reduced Salary is actually paid to the Contributor, elect not to contribute for one or more units of pension, not exceeding the difference between:
- (a) the number of units that is, pursuant to rule 11.1.1 of these Sub-Division D Rules, appropriate to the Contributor's Salary as reduced; and
  - (b) the number of units that is, pursuant to rule 11.1.1 of these Sub-Division D Rules, appropriate to the Contributor's Salary as at the latest of whichever of the following days is applicable to the Contributor, namely:
    - (i) the Contributor's last Annual Review Day;
    - (ii) the day as from which the number of units of pension for which the Contributor was contributing was last reduced under this rule 6.1 or rules 6.3 or 6.4 of these Sub-Division D Rules,
- but so that the number of units in respect of which the Contributor contributes is not reduced to less than 6.
- 6.1.3 Where a Contributor elects not to contribute for a unit of pension under rule 6.1.2 of these Sub-Division D Rules, the Contributor's contributions under this Sub-Division in respect of the unit shall cease on and from the first day of the Contribution Period in which the Salary as reduced is actually paid and shall be refunded to the Contributor.
- 6.1.4 No person has any rights in this Sub-Division in respect of a unit of pension to which an election under rule 6.1.1 of these Sub-Division D Rules relates.

- 6.1.5 No person has any rights in this Sub-Division in respect of an excess unit of pension referred to in rule 6.1.1 of these Sub-Division D Rules and not the subject of an election under rule 6.1.2 of these Sub-Division D Rules, unless the Trustee is satisfied that the Contributor's Salary was reduced by reason of ill health or for some other reason which the Trustee, having regard to the circumstances of the case, considers warrants the retention of entitlement to Benefits under these Sub-Division D Rules in respect of the unit.
- 6.1.6 Where no person has any rights in this Sub-Division in respect of a unit of pension, as referred to in rule 6.1.5 of these Sub-Division D Rules, and the Contributor ceases to be an Employee, any contributions made by the Contributor in respect of the unit shall be refunded to him or her.
- 6.1.7 Where a Contributor elects not to contribute for a unit of pension under rule 6.1.2 of these Sub-Division D Rules, and subsequently the Contributor's Salary is increased, these Sub-Division D Rules apply in relation to the increase as if the Contributor had not been formerly entitled to the unit.
- 6.1.8 A unit of pension in respect of which a Contributor is contributing to this Sub-Division ceases to be an excess unit of pension, as referred to in rule 6.1.1 of these Sub-Division D Rules, if the Contributor's Salary is increased and that unit is one of the number of units that, pursuant to rule 11.1.1 of these Sub-Division D Rules, is appropriate to the Contributor's Salary as increased.

## **6.2 Fluctuations in Salary**

- 6.2.1 Where the number of units of pension that, pursuant to rule 11.1.1 of these Sub-Division D Rules, was appropriate to the Salary actually being paid to a Contributor at any time after 12 January 1976 was higher than the number of units that, pursuant to rule 11.1.1 of these Sub-Division D Rules, was or is appropriate to the Salary actually being paid to the Contributor at the Contributor's net review day after that time, the Trustee may determine that the Contributor's Salary as at the review day shall be treated as if it had been equal to the Contributor's Salary as at the earlier time.
- 6.2.2 A determination under this rule 6.2 shall not take effect unless the appropriate contributions in respect of the additional units of pension (being the contributions that would have been already or would be payable in accordance with these Sub-Division D Rules had the greater Salary in fact been paid to the Contributor at the review day) have been or are paid to the Trustee within a period approved by the Trustee.
- 6.2.3 Where a determination under this rule 6.2 has effect, then, for all purposes of these Sub-Division D Rules:
- (a) the Contributor's Salary shall be treated in accordance with the determination; and
  - (b) the Contributor shall be deemed to have been contributing for the additional units of pension as from the commencement of the period to which the contributions referred to in rule 6.2.2 of these Sub-Division D Rules relate.
- 6.2.4 In this rule 6.2:

**Contributor** includes former Contributor.

**review day** means Annual Review Day or Exit Day.



### **6.3 Decrease in unit entitlement on taking leave of absence**

- 6.3.1 Where, on the commencement, or extension, by a Contributor of a period of leave of absence, or on the commencement of a period for which a deduction factor is applied under rules 11.3.5, 11.4.1 or 11.5.4 of these Sub-Division D Rules, the number of units of pension (if any) for which the Contributor has completed contributing and the number of units of pension (if any) for which, but for this rule 6.3, contributions would be payable by the Contributor is greater than the number of units of pension that, pursuant to rule 11.1.1 of these Sub-Division D Rules, is appropriate to the Salary actually being paid to the Contributor, the Contributor shall cease to contribute for the number of units of pension equal to the difference.
- 6.3.2 On the termination of a period of leave of absence by a Contributor in respect of which rules 11.3.1 or 11.3.5 of these Sub-Division D Rules applies before the expiration of the period or of a period in respect of which rules 11.4.1 or 11.5.4 of these Sub-Division D Rules applies:
- (a) the Contributor shall be deemed not to have ceased to contribute for the number of units of pension for which the Contributor ceased to contribute under rule 6.3.1 of these Sub-Division D Rules but shall be deemed to have ceased to contribute for the number of units of pension (if any) equal to the difference between:
    - (i) the number of units of pension (if any) for which the Contributor has completed contributing and the number of units (if any) for which, but for the application of rule 6.3.1 of these Sub-Division D Rules on the commencement of the period and of this rule 6.3.2 on the termination, contributions would be payable by the Contributor; and
    - (ii) the number of units of pension that, pursuant to rule 11.1.1 of these Sub-Division D Rules, is appropriate to the Salary actually being paid to the Contributor;
  - (b) all contributions for units of pension which would have been payable, had the Contributor ceased to contribute for the number of units of pension equal to the difference on the commencement of the period, shall be deemed to have been payable by the Contributor; and
  - (c) any contributions for units of pension which have been refunded or applied in accordance with a direction by the Contributor as referred to in rule 6.3.3 of these Sub-Division D Rules and which are payable as referred to in paragraph (b) shall be payable in respect of those units.
- 6.3.3 Where a Contributor ceases to contribute for a unit of pension under this rule 6.3, the Contributor's contributions to this Sub-Division in respect of the unit shall cease, on and from the first day of the Contribution Period in which the period concerned commences, and any contributions paid in respect of that unit shall, unless the Contributor directs the Trustee to apply them towards contributions payable in respect of other units of pension during the period, be refunded to the Contributor.
- 6.3.4 No person has any rights in this Sub-Division in respect of a unit of pension for which contributions have ceased under this rule 6.3 and have not again become payable.
- 6.3.5 Where a Contributor ceases to contribute for a unit of pension under this rule 6.3 and subsequently the Salary of the Contributor is increased, these Sub-Division D Rules apply in relation to the increase as if the Contributor had not been formerly entitled to the unit.

## 6.4 Commencement of part-time employment etc.

6.4.1 In this rule 6.4, a reference to a change in the employment status of a Contributor is a reference:

- (a) to a Contributor who is not a part-time Employee becoming a part-time Employee; and
- (b) to a Contributor who is employed in a position as a part-time Employee becoming employed in another position as a part-time Employee, if the Salary ratio (as defined in rule 11.5.1 of these Sub-Division D Rules) in relation to the former position is more than that in relation to the other position.

6.4.2 On a change in the employment status of a Contributor, the Contributor shall cease to be a Contributor for the units of pension in respect of which contributions were payable by the Contributor, or for which the Contributor had completed contributing, before that change (other than any reserve units in respect of which contributions are payable under rule 11.7 of these Sub-Division D Rules).

6.4.3 No person has any rights in this Sub-Division in respect of units of pension for which a person has ceased to be a Contributor pursuant to rule 6.4.2 of these Sub-Division D Rules.

6.4.4 Where a Contributor whose employment status changes ceases to be a Contributor for units of pension pursuant to rule 6.4.2 of these Sub-Division D Rules, the Contributor's contributions to this Sub-Division in respect of those units of pension shall cease, as on and from the first day of the Contribution Period in which the change occurred.

6.4.5 Any contributions paid in respect of units of pension for which a person has ceased to be a Contributor on a change in employment status shall be allocated towards the purchase of the number of fully paid up units calculated in accordance with the following formula:

$$PUU = TU + IU + UC$$

where:

**PUU** is the number of units purchased;

**TU** is the highest whole number obtained from the calculation of the formula:

$$UHn - \frac{Cn}{Rn} \quad (\text{except where } \frac{Cn}{Rn} \text{ exceeds } UHn);$$

**UHn** is the number of units of pension for which contributions were payable by the Contributor immediately before the change occurred in accordance with the tables of contributions fixed by or under these Sub-Division D Rules, but excluding:

- (a) any such units of pension which are excess units of pension referred to in rule 6.1.1 of these Sub-Division D Rules and in respect of which no person has any rights in this Sub-Division; and
- (b) any such units of pension, being reserve units, for which contributions were being made under rule 11.7 of these Sub-Division D Rules;

**Cn** is the amount of contributions due, for the Contribution Period preceding that in which the change occurred, in respect of that number of units of pension;

**Rn** is the relevant amount under rule 6.4.6 of these Sub-Division D Rules in relation to the Contributor for an additional unit of pension;

**IU** is the highest whole number obtained from the calculation of the formula:

$$\frac{\text{TCB}}{\text{RB}}$$

**TCB** is the total amount paid in respect of instalments payable by the person on or before the time the change occurred for units of pension for which the Contributor contributed in accordance with rule 9 of these Sub-Division D Rules (but deducting therefrom any part of that amount allocated under these Sub-Division D Rules to the purchase of fully paid up units);

**RB** is the amount specified in rule 9.1.1 of these Sub-Division D Rules as the cost of a unit of pension in relation to the Contributor;

**UC** is the number of units (if any) purchased by the person and credited to the person as fully paid up units under this rule 6.4, or otherwise.

6.4.6 For the purposes of rule 6.4.5 of these Sub-Division D Rules, the relevant amount in relation to a Contributor whose employment status changes for an additional unit of pension is:

(a) where the Contributor has attained the Prescribed Age on or before the last day of the Contribution Period preceding that in which the change occurred, the amount which, if the Contributor were required under rule 8 of these Sub-Division D Rules to commence to contribute for an additional unit of pension on that day, would be the amount payable in accordance with the tables of contributions fixed under rule 8.3 of these Sub-Division D Rules for that unit for a Contribution Period; or

(b) where the Contributor has not attained the Prescribed Age on or before that day, the amount equal to the sum of:

(i) the amount payable by the Contributor for any additional unit of pension for which the Contributor had been required to commence contributing on and from the Contributor's last Annual Adjustment Day before the change occurred for a Contribution Period or, as the case may be, the amount that would have been so payable if the Contributor had been so required; and

(ii) for each day of the period commencing on the day following that Annual Adjustment Day and ending on the last day of the Contribution Period preceding that in which the change occurred, the amount equal to 1/364<sup>th</sup> part of the difference between the amount referred to in paragraph (b)(i) and the amount which that amount would have been if, on that Annual Adjustment Day, the Contributor had been 1 year older than the age actually attained.

- 6.4.7 Where, in relation to a Contributor whose employment status has changed, the figure obtained pursuant to rule 6.4.5 of these Sub-Division D Rules from the calculation of the formula:

$$\frac{UHn - Cn}{Rn}$$

is or includes a fraction, there shall be paid to the Contributor, as a refund of contributions not allocated towards the purchase of fully paid up units, the amount calculated in accordance with the following formula:

$$Q1 = S \times \frac{F1}{P1}$$

where:

- Q1** is the amount to be paid;
- S** is the amount of the contributions paid by the Contributor in respect of the units the number of which is attributed to the symbol UHn pursuant to rule 6.4.5 of these Sub-Division D Rules;
- F1** is the fraction which is or is included in the figure obtained;
- P1** is the figure obtained.

- 6.4.8 Where, in relation to a Contributor whose employment status has changed, the figure obtained pursuant to rule 6.4.5 of these Sub-Division D Rules from the calculation of the formula:

$$\frac{TCB}{RB}$$

is or includes a fraction, there shall be paid to the Contributor, as a refund of instalments not allocated towards the purchase of fully paid up units, the amount calculated in accordance with the following formula:

$$Q2 = TCB \times \frac{F2}{P2}$$

where:

- Q2** is the amount to be paid;
- TCB** is the amount attributed to that symbol pursuant to rule 6.4.5 of these Sub-Division D Rules;
- F2** is the fraction which is or is included in the figure obtained;
- P2** is the figure obtained.

- 6.4.9 Where a person's contributions are allocated to the purchase of paid up units under this rule 6.4 of these Sub-Division D Rules on a change in employment status:

- (a) the person shall, on and from that change occurring, be deemed to be a Contributor for the number of units purchased and to have contributed for those units for a period of 2 years and 6 months but shall not be required to make further contributions in respect of those units; and

- (b) the Employer in whose Service the person is employed will not be required to make, before the retirement of the person, any further contribution in respect of those units of pension.
- 6.4.10 Subject to the Division Rules and these Sub-Division D Rules, where the number of units of pension that, pursuant to rule 11.1.1 of these Sub-Division D Rules, is appropriate for the Salary certified by the Employer of a Contributor to be the Salary which would be paid to the Contributor if employed full-time in the position in which the Contributor is employed on a change in employment status is higher than the number of fully paid up units credited to the Contributor under this rule 6.4, the Contributor shall, as on and from the first day of the Contribution Period in which the change occurs, contribute under this Sub-Division in respect of the additional number of units of pension in accordance with these Sub-Division D Rules.
- 6.4.11 On the day on which the employment status of a Contributor changes, if the number of additional units of pension referred to in rule 6.4.10 of these Sub-Division D Rules is in excess of the number for which the annual cost to the Contributor is equal to an amount representing 6% of the annual Salary of the Contributor at the rate actually being paid, the excess units of pension are optional units of pension.
- 6.4.12 A Contributor may, within 2 months after the day on which the employment status of the Contributor changes, elect to abandon any one or more of the optional units of pension in respect of which, but for the election, the Contributor would be required by this rule 6.4 to commence contributing under this Sub-Division.
- 6.4.13 Where a Contributor elects not to contribute for a unit of pension under rule 6.4.12 of these Sub-Division D Rules, contributions under this Sub-Division in respect of the unit shall cease as on and from the first day of the Contribution Period in which the employment status of the Contributor changes and any contributions paid in respect of the unit shall be refunded to the Contributor.
- 6.4.14 No person has any rights in this Sub-Division in respect of a unit of pension to which an election under rule 6.4.12 of these Sub-Division D Rules relates.
- 6.4.15 Where no person has any rights in this Sub-Division in respect of an excess unit of pension of a Contributor referred to in rule 6.1.1 of these Sub-Division D Rules and the employment status of the Contributor changes, any contributions made by the Contributor in respect of the unit shall be refunded to the Contributor.
- 6.4.16 Where a person whose contributions are allocated to the purchase of fully paid up units under this rule 6.4 dies, retires under rule 12.1.2 of these Sub-Division D Rules before attaining the age of 60 years, or is retired under rule 12.5 of these Sub-Division D Rules before attaining that age, the Trustee may, except where the contributions are refunded pursuant to another relevant provision (as determined by the Trustee) of these Sub-Division D Rules, determine that a specified amount, being part of those contributions, be refunded to the person or, where the person is dead, to the person's legal personal representatives, and may act in accordance with its determination.
- 6.4.17 Where a Contributor whose employment status changes is a Contributor whose Entry Payment Day in the State Superannuation Scheme occurred before 1 July 1985 and, immediately before the change occurred:
- (a) the Contributor had any Abandoned Units; and
- (b) the annual cost to the Contributor for the units of pension for which contributions were payable by the Contributor was an amount representing a percentage which was less than 6% of the annual Salary of the Contributor at the rate actually being paid on the Contributor's

previous Annual Review Day, the number of those units being less than the number for which the annual cost was equal to an amount representing 6% of that annual Salary,

such of the additional units of pension (if any) referred to in rule 6.4.10 of these Sub-Division D Rules as are in excess of the number for which the annual cost to the Contributor is equal to an amount representing that lesser percentage of the annual Salary at the rate actually being paid to the Contributor on the day the change occurred are optional units of pension for the purposes of rule 6.4.12 of these Sub-Division D Rules, notwithstanding anything to the contrary in rule 6.4.11 of these Sub-Division D Rules.

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## **7. Abandoned Units**

### **7.1 No contributions or rights in respect of Abandoned Units**

7.1.1 Notwithstanding anything in this rule 7, contributions are not payable under this Sub-Division in respect of an Abandoned Unit.

7.1.2 No person has any rights under this Sub-Division in respect of an Abandoned Unit, but nothing in this rule 7.1.2 affects the refund of contributions made in respect of any such unit or the operation of rule 14 of these Sub-Division D Rules in relation to any such unit.

### **7.2 Elections to take up Abandoned Units at Annual Review Day**

Where an Employee has an Abandoned Unit at the Employee's Annual Review Day in any half-year, the Employee may, within 2 months after that day, elect to take up that unit, and if the Employee so elects:

- (a) the Employee shall commence to contribute for the unit as from the Employee's Annual Adjustment Day in that half-year; and
- (b) the unit ceases to be an Abandoned Unit as from that Annual Adjustment Day.

### **7.3 Elections to take up Abandoned Units at Exit Day**

7.3.1 Where an Employee has an Abandoned Unit at the Employee's Exit Day, the Employee may, before the expiration of one month after that day, elect to take up that unit.

7.3.2 Where an Employee entitled to make an election under rule 7.3.1 of these Sub-Division D Rules dies without making such an election before the expiration of the period within which, but for the Employee's death, the Employee could have made the election, the Employee's Spouse may, before the expiration of that period, make the election.

7.3.3 Where an election has been made under this rule 7.3 to take up an Abandoned Unit:

- (a) the contribution payable in respect of the unit shall be paid to the Trustee within one month after the Employee's Exit Day or within such further period as the Trustee may, in special circumstances, allow; and
- (b) the unit ceases to be an Abandoned Unit, provided the contribution is paid.

7.3.4 This rule 7.3 does not apply to or in respect of an Abandoned Unit unless:

- (a) pension is payable in respect of the unit; or
- (b) the former Contributor elects to take the benefit of rule 13.16 of these Sub-Division D Rules.

## **7.4 Restrictions as to Abandoned Units**

7.4.1 An Abandoned Unit may only be taken up under this Sub-Division by a person if the aggregate of:

- (a) the number of units of pension (if any) for which the person is contributing;
- (b) the number of units of pension (if any) for which the person has completed contributing; and
- (c) the number of the person's Abandoned Units (including the first mentioned Abandoned Unit),

is equal to or less than the number of units that, pursuant to rule 11.1.1 of these Sub-Division D Rules, is appropriate for the rate of Salary actually being paid to the person at the person's Annual Review Day or the person's Exit Day, as the case may require.

7.4.2 Pension payable under rule 13.5 of these Sub-Division D Rules or by virtue of the death of a Contributor is not payable in respect of a unit of pension which a person has elected to take up under this rule 7 unless:

- (a) contributions in respect of the unit were due, and have been paid, for at least 2 years and 6 months following the date from which the Contributor commenced contributing for the unit; or
- (b) that person's Exit Day is on or after the last day of the Contribution Period preceding that in which the person attains the Maturity Age.

7.4.3 Where a Contributor's contributions in respect of a unit of pension cease on the first day of the Contribution Period in which the Contributor ceases to be an Employee or attains the Maturity Age, the Contributor shall, for the purposes of rule 7.4.2(a) of these Sub-Division D Rules, be deemed to have paid contributions in respect of the unit for so much of that period as precedes the Contributor so ceasing to be an Employee or the Contributor attaining that age, as the case may be.

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## **8. Contributions by Employees for Units of Pension at Table Rates**

### **8.1 Contributions according to scale graduated by age etc.**

Except where otherwise provided by these Sub-Division D Rules:

- (a) the amount of Contribution to be paid by a Contributor shall be based upon the number of units of pension for which the Contributor contributes, upon the sex of the Contributor, and, in the case of a female Contributor, upon whether she contributes for a pension payable at the age of 55 years or 60 years, and shall be in accordance with the tables of Contributions fixed by or under these Sub-Division D Rules; and

- (b) the amount of Contributions to be paid by the Contributor in respect of:
  - (i) a unit for which the Contributor commenced to contribute as from the Contributor's Entry Payment Day shall be based upon the age of the Contributor at that date;
  - (ii) a unit for which the Contributor commenced or commences to contribute as from the Contributor's Annual Adjustment Day in any half-year shall be based upon the age of the Contributor at the Contributor's Annual Adjustment Day in that half-year; or
  - (iii) a unit for which the Contributor contributes as from the Contributor's Exit Day shall be based upon the age of the Contributor at the Contributor's Exit Day.

## **8.2 Units taken up after Prescribed Age**

Subject to rule 8.5 of these Sub-Division D Rules, an Employee may not commence contributing for a unit of pension under this rule 8 if the Employee attains or has attained the Prescribed Age at the Employee's Annual Adjustment Day.

## **8.3 Tables of contributions**

- 8.3.1 The tables of Contributions, payable under this rule 8, for men and women according to the ages set out in rule 8.3.3 of these Sub-Division D Rules shall be in force and apply in respect of additional units of pension for which Employees who were Contributors at 30<sup>th</sup> June 1963 to the State Superannuation Scheme commenced to contribute on or after 13<sup>th</sup> January 1977 to the State Superannuation Scheme or under Division D of Active Super after the LGSS Transfer Day and before the Transfer Time or under this Sub-Division after the Transfer Time.
- 8.3.2 The tables of Contributions, payable under this rule 8, for men and women according to the ages set out in rule 8.3.4 of these Sub-Division D Rules shall be in force and apply to Employees who became Contributors to the State Superannuation Scheme on or after 1<sup>st</sup> July 1963 and shall be paid in respect of all units of pension contributed for by those Employees.
- 8.3.3 Tables of Contributions for Employees who were Contributors to the State Superannuation Scheme at 30 June 1963



**TABLE A**  
**MEN**  
**Employee Contributions for Four Weeks**  
**(Contribution at 30<sup>th</sup> June 1963)**

Age Next Birthday	For Each Additional unit	Age Next Birthday	For Each Additional Unit
	\$		
26	0.54	41	1.26
27	0.58	42	1.34
28	0.60	43	1.46
29	0.64	44	1.56
30	0.68	45	1.68
31	0.70	46	1.84
32	0.74	47	2.00
33	0.78	48	2.20
34	0.84	49	2.44
35	0.88	50	2.72
36	0.92	51	3.06
37	0.98	52	3.48
38	1.04	53	4.04
39	1.10	54	4.76
40	1.18	55	5.80
		56-60	396.90 ÷ n

NOTE n denotes the number of complete four-weekly contributions payable before attainment of age 60.

**TABLE B**  
**WOMEN**  
**Employee Contributions for Four Weeks**  
**(Contributors at 30<sup>th</sup> June 1963)**

Age Next Birthday	Retirement at age 55 For Each Unit	Retirement at age 60 For Each Unit	Age Next Birthday	Retirement at age 55 For Each Unit	Retirement at age 60 For Each Unit
	\$	\$		\$	\$
26	0.72	0.52	41	2.02	1.24
27	0.76	0.54	42	2.22	1.34
28	0.80	0.58	43	2.44	1.44
29	0.86	0.60	44	2.72	1.56
30	0.92	0.64	45	3.04	1.68
31	0.98	0.68	46	3.42	1.84
32	1.04	0.70	47	3.92	2.00
33	1.12	0.76	48	4.54	2.20
34	1.20	0.80	49	5.38	2.44
35	1.28	0.84	50	6.54	2.72
36	1.38	0.90	51	450.90 ÷ n	3.08
37	1.48	0.96	52	450.90 ÷ n	3.50
38	1.58	1.02	53	450.90 ÷ n	4.06
39	1.72	1.08	54	450.90 ÷ n	4.80
40	1.86	1.16	55	450.90 ÷ n	5.84
			56-60		395.54 ÷ n

NOTE n denotes the number of complete four-weekly contributions payable before attainment of Maturity Age.

8.3.4 Tables of Contributions for Employees who become Contributors to the State Superannuation Scheme on or after 30 June 1963 or to Division D of Active Super after the LGSS Transfer Day and before the Transfer Time or under this Sub-Division after the Transfer Time

**TABLE A**  
**MEN**  
**Employee Contributions for Four Weeks**  
**(Contributors after 30<sup>th</sup> June 1963)**

Age Next Birthday	For First 2 Units	For Each Additional Unit	Age Next Birthday	For First 2 Units	For Each Additional Unit
	\$	\$		\$	\$
16	0.86	0.42	36	2.46	1.16
17	0.94	0.44	37	2.62	1.24
18	0.98	0.46	38	2.74	1.30
19	1.04	0.48	39	2.92	1.40
20	1.10	0.52	40	3.12	1.50
21	1.16	0.54	41	3.32	1.60
22	1.22	0.56	42	3.54	1.70
23	1.28	0.60	43	3.80	1.84
24	1.32	0.62	44	4.08	1.98
25	1.40	0.66	45	4.38	2.12
26	1.44	0.68	46	4.76	2.32
27	1.54	0.72	47	5.18	2.52
28	1.62	0.76	48	5.68	2.76
29	1.70	0.80	49	6.28	3.06
30	1.80	0.86	50	6.96	3.40
31	1.90	0.90	51	7.84	3.84
32	2.02	0.94	52	8.94	4.38
33	2.12	1.00	53	10.32	5.06
34	2.24	1.06	54	12.16	5.98
35	2.34	1.10	55	14.74	7.26
			56-60	999.36 ÷ n	493.28 ÷ n

NOTE n denotes the number of complete four-weekly contributions payable before attainment of age 60.

**TABLE B**  
**WOMEN**  
**Employee Contributions for Four Weeks**  
**(Contributors after 30<sup>th</sup> June 1963)**

Age Next Birthday	Retirement at age 55. For Each Unit	Retirement at age 60. For Each Unit	Age Next Birthday	Retirement at age 55. For Each Unit	Retirement at age 60. For Each Unit
	\$	\$		\$	\$
16	0.46	0.34	36	1.62	1.06
17	0.48	0.36	37	1.74	1.14
18	0.52	0.38	38	1.88	1.20
19	0.54	0.40	39	2.02	1.28
20	0.58	0.42	40	2.20	1.38
21	0.62	0.46	41	2.40	1.46
22	0.66	0.48	42	2.62	1.58
23	0.70	0.50	43	2.90	1.70
24	0.76	0.54	44	3.22	1.84
25	0.82	0.58	45	3.60	2.00
26	0.86	0.62	46	4.06	2.18
27	0.90	0.64	47	4.64	2.38
28	0.96	0.68	48	5.38	2.62
29	1.02	0.72	49	6.38	2.90
30	1.10	0.76	50	7.76	3.22
31	1.16	0.80	51	534.40 ÷ n	3.64
32	1.24	0.84	52	534.40 ÷ n	4.16
33	1.32	0.90	53	534.40 ÷ n	4.82
34	1.42	0.94	54	534.40 ÷ n	5.70
35	1.50	1.00	55	534.40 ÷ n	6.92
			56-60		468.80 ÷ n

NOTE n denotes the number of complete four-weekly contributions payable before attainment of Maturity Age.

#### **8.4 Cessation of Contributions**

Subject to these Sub-Division D Rules, contributions payable to this Sub-Division by a Contributor under this rule 8 in respect of any units of pension, other than those for which the Contributor contributes by instalments under rule 9.2 of these Sub-Division D Rules, and those referred to in rule 8.5 of these Sub-Division D Rules, shall cease to be payable in respect of those units on the first day of the Contribution Period in which the Contributor ceases to be an Employee or attains the Maturity Age, whichever first occurs.

#### **8.5 Units taken up at Exit Day**

8.5.1 The contribution of a former Contributor referred to in rule 5.8.1 of these Sub-Division D Rules in respect of an additional unit of pension shall, if the former Contributor's Exit Day is before the Contribution Period in which the former

Contributor would attain the Maturity Age, and whether or not the former Contributor has attained the Prescribed Age, be the contribution payable for one Contribution Period in accordance with the appropriate table of contributions.

8.5.2 Where:

- (a) an election by a former Employee or a former Employee's Spouse under rule 7.3 of these Sub-Division D Rules to take up an Abandoned Unit takes effect; and
- (b) the former Employee's Exit Day is before the Contribution Period in which the former Employee would attain the Maturity Age,

the contribution payable in respect of the unit shall, whether or not the former Employee has attained the Prescribed Age, be the contribution for one Contribution Period in accordance with the appropriate table of Contributions.

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## **9. Contributions by Employees for Units of Pension Otherwise Than at Table Rates**

### **9.1 Cost of units of pension**

9.1.1 For the purposes of this rule 9, and notwithstanding anything contained in the Division Rules or these Sub-Division D Rules, the cost of a unit of pension is, in relation to an Employee:

- (a) who was a Contributor to the State Superannuation Scheme at 30<sup>th</sup> June 1963 and has continued to be a Contributor since that date, and:
  - (i) who, being a female Contributor, elected to contribute at the rate prescribed for retirement at the age of 55 years, \$450.90;
  - (ii) who, being a female Contributor, elected to contribute at the rate prescribed for retirement at the age of 60 years, \$395.54; or
  - (iii) who is a male Contributor, \$396.90; or
- (b) who commenced to contribute to the State Superannuation Scheme after 30<sup>th</sup> June 1963 and:
  - (i) who, being a female Contributor, elected to contribute at the rate prescribed for retirement at the age of 55 years, \$534.40;
  - (ii) who, being a female Contributor, elected to contribute at the rate prescribed for retirement at the age of 60 years, \$468.80; or
  - (iii) who is a male Contributor, \$499.68 in respect of each of the first 2 units, and \$493.28 in respect of each subsequent unit.

9.1.2 Notwithstanding rule 9.1.1 of these Sub-Division D Rules, where an Employee who, being a woman, elected to contribute at the rate prescribed for retirement at the age of 55 years has attained the age of 60 years on or before her Entry Payment Day, Annual Adjustment Day or Exit Day, the cost of a unit of pension for which she commences to contribute on or after that day shall, for the purposes of this rule 9, be the cost applicable had she elected to contribute at the rate prescribed for retirement at the age of 60 years.

## **9.2 Employees who have reached the Prescribed Age**

- 9.2.1 Subject to rules 8.5 and 9.3 of these Sub-Division D Rules, where an Employee who has reached the Prescribed Age on or before the Employee's Entry Payment Day or Annual Adjustment Day, as the case may require, is required or elects to commence contributing for a unit of pension, the Employee shall, subject to this rule 9.2, contribute the cost of the unit by 65 four-weekly instalments, each such instalment being equal to an amount determined by the Trustee, being an amount that is, or is not less by more than a fraction of a cent than, one sixty-fifth of that cost.
- 9.2.2 Where an Employee referred to in rule 9.2.1 of these Sub-Division D Rules ceases to be employed by the Employer prior to completion of payment of instalments pursuant to rule 9.2.1 of these Sub-Division D Rules, the following provisions apply:
- (a) where the Employee retires after reaching the Maturity Age, the total amount of Contributions unpaid as at the date of retirement shall be paid within one month after the date upon which the Employee ceases to be so employed, or within such further period as the Trustee may, in special circumstances, allow;
  - (b) where the Employee is retired in accordance with rule 12.5 of these Sub-Division D Rules, or elects to retire under rule 13.1.2 of these Sub-Division D Rules, or is Retrenched before reaching the Maturity Age, the total amount of contributions unpaid as at the last day of the Contribution Period preceding that in which the Employee ceases to be employed shall be paid within one month after the date upon which the Employee ceases to be so employed, or within such further period as the Trustee may, in special circumstances, allow;
  - (c) where the Employee dies and is survived by a Spouse, the Spouse, if a pension is payable to the Spouse in accordance with rule 13.6 of these Sub-Division D Rules, shall within 3 months after the death of the Employee, or within such further period as the Trustee may, in special circumstances, allow, pay the total amount of contributions unpaid as at the date of the Employee's death.
- 9.2.3 Where the total amount of contributions required to be paid by rule 9.2.2(a), (b) or (c) of these Sub-Division D Rules is not paid within the time prescribed, or within such further period as the Trustee may, in special circumstances, allow, the Employee or the Spouse of the Employee, as the case may be, shall be refunded the amount of the instalments paid pursuant to rule 9.2.1 of these Sub-Division D Rules.
- 9.2.4 Where a refund is payable under rule 9.2.3 of these Sub-Division D Rules, no person has any rights under this Division in respect of the unit or units of pension to which the refund relates, but nothing in this rule 9.2.4 affects the operation of rule 14 of these Sub-Division D Rules in relation to any such unit.
- 9.2.5 A reference in rule 9.2.2 of these Sub-Division D Rules to the total amount of Contributions unpaid as at a particular date is:
- (a) in relation to an Employee who ceases to be employed by the Employer before attaining the Maturity Age and who commenced contributing for the unit of pension:
    - (i) before the Contribution Period in which the Employee would attain the Maturity Age, a reference to the total amount of Contributions that would have been payable up to and including that date had the tables of Contributions fixed by or under these

Sub-Division D Rules been applicable to the Employee in respect of the unit; or

(ii) after the Contribution Period in which the Employee would attain the Maturity Age, a reference to the cost of the unit; or

(b) in relation to an Employee who ceases to be employed by the Employer on or after attaining the Maturity Age, a reference to the cost of the unit, less the amount of instalments paid pursuant to rule 9.2.1 of these Sub-Division D Rules.

9.2.6 Where, but for this rule 9.2.6, the 65 instalments payable in respect of a unit of pension pursuant to rule 9.2.1 of these Sub-Division D Rules would be less than the cost of the unit, the 65<sup>th</sup> instalment shall, notwithstanding that rule, be increased by the difference.

### **9.3 Units taken up at Exit Day**

9.3.1 The contribution of a Contributor referred to in rule 5.8.1 of these Sub-Division D Rules in respect of an additional unit of pension shall, if the Contributor's Exit Day is on or after the first day of the Contribution Period in which the Contributor would attain or has attained the Maturity Age, be the cost of the unit.

9.3.2 Where:

(a) an election by a former Employee or a former Employee's Spouse under rule 7.3 of these Sub-Division D Rules to take up an Abandoned Unit takes effect; and

(b) the former Employee's Exit Day is on or after the first day of the Contribution Period in which the former Employee would attain or has attained the Maturity Age,

the contribution payable in respect of the unit shall be the cost of the unit.

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## **10. Contributions by Employers**

### **10.1 Contributions to be made by an Employer**

10.1.1 An Employer must pay under this Sub-Division in respect of each Contributor that the Employer employs an amount equal to a specified multiple of the contributions payable to this Sub-Division by that Contributor.

10.1.2 The specified multiple referred to in rule 10.1.1 of these Sub-Division D Rules is a multiple that the Trustee periodically fixes in respect of the Employer concerned.

10.1.3 In determining the contributions payable by an Employer, the Trustee is to have regard to the amount required to meet the full costs of the liabilities under these Sub-Division D Rules.

10.1.4 The Trustee may require an Employer to pay under this Sub-Division additional contributions for a specified period if it appears to the Trustee that there is insufficient money in the relevant Employers' reserves for Employers to meet the Employers' liabilities under these Sub-Division D Rules.

## **10.2 Calculation of contributions and time for payment**

10.2.1 Contributions under this rule 10 shall be calculated on the basis of Contribution Periods.

10.2.2 An Employer must pay to the Trustee the contributions payable by the Employer in respect of a Contribution Period at such times as the Trustee may require.

## **10.3 Employer may be required to make further payments in certain cases**

10.3.1 Whenever it appears to the Trustee that there is insufficient money in an Employer Reserve:

- (a) to pay the Employer-financed portion of a Benefit that is due or will become due to or in respect of a Contributor or former Contributor under these Sub-Division D Rules; or
- (b) to pay any other amounts that are payable from that reserve,

the Trustee may require the Contributor's Employer or former Employer, by notice in writing, to pay under this Sub-Division an amount equal to the amount of the insufficiency.

10.3.2 If an Employer fails to pay an amount required to be paid under rule 10.3.1 of these Sub-Division D Rules within 14 days after being notified of the requirement, the amount becomes an amount owing under this Sub-Division and the Trustee may recover that amount accordingly.

## **10.4 Power of the Trustee to adjust Employer Reserves**

Whenever it appears to the Trustee that, because of a change of circumstances, it would be appropriate to adjust the amount that is currently standing to the credit or debit of an Employer Reserve so as to reflect the change of circumstances, the Trustee may adjust that reserve by crediting or debiting that reserve with a specified amount of money and correspondingly debiting or crediting one or more other Employer Reserves.

## **10.5 Transfer of credits between Employers of transferred Contributors**

Whenever:

- (a) a Contributor ceases to be employed by an Employer and becomes employed by another Employer; and
- (b) the Contributor continues to be a Contributor under these Sub-Division D Rules,

the Trustee must, as soon as practicable after the Contributor begins the later employment:

- (c) debit the Employer Reserve of the former Employer with the actuarially calculated transfer value referable to the Contributor; and
- (d) credit the Employer Reserve of the new Employer with that value.



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## 11. Ancillary Provisions

### 11.1 Contributions to be related to units of pension

11.1.1 Subject to these Sub-Division D Rules, the Contributions of an Employee under this rule 11 shall be made in respect of units of pension as provided by rule 13.1 of these Sub-Division D Rules and the number of those units, on any particular day, shall be calculated in accordance with the following formula:

$$UE = \frac{S}{260} + (9 \times CF)$$

where:

**UE** is the number of units of pension;

**S** is the annual rate of Salary;

**CF** is 1 or  $\frac{a}{b}$  whichever is the greater;

**a** is the index number appearing in the Consumer Price Index (All Groups Index) for Sydney last published before that day by the Australian Statistician under applicable Commonwealth law;

**b** is:

(i) the number 114.6; or

(ii) if, after 3 May 1991, the Australian Statistician changes the reference base for the Consumer Price Index (All Groups Index) for Sydney, a number determined by the Trustee, on actuarial advice, to represent what that index would have been for the June quarter 1982 if the change in the reference base had applied at that date.

11.1.2 Where the number of units of pension calculated in accordance with rule 11.1.1 of these Sub-Division D Rules includes a fraction of a unit, the number of units shall be deemed to be the next highest whole number.

11.1.3 Any Index number published by the Australian Statistician at any time (and whether before or after the commencement of this rule 11.1.3) in respect of a particular quarter in substitution for an Index number previously published in respect of that quarter is to be disregarded for the purpose of ascertaining the value of the expression "a" in the formula in rule 11.1.1 of these Sub-Division D Rules, unless the Trustee otherwise determines.

11.1.4 In this rule, **Index number** and **quarter** have the same meanings as in rule 21 of these Sub-Division D Rules.

### 11.2 Alteration of unit entitlement in certain cases

11.2.1 Except as provided by rule 11.2.2 of these Sub-Division D Rules, a reference (however expressed) in any other provision of these Sub-Division D Rules to the number of units of pension that, pursuant to rule 11.1.1 of these Sub-Division D Rules, is appropriate to the Salary being paid to a Contributor on any particular day shall, if 1 or more deduction factors are required to be applied under this rule 11.2 by the Trustee in relation to the Contributor on that day, be construed as a reference to the number of units calculated in accordance with the following formula:

$$U = NU \times \frac{PFS - DT}{PFS}$$

where:

- U** is the number of units to be calculated;
- NU** is the number of units that, but for this rule 11.2, would be appropriate to that Salary;
- PFS** is the sum of:
- (a) the number of years, if any, (including any fractional part of a year calculated on a daily basis) of the period that commenced when the Contributor last became a Contributor and ended on that day (but excluding any part of that period during which the person had been on leave of absence pursuant to rule 15.1 of these Sub-Division D Rules); and
  - (b) the number of years, if any, (including any fractional part of a year calculated on a daily basis) by which that day precedes:
    - (i) the date on which the person attains the Maturity Age; or
    - (ii) where any employment which, on that day, the Contributor is entitled to count as Service for the purposes of rule 12.1 of these Sub-Division D Rules is, in total, for less than a period of 10 years, the expiration of the balance of that period of 10 years, whichever is the later;
- DT** is the total of all deduction factors required to be applied by the Trustee in relation to the Contributor on that day.

11.2.2 Where the number of units of pension calculated in accordance with the formula specified in rule 11.2.1 of these Sub-Division D Rules is or includes a fraction of a unit:

- (a) if the fraction is less than one-half, the fraction shall be disregarded; or,
- (b) if the fraction is not less than one-half, the fraction shall be deemed to be a whole unit.

### **11.3 Deduction factors in relation to certain periods of leave of absence**

11.3.1 Except as provided by rule 11.3.2 of these Sub-Division D Rules, on and from the commencement of a period of leave of absence without pay by a Contributor, the Trustee shall apply under rule 11.2 of these Sub-Division D Rules, in relation to the Contributor, in addition to such other deduction factors (if any) as the Trustee is required to apply in relation to the Contributor, a deduction factor equal to the length of so much of that period as exceeds 3 months (expressed in terms of years, if any, and including any fractional part of a year calculated on a daily basis).

11.3.2 Rule 11.3.1 of these Sub-Division D Rules does not apply in relation to a period of leave of absence by a Contributor where:

- (a) the leave is a prescribed form of leave or is leave with respect to which rules 11.8.2, 11.8.3 or 11.8.6 of these Sub-Division D Rules applies;

- (b) the period commences before 1 July 1985 or is not more than 3 months; or
- (c) before the commencement of that period, the Contributor elects to have rule 11.3.1 of these Sub-Division D Rules not apply in relation to that period.

- 11.3.3 The reference to a prescribed form of leave in rule 11.3.2(a) of these Sub-Division D Rules includes (but is not limited to) a reference to maternity leave and is to be taken to have included such a reference from and including 1 July 1985.
- 11.3.4 Where a period of leave of absence to which rule 11.3.1 of these Sub-Division D Rules applies terminates (whether by reason of death of the Contributor or otherwise), on or before the expiration of 3 months of the period, the Trustee shall, on and from that termination, cease to apply under rule 11.2 of these Sub-Division D Rules in relation to the Contributor the deduction factor required under rule 11.3.1 of these Sub-Division D Rules to be applied on and from the commencement of that period.
- 11.3.5 The Trustee must apply under rule 11.2 of these Sub-Division D Rules, in relation to a Contributor who takes a single period of leave without pay that is sick leave or maternity leave, a deduction factor equal to the length of that part of the period of leave that exceeds 2 years.
- 11.3.6 The deduction factor applied under rule 11.3.5 of these Sub-Division D Rules is to be expressed in terms of years and include any fractional part of a year calculated on a daily basis.
- 11.3.7 The deduction factor applied under rule 11.3.5 of these Sub-Division D Rules is to be applied on and from the end of 2 years after the commencement of the single period of leave and is in addition to any other deduction factor that the Trustee is required to apply in relation to the Contributor.
- 11.3.8 Where a period of leave of absence to which rule 11.3.1 of these Sub-Division D Rules applies terminates (whether by reason of death of the Contributor or otherwise) before the expiration of the whole, but after the expiration of 3 months, of the period or a period of leave of absence is extended after the commencement of the period and the period, as extended, is a period of leave of absence to which rule 11.3.1 of these Sub-Division D Rules applies, the Trustee shall, on and from that termination or extension, apply under rule 11.2 of these Sub-Division D Rules in relation to the Contributor:
- (a) instead of the deduction factor (if any) required under rule 11.3.1 of these Sub-Division D Rules to be applied on and from the commencement of that period; and
  - (b) in addition to such other deduction factors (if any) as the Trustee is required to apply in relation to the Contributor,

a deduction factor equal to the length of so much of the period of leave actually taken or the length of so much of the period of leave, as extended, as exceeds 3 months (expressed in terms of years, if any, and including any fractional part of a year calculated on a daily basis).

## **11.4 Deduction factors for periods determined by the Trustee**

- 11.4.1 Despite any other provision of these Sub-Division D Rules, the Trustee may apply under rule 11.2 of these Sub-Division D Rules, in relation to a Contributor specified by the Trustee, a deduction factor equal to the length of the period for which the Trustee determines that the deduction factor is to apply.

- 11.4.2 The deduction factor is to be expressed in terms of years and include any fractional part of a year calculated on a daily basis.
- 11.4.3 The Trustee may only make such a determination if it is of the opinion that it is necessary to do so for the purposes of a provision of Superannuation Law restricting the acceptance of contributions by a superannuation fund.
- 11.4.4 The deduction factor is to be applied on and from the commencement of the period specified by the Trustee and is in addition to any other deduction factor that the Trustee is required to apply in relation to the Contributor.

## **11.5 Deduction factors in relation to part-time employment**

- 11.5.1 In this rule 11.5, a reference to the salary ratio in relation to a position in which a person is employed as a part-time Employee is a reference to the ratio of the Salary of the person as a part-time Employee to the Salary certified by the Employer of the person to be the Salary which would be paid to the person if employed full-time in that position.
- 11.5.2 Where a Contributor who is not a part-time Employee becomes employed in a position as a part-time Employee or a Contributor who is a part-time Employee becomes employed as a part-time Employee in a position in relation to which the salary ratio is different from that of the former position, the Trustee shall, on and from the day on which the Contributor becomes so employed, apply under rule 11.2 of these Sub-Division D Rules, in relation to the Contributor, in addition to such other deduction factors (if any) as the Trustee is required to apply in relation to the Contributor, a deduction factor equal to the figure calculated in accordance with the following formula:

$$D = PA \times (1 - SR)$$

where:

**D** is the deduction factor;

**PA** is the number of years, if any, (including any fractional part of a year calculated on a daily basis) by which the day precedes:

- (a) the date on which the Contributor attains the Maturity Age; or
- (b) where any employment which, on that day, the Contributor is entitled to count as Service for the purposes of rule 12.1 of these Sub-Division D Rules is, in total, for less than a period of 10 years, the expiration of the balance of that period of 10 years,

whichever is the later;

**SR** is the salary ratio (expressed as a fraction) in relation to the position.

- 11.5.3 Where a Contributor who is employed in a position as a part-time Employee ceases to be employed as a part-time Employee or becomes employed in another position in relation to which the salary ratio is different from that of the former position, the Trustee shall, on and from the day on which the Contributor becomes employed in the other position, apply under rule 11.2 of these Sub-Division D Rules in relation to the Contributor:
- (a) instead of the deduction factor required under rule 11.5.2 of these Sub-Division D Rules to be applied on and from the day on which the Contributor became employed in a position having the salary ratio of the former position; and

- (b) in addition to such other deduction factors (if any) as the Trustee is required to apply in relation to the Contributor,

a deduction factor equal to the figure which would have been calculated in accordance with rule 11.5.2 of these Sub-Division D Rules if the figure attributed to the symbol "PA" were the number of years, if any, (including any fractional part of a year calculated on a daily basis) of the period during which the Contributor was employed in a position having the salary ratio of the former position.

- 11.5.4 The Trustee must apply under rule 11.2 of these Sub-Division D Rules, in relation to a Contributor who is employed for less than 10 hours a week for a single period of more than 2 years, a deduction factor equal to the length of that part of the period that the Contributor is so employed that exceeds 2 years and ends on the date on which the Contributor attains the Maturity Age.
- 11.5.5 The deduction factor applied under rule 11.5.4 of these Sub-Division D Rules is to be expressed in terms of years and include any fractional part of a year calculated on a daily basis.
- 11.5.6 The deduction factor applied under rule 11.5.4 of these Sub-Division D Rules is to be applied on and from the end of 2 years after the commencement of the period of employment and is in addition to any other deduction factor that the Trustee is required to apply in relation to the Contributor.
- 11.5.7 Rules 11.5.1 to 11.5.3 of these Sub-Division D Rules do not apply in respect of a Contributor during any period in which the Trustee is required to apply a deduction factor under rule 11.5.4 of these Sub-Division D Rules.
- 11.5.8 However, rule 11.5.3 of these Sub-Division D Rules applies to a Contributor who, at the end of the period, commences to be employed for more than 10 hours a week in the same way as it applies to any other Employee whose salary ratio changes.

## **11.6 Continuation of certain contributions**

- 11.6.1 Where a Contributor completes payment of the 65 instalments under rule 9.2 of these Sub-Division D Rules, in respect of a unit of pension, or, pursuant to rule 8.4 of these Sub-Division D Rules, contributions cease to be payable in respect of a unit of pension by a Contributor who attains the Maturity Age, contributions shall, until the Contributor's next Annual Adjustment Day or Exit Day (whichever first occurs), continue to be made at the rate at which the Contributor was contributing for that unit.
- 11.6.2 Any continued contributions made by a Contributor by virtue of rule 11.6.1 of these Sub-Division D Rules shall be credited, in such manner as the Trustee thinks fit, to units of pension in respect of which the Contributor is contributing or may, on the Contributor's next Annual Adjustment Day or Exit Day, be required to contribute by instalments under rule 9.2 of these Sub-Division D Rules.
- 11.6.3 Rule 11.6.1 of these Sub-Division D Rules ceases to apply to a Contributor if the Trustee so approves on application made by the Contributor before his or her Exit Day.
- 11.6.4 Without affecting the operation of this rule 11.6, a Contributor to whom this rule 11.6 applies shall be deemed, for the purposes of these Sub-Division D Rules, to have ceased contributing for the unit of pension referred to in rule 11.6.1 of these Sub-Division D Rules.

## 11.7 Reserve units

- 11.7.1 There shall be a reserve units of pension account (in this rule referred to as the **reserve account**) which shall form part of this Sub-Division and into which shall be paid all contributions made by Contributors under this rule 11.7.
- 11.7.2 A Contributor who is contributing for not less than the number of units of pension corresponding to the salary-group within which the Contributor's Salary falls may, by notice in writing to the Trustee in the form prescribed, elect to contribute for reserve units of pension (hereinafter referred to as **reserve units**) in accordance with the provisions of this rule 11.7.
- 11.7.3 An election under rule 11.7.2 of these Sub-Division D Rules may only be made by a Contributor within 2 months after the Contributor's Annual Review Day in any half-year.
- 11.7.4 The number of reserve units for which a Contributor shall be entitled to contribute shall not exceed 8.
- 11.7.5 Contributions in respect of a reserve unit:
- (a) shall take effect as from the Contributor's Annual Adjustment Day in the half-year in which the election is made; and
  - (b) shall be made as if the reserve unit were a Contributory Unit, contributions for which are payable as from the Annual Adjustment Day.
- 11.7.6
- (a) Where a Contributor who has contributed for at least ten years for any reserve units, or contributed for at least one year for any reserve units and has attained the age of 50 years, becomes eligible to or is required to contribute for one or more additional units of pension in pursuance of the provisions of these Sub-Division D Rules, the Contributor may elect by notice in writing to the Trustee in the form prescribed to appropriate to the contribution account the contributions paid by the Contributor to the reserve account in respect of a number of reserve units not exceeding the number of those additional units of pension.
  - (b) Where a Contributor so elects, no further contributions shall be paid into the reserve account in respect of the reserve units to which the election applies and the contributions payable by the Contributor in respect of so many of the additional units of pension as is equal to the number of those reserve units shall be at the same rate as the contributions paid into the reserve account in respect of those reserve units.
- 11.7.7 The Trustee must pay to a Contributor who, in accordance with section 15A(6) of the *Superannuation Act 1916* (NSW) elected to discontinue the payment of contributions for reserve units the amount paid in respect of those units, together with any interest payable under rule 11.7.9 of these Sub-Division D Rules.
- 11.7.8 If a Contributor who is contributing for reserve units ceases to be an Employee, the Trustee must pay to the Contributor or, as the case may be, to the Contributor's legal personal representatives the amount of the Contributor's contributions paid in respect of those units, together with any interest payable under rule 11.7.9 of these Sub-Division D Rules.
- 11.7.9 A Contributor is entitled to interest on contributions for reserve units paid for by the Contributor, compounded annually, at the rate fixed by the Trustee in accordance with rule 25.5 of these Sub-Division D Rules and payable from the respective dates of payment.

- 11.7.10 Payments under rules 11.7.7 and 11.7.8 of these Sub-Division D Rules are to be made from the appropriate reserve.
- 11.7.11 For the purposes of rules 11.7.7 to 11.7.10 of these Sub-Division D Rules, a reference to the specified rate is:
- (a) if the rate relates to a period before 20 March 1989, 6.5% per annum or, where another rate has been specified for the purposes of subsection (6)(c) of the *Superannuation Act 1916* (NSW) (as in force before 20 March 1989), that other rate; or
  - (b) if the rate relates to a period after 20 March 1989 such rate as the Trustee fixes from time to time under rule 25.5 of these Sub-Division D Rules for the purposes of this rule 11.7.
- 11.7.12 A Contributor who made an election under subsection 15A(6) of the *Superannuation Act 1916* (NSW) in respect of any reserve unit or units shall not again be eligible to elect to contribute for any reserve unit or units.
- 11.7.13 A Contributor who has made an election under rule 11.7.6 of these Sub-Division D Rules may elect to contribute for reserve units but so that the number of reserve units for which the Contributor becomes a Contributor by virtue of the operation of this rule 11.7.13, together with the reserve units, if any, for which the Contributor was contributing immediately before electing under this rule 11.7.13 and any reserve units which may already have been appropriated by the Contributions under rule 11.7.6 of these Sub-Division D Rules shall not exceed 8.

## **11.8 Employees on leave of absence**

- 11.8.1 In respect of any Contributor who is on leave of absence, whether without pay or not, that Contributor's contributions shall be paid during such leave of absence as for a period of Service and shall become due on or before the last day of each month or four-weekly Contribution Period.
- 11.8.2 For the purposes of these Sub-Division D Rules, where a Contributor is on leave without pay from the Service of an Employer and is on secondment to the Service of another Employer, that Contributor's Salary shall, notwithstanding rule 11.8.1 of these Sub-Division D Rules, be that paid or payable by that other Employer.
- 11.8.3 For the purposes of these Sub-Division D Rules, where a Contributor:
- (a) is on approved leave from the Service of an Employer;
  - (b) is not on secondment to the Service of another Employer; and
  - (c) is not a Contributor to and in respect of whom rule 11.8.7 of these Sub-Division D Rules is declared pursuant to rule 11.8.6 of these Sub-Division D Rules to apply,

and the Trustee is of the opinion that the Contributor's Salary would have been varied had the Contributor not been on that leave, the Contributor shall, unless the Trustee otherwise determines, be deemed to have been paid by the Contributor's Employer Salary at the rates to which and at the times at which it would have been varied.

- 11.8.4 For the purposes of rule 11.8.3 of these Sub-Division D Rules, a person is on approved leave if the person is on leave without pay from the Service of the person's Employer:
- (a) by reason of:

- (i) ill health;
  - (ii) secondment to the Service of a public authority constituted by or under an Act;
  - (iii) secondment to the Service of the Government of the Commonwealth or another State or to the Service of a public authority constituted by or under an Act of the Parliament of the Commonwealth or another State; or
  - (iv) Service with the naval, military or air forces of the Commonwealth; or
- (b) in circumstances approved by the Employer under rule 11.8.5 of these Sub-Division D Rules.

11.8.5 For the purposes of rule 11.8.4(b) of these Sub-Division D Rules, the Employer may, if it thinks fit, by notice in writing to the Trustee, approve of circumstances in which a person is on leave without pay from the Service of his or her Employer, if that Employer certifies to the Trustee that that person is, during the period of leave, acting in the interests of the Employer or the State.

11.8.6 An Employer may determine, either unconditionally or subject to conditions, that rule 11.8.7 or 11.8.8 of these Sub-Division D Rules applies, or both apply:

- (a) to and in respect of a Contributor specified in the instrument who is on leave of absence from the service of his or her Employer and is on secondment but not to the Service of another Employer; and
- (b) generally during the period of that secondment or during such period as is specified in the instrument, being, in either case, a period commencing before or after the commencement of this rule 11.8.6 or the date of the declaration.

11.8.7 During the period in which this rule 11.8.7 is declared pursuant to rule 11.8.6 of these Sub-Division D Rules to apply to and in respect of a Contributor who is on secondment, the Contributor's Salary shall, for the purposes of these Sub-Division D Rules, be that paid or payable in respect of the Service to which he or she is seconded.

11.8.8 During the period in which this rule 11.8.8 is declared pursuant to rule 11.8.6 of these Sub-Division D Rules to apply to and in respect of a Contributor who is on secondment, the Employer specified in the declaration as the Employer for the purposes of these Sub-Division D Rules shall, for the purposes of these Sub-Division D Rules, be deemed to be the Employer from whose Service the Contributor is on leave of absence.

## **11.9 Deferment of payment of contributions**

The Trustee may, in special circumstances, defer the payment of any contribution by a Contributor but, where the Trustee so defers a payment, no Benefit is payable to or in respect of the Contributor until the outstanding contribution and, where appropriate, interest thereon, have been paid or arrangements satisfactory to the Trustee have been made for their payment.

## **11.10 Manner of payment deduction from wages or salaries**

11.10.1 Whenever salaries or wages are paid to Contributors, their Employer must deduct from those salaries or wages the contributions that those Contributors are required to make to this Sub-Division.



11.10.2 An Employer who has deducted contributions in accordance with rule 11.10.1 of these Sub-Division D Rules must pay those contributions to the Trustee, without deduction, within the period specified by the Trustee.

11.10.3 The Trustee may enter into an arrangement with a Contributor, or may require a Contributor to enter into an arrangement with the Trustee, for the payment of arrears of contributions to this Sub-Division that have been incurred, or are expected to be incurred, by the Contributor.

11.10.4 Where a Contributor:

(a) fails to comply with a requirement under rule 11.10.3 of these Sub-Division D Rules to enter into an arrangement referred to in that rule; or

(b) having entered into such an arrangement, fails to comply with its terms,

the Trustee may direct that any period in respect of which any such arrears are outstanding is not a period of Service by the Contributor, and the direction shall have effect according to its tenor.

11.10.5 Arrears in Employers' contributions (including arrears arising as a consequence of Contributors commencing to contribute to this Sub-Division after the date on which they were required to contribute) shall be payable, and shall be deemed always to have been payable, at such time or times as the Trustee may determine.

## **11.11 Contributor eligible for membership or a member of other Division**

11.11.1 When a Contributor who is an Executive Officer becomes eligible to become a member of the Accumulation and Pension Division, the Contributor must:

(a) elect to continue to contribute to this Sub-Division; or

(b) elect to make provision for a Benefit provided by rule 16 of these Sub-Division D Rules.

11.11.2 If a Contributor fails to make an election under rule 11.11.1 of these Sub-Division D Rules within 2 months of being required to make that election, the Contributor is, for the purposes of this rule 11.11, to be taken to have elected to continue to contribute to this Sub-Division.

11.11.3 Nothing in these Sub-Division D Rules prevents a Contributor who elects to continue to contribute to this Sub-Division from also contributing to the Accumulation and Pension Division or another Approved Benefit Arrangement and such a Contributor is entitled to Benefits in accordance with these Sub-Division D Rules despite being a member of that Division or other fund.

11.11.4 If a Contributor elects to continue to contribute to this Sub-Division, the Contributor may, at any time thereafter while being eligible to become or being a member of the Accumulation and Pension Division, elect to make provision for a Benefit provided by rule 16 of these Sub-Division D Rules.

11.11.5 A Contributor who elects, under this rule 11.11, to make provision for a Benefit provided by rule 16 of these Sub-Division D Rules:

(a) may elect to make provision for the Benefit even though he or she has not completed 3 years' continuous Contributory Service;

(b) is not entitled to a Benefit payable under any other provision of these Sub-Division D Rules;

- (c) is not entitled to elect to take the Benefit provided by rule 16.11 of these Sub-Division D Rules;
- (d) may elect at any time before the benefit is paid to have the benefit paid to the credit of the Contributor in the Accumulation and Pension Division if the Contributor is a member or is eligible to become a member of that Sub-Division.

11.11.6 If a Contributor makes an election under rule 11.11.5(d) of these Sub-Division D Rules:

- (a) the Contributor is entitled to be paid the Benefit provided by rule 16 of these Sub-Division D Rules, but only in accordance with rule 11.11.5(d) of these Sub-Division D Rules, this rule 11.11.6 and rule 11.11.7 of these Sub-Division D Rules;
- (b) the Trustee must, as soon as practicable thereafter, pay to the Accumulation and Pension Division the amount of Benefit to which the Contributor is entitled; and
- (c) the Trustee must credit the amount to the account established or to be established for the person in the Accumulation and Pension Division.

11.11.7 For the purposes of rule 11.11.6(a) of these Sub-Division D Rules, the Benefit to which the Contributor is entitled is an amount equal to the actuarially calculated lump sum value of the Benefit provided by rule 16 of these Sub-Division D Rules on ceasing to be a Contributor.

11.11.8 If a Contributor makes an election under rule 11.11.1(b) or 11.11.4 of these Sub-Division D Rules within 12 months after being:

- (a) appointed as a Chief Executive Officer or Senior Executive Officer; or
- (b) nominated as an officeholder for the purposes of section 11A of the *Statutory and Other Offices Remuneration Act 1975* (NSW),

the Salary of the Contributor, for the purpose of determining the amount of the Benefit to which the election relates, is to be taken to be his or her Salary immediately before that appointment or nomination took effect.

## **11.12 Transferred members – PSESS Election**

11.12.1 A person:

- (a) who is a member of the Accumulation and Pension Division; and
- (b) who had a benefit transferred under regulation 7(b) of the LGSS Transfer Regulation; and
- (c) is employed by an Employer,

is entitled to elect at any time to make provision for Benefits provided for by rule 16 of these Sub-Division D Rules.

11.12.2 If the person makes an election under this rule, then rule 11.11.6 of these Sub-Division D Rules applies.

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## **12. Pensions and Benefits**

### **12.1 Retirement on pension**

12.1.1 A Contributor (being, in the case of a woman, a Contributor at the rate prescribed for retirement at age 60) who has served for at least ten years with any one or more Employers shall be entitled to elect to retire on pension from the Service of the Contributor's Employer upon or after reaching the age of 60 years; and every female Contributor at the rate prescribed for retirement at age 55 who has so served shall be entitled to so retire upon or after reaching the age of 55 years.

12.1.2 A Contributor (being, in the case of a woman, a Contributor at the rate prescribed for retirement at age 60) shall be entitled to elect to retire from the Service of the Contributor's Employer on pension on or after reaching the age of 55 years if the Contributor has continuously been a Contributor during the next preceding period of ten years.

12.1.3 A person who, before becoming a Contributor, was:

(a) employed on terms requiring the Contributor to give the whole of his or her time to that employment; and

(b) paid at an hourly, daily, weekly or fortnightly rate, or at piecework rates,

is entitled to have that employment treated as Service as an Employee for the purposes of this rule 12.1.

12.1.4 Whenever:

(a) a period of employment that a Contributor has had with an Employer; and

(b) a later period of Service that the Contributor has had as an Employee with an Employer are continuous,

the Trustee may, if satisfied that, having regard to the nature of the work performed by the Contributor during that period of employment, it is proper to do so, treat, for the purposes of this rule 12.1, that period of employment as a period of Service as an Employee with that Employer.

12.1.5 A reference in rule 12.1.4 of these Sub-Division D Rules to a period of Service as an Employee with an Employer includes a reference to a period treated under rule 12.1.3 or 12.1.4 of these Sub-Division D Rules as a period of Service as an Employee.

### **12.2 Commuting of pension**

12.2.1 A person who is entitled or becomes entitled to a pension under these Sub-Division D Rules may commute the whole or part of that pension (subject to this rule 12.2 and rule 28 of these Sub-Division D Rules).

12.2.2 A person may not commute the whole or any part of a pension under rule 12.2.1 of these Sub-Division D Rules before attaining the age of 55 years.

12.2.3 This rule does not authorise the commutation of a pension payable in respect of Children.

12.2.4 Subject to rule 12.3 of these Sub-Division D Rules, any person desiring to commute pension pursuant to this rule 12.2 of these Sub-Division D Rules may elect to do so at any time after attaining the age of 54 years and 6 months.

12.2.5 An election under this rule 12.2 may be made in respect of 2 different amounts and as from 2 different dates and the election shall have effect as to the different amounts as from the respective dates from which the different amounts are commuted.

12.2.6 Where:

- (a) a person making an election under this rule 12.2 in respect of one amount dies before the election takes effect, the election shall be deemed to be revoked; and
- (b) a person making an election under this rule 12.2 in respect of different amounts as from different dates dies before the commutation as to one or both of those amounts takes effect, the commutation as to that or those amounts, as the case may be, shall not be effective.

12.2.7 Where an election under this rule 12.2 takes effect and the person who made the election dies before any lump sum payable pursuant to the election has been paid to the person, the Trustee shall pay the lump sum to the person's legal personal representatives.

12.2.8 Upon an election under this rule 12.2 taking effect as to an amount of pension, there shall be paid from this Sub-Division to the person who made the election or, as the case may require, to the legal personal representatives of the person, a lump sum calculated by multiplying the fortnightly amount of pension commuted by the prescribed commutation factor in relation to the person subject to rules 13.8.3 and 13.9.3 of these Sub-Division D Rules.

12.2.9 In rule 12.2.8 of these Sub-Division D Rules:

**prescribed commutation** factor means:

- (a) in relation to a person whose election under this rule 12.2 took effect as to an amount of pension before the person attained the age of 60 years, the figure (rounded to 2 decimal places) calculated in accordance with the following formula:

$$F = 285 - (A - 55) \times 7$$

where:

- F** is the prescribed commutation factor;
  - A** is the age of the person in years (including any fractional part of a year calculated on a daily basis) on the date the election by the person to commute took effect as to that amount of pension; and
- (b) in relation to a person whose election under this rule 12.2 took effect as to an amount of pension on or after the person attained the age of 60 years:
    - (i) 250, where no prescribed period has elapsed in relation to the person; or
    - (ii) where a prescribed period has elapsed in relation to the person, a figure lower than 250 determined by the Trustee having regard to the length of the prescribed period.

**prescribed period**, in relation to a person whose election under this rule 12.2 took effect as to an amount of pension on or after the person attained the age of 60 years, means:

- (a) in the case of such a person who became entitled to the amount of pension to which the election relates on or before attaining the age of 65 years, the period (if any) between:
  - (i) the attainment by the person of the age of 60 years or the day on which the person became entitled to that amount of pension, whichever was the later; and
  - (ii) the day on which the election took effect as to that amount of pension; or
- (b) in the case of such a person who became entitled to the amount of pension to which the election relates after attaining the age of 65 years, the period (if any) between:
  - (i) the attainment by the person of the age of 65 years; and
  - (ii) the day on which the election took effect as to that amount of pension.

12.2.10 Subject to rule 12.3 of these Sub-Division D Rules, a person may, with the approval of the Trustee, make more than one election under this rule 12.2, but only one such election shall take effect.

12.2.11 Where a person makes an election under rule 12.8 of these Sub-Division D Rules to take up additional units, nothing in rule 12.2.10 of these Sub-Division D Rules applies to an election made under this rule 12.2 in respect only of any of the pension payable in respect of those additional units, but:

- (a) a person may not, without the approval of the Trustee, make more than one such election under this rule 12.2 in respect of that pension; and
- (b) only one such election made by the person under this rule 12.2 in respect of that pension shall take effect.

12.2.12 Rules 12.2.10 and 12.2.11 of these Sub-Division D Rules apply to and in respect of an election under this rule 12.2 whether or not the election has been amended or revoked.

12.2.13 The approval of the Trustee may only be given for the purposes of rules 12.2.10 and 12.2.11 of these Sub-Division D Rules in special circumstances.

12.2.14 An election made under this rule 12.2 by an Employee before the day on which the Employee attained the age of 55 years shall be deemed to be revoked if the Employee has not retired before the expiration of 12 months after attaining that age.

12.2.15 An election made under this rule 12.2 by an Employee on or after the day on which the Employee attained the age of 55 years shall be deemed to be revoked if the Employee has not retired before the expiration of 12 months after making the election.

12.2.16 These Sub-Division D Rules apply to and in respect of a person who is entitled to a pension and who commutes the whole of that pension in accordance with this rule 12.2 in the same way as it applies to and in respect of a pensioner under these Sub-Division D Rules.

12.2.17 On the death of a person who has, pursuant to this rule 12.2, commuted the whole or part of any pension payable to the person, the pension payable to the Spouse of the person pursuant to the provisions of these Sub-Division D Rules shall be determined in accordance with the pension that would have been payable to the person at the time of death had the person not so commuted that pension.

12.2.18 Nothing in these Sub-Division D Rules shall be construed as requiring the Trustee to make inquiries as to whether any pension is payable under these Sub-Division D Rules as a consequence of the death of a person who has commuted the whole of a pension in accordance with this rule 12.2.

### **12.3 Limitations on elections under rule 12.2**

12.3.1 Subject to this rule 12.3, a person may not make an election under rule 12.2 of these Sub-Division D Rules relating to a pension under these Sub-Division D Rules after the expiration of 6 months after:

- (a) the day on which the person attained the age of 55 years; or
- (b) the day on which the person became entitled to that pension,

whichever is the later day.

12.3.2 Subject to this rule 12.3, if a person makes an election under rule 12.8 of these Sub-Division D Rules to take up additional units, the person may not make an election under rule 12.2 of these Sub-Division D Rules in respect only of the pension payable in respect of those additional units after the expiration of 6 months after:

- (a) the day on which the person attained the age of 55 years; or
- (b) the day on which the person made the election under rule 12.8,

whichever is the later day.

12.3.3 Where:

- (a) an election under rule 12.2 of these Sub-Division D Rules was not made within the time prescribed in respect thereof by the provisions of rules 12.3.1 and 12.3.2 of these Sub-Division D Rules;
- (b) it is proved to the satisfaction of the Trustee that the election was not made within that time because:
  - (i) the person entitled to make the election did not know of the right to make the election; or
  - (ii) circumstances substantially beyond the control of the person prevented the making of the election; and
- (c) the Trustee is satisfied that, in the circumstances of the case, it is desirable that the election should be accepted,

the Trustee may, subject to such terms and conditions as it may impose, accept the election and deal with it as if that time had been indefinitely extended.

12.3.4 Where:

- (a) a pension became payable to a person before the person attained the age of 60 years;

- (b) the person has attained the age of 59 years and 6 months; and
- (c) the person, although entitled to do so, has not previously made an election under rule 12.2 of these Sub-Division D Rules (being an election which has taken effect) to commute the whole or any part of that pension,

the person may make an election under rule 12.2 in relation to that pension before the expiration of the period of 6 months after the day on which the person attains or attained the age of 60 years.

#### **12.4 Interest to be paid on commuted amounts**

Whenever a lump sum is payable under rule 12.2 of these Sub-Division D Rules, interest at the rate currently fixed under rule 25.5 of these Sub-Division D Rules for the purposes of this rule 12.4 (less any deduction for money due to this Sub-Division) is payable under this Sub-Division in respect of the period beginning with the date on which the lump sum becomes payable and ending with the date when it is authorised to be paid.

#### **12.5 Breakdown retirement**

12.5.1 Any Contributor may be retired from the Service of his or her Employer on the ground of invalidity or physical or mental incapacity to perform his or her duties.

12.5.2 The question whether the Contributor is an invalid, or is physically or mentally incapable of performing his or her duties, shall be determined by the Trustee, having regard to medical advice furnished by any one or more medical practitioners nominated by the Trustee.

#### **12.6 Retrenchment and Discharge**

12.6.1 For the purposes of these Sub-Division D Rules, a Contributor shall be taken to be Retrenched when the Contributor's Service with an Employer is terminated and where the Service is expressed by the Employer to be:

- (a) compulsorily terminated by the Employer on the ground that:
  - (i) the Employer no longer requires the Contributor's Services and, on termination of the Contributor's Service, does not propose to fill the Contributor's position;
  - (ii) the work which the Contributor was engaged to perform has been completed; or
  - (iii) the amount of work that the Employer requires to be performed has diminished and, because of that fact, it has become necessary to reduce the number of Employees employed by the Employer; or
- (b) terminated as a result of the acceptance by the Contributor of an offer by the Employer of terms of retrenchment made on a ground specified in paragraph (a).

12.6.2 For the purposes of these Sub-Division D Rules, a Contributor shall be taken to be Discharged on the cessation of the Contributor's employment with an Employer expressed by the Employer to be on the ground that the period, or successive periods, for which the Contributor was employed has or have ended.

## **12.7 Date of retirement, Contributions payable etc.**

- 12.7.1 For the purpose of determining the rights of an Employee under these Sub-Division D Rules, the date of his or her retirement shall be the date on which in the opinion of the Trustee he or she ceases to be employed by his or her Employer.
- 12.7.2 Except as provided by rule 12.8 of these Sub-Division D Rules, a person is not entitled to elect to contribute, or required to contribute, in respect of an additional unit or units of pension by reason of a Salary increase not actually paid before the date of his or her retirement, determined as provided by rule 12.7.1 of these Sub-Division D Rules, or the date of his or her death, whichever first occurs.
- 12.7.3 Notwithstanding anything contained in these Sub-Division D Rules, rules 13.3 and 13.5 of these Sub-Division D Rules excepted, pension shall be payable, in the case of the death of an Employee from the day following the date of death of the Employee, and in the case of the retirement of an Employee the date of whose retirement is determined by the Trustee in accordance with this rule 12.7 from the day following such date.

## **12.8 Retrospective Salary increases**

- 12.8.1 Notwithstanding rule 12.7.2 of these Sub-Division D Rules, where:

(a) a Contributor retires or dies; or

(b) where a pensioner dies,

and an amount in respect of an increase in the Contributor's or pensioner's Salary that took effect from a day earlier than the day of the Contributor's or pensioner's retirement or death and payable up to the day of the Contributor's or pensioner's retirement or death has been paid to the Contributor or pensioner, or is payable to the Contributor's or pensioner's estate,

(c) the Contributor or pensioner, or

(d) in the case of the Contributor's or pensioner's death, the Contributor's or pensioner's Spouse,

may make an election to take up any or all of the additional units to which such increase would have entitled the Contributor or pensioner had the Contributor or pensioner continued to be a Contributor.

- 12.8.2 Pension in respect of the additional units in respect of which an election is made under this rule 12.8 shall be payable from the day following the date of retirement or death of the Contributor or pensioner, as the case may be.
- 12.8.3 The contributions payable consequent on an election under this rule 12.8 in respect of a unit of pension shall be the contributions that would have been payable had the unit been a unit in respect of which the Contributor was required by rule 5.8.1 of these Sub-Division D Rules to contribute under this Sub-Division.
- 12.8.4 Nothing in this rule 12.8 authorises a person to elect to take up Abandoned Units.
- 12.8.5 An election under this rule 12.8 shall:
- (a) in the case of a person who retires after 1 January 1971 be made by the Contributor or pensioner within three months after the increase is actually paid to the Contributor or pensioner and, in the event of the person's death before the expiration of the said three months and the



person's not having made such election, be made by the person's Spouse within three months after the person's death;

- (b) in the case of a person who retires after 1 January 1971 and dies before the increase is paid, be made by the person's Spouse within three months after the increase is paid;
- (c) in the case of a Contributor who dies before the increase is paid be made, by the person's Spouse within three months after the increase is paid,

but the Trustee may in special circumstances allow an election to be made under this rule 12.8 after the expiration of the periods above prescribed.

## **12.9 Dismissal**

For the purposes of these Sub-Division D Rules, a Contributor shall be taken to be Dismissed when the Employer compulsorily terminates (however expressed) the Contributor's Service otherwise than:

- (a) by compulsorily retiring the Contributor on a pension payable under these Sub-Division D Rules; or
- (b) by Retrenching or Discharging the Contributor.

## **12.10 Resignation**

12.10.1 For the purposes of these Sub-Division D Rules, a Contributor shall be taken to have Resigned from the Service of an Employer when the Contributor terminates (however expressed) that Service without:

- (a) being entitled to retire from that Service on a pension payable under these Sub-Division D Rules; or
- (b) being Retrenched.

12.10.2 Notwithstanding rule 12.10.1 of these Sub-Division D Rules, a Contributor shall be taken to have Resigned from the Service of an Employer when the Contributor terminates that Service and elects to take the benefit of rule 13.19 of these Sub-Division D Rules.

12.10.3 Where a Contributor elects to take the benefit of rule 13.19 of these Sub-Division D Rules then no other Benefit will be payable under these Sub-Division D Rules.

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# **13. Grant of Pensions and Benefits**

## **13.1 Amount of pension payable on retirement**

13.1.1 A Contributor who retires is entitled to be paid a pension of \$5.50 per fortnight for each unit for which the Contributor was contributing at the time of retirement.

13.1.2 Rule 13.1.1 of these Sub-Division D Rules does not apply to a Contributor in respect of whom special provision for the payment of a pension or other retirement Benefit is made under another provision of these Sub-Division D Rules.

13.1.3 If the Trustee has made a determination under rule 23.1 of these Sub-Division D Rules in respect of a pension payable under this rule 13.1, the amount of the pension is reduced by the amount specified in the Trustee's determination.

### 13.2 Pension of woman retiring before 60

On the retirement at or after the age of 55 years of a woman who has contributed for a pension payable on reaching that age, the full pension for which she has so contributed shall be payable.

### 13.3 Pension on retirement before reaching 60 years of age

13.3.1 This rule 13.3 applies to a Contributor who retires in accordance with rule 12.1.2 and who is not entitled to a pension under rule 13.4 of these Sub-Division D Rules.

13.3.2 A Contributor to whom this rule 13.3 applies is entitled on retirement to a pension determined according to the number of units for which the Contributor has, at the time of retirement, contributed for not less than 2 years and 6 months.

13.3.3 Subject to this rule 13.3, the value of each unit of pension referred to in rule 13.3.2 of these Sub-Division D Rules is as follows:

- (a) if the age of the Contributor at the Contributor's last birthday before retirement was 55 years, \$3.27 per fortnight;
- (b) if the age of the Contributor at the Contributor's last birthday before retirement was 56 years, \$3.55 per fortnight;
- (c) if the age of the Contributor at the Contributor's last birthday before retirement was 57 years, \$3.91 per fortnight;
- (d) if the age of the Contributor at the Contributor's last birthday before retirement was 58 years, \$4.35 per fortnight;
- (e) if the age of the Contributor at the Contributor's last birthday before retirement was 59 years, \$4.88 per fortnight.

13.3.4 In addition to the value of a unit of pension specified in rule 13.3.3 of these Sub-Division D Rules, a Contributor is entitled to receive in respect of the unit an amount per fortnight calculated in accordance with the following formula:

$$\frac{(A - B) \times C}{364}$$

where:

- A** represents the value that the unit would have had if the Contributor had in fact retired on the Contributor's next birthday after that retirement; and
- B** represents the value of the unit at the Contributor's last birthday before retirement; and
- C** represents the number of days during the period beginning with the day after the Contributor's last birthday before retirement and ending with the day before payment of the pension is due to begin.

13.3.5 If a Contributor to whom this rule 13.3 applies has contributed for one or more units of pension for less than 2 years and 6 months, the Contributor is entitled to be paid on retirement a lump sum equal to the amount of contributions that the Contributor has paid in respect of the unit or units.

13.3.6 A pension under this rule 13.3 becomes payable on and from the day following the Contributor's Exit Day, except as provided by rule 13.3.7 of these Sub-Division D Rules.

- 13.3.7 A pension under this rule 13.3 payable to a Contributor who is Retrenched becomes payable on and from the day after the day on which the Contributor actually leaves the Service of the Contributor's Employer, whether at the Contributor's Exit Day any period of untaken leave was due to the Contributor or not.
- 13.3.8 A Contributor whose pension is determined in accordance with this rule 13.3 ceases to be liable to pay contributions to this Sub-Division on the first day of the month or four-weekly period, as the case may be, in which the pension becomes payable in accordance with rules 13.3.6 or 13.3.7 of these Sub-Division D Rules.
- 13.3.9 If the Trustee has made a determination under rule 23.1 of these Sub-Division D Rules in respect of a pension payable under this rule 13.3, the amount of the pension is reduced by the amount specified in the Trustee's determination.

### 13.4 Pension on retirement before age 60 – component pension

- 13.4.1 On the retirement of a Contributor under rule 12.1.2 of these Sub-Division D Rules, except as provided by rule 13.4.2 of these Sub-Division D Rules, the pension to which the Contributor is entitled is a pension under this rule 13.4.
- 13.4.2 A Contributor is entitled to the pension under rule 13.3 of these Sub-Division D Rules and not the pension under this rule 13.4 if the sum of:
- (a) the amount which would be payable to the Contributor on the commutation of the whole of the pension payable to the Contributor under rule 13.3 of these Sub-Division D Rules; and
  - (b) the amount of any lump sum which would be payable to the Contributor under rule 13.3.5 of these Sub-Division D Rules,
- is greater than the amount which would be payable to the Contributor on the commutation of the whole of the pension payable to the Contributor under this rule 13.4.
- 13.4.3 The pension to which a Contributor is entitled under this rule 13.4 is a pension of an amount per fortnight equivalent to the sum of the employee-contributed pension component, and the employer-financed pension component, in relation to the Contributor.
- 13.4.4 For the purposes of rule 13.4.3 of these Sub-Division D Rules, the employee-contributed pension component, in relation to a Contributor, shall be calculated in accordance with the following formula:

$$P1 = 2.20 \times EPU \times (1 - .07 \times TM)$$

where:

**P1** is the employee-contributed pension component;

**EPU** is the sum of the following:

- (a)  $\frac{UHn - Cn}{Rn}$  (except where  $\frac{Cn}{Rn}$  exceeds  $\frac{UHn}{Rn}$ );
- (b)  $\frac{TCB}{RB}$ ; and
- (c) uc;

- UHn** is the number of units of pension for which Contributions were payable by the Contributor on the Contributor's Exit Day in accordance with the tables of contributions fixed by or under these Sub-Division D Rules, but excluding:
- (a) any such units of pension which are excess units of pension referred to in rule 6.1.1 of these Sub-Division D Rules and in respect of which no person has any rights under this Sub-Division; and
  - (b) any such units of pension, being reserve units, for which Contributions were being made under rule 11.7 of these Sub-Division D Rules;
- Cn** is the amount of Contributions due for the last Contribution Period for which Contributions were payable by the Contributor before the Contributor's Exit Day, in respect of that number of units of pension;
- Rn** is the amount which, if the Contributor were required under rule 8 of these Sub-Division D Rules to commence to contribute for an additional unit of pension on the Contributor's Exit Day, would be the amount payable in accordance with the tables of Contributions fixed under rule 8.3 of these Sub-Division D Rules for that unit for a Contribution Period;
- TCB** is the total amount paid in respect of instalments payable by the Contributor on or before the Contributor's Exit Day for units of pension for which the Contributor contributed in accordance with rule 9 of these Sub-Division D Rules (but deducting therefrom any part of that amount allocated under these Sub-Division D Rules to the purchase of fully paid up units);
- RB** is the amount specified in rule 9.1.1 of these Sub-Division D Rules as the cost of a unit of pension in relation to the Contributor;
- UC** is the number of units (if any) purchased by the Contributor and credited to the Contributor as fully paid up units;
- TM** is the number of years, if any, (including any fractional part of a year calculated on a daily basis) by which the day from which the pension under this rule 13.4 of these Sub-Division D Rules commences to be payable precedes the date on which the Contributor attains the age of 60 years.

13.4.5 For the purposes of rule 13.4.3 of these Sub-Division D Rules, the employer-financed pension component, in relation to a Contributor, shall be calculated in accordance with the following formula:

$$P2 = 3.30 \times UE \times \frac{S}{S + TM} \times (1 - .04 \times TM)$$

where:

- P2** is the employer-financed pension component;
- UE** is the number of units of pension that, pursuant to rule 11.1.1 of these Sub-Division D Rules, is appropriate to the Salary payable to the Contributor on the Contributor's Exit Day plus, in a case to which rule 6.1 of these Sub-Division D Rules applies, the number of any excess units of pension referred to in rule 6.1.1 of these Sub-Division D Rules and in respect of which the Trustee considers, in accordance with rule 6.1.5 of

these Sub-Division D Rules, that the retention of entitlement to Benefits under these Sub-Division D Rules is warranted;

**S** is the number of years (including any fractional part of a year calculated on a daily basis) of continuous Contributory Service by the Contributor with any one or more Employers;

**TM** is the number of years, if any, (including any fractional part of a year calculated on a daily basis) by which the day from which the pension under this rule 13.4 commences to be payable precedes the date on which the Contributor attains the age of 60 years.

13.4.6 If the Trustee has made a determination under rule 23.1 of these Sub-Division D Rules in respect of a pension payable under rule 13.4.3 of these Sub-Division D Rules, the amount of that pension is reduced by the amount specified in the Trustee's determination.

13.4.7 For the purposes of rule 13.4.5 of these Sub-Division D Rules, the period of continuous Contributory Service by a person on the person's Exit Day is the period that commenced when the person last became a Contributor and ended on that day (but excluding any part of that period during which the person is treated by rule 15.1 of these Sub-Division D Rules as being on leave of absence without pay).

13.4.8 Except as provided by rule 13.4.9 of these Sub-Division D Rules, a pension payable under this rule 13.4 shall commence and be payable as from the day following the Contributor's Exit Day.

13.4.9 A pension payable under this rule 13.4 to a Contributor who is Retrenched shall be payable as from and including the day after the date on which the Contributor actually leaves the Service of the Employer, whether or not at the Contributor's Exit Day any period of untaken leave was due to the Contributor.

13.4.10 Contributions payable by and in respect of a Contributor whose pension is payable under this rule 13.4 shall cease to be paid on the first day of the Contribution Period preceding that in which the pension commences to be payable in accordance with rules 13.4.8 or 13.4.9 of these Sub-Division D Rules.

### **13.5 Breakdown pensions**

13.5.1 Except as provided by rules 13.5.2, 13.5.4 and 13.5.6 of these Sub-Division D Rules, if a Contributor is retired on the ground of invalidity or physical or mental incapacity to perform the Contributor's duties, the Contributor shall, subject to rule 7.4.2 of these Sub-Division D Rules, be entitled to the full pension for which the Contributor was contributing as at the Contributor's Exit Day.

13.5.2 If a Contributor:

(a) being a person who became a contributor to the State Superannuation Scheme on or after 13<sup>th</sup> January 1978; or

(b) being a person who, immediately before 13<sup>th</sup> January 1978, was:

(i) a contributor accepted or treated as a contributor for limited Benefits under the State Superannuation Scheme as then in force; or

(ii) a contributor accepted or treated as a contributor in the provisional category under the State Superannuation Scheme as then in force,

is retired on the ground of invalidity or physical or mental incapacity to perform the Contributor's duties and the number of years (disregarding any fraction of a year) comprising the period from the date when the Contributor last became a Contributor and the Contributor's Exit Day, after having subtracted from that period any period of retirement pursuant to rule 12.5 of these Sub-Division D Rules in respect of which the Contributor received a pension under the *Superannuation Act 1916* (NSW), is less than 10, the Contributor shall be entitled to a pension, the amount of which shall be calculated in accordance with the formula:

$$P = \frac{A}{100} \times (80 + \frac{20B}{C})$$

where, in relation to the Contributor:

- P** is the amount of the pension per fortnight;
- A** is the amount of pension per fortnight that would have been payable to the Contributor under rule 13.5.1 of these Sub-Division D Rules had the Contributor been a person to whom that rule 13.5.1 of these Sub-Division D Rules applies;
- B** is the number of years (disregarding any fraction of a year) comprising the period from the date when the Contributor last became a Contributor to the Contributor's Exit Day, after having subtracted from that period any period of retirement pursuant to rule 12.5 of these Sub-Division D Rules in respect of which the Contributor received a pension under the State Superannuation Scheme; and
- C** is:
- (a) the number of years (disregarding any fraction of a year) comprising the period from the date when the Contributor last became a Contributor to the last day of the Contribution Period preceding that in which the Contributor would attain the Maturity Age; or
  - (b) 10,
- whichever is the lesser.

13.5.3 If the Trustee has made a determination under rule 23.1 of these Sub-Division D Rules in respect of a pension payable under rule 13.5.2 of these Sub-Division D Rules, the amount of the pension is reduced by the amount specified in the Trustee's determination.

13.5.4 If:

- (a) a person becomes a Contributor within the period of one year ending on and including the last day of the Contribution Period preceding that in which the Contributor would attain the Maturity Age;
- (b) the Contributor is retired on the ground of invalidity or physical or mental incapacity to perform the Contributor's duties; and
- (c) the Contributor's Exit Day precedes the last day of the Contribution Period referred to in paragraph (a),

then:

- (d) rule 13.5.2 of these Sub-Division D Rules does not apply to that person; and
- (e) the Contributor shall be entitled to a pension equal to 80% of the amount of pension that would have been payable to the Contributor under rule 13.5.1 of these Sub-Division D Rules had the Contributor been a person to whom rule 13.5.1 of these Sub-Division D Rules applies.

13.5.5 Rule 13.5.2 of these Sub-Division D Rules does not apply to a Contributor whose Exit Day is on or after the last day of the Contribution Period preceding that in which the Contributor attains or would attain the Maturity Age.

13.5.6 If, in respect of a Contributor referred to in rule 13.5.2(b) of these Sub-Division D Rules (other than a Contributor referred to in rule 13.5.2(b)(ii) of these Sub-Division D Rules), the amount of pension to which the Contributor would have been entitled, had the *Superannuation Act 1916* (NSW) not been amended by the *Superannuation (Amendment) Act 1977* (NSW), is greater than the amount to which the Contributor would otherwise be entitled under rule 13.5.2 of these Sub-Division D Rules, the Contributor shall, notwithstanding rule 13.5.2 of these Sub-Division D Rules, be entitled to a pension of the greater amount.

13.5.7 A Contributor to whom this rule 13.5 applies shall be granted payment of pension only for such period at a time as the Trustee determines and a fresh application shall, unless the Trustee from time to time otherwise determines, be necessary before any further payment is made.

13.5.8 The period determined by the Trustee as referred to in rule 13.5.7 of these Sub-Division D Rules for the payment of pension to a person who:

- (a) has not attained the Maturity Age, shall be such period (not exceeding 5 years) as the Trustee thinks fit, having regard to the state of health of the person; and
- (b) has attained the Maturity Age, may be for the remainder of the person's life.

13.5.9 Contributions payable by or in respect of a Contributor to whom this rule 13.5 applies cease to be payable on the first day of the Contribution Period during which the pension becomes payable.

## **13.6 Pensions to Spouse on death of Contributor**

13.6.1 On the death of a male Contributor, pension is, subject to rule 13.28 of these Sub-Division D Rules, payable to his Spouse, at the rate of two-thirds of the pension that would have been payable to the Contributor had he, where he was aged not less than 60 years, retired or been retired immediately before his death or, where he died before reaching the age of 60 years, had he been retired immediately before his death.

13.6.2 On the death of a female Contributor, pension is, subject to rule 13.28 of these Sub-Division D Rules, payable to her Spouse, at the rate of two-thirds of the pension that would have been payable to the Contributor had she, where she was aged not less than the Maturity Age, retired or been retired immediately before her death or, where she died before reaching the Maturity Age, had she been retired immediately before her death.

## **13.7 Pension to Spouse on death of pensioner**

13.7.1 On the death of a male pensioner, pension is, subject to rules 13.28 and 13.29 of these Sub-Division D Rules, payable to his Spouse, at the rate of two-thirds of the pension payable to the pensioner at the time of his death.

- 13.7.2 On the death of a female pensioner, pension is, subject to rules 13.28 and 13.29 of these Sub-Division D Rules, payable to her Spouse, at the rate of two-thirds of the pension payable to the pensioner at the time of her death.
- 13.7.3 Notwithstanding the foregoing provisions of this rule 13.7, but subject to rule 13.30 of these Sub-Division D Rules, where a pensioner referred to in rules 13.7.1 or 13.7.2 of these Sub-Division D Rules had contributed for not more than 4 units of pension in the State Superannuation Scheme and had received a pension increase in terms of section 2 of the *Superannuation (Amendment) Act 1970* (NSW), the pension payable to the pensioner's Spouse shall not exceed \$20 per fortnight, but nothing in this rule affects the operation of rule 21.
- 13.7.4 A reference in rules 13.7.1 or 13.7.2 of these Sub-Division D Rules to a pensioner does not include a person who is entitled to receive only a pension under this rule or rule 13.6 of these Sub-Division D Rules.

### **13.8 Minimum Benefit payable in respect of a pensioner who dies**

- 13.8.1 If a pensioner dies without leaving a Spouse to whom pension is payable under these Sub-Division D Rules, nor a Child in respect of whom pension is payable under these Sub-Division D Rules, there is payable to the personal representatives of the pensioner an amount calculated by deducting from the minimum Benefit payable in respect of the pensioner the total of all Benefits paid to the pensioner under these Sub-Division D Rules.
- 13.8.2 If a pensioner dies, leaving a surviving Spouse, and the surviving Spouse dies, and there is no Child of the pensioner or Spouse in respect of whom pension is payable under these Sub-Division D Rules, there is payable to the personal representatives of the pensioner an amount calculated by deducting from the minimum Benefit payable in respect of the pensioner the total of:
- (a) all Benefits paid to the pensioner under these Sub-Division D Rules;
  - (b) all Benefits paid as a consequence of the death of the pensioner to the spouse or any other person under these Sub-Division D Rules.
- 13.8.3 If a pensioner dies leaving a surviving Spouse to whom pension is payable under these Sub-Division D Rules, and no Child of the pensioner or spouse in respect of whom pension is payable under these Sub-Division D Rules, and the surviving Spouse elects to commute the whole of that pension under rule 12.2 of these Sub-Division D Rules, there is payable to the Spouse, on that election taking effect, whichever is the greater of the following amounts:
- (a) the amount that would be payable under rule 12.2 of these Sub Division D Rules (but for this rule 13.8), or
  - (b) the amount calculated by deducting from the minimum Benefit payable in respect of the pensioner the total of:
    - (i) all Benefits paid to the pensioner under these Sub-Division D Rules; and
    - (ii) all Benefits paid as a consequence of the death of the pensioner to the Spouse or any other person under these Sub-Division D Rules.
- 13.8.4 If rules 13.8.1, 13.8.2 or 13.8.3 of these Sub-Division D Rules would apply in respect of a pensioner, but for the pensioner leaving a Child or Children in respect of whom pension is payable under these Sub-Division D Rules (or would, but for this rule 13.8, be so payable), the Trustee may, if it considers it to be in the best interests of the Child or Children, apply this rule 13.8 as if there were no



such Child or Children, in which case pension or pensions are not payable under these Sub-Division D Rules in respect of the Child or Children.

- 13.8.5 If a pensioner has no personal representatives, an amount payable to the pensioner's personal representatives is to be paid to such person or persons as the Trustee may determine.
- 13.8.6 For the purposes of this rule 13.8, if a pensioner dies and his or her Spouse died at the same moment or in circumstances rendering it uncertain which of them survived the other, and the Spouse died before a pension became payable to him or her under these Sub-Division D Rules because of the pensioner's death, the pensioner is taken not to have a surviving Spouse.
- 13.8.7 For the purposes of this rule 13.8, the minimum Benefit payable in respect of a pensioner is the amount to which the pensioner would have been entitled under rule 13.19 of these Sub-Division D Rules if the pensioner had, on the day determined by the Trustee as being the last day on which he or she was an Employee, resigned from the service of his or her employer and elected to take the benefit of that rule.

- 13.8.8 In this rule 13.8:

**Benefits** includes instalments of pension.

**Pensioner** means a person to whom a pension is payable under these Sub-Division D Rules because the person was a former Contributor, and includes a person who became entitled to a pension under these Sub-Division D Rules because the person was a former Contributor and who commuted that pension in accordance with these Sub-Division D Rules.

### **13.9 Death of Employee before retirement**

- 13.9.1 Where an Employee dies before retirement without leaving a Spouse in respect of whom pension is payable under these Sub-Division D Rules, the Employee shall, unless the Employee leaves a Child or Children in respect of whom pension is payable under these Sub-Division D Rules or would, but for this rule 13.9, be so payable, be deemed to have Resigned, immediately before dying, from the Service of the Employee's Employer and to have elected under rule 13.20 of these Sub-Division D Rules to take the benefit of rule 13.19 of these Sub-Division D Rules.
- 13.9.2 The amount payable under rule 13.19 of these Sub-Division D Rules by reason of the death of an Employee in the circumstances referred to in rule 13.9.1 of these Sub-Division D Rules shall be paid by the Trustee to the Employee's legal personal representatives or, where the Employee has no legal personal representatives, to such persons as the Trustee may determine.
- 13.9.3 Where an Employee referred to in rule 13.9.1 of these Sub-Division D Rules leaves a Child or Children in respect of whom pension is payable under these Sub-Division D Rules or would, but for this rule 13.9.3, be so payable, the Trustee may:
- (a) make a payment referred to in rule 13.9.2 of these Sub-Division D Rules as if the Employee had not left such a Child or Children, in which case a pension or pensions shall not be payable under these Sub-Division D Rules in respect of the Child or Children; or
  - (b) pay a pension or pensions in respect of the Child or Children as if this rule 13.9 did not exist and pay to the legal personal representatives of the Employee or, if there are no legal personal representatives, to such

persons as the Trustee may determine, an amount equal to the total of the contributions paid by the Employee to this Sub-Division,

whichever the Trustee considers to be in the best interests of the Child or Children.

13.9.4 If an Employee dies before retirement leaving a surviving Spouse in respect of whom pension is payable under these Sub-Division D Rules, and no Child in respect of whom pension is payable under these Sub-Division D Rules, and the surviving Spouse elects to commute the whole of that pension under rule 12.2 of these Sub-Division D Rules, there is payable to the Spouse, on that election taking effect, whichever is the greater of the following amounts:

- (a) the amount that would be payable under rule 12.2 of these Sub-Division D Rules (but for this rule 13.9); or
- (b) the amount that would have been payable if the Employee had resigned, immediately before dying, from the Service of the Employee's Employer and elected under rule 13.20 of these Sub-Division D Rules to take the benefit of rule 13.19 of these Sub-Division D Rules, less the total of any Benefits paid as a consequence of the death of the Employee to the Spouse or any other person under these Sub-Division D Rules (including any instalments of pension).

13.9.5 If rule 13.9.4 of these Sub-Division D Rules would apply in respect of an Employee, but for the Employee leaving a Child or Children in respect of whom pension is payable under these Sub-Division D Rules (or would, but for this rule 13.9, be so payable), the Trustee may, if it considers it to be in the best interests of the child or children, apply rule 13.9.4 of these Sub-Division D Rules as if there were no such Child or Children, in which case pension or pensions are not payable under these Sub-Division D Rules in respect of the Child or Children.

### **13.10 Extension of rule 13.9 to certain cases where Spouses die contemporaneously**

Where:

- (a) an Employee died before the Employee's retirement, whether before, on or after the commencement of this rule 13.10;
- (b) the Employee's Spouse died at the same moment or after the Employee died or in circumstances rendering it uncertain which of them survived the other; and
- (c) the Spouse died before a pension became payable to the Spouse under these Sub-Division D Rules consequent on the Employee's death,

the Employee shall, for the purposes of rule 13.9 of these Sub-Division D Rules or section 32A of the *Superannuation Act 1916* (NSW) as in force at any time, be deemed not to have had a Spouse at the time of the Employee's death.

### **13.11 Refund in certain cases where Spouse dies leaving Children**

13.11.1 Where:

- (a) an Employee dies before retirement leaving a Spouse;
- (b) the Spouse dies; and

- (c) there are Children of the Employee or of the Spouse in respect of whom pension becomes payable in accordance with rule 13.13 of these Sub-Division D Rules,

there shall be paid to the Employee's legal personal representatives or, where the Employee has no legal personal representatives, to such persons as the Trustee may determine a sum equal to the contributions paid by the Employee to this Sub-Division less:

- (d) the total amount of pension paid to the Spouse under rule 13.6 of these Sub-Division D Rules otherwise than in respect of a Child; and
- (e) any lump sum paid to the Spouse under rule 12.2 of these Sub-Division D Rules in respect of such a pension.

### **13.12 Children's pensions at rule 22.2 rates**

13.12.1 A pension of the appropriate amount per fortnight under rule 22.2 of these Sub-Division D Rules is payable on the death of a Contributor or pensioner in respect of a Child if the conditions set out in rules 13.12.2 and 13.12.13 of these Sub-Division D Rules are satisfied.

13.12.2 The Child must be a Child of the Contributor or pensioner or a Child of a surviving Spouse of the Contributor or pensioner who is not eligible to receive a pension under rule 13.13 of these Sub-Division D Rules.

13.12.3 If the Child is not a Child of the Contributor or pensioner, the Child:

- (a) must have been born or adopted before the death of the Contributor or pensioner; and
- (b) must have been ordinarily part of the Contributor's or pensioner's household at the time of the death of the Contributor or pensioner.

13.12.4 A pension under this rule 13.12 ceases to be payable in respect of a Child if the surviving parent dies.

13.12.5 A pension under this rule 13.12 continues to be payable notwithstanding that the surviving parent marries or remarries.

13.12.6 Nothing in this rule affects the operation of rule 13.29 of these Sub-Division D Rules.

13.12.7 In this rule 13.12:

**pensioner** means a person who received a pension because the person was a former Contributor.

### **13.13 Children's pensions at rule 22.3 rates**

13.13.1 A pension of the appropriate amount per fortnight under rule 22.3 of these Sub-Division D Rules is payable on the death of a Contributor or pensioner in respect of a Child if the conditions set out in rules 13.13.2 – 13.13.4 of these Sub-Division D Rules are satisfied.

13.13.2 The Child must be a Child of the Contributor or pensioner or a Child of a Spouse of the Contributor or pensioner.

13.13.3 The other parent of the Child or the Spouse of the Contributor or pensioner who was a parent of the Child:

- (a) must have died before the Contributor's or pensioner's death;
- (b) must have been divorced from the Contributor or pensioner; or
- (c) must have been in a De Facto Relationship with the Contributor or pensioner that ended before the Contributor's or pensioner's death.

13.13.4 If the Child is not a Child of the Contributor or pensioner:

- (a) in a case where the Spouse who is the parent of the Child is divorced from or the former De Facto Spouse of the pensioner or Contributor, the Child must have been born or adopted before the divorce or end of the De Facto Relationship; and
- (b) in any case, the Child must have been ordinarily part of the Contributor's or pensioner's household at the time of the death of the Spouse, divorce or end of the De Facto Relationship.

13.13.5 In this rule 13.13:

**pensioner** means a person who received a pension because the person was a former Contributor.

**Spouse** includes a person previously married to the Contributor or pensioner or a former De Facto Spouse.

13.13.6 Where a pension ceases to be payable under rule 13.12 of these Sub-Division D Rules in respect of a Child because the surviving parent dies, a pension of the appropriate amount per fortnight under rule 22.3 of these Sub-Division D Rules is payable in respect of the Child.

13.13.7 Nothing in this rule 13.13 affects the operation of rule 13.29 of these Sub-Division D Rules.

#### **13.14 The Trustee may determine to pay Children's pensions in other cases**

The Trustee may, if it considers it appropriate, determine that a pension is payable under a provision of these Sub-Division D Rules to a Child even though the Child is not eligible under that provision to receive a pension.

#### **13.15 The Trustee to apportion Benefit between the Contributors' Reserve and the appropriate Employer Reserve**

13.15.1 Whenever:

- (a) a Benefit under these Sub-Division D Rules becomes payable to a Contributor (other than a Benefit under rule 16 of these Sub-Division D Rules);
- (b) a Contributor elects to take the benefit of rule 16 of these Sub-Division D Rules; or
- (c) if a Contributor has died without having received a Benefit under these Sub-Division D Rules the Benefit becomes payable to another person in consequence of that death,

the Trustee must ascertain the portion of the Benefit that is payable from the Contributors' Reserve and the portion that is payable from the appropriate Employer Reserve.

13.15.2 For the purposes of rule 13.15.1 of these Sub-Division D Rules:

- (a) the portion of the Benefit payable to or in respect of a Contributor from the Contributors' Reserve is an amount equal to the lesser of the amount calculated according to rule 13.15.4 of these Sub-Division D Rules and the relevant amount; and
- (b) the portion of the Benefit payable to or in respect of the Contributor from the appropriate Employer Reserve is equal to the relevant amount, less the amount ascertained under paragraph (a).

13.15.3 For the purposes of rule 13.15.2 of these Sub-Division D Rules, the relevant amount is:

- (a) if a lump sum Benefit (other than a commutation of pension) is to be paid to or in respect of the Contributor, the amount of the Benefit payable to or in respect of the Contributor; or
- (b) if a pension or a commutation of a pension is to be paid to or in respect of the Contributor, the amount calculated by the Trustee as the capitalised value of the Benefits payable to or in respect of the Contributor.

13.15.4 For the purposes of rule 13.15.2 of these Sub-Division D Rules, the amount to be calculated is:

- (a) the amount that would have been payable if the Contributor had elected to take the benefit of rule 13.18 of these Sub-Division D Rules; and
- (b) interest:
  - (i) compounded on 30 June in each year in respect of the period beginning with the day on which the Contributor first became liable to make contributions under these Sub-Division D Rules and ending with the day on which the Contributor ceased to be employed by an Employer; and
  - (ii) calculated at the prescribed rate on the amount ascertained by applying the formula set out in rule 13.15.5 of these Sub-Division D Rules.

13.15.5 For the purposes of rule 13.15.4(b) of these Sub-Division D Rules, the formula is as follows:

$$\frac{A + B}{2}$$

where:

- A** represents the total amount of Contributions (excluding Contributions refundable under rule 11.7.7 or 11.7.8 of these Sub-Division D Rules) that the Contributor had paid to this Division from the beginning of the Contributor's Contributory Service to the beginning of the period in respect of which the calculation is to be made, together with interest (if any) at the prescribed rate calculated at 30 June immediately preceding that period;
- B** represents the total amount of those Contributions from the beginning of the Contributor's Contributory Service to the end of the period in respect of which the calculation is to be made, together with interest (if any) at

the prescribed rate calculated as at 30 June immediately preceding that period.

13.15.6 For the purposes of this rule 13.15, **prescribed rate** means:

- (a) in respect of any relevant period ending before 1 July 1972, 3.5% per year; and
- (b) in respect of any relevant period beginning on or after 1 July 1972, the rate as fixed by the Trustee from time to time, having regard to the earnings of this Sub-Division and such other matters as the Trustee considers relevant.

### **13.16 Retrenchment Benefits payable to an Employee who is Retrenched after completing 10 years' Service**

13.16.1 This rule 13.16 does not apply to an Employee who is Retrenched before having completed 10 years' Service with any one or more Employers.

13.16.2 In the case of the retrenchment of an Employee who was a Contributor to the State Superannuation Scheme at 30<sup>th</sup> June 1963, the Contributor is, subject to rule 13.20 of these Sub-Division D Rules, entitled to either:

- (a) a lump sum payment equal to three and one-half times the sum of:
  - (i) the contributions that the Contributor paid to the State Superannuation Scheme (but without interest) before 13<sup>th</sup> January 1952; and
  - (ii) ten-elevenths of the contributions that the Contributor has paid to the State Superannuation Scheme (but without interest) on or after 13<sup>th</sup> January 1952 and to Division D of Active Super and this Sub-Division (but without interest),in determination of all rights given by these Sub-Division D Rules (rule 13.16.4 of these Sub-Division D Rules excepted); or
- (b) such pension as is determined by the Trustee to be the equivalent of the Contributor's rights in this Sub-Division.

13.16.3 In the case of the Retrenchment of an Employee who became a Contributor to the State Superannuation Scheme on or after 1<sup>st</sup> July 1963, the Contributor is, subject to rule 13.20 of these Sub-Division D Rules, entitled to either:

- (a) a lump sum payment equal to two and one-half times the contributions that the Contributor has paid to the State Superannuation Scheme and to Division D of Active Super and this Sub-Division (but without interest), in determination of all rights given by these Sub-Division D Rules (rule 13.16.4 of these Sub-Division D Rules excepted); or
- (b) such pension as is determined by the Trustee to be the equivalent of the Contributor's rights in this Sub-Division.

13.16.4 An Employee entitled to:

- (a) a lump sum payment under rule 13.16.2(a) of these Sub-Division D Rules is also entitled to a lump sum payment equal to two and one-half times an amount equal to ten-elevenths of the contributions; or

- (b) a lump sum payment under rule 13.16.3(a) of these Sub-Division D Rules is also entitled to a lump sum payment equal to one and one-half times an amount equal to the contributions,

that would have been payable by him or her under these Sub-Division D Rules in respect of each of the Reduced Value Units allocated to him or her, had each such Reduced Value Unit been held by him or her as a Contributory Unit as from the earliest of the times that he or she is deemed by rule 14.1.7 of these Sub-Division D Rules to have held the Reduced Value Unit.

13.16.5 If the Trustee has made a determination under rule 23.1 of these Sub-Division D Rules in respect of a Benefit payable under this rule 13.16, the amount of the Benefit is reduced by the amount specified in the Trustee's determination.

13.16.6 Where an Employee who has been Retrenched and is in receipt of a pension thereafter enters the Service of an Employer:

- (a) the pension shall not cease to be payable;
- (b) the Employee shall contribute as provided in rules 4 to 11 of these Sub-Division D Rules; and
- (c) the Employee shall not be entitled to count the Employee's Service prior to retrenchment as Service for the purpose of any other pension or Benefit under these Sub-Division D Rules.

13.16.7 Where an Employee who has been Retrenched and has received a lump sum under this rule 13.16 thereafter enters the Service of an Employer, the Employee is not entitled to claim any further Benefit in respect of the Employee's previous Service unless he or she complies with rule 13.21 of these Sub-Division D Rules.

13.16.8 A person who, before becoming a Contributor, was:

- (a) employed on terms requiring the Contributor to give the whole of his or her time to that employment; and
- (b) was paid at an hourly, daily, weekly or fortnightly rate, or at piecework rates,

is entitled to have that employment treated as Service as an Employee for the purposes of this rule 13.16.

13.16.9 Whenever:

- (a) a period of employment that a Contributor has had with an Employer; and
- (b) a later period of Service that the Contributor has had as an Employee with an Employer,

are continuous the Trustee may, if satisfied that, having regard to the nature of the work performed by the Contributor during that period of employment, it is proper to do so, treat, for the purposes of this rule 13.16, that period of employment as a period of Service as an Employee with that Employer.

13.16.10 A reference in rule 13.16.9 of these Sub-Division D Rules to a period of Service as an Employee with an Employer includes a reference to a period treated under rules 13.16.8 or 13.16.9 of these Sub-Division D Rules as a period of Service as an Employee.

### **13.17 Retrenchment Benefits payable to Contributors having not less than 3 years' Contributory Service**

13.17.1 This rule 13.17 applies to a Contributor who is Retrenched from the Service of an Employer on or after 13 February 1987 and who, at the time of retrenchment, has completed 3 years' continuous Contributory Service.

13.17.2 For the purpose of rule 13.17.1 of these Sub-Division D Rules, a Contributor who is Retrenched shall be taken to have completed 3 years' continuous Contributory Service when:

- (a) the Contributor has, for a continuous period of 3 years or more immediately preceding the retrenchment, been employed in the Service of an Employer or Employers; and
- (b) during the continuous period of 3 years immediately preceding the retrenchment, the Contributor has been a Contributor under these Sub-Division D Rules or Schedule 4 of the Active Super Trust Deed or a Contributor to the Public Authorities Superannuation Scheme.

13.17.3 For the purposes of rule 13.17.1, the period of continuous Contributory Service by a Contributor at the Contributor's Exit Day is:

- (a) subject to paragraph (b), the period that commenced when the Contributor last became a contributor to the State Superannuation Scheme and ended on that Exit Day; or
- (b) if immediately before becoming a Contributor to the State Superannuation Scheme the Contributor was a Contributor to the Public Authorities Superannuation Fund, the period that commenced when the Contributor last became a contributor to the Public Authorities Superannuation Fund and ended on that Exit Day,

but excluding in either case any part of that period during which the Contributor is treated by rule 15.1 of these Sub-Division D Rules as being on leave of absence without pay.

13.17.4 A Contributor to whom this rule 13.17 applies is, subject to rule 13.20 of these Sub-Division D Rules, entitled to either:

- (a) a lump sum Benefit calculated in accordance with the formula set out in rule 13.17.5 of these Sub-Division D Rules; or
- (b) such pension as is determined by the Trustee to be the equivalent of the Contributor's rights in this Sub-Division.

13.17.5 The formula referred to in rule 13.17.4(a) of these Sub-Division D Rules is as follows:

$$B = C + E$$

where:

**B** represents the Benefit to be determined;

**C** is equal to:

- (a)  $P1 \times (0.96 M-A) \times F$ ; or
- (b) the contributions paid by the Contributor,



whichever is the greater; and

**E** is equal to  $P2 \times (0.98 M - A) \times F$ .

13.17.6 For the purposes of rule 13.17.5 of these Sub-Division D Rules:

**A** represents the Contributor's age in years and any fractional part of a year (that part to be calculated on a daily basis) on the Contributor's Exit Day;

**F** is equal to:

(a) if M is 60 or more, 285; and

(b) if M is less than 60,  $320 - (M - 55) \times 7$ ;

**M** represents the greater of the following:

(a) the Contributor's Maturity Age;

(b) the Contributor's age in years and any fractional part of a year (that part to be calculated on a daily basis) at the date on which the Contributor last became a member of the State Superannuation Scheme + 10;

**P1** is the employee-contributed pension component calculated in accordance with rule 13.17.7(a) of these Sub-Division D Rules; and

**P2** is the employer-financed pension component calculated in accordance with rule 13.17.7(b) of these Sub-Division D Rules.

13.17.7 In rule 13.17.6 of these Sub-Division D Rules:

(a)  $P1 = 2.20 \times EPU$

where **EPU** is the sum of:

(i)  $U_{Hn} - \frac{C_n}{R_n}$  (except where  $\frac{C_n}{R_n}$  exceeds  $U_{Hn}$ )

(ii)  $\frac{TCB}{RB}$ ; and

(iii) UC; and

(b)  $P2 = 3.30 \times UE \times \frac{S}{S + T}$

where:

**UE** is the number of units of pension that, pursuant to rule 11.1.1 of these Sub-Division D Rules, is appropriate to the Salary payable to the Contributor on the Contributor's Exit Day plus, in a case to which rule 6.1 of these Sub-Division D Rules applies, the number of any excess units of pension referred to in rule 6.1.1 of these Sub-Division D Rules and in respect of which the Trustee considers, in accordance with rule 6.1.5 of these Sub-Division D Rules, that the retention of entitlement to Benefits under these Sub-Division D Rules is warranted;

- S** is the number of years (including any fractional part of a year calculated on a daily basis) of continuous Contributory Service by the Contributor with any one or more Employers;
- T** is the number of years, if any, (including any fractional part of a year calculated on a daily basis) by which the Contributor's Exit Day precedes:
- (a) the date on which the Contributor attains the Maturity Age; or
  - (b) where any employment which, on the Contributor's Exit Day, the Contributor is entitled to count as Service for the purposes of rule 12.1 of these Sub-Division D Rules is, in total, for less than a period of 10 years, the expiration of the balance of that period of 10 years,
- whichever is the later.

13.17.8 For the purposes of rule 13.17.7(a) of these Sub-Division D Rules:

- UHn** is the number of units of pension for which Contributions were payable by the Contributor on the Contributor's Exit Day in accordance with the tables of Contributions fixed by or under these Sub-Division D Rules, but excluding:
- (a) any such units of pension which are excess units of pension referred to in rule 6.1.1 of these Sub-Division D Rules and in respect of which no person has any rights in this Sub-Division; and
  - (b) any such units of pension, being reserve units, for which Contributions were being made under rule 11.7 of these Sub-Division D Rules;
- Cn** is the amount of Contributions due for the last Contribution Period for which Contributions were payable by the Contributor before the Contributor's Exit Day, in respect of that number of units of pension;
- Rn** is the relevant amount under rule 13.17.9 of these Sub-Division D Rules in relation to the Contributor for an additional unit of pension on the Contributor's Exit Day;
- TCB** is the total amount paid in respect of instalments payable by the Contributor on or before the Contributor's Exit Day for units of pension for which the Contributor contributed in accordance with rule 9 of these Sub-Division D Rules (but deducting from that amount any part allocated under these Sub-Division D Rules to the purchase of fully paid up units);
- RB** is the amount specified in rule 9.1.1 of these Sub-Division D Rules as the cost of a unit of pension in relation to the Contributor; and
- UC** is the number of units (if any) purchased by the Contributor and credited to the Contributor as fully paid up units.

13.17.9 For the purposes of rule 13.17.8 of these Sub-Division D Rules, the relevant amount in relation to a Contributor for an additional unit of pension on the Contributor's Exit Day is:

- (a) where the Contributor has attained the Prescribed Age on or before that day, the amount which, if the Contributor were required under rule 8 of these Sub-Division D Rules to commence to contribute for an additional unit of pension on that day, would be the amount payable in accordance with the tables of Contributions fixed under rule 8.3 of these Sub-Division D Rules for that unit for a Contribution Period; or
- (b) where the Contributor has not attained the Prescribed Age on or before that day, the amount equal to the sum of:
  - (i) the amount payable by the Contributor for any additional unit of pension for which the Contributor had been required to commence contributing on and from the Contributor's last Annual Adjustment Day for a Contribution Period or, as the case may be, the amount that would have been so payable if the Contributor had been so required; and
  - (ii) for each day of the period commencing on the day following that Annual Adjustment Day and ending on the Contributor's Exit Day, the amount equal to  $1/364^{\text{th}}$  part of the difference between the amount referred to in paragraph (b)(i) and the amount that that amount would have been if, on the Contributor's last Annual Review Day before the Contributor's Exit Day, the Contributor had been 1 year older than the age actually attained.

13.17.10 For the purposes of rule 13.17.7(b) of these Sub-Division D Rules, the period of continuous Contributory Service by a Contributor on the Contributor's Exit Day is the period that commenced when the Contributor last became a Contributor and ended on that day, but excluding any part of that period during which the Contributor is treated by rule 15.1 of these Sub-Division D Rules as being on leave of absence without pay.

13.17.11 If the Trustee has made a determination under rule 23.1 of these Sub-Division D Rules in respect of a Benefit payable under this rule 13.17, the amount of the Benefit is reduced by the amount specified in the Trustee's determination.

13.17.12 If a former Employee who:

- (a) has been Retrenched; and
- (b) has received a retrenchment Benefit under this rule 13.17,

subsequently enters the Service of the same or another Employer, the former Employee is not entitled to claim any further Benefit in respect of previous Service with an Employer unless the former Employee has complied with rule 13.21 of these Sub-Division D Rules.

## **13.18 Refund of contributions**

13.18.1 If a Contributor:

- (a) is Retrenched from the Service of an Employer; or
- (b) Resigns or is Dismissed or Discharged from the Service of an Employer,

the Contributor is, subject to rule 13.20 of these Sub-Division D Rules, entitled to be paid a lump sum (without interest) equal to the Contributions (other than Contributions refundable under rule 11.7.8 of these Sub-Division D Rules) paid by the Contributor, irrespective of the cause of the retrenchment, resignation, dismissal or discharge.

13.18.2 Whenever a lump sum is paid under rule 13.18.1 of these Sub-Division D Rules, there shall, subject to rule 13.18.3 of these Sub-Division D Rules, be deducted from that sum any amount received by the Contributor as a pension before the Contributor's retrenchment, resignation, dismissal or discharge.

13.18.3 A deduction under rule 13.18.2 of these Sub-Division D Rules must not reduce the amount paid to a Contributor under this rule 13.18 to an amount below the contributions paid by the Contributor since the Contributor last received any amount as pension.

13.18.4 If a former Employee who:

- (a) has been Retrenched, Dismissed or Discharged, or has Resigned; and
- (b) has received a Benefit under this rule 13.18 or rule 13.19 of these Sub-Division D Rules,

subsequently enters the Service of the same or another Employer, the former Employee is not entitled to claim any further Benefit in respect of previous Service unless the former Employee has complied with rule 13.21 of these Sub-Division D Rules.

### **13.19 Withdrawal Benefit**

13.19.1 In this rule 13.19:

**Contributory Service**, in relation to a Contributor who is Retrenched, Resigns or is Dismissed or Discharged from the Service of an Employer, is the next preceding period that:

- (a) began:
  - (i) when the Contributor last became a Contributor; or
  - (ii) if, since last becoming a Contributor, the Contributor had been held to be on leave of absence without pay as provided by rule 15.1 of these Sub-Division D Rules, when an Employer re-employed the Contributor after that leave of absence; and
- (b) ended when the Contributor's employment with the Employer ceased;

**prescribed rate** means:

- (a) in respect of any relevant period ending before 1 July 1972, 3.5% per year;
- (b) in respect of any relevant period beginning on or after 1 July 1972 and ending before the Transfer Time - the rate as fixed by the Active Super Trustee from time to time, having regard to the earnings of Active Super or a fund that was a Former Fund and such other matters as the Trustee considers relevant; and
- (c) in respect of any relevant period beginning at or after the Transfer Time, the rates as fixed by the Trustee from time to time having regard to such matters as the Trustee considers relevant.

13.19.2 If a Contributor who has not completed 5 years' Contributory Service is Retrenched, Resigns or is Dismissed or Discharged from the Service of an Employer, the Contributor is, subject to rule 13.20 of these Sub-Division D Rules, entitled to receive from this Sub-Division the amount that would have been

payable if the Contributor had elected to take the benefit of rule 13.18 of these Sub-Division D Rules.

13.19.3 If a Contributor who has completed 5 years' but less than 10 years' Contributory Service is Retrenched, Resigns or is Dismissed or Discharged from the Service of an Employer, the Contributor is, subject to rule 13.20 of these Sub-Division D Rules, entitled to receive from this Division an amount equal to the sum of:

- (a) the amount that would have been payable if the Contributor had elected to take the benefit of rule 13.18 of these Sub-Division D Rules; and
- (b) interest:
  - (i) compounded on 30 June each year in respect of the period beginning with the day on which the Contributor first became liable to make contributions under these Sub-Division D Rules and ending with the day on which the Contributor ceased to be employed by that Employer; and
  - (ii) calculated at the prescribed rate on the amount ascertained by applying the formula set out in rule 13.19.5 of these Sub-Division D Rules.

13.19.4 If a Contributor who has 10 years' Contributory Service or more is Retrenched, Resigns or is Dismissed or Discharged from the Service of an Employer, the Contributor is, subject to rule 13.20 of these Sub-Division D Rules, entitled to receive from this Sub-Division an amount equal to the sum of:

- (a) the amount that would have been payable if the Contributor had elected to take the benefit of rule 13.18 of these Sub-Division D Rules; and
- (b) interest:
  - (i) compounded on 30 June each year in respect of the period beginning with the day on which the Contributor first became liable to make contributions under these Sub-Division D Rules and ending with the day on which the Contributor ceased to be employed by that Employer; and
  - (ii) calculated at the prescribed rate on the amount ascertained by applying the formula set out in rule 13.19.5 of these Sub-Division D Rules; and
- (c) a further amount calculated in accordance with the following formula:

$$\frac{T \times P}{40}$$

where:

- T** represents the sum of the amounts referred to in paragraphs (a) and (b); and
- P** represents the period of the Contributor's Contributory Service, expressed in years with any fractional part of a year being calculated on a daily basis.

13.19.5 For the purposes of rules 13.19.3(b) and 13.19.4(b) of these Sub-Division D Rules, the formula is as follows:

$$\frac{A + B}{2}$$

where:

- A** represents the total amount of Contributions (excluding Contributions refundable under rule 11.7.8 of these Sub-Division D Rules) that the Contributor had paid to this Sub-Division from the beginning of the Contributor's Contributory Service to the beginning of the period in respect of which the calculation is to be made, together with interest (if any) at the prescribed rate calculated at 30 June immediately preceding that period; and
- B** represents the total amount of those Contributions from the beginning of the Contributor's Contributory Service to the end of the period in respect of which the calculation is to be made, together with interest (if any) at the prescribed rate calculated at 30 June immediately preceding that period.

13.19.6 Despite rules 13.19.2, 13.19.3, and 13.19.4 of these Sub-Division D Rules, the maximum amount that a Contributor is entitled to receive under this rule is:

- (a) in the case of a Contributor who has not attained the age of 55 years - the amount calculated by the Trustee, on the basis of actuarial advice, as the capitalised value of the pension that would have been payable to the Contributor had he or she been 55 years of age and elected to retire on pension, or
- (b) in the case of a Contributor who has attained the age of 55 years - the amount calculated by the Trustee as the capitalised value of the pension that would have been payable to the Contributor if the Contributor had elected to retire on pension at his or her current age.

13.19.7 If the Trustee calculates that the maximum amount that a Contributor is entitled to receive under rule 13.19.6 of these Sub-Division D Rules is less than the amount the Contributor would receive under rule 13.19 of these Sub-Division D Rules if the terms applying immediately prior to the amendments that took effect on 30 June 1999 are applied to calculate the benefit, then the Contributor is entitled to receive that greater amount.

The **Prescribed Rate** in rule 13.19.1 of these Sub-Division D Rules as it stood immediately prior to that amendment, being as follows:

**Prescribed rate:**

- (a) in respect of any relevant period ending before 1 July 1972, 3.5% per year; and
- (b) in respect of any relevant period beginning on or after 1 July 1972 and ending before 1 July 1990, 4.5% per year; and
- (c) in respect of any relevant period beginning on or after 1 July 1990 and ending before the date of transfer of the Contributor, the rate as fixed by the SAS Trustee Corporation under the Superannuation Act 1916 from time to time, having regard to the earnings or such other matters as the Trustee considers relevant; and
- (d) in respect of any relevant period beginning on or after the date of transfer of the Contributor, the rate as fixed by the Trustee from time to time having regard to such matters as the Trustee considers relevant.

'T' in rule 13.19.4 of these Sub-Division D Rules as it stood immediately prior to that amendment, being as follows:

- T** represents the amount referred to in paragraph (a), together with such amount as would have been the amount of interest calculated for the purpose of paragraph (b) if:
- (i) for any relevant period beginning on or after 1 July 1972, the prescribed rate had been 4.5% per year; and
  - (ii) for any relevant period before that date the prescribed rate had been 3.5% per year; and

13.19.8 If the Trustee has made a determination under rule 23.1 of these Sub-Division D Rules in respect of a Benefit payable under this rule 13.19, the amount of the Benefit is reduced by the amount specified in the Trustee's determination.

### **13.20 Contributor who is Retrenched, Resigns or is Dismissed or Discharged to be entitled to the greatest available Benefit**

13.20.1 A Contributor who is Retrenched from the Service of an Employer and who, at the date when the retrenchment takes effect, is not entitled to elect to retire on a pension under rules 13.1, 13.2, 13.3 or 13.4 of these Sub-Division D Rules may, at any time before the end of 3 months after that date, elect between taking:

- (a) a lump sum Benefit payable under a provision of rules 12 to 25 of these Sub-Division D Rules to any such Contributor who is Retrenched;
- (b) if such a provision also confers an entitlement to a pension, a pension; or
- (c) subject to rule 13.20.7 of these Sub-Division D Rules, the benefit of rule 16 of these Sub-Division D Rules.

13.20.2 A Contributor who Resigns or is Dismissed or Discharged from the Service of an Employer may, at any time before the end of 3 months after the date when the Resignation, Dismissal or Discharge takes effect, elect between taking:

- (a) a lump sum Benefit payable under a provision of rules 12 to 25 of these Sub-Division D Rules to a Contributor who has Resigned or is Dismissed or Discharged; or
- (b) subject to rule 13.20.7 of these Sub-Division D Rules the benefit of rule 16 of these Sub-Division D Rules.

13.20.3 If a Contributor is Retrenched, Resigns or is Dismissed or Discharged from the Service of an Employer, the Employer must take all practicable steps to obtain from the Contributor an election under rule 13.20.1 or 13.20.2 of these Sub-Division D Rules and, after obtaining such an election, must forward it immediately to the Trustee.

13.20.4 If a Contributor who is entitled to make an election under rule 13.20.1 or 13.20.2 of these Sub-Division D Rules to take a particular kind of Benefit does not make such an election before the end of the prescribed period, the Contributor shall be taken to have elected to take the kind of Benefit that the Trustee decides to be the most appropriate in the circumstances of the case.

13.20.5 If a Contributor elects under this rule 13.20 to take a particular kind of Benefit under rule 13.20.1 and would, but for rule 13.20.6 of these Sub-Division D Rules, be entitled to a Benefit of that kind under 2 or more provisions of rules 12 to 25 of these Sub-Division D Rules, the Trustee must calculate which of the Benefits under those provisions would be the greater or greatest.

- 13.20.6 A Contributor referred to in rule 13.20.5 of these Sub-Division D Rules is entitled to receive only the greater or greatest of the Benefits calculated under that rule.
- 13.20.7 A Contributor who is Retrenched, Resigns or is Dismissed or Discharged from the Service of an Employer is not entitled to elect under rules 13.20.1 or 13.20.2 of these Sub-Division D Rules to take the benefit of rule 16 of these Sub-Division D Rules unless the Contributor has completed 3 years' continuous Contributory Service.
- 13.20.8 For the purposes of rule 13.20.7 of these Sub-Division D Rules, a Contributor to whom that rule applies shall be taken to have completed 3 years' Contributory Service when:
- (a) a Contributor has, for a continuous period of 3 years or more immediately preceding the retrenchment, been employed in the Service of one or more Employers; and
  - (b) during the period of 3 years immediately preceding the retrenchment, the Contributor has been a Contributor under these Sub-Division D Rules or Division D of Active Super or a Contributor to the Public Authorities Superannuation Fund.
- 13.20.9 For the purposes of rule 13.20.7 of these Sub-Division D Rules, the period of continuous Contributory Service by a Contributor at the Contributor's Exit Day is:
- (a) subject to paragraph (b), the period that commenced when the Contributor last became a Contributor and ended on that Exit Day; or
  - (b) if immediately before becoming a Contributor to the State Superannuation Scheme the Contributor was a Contributor to the Public Authorities Superannuation Fund, the period that commenced when the Contributor last became a contributor to the Public Authorities Superannuation Fund and ended on that Exit Day,

but excluding in either case any part of that period during which the Contributor is treated by rule 15.1 of these Sub-Division D Rules as being on leave of absence without pay.

### **13.21 Break in Service may be cured on certain conditions**

- 13.21.1 In this rule 13.21, a reference to the **prescribed rate** is a reference to the rate of interest for the time being fixed by the Trustee under rule 25.5 of these Sub-Division D Rules for the purposes of this rule 13.21.
- 13.21.2 Where a person who ceases to be employed by an Employer (otherwise than by retirement or Retrenchment on pension under these Sub-Division D Rules) enters the Service of the same or a different Employer within the next succeeding period of three months and, within that same period of three months, would (but for rule 1.5 of these Sub-Division D Rules) be required to contribute to this Sub-Division, the person may, subject to rule 13.21.7 of these Sub-Division D Rules, elect to resume payment of Contributions as if the person had not ceased to be employed if the person elects within three months after the person would (but for rule 1.5 of these Sub-Division D Rules) be required to contribute to this Sub-Division to comply, and upon the election taking effect does comply, with this rule 13.21.
- 13.21.3 A person referred to in rule 13.21.2 of these Sub-Division D Rules complies with this rule 13.21 if:
- (a) the person pays to this Sub-Division any lump sum received by the person, or authorises the retention in this Sub-Division of any lump sum



payable to the person, under rules 13.16, 13.17, 13.18 or 13.19 of these Sub-Division D Rules in consequence of the cessation of the person's employment together with, where the person has received any such amount, interest thereon at the prescribed rate from the date the amount was paid to the person to the date of receipt in the office of the Trustee of the amount payable pursuant to this paragraph;

- (b) the person pays to this Sub-Division the amount referred to in rule 13.21.4 of these Sub-Division D Rules; and
- (c) the person resumes payment to this Sub-Division of the Contributions that would, had the person continued in the employment of the person's previous Employer, have been payable by the person on and from the beginning of the four-weekly Contribution Period in which the person ceased to be employed.

13.21.4 The amount required to be paid under rule 13.21.3(b) of these Sub-Division D Rules by a person who makes an election under this rule 13.21 is an amount equal to the sum of:

- (a) all the Contributions that would have been payable:
  - (i) by the person from the day following the day to which the person's Contributions were paid before cessation of the person's former employment; and
  - (ii) by the person's Employer from the beginning of the four-weekly Contribution Period in which the person ceased to be employed,

had the person continued in the employment of the person's former Employer, at the same Salary as that which the person was receiving immediately before cessation of the Contributions the person was required to make by reason of the person's former employment, until the beginning of the first Contribution Period in which the person's employment resumes; and

- (b) interest at the prescribed rate on the amount of each Contribution referred to in paragraph (a) from the termination of the four-weekly Contribution Period in respect of which it is required to be paid to the date of receipt of the Contribution in the office of the Trustee.

13.21.5 The Trustee may, in special circumstances and in a particular case:

- (a) waive payment of interest under this rule 13.21 or any part thereof; or
- (b) permit payment over an extended period of any amount required to be paid pursuant to rules 13.21.3(a) or (b) of these Sub-Division D Rules.

13.21.6 Where a person who makes an election under this rule 13.21 was, immediately before cessation of the person's employment, contributing for reserve units of pension under rule 11.7 of these Sub-Division D Rules, the person may, when making an election under this rule 13.21, make an election under section 15(6) of the *Superannuation Act 1916* (NSW) and, where the person so elects under that section, contributions in respect of the reserve units to which the election under that section relates shall not be taken into account when calculating any amount payable by that person under this rule 13.21.

13.21.7 Rules 4 to 11 of these Sub-Division D Rules apply to and in respect of a person who makes an election under this rule 13.21 and does not comply with this rule 13.21, and so applies as if the person had not made the election.

13.21.8 Rule 3.1 of these Sub-Division D Rules does not apply to a person who makes an election under this rule 13.21, unless the Trustee directs that that rule shall apply to the person.

13.21.9 A person who ceases to be an Employee and elects under this rule 13.21 to take the benefit of rule 16 of these Sub-Division D Rules may not, upon entering the Service of an Employer within the next succeeding period of 3 months, make an election under this rule 13.21 if, during that period, the person received any Benefit under rule 16 of these Sub-Division D Rules.

13.21.10 Where a person who is deemed under rule 13.21.11 of these Sub-Division D Rules not to have ceased to be an Employee had, upon ceasing to be an Employee, elected under rule 13.20 of these Sub-Division D Rules to take the benefit of rule 16 of these Sub-Division D Rules:

(a) the person shall be deemed not to have elected to take the benefit of rule 16 of these Sub-Division D Rules; and

(b) no person has any rights in this Sub-Division in relation to the employee-contributed pension component, or the employer-financed pension component, calculated in relation to the person.

13.21.11 A person who makes an election under, and complies with, this rule 13.21 shall, for the purposes of these Sub-Division D Rules, but subject to rule 13.21.7 of these Sub-Division D Rules, be deemed not to have ceased to be an Employee or a Contributor by reason of the cessation of employment that gave rise to the election.

### **13.22 Incapacity or absence of pensioner**

13.22.1 Subject to Superannuation Law if because of a pensioner's incapacity from any cause or because a pensioner cannot be found the Trustee is of opinion that payment of a pension or other Benefit under these Sub-Division D Rules should be made to a person other than the pensioner or other beneficiary, and is satisfied that such payment will be used for the maintenance, care and support of the pensioner or beneficiary, or a person who is wholly or partly dependent on the pensioner or beneficiary, the Trustee may make payment of the pension or part thereof to such other person during the period of absence or incapacity.

13.22.2 Any amount payable pursuant to rule 13.22.1 of these Sub-Division D Rules shall be deducted from any pension or Benefit payable to the pensioner or beneficiary.

13.22.3 Any payment made by the Trustee under the authority of this rule 13.22 shall be as valid as if made by way of pension or Benefit to the pensioner or beneficiary, as the case may be.

### **13.23 Payments in respect of Children**

13.23.1 A pension payable under these Sub-Division D Rules in respect of a Child shall be paid to the Child's mother, if living, or, if she is not living, to the Child's father, if living.

13.23.2 Notwithstanding anything elsewhere contained in these Sub-Division D Rules, any money payable out of this Sub-Division under these Sub-Division D Rules in respect of a Child may, at the discretion of the Trustee, be paid to the Child's guardian or expended by the Trustee for the benefit of the Child.

13.23.3 Not more than one pension may be paid in respect of the one Child during any one period and where, but for this rule 13.23.3, pensions would be payable, in respect of the Child, of the appropriate amount per fortnight under both rule 22.2

and 22.3 of these Sub-Division D Rules, the pension payable shall be that of the appropriate amount per fortnight under rule 22.3 of these Sub-Division D Rules.

### **13.24 Pensions in respect of students**

13.24.1 The provisions of this rule 13.24 shall have effect notwithstanding anything contained elsewhere in these Sub-Division D Rules.

13.24.2 In this rule 13.24 **student** means a person who, though having attained the age of 18 years, is under the age of 25 years and is receiving full time education from a school, college or university approved by the Trustee.

13.24.3 A pension under this rule 13.24:

- (a) shall be payable in respect of a student if a pension would be payable in respect of such student were the student under the age of 18 years; and
- (b) shall be payable to such persons as the Trustee determines a pension would have been payable were such student under the age of 18 years or shall be expended by the Trustee towards the support or education of such student.

13.24.4 The amount of pension payable under this rule 13.24 shall be:

- (a) in the case of a student in respect of whom a pension would be payable under rule 13.12 of these Sub-Division D Rules were the student under the age of 18 years, the appropriate amount per fortnight under rule 22.3 of these Sub-Division D Rules; or
- (b) in any other case, the appropriate amount per fortnight under rule 22.2 of these Sub-Division D Rules.

13.24.5 A pension payable under this rule 13.24 shall be paid until the student attains the age of 25 years or ceases to be a student or dies whichever first occurs.

13.24.6 A pension shall not be paid to any person in respect of a student unless the Trustee is satisfied that such pension is being used for or towards, or such person contributes towards, the support or education of such student.

13.24.7 For the purposes of this rule 13.24 the Trustee may at any time require evidence of the age of the student, the education being received by the student, or the support or education of the student for or towards which the pension is being used, or being contributed to by any person to whom a pension under this rule 13.24 is payable. In default of the provision of such evidence or if in the opinion of the Trustee the evidence provided is not satisfactory, the Trustee may refuse to pay such pension.

### **13.25 Pensions payable for a life**

13.25.1 Except where otherwise specifically provided, a pension shall be payable during the life of the person entitled to it.

13.25.2 Pensions in respect of Children shall be payable until they reach the age of 18 years or die under that age.

### **13.26 Pensions payable fortnightly**

Pensions shall be payable by equal fortnightly instalments.

### **13.27 Reduction of Spouses' pensions**

Except where otherwise specifically provided, in any case where in these Sub-Division D Rules provision is made for the pension of any person to be determined by the Trustee, any pension under these Sub-Division D Rules to the person's Spouse in respect of the Spouse's own life shall be two-thirds of the amount so determined, but not less than one unit.

### **13.28 Miscellaneous provisions as to Spouses' pensions**

13.28.1 In this rule 13.28, **Spouse's pension** means a pension under rules 13.6 or 13.7 of these Sub-Division D Rules.

13.28.2 Where, but for this rule 13.28.2, a person would be entitled to more than one Spouse's pension, the person shall be entitled to only one of those pensions, being (where they are not equal) the greater or greatest of them.

13.28.3 A reference in:

- (a) rule 13.6.1 of these Sub-Division D Rules to the pension that would have been payable to a male Contributor on his retirement;
- (b) rule 13.6.2 of these Sub-Division D Rules to the pension that would have been payable to a female Contributor on her retirement;
- (c) rule 13.7.1 of these Sub-Division D Rules to the pension payable to a Spouse at the time of his death; or
- (d) rule 13.7.2 of these Sub-Division D Rules to the pension payable to a Spouse at the time of her death,

does not include a reference to a Spouse's pension.

### **13.29 No pension for Spouse or Spouse's Children in certain circumstances**

Pension shall not, upon the death of a pensioner, be payable to a person who is the Spouse of the deceased or in respect of any Children of the Spouse who are not Children of the pensioner unless:

- (a) in the case of the Spouse of a pensioner receiving a pension under rule 13.5 of these Sub-Division D Rules, the person was the pensioner's Spouse:
  - (i) before becoming entitled to that pension; or
  - (ii) before the pensioner attained the Maturity Age and more than 3 years before the death of the pensioner; or
- (b) in any other case, the person was the pensioner's Spouse before becoming entitled to a pension under these Sub-Division D Rules,

and unless the person remained the pensioner's Spouse until the date of death.

### **13.30 Employer subsidy not to be of greater Benefit if Service not continuous**

13.30.1 In this rule 13.30, **withdrawal Benefit** means:

- (a) a Benefit payable in accordance with rules 13.19.3 or 13.19.4 of these Sub-Division D Rules; or

- (b) any other Benefit payable to or in respect of a person on cessation of the person's employment otherwise than by reason of the person's death, where the Benefit is wholly or partly payable pursuant to or from a retirement scheme, fund or arrangement to or in respect of which an Employer or a public or local authority constituted by an Act makes, or is liable to make, a payment in respect of a person employed by the Employer or authority.

13.30.2 Where a withdrawal Benefit is paid, or is or will become payable, to a person and he or she subsequently contributes to this Sub-Division without complying with rule 13.21 of these Sub-Division D Rules, any Benefit (other than a Benefit payable pursuant to rule 13.18 of these Sub-Division D Rules or a Benefit referred to in paragraph (a) of rule 13.30.1 of these Sub-Division D Rules ) payable in respect of that person shall be reduced in a manner determined by the Trustee having regard to the amount of any withdrawal Benefit previously paid to him or her.

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## **14. Reduce Value Units**

### **14.1 Allocation of Reduced Value Units**

14.1.1 Where:

- (a) a Contributor or a Contributor's Spouse is entitled to a pension under these Sub-Division D Rules consequent on the Contributor's ceasing to be a Contributor; or
- (b) a Contributor elects to take the benefit of rule 13.16 of these Sub-Division D Rules,

and the Contributor has a number of Abandoned Units at the Contributor's Exit Day, the Trustee shall (whether or not the Contributor has died) allocate to the Contributor one (and one only) Reduced Value Unit in substitution for each of the number of Abandoned Units that the Contributor has at the Contributor's Exit Day.

14.1.2 This rule 14.1 does not apply to:

- (a) a person who is entitled to a pension under rule 13.4 of these Sub-Division D Rules or to a pension under rule 16 of these Sub-Division D Rules; or
- (b) a person who is Retrenched from the Service of an Employer and who is to receive or is receiving a pension under rule 13.17 of these Sub-Division D Rules.

14.1.3 The Reduced Value Units allocated to a Contributor under this rule 14.1 shall be deemed to have been held by the Contributor at the Contributor's Exit Day.

14.1.4 Where:

- (a) a person referred to in rule 14.1.1 of these Sub-Division D Rules has made an election to take up an Abandoned Unit under rules 7.2 or 7.3 of these Sub-Division D Rules;
- (b) the unit has not been held as a Contributory Unit for at least 2 years and 6 months; and
- (c) the Contributor's Exit Day is before the last day of the Contribution Period preceding that in which he or she would attain the Maturity Age,

the Trustee may treat the unit as not having been taken up as a Contributory Unit, and, if the Trustee does so, the Contributions paid by the Contributor concerned or the Contributor's Spouse in respect of the unit shall be refunded.

- 14.1.5 For the purposes of this rule 14.1, where an election is made under rule 5.8 of these Sub-Division D Rules to abandon a unit of pension, the unit shall be deemed to be an Abandoned Unit that the Contributor concerned had at the Contributor's Exit Day.
- 14.1.6 For the purposes of this rule 14.1, where an election is made under rule 12.8 of these Sub-Division D Rules in respect of one or more additional units of pension, the unit or units shall be deemed to have been held by the Contributor concerned at the Contributor's Exit Day.
- 14.1.7 For the purposes of rules 13.16.4 and 14.2.3 of these Sub-Division D Rules, a Contributor to whom Reduced Value Units are allocated under this rule 14.1 shall, as at the Contributor's Exit Day, be deemed to have held at any time one (and one only) Reduced Value Unit for each of the number of Abandoned Units that the Contributor had at that time, but so that:
- (a) the number of Reduced Value Units that the Contributor would, but for this paragraph, be so deemed to have held before that time does not exceed the number that the Contributor is so deemed to have held at that time; and
  - (b) the number of Reduced Value Units that the Contributor would, but for this paragraph, be so deemed to have held at that time does not exceed the number that the Contributor is allocated at the Contributor's Exit Day.
- 14.1.8 Where the number of Reduced Value Units to be allocated to a Contributor is smaller than the number of Abandoned Units that the Contributor has at the Contributor's Exit Day, the Trustee shall, for the purposes of rule 14.1.4 of these Sub-Division D Rules, have regard to such of those Abandoned Units as the Contributor has had the longest.
- 14.1.9 This rule 14.1 does not apply to a person to the extent to which the person or the person's Spouse satisfies the Trustee that the allocation of Reduced Value Units would prejudicially affect the person or the person's Spouse's interests.

## **14.2 Benefits payable in respect of Reduced Value Units**

- 14.2.1 Subject to this rule 14.2, pensions are payable in respect of Reduced Value Units as if they were Contributory Units.
- 14.2.2 Notwithstanding anything in these Sub-Division D Rules or any Act, but subject to this rule 14.2, the sum of \$3.30 per fortnight shall, in respect of Reduced Value Units, be the unit of pension.
- 14.2.3 Where a pension becomes payable under rule 13.3 of these Sub-Division D Rules to a Contributor:
- (a) the fortnightly pension, payable to the Contributor in respect of a Reduced Value Unit that is allocated to the Contributor and that the Contributor is deemed by rule 14.1.7 of these Sub-Division D Rules to have held for not less than 2 years and 6 months, shall be the amount that bears to \$3.30 the same proportion as the fortnightly pension that would be payable in respect of that unit had it been a Contributory Unit bears to \$5.50; and
  - (b) pension is not payable to the Contributor in respect of a Reduced Value Unit that is allocated to the Contributor and that the Contributor is

deemed by rule 14.1.7 of these Sub-Division D Rules to have held for less than 2 years and 6 months.

14.2.4 Where a pension becomes payable under rule 13.5 of these Sub-Division D Rules in respect of Contributory Units for which a Contributor has contributed, the fortnightly pension payable in respect of each of the Contributor's Reduced Value Units shall be the amount that bears to \$3.30 the same proportion as the fortnightly pension payable in respect of each of those Contributory Units bears to \$5.50.

14.2.5 The pension payable in respect of Reduced Value Units is subject to automatic adjustment in accordance with rule 21 of these Sub-Division D Rules.

14.2.6 If the Trustee has made a determination under rule 23.1 of these Sub-Division D Rules in relation to a pension payable in respect of Reduced Value Units, the amount of the pension is reduced by the amount specified in the Trustee's determination.

### **14.3 No Employee contributions payable**

No Contributions are payable by a Contributor in respect of a Reduced Value Unit.

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## **15. Special Provisions re Breakdown Pensioners**

### **15.1 Breakdown pensioner held to be on leave**

Any pensioner who is in receipt of a breakdown pension, shall for the purposes of these Sub-Division D Rules be held to be on leave of absence without pay, but shall not be required to contribute in respect of the period of such leave.

Notwithstanding the fact that the pensioner is held to be on leave of absence, the pensioner's office or position shall be held to be vacant, and may be filled by the appointment thereto of some other person.

### **15.2 Continuity of Service**

The period of such leave without pay in the case of a breakdown pensioner shall not count as Service; but it shall not, except for the purposes of rules 13.4, 13.17, 13.19 and 16.1 of these Sub-Division D Rules, in the event of the pensioner's re-employment under any Employer, be held to constitute a break in the continuity of the pensioner's Service.

### **15.3 Employee retired through infirmity may be called up for medical examination**

Any such pensioner shall submit to a medical examination by a medical practitioner nominated by the Trustee as and when required by the Trustee, and if the pensioner does not comply with that requirement, pension shall cease to be payable to the pensioner until the pensioner complies with the requirement.

### **15.4 Employee restored to health may be recalled to Service**

15.4.1 If, in the opinion of the Trustee, the health of any pensioner retired as aforesaid has become so restored as to enable the pensioner to perform duties which, having regard to the duties performed by the pensioner immediately prior to the pensioner's retirement, are in the opinion of the Trustee suitable to be performed by such pensioner, the Trustee may communicate with the Employer from whose Service the pensioner was retired, or any other Employer under these Sub-Division D Rules, and, if suitable employment be found for such pensioner, at a

Salary not less than two-thirds of the Salary of a person who is employed in a position which is, in the opinion of the Trustee, a corresponding position to that in which the pensioner was employed immediately before the pensioner's retirement, or at such Salary as may be agreed upon between the pensioner and the pensioner's Employer, may cancel the pension; thereupon the pension shall cease to be payable.

15.4.2 In the event of the subsequent retirement on grounds of invalidity or physical or mental incapacity to perform the person's duties or of the death of a person who has been recalled to the Service in accordance with rule 15.4.1 of these Sub-Division D Rules:

- (a) pension shall, where such retirement or death occurred five years or more after the recall of such person, be paid as provided in these Sub-Division D Rules but such pension shall not be less than the amount of pension at which the person was previously retired;
- (b) pension shall not, where such retirement or death occurred less than five years after the recall of such person, be paid in respect of the number of units of pension in excess of the number for which the person was contributing at the time when the person was previously retired but in such case pension shall not be less than the amount of pension at which the person was previously retired and a lump sum, equal to the contribution paid by the person in respect of the number of units of pension in excess of the number in respect of which pension is payable as aforesaid, shall be payable.

15.4.3 Notwithstanding anything in these Sub-Division D Rules:

- (a) Where a person is retired under rule 12.5 of these Sub-Division D Rules within five years of again becoming a Contributor following a previous retirement under section 22 of the *Superannuation Act 1916* (NSW), rule 12.7 of the Active Super Trust Deed or rule 12.5 of these Sub-Division D Rules, then, as on and from the date (being not earlier than the commencement date of subsection 51(3) of the *Superannuation Act 1916* (NSW)) on which pension thereafter first becomes payable to the person, the rate at which it is payable shall be that at which it would have been payable to the person had the person continued in the person's last retirement (disregarding any retirement of that person to which rule 15.4.2(b) of these Sub-Division D Rules applied) instead of again becoming a Contributor and had the provisions referred to in the definition of **suspended part of a pension** in rule 21.1.1 of these Sub-Division D Rules did not apply; and
- (b) where a Contributor dies within five years of having again become a Contributor following a previous retirement under section 22 of the *Superannuation Act 1916* (NSW), rule 12.7 of the Active Super Trust Deed or rule 12.5 of these Sub-Division D Rules, then, as on and from the date being not earlier than the commencement date of subsection 51(3) of the *Superannuation Act 1916* (NSW)) on which pension thereafter first becomes payable to the Contributor's Spouse, the rate at which it is payable shall be that at which it would have been payable to the Contributor's Spouse had the Contributor:
  - (i) where the Contributor has been retired under rule 12.5 of these Sub-Division D Rules or the corresponding provision of the Active Super Trust Deed once only continued in that retirement instead of the Contributor's again becoming a Contributor; or
  - (ii) where the Contributor has been so retired more than once continued in the Contributor's last retirement (disregarding any



retirement of the Contributor's to which rule 15.4.2(b) of these Sub-Division D Rules applied) instead of again becoming a Contributor,

and as if the provisions referred to in the definition of **suspended part of a pension** in rule 21.1.1 of these Sub-Division D Rules did not apply.

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## 16. Deferred Benefits

### 16.1 Calculation of deferred pension components

16.1.1 Where a person who is Retrenched or Resigns or is Dismissed or Discharged from the Service of an Employer elects to take the benefit of this Sub-Division, there shall be calculated, as at the person's Exit Day, the employee-contributed pension component, and the employer-financed pension component, in relation to the person.

16.1.2 For the purposes of rule 16.1.1 of these Sub-Division D Rules, the employee-contributed pension component in relation to a person shall be calculated in accordance with the following formula:

$$P1 = 2.20 \times EPU$$

where:

**P1** is the employee-contributed pension component;

**EPU** is the sum of the following:

(a)  $UHn - \frac{Cn}{Rn}$  (except where  $\frac{Cn}{Rn}$  exceeds  $UHn$ );

(b)  $\frac{TCB}{RB}$ ;

(c) UC;

**UHn** is the number of units of pension for which Contributions were payable by the person on the person's Exit Day in accordance with the tables of Contributions fixed by or under these Sub-Division D Rules, but excluding:

(a) any such units of pension which are excess units of pension referred to in rule 6.1.1 of these Sub-Division D Rules and in respect of which no person has any rights in this Sub-Division; and

(b) any such units of pension, being reserve units, for which Contributions were being made under rule 11.7 of these Sub-Division D Rules;

**Cn** is the amount of Contributions due for the last Contribution Period for which Contributions were payable by the person before the person's Exit Day, in respect of that number of units of pension;

**Rn** is the relevant amount under rule 16.1.4 of these Sub-Division D Rules in relation to the person for an additional unit of pension on the person's Exit Day;

**TCB** is the total amount paid in respect of instalments payable by the person on or before the person's Exit Day for units of pension for which the

person contributed in accordance with rule 9 of these Sub-Division D Rules (but deducting therefrom any part of that amount allocated under these Sub-Division D Rules to the purchase of fully paid up units);

- RB** is the amount specified in rule 9.1.1 of these Sub-Division D Rules as the cost of a unit of pension in relation to the person;
- UC** is the number of units (if any) purchased by the person and credited to the person as fully paid up units.

16.1.3 For the purposes of rule 16.1.1 of these Sub-Division D Rules, the employer-financed pension component in relation to a person shall be calculated in accordance with the following formula:

$$P2 = 3.30 \times UE \times \frac{S}{S+T}$$

where:

- P2** is the employer-financed pension component;
- UE** is the number of units of pension that, pursuant to rule 11.1.1 of these Sub-Division D Rules, is appropriate to the Salary payable to the person on the person's Exit Day plus, in a case to which rule 6.1 of these Sub-Division D Rules applies, the number of any excess units of pension referred to in rule 6.1.1 of these Sub-Division D Rules and in respect of which the Trustee considers, in accordance with rule 6.1.5 of these Sub-Division D Rules, that the retention of entitlement to Benefits under these Sub-Division D Rules is warranted;
- S** is the number of years (including any fractional part of a year calculated on a daily basis) of continuous Contributory Service by the person with any one or more Employers;
- T** is the number of years, if any, (including any fractional part of a year calculated on a daily basis) by which the person's Exit Day precedes:
- (a) the date on which the person attains the Maturity Age; or
  - (b) where any employment which, on the person's Exit Day, the person is entitled to count as Service for the purposes of rule 12.1 of these Sub-Division D Rules is, in total, for less than a period of 10 years the expiration of the balance of that period of 10 years,

whichever is the later.

16.1.4 For the purposes of rule 16.1.2 of these Sub-Division D Rules, the relevant amount in relation to a person for an additional unit of pension on the person's Exit Day is:

- (a) where the person has attained the Prescribed Age on or before that day, the amount which, if the person were required under rule 8 of these Sub-Division D Rules to commence to contribute for an additional unit of pension on that day, would be the amount payable in accordance with the tables of Contributions fixed under rule 8.3 of these Sub-Division D Rules for that unit for a Contribution Period; or
- (b) where the person has not attained the Prescribed Age on or before that day, the amount equal to the sum of:

- (i) the amount payable by the person for any additional unit of pension for which the person had been required to commence contributing on and from the person's last Annual Adjustment Day for a Contribution Period or, as the case may be, the amount that would have been so payable if the person had been so required; and
- (ii) for each day of the period commencing on the day following that Annual Adjustment Day and ending on the person's Exit Day, the amount equal to 1/364<sup>th</sup> part of the difference between the amount referred to in subparagraph (i) and the amount which that amount would have been if, on that Annual Adjustment Day, the person had been 1 year older than the age actually attained.

16.1.5 For the purposes of rule 16.1.3 of these Sub-Division D Rules, the period of continuous Contributory Service by a person on the person's Exit Day is the period that commenced when the person last became a Contributor and ended on that day (but excluding any part of that period during which the person is treated by rule 15.1 of these Sub-Division D Rules as being on leave of absence without pay).

16.1.6 If the Trustee has made a determination under rule 23.1 of these Sub-Division D Rules in respect of a pension payable under this Sub-Division, the amount of the pension is reduced by the amount specified in the Trustee's determination.

## **16.2 Adjustment of pension components**

16.2.1 Expressions used in this rule 16.2 have the same meanings as they have in rule 21 of these Sub-Division D Rules.

16.2.2 Where:

- (a) the employer-financed pension component in relation to a person is calculated under this rule 16 as at the person's Exit Day;
- (b) pensions are adjusted under rule 21 of these Sub-Division D Rules by a percentage for a year commencing after the Exit Day; and
- (c) no Benefit became payable under this rule 16 during that year to, or by virtue of the death of, the person,

the component, as so calculated and as previously adjusted under rule 16.2 of the Active Super Trust Deed or this rule 16.2 is, as from the adjustment date for that year, adjusted by that percentage.

16.2.3 Where:

- (a) the employer-financed pension component in relation to a person is calculated under this rule 16 as at the person's Exit Day;
- (b) pensions are adjusted under rule 21 of these Sub-Division D Rules by a percentage for a year commencing on or before the Exit Day and ending after the Exit Day; and
- (c) no Benefit became payable under this rule 16 during that year to, or by virtue of the death of, the person,

the component, as so calculated, is, as from the adjustment date for that year, adjusted by the percentage calculated in accordance with the following formula:

$$A = P \times \frac{Q}{4}$$

where:

- A** is the percentage by which the component is to be adjusted;
- P** is the percentage for the year by which pensions are adjusted;
- Q** is the number of whole quarters of the year, being the whole quarters after the Exit Day.

16.2.4 Where:

- (a) a pension under this rule 16 or a pension that is calculated by reference to a pension that is payable under this rule 16, has become payable to or in respect of a person referred to in rule 16.1 of these Sub-Division D Rules; and
- (b) pensions are adjusted under rule 21 of these Sub-Division D Rules by a percentage for a year beginning before and ending after the date on which that pension became so payable,

the pension, as from the adjustment date for that year, is, in addition to any adjustment of the pension under rule 21 of these Sub-Division D Rules, adjusted by the amount calculated in accordance with the following formula:

$$A = C2 \times P \times \frac{Q}{4}$$

where:

- A** represents the amount of the pension as adjusted;
- C2** represents:
  - (a) in the case of a pension payable under rules 16.3 or 16.5 of these Sub-Division D Rules to a person, the amount of the employer-financed pension component calculated in relation to the person and as adjusted by the operation (if any) of this rule 16.2 before the pension became payable; or
  - (b) in the case of a pension payable under rule 16.4 of these Sub-Division D Rules to a person, the amount obtained in relation to the person from the calculation, under that rule 16.4 of these Sub-Division D Rules, of the formula  $P2(1 - 0.04 \times TM)$ ; or
  - (c) in the case of a pension payable under this rule 16 to the Spouse of a person referred to in rule 16.1.1 of these Sub-Division D Rules, an amount equal to two-thirds of the amount of the employer-financed pension component calculated in relation to that person and as adjusted by the operation (if any) of this rule 16.2 before the pension became payable; or
  - (d) in the case of a pension of a Spouse that is calculated by reference to a pension that was payable to a person under this rule 16 of these Sub-Division D Rules, an amount equal to two-

thirds of the amount referred to in paragraphs (a) or (b), as the case may be, in relation to that person;

**P** represents the percentage for the year by which pensions are adjusted;

**Q** represents the number derived by adding together the following:

- (a) except when paragraph (b) applies, "1" (representing the quarter of the year during which the pension became payable);
- (b) if the pension became payable on the first day of a quarter, "0";
- (c) the smaller of:
  - (i) the number of whole quarters in that year that have occurred before the day on which the pension became payable; and
  - (ii) the number of whole quarters that have occurred since the Exit Day of the person to or in respect of whom the pension is payable and before the day on which the pension became payable.

### **16.3 Pensions at retirement age**

16.3.1 A person referred to in rule 16.1.1 of these Sub-Division D Rules who has not received any other Benefit under this rule 16 and who applies to the Trustee to receive a pension under this rule 16.3 is entitled to receive that pension:

- (a) on the person's attaining the Maturity Age;
- (b) where any employment which, on the person's ceasing to be a Contributor, the person was entitled to count as Service for the purposes of rule 12.1 of these Sub-Division D Rules was, in total, for less than a period of 10 years, on the expiration of such time after the person ceased to be a Contributor as is equivalent to the balance of that period; or
- (c) on receipt by the Trustee of the application,

whichever is the latest.

16.3.2 The pension which a person is entitled to receive under this rule 16.3 is a pension of an amount per fortnight equivalent to the sum of:

- (a) the employee-contributed pension component calculated in relation to the person; and
- (b) the employer-financed pension component calculated in relation to the person and as adjusted by the operation (if any) of rule 16.2 of these Sub-Division D Rules.

16.3.3 These Sub-Division D Rules apply to and in respect of a person who is entitled to a pension under this rule 16.3 in the same way as it applies to and in respect of a Contributor who is entitled to a pension under rule 13.1 of these Sub-Division D Rules and so applies as if the pension payable under this rule 16.3 were a pension payable under that rule 13.1 of these Sub-Division D Rules.

16.3.4 The pension provided by this rule 16.3 is not payable under rule 16.3.1 of these Sub-Division D Rules to a person who elected to provide for the Benefit under

rule 11.11 of these Sub-Division D Rules when the requirements of rule 11.11.5(d) of these Sub-Division D Rules are satisfied.

## **16.4 Pensions at early retirement age**

16.4.1 A person referred to in rule 16.1.1 of these Sub-Division D Rules who has not received any other Benefit under this rule 16 and who applies to the Trustee to receive a pension under this rule 16.4 is entitled to receive that pension:

- (a) on the person's attaining the age of 55 years;
- (b) on the expiration of the period of ten years after the person last became a Contributor; or
- (c) on receipt by the Trustee of the application,

whichever is the latest.

16.4.2 The pension provided by this rule 16.4 is not payable under this rule 16.4.2 to a person who elected to provide for the Benefit under rule 11.11 of these Sub-Division D Rules unless the requirements of rule 11.11.5(d) of these Sub-Division D Rules are satisfied.

16.4.3 The pension which a person is entitled to receive under this rule 16.4 is a pension of an amount per fortnight calculated in accordance with the following formula:

$$TP = P1 (1 - .07 \times TM) + P2 (1 - .04 \times TM)$$

where:

- TP** is the amount of the pension;
- P1** is the employee-contributed pension component calculated in relation to the person;
- P2** is the employer-financed pension component calculated in relation to the person and as adjusted by the operation (if any) of rule 16.2 of these Sub-Division D Rules;
- TM** is the number of years, if any, (including any fractional part of a year calculated on a daily basis) by which the day from which the pension commences to be payable precedes the date on which the person attains the age of 60 years.

16.4.4 These Sub-Division D Rules apply to and in respect of a person who is entitled to a pension under this rule 16.4 in the same way as it applies to and in respect of a Contributor who is entitled to a pension under rule 13.3 of these Sub-Division D Rules and so applies as if the pension payable under this rule 16.4 were a pension payable under that rule 13.3 of these Sub-Division D Rules.

## **16.5 Disability pension**

16.5.1 A person referred to in rule 16.1.1 of these Sub-Division D Rules who has not received any other Benefit under this rule 16 and who applies to the Trustee to receive a pension under this rule 16.5 is entitled to receive that pension:

- (a) on receipt by the Trustee of the application; or
- (b) on the Trustee's being satisfied, after taking into account any medical opinion that it considers to be relevant, that the person is physically or

mentally incapable of performing the duties of any employment that, in the opinion of the Trustee, it would be reasonable for the person to undertake,

whichever is the later.

- 16.5.2 The pension which a person is entitled to receive under this rule 16.5 is a pension of an amount per fortnight equivalent to the sum of:
- (a) the employee-contributed pension component calculated in relation to the person; and
  - (b) the employer-financed pension component calculated in relation to the person and as adjusted by the operation (if any) of rule 16.2 of these Sub-Division D Rules.
- 16.5.3 A person to whom this rule 16.5 applies shall be granted payment of pension only for such period at a time as the Trustee determines and a fresh application shall, unless the Trustee from time to time otherwise determines, be necessary before any further payment is made.
- 16.5.4 The period determined by the Trustee as referred to in rule 16.5.3 of these Sub-Division D Rules for the payment of pension to a person:
- (a) if the person has not attained the Maturity Age, shall be such period (not exceeding 5 years) as the Trustee thinks fit, having regard to the state of health of the person; and
  - (b) if the person has attained the Maturity Age may be for the remainder of the person's life.
- 16.5.5 A person receiving a pension under this rule 16.5 shall submit to a medical examination as and when required by the Trustee and, if the person defaults in complying with any such requirement, pension shall cease to be payable to the person during the default.
- 16.5.6 A pension payable under this rule 16.5 shall cease to be payable to a person on the Trustee's ceasing to be satisfied as referred to in rule 16.5.1(b) of these Sub-Division D Rules in relation to the person.
- 16.5.7 Where a pension under this rule 16.5 ceases to be payable to a person, the person shall, for the purposes of this rule 16, be deemed not to have received a Benefit under this rule 16.
- 16.5.8 Except as provided by this rule 16.5, these Sub-Division D Rules apply to and in respect of a person who is entitled to a pension under this rule 16.5 in the same way as it applies to and in respect of a person entitled to a pension under rule 13.5 of these Sub-Division D Rules and so applies as if the pension payable under this rule 16.5 were a pension payable under that rule.
- 16.6 Interim pension**
- 16.6.1 The Trustee may grant an interim pension to a person who has attained the age of 55 years and who, on application, would be entitled to a pension under rule 16.4 of these Sub-Division D Rules, pending the determination of an application under rule 16.5 of these Sub-Division D Rules.
- 16.6.2 The pension which the Trustee may grant is a pension equal to the early retirement pension to which the person would be entitled on application under rule 16.4 of these Sub-Division D Rules.

- 16.6.3 These Sub-Division D Rules apply to and in respect of a person granted a pension under this rule 16.6 in the same way as it applies to a person entitled to a pension under rule 13.3 of these Sub-Division D Rules and so applies as if a pension payable under this rule 16.6 were a pension payable under that rule 13.3 of these Sub-Division D Rules.
- 16.6.4 If an interim pension is granted, the amount of any pension payable to a person under rule 16.5 of these Sub-Division D Rules is to be reduced by the amount of any interim pension paid.
- 16.6.5 Despite rule 16.5.1 of these Sub-Division D Rules, the grant of an interim pension under this rule 16.6 does not make a person ineligible for a pension under rule 16.5 of these Sub-Division D Rules or affect any other right of a person granted a pension under rule 16.5 of these Sub-Division D Rules.
- 16.6.6 However, a person who commutes an interim pension before the determination of an application under rule 16.5 of these Sub-Division D Rules is not entitled to a pension under rule 16.5 of these Sub-Division D Rules.

## **16.7 Pensions for Spouses**

- 16.7.1 Where a person referred to in rule 16.1.1 of these Sub-Division D Rules who has not received a Benefit under this rule 16 dies, the Spouse of the person is entitled to receive a pension under this rule 16.7 on receipt by the Trustee of an application by the Spouse for that pension.
- 16.7.2 The pension which a Spouse of a person is entitled to receive under this rule 16.7 is a pension at the rate of two-thirds of the pension that would have been payable to the person had the person been entitled to pension under rule 16.5 of these Sub-Division D Rules immediately before dying.
- 16.7.3 These Sub-Division D Rules apply to and in respect of a Spouse who is entitled to receive a pension under this rule 16.7 in the same way as it applies to and in respect of a Spouse of a Contributor, being a Spouse to whom pension is payable under these Sub-Division D Rules, and so applies as if the pension payable under this rule 16.7 were a pension payable under rule 13.6 of these Sub-Division D Rules by virtue of the death of a Contributor.

## **16.8 Children's pensions at rule 22.2 rates**

- 16.8.1 A pension of the appropriate amount per fortnight under rule 22.2 of these Sub-Division D Rules is payable in respect of a Child on the death of a person referred to in rule 16.1.1 of these Sub-Division D Rules (**the former Employee**) who has not received a Benefit under this rule 16 if the conditions set out in rules 16.8.2 and 16.8.3 of these Sub-Division D Rules are satisfied.
- 16.8.2 The Child must be a Child of the former Employee or a Child of a surviving Spouse of the former Employee who is not eligible to receive a pension under rule 16.9 of these Sub-Division D Rules.
- 16.8.3 If the Child is not a Child of the former Employee, the Child:
- (a) must have been born or adopted before the death of the former Employee; and
  - (b) must have been ordinarily part of the former Employee's household at the time of the death of the former Employee.
- 16.8.4 A pension under this rule 16.8 ceases to be payable in respect of a Child if the surviving parent dies, but continues to be payable even though the surviving parent marries or remarries.



16.8.5 These Sub-Division D Rules apply to and in respect of a Child in respect of whom a pension is payable under this rule 16.8 in the same way as it applies to and in respect of a Child in respect of whom a pension is payable under rule 13 of these Sub-Division D Rules, and so applies as if the pension payable under this rule 16.8 were a pension payable under rule 13 of these Sub-Division D Rules by virtue of the death of a Contributor.

## 16.9 Children's pensions

16.9.1 A pension of the appropriate amount per fortnight under rule 22.3 of these Sub-Division D Rules is payable in respect of a Child on the death of a person referred to in rule 16.1.1 of these Sub-Division D Rules (**the former Employee**) who has not received a Benefit under this rule 16.9 if the conditions set out in rules 16.9.2 to 16.9.4 of these Sub-Division D Rules are satisfied.

16.9.2 The Child must be a Child of the former Employee or a Child of a Spouse of the former Employee.

16.9.3 The other parent of the Child or the Spouse of the former Employee who was a parent of the Child:

- (a) must have died before the former Employee's death; or
- (b) must have been divorced from the former Employee; or
- (c) must have been in a De Facto Relationship with the former Employee that ended before the former Employee's death.

16.9.4 If the Child is not a Child of the former Employee:

- (a) in a case where the Spouse who is the parent of the Child is divorced from or the former De Facto Spouse of the former Employee, the Child must have been born or adopted before the divorce or end of the De Facto Relationship; and
- (b) in any case, the Child must have been ordinarily part of the former Employee's household at the time of the death of the Spouse, divorce or end of the De Facto Relationship.

16.9.5 Where a pension ceases to be payable under rule 16.8 of these Sub-Division D Rules in respect of a Child because the surviving parent dies, a pension of the appropriate amount per fortnight under rule 22.3 of these Sub-Division D Rules is payable in respect of the Child.

16.9.6 These Sub-Division D Rules apply to and in respect of a Child in respect of whom a pension is payable under this rule 16.9 in the same way as it applies to and in respect of a Child in respect of whom a pension is payable under rule 13 of these Sub-Division D Rules, and so applies as if the pension payable under this rule 16.9 of these Sub-Division D Rules were a pension payable under rule 13 of these Sub-Division D Rules by virtue of the death of a Contributor.

16.9.7 In this rule 16.9, **Spouse** includes a person previously married to the former Employee or a former De Facto Spouse.

## 16.10 Students' pensions

16.10.1 In this rule 16.10, **student** has the same meaning as it has in rule 13.24 of these Sub-Division D Rules.

16.10.2 Where a person referred to in rule 16.1.1 of these Sub-Division D Rules who has not received a Benefit under this rule 16 dies, a pension under this rule 16.10:

- (a) is payable in respect of a student if a pension would be payable in respect of the student were the person a Contributor and the student under the age of 18 years, on receipt by the Trustee of an application for that pension; and
- (b) is payable to such persons as the Trustee determines a pension would have been payable were the student under the age of 18 years or shall be expended by the Trustee towards the support or education of the student.

16.10.3 The amount of pension payable under this rule 16.10 shall be:

- (a) in the case of a student in respect of whom the pension referred to in rule 16.10.2(a) of these Sub-Division D Rules is a pension payable under rule 13.13 of these Sub-Division D Rules, the appropriate amount per fortnight under rule 22.3 of these Sub-Division D Rules; or
- (b) in any other case, the appropriate amount per fortnight under rule 22.2 of these Sub-Division D Rules.

16.10.4 For the purposes of rules 13.24.1, 13.24.5, 13.24.6 and 13.24.7 of these Sub-Division D Rules, a pension payable under this rule 16.10 shall be deemed to be a pension payable under rule 13.24 of these Sub-Division D Rules.

16.10.5 These Sub-Division D Rules apply to and in respect of a student in respect of whom a pension is payable under this rule 16.10 in the same way as it applies to and in respect of a student in respect of whom a pension is payable under rule 13.24 of these Sub-Division D Rules, and so applies as if the pension payable under this rule 16.10 were a pension payable under that rule 13.24 of these Sub-Division D Rules by virtue of the death of a Contributor.

## **16.11 Cash termination Benefit**

16.11.1 A person referred to in rule 16.1.1 of these Sub-Division D Rules who has not received any other Benefit under this rule 16 may, at any time, apply to the Trustee for a cash termination Benefit under this rule 16.11.

16.11.2 On receipt by the Trustee of an application made by a person in accordance with rule 16.11.1 of these Sub-Division D Rules, there shall be payable to the person:

- (a) if the person was Retrenched from the Service of an Employer the lump sum payment to which the person would have been entitled under rule 13.20 of these Sub-Division D Rules in consequence of the Retrenchment if the person had elected under that rule 13.20 of these Sub-Division D Rules to take a lump sum Benefit; or
- (b) if the person Resigned or was Dismissed or Discharged from the Service of an Employer the lump sum payment to which the person would have been entitled under rule 13.19 of these Sub-Division D Rules in consequence of the Resignation, Dismissal or Discharge.

16.11.3 The Trustee is to adjust the amount of a Benefit payable under this rule 16.11, having regard to any adjustment under rule 2.5 of these Sub-Division D Rules.

16.11.4 An application made in accordance with rule 16.11.1 of these Sub-Division D Rules shall be deemed to be revoked if the person dies before payment of the cash termination Benefit applied for, leaving a Spouse to whom, but for the payment of that Benefit, a pension would, on application, be payable under these Sub-Division D Rules.

16.11.5 Where a person referred to in rule 16.1.1 of these Sub-Division D Rules dies without having received a Benefit under this rule 16 and without leaving a Spouse (or leaving a Spouse who dies without having received a Benefit under this rule 16), the person shall, unless the person leaves a Child or Children in respect of whom pension is payable under these Sub-Division D Rules or would, but for this rule 16.11, be so payable, if application is made to the Trustee for a Benefit under this rule 16.11, be deemed to have applied for a cash termination Benefit under rule 16.11.1 of these Sub-Division D Rules immediately before the death, and the money payable under rule 16.11.2 of these Sub-Division D Rules shall be paid by the Trustee to the person's legal personal representatives or, where the person has no legal personal representatives, to such persons as the Trustee may determine.

16.11.6 Where a person referred to in rule 16.1.1 of these Sub-Division D Rules dies without having received a Benefit under this rule 16 leaving a Child or Children in respect of whom pension is, on application, payable under these Sub-Division D Rules or would, but for this rule 16.11, be so payable, the Trustee may, on receipt by it of an application for a Benefit under this rule 16.11, or rules 16.8 or 16.9 of these Sub-Division D Rules:

- (a) pay the cash termination Benefit under this rule 16.11 as if the person had not died leaving the Child or Children, in which case a pension or pensions shall not be payable under these Sub-Division D Rules in respect of the Child or Children; or
- (b) pay a pension or pensions in respect of the Child or Children as if this rule 16.11 did not apply,

whichever the Trustee considers to be in the best interests of the Child or Children.

## **16.12 Effect of Contributor becoming a Contributor to another scheme while employed by the same Employer**

A Contributor (other than a Contributor who is eligible to become or who is a member under the Accumulation and Pension Division) who becomes a Contributor to another Approved Benefit Arrangement while employed by the same Employer:

- (a) is required to make provision for a Benefit provided by this rule 16 (rule 16.11 of these Sub-Division D Rules excepted) despite anything to the contrary in this rule 16;
- (b) shall be regarded as having elected to make provision for that Benefit on becoming a Contributor to that other Approved Benefit Arrangement; and
- (c) is not entitled to elect to take the Benefit provided by rule 16.11 of these Sub-Division D Rules while employed by that same Employer.

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## **17. Deferral of Benefit for Contributors in Certain Circumstances**

### **17.1 Eligible Contributors**

17.1.1 This rule applies to a Contributor:

- (a) who, as a result of a single reduction of Salary, has undergone a reduction of 20% or more in Attributed Salary; and

(b) whose Employer certifies the matter referred to in paragraph (a).

17.1.2 The fact that a person undergoes more than one Salary reduction of 20% or more does not mean that the person ceases to be a person to whom this Sub-Division applies.

## **17.2 Exit Day**

In these Sub-Division D Rules, **Exit Day**, in relation to an Employee to whom this rule 17 applies, means the day immediately preceding the day of the reduction in Salary in relation to which the Employee makes an election under rule 17.3 of these Sub-Division D Rules.

## **17.3 Election to a Benefit**

17.3.1 A person to whom this rule 17 applies may elect:

- (a) if the person would have been entitled to be paid a Benefit under rules 12.1.1 or 12.1.2 of these Sub-Division D Rules had he or she ceased employment on his or her Exit Day to defer that Benefit (in this rule 17 termed a **deferred Benefit**) in accordance with this rule 17; or
- (b) in any other case to defer a Benefit provided for by rule 16 of these Sub-Division D Rules which Benefit is to be dealt with in accordance with rule 16 of these Sub-Division D Rules.

17.3.2 When a person has made a valid election under rule 17.3.1(b) of these Sub-Division D Rules, a Benefit is not payable to, or in respect of, that person:

- (a) under any other provision of these Sub-Division D Rules; and
- (b) unless that person has ceased employment or has died.

17.3.3 An Employee may make only one election under this rule 17.3 but the election may relate to any single reduction in Salary of 20% or more (not just the first reduction that occurs).

## **17.4 Date of deferral of Benefit**

A Benefit referred to in this rule 17 is deferred from the Exit Day.

## **17.5 Calculation of value of deferred Benefit**

The initial value of a deferred Benefit is to be calculated:

- (a) if the person is aged 55 years and over, in accordance with rule 13 of these Sub-Division D Rules as if the person had retired and may be adjusted or reduced in the same way as any other Benefit payable to a person on retirement; or
- (b) if the person is aged less than 55 years, in accordance with rule 13 of these Sub-Division D Rules.

## **17.6 Election to commute deferred Benefit**

17.6.1 A person who has made a valid election under rule 17.3.1(a) of these Sub-Division D Rules may elect to commute the whole or part of his or her pension Benefit in accordance with rules 12.2 and 12.3 of these Sub-Division D Rules, except that:

- (a) rules 12.2.5 and 12.2.6 and 12.3.4 of these Sub-Division D Rules do not apply with respect to such an election; and
- (b) the election must be made by the person within 3 months after his or her Exit Day.

17.6.2 A person may not amend or withdraw an election to commute, in whole or in part, a deferred Benefit made under this rule 17.

## **17.7 Adjustment of deferred Benefit**

17.7.1 If a person is aged 55 years or over at the time of making an election pursuant to rule 17.3 of these Sub-Division D Rules, the deferred Benefit is to be adjusted:

- (a) as to the pension component of the Benefit, in accordance with rule 21 of these Sub-Division D Rules; and
- (b) as to the commuted component of the Benefit, in accordance with rule 2.5 of these Sub-Division D Rules.

17.7.2 If a person is aged less than 55 years at the time of making an election pursuant to rule 17.3 of these Sub-Division D Rules, the deferred Benefit is to be adjusted;

- (a) as to the pension component of the Benefit, in accordance with rule 16 of these Sub-Division D Rules; and
- (b) as to the commuted component of the Benefit, in accordance with rule 2.5 of these Sub-Division D Rules.

## **17.8 When deferred Benefit is payable**

A deferred Benefit is to be paid on the happening of any of the following:

- (a) the person in respect of whom a Benefit is payable applying for payment of the Benefit following Resignation, Retirement or any other cessation of employment;
- (b) the death of the person in respect of whom a Benefit is payable.

## **17.9 Payment of deferred Benefit**

17.9.1 A deferred Benefit is to be paid in accordance with this rule 17.9.

17.9.2 In a case other than death of the person to whom this rule 17 applies, payment is to be made to the person of the deferred pension, if any, and the deferred commuted component, if any, adjusted in accordance with this rule 17.

17.9.3 If the person to whom this rule 17 applies dies and is survived by a Spouse, payment is to be made to the Spouse of:

- (a) a fortnightly pension at the rate of two-thirds of the pension, as adjusted, which would have been payable to the person, on the day immediately preceding the day of the person's death, if no election to commute any part of the person's Benefit had been made; and
- (b) where applicable, the deferred commuted component, as adjusted, which would have been payable to the person had the person retired on the day immediately preceding the day of the person's death; and

- (c) amounts in accordance with these Sub-Division D Rules in respect of any eligible Children.

17.9.4 If the person to whom this rule 17 applies dies and is not survived by a Spouse, payment is to be made:

- (a) to the estate of the deceased of:
  - (i) where applicable, the deferred commuted amount, as adjusted; or
  - (ii) an amount calculated in accordance with rule 13.19 of these Sub-Division D Rules which would have been payable to the person on the day immediately preceding the day of the person's death,

whichever is the greater; and

- (b) of amounts in accordance with these Sub-Division D Rules in respect of any eligible Children.

### **17.10 The Trustee to apportion Benefit**

When a Benefit is deferred in accordance with this rule 17, rule 13.15 of these Sub-Division D Rules applies.

### **17.11 Break in Service**

When a Benefit is deferred in accordance with this rule 17, rule 13.21 of these Sub-Division D Rules does not apply.

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## **18. Age Termination Benefits**

### **18.1 Benefit on attaining compulsory payment age**

18.1.1 An Employee may elect at any time on or after attaining 65 years to be paid any pension to which the Employee is entitled at the time but:

- (a) may elect under rule 12.2 of these Sub-Division D Rules to commute to a lump sum all or part of the pension; and
- (b) subject to rule 18.2.2 of these Sub-Division D Rules, if such an election is made, may also elect to preserve the whole of the lump sum in this Sub-Division, even though the Employee is not retired.

18.1.2 The Trustee is to adjust the amount of a Benefit payable under this rule 18.1, having regard to any adjustment under rule 2.5 of these Sub-Division D Rules.

18.1.3 A Benefit provided under rule 18.1.1(b) is to be paid out by the Trustee on application by the person to whom it is payable under rule 18.1.4 of these Sub-Division D Rules.

18.1.4 A Benefit under rule 18.1.1(b) of these Sub-Division D Rules is payable:

- (a) if the former Contributor has not died, to the former Contributor; or
- (b) if the former Contributor has died, in accordance with clause 12.17 of the Division Rules.

18.1.5 A person entitled or who has elected to be paid to a Benefit under this rule 18.1 is not entitled to any other Benefit under these Sub-Division D Rules.

## **18.2 Compulsory payment of deferred or other Benefit**

18.2.1 This rule 18.2 applies to a person who is entitled to, but has not been paid, a Benefit under rules 16 or 17 of these Sub-Division D Rules or this rule 18.

18.2.2 The Trustee is, as soon as practicable, to pay the Benefit to which a person to whom this rule 18.2 applies is entitled if:

- (a) the person is at least 65 years of age and has requested the Trustee to pay the Benefit; or
- (b) the Trustee is satisfied that the person has retired from the work force and has at least reached the preservation age.

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## **19. Compulsory Preservation of Benefits**

### **19.1 Compulsory preservation of benefits on or after 1 July 1999**

19.1.1 The Trustee must, when a pension or lump sum becomes payable under these Sub-Division D Rules (including a benefit provided under rule 16 or 17 of these Sub-Division D Rules) preserve all or so much of the pension or lump sum as is required to be preserved so as to be consistent with Superannuation Law.

19.1.2 For the purpose of preserving a Benefit under this rule 19.1, the Trustee must convert to a lump sum so much of a pension as is required to be preserved. The remainder of the pension is to be dealt with as otherwise required or permitted by or under these Sub-Division D Rules.

19.1.3 The amount of the Benefit to be preserved in respect of a Contributor or former Contributor for the purpose of this rule 19.1 is as determined by the Trustee, after obtaining actuarial advice.

### **19.2 Payment of compulsorily preserved Benefit**

19.2.1 The whole or part of a benefit preserved under rule 19.1 of these Sub-Division D Rules is payable by the Trustee in the circumstances in which a Benefit is payable under Superannuation Law.

19.2.2 The whole or part of a benefit preserved under rule 19.1 of these Sub-Division D Rules must be paid by the Trustee, if it is required to be paid under Superannuation Law.

19.2.3 The benefit is payable:

- (a) unless the former Contributor has died, to the former Contributor, or
- (b) if the former Contributor has died, in accordance with clause 12.17 of the Division Rules.

### **19.3 Preserved Benefits**

19.3.1 Any amounts preserved by the Trustee under rule 19.1 of these Sub-Division D Rules may be preserved in such funds, accounts or reserves as the Trustee determines, including in the Accumulation and Pension Division.

- 19.3.2 Any such preserved amounts payable by the Trustee under rule 19.2 of these Sub-Division D Rules are to be paid from the appropriate fund, account or reserve.

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## 20. Insurance policies may be continued or discontinued at option of Contributor

It shall not be necessary for any Contributor under these Sub-Division D Rules to insure the Contributor's life, or to continue in force any policy of insurance on the Contributor's life already taken out at the date of transfer of the transferred member.

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## 21. Automatic Adjustment of Pensions

### 21.1 Definitions

- 21.1.1 In this rule 21, except in so far as the context or subject-matter otherwise indicates or requires:

**adjustment date**, in relation to a year, means the first day of the pension pay period that ends on the first pension pay day in the October that next follows that year.

**adjustment percentage**, in relation to a year, means (subject to rule 21.2.2 of these Sub-Division D Rules) the percentage for that year, calculated in accordance with rule 21.2 of these Sub-Division D Rules.

**Index number**, in relation to a June quarter, means the number for that June quarter appearing in the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician under applicable Commonwealth law.

**June quarter**, in relation to a year, means the period commencing on and including 1st April in that year and ending on and including 30th June in that year.

**pension:**

- (a) subject to paragraph (b), means:
- (i) pension payable under these Sub-Division D Rules; and
  - (ii) pension wholly paid or recouped from the Consolidated Revenue Fund or the funds of an Employer; and
- (b) does not include:
- (i) pension that has been commuted under rule 12.2 of these Sub-Division D Rules; or
  - (ii) pension payable in respect of a Child or a student;

**quarter**, in relation to a year, means:

- (a) the period commencing on and including 1st July in that year and ending on and including 30th September in that year;
- (b) the period commencing on and including 1st October in that year and ending on and including 31st December in that year;



- (c) the period commencing on and including 1st January in that year and ending on and including 31st March in that year; or
- (d) the period commencing on and including 1st April in that year and ending on and including 30th June in that year;

**suspended part of a pension**, in relation to an adjustment date, means, where any part of an increase in pension was not payable at that adjustment date by reason only of the operation of section 33A of the *Superannuation Act 1916* (NSW), the unpaid part of that increase or, where any part of a pension was not payable at that adjustment date by reason only of the operation of section 31B of the *Superannuation Act 1916* (NSW), the unpaid part of that pension;

**suspended pension**, in relation to an adjustment date, means:

- (a) a pension that was not payable under rules 13.5 or 13.6 of these Sub-Division D Rules at that adjustment date by reason only of the marriage of a person; or
- (b) a pension that was not payable at that adjustment date by reason only of the operation of rule 15.3 of these Sub-Division D Rules;

**year** means a period commencing on and including 1st July and ending on and including the next following 30th June.

21.1.2 Where a pension is to be adjusted under this rule 21 by reference to the adjustment percentage for a year, a reference (however expressed) in this rule 21 to adjusting the pension is a reference to:

- (a) where the adjustment percentage is calculated in accordance with the formula set out in rule 21.2.1(a) of these Sub-Division D Rules increasing the pension; or
- (b) where the adjustment percentage is calculated in accordance with the formula set out in rule 21.2.1(b) of these Sub-Division D Rules reducing the pension.

## 21.2 Calculation of adjustment percentage

21.2.1 For the purposes of the definition of **adjustment percentage** in rule 21.1.1 of these Sub-Division D Rules, the percentage for a year shall be calculated:

- (a) if the Index number for the June quarter in that year is greater than the Index number for the immediately preceding June quarter in accordance with the following formula:

$$P = \frac{100 (C - L)}{L}$$

- (b) if the Index number for the June quarter in that year is less than the Index number for the immediately preceding June quarter in accordance with the following formula:

$$P = \frac{100 (L - C)}{L}$$

where:

**P** is the percentage to be obtained;

- C** is the Index number for the June quarter in that year; and
- L** is the Index number for the immediately preceding June quarter.

21.2.2 Where:

- (a) the percentage calculated for a year in accordance with this rule 21.2 is less than 1.1%; or
- (b) the Index number for the June quarter in that year is the same as the Index number for the immediately preceding June quarter,

there shall be deemed to be no adjustment percentage for that year.

21.2.3 Where there is deemed to be no adjustment percentage for a year, then, for the purposes of calculating the percentage for the next year:

- (a) the Index number for the June quarter in the first mentioned year shall be deemed not to have been published; and
- (b) the Index number for that quarter shall be deemed to be the same as the Index number for the June quarter in the last year for which there was an adjustment percentage.

21.2.4 If at any time, the Australian Statistician has published in respect of a particular June quarter an Index number in substitution for an Index number previously published in respect of that quarter, the publication of the later Index number shall be disregarded unless the Trustee otherwise determines for the purposes of this rule 21.

21.2.5 Notwithstanding rule 21.2.4 of these Sub-Division D Rules, if the Australian Statistician changes the reference base for the Consumer Price Index (All Groups Index) for Sydney, then, for the purposes of the application of this rule 21 after the change takes place, regard shall be had only to Index numbers published in terms of the new reference base.

### **21.3 Adjustment of pensions: general cases**

21.3.1 Subject to this rule 21, where there is an adjustment percentage for a year (in this rule 21.3 referred to as **the particular year**), the pension payable on the adjustment date for that year to a person to whom this rule 21.3 applies is hereby adjusted, on and from that adjustment date, by that percentage.

21.3.2 This rule 21.3 applies to:

- (a) a person who last became a pensioner on or before 1st July in the particular year;
- (b) a person who is the Spouse of a pensioner, where that pensioner last became a pensioner on or before 1st July in the particular year and died before the adjustment date for that year; and
- (c) a person who is the Spouse of a Contributor, being a Contributor who died, on or after 1st July in the particular year but before the adjustment date for that year, within five years of having again become a Contributor following a retirement under rule 12.5 of these Sub-Division D Rules on or before 1st July in that year.

21.3.3 A reference in rule 21.3.1 of these Sub-Division D Rules to a pension payable to a person includes a reference to the pension that would have been payable to

the person as if the provisions referred to in the definition of **suspended part of a pension** in rule 21.1.1 of these Sub-Division D Rules did not apply .

## **21.4 Adjustment of pensions: partial adjustment**

21.4.1 Subject to this rule 21, where there is an adjustment percentage for a year (in this rule 21.4 referred to as **the particular year**), the pension payable on the adjustment date for that year to a person to whom this rule 21.4 applies is hereby adjusted, on and from that adjustment date, by the percentage calculated in accordance with the formula set out in rule 21.4.3 of these Sub-Division D Rules.

21.4.2 This rule 21.4 applies to:

- (a) a person who last became a pensioner after 1st July in the particular year but on or before 1st April in that year, other than a person referred to in paragraph (c);
- (b) a person who is the Spouse of a pensioner, where that pensioner last became a pensioner after 1st July in the particular year but on or before 1st April in that year and died before the adjustment date for that year; and
- (c) a person who is the Spouse of a Contributor, being a Contributor who died, after 1st July in the particular year but before the adjustment date for that year, within five years of having again become a Contributor following a retirement under rule 12.5 of these Sub-Division D Rules after 1st July in that year but on or before 1st April in that year,

but does not apply to a person to whom rule 21.3 of these Sub-Division D Rules applies.

21.4.3 The formula referred to in rule 21.4.1 of these Sub-Division D Rules is:

$$A = P \times \frac{Q}{4}$$

where:

**A** is the percentage by which the pension is to be adjusted;

**P** is the adjustment percentage for the particular year; and

**Q** is the number of whole quarters of the particular year, being the whole quarters after, and (if applicable) the whole quarter on the first day of which:

- (a) in the case of a person referred to in rule 21.4.2(a) of these Sub-Division D Rules, the person last became a pensioner;
- (b) in the case of a person referred to in rule 21.4.2(b) of these Sub-Division D Rules, the person's late pensioner Spouse last became a pensioner; or
- (c) in the case of a person referred to in rule 21.4.2(c) of these Sub-Division D Rules:
  - (i) where the person's late Spouse had been retired under rule 12.5 of these Sub-Division D Rules once only, the person's late Spouse was so retired; or

- (ii) where the person's late Spouse had been so retired more than once, the person's late Spouse was last so retired, disregarding any retirement of the person's late Spouse to which rule 15.4.2(b) of these Sub-Division D Rules applied.

## **21.5 Application of rules 21.3 and 21.4 to breakdown pensions and suspended pensions**

- 21.5.1 In determining when a pensioner last became a pensioner for the purposes of rules 21.3 or 21.4 of these Sub-Division D Rules, regard shall not be had to any retirement to which rule 15.4.2(b) of these Sub-Division D Rules applied.
- 21.5.2 Rule 21.3 or 21.4 of these Sub-Division D Rules, as the case may require, applies to and in respect of a suspended pension in the same way as it applies to and in respect of a pension referred to therein, and so applies as if:
  - (a) the marriage by reason of which the pension is a suspended pension had not taken place; or
  - (b) rule 15.3 of these Sub-Division D Rules did not exist,

as the case may require, but nothing in this rule 21.5.2 operates so as to authorise or require the payment at any time of that suspended pension or any part thereof.

## **21.6 Minimum amount to which pensions may be reduced**

Notwithstanding anything in this rule 21:

- (a) a pension (other than a pension payable to a person by virtue of the person being a Spouse of a pensioner) shall not be reduced below the fortnightly amount that would, but for this rule 21, have been payable; and
- (b) a pension payable to a person by virtue of the person being a Spouse of a pensioner shall not be reduced below the fortnightly amount that would have been payable to the person by reference to the pension that would, but for this rule 21, have been payable to the pensioner.

## **21.7 Calculation of percentages**

Where a percentage that is to be calculated under this rule 21 is or includes a fraction of one-tenth of 1%:

- (a) if that fraction is less than one-half of one-tenth, that fraction shall be disregarded; and
- (b) if that fraction is not less than one-half of one-tenth, that fraction shall be treated as one-tenth.

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# **22. Automatic Adjustment of Children's Pensions**

## **22.1 Definitions**

In this rule 22, except in so far as the context or subject-matter otherwise indicates or requires, **adjustment date**, **adjustment percentage** and **year** have the meanings respectively ascribed to those expressions by rule 21.1.1 of these Sub-Division D Rules.

## **22.2 Children's pensions**

- 22.2.1 For the purposes of rules 13.12 and 13.24.4(b) of these Sub-Division D Rules, the appropriate amount of pension in respect of a Child or student is, subject to this rule 22.2, \$4 per week.
- 22.2.2 Subject to this rule 22, the appropriate amount of pension under this rule 22.2 is \$41.20 per fortnight.
- 22.2.3 Subject to this rule 22, where pensions are increased or decreased under rule 21 of these Sub-Division D Rules by a percentage for any year, the appropriate amount of pension, as previously adjusted, under this rule 22.2 is, as from the adjustment date for that year, increased or decreased, as the case may be, by that percentage.
- 22.2.4 If the Trustee has made a determination under rule 23.1 of these Sub-Division D Rules in respect of a pension under this rule 22.2, the amount of the pension is reduced by the amount specified in the Trustee's determination.

## **22.3 Orphans' pensions**

- 22.3.1 For the purposes of rules 13.13 and 13.24.4(a) of these Sub-Division D Rules, the appropriate amount of pension in respect of a child or student is, subject to this rule 22.3, \$10 per week.
- 22.3.2 Subject to this rule 22, the appropriate amount of pension under this rule 22.3 is \$97.85 per fortnight.
- 22.3.3 Subject to this rule 22, where pensions are increased or decreased under rule 21 of these Sub-Division D Rules by a percentage for any year, the appropriate amount of pension, as previously adjusted, under this rule 22.3 is, as from the adjustment date for that year, increased or decreased, as the case may be, by that percentage.
- 22.3.4 If the Trustee has made a determination under rule 23.1 of these Sub-Division D Rules in respect of a pension under this rule 22.3, the amount of the pension is reduced by the amount specified in the Trustee's determination.

## **22.4 Minimum amounts to which pensions may be reduced**

Notwithstanding anything in this rule 22, the appropriate amount of pension under:

- (a) rule 22.2 of these Sub-Division D Rules shall not be reduced below \$4 per week; or
- (b) rule 22.3 of these Sub-Division D Rules shall not be reduced below \$10 per week.

## **22.5 Operation of rule 22**

An increase or decrease of the appropriate amount under rules 22.2 or 22.3 of these Sub-Division D Rules operates in relation to pensions being paid as at the date of the increase or decrease, as well as to pensions that become payable thereafter.

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## **23. Circumstances in which Benefits may be Reduced**

### **23.1 Power of the Trustee to reduce pensions and other Benefits to offset certain Tax liabilities**

23.1.1 Whenever:

- (a) a right to a Benefit under these Sub-Division D Rules accrues to or in respect of a Contributor or former Contributor; and
- (b) the Trustee has paid or is liable to pay Tax in respect of Employers' contributions under this Sub-Division; and
- (c) a portion of that Tax is referable to the Employer-financed portion of that Benefit,

the Trustee must, subject to rule 23.1.2 of these Sub-Division D Rules:

- (d) calculate the amount necessary to offset the Trustee's liability to pay Tax so far as it is referable to the Employer-financed portion of that Benefit; and
- (e) accordingly make a determination reducing the Benefit by the amount so assessed.

23.1.2 Rule 23.1.1 of these Sub-Division D Rules does not authorise the reduction of a Benefit under these Sub-Division D Rules, unless:

- (a) the Benefit is of a kind to which rule 23.3 of these Sub-Division D Rules applies; and
- (b) the method of calculating the reduction is set out in rule 23.3 of these Sub-Division D Rules; and
- (c) the reduction is calculated according to that method.

### **23.2 Power of the Trustee to adjust Benefits to comply with certain Commonwealth standards relating to occupational superannuation**

23.2.1 If:

- (a) a Contributor or former Contributor becomes entitled to receive a pension under these Sub-Division D Rules, other than a pension under rule 13.5 of these Sub-Division D Rules; and
- (b) payment of the pension to the Contributor or former Contributor would, but for this rule 23.2.1, not comply with Superannuation Law,

the Contributor or former Contributor may, by notice in writing given to the Trustee before the pension starts to be paid, elect to receive the pension:

- (c) in a form that complies with Superannuation Law; or
- (d) in a form that is in accordance with these Sub-Division D Rules (apart from this rule 23.2).

23.2.2 Even after such a pension has started to be paid in a form that does not comply with Superannuation Law, the Contributor or former Contributor concerned is, by notice in writing given to the Trustee at any time before the Trustee is required to take the action referred to in rule 23.3.1 of these Sub-Division D Rules, entitled to

make an election or a further election to receive payment of the pension in a form that complies with Superannuation Law.

- 23.2.3 An election made and notified to the Trustee in accordance with this rule 23.2 is sufficient authority for the Trustee to pay a pension in accordance with the election of the Contributor or former Contributor concerned.
- 23.2.4 An election under this rule 23.2 to receive a pension in a form that complies with Superannuation Law is irrevocable.
- 23.2.5 A Contributor or former Contributor who does not notify the Trustee of the election of the Contributor or former Contributor under this rule 23.2 before the pension concerned starts to be paid is, subject to rule 23.2.3 of these Sub-Division D Rules, to be regarded as having elected to receive payment of that pension in the form provided by these Sub-Division D Rules (apart from this rule).
- 23.2.6 If a Contributor or former Contributor makes an election under this rule 23.2 to receive a pension in a form that complies with Superannuation Law, the Trustee must ensure that the pension is varied only to the extent necessary to comply with Superannuation Law.
- 23.2.7 An election under this rule 23.2 to receive a pension in a form that complies with Superannuation Law is binding not only on the Contributor or former Contributor who made the election but also on any person claiming a Benefit under these Sub-Division D Rules through that Contributor or former Contributor.
- 23.2.8 If an election is made under this rule 23.2 to receive a pension in a form that complies with Superannuation Law, the pension is payable in that form despite any other provision of these Sub-Division D Rules to the contrary.
- 23.2.9 In this rule 23.2 a reference to a Benefit or pension is a reference to the Benefit or pension after reducing it in accordance with rule 23.1 of these Sub-Division D Rules where appropriate.

### **23.3 Reduction of Benefit**

- 23.3.1 This rule 23.3 applies to the Benefits provided under the following provisions:
- (a) rule 13.1 (Amount of pension payable on retirement) of these Sub-Division D Rules;
  - (b) rule 13.3 (Pension on retirement before reaching 60 years of age) of these Sub-Division D Rules;
  - (c) rule 13.4 (Pension on retirement before age 60 component pension) of these Sub-Division D Rules;
  - (d) rule 13.5 (Breakdown pensions) of these Sub-Division D Rules;
  - (e) rule 13.6 (Pensions to Spouse on death of Contributor) of these Sub-Division D Rules;
  - (f) rule 13.16 (Retrenchment Benefits payable to an Employee who is Retrenched after completing 10 years' Service) of these Sub-Division D Rules;
  - (g) rule 13.17 (Retrenchment Benefits payable to Contributors having not less than 3 years' contributing Service) of these Sub-Division D Rules;
  - (h) rule 13.19 (Withdrawal Benefit) of these Sub-Division D Rules;

- (i) rule 14.2 (Benefits payable in respect of Reduced Value Units) of these Sub-Division D Rules;
- (j) rule 16 (Deferred Benefits) of these Sub-Division D Rules.

23.3.2 For the purposes of rule 23.1 of these Sub-Division D Rules, the reduction in a Benefit to which this rule 23.3 applies (other than a Benefit under rules 13.19 or 14.2 of these Sub-Division D Rules) is the amount calculated in accordance with the following formula:

$$R = M \times \frac{A}{B} \times Q$$

23.3.3 For the purposes of rule 23.1 of these Sub-Division D Rules, the reduction in a Benefit under rule 13.19 of these Sub-Division D Rules (other than a Benefit arising as a result of the death of a person) is the amount calculated in accordance with the following formula:

$$R = A \times Q$$

23.3.4 For the purposes of rule 23.1 of these Sub-Division D Rules, the reduction in a Benefit under rule 14.2 of these Sub-Division D Rules is the amount calculated in accordance with the following formula:

$$R = T \times Q$$

23.3.5 In this rule 23.3:

- R** represents the amount of the reduction;
- M** is calculated in accordance with rule 23.3.6 of these Sub-Division D Rules and represents the amount of the pension or lump sum being reduced;
- A** represents the portion of the Benefit payable from the appropriate Employer's reserve in accordance with rule 13.15.2(b) of these Sub-Division D Rules;
- B** represents the relevant amount in respect of the Benefit determined in accordance with rule 13.6.3 of these Sub-Division D Rules;
- Q** represents the sum of such number of terms as is determined in accordance with the formula prescribed by rule 23.3.7 of these Sub-Division D Rules to reflect the number of times the rate of Tax has changed;
- T** represents the total amount of Benefit derived under rule 14.2 of these Sub-Division D Rules.

23.3.6 In rule 23.3.5 of these Sub-Division D Rules, the symbol "M" represents:

- (a) in the case of a Benefit arising under rules 13.1, 13.3, 13.4 or 13.5 of these Sub-Division D Rules the Benefit that would be payable under the applicable rule, but for rule 23.1 of these Sub-Division D Rules and this rule 23.3; or
- (b) in the case of a Benefit arising under rule 13.6 of these Sub-Division D Rules in respect of a Contributor who dies before reaching the age of 60 in the case of a man, or the Maturity Age in the case of a woman, two-thirds of the pension that, but for rule 23.1 of these Sub-Division D Rules and this rule 23.3, would have been payable to the Contributor under



rule 13.5 of these Sub-Division D Rules if the Contributor had been retired immediately before death; or

- (c) in the case of a Benefit arising under rule 13.6 of these Sub-Division D Rules in respect of a Contributor who dies on or after reaching the age of 60 in the case of a man, or the Maturity Age in the case of a woman, two-thirds of the pension that, but for rule 23.1 of these Sub-Division D Rules and this rule 23.3, would have been payable under rule 13.1 of these Sub-Division D Rules if the Contributor had retired, or had been retired, immediately before death; or
- (d) in the case of a Benefit arising under rules 13.16 or 13.17 of these Sub-Division D Rules, the lump sum Benefit that would be payable under the applicable rule, but for rule 23.1 of these Sub-Division D Rules and this rule 23.3; or
- (e) in the case of a Benefit arising under rule 16 of these Sub-Division D Rules the total component pension preserved in accordance with rule 16.1 of these Sub-Division D Rules.

23.3.7 For the purposes of the symbol “Q” in rule 23.3.5 of these Sub-Division D Rules, the formula prescribed by this rule is:

$$\frac{C}{D \times L}$$

where:

- C** represents the number of days of continuous Contributory Service that the person in respect of whom the pension is payable has had with one or more Employers in each period during which the rate of Tax payable on Employer contributions is L;
- D** represents:
  - (a) in the case of Benefits arising under rules 13.5 or 13.6 of these Sub-Division D Rules the number of days of continuous Contributory Service that the person in respect of whom the pension is payable has had with one or more Employers during the period beginning with the date when the person last became a Contributor and ending with the later of the Exit Day and the date on which the person would have been eligible to retire under rule 12.1.1 of these Sub-Division D Rules if the person’s employment had continued to that date; or
  - (b) in all other cases the number of days of continuous Contributory Service that the person in respect of whom the pension is payable has had with one or more Employers during the period beginning with the date on which the person last became a Contributor and ending with the person’s Exit Day;
- L** represents the rate of Tax payable on Employer Contributions or such lesser rate as may be determined by the Trustee having regard to the most recent actuarial valuation in respect of the Division.

23.3.8 For the purposes of the symbols “C” and “D” in rule 23.3.7 of these Sub-Division D Rules, the period of a person’s continuous Contributory Service does not include any period during which the person is treated by rule 15.1 of these Sub-Division D Rules, as being on leave without pay.

- 23.3.9 For the purposes of rules 13.7 and 16.7 of these Sub-Division D Rules, the Benefit that emerges upon the death of the member is not to be reduced as it would already have been reduced in accordance with rule 23.1 of these Sub-Division D Rules when the member retired or when the Benefit was preserved.

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## **24. Superannuation Interest under the Family Law Act**

Where a Family Law Order, a Superannuation Agreement or Flag Lifting Agreement applies, the Trustee shall ensure that, the value of the Non-Member Spouse's entitlement shall be calculated in accordance with the valuation methodology set out by the Actuary from time to time in accordance with the Family Law Act, and the Member's Superannuation Interest is reduced in accordance with the valuation methodology set out by the Actuary from time to time in accordance with the Family Law Act.

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## **25. Compliance with Superannuation Guarantee Legislation**

### **25.1 Minimum Benefits**

The Trustee must, after obtaining actuarial advice, determine what the minimum employer-financed Benefit would have to be to ensure that there is no Superannuation Guarantee Shortfall.

### **25.2 Increase in Benefits**

So much of a pension component of a Benefit or lump sum as is Employer-financed is, despite any other provision of the Division Rules or these Sub-Division D Rules, not to be less than the minimum Benefit determined under rule 25.1 of these Sub-Division D Rules. The Benefit that would otherwise be payable under these Sub-Division D Rules is increased to the extent necessary for the purpose of complying with this rule 25.2.

### **25.3 Increase in Benefit to be paid from non-Contributory scheme**

The amount of any increase in Benefit is to be debited by the Trustee from the Employer Reserve of the Employer concerned established under the Sub-Division C Rules.

### **25.4 Definition**

In this rule 25, **employer-financed Benefit** means the sum of so much of a pension component of a Benefit or lump sum as is Employer-financed under these Sub-Division D Rules, any basic Benefit under the Sub-Division C Rules and any Employer-financed Benefit of a kind provided by the Sub-Division C Rules.

### **25.5 The Trustee empowered to fix interest rates for the purposes of these Sub-Division D Rules**

- 25.5.1 Whenever the Trustee considers it necessary to do so, the Trustee may, by resolution, fix a rate of interest for the purposes of rules 11.7, 12.4 or 13.21 of these Sub-Division D Rules.

- 25.5.2 A rate fixed under rule 25.5.1 for the purposes of rule 13.21 of these Sub-Division D Rules has effect on and from:

- (a) the date on which the resolution of the Trustee fixing the rate is made; or
  - (b) if a later date is specified in the resolution, that later date.
- 25.5.3 A rate fixed under rule 25.5.1 of these Sub-Division D Rules for the purposes of rules 11.7 or 12.4 of these Sub-Division D Rules has effect on and from:
- (a) such date as is specified in the resolution of the Trustee fixing the rate (whether that date is before or after the date of the resolution); or
  - (b) if no such date is specified in the resolution, the date on which the resolution is made.
- 25.5.4 Subject to this rule 25.5, the Trustee has power, and shall be regarded as always having had power, when paying a Benefit under these Sub-Division D Rules, to pay interest at such rates, for such periods and in such circumstances as in its absolute discretion it thinks appropriate.
- 25.5.5 The Trustee may fix different rates for the provisions mentioned in rule 25.5.1 of these Sub-Division D Rules.

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## **26. Transitional and Other Provisions arising from the Superannuation (Amendment) Act 1988**

**26.1** Certain persons to continue to be liable to make payments that were due under the *Superannuation Act 1916* (NSW) before the commencement of the *Superannuation (Amendment) Act 1988* (NSW):

- (a) a provision of the *Superannuation (Amendment) Act 1988* (NSW) repealed or amended a provision of the *Superannuation Act 1916* (NSW); and
- (b) immediately before the commencement of the repealing or amending provision a person was liable to make a payment under the repealed or amended provision which has not been satisfied,

the liability continues under these Sub-Division D Rules despite the repeal or amendment.

### **26.2 Equation of payments**

Any agreement entered into under section 90 of the *Superannuation Act 1916* (NSW) and in force immediately before 1 July 1988 continues in force as if that section had not been repealed by the *Superannuation (Amendment) Act 1988* (NSW).

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## **27. Contributions while on leave without pay or working minimum hours**

Rules 6.3, 11.3 and 11.5 of these Sub-Division D Rules apply to a period of leave without pay or part-time work commenced before 1 January 1994 and not completed immediately before that date.

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## **28. Savings and Transitional**

## 28.1 Definitions

In this rule:

**amending deed** means the Deed of Amendment No. 4 Schedule A to the Active Super Trust Deed.

**eligible pensioner** means a person who is in receipt of a pension under these Sub-Division D Rules and who, on the repeal of rule 12.2 of the Active Super Trust Deed by the amending deed on 1 January 2000:

- (a) had not attained the age of 60 years and 6 months; and
- (b) had not made an election to commute any part of the pension under rule 12.2 of the Active Super Trust Deed or whose election to commute under that rule had not taken effect.

## 28.2 Amendments do not confer new commutation rights on persons who are not eligible pensioners

- (a) Rule 12.2 of these Sub-Division D Rules does not apply to or in respect of any pension to which a person became entitled under the applicable predecessor scheme (to this Sub-Division) before 1 July 1985 if the person who is in receipt of that pension is not an eligible pensioner and, accordingly, rule 12.2 of these Sub-Division D Rules does not confer on such a person an entitlement to commute the whole or part of that pension.
- (b) The repeal of rule 12.2 of the Active Super Trust Deed by the amending deed on 1 January 2000 does not affect any election made by a person (not being an eligible pensioner) under rule 12.2 of the Active Super Trust Deed before that repeal, and these Sub-Division D Rules apply in respect of such an election as if rule 12.2 of the Active Super Trust Deed had not been repealed by the amending deed (and, for the avoidance of doubt, as if that repeal had not been carried forward into these Sub-Division D Rules).
- (c) This rule is subject to rule 28.3 of these Sub-Division D Rules.

## 28.3 Commutation of mandatory residual pension under rule 12.2

- (a) If a person who became entitled to a pension under the applicable predecessor scheme (to this Sub-Division) before 1 July 1985 elected to commute the whole of his or her pension (other than the mandatory residual pension) in accordance with the Active Super Trust Deed, before the repeal of rule 12.2 of the Active Super Trust Deed by the amending deed on 1 January 2000, rule 12.2 of these Sub-Division D Rules extends to that mandatory residual pension.
- (b) The Trustee may, subject to such terms and conditions as it may impose, accept an election and deal with it in accordance with these Sub-Division D Rules if:
  - (i) it is proved to the satisfaction of the Trustee that an election was not made because:
    - (1) the person entitled to make the election did not know of the person's right to make the election; or
    - (2) circumstances substantially beyond the person's control prevented the person's making an election; and

- (ii) the Trustee is satisfied that in the circumstances of the case it is desirable that the election should be accepted.
- (c) This rule does not authorise the commutation of a pension payable in respect of children.
- (d) In this rule 28.3:

**mandatory residual pension** means any amount of pension per fortnight that a person was not entitled to commute under rules 12.2.1, 12.2.2, or 12.2.3 of the Active Super Trust Deed as in force immediately before the repeal of those rules by the amending deed on 1 January 2000.

#### **28.4 Saving of commutation entitlements of eligible pensioners**

- (a) Rule 12.2.1 of these Sub-Division D Rules applies to or in respect of a pension to which a person became entitled under the applicable predecessor scheme (to this Sub-Division) before 1 July 1985 if the person who is in receipt of that pension is an eligible pensioner.
- (b) Accordingly, an eligible pensioner may commute the whole or part of that pension in accordance with rules 12.2 and 12.3 of these Sub-Division D Rules.
- (c) If an eligible pensioner attained the applicable commutation age before 1 January 2000:
  - (i) the eligible pensioner is taken, for the purposes of rules 12.3.1 and 12.3.2 of these Sub-Division D Rules, to have attained the applicable commutation age on 1 January 2000; and
  - (ii) the reference in rule 12.3.3 of these Sub-Division D Rules to the time prescribed is taken to be a reference to the time prescribed by that section as modified by this rule.
- (d) If an eligible pensioner made an election to commute any part of his or her pension under rule 12.2 of the Active Super Trust Deed before the repeal of that rule by the amending deed on 1 January 2000 (being an election that had not taken effect):
  - (i) that election is to be treated as an election under rule 12.2 of these Sub-Division D Rules; and
  - (ii) the eligible pensioner may, without the approval of the Trustee being necessary, make a further election under rule 12.2 of these Sub-Division D Rules in accordance with rule 12.3 of these Sub-Division D Rules (as modified by rule 12.3.3 of these Sub-Division D Rules, if applicable).
- (e) In this rule 28.4, the **applicable commutation age** means:
  - (i) in the case of a person who is in receipt of a pension payable under rule 13.5, the maturity age; or
  - (ii) in any other case, 55 years.

#### **28.5 References to amounts commuted under repealed provisions**

- (a) The reference in rule 12.2.18 of these Sub-Division D Rules to the spouse of a person who dies, having commuted the whole or part of any

pension payable to the person pursuant to rule 12.2 of these Sub-Division D Rules, extends to the spouse of a person who dies on or after 1 January 2000, having commuted the whole or any part of any pension payable to the person pursuant to rule 12.2 of the Active Super Trust Deed (before the repeal of the rule by the amending deed on 1 January 2000 or in accordance with an election referred to in rule 28.2(b) of these Sub-Division D Rules).

- (b) A reference in rules 13.11 or 21 of these Sub-Division D Rules to any lump sum paid, or any pension that has been commuted, under rule 12.2 of these Sub-Division D Rules extends to any lump sum paid, or pension that has been commuted, under rule 12.2 of the Active Super Trust Deed (before the repeal of that rule by the amending deed on 1 January 2000 or in accordance with an election referred to in rule 28.2(b) of these Sub-Division D Rules).

## **28.6 Changes to method of calculation**

- (a) Rule 13.17 of these Sub-Division D Rules does not apply to the calculation of a benefit payable to a contributor who became entitled to the benefit before 30 June 1999. Rule 13.17 of the Active Super Trust Deed, as in force immediately before that date, continues to apply in respect of such a calculation.
- (b) Rule 13.19 of these Sub-Division D Rules does not apply to the calculation of any amount payable to a contributor who became entitled to the amount before 30 June 1999. Rule 13.19 of the Active Super Trust Deed, as in force immediately before that date, continues to apply in respect of such a calculation.

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## **29. Transitional Provisions**

### **29.1 Amendments to rule 12.3 – no application to persons of or over the age of 60 years**

Rule 12.3 of these Sub-Division D Rules does not apply in respect of any person who was entitled to a pension payable under rule 13.5 of the Active Super Trust Deed and who attained the age of 60 years on or before 1 January 2000.

### **29.2 Amendments to rule 12.3 – application to certain persons between 55 and 60 years of age**

29.2.1 This rule 29.2 applies in respect of a person who has a maturity age of 60 years, and who, on 1 January 2000:

- (a) was entitled to a pension payable under rule 13.5 of the Active Super Trust Deed; and
- (b) had attained the age of 55 years but had not yet attained the age of 60 years.

29.2.2 Rule 12.3 of these Sub-Division D Rules applies in respect of such a person as if the person had attained the age of 55 years on 1 January 2000. Accordingly, the reference in rule 12.3.3 of these Sub-Division D Rules to the time prescribed by rule 12.3.1 and 12.3.2 of these Sub-Division D Rules is a reference to the time prescribed by those rules.

### **29.3 Application of rule 13.8 and amendments to rule 13.9**

29.3.1 Rule 13.8 of these Sub-Division D Rules does not apply to or in respect of a pensioner who died before 30 June 1999.

29.3.2 Rules 13.9.4 and 13.9.5 of these Sub-Division D Rules do not apply to or in respect of an employee who died before 30 June 1999.

### **29.4 Application of rule 13.8**

Rule 13.8 of these Sub-Division D Rules applies only in respect of a Contributor referred to in rule 13.8.1 of these Sub-Division D Rules who is retrenched on or after 30 June 1999.

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## **30. Further Transitional Provisions**

Rule 13.5 of these Sub-Division D Rules applies to any person entitled to a pension on 1 July 1999 but who was, immediately before that date, not entitled (because of rule 13.5.9 of the Active Super Trust Deed as in force immediately before 1 July 1999) to payment of that pension.

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## **31. Provisions Applicable in respect of Foreign Contributors**

### **31.1 Definitions**

31.1.1 In this rule 31:

**conversion ratio**, in relation to a foreign currency, means:

- (a) in the case of sterling the ratio of 1 pound sterling to 2 Australian dollars; or
- (b) in the case of Japanese currency the ratio of 400 Japanese yen to 1 Australian dollar.

**foreign Contributor** means a Contributor who:

- (a) was recruited in a country other than Australia and is employed in such a country; and
- (b) is paid a Salary at a rate expressed in a currency other than Australian currency.

**foreign currency** in relation to a foreign Contributor means the currency in which his or her rate of Salary is expressed.

31.1.2 A reference in this rule 31:

- (a) to a foreign Contributor shall be construed as including a reference to a former foreign Contributor; and
- (b) to an Employer of a foreign Contributor shall be construed as including a reference to the person who was the Employer of the former foreign Contributor.

### **31.2 Certain calculations to be made by means of a conversion ratio**

Where:

- (a) an amount expressed in a foreign currency is required for the purposes of these Sub-Division D Rules to be expressed in Australian currency that amount expressed in Australian currency; or
- (b) an amount expressed in Australian currency is required for the purposes of these Sub-Division D Rules to be expressed in a foreign currency that amount expressed in the foreign currency,

shall be calculated by means of the conversion ratio in relation to that foreign currency.

### **31.3 Certain amounts to be expressed in foreign currency**

31.3.1 This rule 31.3 shall not apply in respect of a foreign Contributor unless a conversion ratio applies in relation to the currency of the country in which the foreign Contributor is employed.

31.3.2 For the purpose of determining the number of units of pension that, pursuant to rule 11.1.1, is appropriate for the Salary actually being paid to a foreign Contributor, the amount of the Salary shall be expressed in Australian currency in accordance with rule 31.2 of these Sub-Division D Rules.

31.3.3 Any amount payable under these Sub-Division D Rules by or to a foreign Contributor shall be expressed in foreign currency in accordance with rule 31.2 of these Sub-Division D Rules.

### **31.4 Any difference between actual amount paid and amount otherwise payable**

31.4.1 Where:

- (a) an amount that, but for rule 31.3.3 of these Sub-Division D Rules, would be payable under these Sub-Division D Rules by a foreign Contributor is greater than the amount that is paid by that person; or
- (b) an amount that, but for rule 31.3.3 of these Sub-Division D Rules, would be payable under these Sub-Division D Rules to a foreign Contributor is less than the amount that is paid to that person,

the Employer of the foreign Contributor shall pay under this Sub-Division an amount equal to the difference between the amount that, but for rule 31.3.3 of these Sub-Division D Rules, would be payable and the amount that is paid.

31.4.2 Where:

- (a) an amount that, but for rule 31.3.3 of these Sub-Division D Rules, would be payable under these Sub-Division D Rules by a foreign Contributor is less than the amount that is paid by that person; or
- (b) an amount that, but for rule 31.3.3 of these Sub-Division D Rules, would be payable under these Sub-Division D Rules to a foreign Contributor is greater than the amount that is paid to that person,

the Trustee shall pay under this Sub-Division to the Employer of the foreign Contributor an amount equal to the difference between the amount that, but for



rule 31.3.3 of these Sub-Division D Rules, would be payable and the amount that is paid.

### **31.5 Payments to be made as if conversion ratio always applied**

Where a conversion ratio applies to the currency of a country in which, immediately before the conversion ratio first applied to that currency, there was employed a foreign Contributor to whom rule 31.3 of these Sub-Division D Rules did not apply:

- (a) the Trustee may pay to the foreign Contributor such amount or make such allowance in respect of future contributions payable by the Contributor;
- (b) the Employer shall pay under this Sub-Division such amount; and
- (c) the foreign Contributor shall pay under this Sub-Division such amount,

as in the opinion of the Trustee would place this Sub-Division, the foreign Contributor and the Employer of the foreign Contributor in the financial position in which they would have been if the conversion ratio had always applied.

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## Part 4 – Rules for Sub-Division F (Non-Account Based Pensions)

### 1. Application and interpretation

#### 1.1 Application of these Sub-Division F Rules

The provisions of these Sub-Division F Rules relate only to Pensioners of Sub-Division F of the Division.

#### 1.2 Definitions

In these Sub-Division F Rules, unless the contrary intention appears:

**Non-Account Based Pension** means a pension paid from this Sub-Division which is provided for by an annuity held by the Trustee.

**Pension** means a Benefit payable from this Sub-Division by instalments for either a fixed or open term.

**Pensioner** has the meaning it has in the Division Rules and, where the context requires, includes a reversionary beneficiary.

**Sub-Division** means this Sub-Division F of the Division.

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### 2. Membership

#### 2.1 Commencement

Each person with a 'Non-Account Based Pension' in Division F of Active Super immediately before the Transfer Time is admitted to this Sub-Division as a Pensioner with a Non-Account Based Pension with effect at and from the Transfer Time.

#### 2.2 Cessation

A Pensioner's membership of this Sub-Division ceases when the Trustee has paid all the Benefits in respect of the Pensioner.

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### 3. Maintenance and Administration

#### 3.1 Annuities

The Trustee must keep a record of the details of the annuity held by the Trustee in respect of each Non-Account Based Pension.

#### 3.2 Superannuation Interest under the Family Law Act

Where a Family Law Spouse Amount is required to be dealt with in accordance with the Family Law Act and Superannuation Law, the Pensioner's interest in this Sub-Division will be debited with the amount. The Trustee will deal with the Family Law Spouse Amount in accordance with clause 12.24 of the Division Rules.

### **3.3 Superannuation standards**

Notwithstanding any other provision of these Sub-Division F Rules, a pension provided by this Sub-Division must comply with Superannuation Law for pension benefits of the kind provided by this Sub-Division. To the extent a pension standard in regulation 1.06 of the SIS Regulations for a pension provided by this Sub-Division is not expressly included in these Sub-Division F Rules, the pension standard is deemed to be included in these Sub-Division F Rules.

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## **4. Amount of Benefit**

Subject to rule 5 of these Sub-Division F Rules, the Benefit payable in respect of a Non-Account Based Pension is that provided for under the terms of the annuity held by the Trustee to provide that pension.

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## **5. Payment of Benefits**

### **5.1 Payment of Benefit**

The Trustee may make rules in respect of minimum Benefit payment limits and the manner by which Benefits may be paid.

### **5.2 Payment of Pension**

5.2.1 Except as otherwise agreed between the Trustee and the Pensioner, the amount and frequency of payment of a Non-Account Based Pension to a Pensioner is, immediately after the Transfer Time, the amount and frequency of payment to the Pensioner immediately before the Transfer Time.

5.2.2 A Pension will be subject to the terms of the annuity to which the Pension is attributable and no payment shall be required to be made to the Beneficiary of any amount greater than the amount actually received by the Trustee under the terms of the annuity, less any deductions for Taxes, remuneration, fees and other expenses the Trustee is entitled to make under the Division Rules and the Deed.

### **5.3 Commutation**

A Pensioner may commute the whole or part of a Pension at any time by notifying the Trustee in the manner approved by the Trustee, subject to the terms of the annuity to which the Pension is attributable and to:

- (a) the approval of the Trustee if there are six or more commutations in any financial year; and
- (b) any other condition prescribed by the Trustee from time to time.

### **5.4 Payment of death benefits**

5.4.1 Any benefit payable from this Sub-Division on or after the death of a Pensioner is payable:

- (a) to the Pensioner's Nominated Beneficiary (if applicable);
- (b) to the Pensioner's reversionary beneficiary (if applicable); or
- (c) in accordance with rule 5.4.2 of these Sub-Division F Rules if there is no Valid Nomination Form and no reversionary beneficiary in respect of the Pensioner or if payment in accordance with rules 5.4.1(a) or (b) of these Sub-Division F Rules cannot otherwise be made.

- 5.4.2 Subject to rule 5.4.1 of these Sub-Division F Rules, any benefit payable from this Sub-Division on or after the death of a Pensioner which under these Sub-Division F Rules is not expressed to be payable to or for the benefit of some other specified person or persons must be paid or applied by the Trustee to or for the benefit of one or more of:
- (a) the Pensioner's Dependants; and
  - (b) the Pensioner's legal personal representatives,
- to the exclusion of the other or others of them and in the form, manner, proportions and subject to the conditions determined by the Trustee.
- 5.4.3 If after such inquiries and such period as the Trustee considers appropriate, the Trustee is unable to identify a Dependant or legal personal representative of a deceased Pensioner to its satisfaction, the Trustee may pay or apply the benefit otherwise payable in any other manner permissible under Superannuation Law.
- 5.4.4 Each Benefit payable from this Sub-Division on death (including any part of a remaining Pension), if not paid to a reversionary beneficiary, shall be paid as a lump sum Benefit, but a beneficiary may apply to transfer the lump sum Benefit, or part of the Benefit, to a pension that is payable from the Accumulation and Pension Division.