

THIS DOCUMENT INCORPORATES THE FOLLOWING AMENDMENTS

Memorandum of Commencement dated 22 October 2008 (*added Schedule 7*)

Amendment 34 dated 14 December 2011

SCHEDULE 7

DIVISION P – PUBLIC OFFER FUND

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Division P – (Public Offer Fund)

These are the Rules governing Division P of the Scheme the assets of which are to be held in Pool A.

1 Interpretation

Definitions

1.1 In these Rules:

Asset Portfolio means an Asset portfolio established under rules 2.3 to 2.13.

Complaints Act means the *Superannuation (Resolution of Complaints) Act 1993*.

Complying Fund means a superannuation fund that complies with the Superannuation Law.

Division P Employer means an employer who agrees to be bound by the terms of Division P but does not include any person that has ceased to participate. When used in relation to a Member it means the employer or former employer of that person.

Due Date means the date for payment of contributions agreed to between the Trustee and the Division P Employer and otherwise 14 days after the end of the month in which salary or wages the subject of contributions to the Fund were paid to the employee of the Division P Employer.

Employment or **Employed** means employed or self-employed for gain or reward in any business, trade, professions, vocation, calling, occupation or employment.

Family Law Spouse means a spouse entitled to a payment split under the Family Law Act.

Full-time means Employment of 30 or more hours weekly.

Fund Expenses means all amounts or costs to be taken into account in operating the Fund including:

- (a) taxation of contributions, the Fund or its income;
- (b) administration costs, charges or expenses;
- (c) costs and expenses of investing the Fund;
- (d) custody expenses;

- (e) Trustee fees; and
- (f) insurance premiums.

Member means a person who has been admitted as a Member of Division P whose membership has not come to end in accordance with the terms of Division P.

Minimum Information means name of the person, gender, date of birth, address, and date of commencement of employment and any other information the Trustee determines.

Month means a calendar month.

Part-time means Employment of 10 or more hours but less than 30 hours weekly.

Reserve Account means the account maintained in accordance with rule 2.26.

Retirement means:

- (a) in the case of a Member who has reached a preservation age that is less than 60 –
 - (i) if an arrangement under which the Member was gainfully employed has come to an end; and
 - (ii) the Trustee is reasonably satisfied that the person intends never to again become gainfully employed, either on a Full-time or a Part-time basis; or
- (b) in the case of a Member who has attained age 60 – an arrangement under which the Member was gainfully employed has come to an end and either of the following circumstances apply:
 - (i) the person attained the age on or before the ending of the employment; or
 - (ii) the Trustee is reasonably satisfied that the person intends never to again become gainfully employed, either on a full-time or a part-time basis.

Same Sex Partner means a person of the same gender as the Member who was living with the Member immediately prior to the death of the Member as a member of a couple on a genuine domestic basis and who is also a dependant of the Member.

Spouse of a person means:

- (a) the wife or husband, as the case may be, of the person, or
- (b) if the person is a man and is living with a woman as her husband on a bona fide domestic basis – the woman with whom he is so living, or
- (c) if the person is a woman and is living with a man as his wife on a bona fide domestic basis – the man with whom she is so living; or
- (d) a Same Sex Partner of the person.

Total and Permanent Disability means in relation to a Member:

- (a) if insurance cover for total and permanent disablement benefits applies to the Member, the same meaning as the corresponding term in the policy of insurance for that Member; and
- (b) where (a) does not apply to the benefit claimed, in relation to a Member who has ceased to be gainfully employed, means ill health (whether physical or mental), where the Trustee is reasonably satisfied that the Member is unlikely, because of the ill health, to engage in gainful employment for which the member is reasonably qualified by education, training or experience.

Total and Temporary Disability has the same meaning as the corresponding term in the policy of insurance for such cover (if any).

Transfer Fund means a Complying Fund, an approved deposit fund that is a complying approved deposit fund for the purposes of section 43 of the Superannuation Law, a Retirement Savings Account and where permitted by the Superannuation Law an annuity.

- 1.2 Unless the contrary intention appears, the terms used in these Rules shall have the same meaning as defined in the Deed.

2 Maintenance and administration

Member Accounts

- 2.1 The Trustee is required to establish and maintain under this Division a separate Benefit Account for each Member showing such of the following amounts as may be required:

- 2.1.1 contributions by the Division P Employer in respect of the Member;

- 2.1.2 contributions by the Member;
- 2.1.3 amounts that are Family Law Spouse Amounts;
- 2.1.4 any amounts transferred to the Fund from another Complying Fund;
- 2.1.5 any other contributions on behalf of the Member;
- 2.1.6 insurance premiums paid;
- 2.1.7 any insurance benefit that has been paid and credited to the account;
- 2.1.8 sums credited or debited to such account pursuant to the provisions hereof;
- 2.1.9 number of Units held at the commencement of the reporting period;
- 2.1.10 number of Units issued or redeemed during the reporting period; and
- 2.1.11 number of Units held at the end of the reporting period.

Preservation and Cashing Restrictions

- 2.2 The Trustee shall record as required in the Benefit Accounts of each Member:
 - 2.2.1 the amount that is preserved;
 - 2.2.2 the amount that is a restricted non-preserved benefit; and
 - 2.2.3 the amount that is the subject of a 'Nil' cashing requirement for the purposes of the Superannuation Law.

Other Accounts and reserves and Asset Portfolios

- 2.3 The Trustee may establish and maintain in respect of this Division such other accounts and reserves as, in the opinion of the Trustee, are necessary or convenient for the administration of this Division and these Rules.
- 2.4 Without limiting sub rule 2.3, the Trustee may establish separate Asset Portfolios, comprising assets in respect of this Division allocated by the Trustee, for the purposes of this Division.
- 2.5 The initial Asset Portfolios established by the Trustee are:
 - (a) Cash Plus;
 - (b) Capital Guarded;
 - (c) Balanced;

- (d) Diversified; and
 - (e) High Growth.
- 2.6 A Member may, at any time, elect to have the Member's Benefit Account treated, for the purpose only of allocating Fund earnings, as being invested as part of one or more particular Asset Portfolios nominated by the Trustee to the Member. The Member may elect to vary or revoke any such election.
- 2.7 Where no direction acceptable to the Trustee as to the investment of the balance of Member's Benefit Account has been made by a Member, the Trustee shall determine how the balance of the Member's Benefit Account is to be invested and may set a policy or policies to vary how that balance is to be invested including variation of investment based on age.
- 2.8 Where no election has been made by a Protected Member in accordance with subrule 2.6, the Trustee shall treat the Member's Benefit Account as being invested in the Cash Plus portfolio.
- 2.9 Until a different policy is set, where no direction satisfactory to the Trustee has been made by a Member who is not a Protected Member in accordance with subrule 2.6, the Trustee shall treat the Member's Benefit Account as being invested:
- (a) where the Member has not attained the age of 46 years: in the Diversified Asset portfolio;
 - (b) where the Member has attained the age of 46 years but has not attained the age of 55 years: in the Balanced Asset portfolio; and
 - (c) where the Member has attained the age of 55 years: in the Capital Guarded Asset portfolio.
- 2.10 An election made in accordance with subrule 2.6 shall take effect on the date determined by the Trustee from time to time, or if no such date is determined, on the day that is five working days after the day the election is received by the Trustee, or such later date as may be specified in the election. However, where an election is received prior to the day that Contributions are first credited to the account of the Member making the election, the election is to take effect on that later day.
- [replaced by Deed of Amendment No. [34] operative 14/12/11]*
- 2.11 A fee of \$20.00 (or such other amount as is determined by the Trustee) per election shall apply to all elections made in accordance with subrule 2.6 other than:

- (a) the first election made by a Member; and
 - (b) the first subsequent election made by that Member in each period of 12 months ended 30 June.
- 2.12 For the purposes of these Rules, the *investment earning rate* of each particular Asset Portfolio shall be the rate declared by the Trustee in respect of that Asset Portfolio for any given period.
- 2.13 For the purposes of adjusting Benefit Accounts and reserves, other than Member Benefit Accounts, the Trustee shall treat those Benefit Accounts and reserves as being invested:
- (a) where those Benefit Accounts and reserves comprise Contributions received in respect of Members which the Trustee has, for any reason, been unable to allocate to Members' Benefit Accounts, in such Asset Portfolio or Portfolios as may be considered appropriate by the Trustee, as long as no such Benefit Account or reserve is to be treated as having been wholly invested in either the Cash Plus Asset Portfolio or the High Growth Asset Portfolio; and
 - (b) in any other case, in the Cash Plus Asset Portfolio.
- 2.14 The Trustee is to determine, for the purpose only of allocating earnings under this Division, the parts of a Benefit Account or a reserve to be treated as being invested in a particular Asset Portfolio or Portfolios.

Nature of Members' Interests

- 2.15 The interest in the Fund of a Member and those entitled to a benefit on the death of the Member is personal to that person and the Trustee shall not recognise any assignment, claim or charge in respect of that interest unless that assignment, claim or charge is permitted expressly or by necessary implication of the Superannuation Law.
- 2.16 A Member only has an interest in the Fund whilst the Member is alive.
- 2.17 On the death of a Member the entitlement to the Member's Benefit Account shall be determined in accordance with the provisions applying on the death of a Member.
- 2.18 Where after a valid claim for payment is made, the Member dies and the Trustee has not received a written notice of the death of the Member before authorising payment, the Member's legal personal representative shall be entitled to payment.

Payment

- 2.19 If any part of the Benefit cannot be paid in accordance with the provisions as to payment in this document and is not required to be paid in accordance with the requirements of the Superannuation Law or other unclaimed moneys legislation, then it may be applied to the general purposes of the Fund.

Division P Employer and Employee Rights not Restricted

- 2.20 Nothing herein contained shall restrict the right of a Division P Employer to dismiss an employee who is a Member or be used to increase damages in any action brought against the Division P Employer in respect of such dismissal or affect the legal rights of a Member or legal personal representative arising out of or in the course of his or her employment with the Division P Employer.

Family Law Orders/Agreement

- 2.21 Where a Family Law Spouse Amount is required to be dealt with in accordance with the Family Law Act and the Superannuation Law, the Member's Benefit Account will be debited with the amount and the amount credited to the account of the Family Law Spouse or transferred in accordance with the directions of the Family Law Spouse to a Transfer Fund.

Fund Expenses

- 2.22 The Trustee from time to time is to determine the Fund Expenses and the amount of these Fund Expenses that are to be allocated to Division P.
- 2.23 The Trustee in its discretion may deduct all Fund Expenses not to be taken into account in determining the price of Units from Member Benefit Accounts in such proportions as is fair and reasonable between Members.
- 2.24 The Trustee may set one or more fees to be deducted from Member Benefit Accounts. The setting and deduction of such fees is subject to the Superannuation Law as it applies to protected members and lost members

Member Protection

- 2.25 The Trustee, in order to comply with the provisions of the Superannuation Law that apply to protected members and lost members, has a complete discretion as to the setting of fees and earnings rates including but not limited to:
- 2.25.1 setting fees that vary between Members; and
- 2.25.2 setting earnings rates that vary between Members.

Reserve Account

- 2.26 The Trustee shall keep a Reserve Account showing:
- 2.26.1 benefits forfeited;
 - 2.26.2 reserves of earnings;
 - 2.26.3 other amounts not applied to a specific account;
 - 2.26.4 amounts applied to general or particular purposes of the Fund.

Consolidation of Member Benefit Accounts

- 2.27 Where a person is enrolled or is eligible to be enrolled as a Member in another division in Pool A as well as this Division the Trustee may take steps so that there is only one Benefit Account maintained for the Member showing all transactions in respect of that Member. The Trustee may choose the Division in which the Benefit Account in respect of that Member is to be kept.

Other Accounts

- 2.28 The Trustee shall keep such other accounts as may be necessary to record the financial transactions by the Trustee and to record the Members' entitlements and changes in nature of entitlements.

3 Employers

Admission of Division P Employer

- 3.1 The Trustee may, in its absolute discretion, admit as a Division P Employer, an employer who consents to be bound by the terms of this Division and the Deed.

Division P Employer to Provide Information

- 3.2 Every Division P Employer in respect of its employees shall submit:
- 3.2.1 the Minimum Information; and
 - 3.2.2 all other information as may be reasonably required by the Trustee.

Removal Of Division P Employers

- 3.3 The Trustee in its absolute discretion, may at any time by notice in writing remove a Division P Employer.
- 3.4 A Division P Employer may give the Trustee 30 days notice in writing of its intention to cease its participation in the Fund and at the end of the 30 days it will cease to be a Division P Employer.

4 Members of the Division

Eligibility

- 4.1 The persons eligible for membership of this Division shall be such persons for whom application to become a Member is made to the Trustee.
- 4.2 Each Member is bound by the terms of this Division and the Deed.

Member to Provide Information

- 4.3 Every Member shall submit:
 - 4.3.1 an application for membership in a form approved by the Trustee; or
 - 4.3.2 the Minimum Information in the circumstances determined by the Trustee; and
 - 4.3.3 if required, any evidence of health and completed and signed statements as to health required in connection with any insurance cover; and
 - 4.3.4 all other information as may be reasonably required by the Trustee.
- 4.4 The Trustee may within 30 days of receipt of an application for membership:
 - 4.4.1 reject the application by the Member without giving a reason for this rejection;
 - 4.4.2 impose special conditions when accepting the application by the Member; and
 - 4.4.3 an application for membership that is not so rejected is accepted.

Commencement of Membership

- 4.5 Notwithstanding anything in the Trust Deed, a person eligible for membership shall become a Member on the day determined by the Trustee and on the payment or forfeiture of the whole of a Member's rights to benefit hereunder, the person's membership shall cease.

5 Contributions

Division P Employer contributions

- 5.1 Each Division P Employer will contribute to the Fund for each of its employees who is a Member the rate specified in the award or industrial agreement applying to that Member or such greater rate specified by the Division P Employer for that Member.

5.2 Each Division P Employer shall give to the Trustee clear directions as to the amount of contributions to be allocated to each Member employed by it.

5.3 Each Division P Employer shall pay by the Due Date to the Trustee:

5.3.1 the amount payable in accordance with rule 5.1; and

5.3.2 any contributions deducted from the pay of a Member.

Member Contributions

5.4 A Member may contribute to the Fund such amount as the Trustee and the Member agree.

5.5 The Member, or if employed by a Division P Employer, the Division P Employer, shall notify the Trustee of the amount of contribution.

Failure of Division P Employer to pay contributions

5.6 The Trustee shall have no obligation whatsoever to take follow up action or any action to enforce payment of any contributions a Division P Employer has agreed to pay that are not paid on time or at all.

5.7 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 a Division P Employer at such time as the Trustee may require.

Other contributions

5.8 The Trustee may accept any contributions in respect of a Member that it is lawfully able to accept.

Controls on contributions

5.9 The Trustee will not accept contributions for a Member where:

5.9.1 the Superannuation Law does not permit payment to this Division or to a Complying Fund; or

5.9.2 the Trustee determines not to accept contributions of that type.

Application of contributions

5.10 Subject to any Investment Direction by the Member, the Trustee in its absolute discretion shall determine the manner in which such contributions will be invested.

Contributions splitting

- 5.11 A Member may, in a financial year, apply to the Trustee to roll over, transfer or allot an amount of Benefits, for the benefit of the Member's Spouse up to the maximum amount of contributions that may be split in accordance with the Superannuation Law.

6 Insurance benefits

Level of Benefits

- 6.1 The amount and nature of cover under any insurance policy shall be determined by the Trustee and shall be subject to the terms of the insurance policy or policies taken out by the Trustee to provide the relevant cover under any insurance policy.

Trustee to Effect Necessary Death and Disability Insurances

- 6.2 To provide insurance benefits, the Trustee may enter into one or more group insurance policies with insurers for amounts and on terms and conditions agreed between the Trustee and the insurer.

Commencement of Death and Disability Insurance

- 6.3 Any insurance cover in respect of a person will not commence until:
- 6.3.1 the person is admitted as a Member; and
 - 6.3.2 if required, the Member and the Employer have provided all information required by the insurer and that information is to the satisfaction of the insurer.

Cessation of Insurance Cover

- 6.4 Any insurance cover shall cease:
- 6.4.1 in accordance with the terms contained in the policy of insurance with the insurer;
 - 6.4.2 on the Trustee determining that it is not reasonably practicable to obtain or renew a policy of life insurance on terms acceptable to the Trustee;
 - 6.4.3 if the insurer for any reason terminates a policy of life insurance, or terminates the cover for the Member; or
 - 6.4.4 if the amount standing to the credit of a Member's Benefit Account is insufficient to pay the costs attributable to that Member of providing that cover.

Scope of Insurance Cover

- 6.5 Any insurance cover shall be subject to the terms of the applicable policy.
- 6.6 No payment shall be required to be made in respect of a Member in satisfaction of any insurance cover that is greater than the amount received by the Trustee under the policy in respect of that Member after deduction of all administration charges and expenses and taxes attributable to that amount.
- 6.7 The Trustee has no duty:
- 6.7.1 to effect insurance cover;
 - 6.7.2 to increase insurance cover; or
 - 6.7.3 to maintain any insurance policy.
- 6.8 The amount of any insurance cover shall be adjusted where appropriate where there is an error in the age, sex or other details of the Member the subject of the insurance cover.

7 Transfer from another fund

- 7.1 The Trustee may accept into the Fund in respect of the Member an amount transferred from a Transfer Fund in which the Member has participated and the benefit payable under the Transfer Fund in respect of the Member shall be adjusted in such a manner as is agreed upon by the Trustee and the Member to take into account the value of the amount transferred.

8 Payment of Benefits

Amount of Benefit generally

- 8.1 The Benefit payable to or in respect of a Member under these Rules is an amount equal to the balance at credit in the Member's Benefit Account at the time the Benefit is paid, except as provided by or under these Rules.

Lump Sum Payment

- 8.2 Benefits payable under this document (other than Total and Temporary Disability Benefits) will be by way of lump sum or, if the Trustee agrees in any case, a pension or in purchase of an annuity.

When Payable

- 8.3 The Trustee must pay the Benefit when required by the Superannuation Law.

- 8.4 The Trustee will, if requested by the Member, pay Benefits:
- 8.4.1 on Retirement;
 - 8.4.2 on suffering Total and Permanent Disability;
 - 8.4.3 upon permanently departing Australia; or
 - 8.4.4 at any other time to the extent that the Benefit is a benefit that can be paid in accordance with the Superannuation Law.

Evidence of Entitlement

- 8.5 As a precondition to payment, the Trustee may require the payee of any benefit to produce satisfactory evidence of his or her entitlement and to execute documents and do other things reasonably required by the Trustee. Payment of the benefit payable in respect of a Member to the person entitled will discharge the Trustee and satisfy that Member's rights under this Division.

Establishing Total and Permanent Disability

- 8.6 A Member shall not be treated as Totally and Permanently Disabled unless and until:
- 8.6.1 in the case where there is no insurance, the Member has supplied the Trustee with such medical and other evidence as the Trustee requires to satisfy itself that the Member is Totally and Permanently Disabled;
 - 8.6.2 in the case where there is insurance, the Member has supplied the Trustee with such medical and other evidence as the insurer requires to satisfy itself that the Member is Totally and Permanently Disabled.

Total and Temporary Disability

- 8.7 If a Member suffers Total and Temporary Disability and that Member is entitled to a Total and Temporary Disability benefit under a policy of insurance taken out by the Trustee, the Member is entitled to be paid the benefit.
- 8.8 A Member shall not be treated as Totally and Temporarily Disabled unless and until the Member has supplied the Trustee with such medical and other evidence as the insurer requires to satisfy itself that the Member is Totally and Temporarily Disabled.

Death of Member

- 8.9 Where a Member has died, the Benefit payable is to be paid in accordance with clause 14.17A of the Deed.

9 Transfer of Benefit to New Fund

Transfers on Member Request

- 9.1 Any Member may, with the consent of the Trustee terminate his or her membership of the Fund and transfer or apply the amount standing to his or her accounts to a Transfer Fund nominated by the Member which makes provision for payment and preservation of benefits in accordance with the Superannuation Law.

Withdrawal of Employer

- 9.2 A Division P Employer's participation in the Fund shall be determined in the following manner:
- 9.2.1 date of withdrawal is the date any notice takes effect, or if there is no date specified in the notice, the date the notice is received by the Trustee and where there is no notice, the date the Trustee determines that the Division P Employer has ceased to be a Division P Employer; and
 - 9.2.2 all arrears of contributions and amounts advanced by the Trustee for the benefit of the Division P Employer's Members, if any, together with interest on any amount not paid by the Division P Employer on the Due Date at a reasonable rate as determined from time to time by the Trustee and collection costs shall be paid up to the date of withdrawal.

Transfer to Successor Fund

- 9.3 The Trustee shall transfer a Member's benefits to a superannuation fund that is a successor fund in such circumstances as the Trustee determines.

Transfer to Eligible Rollover Fund

- 9.4 The Trustee may, in accordance with the Superannuation Law, and where required by the Superannuation Law, transfer a Member's Benefit to an eligible rollover fund and shall provide any information to the Trustee of the eligible rollover fund at such time and in such manner as required by the Superannuation Law. Payment to the Trustee of an eligible rollover fund in accordance with the Superannuation Law shall be a complete discharge to the Trustee.

10 Benefits to persons under legal incapacity

Legal Incapacity of Recipient

- 10.1 Where any amount is payable or transferable to a person who is a minor or who, in the opinion of the Trustee, is unable to give a good receipt or is otherwise under a legal incapacity, then the Trustee may in its discretion:
- 10.1.1 defer payment of such moneys or any part thereof until such time as such person is in the opinion of the Trustee able to give a good receipt therefore and in the meantime invest such moneys in any investment authorised hereunder; or
 - 10.1.2 pay the amount or any part thereof to any parent, guardian or legal personal representative of such first mentioned person or to any person with whom he or she is residing for his or her maintenance, education, advancement or benefit;
 - 10.1.3 pay the amount to the Public Trustee or a trustee company or two or more trustees to be held by it upon trust to pay or apply the amount for the maintenance, education, advancement or benefit of the person with power for such Trustee to pay or transfer the same to any parent, guardian or legal personal representative of the person.

Trustee Receipt

- 10.2 No Trustee shall be concerned to see to the application of any amount paid in accordance with rule 10.1 and the receipt of the recipient shall be a complete discharge for any moneys so paid or any assets so transferred.

11 Complaints

Complaints Procedure

- 11.1 The Trustee will establish a complaints procedure to deal with complaints by beneficiaries in a manner as required by the Superannuation Law. The procedure will be determined by the Trustee in its absolute discretion.

Complaint to delay Payment

- 11.2 The Trustee shall have no obligation to pay any Benefit on the death of a Member until:
- 11.2.1 The time to lodge a complaint by the persons notified by the Trustee under the Complaints Act has lapsed; and

11.2.2 If a complaint is lodged under the Complaints Act, that complaint has been dealt with.

12 Other adjustments of accounts and reserves

12.1 The Trustee may, from time to time, adjust any of the accounts and reserves established under this Division as it thinks appropriate for the purposes:

12.1.1 to reflect a change in circumstances,

12.1.2 to correct mistakes relating to amounts credited or debited to the accounts or reserves,

12.1.3 to reflect changes in the law applicable to the accounts or reserves.

13 Trustee fees

13.1 The Trustee is entitled to charge fees for its services to the Division.