

QSuper - Participation Deed

Dated 17 February 2022

Queensland Treasurer (**Treasurer**), on behalf of the State of Queensland

QSuper Board (ABN 32 125 059 006) (**Trustee**) as the trustee of QSuper
(ABN 60 905 115 063)

Sunsuper Pty Limited (ABN 88 010 720 840) (**New Trustee**)

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QSuper - Participation Deed

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Details

Parties		
Treasurer	Name	Honourable Cameron Dick, Queensland Treasurer, on behalf of the State of Queensland
	Address	1 William Street BRISBANE QLD 4001
Trustee	Name	QSuper Board
	ABN	32 125 059 006
	Address	70 Eagle Street (Central Plaza 3) BRISBANE QLD 4000
New Trustee	Name	Sunsuper Pty Limited
	ABN	88 010 720 840
	Address	30 Little Cribb Street MILTON QLD 4064
Business Day place(s)	Brisbane	
Governing law	Queensland	
Recitals	A	QSuper (ABN 60 905 115 063) (QSuper Fund) is the superannuation fund that is part of the public sector superannuation scheme that was established under the <i>Superannuation (State Public Sector) Act 1990</i> (Qld) (SSPS Act) and the <i>Superannuation (State Public Sector) Deed 1990</i> (Qld).
	B	The Trustee is trustee of the QSuper Fund.
	C	The SSPS Act was amended by the <i>Superannuation (State Public Sector) (Scheme Administration) Amendment Act 2021</i> (Qld) (Amending Act) which was enacted on 28 October 2021.
	D	In accordance with sections 6 and 54 of the SSPS Act, as replaced and introduced by the Amending Act, respectively (with commencement on a day to be fixed by proclamation), the Trustee prepared an instrument (Instrument) which, pursuant to the terms of a deed poll (Initial Deed Poll) (that was executed on or around the date of this deed) restated

the provisions of the deed set out in the *Superannuation (State Public Sector) Deed 1990 (Qld)*, as in force immediately before its repeal, subject to certain amendments permitted under section 54 of the SSPS Act, as the trust deed for the QSuper Fund (**Trust Deed**).

E Sections 55 and 56 of the SSPS Act, as introduced by the Amending Act (and which will commence on a day to be fixed by proclamation), states:

“55 Definition for subdivision

In this subdivision—

Sunsuper transfer means the transfer of the benefits of all members of Sunsuper Superannuation Fund (ABN 98 503 137 921) to the scheme.

56 Amendment of deed to facilitate Sunsuper transfer

- (1) The trustee must, in accordance with the deed and before the Sunsuper transfer is completed, amend the deed to provide for and facilitate the implementation of the Sunsuper transfer.
- (2) An amendment under subsection (1) must not amend the deed in a way that—
 - (a) adversely affects the rights to superannuation or other benefits of members of the scheme accrued before the amendment; or
 - (b) affects, or purports to affect, the continuation of the scheme or the fund for the scheme; or
 - (c) otherwise resettles or redeclares the scheme or the fund for the scheme.
- (3) An amendment of the deed under subsection (1) that is inconsistent with subsection (2) is void to the extent of the inconsistency.”

F Section 26(1) of the SSPS Act, as replaced by the Amending Act (and which replacement will commence on a day to be fixed by proclamation), that applies in relation to members of the scheme in a government defined benefit category and their rights to superannuation or other benefits attributable to that category, states:

“The trustee may amend the deed in a way that affects the rights to superannuation or other benefits of members only if—

- (a) all of the following apply—

- (i) the trustee, acting on the advice of an actuary, believes the amendment will not affect the Treasurer's contributions under section 31;
- (ii) the amendment does not affect entitlements to defined benefits, or defined benefit contributions, of the members;
- (iii) the Minister has been given written notice of the amendment; or

(b) the Minister has consented to the amendment."

G To provide for and facilitate the implementation of the 'Sunsuper transfer' (**SFT**), the Trustee has executed a deed of amendment (**Deed of Amendment**) to:

(a) pursuant to section 14B of the Instrument in the schedule to the Initial Deed Poll, amend the Trust Deed by:

- (1) amending the Trust Deed as set out in the Deed of Amendment; and
- (2) pursuant to the amendments that are referred to in paragraph (a)(1) above, incorporating into the Trust Deed the provisions of chapters 2, 4, 5, 6, 7, 8 and 9 of the Instrument in the schedule to the Initial Deed Poll (**Closed Defined Benefit Chapters**) that are set out in a participation schedule to a participation deed entered into between the Trustee and the Queensland Treasurer on behalf of the State of Queensland (**Participation Deed**) and executed on or around the same time as the execution of the Deed of Amendment; and

(b) change the name of the QSuper Fund to the Australian Retirement Trust.

H Under clause 2 of the Deed of Amendment, the amendments referred to in recital G take effect immediately before 12.00.01am, or such other time agreed by the Trustee and the New Trustee, on 28 February 2022, or such other date agreed by the Trustee and the New Trustee (**Transfer Time**), subject to:

- (a) commencement by proclamation of section 56 of the [SSPS] Act; and
- (b) the prior execution of the Participation Deed.

I Rule 6 of the Division Rules in Schedule 2 to the Trust Deed states:

“The Trustee and the Queensland Treasurer must enter into a Participation Deed that:

- (a) sets out the rules of each Closed Defined Benefit Category that are incorporated into the Division Rules; and
- (b) may also contain any other matters agreed between the Trustee and the Queensland Treasurer in relation to Employees and former Employees of a Unit of the State Public Sector under the *Superannuation (State Public Sector) Act 1990*.”

J Under rule 1 of the Division Rules in Schedule 2 to the Trust Deed, “Closed Defined Benefit Category” means:

“the standard defined benefit category, State 58 category, State 72 category, police 68 category, police 74 category, fire category or parliament 70 category.”

K Rule 46(2) of the Division Rules in Schedule 2 to the Trust Deed states:

“The contributions payable under section 31(1)(b) of the *Superannuation (State Public Sector) Act 1990* must be paid in accordance with the Participation Deed.”

L In addition to the SFT, at the Transfer Time, the Trustee will cease to be the trustee of the QSuper Fund and the New Trustee will become the trustee of the QSuper Fund.

M The parties wish to enter into this Participation Deed under rule 6 of the Division Rules in Schedule 2 to the Trust Deed to:

- (a) in the participation schedule, set out the Closed Defined Benefit Chapters, that are incorporated into the Trust Deed and contain the rules of each “Closed Defined Benefit Category” for the Division Rules in Schedule 2 to the Trust Deed;
- (b) record matters regarding the contributions payable under section 31(1)(b) of the SSPS Act for the purposes of rule 46(2) of the Division Rules in Schedule 2 to the Trust Deed; and
- (c) record that the New Trustee will take on the rights and obligations of the Trustee under this Participation Deed with effect from the Transfer Time.

The parties agree in consideration of, among other things, the mutual promises contained in this Participation Deed and in accordance with rule 6 of the Division Rules in Schedule 2 to the Trust Deed:

QSuper - Participation Deed

General terms

1 Definitions and Interpretation

1.1 Definitions

Unless the contrary intention appears in this Participation Deed, terms not defined in this Participation Deed have the same meaning as in clause 1.1 of the Trust Deed and the following meanings apply:

Actuary has the same meaning as in Schedule 2 to the Trust Deed.

Amended SSPS Act means the SSPS Act as amended by the Amending Act.

Amending Act has the same meaning as in recital C.

Closed Defined Benefit Category has the same meaning as in Schedule 2 to the Trust Deed.

Confidential Information means information relating to the Government Division of the QSuper Fund, any Member or other beneficiary of the Government Division of the QSuper Fund, but excludes information that is in the public domain other than as a result of a breach of this Participation Deed.

Defined Benefit Assets has the same meaning as in rule 15 of the Division Rules in Schedule 2 to the Trust Deed.

Defined Benefit Contributions means contributions to the QSuper Fund required under the Trust Deed by Members in relation to their membership in a Closed Defined Benefit Category.

Defined Benefits has the same meaning as in rule 15 of the Division Rules in Schedule 2 to the Trust Deed.

Division Rules has the same meaning as in Schedule 2 to the Trust Deed.

Employee, in relation to a Unit of the State Public Sector, has the same meaning as in Schedule 2 to the Trust Deed.

General Part means the provisions of this Participation Deed, but excluding the Participation Schedule.

Government Division Reserve Account has the same meaning as in clause 15.4 of the Trust Deed.

Liability means a liability or obligation (of any kind including, without limitation, for negligence, in tort, in equity, or under statute) of a party which arises in any way under or in connection with this Participation Deed or its performance.

Member means an Employee or former Employee of a Unit of the State Public Sector who is a member of the Government Division of the QSuper Fund.

Participation Deed means this participation deed, including any annexures and schedules.

Participation Schedule means Schedule 1 (“Participation Schedule”).

QSuper Fund has the same meaning as in recital A, being a regulated superannuation fund that will be known as the Australian Retirement Trust from the Transfer Time.

SSPS Act has the same meaning as in recital A.

Transfer Time has the same meaning as in recital H.

Unit of the State Public Sector has the same meaning as in Schedule 2 to the Trust Deed.

1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) The following rules apply unless the context requires otherwise.
 - (i) The singular includes the plural, and the converse also applies.
 - (ii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - (iii) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
 - (iv) A reference to a clause, annexure or schedule is a reference to a clause of, annexure to, or schedule of, this Participation Deed.
 - (v) A reference to an agreement or document (including a reference to this Participation Deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Participation Deed or that other agreement or document, and includes recitals of, annexures to and schedules of that agreement or document.
 - (vi) A reference to a party to this Participation Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
 - (vii) A reference to a section of the Amended SSPS Act is a reference to that section of the SSPS Act, with effect from the commencement of the amendments made under the Amending Act (that will be on a day to be fixed by proclamation).

2 Commencement

This Participation Deed takes effect immediately before the Transfer Time.

3 State of Queensland bound by Trust Deed

The Treasurer, on behalf of the State of Queensland, agrees to be bound by the Trust Deed.

4 Defined Benefits

4.1 Contributions and funding of administration fees and expenses

- (a) For the purposes of rule 46(2) of the Division Rules in Schedule 2 to the Trust Deed:
 - (i) the contributions required to be made by the Treasurer under section 31(1)(b) of the Amended SSPS Act include:
 - (A) subject to clause 4.1(a)(ii), amounts as agreed between the Trustee and the Treasurer to fund the fees and expenses attributable to the Members in the Closed Defined Benefit Categories taking into account the Trustee's obligations under the SIS Act; and
 - (B) any other amounts determined by the Treasurer, in consultation with the Trustee; and
 - (ii) in relation to an amount agreed under clause 4.1(a)(i)(A):
 - (A) subject to clause 4.1(c), to the extent that there are sufficient Defined Benefit Assets, these amounts will be satisfied by transfer from the Defined Benefit Assets to the Government Division Reserve Account on a monthly basis or on any other basis as agreed between the Treasurer and the Trustee; and
 - (B) to the extent that there are insufficient Defined Benefit Assets in relation to a period, the Trustee must notify the Treasurer of the amount of the additional contributions required in relation to the period, along with any information that would be reasonably necessary for the Treasurer to understand the calculation of that amount.
- (b) Clause 4.1(a) does not restrict the Trustee's rights under the Trust Deed.
- (c) Subject to the SIS Act, if the Trustee determines an administration fee rebate is payable in relation to the Closed Defined Benefit Categories, the fee rebate will be paid into the Defined Benefit Assets.

4.2 Amendments to Trust Deed relating to Defined Benefits

The Trustee may amend the Trust Deed in a way that affects the rights to superannuation or other benefits of Members in the Closed Defined Benefit Categories only if:

- (a) all of the following apply:
 - (i) the Trustee, acting on the advice of an Actuary, believes the amendment will not affect the Treasurer's contributions under section 31 of the Amended SSPS Act;
 - (ii) the amendment does not affect entitlements to Defined Benefits, or Defined Benefit Contributions, of the Members;
 - (iii) the Treasurer has been given written notice of the amendment; or
- (b) the Treasurer has consented to the amendment.

4.3 Investment of Defined Benefit Assets

- (a) The Treasurer and Trustee will consult on the investment manager for the investment of the Defined Benefit Assets.
- (b) The Trustee will appoint an approved investment manager named in a notice from the Treasurer to manage and invest the Defined Benefit Assets.

5 Confidentiality

5.1 Confidential Information

The parties must treat all Confidential Information in their possession or control as confidential and must not disclose any Confidential Information except as permitted by clause 5.2 ("Permitted disclosure").

5.2 Permitted disclosure

Subject to all applicable laws, a disclosure of Confidential Information does not constitute a contravention of clause 5.1 ("Confidential Information") where the disclosure by a party is:

- (a) of information that is publicly available or that has not been received from the other party;
- (b) with the consent of the party that provided the information (such consent not to be unreasonably withheld);
- (c) to its employees, delegates, external advisers, agents, sub-contractors or anyone else the party deals with in connection with the administration of the QSuper Fund or the performance of the Trustee's obligations as trustee of the QSuper Fund, provided that the recipient party keeps the Confidential Information confidential in accordance with this clause 5;
- (d) to any court, statutory body or regulatory authority, or other person, where the party has a legal obligation to disclose it or is being disclosed as a result of a decision under the *Right to Information Act 2009* (Qld); or
- (e) disclosure by the State of Queensland to the Queensland Auditor-General.

6 Trustee's limitation of Liability

- (a) The Trustee enters into this Participation Deed in its capacity as trustee of the QSuper Fund and in no other capacity.
- (b) The Treasurer, on behalf of the State of Queensland, acknowledges that the Trustee incurs any Liabilities solely in its capacity as trustee of the QSuper Fund.
- (c) A Liability may be enforced against the Trustee only to the extent to which:
 - (i) the Trustee is actually indemnified in respect of that Liability out of the property of the QSuper Fund; and
 - (ii) there is sufficient property held by the Trustee as trustee at the time, which is available to meet that indemnity (after all QSuper

Fund assets have been allocated to meet the indemnity and any other valid claims).

- (d) Subject to clause 6(e) no person will be entitled to:
 - (i) claim from or commence proceedings against the Trustee in respect of any Liability in any capacity other than as trustee of the QSuper Fund;
 - (ii) enforce or seek to enforce any judgment in respect of any Liability against any property of the Trustee other than property held by the Trustee as trustee of the QSuper Fund;
 - (iii) take any steps to procure or support the appointment of a liquidator, administrator or any other similar office holder to the Trustee on the basis of a Liability, or prove in any liquidation, administration or arrangement of or affecting the Trustee; or
 - (iv) in respect of a Liability, appoint or take any steps to procure or support the appointment of a receiver or receiver and manager to any property of the Trustee, other than property which is held by it in its capacity as trustee of the QSuper Fund.
- (e) The restrictions in clauses 6(c) and 6(d) do not apply to any Liability to the extent that the Trustee has no right or power to have the assets of the QSuper Fund applied towards satisfaction of that liability, or its right or power to do so is subject to a deduction, reduction, limit or requirement to make good, in any case as a result of the Trustee's fraud, wilful misconduct, negligence or breach of trust in relation to the QSuper Fund.
- (f) The Treasurer, on behalf of the State of Queensland, agrees that no act or omission of the Trustee (including any related failure to satisfy any Liabilities) will constitute fraud, wilful misconduct, negligence or breach of trust of the Trustee for the purposes of clause 6(e) to the extent to which the act or omission was caused or contributed to by any failure of the State of Queensland to fulfil its obligations relating to the QSuper Fund or by any other act or omission of the State of Queensland.
- (g) Nothing in clause 6(e) will make the Trustee liable to any claim for an amount greater than the amount which the State of Queensland would have been able to claim and recover from the assets of the QSuper Fund in relation to the relevant Liability if:
 - (i) the Trustee's right of indemnification out of the assets of the QSuper Fund had not been lost or reduced; and
 - (ii) the assets of the QSuper Fund had not been reduced, as a result of the Trustee's fraud, wilful misconduct, negligence or breach of trust in relation to the QSuper Fund.
- (h) This limitation of the Trustee's Liability applies despite any other provisions of this Participation Deed and extends to all Liabilities of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Participation Deed or its performance.

7 Termination

- (a) This Participation Deed terminates if the Government Division terminates in accordance with the Division Rules set out in Schedule 2 to the Trust Deed.
- (b) Termination of this Participation Deed under this clause 7 is without prejudice to the accrued rights or remedies of the State of Queensland and the Trustee.

8 Amendments

- (a) This General Part may be amended at any time by written agreement between the Trustee and the Treasurer on behalf of the State of Queensland.
- (b) Rule 13(1) of the Division Rules in Schedule 2 to the Trust Deed applies to the Participation Schedule (that forms part of the Division Rules).
- (c) The Trustee and Treasurer acknowledge that clause 4.2 of this Participation Deed and section 26 of the Amended SSPS Act must be complied with in relation to amendments to the Participation Schedule (that forms part of the Division Rules).

9 Assignment and novation

- (a) The parties agree that, with effect from the Transfer Time:
 - (i) all rights and obligations of the Trustee under this Participation Deed become the rights and obligations of the New Trustee; and
 - (ii) the Trustee ceases to be a party to this Participation Deed.
- (b) The Trustee may not novate, assign, charge, create a security interest over, encumber or otherwise deal with any of its rights or obligations under this Participation Deed, or attempt or purport to do so, without the prior written consent of the Treasurer (such consent not to be unreasonably withheld).

10 Notices

Any notice or other communication (a **Notice**) given or made under this Participation Deed:

- (a) must be in writing and signed by the sender or a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or email to the address or email address below or the address or email address last notified by the intended recipient to the sender:

to the Under Treasurer (on behalf of the Treasurer):
Postal address: GPO Box 611
BRISBANE QLD 4001
Email address:
Executive.Correspondence@treasury.qld.gov.au
Attention: Under Treasurer

to the Trustee:
Address: 70 Eagle Street (Central Plaza 3)
BRISBANE QLD 4000
Email address: Deanne.Wilden@qsuper.qld.gov.au
Attention: Deanne Wilden

to the New Trustee:
Address: 30 Little Cribb Street
MILTON QLD 4064
Email address: Bern_Reilly@sunsuper.com.au
Attention: Bernard Reilly

- (c) will be conclusively taken to be duly given or made:
- (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, on the third Business Day after the date of posting; and
 - (iii) in the case of delivery by email:
 - (A) when the sender receives an automated message confirming delivery; or
 - (B) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or at a time that is later than 5.00pm in the place to which the Notice is sent, it will be conclusively taken to have been duly given or made at the start of business on the next Business Day in that place.

11 Costs and Duty

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Participation Deed.

12 Counterparts

- (a) This Participation Deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this Participation Deed by signing any counterpart.

13 Applicable law

This Participation Deed is governed by, must be construed under and takes effect in accordance with the laws of the State of Queensland.

EXECUTED as a deed

QSuper - Participation Deed

Signing page

DATED: 10 February, 2022

SIGNED SEALED AND DELIVERED by
Honourable Cameron Dick,
Queensland Treasurer, on behalf of
the State of Queensland, in the
presence of:


.....
Signature of witness

BARNABY KERDEL
.....
Name of witness (block letters)


.....
Signature

SIGNED, SEALED AND DELIVERED

by

and
as attorneys for **QSuper Board** under
power of attorney dated 22 November
2021

in the presence of:

.....
Signature of witness

.....
Name of witness (block letters)

.....
Signature of witness

.....
Name of witness (block letters)

.....
By executing this document the
attorney states that the attorney has
received no notice of revocation of the
power of attorney

.....
By executing this document the
attorney states that the attorney has
received no notice of revocation of the
power of attorney

QSuper - Participation Deed

Signing page

DATED: _____

SIGNED SEALED AND DELIVERED by)
Honourable Cameron Dick,)
Queensland Treasurer, on behalf of)
the State of Queensland, in the)
presence of:)

.....)
Signature of witness)

.....)
Name of witness (block letters))

SIGNED, SEALED AND DELIVERED)

by DON LUKE)

and TREVOR COLDEN)
as attorneys for **QSuper Board** under)
power of attorney dated 22 November)
2021)

in the presence of:)

[Signature])
Signature of witness)

SARAH BROOKES)
Name of witness (block letters))

[Signature])
Signature of witness)

SARAH BROOKES)
Name of witness (block letters))

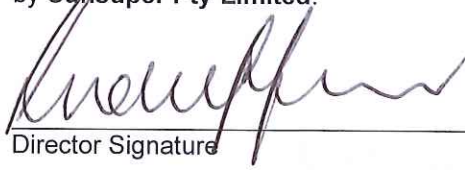
.....)
Signature)



.....)
By executing this document the)
attorney states that the attorney has)
received no notice of revocation of the)
power of attorney)

[Signature])
By executing this document the)
attorney states that the attorney has)
received no notice of revocation of the)
power of attorney)

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **Sunsuper Pty Limited**:



Director Signature

Andrew Fraser

Print Name



Director/Secretary Signature

Elizabeth Hallett

Print Name