



# Consolidated Constituent Deed for Aware Super

## *Notes:*

These notes do not form part of the Constituent Deed and have been provided for convenience only.

The Constituent Deed which made provision for and with respect to the workings of the First State Superannuation Scheme (as Aware Super was then known) was adopted by a Deed of Variation dated 29 March 2006.

No variations have been made to the Constituent Deed since that time. This Constituent Deed should be read in conjunction with the Aware Super Rules which are available as a separate document (referred to as 'Annexure A' in the Constituent Deed).

This document is a consolidated version of the Constituent Deed which applies as at 3 December 2020 and is a working copy only.

Prepared by Aware Super Pty Ltd (ABN 11 118 202 672, AFSL 293340) the trustee for Aware Super (ABN 53 226 460 365).

## TRUSTEE

FSS Trustee Corporation (now known as Aware Super Pty Ltd) (ABN 11 118 202 672) of Level 28, 388 George Street, Sydney NSW 2000.

## RECITALS

- A. The *First State Superannuation Scheme* (now known as Aware Super) (**Fund**) was established under the *First State Superannuation Act 1992 (FSS Act)*.
- B. Pursuant to section 13(1) of the FSS Act, on 19 February 1999, a trust deed was executed to make provision for and with respect to the workings of the Fund. The trust deed has been amended on numerous occasions and was last amended by the *First State Superannuation Legislation Amendment (Conversion) Act 2005 (NSW)*. The trust deed, as amended, is referred to in this Deed as the **Constituent Deed**.
- C. The Trustee is the present trustee of the Fund.
- D. Pursuant to clause 25 of the Constituent Deed (**Variation Power**), the Trustee may, by deed, vary all or any of the provisions of the Constituent Deed (including the Variation Power) in various ways and for various purposes (including, to facilitate the transition of the Fund to a public offer superannuation fund as defined under the *Superannuation Industry (Supervision) Act 1993 (Cth)*).
- E. The Trustee has resolved that the Fund should transition to a public offer superannuation fund.
- F. The Trustee is of the opinion that the variations of the Constituent Deed effected by this Deed may be made in accordance with the Variation Power.

## OPERATIVE PROVISIONS

### 1. EFFECTIVE DATE

With the exception of this clause 1 and clause 6.2, this Deed takes effect on and from the date of commencement of section 4 of the *First State Superannuation Legislation Amendment (Conversion) Act 2005 (NSW) (Transition Act)*. At any time before the date of commencement of section 4 of the Transition Act, the Trustee can revoke this Deed by executing a deed of revocation.

### 2. VARIATION OF CONSTITUENT DEED

#### 2.1 Variation of Constituent Deed

The Constituent Deed is varied by deleting the provisions of the Constituent Deed (with the exception of the Variation Power) and replacing them with the provisions of this Deed and the rules set out in Annexure A (**Rules**). The Fund continues subject to the provisions of this Deed and nothing in this Deed terminates (or is to be taken to have terminated) the Fund or creates (or is to be taken to have created) a new trust or a new fund.

#### 2.2 Rules apply as if set out in Deed

The Rules (as varied from time to time) have effect as if set out in this Deed.

## 2.3 Variation of Variation Power

The Variation Power is:

- (a) varied by:
  - (i) adding, after the words "*this Deed*" wherever they appear in the Variation Power, the words "*or the Rules*";
  - (ii) inserting, before the word "*Deed*" in the heading to the Variation Power, the word "*Constituent*"; and
  - (iii) deleting the words "*Superannuation Authority*" wherever they appear in the Variation Power and replacing them with the word "*Regulator*"; and
- (b) renumbered and set out in accordance with clause 5 of this Deed.

## 2.4 Restatement of Variation Power

The Variation Power is as set out in clause 5. In the event of any inconsistency between clause 5 and any other document regarding the wording of the Variation Power, clause 5 is to be taken to set out conclusively the wording of the Variation Power (and, if necessary, the Variation Power is taken to have been amended to give effect to the wording set out in clause 5).

## 3. MANAGING AND ADMINISTERING FUND

The Fund must be managed and administered in all respects in accordance with this Deed and the Rules.

## 4. APPOINTMENT RETIREMENT AND REPLACEMENT OF TRUSTEE

The trustee of the Fund must be appointed, and may resign or be replaced, from time to time in accordance with the Rules.

## 5. VARIATION OF CONSTITUENT DEED

### 5.1 Method of variation

The Trustee may, by deed, vary all or any of the provisions of this Deed or the Rules, including this clause 5, (whether by way of alteration, addition, deletion, modification, removal or replacement) (each a **variation**) without the consent of Members or Employers where the variation is made:

- (a) to satisfy a requirement of Superannuation Law (including, without limitation, a licensing or other legal requirement of the trustee of the Fund);
- (b) to authorise the payment to the Trustee, as a transfer from any unallocated reserve, for the purpose of the Trustee satisfying any financial capacity or solvency requirement imposed on trustees of superannuation funds by a Regulator;
- (c) to authorise the payment to the Trustee of fees for acting as trustee of the Fund to be retained for the Trustee's own purposes;
- (d) to facilitate the transition of the Fund to a public offer superannuation fund as defined under Superannuation Law;

- (e) to enable the Fund to be more conveniently, advantageously, efficiently or economically administered, promoted or invested;
- (f) in respect of the retirement of the Trustee as trustee of the Fund, the appointment of new or additional trustees of the Fund or to remove or replace a trustee of the Fund;
- (g) to introduce a new, or to change existing, sub-fund, division, Member qualification, Employer qualification or benefit design;
- (h) to correct a manifest error;
- (i) as a consequence of the repeal or amendment of all, or any provision, of a Superannuation Law (including, without limitation, incorporating a provision from the repealed or amended provisions into this Deed or the Rules with effect from the time of the repeal or amendment of the provision); or
- (j) in the opinion of the Trustee, in the best interests of the Members, future Members or other beneficiaries or potential beneficiaries of the Fund.

## 5.2 Timing of variations

- (a) A variation of this Deed or the Rules will take effect on the date specified in the deed under which the variation is made (**effective date**) or, if no date is specified, on the date of execution of such deed.
- (b) The effective date may be before, on or after the date of execution of the deed under which the variation is made.

## 5.3 Limitation on variations

- (a) No variation may be made to this Deed or the Rules which will have the effect of:
  - (i) allowing a person other than a constitutional corporation (as defined under Superannuation Law) to be eligible to be appointed as the trustee of the Fund unless this Deed provides, or would continue to provide after the change is made, that the sole or primary purpose of the Fund is the provision of old-age pensions; or
  - (ii) causing the Fund to cease to be approved by a Regulator under any provision of Superannuation Law.
- (b) No variation may be made to this Deed or the Rules which will reduce any benefits or entitlements accrued to Members or adversely affect the basis for the calculation of retirement benefits and other benefits or entitlements of Members in respect of Members' periods of membership to the date such change is made or comes into effect, unless such change is made to comply with the provisions of Superannuation Law:
  - (i) in circumstances permitted or sanctioned by Superannuation Law and approved, where required, by the Regulator; or
  - (ii) with the consent in writing of all Members materially and adversely affected.

## **6. GENERAL PROVISIONS**

### **6.1 Severance**

If any provision inserted in the Constituent Deed by this Deed is void or ineffective by operation of law, or declared void by any court of competent jurisdiction, such avoidance or ineffectiveness does not affect the operation of the remaining provisions of the Constituent Deed, to the extent that the ineffective or void provisions can be severed from those provisions.

### **6.2 Governing law**

This Deed is governed by and interpreted in accordance with the law of New South Wales.

### **6.3 Definitions and interpretation**

Unless the context requires otherwise:

- (a) where a term is defined in the Rules and is also used in this Deed (but is not specifically defined in this Deed), in the interpretation of this Deed, the term has the meaning given in the Rules; and
- (b) a reference to this Deed includes, without limitation, a reference to the Rules.

### **6.4 Consent**

For the purposes of the *Superannuation Industry (Supervision) Act 1993 (Cth)*, the Trustee consents to being appointed as and being the trustee of the Fund and confirms all prior consents in that respect.