



Execution

# Brighter Super Deed of Variation

Brighter Super Trustee

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# Brighter Super Deed of Variation

**Date** 24 September 2024

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## Party

**Trustee** **Brighter Super Trustee** ABN 94 085 088 484 of Level 20, 333 Ann Street,  
Brisbane QLD 4000

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## Recitals

- A. The Trustee is trustee of Brighter Super.
- B. Under clause 9.1 of the Trust Deed, the Trustee may amend the Trust Deed for any purpose not inconsistent with Superannuation Law or the LGAct, subject to the restrictions on amendment under clause 9.2 and clause 9.3 of the Trust Deed.
- C. The Trustee wishes to amend the Trust Deed as set out in this deed, substantially for the following purposes:
- (1) to substantively replicate the rules for payment of death benefits applicable to Members who have insurance-only benefits provided by Zurich Australia Limited, to take effect on the successor fund transfer of the Zurich Division of Smart Future Trust to Brighter Super;
  - (2) to modify the provisions for payment of death benefits for all other Members;
  - (3) to modify the rules for nomination, appointment and removal of directors.
- D. For the purposes of clauses 9.1, 9.2 and 9.3 of the Trust Deed:
- (1) The Trustee is of the opinion that the amendments set out in this deed are not inconsistent with Superannuation Law or the LGAct;
  - (2) The Trustee is of the opinion that the amendments set out in this deed will not:
    - (i) reduce the amount of any benefit which has accrued to or in respect of the Member up to the date on which the amendment is made;
    - (ii) contravene mandatory requirements of Superannuation Law;
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- (iii) cause the Scheme to be maintained for purposes which do not comply with the sole purpose test under Superannuation Law; or
  - (iv) cause the trustee to not be a constitutional corporation;
- (3) The amendments set out in this deed will not impose an increase in liability to contribute to the Scheme upon any Participating Employer or Member.
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It is **declared** as follows.

## **1. Definitions and interpretation**

### **1.1 Definitions in this document**

In this deed (including the Recitals):

“**Brighter Super**” means the superannuation fund as established under the *Local Government Act 1993* and continued in existence under the *Local Government Act 2009*.

“**Trust Deed**” means the trust deed of Brighter Super comprising, prior to execution of this deed, the terms of the trust deed adopted on 2 July 2024. Those terms were an amendment and consolidation of the terms adopted on the merger with Energy Super which took effect on 1 July 2021, as subsequently amended. The terms adopted on the merger with Energy Super were an amendment and consolidation of the trust deed adopted on the merger with City Super which took effect on 1 July 2011, as amended. The terms adopted on the merger with City Super were an amendment and consolidation of the original QLGS trust deed first made in 1995, as amended.

### **1.2 Definitions in Trust Deed**

Words and phrases defined in the Trust Deed have the same meaning in this deed (including the Recitals).

## **2. Supplemental deed**

- (a) This deed is supplemental to and constitutes an amendment of the Trust Deed, and the Trust Deed will be construed and take effect as amended in this deed.
- (b) The amendments in this deed take effect on the relevant effective date set out in clause 3.

## **3. Amendments and effective dates**

The Trustee declares that the Trust Deed is amended:

- (a) as set out in Schedule 1, on and from the date of execution of this deed; and
- (b) as set out in Schedule 2, on and from 1 October 2024.

## **4. Continuation of Scheme**

The Scheme continues under the terms of the Trust Deed as amended in this deed, and this deed does not re-declare or re-settle the terms of the trust in respect of the Scheme.

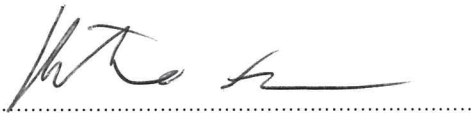
**5. Governing law**

This deed is governed by the laws of the State of Queensland.

# Signing page

Executed as deed poll

Signed, Sealed and Delivered by )  
Brighter Super Trustee )  
(ABN 94 085 088 484) )  
as trustee of Brighter Super )  
(ABN 23 053 121 564) by its authorised )  
persons: )



Signature of Chief Executive Officer



Signature of Witness

KATE FARRAR

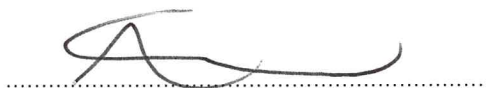
Name of Chief Executive Officer

KAY STENZEL

Name of Witness



Signature of Company Secretary



Signature of Witness

BRYAN INGRAM

Name of Company Secretary

Ashleigh Simpson-Wade

Name of Witness

# Schedule 1 – Amendments effective on execution

The Trust Deed is amended as set out in this Schedule 1, on and from the date of execution of this deed.

1. Clause 3.7(e) is replaced with:

- “(e) The maximum period of service for a person who is an Employer representative director is 12 years in aggregate (whether continuous or broken, and including service where appointed or nominated in any capacity). For a director who was:-
- (i) a director of the Energy Super Trustee immediately before the ES Merger Date, the director’s terms of previous service as a director of the Energy Super Trustee are counted;
  - (ii) a director of the SMT Trustee immediately before the SMT Merger Date, the director’s terms of previous service as a director of the SMT Trustee are counted.”

2. Clause 3.8(c) is replaced with:

- “(c) The maximum period of service for a person who is a Member representative nominated by QSU is 12 years in aggregate (whether continuous or broken, and including service where appointed or nominated in any capacity). For a director who was:-
- (i) a director of the Energy Super Trustee immediately before the ES Merger Date, the director’s terms of previous service as a director of the Energy Super Trustee are counted;
  - (ii) a director of the SMT Trustee immediately before the SMT Merger Date, the director’s terms of previous service as a director of the SMT Trustee are counted”.

3. Clause 14.9(c) is replaced with:

- “(c) The Trustee may prescribe:-
- (i) form and content requirements for the notice;
  - (ii) provisions limiting the classes of person who may be nominated;
  - (iii) provisions requiring a notice to be given a minimum time before a Member’s death,

differently for groups and/or categories of applicants and/or Members, and differently in respect of Binding Nominations, Death Benefit Instructions and (prior to 1 January 2025) nominations that are not in the form of a Binding Nomination or Death Benefit Instruction.”

4. Clause 14.11 is replaced with:

**“14.11 Death benefits – Non-Binding Nominations or no nomination**

Where on a Member’s death prior to 1 January 2025 there is no Binding Nomination, no Valid Death Benefit Instruction and no Reversionary Beneficiary:-

- (a) the Trustee must consider a nomination made by the deceased Member of the person or persons that the Member would prefer to receive the Death Benefit (“**Non-Binding Nomination**”), if any;
- (b) the benefit may be paid to any one or more of the Dependants and legal personal representative of the deceased Member, or if applicable persons identified under clause 14.10(b), in such proportions as the Trustee determines.

**14.11A Death benefits – No nomination (death on or after 1 January 2025)**

Where on a Member’s death on or after 1 January 2025 there is no Binding Nomination, no Valid Death Benefit Instruction and no Reversionary Beneficiary:-

- (a) if at the date of death the Member:-
  - (i) has one Qualifying Spouse who is a Current Spouse, the Trustee must pay the Death Benefit to the Current Spouse;
  - (ii) has more than one Qualifying Spouse, the Trustee must pay the Death Benefit to any one or more of the Qualifying Spouses, and if more than one in such proportions, as the Trustee determines.
- (b) if at the date of death the Member:-
  - (i) does not have a Qualifying Spouse; and
  - (ii) has one or more Qualifying Children,  
the Trustee must pay the Death Benefit to any one or more of the Qualifying Children, and if more than one in such proportions, as the Trustee determines;
- (c) if at the date of the death the Member does not have any Qualifying Spouse and does not have any Qualifying Children, the Trustee must pay the Death Benefit to the Member’s legal personal representative, unless:-
  - (i) the Trustee has not identified the Member’s legal personal representative, or a person who has filed an application in court for a grant of probate or letters of administration, within 6 months of the Trustee being notified of the Member’s death; or
  - (ii) the Trustee is notified, by a person that the Trustee considers is reasonably qualified to form the view, that the Member’s estate is insolvent because the estate’s assets (excluding, for this purpose, the amount of the Death Benefit) will be exhausted in meeting the estate’s liabilities.
- (d) If the Death Benefit is not payable to a Qualifying Spouse under clause 14.11A(a), a Qualifying Child under clause 14.11A(b), or a legal personal representative under clause 14.11A(c), the Death Benefit may be paid to any one or more of the Dependants of the deceased Member, or if



applicable persons identified under clause 14.10(b), in such proportions as the Trustee determines.

5. The following new clauses 14.13A and 14.13B are inserted after clause 14.13:

**14.13A Exceptions to payment of Death Benefit to Spouse**

Despite clauses 14.11A(a) and 14.13, if before the Trustee has paid a Death Benefit to a deceased Member's Spouse under either of those clauses the Trustee receives evidence that:-

- (a) the Spouse's entitlement to payment of the benefit is forfeited by operation of law, or there are grounds to anticipate that the entitlement may be forfeited; or

- (b) the Spouse had committed spousal abuse towards the Member,

then:-

- (c) where the Member died before 1 January 2025, the benefit must be paid under clause 14.11;

- (d) where the Member died on or after 1 January 2025, the benefit may be paid to any one or more of the Dependants and legal personal representative of the deceased Member, or if applicable persons identified under clause 14.10(b), in such proportions as the Trustee determines.

**14.13B Payment of Death Benefit in advance of decision**

The Trustee may, before making the Trustee's final determination about payment of a Death Benefit, pay the whole or any part of the amount of the benefit to one or more of the persons that are or may be entitled to the benefit, as an advance against a benefit which may ultimately be payable, subject to:-

- (a) the recipient(s) of the payment entering into such agreements or other arrangements as the Trustee shall reasonably require to secure repayment of any amount by which the advance made to that recipient exceeds the final benefit actually payable to that recipient (as finally determined by the Trustee or as finally determined, where relevant, by a tribunal or statutory body that has authority under the tribunal's or statutory body's enabling legislation to make decisions that are binding on the Trustee, or by a court);

- (b) if so required by the Trustee, provision by the recipient(s) or some other person of such security as the Trustee reasonably requires in respect of the obligations referred to in clause 14.13B(a); and/or

- (c) if so required by the Trustee, provision of an indemnity in favour of the Trustee from the recipient(s) or some other party acceptable to the Trustee indemnifying the Trustee against any loss suffered by the Scheme in the event that:-

- (i) the Trustee's actual decision on payment of the benefit after investigation of all relevant circumstances; or

- (ii) a decision of a tribunal or statutory body that has authority under the tribunal's or statutory body's enabling legislation to make decisions that are binding on the Trustee, or of a court,

requires all or part of the advance payment to the recipient(s) to be paid to some other person, and the Trustee is unable for any reason to recover the advance payment or part from the recipient(s).”

6. The first sentence of clause 17.3(e) is replaced with (typographical correction):

“(e) Nomination of a Reversionary Beneficiary of a pension benefit revokes any previous Binding Nomination or Death Benefit Instruction, or previous nomination of Reversionary Beneficiary, in respect of that pension account.”

7. In clause 17.3(h)(ii) and in clause 17.3(i):

After “clause 14.11,” insert “clause 14.11A,”.

8. In clause 32.1, the following definitions are inserted in alphabetical order:

“**Child**” has the meaning given by the Superannuation Industry (Supervision) Act 1993 (Cwlth).

“**Current Spouse**” of Member means a Spouse who is in a genuine domestic relationship with the Member at the date of the Member’s death.

“**Financially Dependent Spouse**” of a Member means a Spouse or former Spouse of the Member who, at the date of the Member’s death:-

- (a) is no longer in a genuine domestic relationship with the Member; and
- (b) in the opinion of the Trustee, having regard to such factors as the Trustee considers relevant, is financially dependent on the Member to a significant extent.

“**Qualifying Child**” means a Child of a Member who at the date of a Member’s death:-

- (a) is aged under 18 years;
- (b) is financially dependent on the Member;
- (c) is in an interdependency relationship with the Member; or
- (d) has a disability of the kind described in subsection 8(1) of the Disability Services Act 1986 (Cwlth).

“**Qualifying Spouse**” of Member means a person who is a Current Spouse or a Financially Dependent Spouse.

## Schedule 2 – Amendments effective on 1 October 2024

The Trust Deed is amended as set out in this Schedule 2, on and from 1 October 2024.

1. The following new clause 17B is inserted after clause 17A:

### **“17B APPENDIX E APPLIES INSTEAD OF CHAPTER 2**

Appendix E applies to the payment of a death benefit in respect of a Member that Appendix E applies to, instead of clauses 14.11, 14.11A, 14.12, 14.13, 14.13A and 14.13B.”

2. In clause 32.1, paragraph (b) of the definition of “Death Benefit Instruction” is replaced with:

“(b) in respect of a SFT Member, a notice delivered to the Trustee by the Transferor Trustee that the Transferor Trustee requests and the Trustee agrees is accepted as a Death Benefit Instruction for the Scheme.”

3. The following new Appendix E is inserted after Appendix D:

## “Appendix E – Special Provisions for Zurich Insurance Only Superannuation Plan

### **A.**

#### **A.1. APPLICATION OF APPENDIX E**

This Appendix E for applies to Members admitted to Zurich Insurance Only Superannuation Plan whose benefit consists solely of a Zurich Policy (**Zurich Insurance Only Members**), in respect of that membership.

#### **A.2. DEATH BENEFITS FOR ZURICH INSURANCE ONLY SUPERANNUATION PLAN**

##### **A.2.1 Payment of death benefits for Zurich Insurance Only Members**

The Trustee must pay a benefit payable in respect of the death of a Zurich Insurance Only Member in accordance with this clause E.2 instead of clauses 14.11, 14.11A, 14.12, 14.13, 14.13A and 14.13B.

##### **A.2.2 Death Benefit Instructions for Zurich Insurance Only Members**

- (a) A Zurich Insurance Only Member or applicant may at any time make a Death Benefit Instruction. A Death Benefit Instruction given to the Trustee revokes any previous Death Benefit Instruction in respect of that benefit.
- (b) A Death Benefit Instruction in respect of a benefit is revoked if the Member:-
  - (i) gives the Trustee notice in writing, in a form prescribed or accepted by the Trustee, that the Death Benefit Instruction is revoked; or
  - (ii) gives the Trustee another Death Benefit Instruction.

- (c) On receipt of a notice in the form of a Death Benefit Instruction, the Trustee must:
  - (i) consider whether to consent to the Death Benefit Instruction; and
  - (ii) notify the Member if the Trustee does not consent.
- (d) A Death Benefit Instruction becomes invalid:-
  - (i) if the Member marries, enters a de facto relationship, divorces, or ends a de facto relationship;
  - (ii) for each nominated beneficiary, if the beneficiary is no longer a Dependant or the legal personal representative of the Member.
- (e) On the death of a Member, where there is a Death Benefit Instruction the Trustee must pay the benefit to the person or persons nominated, and if more than one person is nominated in the proportions specified, except to the extent that the Death Benefit Instruction has become invalid (wholly or partly) under clause E.2.2(d).

### **A.2.3 Death benefits where no Death Benefit Instruction for Zurich Insurance Only Member**

- (a) If the Member does not have a Death Benefit Instruction at death, or a Death Benefit Instruction has become invalid (wholly or partly), the Trustee must pay the Member's death benefit, or that part of the death benefit that cannot be paid in accordance with the Death Benefit Instruction, to the Member's legal personal representative unless:-
  - (i) the Trustee has not identified the Member's legal personal representative, or a person who has filed an application in court for a grant of probate or letters of administration, within 6 months of the Trustee being notified of the Member's death; or
  - (ii) the Trustee is notified, by a person that the Trustee considers is reasonably qualified to form the view, that the Member's estate is insolvent because the estate's assets (excluding, for this purpose, the death benefit payable from the Scheme) will be exhausted in meeting the estate's liabilities.
- (b) A death benefit payable to a legal personal representative may be paid to an executor named in the deceased Member's will without a grant of probate where the death benefit is less than the probate limit, being \$100,000 or such other amount determined by the Trustee from time to time and notified to Zurich Insurance Only Members.
- (c) If a death benefit is not payable in accordance with a Death Benefit Instruction or under clause E.2.3(a), the Trustee must pay the Member's death benefit to:-
  - (i) the Member's Spouse at the date of death or, if the Member had more than one Spouse at the date of death, to them in equal shares; and
  - (ii) if the benefit is not paid under clause E.2.3(c)(i), the Member's Child (including an unborn child) at the date of death, or if the Member had more than one Child (including an unborn child) at the date of death, to them in equal shares,

and for the purposes of this clause E.2.3(c) the terms “**Spouse**” and “**Child**” have the meaning given to them by Superannuation Law, except that a person is only a Spouse or Child for the purposes of this clause E.2.3(c) if the Trustee is aware of the person's existence and is otherwise reasonably satisfied of their status as such.

- (d) If a death benefit is not payable in accordance with a Death Benefit Instruction or under clause E.2.3(a) or clause E.2.3(c), the Trustee must:-
- (i) even if the Member's estate is insolvent, pay the death benefit to the Member's legal personal representative; and
  - (ii) if the benefit is not paid under clause E.2.3(d)(i), deal with the benefit in accordance with applicable unclaimed money legislation.

**A.3. DEFINITIONS AND GENERAL PROVISIONS FOR APPENDIX E**

**Zurich** means Zurich Australia Limited (ABN 92 000 010 195).

**Zurich Policy** means a policy of insurance issued to the Trustee covering a Zurich Insurance Only Member.”