

SUPERANNUATION INDUSTRY (SUPERVISION) ACT (1993)

SUPERANNUATION DEED

for

**MCPEAKE CONSTRUCTIONS PTY LTD
SUPERANNUATION FUND**

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TABLE OF CONTENTS

Clause Number	Description
1	Definitions and Interpretation
2	The Fund
3	Trustee
4	Trustee Powers
5	Limitation of Liability
6	Indemnity
7	Investment
8	Records, Audit and Information
9	Membership
10	Actuarial Requirements
11	Contributions
12	Benefits: General Provisions
13	Transfers
14	Investment Options
15	Reserve Account
16	Confidentiality
17	Termination of the Fund
18	Amendments
19	Severance
20	Notices
21	Governing Law
Schedules	
1	General
2	Benefits
3	Application for Membership

DEED made by the person or persons named as the Trustee in the General Schedule

RECITALS

- A. The Trustee has resolved to establish a Self Managed Superannuation Fund to be known by the name specified in the General Schedule, for the purpose of providing superannuation benefits for its Members and their Dependents and for such incidental and ancillary purposes as the Regulator may from time to time approve.
- B. The Trustee has resolved to act as trustee of the Fund with and subject to the powers and provisions contained within this Deed.
- C. The Fund was established on the date of this Deed.

1. Definitions and Interpretation

1.1 Definitions

In this deed:

"Act" means the Superannuation Industry (Supervision) Act 1993, the Corporations Act 2001 and the Tax Act and any other law of the Commonwealth of Australia which deals with superannuation or taxation in relation to superannuation (as the context requires) and includes any regulations, declarations or orders made under that Act or any other law or any requirement of a Regulator;

(a) which the Fund must satisfy to qualify for the most favourable taxation treatment available to superannuation funds; or

(b) which the Trustee or the Fund must comply with to avoid any penalty or disadvantage which might be incurred in connection with the operation of the Fund;

"Asset" means any cash investments and any other form of property;

"Associate" has the meaning given by the Act;

"Beneficiary" includes Members and any person entitled at the relevant time to receive a payment from the Fund in respect of a Member and any other person who is a Beneficiary for the purposes of the Act and shall include a Non-Member Spouse;

"Benefit arrangement" means any fund or arrangement established to receive superannuation contributions or amounts arising from such contributions. For example, it includes a superannuation fund, approved deposit fund, retirement savings account and the Superannuation Holding Accounts Reserve;

"Benefit Schedule" means Schedule 2 to this Deed;

"Binding Death Benefit Nomination" means a direction which is a binding direction for the purposes of the Act as to payment of the Member's Death Benefit and referred to in Clause 12.6.4;

"Child", in relation to a Beneficiary, includes a stepchild, an adopted child or an ex-nuptial child, or any other person who is a child for the purposes of the Act;

"Constitutional Corporation" has the meaning given by the Act;

"Contribution" means payments and/or transfers of property to the Fund by or in respect of a Member and/or payments of expenses on behalf of the Fund;

"Death Benefit" means a benefit payable on a Member's death. It includes a benefit that became payable in respect of a Member before, but that is not actually paid until after, the Member's death;

"Death Benefit Nomination" means an Indicative Death Benefit Nomination or a Binding Death Benefit Nomination;

"Deed" means this Deed as amended from time to time;

"Dependant", in relation to a Beneficiary, includes:

- (a) the Beneficiary's Spouse;
- (b) the Beneficiary's Child;
- (c) any other person who, in the Trustee's opinion, is or was at the relevant time dependant on the Beneficiary;
- (d) any other person who, in the opinion of the Trustee, the relevant Beneficiary had a legal or moral obligation to support at the relevant date; and
- (e) any person who is a dependant within the meaning of the Act;

"Eligible Rollover Fund" has the meaning given by the Act;

"Employer" means an employer of a Member who contributes to the Fund on behalf of the Member;

"Expenses" means all direct and indirect costs of the establishment, operation and termination of the Fund, including any tax, insurance costs and any fees or charges imposed on or paid by the Trustee in connection with the Fund;

"Family Law Act" means the Family Law Act 1975 (Cth);

"Family Law Legislation" means

- (a) the Family Law Act and the Regulations made under that Act; and
- (b) any other legislation, including the Act, that imposes legal requirements regarding the dealing with the interests of a beneficiary of superannuation fund in connection with a marital relationship, including on the breakdown of such a relationship and associated matters;

"Family Law Requirement" means any requirement whatsoever under Family Law Legislation relating to superannuation benefits of parties or former parties to a marriage and incidental matters, including without limitation, requirements regarding Payment Splits and the imposition of any other condition or restriction on, or variation of, a Beneficiary's interest in the Fund;

"Financial Instrument" includes a futures contract, forward contract, interest rates swap contract, currency swap contract, forward exchange contract, forward interest rate contract, a right or option in respect of any such contract or any similar financial instrument;

"Fund" means the fund referred to in the General Schedule and established in accordance with this Deed;

"Gainful Employment" has the meaning given by the Act and includes full time and part time employment;

"General Schedule" means Schedule 1 to this Deed;

"Indicative Death Benefit Nomination" means a Death Benefit Nomination expressed to take effect as an indication of the Member's wishes as to payment of the Member's Death Benefit

and referred to in Clause 12.6.4;

"Investment Earnings" means the positive or negative amount which the Trustee determines to be the Fund's profit for the period, having regard to the income of the Fund, the expenses of the Fund, the movement in the value of the Fund assets (including unrealised assets), the Fund liabilities (including unrealised liabilities) and any other matters the Trustee considers appropriate.

"Investment Option" means an investment strategy that may be chosen in respect of investments in the Fund in accordance with this Deed;

"Legal Personal Representative" means the executor of the will or administrator of the estate of a deceased member, the Trustee of the estate of a member under a legal disability, a person who holds an enduring power of attorney granted by a member or the parent or legal guardian of a member under the age of eighteen.

"Liabilities" means all liabilities whatsoever of the Fund, and includes any provisions the Trustee makes in connection with such liabilities;

"Member" means a person who has been admitted as a member of the Fund in accordance with Clause 9 and who has not ceased to be a Member;

"Member's Account" means an account maintained in respect of a Member in accordance with Clause 9.8;

"Member's Account Balance" means the amount standing to the credit of a Member's Account, determined in accordance with Clause 9.8.2;

"Member Spouse" has, in relation to and interest in the Fund the same meaning as in the Family Law Act;

"Non-Member Spouse" has in relation to an interest in the Fund the same meaning as that term has under the Family Law Act;

"Old Age Pensions" has the meaning given by the Act;

"Payment Flag" has the same meaning as in the Family Law Act;

"Payment Split" has the same meaning as in the Family Law Act;

"Policy" means an insurance policy or policies of life, disability or accident insurance in which the Trustee has a legal or equitable interest;

"Preserved Benefits" means any part of an amount held in the Fund in respect of the Member that the Act requires to be retained in the Fund or another complying Benefit Arrangement until the Member has retired from the work force and attained the age specified by the Act, or until such other circumstances as the Act permits;

"Regulator" means the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, the Commissioner of Taxation or any other governmental authority responsible for the administering of the laws, regulations or any other rules governing the operation of or the availability of income tax concessions to superannuation funds, as relevant;

"Reserve Account" means an account or accounts established and maintained in accordance with Clause 15;

"Retirement Age" means:

- (a) age 65; or
- (b) if the Act stipulates another age at which benefits can generally be paid from a regulated superannuation fund whether or not a Member has ceased Gainful Employment, that age;

"Rule" means a provision of the Schedules;

"Schedule" means the Schedule to this Deed;

"Service" means a period of Gainful Employment by the Member;

"SIS Regulations" means the Superannuation Industry (Supervision) Regulations 1994 as amended;

"Social Security Act" means the Social Security Act 1991 and the Veterans' Entitlement Act 1986 and all other requirements with which a payment made from the Fund must comply to be treated as an Asset-Test Exempt Income Stream for the purposes of that Act;

"Spouse", in relation to a person, includes:

- (a) another person who, whether or not legally married to the person, lives with them on a genuine domestic basis as their husband or wife; and
- (b) any other person who is a spouse for the purposes of the Act;

"Successor Fund" has the meaning given by the Act;

"Tax" includes:

- (a) any form of taxation surcharge levy duty or other government charges that the Trustee must pay out of the Fund or a member or former member is required to pay;
- (b) any interest, fines, penalties, charges, fees or other amounts payable in respect of the items mentioned in paragraph (a);

"Tax Act" means the Income Tax Assessment Act 1936 or the Income Tax Assessment Act 1997 (as amended) as appropriate;

"Total and Permanent Disablement":

- (a) means, if any part or all of the benefit payable on such disablement is insured under a Policy enforced in respect of a Member at the relevant time, total and permanent disablement as defined in that Policy or as agreed by the Trustee and the insurer for the purposes of that Policy; or

- (b) if at the relevant time the benefit is not insured under a Policy, then in respect of such benefit, the term has the meaning for the time being adopted by the Trustee

and "Totally and Permanently Disabled" has a corresponding meaning.

"Temporary Disablement":

- (a) means, if any part or all of the benefit payable on such disablement is insured under a Policy enforced in respect of a Member at the relevant time, temporary disablement as defined in that Policy or as agreed by the Trustee and the insurer for the purposes of that Policy; or

- (b) if at the relevant time the benefit is not insured under a Policy, then in respect of such benefit, the term has the meaning for the time being adopted by the Trustee

and "Temporarily Disabled" has a corresponding meaning.

"Trustee" means the trustee described in the General Schedule and includes the trustee for the time being of the Fund. Where there is more than one trustee it refers to each trustee for the time being of the Fund. The expression also includes any replacement or additional trustees.

1.2 Compliance

The Fund must meet the requirements of the Act to be regulated as a complying self managed superannuation fund.

To the extent that anything in this Deed is inconsistent with the Act then it is to be severed from this Deed.

This Deed includes the provisions of the Act applying to the regulation of self managed superannuation funds, and in the absence of a specific provision in this Deed those provisions are (to the extent they are relevant to the Fund) deemed to be incorporated in this Deed.

If there is any conflict between the provisions of this Deed and the provisions deemed to be included in this Deed as provided above then the deemed provisions shall prevail over the provisions of this Deed to the extent of any inconsistency.

Nothing in this Deed requires the Trustee or any other person to do anything that is contrary to the Act or prevents the Trustee or any other person doing anything that is required to be done to comply with the Act.

1.3 Interpretation

In this Deed unless the contrary intention appears or can reasonably be implied from the context:

A term used in this Deed which is defined in the Act has the same meaning in this Deed.

A reference to this Deed or any other instrument includes any variation or replacement of them;

A reference to a statute or other law includes regulations and other instruments ("subordinate instrument") made under such a statute or law and any consolidation, amendment, re-enactment or replacement of such a statute, law or subordinate instrument;

The singular includes the plural and vice versa;

Terms such as "including", "for example" and similar expressions or words are not words or expressions of limitation;

A reference to a person includes:

- (a) a body corporate, any other entity recognised at law, a partnership and any other group or organisation of persons; and
- (b) a person's legal personal representatives, successors and assigns;

Where an expression is defined in the Act but is not defined in this Deed then that expression will have the meaning given to it in the Act.

Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

Headings are inserted for convenience of reference only and are not to be taken into account in interpreting this Deed;

A reference to any thing (including any amount) is reference to the whole or any part of it; and

A reference to a group of persons is a reference to any one or more of them.

2. The Fund

2.1 Assets

The Fund comprises all assets held by the Trustee at any time in accordance with this Deed. The Trustee shall hold the assets on trust for the objects and purposes of this Deed.

2.2 Name

The name of the Fund is specified in the General Schedule. The Trustee may change the name or promote the Fund under a different name without the necessity of amending this Deed.

2.3 Single trust

Nothing in this Deed is to be taken as establishing a separate trust in respect of any of the categories of Investment Options, any Investment Option or any part of the Fund.

3. Trustee

3.1 Trustee

The person or persons named in the General Schedule is or are appointed as Trustee with effect from the date of this Deed.

3.2 Regulated superannuation fund

- (a) The number of Trustees appointed shall be in accordance with the requirements of the Act relevant to the number of Members of the Fund;
- (b) Subject to Clause 3.2(c), the Trustee must be a Constitutional Corporation;
- (c) Despite Clause 3.2(b) the Trustee may be, or include a person or persons, other than a Constitutional Corporation, but in that event and for so long as that situation continues, the primary purpose of the Fund will be the provision of Old Age Pensions in accordance with Part 2 of the Benefit Schedule;
- (d) Despite Clause 3.2(c) the Fund may also be conducted for any other ancillary purpose which may be permitted under the Act.

3.3 Conditions

- (a) A person that is to be appointed as Trustee must give written consent to the appointment in accordance with the Act before accepting the appointment;
- (b) A member's Legal Personal Representative may act as Trustee in the members stead where permitted by the Act;
- (c) An additional person or persons may be appointed as Trustee by Deed;
- (d) The Trustee must otherwise comply with any other requirements of the Act including, for example, requirements under the Act for approval by the Regulator, requirements as to the qualifications or identity of the person or persons appointed as Trustee or, where relevant, officers or directors of the Trustee corporation.

3.4 Termination of Trustee's office

- 3.4.1 A Trustee will hold office until:
- (a) the Trustee resigns the office by notice in writing to the Members; or
 - (b) the Trustee ceases to be a member of the Fund; or
 - (c) being a natural person, dies or becomes incapable of performing his

duties hereunder; or

- (d) being a corporation, goes into liquidation or has a receiver appointed or enters into administration; or
- (e) the Trustee is removed, or ceases to be eligible to act as Trustee under the Act; or
- (f) the Trustee is removed by vote of the Members pursuant to Clause 3.4.2.

3.4.2 A majority of the Members shall have the right to appoint and remove the Trustee subject at all times to the Act.

3.4.3 If a Trustee:

- (a) retires;
- (b) becomes aware that it will be removed as Trustee;
- (c) becomes aware that it will cease to be eligible to act as Trustee; or
- (d) is otherwise disqualified or removed from its office as Trustee;

It must appoint another person to act as Trustee that otherwise complies with the Act (unless there is more than one Trustee and the Act does not require the vacancy to be filled).

3.4.4 If the Act or any other law does not permit the terminating Trustee to appoint a new Trustee in accordance with Clause 3.4.3 or the terminating Trustee fails to do so, the new Trustee may be appointed:

- (a) where management of the affairs of the Trustee has been placed under a liquidator, receiver, manager, administrator or other controller, by that person;
- (b) where paragraph (a) does not apply, or where it does apply but the controller fails to appoint a new Trustee within 30 days of the vacancy arising, by vote of the Members; or
- (c) by the Continuing Trustee or Trustees if that appointment and the holding of office by the New Trustee is consistent with the Act;
- (d) in accordance with any procedure prescribed by the Act.

3.4.5 Where the office of Trustee becomes vacant due to the operation of Clause 3.4.1(c) the Members Legal Personal Representative shall act as Trustee until such time as the Members benefits have been dealt with as prescribed by this Deed and the Act.

3.4.6 The terminating Trustee and the new Trustee will record the retirement and appointment by Deed.

3.5 Transfer of assets

If a Trustee's office terminates, it must:

- (a) provide to any Trustee all records, information and other property relating to the Fund in its control; and
- (b) otherwise do such acts, matters and things as may be necessary to perfect or complete the appointment of a new Trustee.

3.6 Power to appoint

Without limiting any other power conferred on the Trustee by this Deed or law, the Trustee has power to appoint any additional Trustee by deed. This power is to be exercised subject to any relevant provision of the Act.

3.7 Number of Trustees

Any limitations or requirements under State laws relating to the number of trustees do not apply to this Deed.

3.8 Rules

The Members may make rules (subject to the Act) regarding all matters concerning the Trustee provided that any such rule is recorded in writing and signed by all the Members. Such rules may be varied or rescinded by the Members at any time. Any such rule which shall be in conflict with the provisions of this Deed and/or the Act shall be void and of no effect.

4. Trustee Powers

4.1 Powers

Subject to the Act, the Trustee:

- (a) is empowered to do anything whatsoever necessary or desirable for the purpose of maintenance, operation, management, development of the Fund or to otherwise further the interests of the Fund;
- (b) may regulate and conduct Trustee meetings or if the Trustee is a corporation meetings of its directors as it considers appropriate;
- (c) has, in addition to the powers conferred by this Deed, all the powers conferred on a trustee by statute or general law;
- (d) has the power to do anything required or permitted by the Act.

4.2 Examples of Powers

Without limiting Clause 4.1 and in addition to any powers described in this Deed the Trustee has power to:

- (a) accept any assets given or transferred to the Trustee as a Contribution by a Member or other person under this Deed;
- (b) to retain an asset in the condition it is received by the Trustee as the Trustee may determine notwithstanding that it may have a wasting, reversionary or depreciating nature;
- (c) retain any part of the Fund in cash as the Trustee may determine notwithstanding that the cash retained may not be earning interest;
- (d) retain for such period as the Trustee may determine any assets notwithstanding that it may not be producing any income;
- (e) purchase or otherwise acquire any assets (whether income-producing or not) in any country upon such terms and conditions as the Trustee may determine;
- (f) acquire and retain life insurance policies on the life of any Member and upon such conditions as the Trustee may determine;
- (g) acquire and retain an annuity for such period and on such terms and conditions as the Trustee may determine;

- (h) advance or lend money to any person, corporation, bank, government, public body or authority in any country, either with or without security and either bearing or not bearing interest and in such currency and upon such terms as the Trustee may determine;
- (i) lend any assets other than money to any person or corporation, either with or without security and for such period and upon such terms as to use, return and otherwise as the Trustee may determine. If the Trustee takes any security in relation to assets advanced or lent, the value of the security may be less than the value of the assets advanced or lent and the Trustee shall not be obliged to obtain any valuation of the security or the assets lent.
- (j) sell, exchange or otherwise dispose of any assets and to grant options or rights to purchase, exchange or otherwise acquire any assets upon such terms and conditions as the Trustee may determine; and to vary any contract for sale, buy at any auction, rescind any contract for sale and resell upon such terms and conditions as the Trustee may determine;
- (k) lease or license and to grant options or rights to lease or license any assets to any person for such period and for such rent or consideration including rent free and upon such terms and conditions as the Trustee may determine;
- (l) promote or carry on any scheme or undertaking of any nature in any country (including any scheme or undertaking of a speculative nature) upon such terms as the Trustee may determine;
- (m) join or enter into partnership or into any arrangement for sharing of profits, co-operation, joint venture or otherwise in any country with any person, corporation or other Fund for the purpose of promoting or carrying on any business, scheme or undertaking of any nature upon such terms as the Trustee determine;
- (n) make, add to, enlarge, alter, demolish or reconstruct any improvements on any land whether the title to such land be freehold, leasehold or some other title;
- (o) repair, maintain, renovate or improve any assets;
- (p) insure any assets in which the Trustee has an interest on such terms as the Trustee may determine. Any such insurance need not be for the full value of the assets insured. The Trustee shall not be obliged to obtain any valuation of any assets for the purpose of insuring it;
- (q) surrender any assets upon such terms as the Trustee thinks fit;
- (r) accept any shares, units, notes, debentures or other securities in any corporation and/or other Fund in any country in place of or in exchange for any shares, units, notes, debentures, or other securities forming part of the Fund;
- (s) exercise all rights and privileges in respect of any shares, units, notes or other securities forming part of the Fund as the Trustee may determine;
- (t) pay calls on any shares, units, notes, or other securities or to allow same to be forfeited;
- (u) allow documents of title in respect of any assets to remain out of the possession of the Trustee whether with or without security and for such period and upon such terms and conditions as the Trustee thinks fit;
- (v) allow any assets to be held by or registered in the name of any person in any country whether with or without security and for such period and upon such terms as the Trustee thinks fit;
- (w) give receipts for capital and other monies and to allow any person or corporation to give a receipt on behalf of the Trustee. Any receipt shall be a valid discharge to the person, corporation or Fund in whose favour it is given;

- (x) commence, defend or otherwise take part in any proceedings in any court, tribunal or other judicial, quasi-judicial or administrative body, including any arbitration. The Trustee may conduct such proceedings in such manner as it thinks fit and may discontinue, withdraw from, compromise or proceed to the final determination of any such proceedings on such terms (including a total admission of liability at any stage of the proceedings) as the Trustee thinks fit;
- (y) compromise, compound, abandon or otherwise settle any debt, account, or claim relating to the whole or any part of the Fund's assets including releasing in whole or in part the payment or transfer of any assets owing or due to the Trustee.
- (z) move, transmit or reinvest all or any part of the Fund's Assets to whatever location and at such time or times as the Trustee may determine;
- (aa) do anything and to execute any writing incidental to or which may facilitate any exercise of the powers, authorities and discretions conferred on the Trustee by this clause;
- (bb) invest in any asset available to the Trustee including assets outside of Australia provided that this does not prejudice its ability to receive the taxation concessions provided to regulated self-managed superannuation funds under the Act;
- (cc) settle, compromise or submit to arbitration any claims, matters or things relating to this Deed or to the rights of Members, former Members or Beneficiaries;
- (dd) commence, carry on or defend proceedings relating to the Fund or to the rights of Members, former Members or Beneficiaries and to commence, carry on or defend legal proceedings to recover damages against any person arising out of any loss suffered by any Member or former Member or Beneficiary as a result of any negligence, or breach of the terms of this Deed and the Trustee may abandon compromise or release any such legal proceedings as it may consider desirable;
- (ee) to insure or reinsure any risks or liabilities of the Fund with an insurer, mortgage insurance company, reinsurance company or superannuation fund;
- (ff) purchase an annuity to provide all or a part of the benefit payable to a Member;
- (gg) retain the services of and to appoint professional or other advisers in relation to the management, investment, administration or conduct of the Fund, to act on the advice of any person so retained and to pay the fee or remuneration for any professional or other advisers so appointed;
- (hh) pay and advance out of the Fund all costs, expenses and outgoings (including tax) of and incidental to the management of the Fund;
- (ii) provide a full or part release to any person, company, government or institution in respect of any matters which have arisen or may arise as a result of an association, involvement or membership of the Fund by that person;
- (jj) insure and keep insured as it sees fit any liability of the Trustee or any directors or officers of the Trustee or the liability of the Fund or indemnify or reimburse the Trustee or its directors or officers under this Deed;
- (kk) generally do all acts the Trustee considers necessary or expedient for the administration, maintenance and preservation of the Fund and in the performance of its obligations under this Deed.

4.3 Compliance

Without limiting anything in Clauses 4.1 or 4.2 the Trustee may:

- (a) do anything that the Trustee considers necessary or desirable in order to comply with the Act; and

(b) refrain from actions that the Trustee might otherwise be empowered or obliged to do if the Trustee considers it necessary or desirable in order to comply with the Act.

4.4 Discretions

The Trustee:

- (a) has an absolute and uncontrolled discretion in exercising or refraining from exercising trusts, authorities and powers under this Deed;
- (b) may exercise any of the Trustee's powers at any time;
- (c) may refrain from exercising any of the Trustee's powers from time to time or at all;
- (d) may exercise a power even if the Trustee or any of the Trustee's Associates have a direct or indirect interest that may be affected by the exercise of that power or may benefit directly or indirectly from its exercise;
- (e) may enter arrangements with Associates, Beneficiaries, Employers or other persons in connection with the Fund and retain for the Trustee's own benefit, any commission, profit or other gain received in connection with such arrangements; and
- (f) may exercise a power even if the Trustee or any of the Trustee's Associates has any interest as a Beneficiary that may be affected by the exercise of that power and may exercise the power such that the interests of the Trustee or any Associate are advanced, preferred or better secured over those of any other Beneficiary or class of Beneficiary.

4.5 Fees

The Trustee must not charge any fees in relation to acting as trustee under this Deed or for performing any services in respect of the Fund.

4.6 Decisions

4.6.1 Subject to Clause 4.6.2, where the Trustee comprises:

- (a) two individuals – Trustee decisions require unanimous approval;
- (b) more than two individuals – Trustee decisions require majority approval;
- (c) a constitutional corporation – Trustee decisions shall be in accordance with the governing rules of the corporation unless the Act requires otherwise.

4.6.2 Where there is a deadlock in making any Trustee decision the deadlock shall, subject to the Act, be resolved by weighting each Trustee's vote in accordance with their respective Member's Account Balance as a proportion of the total Member Account balances of the Fund.

4.7 Meetings

Meetings

4.7.1 Subject to the Act and the Deed, the Trustees may communicate with each other, meet together and otherwise regulate their business as Trustee as they think fit.

4.7.2 The Trustees may communicate via any means they approve, and a resolution passed by such communication method shall, notwithstanding that the Trustees are not present together in the same place, be deemed to have been validly passed at a Trustee's meeting.

4.7.3 If all the Trustees have signed a document or separate documents containing a statement that they are in favour of a resolution of the Trustees as set out in the document, a resolution in those terms shall be deemed to have been validly passed.

5. Limitation of Liability

5.1 Limitation

Subject to Clause 5.2, no Trustee or, where the Trustee is a corporation, any of its directors or officers, will be personally liable for any loss or detriment whatsoever incurred by any person in connection with the Fund for whatever reason. This limitation applies whether or not the loss or detriment arises from an act or omission on the part of the Trustee director or an officer.

5.2 Exceptions

Clause 5.1 does not apply:

- (a) to the extent that the loss or detriment is due to the Trustee's, director's or officer's dishonesty or wilful or reckless failure to exercise the degree of care and diligence that the Trustee, director or officer was required to exercise;
- (b) in any other circumstance specified by the Act in which the liability of a Trustee or director or officer of a Trustee of a regulated superannuation fund may not be excluded or limited; or
- (c) where the limitation expressed in Clause 5.1 would not otherwise be enforceable at law.

6. Indemnity

6.1 Indemnity

The Trustee and, where the Trustee is a corporation, its directors and officers are entitled, to the maximum extent permitted by the Act, and by law, to be indemnified from the Fund against all liabilities incurred by each of them in connection with execution, attempted execution, or in respect of non-execution of the Trustee's powers and discretions under this Deed.

6.2 Payment and reimbursement

Subject to the Act, the Trustee and its directors and officers may recover from the Fund amounts necessary:

- (a) to meet the indemnities referred to in Clause 6.1; and
- (b) to meet all expenses and liabilities whatsoever in connection with the Fund and the exercise of their powers and duties under or in connection with this Deed.

To this end, to the maximum extent permitted by the Act, the Trustee and its directors and officers have, and may exercise, a lien over the Fund.

7. Investment

7.1 General

7.1.1 The Trustee shall invest the assets of the Fund in such a manner that complies with the investment strategy of the Fund and does not contravene the Act;

7.1.2 Subject to the Act, the Trustee may invest the assets of the Fund in any manner or form in which it could invest if it were acting personally and as the sole and absolute legal and beneficial owner of the assets. To the maximum extent possible any duties and limitations under State laws relating to trustee

investments do not apply to the Fund.

- 7.1.3 Subject to Clause 7.1.1 and without limiting Clause 7.1.2, the Trustee has power:
- (a) to vary, substitute, sell or otherwise deal with assets in any manner; and
 - (b) to acquire an interest in an asset jointly with any other person and mix assets of the Fund with other property (as long as separate records are maintained that enable assets attributable to the Fund or any Investment Option to be identified).

7.1.4 The Trustee must not invest in any investment that is forbidden by the Act. The Trustee must not make an investment in the form of a loan or other financial assistance to a Member or a relative of a Member.

7.2 Investment strategy

7.2.1 Investments of the Fund must be made in accordance with a written investment strategy formulated by the Trustee that complies with the Act. Such strategy to be formulated in light of all of the circumstances relevant to the Fund and shall be reviewed on a regular basis.

7.2.2 The Trustee may formulate and adopt separate investment strategies for each Investment Option offered in accordance with Clause 14.1.

7.2.3 If the Trustee invests in what are known as derivative investments the Trustee shall, if required by the Act, implement satisfactory risk management practices by way of a risk management statement prepared in accordance with the Act and any guidelines issued by a Regulator.

7.3 Reserves management

The Trustee must formulate and give effect to a strategy for prudential management of any reserves maintained in the Fund, consistent with the Act.

7.4 Valuation

The Trustee will arrange for valuations of assets at such times and on such basis as it considers appropriate, subject to the Act.

7.5 Investment earnings

7.5.1 As at the end of each financial year, and at such other times as the Trustee determines, the Trustee shall distribute the whole or any portion of the Investment Earnings of the Fund as the Trustee determines to be appropriate to the Member's Account(s) maintained in respect of each Member.

7.5.2 Any Investment Earnings not applied to Member Accounts in accordance with Clause 7.5.1 shall be applied to a Reserve Account maintained under Clause 15.

8. Records, Audit and Information

8.1 The Trustee must, in accordance with the Act:

- (a) keep records and accounts for the Fund;
- (b) prepare and/or lodge financial and other statements and/or returns in respect of the Fund;
- (c) arrange for audit of records, financial statements and other information in respect of the Fund;
- (d) arrange for the retention of records and other information in respect of the Fund; and

(e) provide information to Beneficiaries, prospective Members, Employers, a Regulator and any other person in connection with the Fund.

8.2 Without limiting anything else in this Deed the Trustee must comply with all relevant requirements of the Family Law Legislation in relation to the provision of information to any affected person in connection with the Fund and the interest or claims of any Member, Member Spouse or Non Member Spouse therein.

9. Membership

9.1 Eligibility

The Trustee may set eligibility conditions for membership of the Fund.

9.2 Acceptance

9.2.1 Membership applications:

- (a) may be made by a person who wishes to become a Member or by a person on behalf of a prospective Member (for example a child of the person); and
- (b) must be made in the form provided in Schedule 3 or in another form acceptable to the Trustee.

Schedule 3 provides forms of application to be used depending on whether the Member will make either an Indicative Death Benefit Nomination or a Binding Death Benefit Nomination under Clause 12.6.4.

9.2.2 The Trustee may:

- (a) accept or reject any application;
- (b) establish arrangements under which people satisfying certain eligibility conditions may become Members provisionally from a certain date unless the Trustee subsequently rejects the application;

Prior to making a decision under Clause 9.2.2(a) the Trustee may, subject to the Act, request an applicant to undergo a medical examination and to provide all relevant information and evidence and sign all documents as may be required by the Trustee.

9.2.3 The Trustee may admit a person as a Member even though a formal application has not been completed where:

- (a) the applicant is under eighteen years of age and the applicants Legal Personal Representative is eligible to act as a Trustee; or
- (b) the applicant becomes entitled to a benefit or interest in the Fund under an order or agreement made pursuant to the Family Law Legislation.

9.3 Timing

If a membership application is accepted the person's membership will commence from:

- (a) the date on which the Trustee accepts the application; or
- (b) another date agreed by the Trustee and the Member.

9.4 Deed

Each person admitted as a Member and each Beneficiary is deemed to have approved of, and becomes bound by, the Deed.

9.5 Member's attorney

Each Member irrevocably appoints the Trustee as the Member's attorney to execute, sign and complete any deeds, instruments or other documents and to do anything the Trustee reasonably considers appropriate for the purposes of administering the Fund.

9.6 Cessation of Membership

A person ceases to be a Member when:

- (a) all benefits to which the Member has become entitled under this Deed have been paid;
- (b) the whole of the Member's Account Balance relating to that Member has been transferred out of the Fund in accordance with Clause 13.2;
- (c) the Member dies;
- (d) the Member is required to cease his membership to comply with the Family Law Legislation or an agreement made pursuant thereunder;
- (e) the Trustee requires that a Member ceases his membership in order to comply with the Act; or
- (f) the Member's entitlement to benefits is otherwise terminated.

9.7 Beneficiaries' interests and liabilities

9.7.1 No Beneficiary has any interest in any particular asset of the Fund. Beneficiaries must not

- (a) interfere with the exercise of the Trustee's powers; and
- (b) assert any right in respect of any asset or part of an asset.

9.7.2 The liability of Beneficiaries in connection with the Fund is limited as described below:

- (a) The Trustee's right of indemnity and the right of recourse of any creditor is limited to the Fund's assets; and
- (b) Beneficiaries are not liable (in their capacity as Beneficiaries):

- (i) to indemnify the Trustee in respect of any deficiency in the Fund; or
- (ii) in connection with claims by any of the Trustee's creditors relating to the Fund.

9.7.3 The rights of Beneficiaries to receive benefits are those set out in this Deed.

9.8 Member's account

9.8.1 The Trustee will maintain a Member's Account in respect of each Member for the purpose of recording benefit entitlements under this Deed.

9.8.2 The Member's Account Balance at any time is determined by adding:

- (a) contributions in respect of the Member and amounts transferred to the Fund in respect of the Member under Clause 13.1;
- (b) investment earnings determined having regard to Clause 7.5 and the

requirements of the Act, and any Investment Options applicable to the Member;

- (c) proceeds of any Policy in respect of the Member;
 - (d) amounts transferred to the Member's Account in accordance with an order or agreement made pursuant to the Family Law Legislation; and
 - (e) any other amount that the Trustee considers should be credited to the Member's Account;
- and deducting:
- (f) benefits paid from the Member's Account or transferred to another Benefit Arrangement in accordance with Clause 13.2;
 - (g) any costs or fees deducted from the Member's Account or any other liabilities attributed to it;
 - (h) amounts in respect of Tax deducted from the Member's Account;
 - (i) any negative investment returns determined having regard to Clause 7.5, the requirements of the Act, and any investment strategy applicable to the Member;
 - (j) amounts transferred from the Member's Account in accordance with an order or agreement made pursuant to the Family Law Legislation; and
 - (k) any other amount that the Trustee considers should be debited to the Member's Account.

9.8.3 More than one Member's Account may be maintained in respect of a Member if a Member participates in the Fund in more than one capacity. If so, provisions dealing with a Member's Account will be applied separately to the separate Member's Accounts.

9.8.4 A Member may notify the Trustee where he is already in excess of his applicable Reasonable Benefits Limit (RBL) or where the allocation of Investment Earnings in respect of that Member would result in him exceeding his applicable RBL. Subject to the Act, upon receipt of such notification the Trustee shall not allocate any further Investment Earnings to the Member unless that member subsequently advises otherwise.

9.9 Special Arrangements

9.9.1 Subject to the Act, the Trustee and a Member may agree at any time that special conditions will apply to the Member in place of those that would otherwise apply under this Deed;

9.9.2 Any special arrangements of the type referred to in Clause 9.9.1:

- (a) must be recorded in writing; and
- (b) may be varied at any time by further agreement in writing between the Trustee and Member.

9.10 Separate Investments

9.10.1 Without limiting Clause 9.9 but subject to the Act, the Trustee may (but is not obliged to) provide Members with the ability to request that a separate investment be made in respect of that Member being:

- (a) a separate investment option or investment strategy; and/or

(b) a specific investment.

9.10.2 Subject to the Act, if a separate investment is made for a Member under clause 9.10.1 it is made for the sole benefit of and at the sole risk of the Member, and any income, gains, losses or expenses incurred in respect of that investment must be attributed to the relevant Member Account prior to calculating the Funds Investment earnings in accordance with clause 7.5.

9.10.3 The trustee is not liable for the performance of or for any loss attributable to any separate investment referred to in clause 9.10.1.

10. Actuarial Requirements

The Trustee shall engage an actuary where required under the Act and shall cause the Fund to otherwise comply with the actuarial requirements of the Act, if applicable.

11. Contributions

11.1 Powers

The Trustee may accept contributions from:

- (a) Members or prospective Members;
- (b) Employers;
- (c) a Spouse of a Member or prospective Member.
- (d) any related person or entity as defined in the Act;
- (e) the Government for a Member; or
- (f) other persons or entities permitted to make contributions under the Act.

Without limiting this Clause 11, the Trustee may accept a shortfall component, as defined in the Superannuation Guarantee (Administration) Act 1992 (Cth), in respect of a Member.

11.2 A Trustee may choose whether or not to accept all or part of a contribution.

11.3 Defective contributions

11.2.1 Notwithstanding any other provision of this Deed the Trustee shall not accept contributions by or in respect of a Member if receipt of the contributions would be inconsistent with the Act;

11.2.2 If the Trustee finds after accepting contributions that it should have not done so, it will, if the Act permits, repay an appropriate amount to the person making the contribution. That amount must be calculated on a fair and reasonable basis after allowing for reasonable administrative charges incurred in relation to the contribution.

11.2.3 If an amount is initially recorded as having been contributed or transferred to the Fund but that amount is not actually received (for example where a cheque is dishonoured), the contribution or transfer will be deemed to have never been made.

11.4 A person permitted to make contributions may make contributions by way of:

- (a) money;
- (b) securities listed on a stock exchange in Australia
- (c) other property in kind

(d) payment of fund expenses or liabilities

to the Fund on behalf of one or more Members with the consent of and on such terms conditions and at such value as determined by the Trustee subject to compliance with the Act.

11.5 If required by the Act, the Trustee must allocate relevant contributions to a Member's Account to the extent provided by the Act and within any relevant timeframe set out in the Act.

11.6 (a) 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, that is equal to an amount of the splitable contributions made by, for, or on behalf of the Member in:

- (i) the last financial year that ended before the application; or
- (ii) the financial year in which the application is made – where the Member's entire benefit is to be rolled over or transferred in that year.

(b) However, the application is taken to be invalid:

- (i) if in the financial year in which it is made:
 - (A) the Member has already made an application in respect of a relevant financial year; and
 - (B) the Trustee:
 - (I) is considering the application; or
 - (II) has given effect to that application; or

(ii) if the amount of benefits to which the application relates exceeds the maximum splitable amount allowed under the Act; or

(iii) subject to paragraph (c); if:

- (A) the member's spouse is aged 65 years or more; or
- (B) both:

(I) the member's spouse is aged between the relevant preservation age and 65 years; and

(II) the member's spouse satisfies item 101 conditions of release, set out in Schedule 1 of the SIS Regulations at the time of the application.

(c) Despite paragraph (b)(iii), an application is not taken to be invalid under that paragraph if the application includes a statement by the member's spouse to that effect that the spouse:

(A) is aged less than the relevant preservation age; and

(B) both:

(I) is aged between the relevant preservation age of 65 years; and

(III) does not satisfy item 101 conditions of release, set out in Schedule 1 of the SIS Regulations.

(d) The applicant must specify, in the application, the amount of the benefit from the following:

- (i) the Member's taxed splittable contributions;
- (ii) the Member's untaxed splittable contributions;
- that the Members seeks to split for the benefit of the member's spouse.
- 11.7 A Trustee may accept an application made under Clause 11.6(a) if all of the following conditions are satisfied:
- (a) the application complies with Clause 11.6;
 - (b) the Trustee has no reason to believe that the statement mentioned in Clause 11.6(c) is untrue;
 - (c) the amount to which the application relates is not more than the maximum splittable amount for the relevant financial year.
- 11.8 If a Trustee accepts an application in accordance with Clause 11.6 then it must as soon as practicable, and in any case within 90 days after receiving the application, roll over, transfer or allot the amount of benefits for the benefit of the receiving spouse.
- 11.9 If the application requests a split of untaxed splittable contributions the Trustee can only give effect to the application where the amount specified in the application is less than or equal to the undeducted contributions that would form part of the Eligible Termination Payment that would be payable if the member withdrew the Member's entire benefits at the time of the Trustee giving effect to the application.
- 11.10 If the application requests a split of taxed splittable contributions the Trustee can only give effect to the application where the amount specified in the application is less than or equal to the taxed element of the post-June 83 component that would form part of the Eligible Termination Payment that would be payable if the Member withdrew the Member's entire benefits at the time of the Trustee giving effect to the application.
- 11.11 If a Trustee accepts an application made under Clause 11.6, the applicant's spouse is a receiving spouse.
- 11.12 The Trustee is not bound to accept a contribution splitting application and may reject any such application for any reason.
- 11.13 This arrangement cannot be used to transfer benefits out of the Member's superannuation interest that is subject to a Payment Split or on which a Payment Flag under the Family Law legislation is operating.
- 11.14 For this purpose, the Trustee has power to create such accounts in respect of such other person and to treat them as admitted to membership and do such other acts, matters and things as may be necessary to give effect to the division and as is consistent with the Act.

12. Benefits: General Provisions

- 12.1 Schedules
- Particulars regarding calculation of benefits and the circumstances in which they are payable appear in the Benefit Schedule.
- 12.2 Conditions
- The Trustee may impose any reasonable conditions regarding payment of a benefit. For example the Trustee may require Beneficiaries to produce evidence of entitlement.

12.3 Policy

If a benefit would ordinarily include an insured component under a Policy but:

- (a) no amount is paid under that Policy; or
 - (b) the amount paid under the Policy is less than the amount that would ordinarily be payable;
- the amount payable to the Member may be adjusted accordingly.

12.4 Method

Benefits may be paid by any method that the Trustee considers appropriate.

12.5 Circumstances and amounts — general

12.5.1 Benefits:

- (a) may, in addition to any specific circumstance described in the Benefit Schedules, be paid in any other circumstance permitted by the Act. For example, benefits may be paid to a Member in the event of a Member's financial hardship and on compassionate grounds as provided by the Act. However, the Trustee is not obliged to pay benefits in those other circumstances unless it agrees to do so or the Act compels it to do so.
- (b) must be paid in the form and in the circumstances in which the Act compels benefits to be paid;
- (c) may be paid in any form and in any circumstances in which the Act permits benefits to be paid;
- (d) may, where payable in lump sum form, be paid in more than one instalment;
- (e) may, at a Member's request, be retained wholly or partly in the Fund with the Trustee's agreement and if the Act permits, until paid in accordance with this Deed;
- (f) must not be paid if payment of the Benefit would result in the Fund not complying with the Act.

12.5.2 Except where this Deed provides otherwise or the Trustee otherwise determines, the amount of any benefit will be an amount not:

- (a) exceeding the Member's Account Balance; or
- (b) less than any amount required under the Act.

12.6 Death benefits

12.6.1 This Clause 12.6 applies to Death Benefits. To avoid doubt, it does not apply to a Member's Account or any portion of a Members' account relating to benefits that have already begun to be paid or applied for payment of a benefit in provision form.

12.6.2 A Death Benefit to which this Clause applies must, subject to the remaining provisions of this Clause 12.6, be paid in proportions decided by the Trustee to one or more of the following:

- (a) one or more of the Member's Dependents; and
- (b) the Member's legal personal representative.

The Trustee must consider any Death Benefit Nomination made in accordance with ~~Clause 12.6.4, but unless Clause 12.6.5 applies may not treat the Death Benefit Nomination as binding.~~

12.6.3 Subject to the Act, if after making enquiries that it considers reasonable the Trustee cannot locate any Dependents or the legal personal representative, the benefit may be paid to any other person that the Trustee chooses or in any other manner.

12.6.4 For the purposes of this Clause 12.6, the following provisions apply:

- (a) Members may give the Trustee a Death Benefit Nomination;
- (b) a Death Benefit Nomination may be an Indicative Death Benefit Nomination, or, alternatively, but subject to the Act, a Binding Death Benefit Nomination as to payment of the Death Benefit payable in respect of the Member;
- (c) subject to any requirements of the Act, members may vary Death Benefit Nominations at any time;
- (d) Death Benefit Nominations must be made in accordance with the form included in the Member application forms contained in Schedule 3 or in another form acceptable to the Trustee;
- (e) the Trustee may disregard an Indicative Death Benefit Nomination if it does not comply with any formal requirements set by the Trustee; and
- (f) subject to the Act, the Trustee must disregard a Binding Death Benefit Nomination if it does not comply with the formal requirements of the Act.

12.6.5 The Trustee will treat a Binding Death Benefit Nomination made in accordance with the form included in the Member application forms contained in Schedule 3 or in another form acceptable to the Trustee as a binding direction and nomination and effect payments in accordance with the Death Benefit Nomination, provided it is given in accordance with the requirements of the Act and is current and valid at the date of the Member's death.

12.6.6 The Trustee may in its absolute discretion increase the amount of the Death Benefit by an amount equal to such amount (if any) which is available as a deduction to the Fund under s279D of the Tax Act.

12.6.7 Subject to Clause 12.6.5 the Trustee may pay a Death Benefit in any manner permitted by the Act, including as a lump sum, pension or combination of both.

12.7 Transfer of assets

Subject to the Act (including any requirement for approval by the Regulator) where the Trustee is obliged to pay a benefit, it may at the request of the Beneficiary meet that obligation wholly or partly by transferring one or more assets in kind of equivalent value to the Beneficiary.

12.8 Form of Benefits

12.8.1 If the Trustee is not a Constitutional Corporation any Benefit payable under this Deed, other than a Death Benefit, is payable in the form of one or more pensions.

12.8.2 If the Trustee is a Constitutional Corporation any Benefit payable under this Deed, other than a Death Benefit, is, subject to the Act, payable in the form of:

- (a) one or more lump sums; or
- (b) one or more pensions; or

- (c) a combination of one or more pensions and one or more lump sums.

12.9 Forfeited benefits

12.9.1 Subject to the Act a Beneficiary forfeits a contingent or prospective or current entitlement to an interest if:

- (a) the Trustee determines that a Beneficiary has attempted to assign, alienate or charge all or part of their interest under this Deed;
- (b) in the Trustee's opinion the Beneficiary is incapable of managing his or her affairs;
- (c) the Beneficiary is or becomes insolvent or has committed or commits an act of bankruptcy;
- (d) the Beneficiary is dishonest or fraudulent in respect of the Fund;
- (e) any other event occurs that results in a person or a government or public authority other than the Beneficiary becoming entitled to that interest (except an event that produces that result because of a provision of this Deed).

Subject to the Act, the amount representing any interest that is forfeited in accordance with this Clause may be applied in proportions decided by the Trustee for the benefit of one or more of the Beneficiary, former Beneficiary or Beneficiary's Dependants as the Trustee considers appropriate.

12.9.2 The Trustee may credit to a Forfeited Benefits Account the amount of any forfeited interest or other interest or benefits which are not dealt with under this Deed and may debit amounts applied under this Deed.

12.9.3 The Trustee may apply amounts in the Forfeited Benefits Account:

- (a) to supplement benefits that all or some of the Beneficiaries or their Dependants have rights to receive from the Fund; or
- (b) to provide additional benefits for all or some of the Beneficiaries or their Dependants; or
- (c) to any other person or for any other purpose the Trustee determines; or
- (d) to any other person or authority that the Regulator approves.

12.9.4 Amounts to the Forfeited Benefits Account must be applied in a manner and within a period which satisfies the Act.

12.10 Minor beneficiaries or those without legal capacity

If:

- (a) a Beneficiary is a minor;
- (b) the Trustee believes that a Beneficiary is unable to manage their financial affairs because of legal incapacity; or
- (c) the Trustee otherwise considers it appropriate for any reason;

the Trustee may, subject to the Act, pay some or all of the amount payable in respect of the Beneficiary to another person including the guardian or legal personal representative of that person to be applied for the benefit of the Beneficiary. The receipt of the person to whom the benefit is paid is a complete discharge to the Trustee in respect of that benefit. The Trustee may impose any terms on such a payment that it considers appropriate.

12.11 Discharge

The Trustee is fully discharged from all obligations in connection with benefit payments once the person to whom a payment has been made has received the benefit in full. The Trustee has no obligation to see how the payment is applied.

12.12 Deductions

Subject to the Act, the Trustee may deduct fees and amounts in respect of Liabilities and Tax from any benefit payment. This is not intended to restrict the Trustee from deducting fees or recovering such amounts in any other way permitted by the Act or law.

12.13 (a) Notwithstanding any other provisions of this Deed, the Trustee will vary the interest of a Beneficiary in the Fund to take account of a Payment Split and any other Family Law Requirement. Without limiting this clause 12.13(a) to the extent relevant:

- (i) the value of a Member's Account will be adjusted accordingly; and
- (ii) the amount of a benefit payable from the Fund in respect of a Beneficiary (whether in the form of a lump sum or a pension) will be adjusted accordingly.

(b) Subject to Clause 12.13(c) and the Family Law Requirements, if the interest of a Beneficiary (Affected Beneficiary) in the Fund becomes subject to a Payment Split:

- (i) the Non-Member Spouse is not entitled to become a Member;
- (ii) the Trustee may admit the Non-Member Spouse as a Member if it so resolves and the Affected Beneficiary agrees; and
- (iii) either the Affected Beneficiary or the Non-Member Spouse may request the Trustee to have the Transferable Benefits of the Non-Member Spouse transferred to another Benefit Arrangement in accordance with Clause 13.2.

If the Affected Beneficiary is incapable of giving agreement under Clause 12.13(b)(ii) for any reason, the Trustee may admit the Non-Member Spouse as a Member if it so resolves.

(c) Subject to the Family Law Requirements, if a Non-Member Spouse was a Member immediately prior to the Payment Split taking effect, nothing in Clause 12.13(b) is to be taken as:

- (i) affecting the membership status of the Non-Member Spouse in relation to the entitlements of the Non-Member Spouse immediately prior to the Payment Split; or
- (ii) enabling an Affected Beneficiary to request transfer of benefits other than Transferable Benefits of the Non-Member Spouse in accordance with Clause 12.13(b)(iii).

(d) Without limiting any other power it has under this Deed, the Trustee has power to do anything necessary or convenient to comply with the Family Law Requirements, including without limitation:

- (i) power to provide information about Member's entitlements and Payment Splits to relevant parties;
- (ii) power to give effect to Payment Flags and any relevant lawful agreement or order of a court of competent jurisdiction in relation thereto;
- (iii) power to give effect to Payment Splits within any required time period;

(iv) power to transfer Transferable Benefits within any time period set by the Family Law Legislation;

(v) power to charge fees; and

(vi) power to recognise interests created under the Family Law Requirements.

12.14 Repayment

If a Benefit is paid to a Member and the Trustee subsequently determines that the Benefit should not have been paid the Member shall, upon demand by the Trustee, repay to the Trustee the full amount of the Benefit.

13. Transfers

13.1 Transfers in

Subject to the Act, the Trustee may accept into the Fund an amount or asset in respect of a Member or prospective Member that is transferred from another Benefit Arrangement, Employer or other person or entity permitted to do so under the Act or transferred or rolled over within the Fund.

13.2 Transfers out

13.2.1 The Trustee may transfer the whole or part of any amount held in the Fund in respect of a Member to another Benefit Arrangement.

13.2.2 The Trustee may make such a transfer without the Member's consent where the Act permits (including to a Successor Fund or an Eligible Rollover Fund).

13.2.3 The Trustee may make such enquiries as it considers appropriate to satisfy itself that the Benefit Arrangement complies with the requirements of the Act (or in the case of a retirement savings account, the *Retirement Savings Account Act 1997 (Cw/1th)*) and that any Preserved Benefits must continue to be preserved in accordance with the requirements of the Act.

13.2.4 A transfer of an amount under this Clause 13.2 is a complete discharge to the Trustee in relation to any liability to the Member or any person claiming through the Member in relation to the amount transferred.

14. Investment Options

14.1 Investment options

14.1.1 The Trustee may offer Investment Options in accordance with this Clause 14.1.

14.1.2 The Trustee may offer a new Investment Option at any time.

14.1.3 On establishing an Investment Option, the Trustee will decide its name and other specifications relating to it (including the kinds of asset or assets to be held, the investment objectives and strategy and other relevant matters). The Trustee may change the name or other specifications at any time.

14.1.4 Subject to the Act, the Trustee may merge, divide or discontinue Investment Options at any time. In this event the Trustee will determine how the interests of Beneficiaries will be attributed between the Investment Options to reflect those changes.

14.1.5 The Trustee will ensure that the assets and liabilities associated with each Investment Option can be identified separately.

14.2 Selection of investment options

Amounts may be attributed to one or more Investment Options requested by the Member

and accepted by the Trustee.

14.3 Switches

14.3.1 A Member may apply to switch amounts between Investment Options.

14.3.2 The Trustee may accept or reject a switch application and, if it accepts an application, determine the date on which it takes effect.

14.4 Order of debiting

14.4.1 Where there are two or more Investment Options attributable to a Beneficiary, the order in which debits relating to the Member's Account (including those relating to benefit payments) attributed to those Investment Options will be in accordance with arrangements selected by the Member and accepted by the Trustee.

14.4.2 The Trustee:

- (a) may determine the form in which a selection referred to in Clause 14.4.1 is to be made; and
- (b) may suspend a selection made in accordance with Clause 14.4.1.

15. Reserve Account

15.1 The Trustee may establish and maintain any Reserve Account or Accounts as the Trustee thinks necessary or desirable for the convenient and efficient operation and administration of the Fund or that is required or permitted by the Act. The Trustee may use such Accounts for any purpose permitted by the Act or this Deed.

15.2 Credits

Subject to the Act, the following amounts may be credited to a Reserve Account:

- (a) amounts transferred from another Benefit Arrangement that are not allocated to any Member's Account;
- (b) any amount in a Member's Account that is not required or that cannot be applied to pay benefits in respect of the Member;
- (c) any investment earnings determined having regard to Clause 7.5, the requirements of the Act, and any Investment Options applicable; and
- (d) any other amounts for such matters or things as the Trustee considers appropriate or as provided for under this Deed.

15.3 Debits

The following amounts may be debited from the Reserve Account if the Act permits:

- (a) any amounts to be credited to Member's Accounts by way of:
 - (i) additions to benefits otherwise payable; or
 - (ii) satisfaction in whole or in part of any obligation of an Employer or Member to make contributions to the Fund;
- (b) amounts to be applied by way of payment to an Employer; and
- (c) any negative investment earnings determined having regard to Clause 7.5, the requirements of the Act, and any Investment Options; and
- (d) amounts to be applied in any other way that the Trustee considers appropriate.

16. Confidentiality

16.1 Non-disclosure

The Trustee will not disclose any confidential information regarding Beneficiaries or Employers acquired in the course of acting as Trustee to other parties, except in connection with Members' interests in the Fund.

16.2 Exceptions

This Clause 16 does not apply:

- (a) where the Trustee may be legally compelled to, or penalised for, failure to disclose such information; or
- (b) to disclosures made to Employers or agents or delegates of the Trustee in connection with the operation of the Fund; or
- (c) where non-disclosure of the material may cause adverse tax consequences to the Fund.

17. Termination of the Fund

17.1 General

17.1.1 The Fund will be terminated upon the first to occur of the following:

- (a) if the Trustee's office becomes vacant and no new Trustee is appointed within ninety (90) days;
- (b) if the Trustee resolves to terminate the Fund in accordance with Clause 17.3; or
- (c) if the rule of law known as the rule against perpetuities applies to the Fund, on the expiration of the maximum period allowed under that rule for the duration of the trusts established under this Deed.

17.1.2 Where Clause 17.1.1(a) applies, references in Clauses 17.2 and 17.3 to:

- (a) the "Trustee", refer to any entity appointed after the ninety (90) day period referred to in Clause 17.1.1 (a); and
- (b) the "Closure Date" refers to the date of expiry of the ninety (90) day period referred to in Clause 17.1.1 (a).

17.1.3 Where Clause 17.1.1(c) applies, references in Clauses 17.2 and 17.4 to the "Closure Date" refer to the date on which the Fund terminates by law.

17.2 No Further Receipts

From the Closure Date no further contributions or transfers of amounts into the Fund may be accepted unless the Trustee specifically agrees (except for payment of any contributors arrears due on that date).

17.3 Termination by Trustee

The Trustee may resolve to terminate the Fund at any time. If it decides to do so the following provisions will apply:

- (a) the Members and Employers will be notified in accordance with the Act; and
- (b) the Trustee will determine a closure date ("Closure Date").

17.4 Application of assets

Assets of the Fund will be applied in the following order on termination:

- (a) to provide for all Liabilities relating to the Fund, except for those relating to benefit payments;
- (b) to provide for benefits that became payable on or before the Closure Date including benefits that have begun to be paid in pension form;
- (c) in relation to Beneficiaries for whom benefits have not become payable under paragraph (b), and subject to this Deed, to provide for a benefit being an amount equal to the Member's Account Balance;
- (d) in the case of Members in respect of whom a Reserve Account is maintained in the Fund, to increase any benefits by application of amounts from the Reserve Account on a basis determined by the Trustee; and
- (e) subject to the Act, to pay any amounts remaining to or for the benefit of one or more of the Members or former Members, as the Trustee considers appropriate.

18. Amendments

18.1 Power

Subject to this Clause 18 the Trustee may amend any provision of this Deed (including this Clause) at any time by deed. An amendment must be made by Deed.

18.2 Effective date

An amendment made under this Clause will take effect from a date specified by the Trustee (whether before or after the date of the deed), or if none is specified, from the date of the deed or resolution.

18.3 Limitations

No amendment may be made that:

- (a) is inconsistent with the Act; or
- (b) would have the effect of reducing the amount of a benefit that has accrued or become payable by or in respect of the Member before the date of payment of the benefit, unless any such reduction:
 - (i) is required to meet a Tax liability in respect of the Fund; or
 - (ii) is required to comply with the Act; or
 - (iii) is approved in writing by the Member; or
 - (iv) is approved in writing by the Regulator.

19. Severance

If any provision of this Deed or part thereof is void, prohibited or unenforceable in a jurisdiction then such provision or the relevant part thereof will be severed. The remainder of this Deed will have full force and effect notwithstanding any consequential alteration to the meaning or construction of that provision or this Deed that may result unless severing the provision would be contrary to public policy or the Act.

20. Notices**20.1 Form**

Any notice given under this Deed must be in writing.

20.2 Receipt

Notices will be deemed to have been given to the recipient if:

- (a) they are handed to them personally; or
- (b) they are sent by pre-paid post addressed to:
 - (i) in the case of Beneficiary, the person's last known address or place of employment; or
 - (ii) in the case of a Trustee or an Employer which is a corporation, its registered office or place of business; or
 - (iii) in the case of a Trustee or an Employer which is not a corporation, its place of business or other last known address.

21. Governing Law

The law applicable to the Fund is the law of the State or Territory of the Commonwealth of Australia where the Trustee resides.

GENERAL SCHEDULE

Date of Making This Deed	The..... ^{2nd}day of... <i>May</i> 20 <i>1996</i>	
The Trustees	McPeake Constructions Pty Ltd ACN 008 019 798 Level 1, 120 Greehill Road UNLEY SA 5061	
The Name of the Fund	MCPEAKE CONSTRUCTIONS PTY LTD SUPERANNUATION FUND	
Law of this Fund:	South Australia	

SCHEDULE 2**BENEFIT SCHEDULE****PART 1****1. Circumstances**

Subject to the Act and this Deed, benefits are payable in the following circumstances:

- (a) if the Member has reached the Retirement Age;
- (b) if the Member has ceased Service;
- (c) if the Member has died;
- (d) if the Member has become Totally and Permanently Disabled;
- (e) if the Member has become Temporarily Disabled; or
- (f) any other circumstance allowed by the Act.

To avoid doubt, a benefit must be paid when required under the Act as provided by Clause 12.5.1(b).

2. Calculation of benefits other than pension benefits**2.1 General**

Subject to this Deed and except where Rules 2.2 or 3 of this Schedule apply, the amount of a Member's benefit will be the amount of the Member's Account Balance plus any additional amount included in accordance with Clause 12.6.6 where applicable;

2.2 Disablement benefit

Rule 2.1 does not apply in the case of a benefit payable on the Member's Total and Permanent Disablement or Temporary Disablement. The benefit payable in those circumstances will be calculated having regard to:

- (a) the amount or amounts payable under the Policy in respect of the Member's Disablement;
- (b) the timing of those payments;
- (c) the liabilities incurred by the Trustee in connection with the Policy (including receipt and payment of proceeds); and
- (d) any relevant Policy terms.

3. Pension benefits**3.1 General**

Where a benefit in respect of a Member is to be payable in pension form, the amount referred to in Rule 3.2 will be applied for the purposes of providing that pension.

3.2 Relevant amount

For the purposes of Rule 3.1, the relevant amount is:

- (a) the amount that would be payable as a lump sum under Rule 2.1 if it applied; or
- (b) if the Member requests that only part of that amount be applied to fund the pension and the Trustee accepts that request, the amount of the part requested.

3.3 Pension conditions

3.3.1 The conditions applicable to payment of pension benefits appear in Part 3 of this Benefit Schedule.

3.3.2 A Member who is entitled to receive a pension may nominate one or more reversionary beneficiaries to receive pension payments after the Member's death.

3.3.3 The Trustee may ignore any of the provisions of Part 3 of this Benefit Schedule or impose additional conditions on any pension payable under this Deed if this is necessary to ensure the Fund complies with the Act and /or the Social Security Act.

3.4 Commute to Lump Sum

A Member to whom a pension is payable is entitled, subject to the Act, to commute part or all of that benefit to a lump sum prior to the pension commencing or being established for the Member. Such commutation must be allowed by and be in accordance with the Act to be on terms agreed between the Trustee and the Member, or in the absence of agreement as determined by the Trustee.

PART 2

1. Application

Where Clause 3.2(c) of the Deed applies, the main benefit payable from the Fund is an Old Age Pension payable at the Member's Retirement Age as described in Rule 2 of this Part of the Benefit Schedule.

2. Retirement pension

If a benefit is payable to the Member on the Member's attaining Retirement Age, then subject to the Act, the benefit will be paid in the form of a pension on terms agreed between the Trustee and the Member, or in any absence of agreement, as determined by the Trustee. A Member to whom a pension benefit is payable as described above is entitled, subject to the Act, to commute part or all of that benefit to a lump sum on terms agreed between the Trustee and the Member, or in the absence of agreement as determined by the Trustee.

3. Incidental benefits

Where this Part 2 of the Benefit Schedule applies, subject to Rule 2, benefits will otherwise be payable in accordance with Parts 1 and 3 of the Benefit Schedule, as relevant.

PART 3

PROVISIONS APPLYING TO PENSION BENEFITS

1. Forms of pension

Without limiting anything in this Deed, the Trustee and a Beneficiary may agree that the whole or any part of any amount payable to a Beneficiary under this Deed will be paid in one or more of the following forms of pension if that is permitted by the Act and the terms of such a pension complies with any relevant provision of the SIS Regulations:

- (a) a Lifetime Pension;
- (b) an Allocated Pension;
- (c) a Life Expectancy Pension;
- (d) a Market Linked Pension;
- (e) a Flexi Pension; and

(f) subject to the Act, any other form of pension that the Trustee chooses to make available at the relevant time.

Terms relating to each type of pension referred to in paragraphs (a) to (f) are provided in the subsequent Rules 4 to 10 of this Schedule ("Pension Clauses").

2. Provisions of Act

2.1 Pension Provisions

The Pension Clauses and including any other form of pension referred to in Rule 1(f) are designed to reflect certain provisions of the Act relating to pensions. To the extent that those provisions of the Act may be:

- (a) varied or supplemented, the Trustee may offer pensions on terms that are consistent with the varied or supplemented provisions; or
- (b) removed, the Trustee may adjust the features of pensions to which the Pension Clauses apply, having regard to the provisions that have been removed.

To avoid any doubt, a provision of the Act or the SIS Regulations includes part of a provision.

Subject to the Act, where a change of the type referred to in paragraphs (a) or (b) of this Rule 2 occurs, or if the Trustee otherwise considers it appropriate to do so, the Trustee may change the terms on which a current pension is paid, without being required to amend the terms of this Deed or any other deed evidencing any agreement with a Beneficiary in relation to payment of a Pension benefit.

2.2 Permitted Pensions

For clarity, the Trustee may only pay one or more of the forms of pension referred to in Rule 1 of this Part 3 to the extent to which payment of such form of pension is permitted by the Act.

In particular, the Trustee must not pay a Lifetime Pension, a Life Expectancy Pension or other form of 'defined benefit pension' (for the purpose of the Act) unless either it satisfies any relevant requirements of the Act (such as the Fund having at least 50 members) or the provisions of the Act do not apply to it in relation to such a person.

2.3 Life Tables etc

In determining the life expectancy of a person under these pension terms, then if required by the SIS Regulations or the Act, the relevant life tables required under the Act or Regulations made under the Tax Act (as the case may be) are to be used in ascertaining the life expectancy of a person for the purposes of these terms.

3. Additional Terms

Subject to the Act, the Trustee is also permitted to:

- (a) pay pensions in any form permitted by the Act, which may include forms other than those described in the Pension Clauses;
- (b) make the payment of pensions, including those governed by the Pensions Clauses, subject to any other terms that the Trustee considers appropriate. Those other terms may supplement or wholly or partly replace the terms that would otherwise apply. For example, the Trustee may, but is not obliged to, impose terms that it considers may enable the pension payments or the assets supporting those payments to be subject to concessional treatment under laws relating to tax or social security or similar entitlements; and
- (c) further document the terms governing any pension, including those governed by the Pension Clauses, in any manner it considers appropriate, whether by way of variation, supplement, qualification or deletion of terms that might otherwise apply.

4. Terms

Terms used in the Pension Clauses have the same meaning as in the Act (and in particular those provisions of the Act relating to pensions) unless the context otherwise requires.

5. Lifetime Pension

The following terms apply to Lifetime Pensions:

- (a) Payments of a Lifetime Pension must be made at least annually throughout the life of the primary beneficiary in accordance with paragraphs (b) and (c) and, if there is a reversionary beneficiary:
- (i) throughout the reversionary beneficiary's life; or
 - (ii) if he or she is a child of the primary beneficiary or of a former reversionary beneficiary under the pension — at least until his or her 16th birthday; or
 - (iii) if the person referred to in subparagraph (ii) is a full-time student at age 16 — at least until the end of his or her full-time studies or until his or her 25th birthday (whichever occurs sooner);
- (b) Unless otherwise agreed in a particular case, and subject to the Act, the size of pension payments in a year will be fixed. The size of a fixed pension payment will be as agreed between the Trustee and Beneficiary or, in the absence of agreement, as determined by the Trustee. This does not limit the ability to allow commutation to pay a superannuation contributions surcharge liability or to allow an amount to be paid under a Payment Split and the reasonable fees in relation to that Payment Split;
- (c) Unless the relevant Regulator otherwise approves, or the Act otherwise allows, the sum payable as benefit in each year to the primary beneficiary or to the reversionary beneficiary, as the case may be, may be no less than the sum payable in the immediately preceding year;
- (d) The pension will not have a residual capital value;
- (e) The pension cannot be commuted except:
- (i) if the commutation is made within 6 months after the commencement day of the pension;
 - (ii) to a reversionary beneficiary on the death of the primary beneficiary and within one of the following periods after the commencement day of the pension
 - if the primary beneficiary's life expectancy on the commencement day is a period less than 20 years – that period; and
 - in any other case – 20 years.
 - (iii) if the eligible termination payment resulting from the commutation is transferred directly to the purchase of another benefit provided under arrangements that are consistent with the relevant requirements of the Act; or
 - (iv) for any other purpose permissible under the Act.
- (f) The following further rule applies in relation to commutations, that is, a pension cannot be commuted in whole or in part unless:
- (i) the commutation results from the death of a pensioner or reversionary pensioner; or
 - (ii) the sole purpose of the commutation is:
 - (A) to pay a superannuation contribution surcharge; or

~~(B) to give effect to an entitlement of a Non-Member Spouse under a Payment Split; or~~

- (C) to meet the rights of a client to return a financial product under Division 5 of Part 7.9 of the Corporations Act 2001; or
- (iii) the pension has paid in the financial year in which the commutation is to take place that amount which is at least the minimum amount determined in accordance with the Act and the SIS Regulations.
- (g) If the pension reverts or is commuted, it may not have a reversionary component greater than 100% of the benefit that was payable before the reversion or the commutation;
- (h) The pension cannot be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;
- (i) The capital value of the pension and the income from it cannot be used as security for a borrowing; and
- (j) The pension may be offered on the basis that:
 - (i) if the primary beneficiary dies within the period used in (e)(ii), a surviving reversionary beneficiary may be paid an amount equal to the total payments that the primary beneficiary would have received, if the primary beneficiary had not died, from the day of death until the end of the period; and
 - (ii) if the primary beneficiary dies within the period used in (e)(ii) and there is no surviving reversionary beneficiary, an amount may be paid to the primary beneficiary's estate, not exceeding the difference between the sum of the amounts paid to the primary beneficiary and the sum of the amounts that would have been so payable in the period; and
 - (iii) if the primary beneficiary dies within the period used in (e)(ii) and there is a surviving reversionary beneficiary who also dies within that period, an amount may be paid to the reversionary beneficiary's estate, in accordance with the previous subparagraph as if that subparagraph applied to the reversionary beneficiary.

6. Allocated Pension

The following terms apply to Allocated Pensions:

Payments and Amounts

- (a) Subject to the Act, the size of pension payments in a year is not fixed.
- (b) Except where the Act otherwise requires:
 - (i) the pensioner may nominate the amount of the pension by written notice to the trustee. However the nominated amount must be within the maximum and minimum limits specified by the Act;
 - (ii) those payments must be made at least annually;
 - (iii) for a pension that had a commencement date on or after 22 December 1992 and before 1 January 2006: the payments in a year (excluding a payment by way of commutation, but including payments made under a Payment Split) may not be larger, or smaller in total than, respectively, the maximum and minimum limits calculated in accordance with Schedule 1A to the SIS Regulations; and
 - (iv) for a pension that has a commencement day on or after 1 January 2006 – the payments in a year (excluding payments by way of commutation but including payments made under a Payment Split) are not larger or smaller in total than the following:

(A) for payments made during the period starting on 1 January 2006 and ending on 30 June 2006 – the respective maximum and minimum limits for the year calculated in accordance with 1 of the following Schedules to the SIS Regulations:

(I) Schedule 1A;

(II) Schedule 1AAB;

(B) for payments made on or after 1 July 2006 – the respective maximum and minimum limits for the year calculated in accordance with Schedule 1AAB.

(c) Payments of the pension will cease when the relevant Member's Account Balance is nil.

Prohibition on certain transfers etc.

(d) The pension cannot be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;

Prohibition against borrowing

(e) The capital value of the pension and the income from it cannot be used as security for a borrowing;

Commutations

(f) The pension may be commuted by application to the Trustee, subject to meeting the requirements of the Act and may be commuted only in the circumstances and to the extent permitted by the Act. For this purpose, the following provisions apply:

(i) in no circumstances where the pension is commuted will the pension have a reversionary component greater than 100% of the benefit payable before the commutation;

(ii) in whole or in part a pension may not be commuted unless:

(A) the commutation results from the death of a pensioner or reversionary pensioner; or

(B) the sole purpose of the commutation is:

(I) to pay a superannuation contribution surcharge; or

(II) to give effect to an entitlement of a Non-Member Spouse under a Payment Split; or

(III) to meet the rights of a client to return a financial product under Division 5 of Part 7.9 of the Corporations Act 2001; or

(C) for a commutation in part – the account balance of the pension, immediately after the commutation in part, would be equal to or would exceed the minimum limit applicable under Schedule 1A or Schedule 1AAB whichever is applicable to the pension under Regulation 1.06(4) of the SIS Regulations as reduced by the amount of income payments already made in the financial year in which the commutation in part would occur; or

(D) the pension has paid in the financial year in which the commutation is to take place at least the minimum amount under regulation 107A of the SIS Regulations.

Reversions

- (g) For the purpose of Rule 6(c) the Trustee and Member may agree that on the death of a Beneficiary to whom an allocated pension is being paid, a pension may be paid to one or more reversionary pensioners. In the absence of agreement with the Beneficiary, the Trustee may determine such arrangements;
- (h) Where a reversionary pension is payable, the amount and terms and conditions of the reversionary pension will be agreed on between the reversionary pensioner concerned and the Trustee. In the absence of the agreement, the Trustee may determine such matters;
- (i) In no circumstance however, will the reversionary component of such a reversionary pension be greater than 100% of the benefit payable before the reversion; and

Non-Commutable Allocation Pension

- (j) For the purpose of these Rules, the reference to 'Allocated Pension' will include a reference to a Non-Commutable Allocated Pension.
- (k) This is a Pension to which the following provisions apply:
- (i) a Non-Commutable Allocated Pension must meet the standards of Regulation 1.06(4) of the SIS Regulations and cannot be cashed except in accordance with these Rules;
- (ii) subject to these Rules, the same conditions and restrictions applying to the payment of Allocated Pensions apply to the payment of Non-Commutable Allocated Pensions;
- (iii) however, a Non-Commutable Allocated Pension can only be commuted and paid as a lump sum to a Member if:
- (A) the purpose of the commutation meets the requirements of the definition of non-commutable allocated pension in regulation 6.01 of the SIS Regulations; or
- (B) before commutation, the Member has satisfied a condition of release as contemplated in the definition of non-commutable allocated pension in regulation 6.01 of the SIS Regulations.

7. Life expectancy pensions

The following terms apply to Life Expectancy Pensions:

Pension Age

- (a) A person is only entitled to be paid a Life Expectancy Pension on or after the day when the person attains pension age;

Payment and Amounts

- (b) The following conditions apply to the payment of a Life Expectancy Pension:
- (i) the pension must be paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to the primary beneficiary's life expectancy on the commencement day (rounded up to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years); or
- (ii) the pension is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to the primary beneficiary's life expectancy mentioned in subparagraph (i) above calculated, at the option of the primary beneficiary, as if the primary beneficiary were up to 5 years younger on the commencement day of the pension; or
- (ia) if the pension has a commencement day on or after 1 January 2006 – the pension is paid at least annually to the primary beneficiary or reversionary beneficiary

throughout a period not less than the period available under subparagraph (b)(i), and not more than the greater of the following periods:

- (A) the maximum period available under subparagraph (b)(ii);
 - (B) the period of years equal to the number that is the difference between the age attained by the primary beneficiary at his or her most recent birthday before the commencement day, and 100; or
- (iii) if:
- (A) the pension is a pension that reverts to a surviving spouse on the death of the primary beneficiary; and
 - (B) the life expectancy of the primary beneficiary's spouse is greater than the life expectancy of the primary beneficiary; and
 - (C) the primary beneficiary has not chosen to make an arrangement mentioned in (i), (ii) or (ia) above for the pension;
- the pension is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to:
- (D) the life expectancy of the spouse on the commencement day; or
 - (E) the life expectancy of the spouse calculated, at the option of the primary beneficiary, as if the spouse were up to 5 years younger on the commencement day; or
 - (F) if the pension has a commencement day on or after 1 January 2006 – a period that is not less than the period available under subparagraph (b)(iii)(D); and not more than the greater of the following periods:
 - (i) the maximum period available under subparagraph (b)(iii)(E);
 - (ii) the period of years equal to the number that is the difference between the age attained by the spouse at his or her most recent birthday before the commencement day, and 100;

at the option of the primary beneficiary, and rounded up to the next whole number if the life expectancy of the spouse, or the period, does not consist of a whole number of years;

- (c) the total amount of the payment, or payments, to be made in the first year after the commencement day of the Life Expectancy Pension (not taking commuted amounts into account) is fixed and that payment, or the first of those payments, relates to the period commencing on the day the primary beneficiary became entitled to the pension;
- (d) the total amount of the payments to be made in a year other than the first year after the commencement day of the Life Expectancy Pension (not taking commuted amounts into account) must not fall below the total amount of the payments made in the immediately preceding year (*the previous total*), and must not exceed the previous total:
 - (i) if CPI, is less than or equal to 4% - by more than 5% of the previous total; or
 - (ii) if CPI, is more than 4% - by more than CPI, + 1%;

For these purposes, *CPI* is the change (if any), expressed as a percentage, determined by comparing the quarterly CPI first published by the Australian Statistician for the second-last quarter before the day on which the first of those payments is to be made and the quarterly CPI first published by the Australian Statistician for the same quarter in the immediately preceding year;

(e) the total amount of the payments to be made in a year in accordance with paragraph (c) or (d) above may be varied only:

- (i) to allow commutation to pay a superannuation contributions surcharge: or
- (ii) to allow an amount to be paid under a payment split and reasonable fees in respect of the payment split to be charged; and:

Residual Capital Value

(f) a Life Expectancy Pension does not have a residual capital value;

Commutations

(g) a Life Expectancy Pension cannot be commuted unless one of the following conditions applies:

- (i) if the pension is not funded from the commutation of an annuity or another pension and the commutation is made within 6 months after the commencement day of the pension; or
- (ii) subject to (iv) below by payment, on the death of the primary beneficiary, to the benefit of a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the primary beneficiary; or
- (iii) subject to (iv) below by payment, on the death of a reversionary beneficiary to the benefit of another reversionary beneficiary, or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; or
- (iv) for the purposes of (ii) and (iii) if the primary beneficiary has opted, under paragraph (b)(iii) for a period worked out in relation to the life expectancy or age of the primary beneficiary's spouse, the pension cannot be commuted until the death of both the primary beneficiary and the spouse; or
- (v) if the eligible termination payment resulting from the commutation is transferred directly to the purchase of another benefit that is:
 - (A) an annuity provided under a contract that meets the requisite standards set out and prescribed by the Act; or
 - (B) a pension that is provided under rules that meets the requisite standards set out and prescribed by the Act; or
 - (C) a pension that is provided under terms and conditions that meets the standards as prescribed by the Act.
- (vi) to pay a superannuation contributions surcharge; or
- (vii) to give effect to an entitlement of a Non-Member Spouse under a Payment Split.

(h) if the Life Expectancy is commuted, the commuted amount cannot exceed the benefit that was payable immediately before the commutation; and

Reversions

(i) if the Life Expectancy Pension reverts, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion;

Prohibition against transfers etc

(j) the Life Expectancy Pension cannot be transferred to a person except:

- (l) on the death of the primary beneficiary, to a reversionary beneficiary or, if there is no

reversionary beneficiary, to the estate of the primary beneficiary; or

- (ii) on the death of a reversionary beneficiary, to another reversionary beneficiary or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary;

Prohibition on borrowing etc

- (k) the capital value of the Life Expectancy Pension, and the income from it, cannot be used as security for a borrowing.

8. Market-Linked Pensions

The following terms apply to Market-Linked Pensions

Payments

- (a) a Market-Linked Pension must be paid:

- (i) at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to the primary beneficiary's life expectancy on the commencement day of the pension, rounded up to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years; or

- (ii) at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to the primary beneficiary's life expectancy mentioned in paragraph (i) calculated, at the option of the primary beneficiary, as if the primary beneficiary were up to 5 years younger on the commencement day; or

- (iia) if the pension has a commencement day on or after 1 January 2006 – the pension is paid at least annually to the primary beneficiary or reversionary beneficiary throughout a period that is not less than the period available under subparagraph (a)(i), and not more than the greater of the following periods:

- (A) the maximum period available under subparagraph (8)(a)(ii);

- (B) the period of years equal to the number that is the difference between the age attained by the primary beneficiary at his or her most recent birthday before the commencement day, and 100; or

(iii) if:

- (A) the pension is a pension that reverts to a surviving spouse on the death of the primary beneficiary; and

- (B) the life expectancy of the primary beneficiary's spouse is greater than the life expectancy of the primary beneficiary; and

- (C) the primary beneficiary has not chosen to make an arrangement mentioned in paragraph (i), (ii) or (iia) for the pension;

the pension is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to:

- (D) the life expectancy of the spouse on the commencement day; or

- (E) the life expectancy of the spouse calculated, at the option of the primary beneficiary, as if the spouse were up to 5 years younger on the commencement day; or

- (F) if the pension has a commencement day on or after 1 January 2006 – a period that is not less than the period available under sub-subparagraph (a)(iii)(D), and not more than the greater of the following periods:

- (I) the maximum period available under sub-subparagraph (a)(iii)(E);
 - (II) the period of years equal to the number that is the difference between the age attained by the spouse at his or her most recent birthday before the commencement day, and 100;
- at the option of the primary beneficiary, and rounded up to the next whole number if the life expectancy of the spouse, or the period, does not consist of a whole number of years; and

Amounts

- (b) the total amount of the payments to be made in a year (excluding payments by way of commutation but including payments made under a Payment Split) is determined in accordance with Schedule 6 to the SIS Regulations;

Residual capital value

- (c) a Market-Linked Pension does not have a residual capital value;

Rules concerning commutation of Market-Linked Pensions

- (d) a Market-Linked Pension cannot be commuted in whole or in part unless:
 - (i) the commutation results from the death of a pensioner or reversionary pensioner; or
 - (ii) the sole purpose of the commutation is:
 - (A) to pay a contribution surcharge; or
 - (B) to give effect to an entitlement of a Non-Member Spouse under a Payment Split; or
 - (C) to meet the rights of a client to return a financial product under Division 5 of Part 7.9 of the Corporations Act 2001; or
- (iii) the Market-Linked Pension has paid in the financial year in which the commutation is to take place at least the minimum amount, if any, determined in accordance with the SIS Regulations and as prescribed in the SIS Regulations.

- (e) the following further limitations on commutation apply in relation to a Market-Linked Pension. Such a pension additionally cannot be commuted in whole or in part unless:

- (i) if the pension:
 - (A) is not funded from the commutation of:
 - (i) an annuity that is provided under a contract that satisfies regulations 1.05 (2), (3), (9) or (10) of the SIS Regulations; or
 - (ii) another pension that is provided under rules that satisfies the standards applicable to Market-Linked Pensions or regulations 1.06 (2), (3) or (7) of the SIS Regulations; or
 - (iii) another pension that is provided under terms and conditions that meet the standards of regulation 1.07 (3A) of the Retirement Savings Account Regulations (**RSA Regulations**); and
 - (B) the commutation is made within 6 months after the commencement day of the pension; or
- (ii) subject to paragraph (iii), on the death of the primary beneficiary or reversionary beneficiary, by payment of:

- (A) a lump sum or a new pension to one or more dependants of either the primary beneficiary or reversionary beneficiary; or --
 - (B) a lump sum to the legal personal representative of either the primary beneficiary or reversionary beneficiary; or
 - (C) if, after making reasonable enquiries, the Trustee is unable to find a person mentioned in (A) or (B) above - a lump sum to another individual; or
- (iii) for the purposes of paragraph (ii), if the primary beneficiary has opted, under paragraph (a)(iii), for a period worked out in relation to the life expectancy or age of the primary beneficiary's spouse -- a Market-Linked Pension cannot be commuted until the death of both the primary beneficiary and the spouse; or
- (iv) if an eligible termination payment resulting from the commutation is transferred directly to the purchase of another benefit that is:
 - (A) an annuity provided under a contract that satisfies regulation 1.05 (2), (3), (9) or (10) of the SIS Regulations; or
 - (B) a pension that is provided under rules that meet the standards of this subregulation, or regulation 1.06 (2), (3) or (7) of the SIS Regulations; or
 - (C) a pension that is provided under terms and conditions that meet the standards of regulation 1.07 (3A) of the RSA Regulations; or
 - (v) to pay a superannuation contributions surcharge; or
 - (vi) to give effect to an entitlement of a Non-Member Spouse under a Payment Split;

Reversions

- (f) a Market-Linked Pension may be reversionary as the Trustee may determine. However, in such circumstances, it must not have a reversionary component greater than 100% of the account balance immediately before the reversion.

Commutation amounts

- (g) where a Market-Linked Pension is commuted - the commutation amount cannot exceed the account balance immediately before the commutation;

Transfers

- (h) a Market-Linked Pension is transferable. However, it can be transferred only:
 - (i) on the death of the primary beneficiary:
 - (A) to one of the dependants of the primary beneficiary; or
 - (B) to the legal personal representative of the primary beneficiary; or
 - (ii) on the death of the reversionary beneficiary:
 - (A) to one of the dependants of the reversionary beneficiary; or
 - (B) to the legal personal representative of the reversionary beneficiary.

Borrowing prohibition

- (i) the capital value of a Market-Linked Pension, and the income from it, cannot be used as security for a borrowing.
- (j) If at any relevant time the commencement day of the pension is on or after 1, June in any financial year, it is not necessary for any payment to be made for that financial year.

Other commutation etc requirements

- (k) The market-linked income stream must otherwise comply with all and any relevant requirements of the Act in relation to commutations, payments, payment factors and any other relevant requirement.

Non-Commutable Market-Linked Pension

- (l) For the purposes of these Rules the reference to 'Market-Linked Pension' will include a reference to a Non-Commutable Market-Linked Pension. This is a pension to which the following rules apply:

- (i) a Non-Commutable Market-Linked Pension must meet the standards of Regulation 1.06(8) of the SIS Regulations and cannot be cashed except in accordance with these Rules;
- (ii) subject to these Rules the same terms and conditions applying to payment of Market-Linked Pensions apply to the payment of Non-Commutable Market-Linked Pensions;
- (iii) however, a Non-Commutable Market-Linked Pension can only be commuted and paid as a lump sum to a member if:
 - (A) the purpose of the commutation meets the requirements of the definition of non commutable pension in Regulation 6.01 of the SIS Regulations; or
 - (B) before commutation the Member has satisfied a condition or release as contemplated in the definition of non commutable pension in Regulation 6.01 of the SIS Regulations; or
 - (C) the commutation occurs within the first six months and otherwise meets the standards of the Act and SIS Regulations; or
 - (D) the commutation results from the death of the Member or Reversionary Beneficiary in the circumstances set out in the Act and SIS Regulations; or
 - (E) the resulting lump sum is used to purchase another income stream; or
 - (F) the sole purpose of the commutation meets the requirements in regulation 1.07C of the SIS Regulations; or
 - (G) for partial commutations, the balance of the Member's Member Account after the commutation is equal to or exceeds the limits calculated in accordance with regulation 1.07C of the SIS Regulations; or
 - (H) the pension payments for the year to date at least equal the minimum amount required under regulation 1.07C of the SIS Regulations.

9 Flexi Pensions

The following terms apply to Flexi Pensions:

Payments and Amounts

- (a) the pension must be paid at least annually;
- (b) the size of pension payments in a year is fixed, allowing variation only as specified in these Rules or to allow payments to be made under a Payment Split.
- (c) the pension must commence after 1 July 1994;
- (d) if the pension reverts or is commuted it does not have a reversionary component greater than 100% of the benefit payable before the reversion or commutation;

Prohibition on certain Transfers etc

- (e) the pension can only be transferred to the reversionary beneficiary on the death of the pensioner or of another reversionary beneficiary;

Prohibition against borrowings

- (f) the capital value of the pension cannot be used as security for borrowing;
- (g) unless a payment is a commutation to pay a superannuation contributions surcharge, any variation in payments from year to year must not exceed the average rate of increase of the CPI in the preceding 3 years.

Residue if no reversion

- (h) on the death of a pensioner leaving no reversionary beneficiary, if the pension is not commuted or transferred in accordance with this Deed, the Trustee must pay any residue in the pension account in any way permitted by the Act.

Commutation

- (i) a flexi pension cannot be commuted unless one of the following conditions applies:
- (i) the commutation results from the death of a pensioner or reversionary beneficiary; or
- (ii) the sole purpose of the commutation is to:
- (A) pay a superannuation contributions surcharge; or
- (B) give effect to the entitlement of a Non-Member Spouse under a Payment Split; or
- (C) meet the rights of a client to return a financial product under Division 5 of Part 7.9 of the Corporations Act; or
- (iii) the pension has paid, in the year when the commutation takes place, the minimum annual amount as provided in r 1.07B(4) of the SIS Regulations.
- (j) if the pension is commuted then, the conversion to a lump sum is limited to a sum not greater than the sum determined by applying a pension valuation factor under Schedule 1B to the SIS Regulations to the pension, as if the commencement day were the day on which the commutation occurs.

10 Particular arrangements

Subject to the Act, the Trustee may:

- (a) require a Beneficiary requesting payment of a pension to provide the Trustee with information and other particulars relating to the pension before the pension begins to be paid and during the period of payment of the pension; and
- (b) agree with the Beneficiary on particular arrangements to apply to the pension. For example, these may relate to the number and identity of any reversionary beneficiaries, the frequency of pension payments, the amount of pension payments, the treatment of benefits on the Beneficiary's death and any other relevant matters; and

11 Reserves

Subject to the Act, where it considers it appropriate, the Trustee may:

- (a) obtain the advice of an actuary regarding the amount of pension payments, any variation to the amount of those payments, commutations, the establishment, monitoring or treatment of pension reserves in accordance with this Rule 11, or any other relevant

matter;

- (b) establish pension reserves in relation to the funding of pension obligations relating to particular Beneficiaries;
- (c) where a pension benefit liability to which a pension reserve relates no longer exists, or the amount of the pension reserve exceeds the expected liability, arrange for any assets or excess assets in the pension reserve to be applied in any manner whatsoever that the Trustee considers fair and reasonable, including for the general purposes of the Fund, but having special regard to the interests of the Beneficiary to whom the pension benefit related and that Beneficiary's Dependents.

12. Death benefits

- (a) This Rule 12 applies if the terms of a particular pension as provided above, and taking into account any particular arrangements made in accordance with Rules 8 and 10, do not provide for the consequences for payment of the pension on the death of the pension recipient.
- (b) Where this Rule 12 applies, then unless the Trustee otherwise agrees, and subject to the Act, if any amount is payable in respect of the pension recipient on the pension recipient's death, it will be dealt with in accordance with Clause 12.6 of the Deed. For this purpose, references in Clause 12.6 to the Member will be treated as references to the deceased pension recipient.

SCHEDULE 3

PART 1
Application for Membership
With Indicative Death Benefit Nomination – No Binding
Death Benefit Nomination

Member details	
Name:	
Address:	
Date of Birth:	
Occupation:	
Telephone:	
Fax:	
Amount of Deposit (\$)?:	

* **(A Statement of Termination Payment needs to be attached if an amount is being transferred from another superannuation fund)**

I hereby apply to become a member of

I understand that my membership is subject to terms and conditions specified in the Trust Deed governing the Fund.

SIGNED DATED

Employer details	
Employer:	
Address:	

Nomination of dependants

Important information for completion

- This Nomination Notice is not binding. The Trustee/s will take it into account in the event that a benefit is paid from the Fund on your death. However, the Trustee/s have complete discretion as to which of your Dependants and/or Legal Personal Representative may receive the benefit and in what proportions. If there are no Dependants or Legal Personal Representative, the benefit may be payable to any other person.
- This Nomination Notice must be fully completed in accordance with the details below:
 - Ensure both pages of this Notice are completed.
 - The Beneficiaries named in this Notice must be Dependants and/or your Legal Personal Representative. Your Dependants are your spouse, de facto spouse and your children (including step, adopted and ex-nuptial children), and any other person financially dependent upon you at the time of your death. Your Legal Personal Representative is either the person named as your executor in your will, or, if you do not have a valid will at the date of your death, the person who, as your next of kin, applies for and has been granted letters of administration for your estate. Should you wish to nominate your legal personal representative, please write 'Legal Personal Representative' as the name of the Beneficiary.
 - For each person nominated, you must provide both their relationships to you and the proportion of any benefit that is to be paid to each.

Nomination of dependants		
Name	Relationship to you	Proportion of benefit

Member declaration

I, _____ of _____ as a member of the Fund, request the Trustee/s to pay my death benefit to the above persons in the proportions shown.

I understand that:

- in the event of my death, the Trustee/s have complete discretion as to which of my dependants and/or estate will receive any death benefit payable.
- this Notice revokes and amends any previous notice supplied to the Trustee/s of the Fund in regard to my nominated beneficiaries.

Signature of Member	Date / /
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SCHEDULE 3

PART 2
Application for Membership
With Binding Death Benefit Nomination

Member details
Name:
Address:
Date of Birth
Occupation:
Telephone:
Fax:
Amount of Deposit (\$) *:

* **(A Statement of Termination Payment needs to be attached if an amount is being transferred from another superannuation fund)**

I hereby apply to become a member of.

I understand that my membership is subject to terms and conditions specified in the Trust Deed governing the Fund.

SIGNED

DATED

Employer details
Employer:
Address:

Binding death benefit nomination**Information about binding directions**

The operation of the Fund, or which you are being invited to be a member, is governed by a document called a Trust Deed. The Trustee of the Fund is bound to act in accordance with the requirements of the Trust Deed in administering the Fund.

Under the Trust Deed, the Trustee has a discretion to decide whether, in the event of your death, to pay the death benefit, which is payable to your estate or to dependants of yours, and, in what proportions.

However, the Trust Deed also enables you to override the Trustee's discretion by you giving a binding direction to the Trustee. This is a direction to the Trustee to pay any death benefit payable either to your estate or to dependants specified by you and in the proportions that you specify.

You may either elect for the Trustee to exercise the discretion given to it to decide who to pay your benefit to, in the event of your death, or you can give a binding direction to the Trustee by completing the direction in this Nomination.

Important points about binding directions

If you decide to give a binding direction by completing this Nomination, it is important for you to note the following:

1. You can only direct the Trustee to pay the benefit either to your estate or to the dependants that you specify on this Nomination (or both).
2. If you wish to give such a direction to the Trustee, you must specify the percentage of your total death benefit which is to be paid to each of the estate of your dependants.
3. You can confirm, amend or revoke this Nomination at any time by giving written notice to the Trustee.
4. The direction that you give automatically ceases to have any effect 3 years after the date on which you sign and date this Nomination. If the direction ceases to have effect, the Trustee will have a discretion to decide who to pay the death benefit to.
5. If, on this Nomination, you direct the Trustee to pay any part of your death benefit to a person who is not a dependant (as described below), your direction will be void and of no effect and the Trustee will be required to decide who to pay your death benefit to.
6. For the purposes of the Trust Deed, a dependant is:
 - a spouse of a Member
 - any children of a Member
 - any other person (whether related to the Member or not) who is financially dependent on the Member

"Spouse" includes a de facto spouse and "children" includes step-children, adopted and ex-nuptial children. If you have any doubt as to whether a person you wish to nominate to receive any part of your death benefit is a dependant, you should seek advice from the Trustee before completing this Nomination.
7. For this Nomination to be effective, it must be signed and dated by you in the presence of 2 witnesses who are both at least 18 years old and neither of the witnesses can be a person who you have nominated to receive a part of your death benefit.

Important information for completion

1. In order for this Nomination Notice to be valid, it must be fully completed in accordance with the details below:
 - Ensure the Nomination, Member Declaration and Witness Declaration are completed.
 - The Beneficiaries named in this Nomination must be Dependents and/or your Legal Personal Representative. As mentioned above, your Dependents are your spouse, de facto spouse and your children (including step, adopted and ex-nuptial children), and any other person financially dependent upon you at the time of your death. Your Legal Personal Representative is either the person named as your executor in your will, or, if you do not have a valid will at the date of your death, the person who applies for and has been granted letters of administration for your estate. Should you wish to nominate your legal personal representative, please write 'Legal Personal Representative' as the name of the Beneficiary.
 - For each person nominated, you must provide both their relationships to you and the proportion of any benefit that is to be paid to each.
 - The Nomination must be signed and dated by you in the presence of two witnesses aged 18 years or over. Both witnesses must also provide their date of birth, sign and date the Nomination. It is important to note that the witnesses cannot be persons nominated as beneficiaries.
2. If any of this information is not provided, then your Nomination may be invalid. The Trustee/s will contact you for clarification if this is the case.
3. It is not compulsory to complete this Nomination. Details of who a death benefit will be paid to in the situation where there is no valid Nomination, can be found in the Member Information document.

Nomination of dependants		
Name of beneficiary	Relationship to you	Proportion of benefit

Total Allocation 100%
Member declaration

I, _____ of _____ as a member of the Fund, direct the Trustees to pay my death benefit to the above persons in the proportions shown above.

I understand:

- I can amend or revoke this Nomination at any time by providing a new Nomination to the Trustee/s of the Fund, signed and dated by myself in the presence of two witnesses who are aged 18 years or over;
- Unless amended or revoked earlier, this Nomination is binding on the Trustee/s for a period of 3 years from the date it is first signed or last confirmed;
- This Nomination revokes and amends any previous notice supplied to the Trustee/s of the Fund in regard to my nominated beneficiaries;
- If this Nomination is not correctly completed, it may be invalid.
- If I have nominated persons who are not "dependants" as explained above, the direction contained in the Nomination, will be void and of no effect and the Trustee will have a discretion as to when the benefit is payable and in what proportion.

I acknowledge that I have been provided with information by the Trustee/s of the Fund that enables me to understand my rights to direct the Trustee/s to pay my Death Benefit in accordance with this Nomination.

Signature of Member	Date / /
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Witness declaration
 We declare that:

- this Nomination was signed by the member in our presence;
- we are aged 18 or more; and
- we are not named as beneficiaries.

Signature of Member	Signature of Witness	Date / /
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EXECUTED AS A DEED

Signed Sealed and Delivered for and on behalf of
McPeake Constructions Pty Ltd

ACN 008 019 798

by authority of the Directors

in the presence of:

)
)
)
)

Name: _____

Director



Name: _____

Director/Secretary

