

**SUPERANNUATION FUND  
DEED OF VARIATION**

**Tyler Narborough  
Super Fund**

Our ref: 3598:187674 (SMSF2018-19)



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JAN 2019

THIS DEED is made on: 21 January 2019 (insert date of execution)

**BETWEEN:** **DEBRA JOY TYLER** and **GUY NARBOROUGH** both of 24 Lillian Sophia Pl,  
Coomba Bay, New South Wales 2428 ('Trustees')

**AND:** **DEBRA JOY TYLER** and **GUY NARBOROUGH** both of 24 Lillian Sophia Pl,  
Coomba Bay, New South Wales 2428 ('Members')

**RECITALS:**

- A The fund known as 'Tyler Narborough Super Fund' ('Fund') was established by deed dated 9 August 2006.
- B The Trustees are all of the current trustees and the Members are all of the members of the Fund.
- C The parties propose to vary the current governing rules of the Fund ('Outgoing Governing Rules') to ensure the Fund continues to comply with the *Superannuation Industry (Supervision) Act 1993* (Cth) ('SISA') and the *Superannuation Industry (Supervision) Regulations 1994* (Cth) ('SISR'). Broadly, the variation will delete the provisions of the Outgoing Governing Rules and replace them with the new governing rules attached to this deed ('New Governing Rules').
- D Subject to certain provisos, the Outgoing Governing Rules empower the Trustees to vary the Outgoing Governing Rules. The Members wish to consent to the variation by executing this deed.
- E Subject to rule 1, the purpose of the Fund is to provide superannuation benefits to Members, and in the event of their death, to their Dependants and to act for any other purposes as permitted from time to time by the SISA and the SISR.
- F The parties wish to maintain the Fund as a complying superannuation fund under the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth).
- G The parties intend that the proposed variation is in accordance with the provisos limiting variation of the Outgoing Governing Rules and is not intended to give rise to any change in beneficial entitlement in the Fund.
- H Details of the Fund on execution of this deed are summarised in the schedule attached to this deed.

**PROVISIONS:**

- 1. Subject to provisions 2 and 3 below:
  - 1.1 the Outgoing Governing Rules (including any schedules thereto) are varied by deleting all of the operative provisions therein and replacing them with this deed and the New Governing Rules; and
  - 1.2 this deed and the New Governing Rules are subject to the interpretation and definition provisions in the New Governing Rules.
- 2. Subject to the Standards, any provisions or schedules in the Outgoing Governing Rules that:
  - 2.1 provide for the payment of a Benefit (including a Defined Benefit Pension) that is still being provided, the provision of which is not specifically contemplated in the New Governing Rules;
  - 2.2 specify a perpetuity period;

- 2.3 provide for loans to Members;
- 2.4 provide a limitation or restriction that cannot be varied or deleted; or
- 2.5 are currently utilised by the Trustees to provide for:
  - (a) categories of membership; or
  - (b) vesting of benefits;

are preserved and form part of this deed and the New Governing Rules ('Preserved Provisions'). To the extent of any inconsistency between the Preserved Provisions and the remaining provisions of this deed and the New Governing Rules (including any schedules thereto), the Preserved Provisions shall prevail.

3. A BDBN made by a Member under the provisions of the Outgoing Governing Rules continues to be effective despite this variation. Such a BDBN is subject to the conditions (such as the completion of formalities, duration, type of Benefit and to whom it is payable) that applied to that BDBN prior to the date of this variation. Each Member may however revoke their existing BDBN and make a new BDBN in accordance with this deed and the New Governing Rules.
4. This variation maintains the trust relationship and shall not give rise to any change in beneficial entitlement in the Fund or a resettlement of the Fund and shall be void to the extent that it would otherwise do so.
5. The parties confirm that:
  - 5.1 all parties consent to the variation and act and execute this deed in all relevant capacities to effect it;
  - 5.2 this deed constitutes written notice to all parties and also constitutes a simple resolution and a resolution passed by all parties present in a meeting called for the relevant purpose;
  - 5.3 the Outgoing Governing Rules (including any notice or information requirements) have been complied with, but to the extent that any requirement has not or may not have been complied with, it is waived; and
  - 5.4 the variation is in accordance with the provisos limiting the variation of the Outgoing Governing Rules and where any additional items are necessary in order to ensure the effectiveness of this deed, such items are hereby deemed to occur.
6. The parties confirm the provisions of this deed and the New Governing Rules in all other respects.

**EXECUTED** as a deed.

#### TRUSTEES

SIGNED SEALED AND DELIVERED by  
**DEBRA JOY TYLER** in the presence of  
 the following witness:

)  
 )

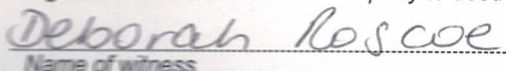
X



Signature of **DEBRA JOY TYLER**



Signature of witness who is not a party to deed

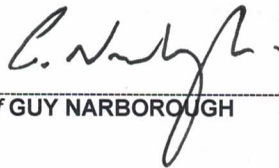


Name of witness



Address of witness

SIGNED SEALED AND DELIVERED by  
**GUY NARBOROUGH** in the presence of  
the following witness:



Signature of **GUY NARBOROUGH**



Signature of witness who is not a party to deed

Deborah Roscoe

Name of witness

133 Alexander Street, Crows Nest, NSW 2065

Address of witness

#### MEMBERS

SIGNED SEALED AND DELIVERED by  
**DEBRA JOY TYLER** in the presence of  
the following witness:



Signature of **DEBRA JOY TYLER**



Signature of witness who is not a party to deed

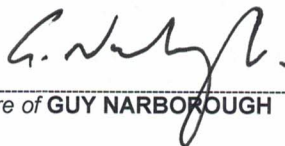
Deborah Roscoe

Name of witness

133 Alexander Street, Crows Nest NSW 2065

Address of witness

SIGNED SEALED AND DELIVERED by  
**GUY NARBOROUGH** in the presence of  
the following witness:



Signature of **GUY NARBOROUGH**



Signature of witness who is not a party to deed

Deborah Roscoe

Name of witness

133 Alexander Street, Crows Nest, NSW 2065

Address of witness

## **SCHEDULE**

### **Fund details**

Fund name: Tyler Narborough Super Fund

### **Trustee details**

Name: DEBRA JOY TYLER

Address: 24 Lillian Sophia Pl, Coomba Bay, New South Wales 2428

Name: GUY NARBOROUGH

Address: 24 Lillian Sophia Pl, Coomba Bay, New South Wales 2428

### **Member details**

Name: DEBRA JOY TYLER

Address: 24 Lillian Sophia Pl, Coomba Bay, New South Wales 2428

Name: GUY NARBOROUGH

Address: 24 Lillian Sophia Pl, Coomba Bay, New South Wales 2428

## SMSF GOVERNING RULES

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## **1. Fund purpose**

- 1.1 While the Trustee is not a Corporate Trustee, the sole or primary purpose of the Fund is the provision of Old-Age Pensions to Members and, on their death, to their Dependants.
- 1.2 While the Trustee is a Corporate Trustee, the sole or primary purpose of the Fund is the provision of Benefits to Members and, on their death, to their Dependants.
- 1.3 Subject to the Standards, this Fund is not intended to be a Defined Benefit Fund, and the Trustee must not:
- (a) operate the Fund as if the Fund were a Defined Benefit Fund;
  - (b) accept a Member who would be a Defined Benefit Member; or
  - (c) convert a Member to a Defined Benefit Member, or the Fund to a Defined Benefit Fund;
- and the Trustee must reject or disregard any applicant, Member, contribution or any other event that would otherwise cause the Fund to become a Defined Benefit Fund.
- 1.4 The Fund is intended to be an SMSF. However, during any period that the Fund's status is such that it is no longer an SMSF and is a Small APRA Fund or another type of fund permitted under the Standards, these Governing Rules are to be read subject to the Fund's status at the relevant time.

## **2. Fund assets**

- 2.1 The assets of the Fund comprise all the cash, investments, insurances and other rights or entitlements held on trust by the Trustee under these Governing Rules and include:
- (a) any money or assets transferred to the Fund;
  - (b) any contribution (in money or in kind) made to the Fund; and
  - (c) all profits, accumulations and Earnings of the Fund, net of any Disbursements.
- 2.2 Subject to rule 6.2, a Member is not entitled to any specific asset belonging to the Fund and the Trustee has discretion in determining which assets are applied to provide funds for any amount which becomes payable in respect of a particular Member.
- 2.3 Every outgoing Trustee must use its best endeavours, at the request of an incoming Trustee, to transfer its title to the assets of the Fund to the incoming Trustee and to assist the incoming Trustee to gain control of the Fund.

## **3. Trustee**

### **3.1 Trustee**

The Fund is vested in the Trustee and the Trustee holds the Fund assets subject to these Governing Rules. The Trustee is permitted to be such one or more natural persons, Corporate Trustee, RSE Licensee, acting trustee, substitute trustee, replacement trustee or other person or company permitted or required to act as a trustee of the Fund from time to time by the Standards.



## 3.2 Appointment

- (a) Subject to the Standards, the Member or Members who either individually or combined have aggregate Total Interests attributable to them that are greater than half of the total value of all Total Interests in the Fund attributable to Members may, by deed, written resolution or other written instrument appoint a Trustee who consents to that appointment in writing.
- (b) If the Trustee is a Corporate Trustee, the appointment of a director of a Corporate Trustee (whether as a successor director or otherwise) is determined in accordance with the Company Rules unless the Standards prescribe otherwise.
- (c) Subject to the Standards and the Trustee's discretion to determine otherwise, during any period that the Fund is an SMSF, each individual Trustee or each director of a Corporate Trustee must:
  - (i) not be a Disqualified Person;
  - (ii) be a Member of the Fund and satisfy any eligibility criteria to be an individual trustee or director of a Corporate Trustee as prescribed by the Standards;
  - (iii) satisfy such alternative test that is permitted by the Standards providing for such situations as:
    - (A) if the SMSF has a single Member;
    - (B) if a Member has died, even if no nomination has been made by that Member in accordance with rule 3.3 or, if the Trustee is a Corporate Trustee, under the Company Rules;
    - (C) if a Member suffers from a legal disability (including a person under a legal disability because of age), even if no nomination has been made by that Member in accordance with rule 3.3 or, if the Trustee is a Corporate Trustee, under the Company Rules;
    - (D) if a Member is under a legal disability due to age and does not have an LPR — including where:
      - (1) the parent or guardian of the Member is a Trustee of the Fund in place of the Member; or
      - (2) if the Trustee of the Fund is a Corporate Trustee — the parent or guardian of the Member is a director of the Corporate Trustee in place of the Member;
    - (E) if a Member has appointed an LPR under an enduring power of attorney; or
    - (F) if a Benefit in the Fund is subject to a Payment Split or a Non-Member Spouse interest has been created pursuant to the SISR for a Non-Member Spouse who was not a Member of the Fund immediately before the operative time for the Payment Split; or
  - (iv) satisfy such other requirements permitted by the Standards or the Regulator.



- (d) Subject to the Standards and the Trustee's discretion to determine otherwise, during any period that the Fund is a Small APRA Fund the Trustee must:
  - (i) be an RSE Licensee authorised to act as trustee of the Fund; or
  - (ii) satisfy such other requirements permitted by the Standards or the Regulator.
- (e) Subject to the Standards and the Trustee's discretion to determine otherwise, during any period that the Fund is not an SMSF or a Small APRA Fund, the Trustee must satisfy such requirements prescribed by the Standards or the Regulator in relation to the Trustee and the decision making of the Trustee.
- (f) The Regulator may appoint an acting trustee in accordance with the Standards on such terms and conditions as the Regulator may specify.
- (g) To the greatest extent permitted by law, the appointment of a Trustee can take effect retrospectively.
- (h) To the greatest extent permitted by law, any change of trustee (whether appointment, resignation, retirement, removal, etc) does not need to be registered in any state or territory in order to be effective.

### 3.3 **Successor Trustee**

- (a) A Member who is an individual Trustee (**'Nominating Member'**) may make a nomination to appoint one or more persons to act as Trustee (**'Successor Trustee'**) in place of the Nominating Member in the event of the Nominating Member's death or during any period that the Nominating Member is under a legal disability, subject to rule 3.10(b).
- (b) A nomination made under this rule 3.3:
  - (i) must be in writing;
  - (ii) must be signed by the Nominating Member in the presence of at least one adult witness;
  - (iii) can provide for conditions or limitations on how the Successor Trustee can act; and
  - (iv) can provide for whether the failure of one person to be appointed as Successor Trustee affects the appointment of any other person.
- (c) A nomination made under this rule 3.3 is revoked if:
  - (i) the Nominating Member makes a new nomination;
  - (ii) the Nominating Member revokes their nomination in writing, whether or not any other Trustees are notified; or
  - (iii) a Corporate Trustee is appointed as Trustee of the Fund.
- (d) The appointment of each Successor Trustee becomes effective and each Successor Trustee becomes a Trustee of the Fund on the death or legal disability of the Nominating Member.
- (e) For the avoidance of doubt, if a Successor Trustee dies or comes under a legal disability before the death or legal disability of the Nominating Member, the deceased or legally disabled Successor Trustee's LPR may not become a Trustee of the Fund by virtue of being the LPR of that Successor Trustee.
- (f) In addition to any other circumstances in which the office of a Trustee becomes vacant under these Governing Rules, where the Successor Trustee holds

office as a Trustee because of the legal disability of the Nominating Member, the office of a Trustee that is held by a Successor Trustee ceases if the Nominating Member ceases to be under a legal disability and subsequently gives notice in writing to the Successor Trustee that the Successor Trustee is to cease to be a Trustee (furthermore, at the time such notice occurs, the Nominating Member again becomes a Trustee).

### 3.4 Vacancy

Subject to the Standards:

- (a) the office of a Trustee, or in the case of an individual Trustee, the office of that individual Trustee becomes vacant if:
  - (i) the Trustee resigns as trustee by executing a deed, written resolution or other instrument or in some other manner authorised by the Standards;
  - (ii) where the Trustee is a natural person, the Trustee dies;
  - (iii) where the Trustee is a natural person, the Trustee comes under a legal disability and an appointment of Successor Trustee in place of that Trustee is made in accordance with rule 3.3;
  - (iv) subject to the Standards, the Member or Members who either individually or combined have aggregate Total Interests attributable to them that are greater than half of the total value of all Total Interests in the Fund attributable to Members remove a Trustee by deed, written resolution or other written instrument; or
  - (v) where a Trustee has consented (including prospectively) to resign upon the occurrence of a specified event, or at a specified time, that event occurs or that time arrives;
- (b) if any of the events described in rule 3.4(a) occur, either of the following applies:
  - (i) where the Trustee comprised individual trustees, the office may be filled if a Successor Trustee has been appointed under rule 3.3(d); or
  - (ii) if rule 3.4(b)(i) does not apply, the vacancy should be filled as soon as practicable if the vacancy causes or would in the short-term cause the Fund to cease being an SMSF, Small APRA Fund or another type of fund as the case may be; and
- (c) if the office of Trustee (**'Relevant Trustee'**) becomes vacant as contemplated by rule 3.4(a)(v) above, the Trustee or Trustees who remain have the power to complete all necessary transactions and documents, including, where applicable:
  - (i) confirming by written instrument that the Relevant Trustee is no longer a Trustee (though a failure to confirm this in writing will not affect the Relevant Trustee's cessation from the office of Trustee);
  - (ii) notifying the Regulator that the Relevant Trustee has ceased to be a Trustee or director of the Corporate Trustee; and
  - (iii) transferring money or assets into the name of the remaining Trustee or Trustees.

### 3.5 **Retrospective and prospective appointment, retirement and removal of Trustee**

To the greatest extent permitted by law, a Trustee can retrospectively or prospectively be appointed, retire or be removed.

### 3.6 **Appointor, Member and Member Representative powers not fiduciary**

To the greatest extent permitted by the Standards, the powers in rules 3.2(a), 3.2(b) and 3.4(a)(iv) and any other powers or discretions conferred on Members or on a Member Representative are not fiduciary powers, and may be exercised without any requirement to act in good faith, to act impartially or to consider the interests of any other person or entity.

### 3.7 **Queensland law**

If the applicable law in rule 27 includes Queensland, any change of trustee is subject to part 2 of the *Trusts Act 1973* (Qld) except that a sole trustee may act as Trustee and a resigning or departing trustee is fully discharged even where only one Trustee remains.

### 3.8 **Notification and declaration requirements**

If required by the Standards and subject to rule 23, a declaration, notification or other document prescribed by the Standards must be completed and lodged with the Regulator or retained with the Fund's records within the required time on a change in the office of Trustee or change in the directorship of a Corporate Trustee.

### 3.9 **Decisions — individual Trustees**

- (a) If the Trustee comprises two or more individuals, trustee decisions at first instance require majority approval, with each trustee having one vote, and if there is any deadlock in reaching any decision, each trustee's vote is weighted in relation to the value the person's Total Interests in the Fund that they either have as a Member and/or represent if the trustee is acting in place of a Member, and the decision of the trustee or trustees with the greatest overall weighting prevails. This rule applies despite any general law rule to the contrary.
- (b) If the Trustee comprises one individual, the Trustee may make decisions and pass resolutions alone.

### 3.10 **Decisions — Successor Trustees and LPRs**

- (a) The following have the same voting rights as the Nominating Member or Member would otherwise have had as Trustee:
  - (i) a Successor Trustee appointed as a Trustee in accordance with rule 3.3; or
  - (ii) an LPR appointed as a Trustee in place of a Member in any other circumstance.
- (b) If the LPR acting as Trustee, whether as Successor Trustee or otherwise, is comprised of more than one person, whether acting jointly or jointly and severally, then:
  - (i) those persons are jointly entitled to only one vote as Trustee; and
  - (ii) in the event of a deadlock in making any decision, the LPR's joint vote is only weighted once under rule 3.9 in relation to the value of the Total Interests of the Nominating Member or Member, as the case requires, whom the LPR acts as Trustee in place of.

- (c) Despite rule 3.10(a), if:
- (i) a Successor Trustee appointed in accordance with rule 3.3 continues to be, and is permitted to be, a Trustee of the Fund after the events described in rule 3.3(f); or
  - (ii) an LPR appointed as Trustee in place of a Member in any other circumstance continues to be, and is permitted to be, a Trustee of the Fund after, as the case requires:
    - (A) Benefits in respect of the deceased Member's Interests commence to be payable;
    - (B) the Member ceases to be under a legal disability; or
    - (C) the LPR ceases to hold an enduring power of attorney in respect of the Member;
- then that Trustee, after the relevant event, has the ordinary voting rights of any Trustee as provided for in rule 3.9.

### 3.11 Meetings — individual Trustees

Trustees may communicate with each other and meet together for the dispatch of business and adjourn and otherwise regulate their business as they think fit and, unless the Standards prescribe otherwise:

- (a) the Trustees may communicate via any means as the Trustees determine appropriate including any Technology. Subject to rules 3.11(c) and 3.11(d), a resolution passed by Technology is effective, despite that the Trustees may not be present together in the same place at the same time;
- (b) if there is any interruption to a conference of Trustees, the Trustees have a discretion to determine that the interruption constitutes an adjournment of the conference until the time communications are reconnected or the Trustees determine;
- (c) a resolution may be confirmed by means of writing, Technology or other means as the Trustees approve; and
- (d) if all the Trustees have signed, passed or otherwise acknowledged a resolution which may be in a document or separate documents (including in a manner permitted by rule 3.11(c)) containing a statement that they are in favour of a resolution, that resolution is taken to have been passed at the time the document was signed, passed or otherwise acknowledged by the last Trustee required to sign, pass or otherwise acknowledge that document.

### 3.12 Decisions and meetings — Corporate Trustees

If the Trustee is a Corporate Trustee, Trustee decisions and meetings are to be in accordance with the Company Rules unless the Standards prescribe otherwise.

### 3.13 Remuneration

Subject to rule 3.14 (the object of which is to, where applicable, prevent the Fund from ceasing to be an SMSF), both a director of a Corporate Trustee and an individual who is a Trustee may be remunerated from the Fund. An RSE Licensee or acting trustee is entitled to its normal fees, charges and commissions including any amounts authorised by legislation.

### 3.14 Limitations on remuneration

Subject to rule 5 and the Standards:

- (a) during any period that the Fund is an SMSF, neither a director of a Corporate Trustee nor an individual who is a Trustee is entitled to receive remuneration from the Fund for their services unless remuneration would not cause the Fund to cease to be an SMSF;
- (b) subject to rule 3.14(a), any individual Trustee or director of a Corporate Trustee engaged in any profession or business may, despite their office, act in a professional or business capacity, and is entitled to charge and be paid for all professional and other charges for any business or work or act done by them in connection with the Fund, and in particular, a director of a Corporate Trustee or an individual who is a Trustee ('**Service Provider**') may be remunerated if:
  - (i) the Service Provider performs the duties or services other than in the capacity of Trustee;
  - (ii) the Service Provider is appropriately qualified, and holds all necessary licences, to perform the duties or services;
  - (iii) the Service Provider performs the duties or services in the ordinary course of a business, carried on by the Service Provider, of performing similar duties or services for the public; and
  - (iv) the remuneration is no more favourable to the Service Provider than that which it is reasonable to expect would apply if the Service Provider were dealing with the relevant other party at arm's length in the same circumstances; and
- (c) subject to rules 3.14(a) and 3.14(b), an individual Trustee or a director of a Corporate Trustee is not required to make an election between professional charges and any commission or fees otherwise authorised by the Members, statute or a court of law.

### 3.15 Vesting assets and transfer of rights on a change of trustee

A change of Trustee including the appointment or removal of a Successor Trustee made in accordance with this rule 3 whether by deed, resolution or otherwise is sufficient to implement such a change (whether an appointment, resignation or other change), vest the Fund's assets and transfer existing rights (including contractual or other rights) into or in the name of the new or continuing Trustees or Successor Trustees, as the case may be, without any further need for any document evidencing that change to be registered or stamped with any government or similar body or any further action unless such a requirement cannot be excluded under the Trustee Law or other applicable law of the relevant state or territory.

## 4. Trustee's duties

### 4.1 The Trustee must:

- (a) act honestly in relation to all matters concerning the Fund;
- (b) exercise, in relation to all matters concerning the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with assets of another for whom that person felt morally bound to provide;
- (c) ensure that the Trustee's duties and powers are performed and exercised in the best interests of the beneficiaries;

- (d) keep the money and other assets of the Fund separate from any money and assets, respectively:
  - (i) that are held by the Trustee personally;
  - (ii) that are money or assets of an employer or an associate; or
  - (iii) that are otherwise not part of the Fund;
- (e) not enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising its functions and powers;
- (f) formulate, review regularly and give effect to one or more investment strategies that have regard to the whole of the circumstances of the Fund and the circumstances of particular Members including, but not limited to, the following:
  - (i) the risk involved in making, holding and realising, and the likely return from, the investments of the Fund having regard to the Fund's objectives and expected cash flow requirements;
  - (ii) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
  - (iii) the liquidity of the Fund's investments having regard to the Fund's expected cash flow requirements;
  - (iv) the ability of the Fund to discharge its existing and prospective liabilities;
  - (v) any other factors prescribed by the Standards; and
  - (vi) whether the Trustee should hold a contract of insurance that provides insurance cover for one or more Members of the Fund;
- (g) if there are reserves, formulate and give effect to one or more strategies for the prudential management of any reserves held by the Fund consistent with the Fund's investment strategies and its capacity to discharge its liabilities, whether actual or contingent, as and when they fall due;
- (h) provide Members with access to any prescribed information and prescribed documents in accordance with the Standards; and
- (i) ensure that such other duties or covenants that a trustee of the Fund must comply with under the Standards from time to time, including preparation of a derivatives risk statement and related documentation, are complied with.

4.2 Where the Trustee of the Fund is a Corporate Trustee, each director of the Corporate Trustee must exercise a reasonable degree of care and diligence for the purposes of ensuring that the Corporate Trustee acts in accordance with rule 4.1.

## **5. Indemnities**

5.1 Subject to the Standards, the Trustee and its directors or officers are not liable or responsible for any loss:

- (a) arising from a breach of trust or otherwise, unless the Trustee and its directors or officers:
  - (i) failed to act honestly in a matter concerning the Fund; or

- (ii) intentionally or recklessly failed to exercise, in relation to a matter affecting the Fund, the degree of care and diligence the Trustee and its directors or officers were required to exercise;
- (b) suffered as a result of relying on any Advice or assistance, provided that the Trustee was acting in good faith;
- (c) suffered as a result of the delegation in good faith of any function, discretion, duty or obligation;
- (d) resulting from the Trustee complying with the Standards notwithstanding that the act or omission may constitute a breach of trust or non-compliance with the express provisions of these Governing Rules;
- (e) suffered by the Fund or any Member as a result of:
  - (i) no or insufficient, inadequate or inappropriate insurance being obtained by the Trustee, whether the loss was foreseeable or not; or
  - (ii) an insurer failing to pay, in whole or in part, an amount in respect of an insurance cover for whatever reason; or
- (f) suffered by the Fund or any Member as a result of an honest mistaken payment or overpayment to any person or entity;

unless the Standards require that the Trustee and its directors or officers must remain liable or responsible for the act or omission resulting in the loss if the act or omission gave rise to a monetary penalty under the civil penalty order provisions of the Standards or otherwise.

## 5.2 The Trustee:

- (a) is fully indemnified out of the Fund for the costs of managing and administering the Fund and all other liabilities incurred by or on behalf of the Fund;
- (b) has a lien on and may use the assets of the Fund to satisfy this indemnity unless prohibited by regulations 13.13 or 13.14 of the SISR, Part 5 of the SISR or otherwise by the Standards.

5.3 Unless expressly provided for elsewhere in these Governing Rules, a Member or a beneficiary of the Fund, in that capacity, is not liable and is not required to indemnify the Trustee against any liability, obligation, costs, Tax or damages howsoever arising in respect of amounts owing by the Trustee to third parties, even if there is a deficiency of Fund assets. This is the case despite any relationship such a person has with the Trustee (including where the person is a Trustee or a director of the Corporate Trustee).

5.4 Unless otherwise agreed between interested parties, the Trustee's costs of obtaining Advice and all related assistance and information in respect of the Fund can be met by the Fund.

## 6. Investment

### 6.1 Fund investments

- (a) Subject to rules 2 and 4 and the Standards, the Trustee has power to invest and must ensure that all of the assets of the Fund are invested in such appropriate investments, in Australia or elsewhere, as the Trustee thinks fit including, without limitation, any:
  - (i) investment taken to be prudent under Trustee Law;



- (ii) deposit, loan or sub-participation, with or without security, at such rate of interest and upon such terms as the Trustee may consider reasonable;
- (iii) tangible or intangible property, whether it be:
  - (A) real property (whether located in Australia or overseas); or
  - (B) personal property, including (but not limited to) any chattels, machinery, plant, stock-in-trade, patents, trade marks, registered designs and copyrights or any interest in them, licences, water rights and similar rights;
- (iv) giving or taking of leases, licences or options over real or personal property or any interest in respect of them;
- (v) discounting of loans, mortgages, contracts, hire purchase agreements or leases;
- (vi) purchase or acquisition in any way of Securities;
- (vii) deposit with or loan to any bank, building society, credit co-operative or other financial institution and in any type of account, whether secured or not and the Trustee is empowered to open and operate accounts accordingly;
- (viii) financial instrument and the Trustee may draw, make, accept, endorse, discount, issue or otherwise deal with any promissory note, cheque, bank bill or other negotiable or transferable instrument;
- (ix) mortgage or other security on freehold, leasehold or any other form of property even though the amount of the loan may exceed two-thirds of the value of the property and whether or not a report or valuation has been obtained on the value of the property;
- (x) policy of insurance, assurance or annuity whether by proposal, purchase or otherwise, any choses in action, and any interests for life or any lesser term or in reversion;
- (xi) purchase or acquisition of or subscription for any interest in a trust, including any unit or sub-unit in any unit, fixed or hybrid trust, whether listed or unlisted, whether held individually or jointly and whether the units or sub-units are fully or partly paid up or whether their issue involves any other interest whether contingent or not;
- (xii) commodity whatsoever (including mined, grown, farmed or reared, soft and hard commodities), including any Security that derives its value from the value of any commodities;
- (xiii) business (including a business of property development, primary production or any other trading or business enterprise) including any direct or indirect interest in any business and if a Trustee has invested in a business the Trustee may, to the extent permitted by the Standards, carry on the business or employ persons (including any related party) to carry on the business on behalf of the Trustee;
- (xiv) portfolio of assets or investments, whether or not those assets or investments are specifically named in these Governing Rules;
- (xv) joint venture or partnership or similar arrangement; and
- (xvi) other investments which are acceptable under the Standards.

- (b) The Trustee is not empowered or authorised to:
  - (i) make loans or give any other financial assistance using the resources of the Fund to a Member or a relative of a Member;
  - (ii) make loans to, make investments in or enter into Leases over assets of the Fund with a related party or related trust of the Fund that would cause the loan, investment or Lease to exceed the level permitted by the Standards;
  - (iii) subject to rule 7.2(n), borrow money on behalf of the Fund; or
  - (iv) acquire assets from a Member, a related trust or any other related party;

unless authorised by the Standards and only to the extent (if at all) allowed by the Standards.
- (c) Subject to the Standards, the Trustee is permitted to recognise as an asset a future income tax benefit, despite it generating no Earnings.
- (d) To the greatest extent permitted by the Standards and rule 4.1(f):
  - (i) the Trustee may invest in an undiversified portfolio, including where the investment is a single asset; and
  - (ii) the Trustee may make any freehold, leasehold or other investment in property despite it generating no or minimal Earnings.
- (e) In relation to any asset owned by the Trustee, the Trustee is permitted to:
  - (i) wholly own or partly own the asset (where the other owner or owners is or are any other persons or entities including any related party); and
  - (ii) own the asset or have the asset registered as:
    - (A) joint tenants;
    - (B) tenants in common; or
    - (C) any other form of ownership;

provided this does not contravene the Standards.
- (f) If the Trustee comprises two or more individuals, assets will be deemed to be held as joint tenants unless a different form of ownership is registered or otherwise used.
- (g) Subject to the Standards and in addition to the powers in rule 7.10, the Trustee is permitted to hold Fund assets even though not all names of the Trustee are legally registered as the owner, including where an asset is held on bare or other trust for the Trustee.

## 6.2 Separately identifiable assets and segregation

- (a) Subject to the Standards, the Trustee may deal with specific assets (whether wholly or partially) of the Fund in respect of particular Members in accordance with rules 6.2(b) or 6.2(c) respectively for the purpose of investment segregation, member investment choice, exempt income calculations or any other purpose and may also unsegregate or reverse any such segregation, mode, dealing or action.

- (b) Subject to the Standards, the Trustee may segregate (whether wholly or partially) an asset of the Fund and in particular, the Trustee may:
- (i) acquire and maintain any specific assets for the purposes of supporting any Interest or of paying any Benefit and acquire and deal with any asset, insurance, annuities or similar arrangements for any Member;
  - (ii) establish, change or discontinue any sub-fund, portfolio, account or class of Membership ('**Sub-Account**') in the Fund with separately identifiable assets, Members and liabilities with Interests in such part only held by the Members in that Sub-Account or class of Membership as may be the case;
  - (iii) alter, exchange and segregate specific assets from other assets and deal with the Fund as different Sub-Accounts, segments or partitions in respect of certain assets as the Trustee determines and deal with liabilities accordingly;
  - (iv) reallocate, alter or exchange a segregated asset from one Sub-Account to another Sub-Account regardless of whether any or all of the Sub-Accounts are supporting a Pension and regardless of whether one Sub-Account is for the benefit of one Member and the other Sub-Account is for the benefit of another Member;
  - (v) apply, without obtaining any of the consents required by Trustee Law, any part of the Fund in its actual condition or state of investment in or toward satisfaction of any Benefit as the Trustee thinks fit; and
  - (vi) if a specific asset is held for a Member, Sub-Account or a class of Members, reflect the value of the asset and the Earnings on such asset in the Accounts for that Member, Sub-Account or class of Members as the case requires or on such other Accounts as the Trustee determines.
- (c) Despite any other provisions in these Governing Rules, the Trustee may quarantine any asset of the Fund (whether wholly or partially) on an ongoing basis as follows:
- (i) the Trustee may establish any Sub-Account or class of Membership within the Fund with separately identifiable assets and Members and the Trustee should record such assets in the Accounts of the Members of the particular Sub-Account or class of Membership and deal with liabilities accordingly;
  - (ii) the Earnings on such assets should only be reflected in the Sub-Accounts for those Members for whom the particular asset is held. Any Taxes and expenses payable in respect of the particular asset should be debited to the Sub-Accounts of those Members for whom the asset or investment is held; and
  - (iii) such assets should not be transferred out of the Sub-Accounts of those Members under rule 22 or otherwise, other than for the purpose of providing a Benefit to those Members in accordance with these Governing Rules.
- (d) The Trustee may ascertain and fix the value of the assets of the Fund and the liabilities to which the Fund is committed in accordance with the Standards, and every ascertainment or fixing of value made under this rule binds all persons who are or may become interested in the Fund, including persons who do not have legal capacity and persons who are not yet Members.

- (e) Rule 6.2 applies despite that certain assets can be treated as not segregated for certain tax purposes (such as disregarded small fund assets under the ITAA 1997).

### **6.3 Segregation and transfers to SMSFs (including in New South Wales)**

- (a) Despite any other provisions in these Governing Rules, the Trustee (or a custodian, agent or bare trustee for the Trustee) has power to accept a transfer of dutiable property from a Member or Members if:
  - (i) there are no other Members (besides the Member or Members transferring or agreeing to transfer the property) or the dutiable property is segregated from other Fund property;
  - (ii) the property is to be used solely for the purpose of providing a retirement benefit to the Member or Members transferring or agreeing to transfer the property; and
  - (iii) if there is more than one Member transferring or agreeing to transfer the property, the property is to be used for the benefit of those Members in the same proportions as it was held by them before the transfer or agreement to transfer.
- (b) Despite any other provisions in these Governing Rules, the Trustee has power to segregate property from other Fund property in the following manner:
  - (i) the property is held specifically for the benefit of the Member or Members transferring or agreeing to transfer the dutiable property, as Fund Members;
  - (ii) the property (or proceeds of sale of the property) cannot be pooled with property held for any other Member of the Fund (besides the Member or Members transferring or agreeing to transfer the property); and
  - (iii) no other Member of the Fund (besides the Member or Members transferring or agreeing to transfer the property) can obtain an interest in the property (or the proceeds of sale of the property).
- (c) Despite rule 24, the Trustee has power to determine that any of rules 6.3(a) or 6.3(b) apply to property being acquired and if such a resolution is made, such rules irrevocably apply in respect of the property until the Fund is wound up.

### **6.4 Segregation and transfers to SMSFs (including in Western Australia)**

- (a) Despite any other provisions in these Governing Rules, the Trustee (or a custodian, agent or bare trustee for the Trustee) has power to accept a transfer if:
  - (i) either of the following apply to the Fund:
    - (A) only the transferor can be a Member of the Fund; or
    - (B) property can only be held in the Fund specifically for the transferor and cannot be pooled with the contributions or other assets of another Member and no other Member can obtain an interest in the property; and
  - (ii) property can only be held in the Fund to be provided to the transferor as a retirement benefit.

- (b) Despite rule 24, the Trustee has power to determine that rule 6.4(a) applies to property being acquired and if such a resolution is made, such rules irrevocably apply in respect of the property until the Fund is wound up.

## 6.5 **Storage of collectables and personal use assets**

Where the Trustee has invested in collectable or personal use assets, the Trustee's reasons for any decision on the storage of such items are convenience and cost factors, unless the Trustee has recorded other reasons.

## 7. **Powers**

- 7.1 The Trustee has discretion in carrying out any acts, matters and things it deems expedient for the purposes of the Fund. In the exercise of the powers, authorities and discretions conferred on the Trustee by law and these Governing Rules, the Trustee has an absolute and uncontrolled discretion to exercise or refrain from exercising all powers, authorities and discretions.
- 7.2 The Trustee has the power, having regard to the Fund's status at the relevant time, to do anything that a natural person or a trustee of a superannuation fund is permitted to do under the Standards and at law, including the power to:
  - (a) invest money, assets or resources of the Fund in such appropriate investments, in Australia or elsewhere, as the Trustee thinks fit;
  - (b) pay, provide or arrange (internally or externally) any Benefit and wholly or partially commute any Pension (subject to these Governing Rules);
  - (c) settle, compromise, commence, carry on or defend proceedings or submit to arbitration, mediation or other alternative dispute resolution in any court, tribunal or other forum or medium, whether formal or informal, where the matter relates to any claim, matter or thing in respect of the Fund, these Governing Rules or the rights of any Member or beneficiary;
  - (d) purchase an interest in an Approved Fund to provide all or part of a pension or annuity or to provide all or a part of the Pension payable in respect of a Member and the pension or annuity must be in the name of the Trustee or, if the Trustee so determines, in the name of the Member in accordance with the Standards;
  - (e) pay all Disbursements (and the Trustee can choose to pay Disbursements from one or more Accounts to the exclusion of others);
  - (f) sell, dispose, exploit or otherwise deal with any real or personal property or any other right or asset of the Fund including any interest therein, whether in whole or in part, as the Trustee considers appropriate including:
    - (i) agreeing to any sale, disposal, exploitation or other dealing which may be via any market (whether listed, unlisted, formal or informal), by private agreement, auction, internet, social media or otherwise;
    - (ii) agreeing, varying, rescinding, novating, negotiating or otherwise dealing with any contract, agreement or similar legal or equitable obligation and any related terms and conditions whether any condition is a condition precedent, subsequent or otherwise without being answerable for any loss; and
    - (iii) severing any fixtures, plant, equipment, property or any other right or asset separately and selling, disposing or otherwise dealing with same, distinct from the balance of any property, right or other asset;

- (g) acquire, invest, store, hold, sell, dispose, exploit or otherwise deal in relation to any currency, whether Australian, foreign or any other region or country's currency or medium of exchange, including entering into any transaction, hedging, derivative, investment, speculation or being a dealer, market maker or some other intermediary and to have similar powers in relation to any cryptocurrency or to anything regarding any other right or interest in relation to the foregoing as the Trustee considers appropriate including:
  - (i) agreeing to any acquisition, investment, transaction, sale, disposal, exploitation or other dealing which may be via any company, firm, institution or organisation or market (whether listed, unlisted, formal or informal), by private agreement, retail, auction, internet, social media or otherwise; and
  - (ii) agreeing, varying, rescinding, novating, negotiating or otherwise dealing with any currency or medium of exchange and entering into any related terms and conditions whether any condition is a condition precedent, subsequent or otherwise without being answerable for any gain or loss;
- (h) vary, hold, use, purchase, contract, demolish, maintain, repair, renovate, reconstruct, develop, improve, sell, transfer, convey, surrender, let, lease, exchange, take and grant any investment or real or personal property and may exchange any investment for another investment;
- (i) commence, acquire or carry on any business (including a business of property development, trading in Securities, primary production or similar trading enterprise) including being involved or owning a direct or indirect interest in any business and if the Trustee has any interest in any business the Trustee is empowered to manage that interest as it determines appropriate and may, to the extent permitted by the Standards, employ moneys, resources and persons to carry on the business on behalf of the Trustee;
- (j) set aside out of the Fund from time to time such amount of money as is sufficient, in the Trustee's opinion, to meet any debt or obligation due or accruing, and the Trustee may set off amounts owed or owing;
- (k) pay calls on Securities forming part of the Fund and to accept transfers of Securities;
- (l) assent to and concur in any arrangement, sale, transfer or exchange of any Securities modifying any rights, privileges or interest in relation to the Fund and to agree to and concur in any scheme of arrangement for the increase or reduction of the value or amount of the same in the capital of any company, trust or other investment in which any Securities forming any part of the Fund for the time being may be invested or agree to or concur in any rearrangement of its capital or its reconstruction or any arrangement made or proposed to be made by it for any purpose;
- (m) subject to rules 6.1(b)(i) and 6.1(b)(ii), lend money and provide similar financial assistance and to secure the repayment of it in any manner and upon such terms and conditions, including with or without security or with or without interest, as the Trustee determines;

- (n) subject to the Standards, borrow money (including where only a constructive transfer of money or a set-off of liabilities occurs) from any persons, firms, corporations, bodies, associations or governmental or municipal bodies, (including a related party), including:
- (i) to apply for the acquisition of an asset where:
    - (A) the asset or a replacement for that asset ('**Asset**') is held on trust (including any bare, resulting or other trust) for the benefit of the Trustee until the Trustee acquires legal ownership of the Asset and the term **Asset** includes any real or personal property and real estate or an interest relating to real estate purchased under an 'off-the-plan' arrangement;
    - (B) the Asset is one which the Trustee is not prohibited from acquiring under the Standards;
    - (C) the rights of the lender against the Trustee for default on the borrowing and any charges related thereto are limited to the Asset;
    - (D) if the Trustee has a right relating to the Asset, the rights of the lender against the Trustee for the Trustee's exercise of its right are limited to rights relating to the Asset;
    - (E) the money is or has been applied for the acquisition of the asset, including expenses incurred in connection with the borrowing or acquisition, or in maintaining or repairing the acquirable asset (but not expenses incurred in improving the acquirable asset unless the Standards permit);
    - (F) the borrowing complies with any other requirement under the Standards; and
    - (G) the borrowing takes place on such terms and conditions including with or without security or interest as the Trustee determines and to give, or to authorise the giving of security by mortgage, charge (whether fixed or floating) or otherwise in respect of the Asset. The rights of the mortgagee or chargee takes priority in all respects over the rights of the Members and beneficiaries hereunder and all other persons whomsoever;
  - (ii) to acquire an Asset where the borrowing otherwise complies with such rules relating to a borrowing by a trustee of a regulated superannuation fund as may be provided under the Standards including without limitation having regard to the following:
    - (A) the purpose of the borrowing, which in addition to acquiring an Asset, may also cover repairs and maintenance;
    - (B) refinancing of a borrowing (including any accrued interest thereon);
    - (C) limiting the rights of the lender or any other person in respect of the borrowing against the Trustee in respect of the Asset;
    - (D) what is a collection of assets;
    - (E) what constitutes a replacement asset;
    - (F) where more than one borrowing may be involved to acquire the same Asset or where more than one borrowing



arrangement may be involved to acquire different Assets;  
and

- (G) any other relevant matter;
- (iii) for a limited recourse borrowing arrangement as set out in section 67A of the SISA; or
- (iv) for any other purpose and in any way provided for under the Standards, including to pay Benefits or to settle Securities;
- (o) give a guarantee, indemnify or undertake to guarantee and/or indemnify anyone or any body in respect of any claims, matters or things relating to the Fund or to the rights of Members in respect of the Fund;
- (p) insure or underwrite any assets, risks, contingencies, penalties, costs, audits, investigations, investments or liabilities in respect of the Trustee, the Fund, the Members, any assets of the Fund or any other matter with any insurance company, mortgage insurance company, re-insurance company, financial institution or any other entity willing to accept or underwrite such risks as the Trustee determines;
- (q) procure the registration or recognition of the Trustee or the Fund in any overseas country or jurisdiction including to become registered as a qualifying recognised overseas pension scheme (QROPS), a qualifying retirement plan or similar arrangement and the Trustee is empowered to attend to any associated action, matter or thing including the provision of any undertaking, disclosure of information, entering into any arrangements or agreements or limiting or restricting the circumstances or events under which a Benefit is provided under the Governing Rules, whether or not there is greater flexibility under the Standards;
- (r) subject to rule 1.3, complete any election or perform any act as required by the Standards, including changing the status of the Fund to or from an SMSF to a Small APRA Fund or other type of Approved Fund, accumulation, pension or any other type of fund permitted or required by the Standards;
- (s) open any account or accounts with any bank or financial or other institution and to operate such an account or accounts and to draw, make, accept, endorse, discount, issue or otherwise deal with any promissory note, bill of exchange, bill of lading, cheque, bank bill or other negotiable or transferable instrument;
- (t) raise any money in any lawful manner including by way of drawing, endorsing, accepting or otherwise dealing in any bill of exchange, promissory note, derivative or other negotiable instrument. The Trustee may secure the repayment of any moneys so raised with interest at such rate as the Trustee thinks fit and upon any terms and conditions in all respects as the Trustee thinks fit. Any money raised by the Trustee will form part of the Fund;
- (u) subject to the Standards, give or authorise the giving of security by way of mortgage, charge, guarantee, indemnity or otherwise in respect of any asset of the Fund;
- (v) subject to the Standards, pay for or reimburse the reasonable expenses of a Trustee, Member or other person incurred in relation to the Fund's operations (including expenses for supplies, services or travel costs) or reasonable expenses that relate in some way to the Fund, including BDBNs and pension, lump sum or benefit documentation and for the avoidance of doubt, these payments, reimbursements and arrangements will not constitute a payment or provision of a benefit, loan, borrowing, financial assistance, financial accommodation or a contribution;

- (w) purchase, sell, trade or deal in Securities of all kinds, and otherwise to do and perform all related things such as to enter into or perform a contract or operate, utilise or deal with the facilities of any Securities or futures exchange either directly or through any broker or agent in any market in any part of the world;
- (x) enter into any contract including on vendor terms, instalment payment or other arrangement;
- (y) subject to the Standards, borrow one or more assets from any person;
- (z) deal in, transact in or determine the fair value of cryptocurrency, negotiable means of value or similar in any manner including dealing with these things as money;
- (aa) subject to the Standards including any restrictions on acquiring assets from related parties of a Fund, facilitate (by way of Asset Transfer or otherwise) a Member maintaining more than one superannuation fund for any reason including for the purposes of succession planning, asset security, quarantining of risk and investment simplification;
- (bb) do anything required to give effect to or comply with the Standards including any operating standards under the SISA and SISR; and
- (cc) generally do any other act or thing as the Trustee determines necessary or expedient in respect of any powers in these Governing Rules or the management and administration of the Fund and to further the interests of the Fund.

7.3 The Trustee may exercise any power or discretion even if this gives rise to a conflict of interest. For the avoidance of doubt, the Trustee may exercise any power or discretion even if:

- (a) the Trustee;
- (b) any person being a director or shareholder of a Corporate Trustee;
- (c) any person being a relative or other related party of a Trustee; or
- (d) any person being a relative or other related party of a director or shareholder of a Corporate Trustee;

has or may have a direct or indirect interest, whether:

- (e) in a personal capacity;
- (f) as a relative of a Trustee;
- (g) as a shareholder or director of the Corporate Trustee;
- (h) as a relative of a director or shareholder of a Corporate Trustee;
- (i) as a shareholder, director, member or partner of any company or partnership;
- (j) as a trustee of any trust (including any discretionary, unit or hybrid trust);
- (k) as a beneficiary or unitholder of any trust (including any discretionary, unit or hybrid trust); or
- (l) in any other capacity or way howsoever arising;

in the mode or the result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and even if the Trustee or a director of the Corporate Trustee is a sole Trustee or director.

7.4 Subject to the Standards and rule 4.1(f)(vi), the Trustee may:

- (a) take out and maintain insurance in respect of any risks and liabilities including:
  - (i) on the lives and medical conditions of any Member (including a Terminal Medical Condition or trauma or similar event);
  - (ii) Permanent Incapacity or total and permanent disablement, whether the cover is 'own occupation' or 'any occupation' despite that the circumstances of a payout may not satisfy a condition of release in the SISR;
  - (iii) Temporary Incapacity or income protection despite that the circumstances of a payout may not satisfy a condition of release in the SISR;
  - (iv) in order to provide Benefits to Members and, on their death, to their Dependants or LPR including a Pension Funded by Assurance; and
  - (v) in respect of the Fund's assets, liabilities, operations and risks (or anything else);
- (b) implement insurance whereby the insured event is in respect of a Member, but the premium is deducted from:
  - (i) the Account of another Member (cross-insurance); or
  - (ii) another Account (eg, a reserve Account);
- (c) enter into arrangements that involve split-insurance, where the Trustee only obtains part of a policy and pays for part of the insurance premiums;
- (d) transfer any insurance policy, annuity contract or other similar entitlement in the Fund in favour of a Member in respect of any Benefit entitlement under these Governing Rules and the Trustee may determine the value, if any, that is attributable to the entitlement transferred;
- (e) reduce or abandon insurance cover in relation to a Member whose age, ill health or other circumstances makes it too costly or impracticable to implement or continue such cover; and
- (f) meet the cost of insurance out of any Account in the Fund including a Member or reserve account;

but the Trustee is not under any obligation to implement any insurance.

7.5 The Trustee may withhold Tax from any Benefit, contribution, amounts allocated from a reserve Account, Earnings, gains, assets, Disbursement or other payment received, receivable or paid or payable by the Fund, including for the purpose of foreign resident capital gains withholding payments on the purchase or sale of property, and the Trustee may obtain and furnish any relevant information and deal in or pay any relevant Tax.

7.6 The Trustee may pay any Tax liability of a Member in respect of contributions received by the Trustee on the Member's behalf if permitted by the Standards. The Trustee may also attend to any related matter relating to such Tax, including releasing an amount on behalf of the Member and paying that amount to the Regulator or the Member.

7.7 The Trustee may make any election or choice in respect of any Tax matter, including in respect of capital gains tax relief, the Transfer Balance Cap and Total Superannuation Balance.

7.8 The Trustee may obtain and, subject to its discretion, act (or refrain from acting) on any Advice or obtain any assistance as it determines appropriate.

- 7.9 Subject to the Standards and these Governing Rules, the Trustee may pay an amount or transfer assets to or in favour of a Member and the Trustee may accept an amount or assets directly or indirectly from a Member or any other party (if an amount is paid or assets are transferred to another party) provided its consent is obtained in respect of any such payment, receipt or transfer.
- 7.10 Subject to the Standards, the Trustee may restrict, limit or fetter its powers, discretions or duties. Moreover, the Trustee may delegate any functions, duties, discretions or obligations, including the holding of title to the assets of the Fund, to any person, entity, organisation, custodian, attorney, agent, nominee or any bare, resulting or other trustee to exercise or undertake on behalf of the Trustee by power of attorney (whether enduring or otherwise), resolution, deed or otherwise for any purpose and with any powers, conditions, limitations, authorities or discretions as it thinks fit, provided that any custodian or investment manager is appointed in writing. Similarly, the Trustee may remove, replace or suspend any person or organisation as it determines appropriate. The Trustee may implement any process or execute any power of attorney including any instrument necessary to effectuate any delegation or other power under this rule.
- 7.11 Unless otherwise required under these Governing Rules or by the Standards, the Trustee is not obliged to and can choose not to:
- (a) give reasons for, or disclose any material connected with its acts, omissions, and/or exercise or non-exercise of any power, discretion, decision or determination; and
  - (b) disclose any advice or other information;
- and this rule is without prejudice to any general law right to privacy, privilege or secrecy that the Trustee has. The Trustee's decision regarding what is required to be disclosed is final and binding.
- 7.12 To the greatest extent permitted by the Standards, where the Trustee or a Trustee acts in another capacity (including in a personal capacity), the Trustee (in its capacity as trustee of the Fund) may contract or otherwise deal with the Trustee or a Trustee acting in its other capacity.
- 7.13 Subject to rule 8.5 and the Standards, the Trustee is empowered to comply with and do all things necessary to give effect to:
- (a) orders or agreements for a Payment Split or a Payment Flag made under the Family Law Act including but not limited to:
    - (i) Splitting Orders;
    - (ii) Flagging Orders;
    - (iii) Financial Agreements and Part VIIIAB Financial Agreements, including Superannuation Agreements;
    - (iv) Flag Lifting Agreements; and
    - (v) Termination Agreements and Part VIIIAB Termination Agreements;
  - (b) any arrangements (whether formal or informal) under the Family Court Act made between a Member Spouse and a Non-Member Spouse which have the effect of a Payment Split or a Payment Flag or a termination of a Payment Split or a Payment Flag;
  - (c) any arrangements (whether formal or informal) howsoever made between a Member Spouse and a Non-Member Spouse which have the effect of a Payment Split or a Payment Flag or a termination of a Payment Split or a Payment Flag;

- (d) its obligations under the operating standards prescribed in Part 7A of SISA;
  - (e) making adjustments or notifications in relation to tax matters including the Transfer Balance Account and Transfer Balance Cap; and
  - (f) any related matter in Australia or in relation to any other jurisdiction.
- 7.14 The Trustee is empowered to do or refrain from doing any other such thing as is necessary in order to comply with such orders, agreements or arrangements referred to in or contemplated by rule 7.13, and the Trustee is, subject to the Standards, entitled to charge reasonable fees and charges for such acts, matters or things.
- 7.15 Subject to the Standards, in the event that any Member of the Fund makes any claim, assertion, complaint, demand, request or otherwise in relation to the Fund or the Trustee that, in the Trustee's opinion, is of little or no substance, even if the matter does not involve any legal action or third party, the Trustee can recover any reasonable expense or cost in relation to the administration, dispute resolution, Advice, other assistance or any dealing in relation to that Member from their Interests in the Fund and is not under any obligation to notify that Member or any other person in relation thereto (including any other Member).
- 7.16 If the terms and conditions of a Benefit provided by this Fund are not expressly prescribed in these Governing Rules either in whole or in part, the Trustee should determine the terms and conditions under which that Benefit is provided. The Trustee must ensure that at least the minimum terms and conditions of the Standards relating to that type of Benefit are complied with.
- 7.17 The Trustee is empowered to pay for, indemnify in respect of or reimburse the set up costs for the Fund and/or its Corporate Trustee or any ongoing related costs including any variation to the governing rules of the Fund or change of trustee of the Fund or change in directors of the Corporate Trustee of the Fund.
- 7.18 The Trustee must not discriminate against any person on the grounds of that person's sex or marital status or in any other manner that would infringe the *Sex Discrimination Act 1984* (Cth) or any other Australian law (including state or territory law) concerned with discrimination.
- 7.19 Subject to the Standards, the Trustee may determine that any of its discretions or powers, or instances of the exercise of its discretions or powers:
- (a) have effect on a current, retrospective or prospective basis; or
  - (b) are subject to one or more limitations or fetters.

## **8. Membership and beneficiaries**

### **8.1 Eligibility for admission**

Subject to rules 1.3, 3 and 8.2 and the Standards, the Trustee may admit any one or more of the following applicants to Membership:

- (a) a person under a legal disability, including a person under a legal disability because of age;
- (b) a person under 65 years of age, including a person who is or who is not Gainfully Employed;
- (c) subject to rules 9.3 and 9.4, a person 65 years of age or older;

- (d) subject to rule 8.5, a Spouse who becomes entitled to a Benefit or Interest in the Fund under:
  - (i) an order or agreement for a payment split under the Family Law Act; or
  - (ii) the operating standards under Part 7A of the SISR;
- (e) subject to rule 8.6, a Spouse who is entitled to contributions-splitting;
- (f) an Eligible Spouse; or
- (g) any other person authorised under the Standards.

## 8.2 **Commencement of Membership**

Without limiting when Membership can commence, admission of a Member and commencement of that person's Membership in the Fund occurs when the Trustee approves of a person becoming a Member. The Trustee may give this approval in writing or otherwise, on a current, retrospective or prospective basis and the approval may be given implicitly by conduct. The Trustee may attach conditions and limitations to an applicant's Membership in the Fund. An applicant for Membership can provide an application form (and the applicant can use the form in Part B of these Governing Rules) to the Trustee before or after their Membership commences, but a failure to use that form or any form at all does not mean Membership does not commence. The applicant can also apply for Membership by such other means as the Trustee determines appropriate or accepts by conduct, including an oral or implicit request.

## 8.3 **Conditional Membership**

Without limiting rule 8.8(g), the Trustee may admit a Member to the Fund on a conditional or limited basis, including by specifying that the Member will cease to be a Member upon a specified event or at a specified time, whether or not the occurrence of any event is within the control of the Member.

## 8.4 **No minimum Interest**

Subject to these Governing Rules including rule 8.8, a person who has or will have a nil or negative Total Interests in the Fund or whose Total Interests are reduced to nil or becomes negative:

- (a) may be admitted for Membership by the Trustee; or
- (b) in the case of an existing Member — continues to be a Member until the Trustee determines otherwise.

## 8.5 **Family law — new Interests**

Despite anything else in these Governing Rules and unless the Trustee determines otherwise in relation to a request under regulation 7A.05 of the SISR or a request under regulation 7A.03B of the SISR, a new Interest in the Fund is not to be created for a Non-Member Spouse.

## 8.6 **Spouse contributions-splitting**

Despite anything else in these Governing Rules, if a Member requests the Trustee under any spouse contributions-splitting provisions of the Standards to create a new Interest in the Fund for a Spouse, the Trustee may refuse to create the Interest.

## 8.7 **Evidence**

Each applicant for Membership and each Member must give to the Trustee full and accurate information and produce such documents and other evidence, including

submitting to health checks, medical checks and other tests, as the Trustee may reasonably and lawfully require from time to time in connection with their Membership of the Fund.

## 8.8 Cessation

Subject to the Standards and the Trustee's discretion to determine otherwise, a Member ceases to be a Member of the Fund upon the earliest to occur of the following:

- (a) in relation to that Member's death — when all of the deceased Member's Total Interests have been cashed, paid or otherwise applied towards the Eligible Beneficiaries of the deceased Member or the Member's LPR or both, and this rule 8.8(a) takes priority over rule 8.4;
- (b) when all of the Member's Total Interests have been cashed, paid or otherwise applied in accordance with the Standards and the Trustee is satisfied that the Member has ceased to be a Member;
- (c) when the Trustee determines that their continued Membership may cause the Fund to become another type of fund;
- (d) when the Trustee requires that a Member cease their Membership of the Fund to comply with the Standards;
- (e) when the Member is required to cease their Membership of the Fund to comply with the Family Law Act or an order or agreement made pursuant to that Act;
- (f) if the Standards require cessation of Membership, then at such time as the Standards require;
- (g) in the case that a Member ('**Relevant Member**') has consented to have their Total Interests transferred out of the Fund upon the occurrence of a specified event or at a specified time ('**Exit Event**') — upon occurrence of the Exit Event, provided that all of the Other Trustees (as defined later in this rule) determine in writing after the Exit Event that the Relevant Member is to cease to be a Member. **Other Trustees** means all of the Trustees or directors of the Trustee excluding, where applicable, the Relevant Member and/or the Relevant Member's LPR in the capacity of a Trustee or a director of the Trustee; or
- (h) when the Trustee otherwise reasonably determines.

## 8.9 Trustee powers in relation to conditional membership

If a person ceases to be a Member as contemplated by rule 8.8(g), the Trustee has the power to implement the removal of the person and to complete all necessary transactions and documents, including:

- (a) confirming by written instrument that the person is no longer a Member (though a failure to confirm this in writing will not affect the cessation);
- (b) ceasing, rolling over or transferring arrangements under which insurance or any other entitlement is provided in respect of the person;
- (c) paying the person a Benefit that is permitted by the Standards;
- (d) rolling over or transferring the person's Total Interests out of the Fund, as permitted by the Standards; and
- (e) attending to any related matter including matters that may otherwise require the person's consent.



**8.10 Interest and rights of a legally disabled or deceased Member or a Member with an LPR or a Member Representative**

- (a) If a Member is under a legal disability or deceased, the Trustee continues to be bound by these Governing Rules in respect of the remaining Interest of a Member who is under a legal disability or deceased.
- (b) If a Member is under a legal disability or deceased, the Trustee may, in its discretion, continue to allocate Earnings to a Member's Account (and for the avoidance of doubt, this includes allocating negative Earnings or any other such loss or outgoing).
- (c) Without limiting anything else in these Governing Rules, whether or not a Member is under a legal disability or deceased, a Member Representative or LPR of a Member may exercise any powers that the Member can or could have exercised. In the event of death, the Member Representative can only exercise powers that a Member could have exercised until such time as the Member has an LPR.
- (d) If the LPR or Member Representative exercises the powers of a Member and the LPR or Member Representative is comprised of more than one person, whether acting jointly or jointly and severally, then the persons comprising the LPR or Member Representative jointly have one vote only in any decision making by the Member and that vote only reflects the value of the Member's Total Interests.

**8.11 Members bound by Governing Rules**

Members are bound by these Governing Rules even if they have not read or obtained a copy.

**8.12 Members appoint Trustee**

Each Member appoints the Trustee as his or her attorney to do anything permitted or required by these Governing Rules or the Standards until the Member provides notice in writing otherwise. However, the Trustee does not have authority to make, vary or revoke a BDBN on behalf of a Member or enter into any contract that binds a Member personally, in relation to any matter that does not relate to their Membership in the Fund.

**8.13 Member Representative**

- (a) A Member Representative can be appointed by a Member, provided:
  - (i) the appointed person is a natural person who is at least 18;
  - (ii) the appointment is made in writing (without having to use any particular form of words or having to refer to this rule), and for the avoidance of doubt, the appointed person can be the Member's LPR, another Member or an adviser;
  - (iii) the appointment is signed by the Member in the presence of at least one adult witness, who is not a person appointed; and
  - (iv) the Member's trustee in bankruptcy or any similar administrator or controlling person in the case of an Insolvent Under Administration or debt agreement can never be a Member Representative, and any purported appointment of such a person is void.
- (b) The appointment of a Member Representative:
  - (i) can be subject to conditions and limitations on the Member Representative's powers;

- (ii) can be done by appointing more than one person to act as the Member Representative, and the appointment can specify whether the persons must act jointly or can act jointly and severally (in default of which specification, the appointment is a joint appointment);
- (iii) continues despite the loss of capacity of the Member, unless the conditions or limitations in the appointment otherwise provide; and
- (iv) can be revoked by the Member who appointed the Member Representative, and the revocation can be oral or in writing.

#### **8.14 Trustee can exclude persons from being beneficiaries**

- (a) Despite anything else in these Governing Rules, but subject to any minimum benefits or rights a person has as a Member of the Fund, the Trustee may prospectively or retrospectively, with the consent of the requisite number of Members specified in rule 3.2(a), determine in writing any of the following:
  - (i) to exclude or limit the payment of Benefits to any person (including an LPR); or
  - (ii) that a person is not or never to become a beneficiary or Member of the Fund (and for the avoidance of doubt, that person is therefore not even a mere object, including in relation to paying death benefits).
- (b) Where a determination is made under rule 8.14(a), it can be revoked in writing by the Trustee with the consent of the requisite number of a Members specified in rule 3.2(a).
- (c) At any time that a person is not a beneficiary of the Fund, the person has no rights in respect of the Fund or against the Trustee and has no ability or right to gain access to any Fund records or accounts.

## **9. Contributions**

9.1 The Trustee may, in respect of one or more Members, accept contributions to the Fund by an Eligible Contributor only if and to the extent that the contributions are permitted under the Governing Rules and the Standards, but is under no obligation to do so. These contributions may include:

- (a) money (of any currency);
- (b) Securities listed on a prescribed exchange in Australia or elsewhere that are permitted to be acquired under the Standards, subject to rule 6.1(b)(iv);
- (c) business real property, as that term is defined under the Standards;
- (d) units in a related trust or shares in a related company that are permitted to be acquired under the Standards;
- (e) money or assets that have been paid or transferred to another person or entity, the result of which is to offset a liability or pay an expense of the Fund; and
- (f) any other asset or benefit conferred upon the Fund, subject to rule 6.1(b)(iv).

9.2 Subject to the Standards, the Trustee may accept contributions made in respect of a Member who has not reached 65 years of age (including a minor).

- 9.3 The Trustee may, subject to the Standards, accept contributions made in respect of a Member who has reached 65 years of age but not reached 75 years of age if:
- (a) the contributions are Mandated Employer Contributions;
  - (b) the Member has been Gainfully Employed on at least a Part-Time Basis in respect of the Financial Year in which the Trustee accepts those contributions; or
  - (c) the contributions are otherwise permitted by the Standards.
- 9.4 The Trustee may accept contributions made on behalf of a Member who has reached 75 years of age if:
- (a) the contributions are Mandated Employer Contributions; or
  - (b) the contributions are otherwise permitted by the Standards.
- 9.5 The Trustee may not accept any contribution:
- (a) if the Member's tax file number has not been provided to the Trustee, unless rule 9.6 provides otherwise; or
  - (b) in such other circumstances as prescribed by the Standards;
- unless the Standards allow the contribution to be accepted.
- 9.6 If the Trustee receives an amount that is inconsistent with rule 9.5(a), then the Trustee must, as required by the Standards, return the amount to the Member within 30 days of the Trustee becoming aware that the amount was received in a manner inconsistent with rule 9.5 unless:
- (a) if the amount received is inconsistent with rule 9.5(a) — the Member's tax file number is quoted to the Trustee within 30 days of the amount being received by the Trustee; or
  - (b) otherwise permitted by the Standards;
- and the Trustee may adjust the amount that is returned to the contributor as permitted by the SISR.
- 9.7 An Eligible Contributor is not bound to make any contribution to the Fund unless the Eligible Contributor is bound to make the contribution in accordance with a separate contribution agreement between the Trustee and the Eligible Contributor.
- 9.8 Contributions by an Eligible Contributor must only be made to the Fund in amounts and at times acceptable to the Trustee. The Trustee may request that an Eligible Contributor provide such information or documentary evidence as the Trustee considers relevant in order to determine whether the tendered contribution may be accepted by the Fund.
- 9.9 Subject to the Standards, the Trustee is authorised to take action as specified under rule 9.10 when any of the following occurs:
- (a) a Member requests that the Trustee repay or reject the whole or part of a contribution;
  - (b) a contribution is paid to the Trustee by mistake;
  - (c) a contribution or part of a contribution exceeds a Member's Concessional Contributions Cap, Non-Concessional Contributions Cap, CGT cap amount or any other cap or limit under the Standards;

- (d) a contribution is paid to the Trustee, that, in the Trustee's opinion could:
  - (i) prejudice the Fund's ability to comply with the Standards; or
  - (ii) cause the Fund to become another type of fund; or
- (e) a contribution is paid to the Trustee that may otherwise be rejected or returned in accordance with the Standards.

9.10 Subject to the Standards, without limiting the items in rule 9.9, the Trustee (including at the request of a Member) may:

- (a) reject, refund, release, withdraw or repay the whole or any part of an amount or asset representing the whole or any part of a contribution (including where the contribution would cause a Member's Total Superannuation Balance to exceed the General Transfer Balance Cap or any other relevant threshold), to or in favour of the contributor or another person; or
- (b) hold the whole or any part of an amount or asset representing the whole or any part of a contribution, on bare trust for the contributor or another person, and the contributor or other person, as the case may be, is absolutely entitled to the amount or asset held on bare trust;

and the Trustee may make adjustments for any costs, Earnings and Taxes.

9.11 Subject to the Standards, the types of the contributions the Trustee can receive include concessional contributions, non-concessional contributions, contributions counting toward the CGT cap amount, downsizer contributions, any contributions relating to the First Home Super Saver Scheme, amounts relating to structured settlements, contributions towards any prior Financial Year unused concessional contributions cap, bring forward contributions and any other classification of contributions permitted by the Standards, including where a contribution falls within more than one category.

#### 9.12 **Contribution reserve**

Subject to the Standards, the Trustee may establish a contribution reserve or any other type of unallocated contributions account for contributions pending allocation to a Member and take such other action relevant to managing a contribution, including making any objection or appeal. The Trustee may determine (including retrospectively or prospectively) when a contribution is allocated to or in respect of a Member. Unless the Trustee determines otherwise, Earnings do not accrue on any amount in a contributions reserve or unallocated contributions account. Contributions so held should be allocated within 28 days following the end of the month in which the contribution was made, or if this is not reasonably practicable, within such longer period as is reasonable in the circumstances.

#### 9.13 **Structured settlements**

Subject to the Standards, the Trustee may accept contributions relating to structured settlements that may or may not count toward a member's concessional contribution cap or non-concessional contribution cap. The Trustee is empowered to receive any relevant evidence from legally qualified medical practitioners and any relevant notification in the approved form. The Trustee may account for any corresponding debit to a person's Transfer Balance Account or attend to any other aspect of structured settlements.

## 10. **Benefits**

### 10.1 **Benefit election**

If a Member becomes eligible to receive a payment of a Benefit from the Fund, the Trustee may pay a Benefit regardless of whether a Member request occurs, or

alternatively, the Member may, subject to the Standards, elect to receive their Benefit in one or more of the following types:

- (a) one or more Lump Sums;
- (b) one or more Pensions;
- (c) one or more Temporary Incapacity Income Streams;
- (d) one or more Miscellaneous Benefits, if the Member has satisfied the specific criteria relevant to each Miscellaneous Benefit elected by the Member;
- (e) one or more annuities acquired from one or more Approved Funds; or
- (f) any other type of Benefit permitted by these Governing Rules or the Standards;

unless the Benefit must be provided in some other form under the Standards and provided that the sum of all Benefits does not exceed the Member's Total Interests in the Fund.

## **10.2 Features of election**

- (a) Unless the Trustee determines otherwise (including implicitly by conduct), an election under rule 10.1 should be in writing and indicate the desired amount or extent that a Lump Sum, Pension or any other Benefit contemplated in rule 10.1, as the case may be, is sought to be received and must be provided to the Trustee before the Benefit commences to be paid or within such further period as the Trustee permits.
- (b) The Trustee may waive any requirement in rule 10.2(a) (including implicitly by conduct) and may approve an election on a current, retrospective or prospective basis.
- (c) A Member may specify in any election relating to a Pension whether or not it is intended to be a Reversionary Pension and, if so, subject to rule 18.1(h), to whom and what other terms or conditions the Member would wish the Pension to be subject to.

## **10.3 Trustee's powers and discretion**

In relation to any Benefit, the Trustee is empowered, subject to the Standards and any BDBN, determine the following:

- (a) whether such Benefit will be provided by the Fund;
- (b) whether such Benefit will be paid to the Member or on behalf of the Member in favour of another person or entity in accordance with rule 10.13(c) or otherwise;
- (c) the amount of the Benefit and which Account (including Pension, accumulation or other Account) the Benefit is to be paid out of;
- (d) if relevant, the commencement day of the Benefit and the timing and frequency of any payment or payments, as the case may be;
- (e) whether a Pension commences to be payable and, if so, whether such a Pension will be reversionary and the amount of Pension that may be withdrawn each Financial Year;
- (f) the proportions of unrestricted non-preserved benefits, restricted non-preserved benefits, and preserved benefits that will be used to pay any Benefit;

- (g) whether or not any Benefit automatically restarts upon a deliberate or inadvertent cessation (including a cessation for tax purposes if the legislated minimum annual payments for a Pension are not met); and
- (h) any other characteristics;

provided that any such determination is subject to any specific requirements that the Benefit be provided in a particular manner or form necessary to comply with the Standards. The Trustee is also empowered to determine ahead of time the form of any Benefit and any other features of the Benefit. Should the Trustee determine that such a Benefit will not be provided or, in the case of a Benefit other than a single Lump Sum, continued, the request by the Member may be disregarded and the Trustee may, subject to the Standards, commute a Pension back into accumulation at any time it determines.

#### 10.4 **Transfer Balance Cap**

The Trustee may take any action to maintain and monitor any records required by the Standards in relation to the Transfer Balance Cap, Transfer Balance Account and Transfer Balance in relation to any Member, and the Trustee is empowered to perform or refrain from performing any related act or thing as the Trustee sees fit including to appropriately manage any capped defined benefit income streams and deal with any commutation authority as referred to in rule 22.6. A Member's Transfer Balance can be nil or less than nil (negative) in accordance with the Standards. The Trustee should have regard to the Transfer Balance Cap and a Member's Transfer Balance before paying a Pension.

#### 10.5 **No pension exemption for certain Pensions post-30 June 2017**

Subject to the Standards, the Trustee should consider that a Transition to Retirement Income Stream and a Non-Commutable Allocated Pension do not attract an income tax exemption from 1 July 2017 unless the Pension is in retirement phase and the Trustee is empowered to adjust any Account and to perform or refrain from performing any related act or thing as the Trustee sees fit.

#### 10.6 **Proportioning of Interest and Benefits**

- (a) If required by the Standards, where the Trustee determines to provide a Benefit to a Member or to make some other payment, the Trustee must:
  - (i) calculate the proportions of the value of the Member's Interest (excluding the value of that part of the Member's Interest that is, at the time of calculation, used to provide a Pension) that the Tax Free Component and Taxable Component represent; and
  - (ii) apply those proportions to the amount of the Member's Interest used to provide the Benefit;

so that the Tax Free Component and the Taxable Component of the Benefit (and, in the case of a Pension, each payment made from the Pension) correspond to the proportions those components comprise in the Member's Interest as provided in rule 10.6(a)(i).
- (b) The relevant time for determining the value of the Member's Interest and the amounts of the Tax Free Component and the Taxable Component that comprise that Interest is:
  - (i) if the Benefit to be provided by the Trustee is a Pension — when the Pension commences;
  - (ii) if the Benefit to be provided by the Trustee is a Lump Sum — just before the Lump Sum is provided to the Member;

- (iii) if the Benefit is a Lump Sum that arises from the commutation of all or part of a Pension — when the Pension commenced; or
  - (iv) at such other time as required by the Standards.
- (c) Subject to the Standards, rule 10.6(a) does not apply, or applies in a modified manner, to the following:
  - (i) an amount transferred in accordance with rule 22.6(b);
  - (ii) an allotment of a splittable contribution under rule 22.4;
  - (iii) a government co-contribution Benefit;
  - (iv) a superannuation guarantee Benefit;
  - (v) a Lump Sum that is a Disability Superannuation Benefit;
  - (vi) a Lump Sum with an element untaxed;
  - (vii) amounts paid under a release authority issued in accordance with the Standards; or
  - (viii) in any other case provided by the Standards.

#### 10.7 **Death benefits**

Upon the death of a Member, the payment of the deceased Member's Interest is in accordance with rules 18 and 19.

#### 10.8 **Preservation of Interest**

The Trustee must ensure, to the extent that an Interest is required to be preserved under the Standards, that:

- (a) the Interest is preserved in the Fund;
- (b) the Interest is transferred to an Approved Fund; or
- (c) the Interest is transferred to a Member or the ATO in accordance with rule 22.6(b);

in accordance with the Standards and the Trustee may make all determinations, notifications and elections in relation to the components or amounts of such Interest and may treat all or part of a Member's Interest as preserved even though such amount is not required to be preserved by the Standards.

#### 10.9 **Form of Benefits**

A Benefit may be paid either in money or in any other form of assets (that is, in specie or in kind) provided that the Benefit is paid in accordance with the Standards.

#### 10.10 **Member debt**

Subject to rule 10.8, if a Member owes money to the Trustee or to a Contributing Employer or its associate, the Trustee may, subject to the Standards, reduce a Member's Interest by the outstanding debt.

#### 10.11 **Insurance Proceeds**

Any Insurance Proceeds received in respect of a Member may, subject to the Standards, be equal to the amount (if any) paid or obtained by the Trustee in respect of any insurance or assurance policy or arrangement undertaken in respect of a Member and any other amount including any taxation benefit or saving to which the Trustee is



entitled, less any amount credited from that amount to any other Account. Subject to the Standards, the Trustee may retain insurance in respect of a Member's Account, a reserve Account or such other Account or provision as the Trustee determines. The Trustee is authorised to make all decisions and attend to any matter or thing regarding any Insurance Proceeds.

#### 10.12 **Cross/split-insurance**

For the avoidance of doubt, subject to the Standards, the Trustee may implement cross-insurance and split-insurance as contemplated by rules 7.4(b) and 7.4(c) and may pay or deal with any resulting Insurance Proceeds to, for or on behalf of a Member from whose Account the premium was deducted, despite the insured event relating to another Member or to a Fund asset. The Trustee, one or more Members or other parties may agree and document the rules regarding how such insurance and Insurance Proceeds are to be dealt with, in a method that can bind the parties.

#### 10.13 **Discharge**

- (a) This rule 10.13 is subject to rule 10.14.
- (b) The payment of all of a Member's Total Interests to or on behalf of a Member or a transfer to an Approved Fund of all of a Member's Total Interest is in full and final satisfaction and discharge of the Trustee's and the Fund's obligations in respect of that Member and all of their rights and interests in the Fund, unless the Member continues to be a Member of the Fund after the payment of all of their Interests in accordance with rule 8.4 but subject to rule 8.8(a).
- (c) If any Benefit is payable to a person who lacks legal capacity, is a Disqualified Person or in such other circumstances the Trustee determines appropriate ('**Recipient**'), the Trustee may, subject to the Standards, pay a Benefit to the Recipient, the Recipient's Eligible Beneficiary, parent, guardian, LPR or may establish a trust for the Recipient with a suitable trustee that may include the Trustee ('**Payee**') and pay a Benefit to the Recipient's trust.
- (d) Where a Benefit is paid to a Payee in accordance with rule 10.13(c), it will be subject to such terms, provisions, conditions, limitations and alterations as the Trustee determines, with the associated costs being payable out of the Benefit, and:
  - (i) if the Payee is a professional person or carrying on a business, the Payee is entitled, subject to rule 3.13, to act as Payee and to charge fees accordingly;
  - (ii) the Payee is entitled to pay or apply the Benefit or any part of it (including by directly paying for an expense or cost) at any time for the Recipient's advancement, maintenance, education or general well-being until they no longer lack legal capacity or are a Disqualified Person or for such period as the Trustee otherwise determines; and
  - (iii) the receipt by the Payee is a complete and final discharge to the Trustee for the application or payment.

#### 10.14 **Overpayment of Benefit**

- (a) If an overpayment of any Benefit is made to or in respect of a Member, the Trustee may, subject to the Standards:
  - (i) reduce the Member's Benefit or remaining Interest in the Fund by the amount of the overpayment;
  - (ii) recover any amounts overpaid to the Member or any other party that has received the Benefit; or

- (iii) undertake any such other measures to rectify the overpayment as the Trustee sees fit.

- (b) If an overpayment of any Benefit occurs, rule 5.1(f) applies.

#### 10.15 **Capped defined benefit income streams**

The Trustee may take any action to manage and deal with any capped defined benefit income stream as defined in the ITAA 1997 in relation to any Member or the Fund generally and the Trustee is empowered to perform or refrain from performing any related act or thing as the Trustee sees fit, including appropriately managing any reserve amount.

#### 10.16 **Asset-Test Exempt Pension**

Unless the Trustee has agreed in writing with a Member that this rule does not apply in respect of that Member, during any period in which a Benefit is provided as a Pension that is an Asset-Test Exempt Pension:

- (a) the Trustee must ensure that it complies with any requirement of the Social Security Legislation necessary to retain its status as an Asset-Test Exempt Pension during any period it is provided as an Asset-Test Exempt Pension;
- (b) the applicable provisions of the Social Security Legislation, as relevant, apply to the extent of any inconsistency in preference to any applicable provision of the SISA and the SISR relating to the provision or commutation of that Pension to ensure the Pension qualifies as an Asset-Test Exempt Pension; and
- (c) the annual rate of indexation, if applicable, of that Pension is to be limited by the maximum rate set by the Social Security Legislation and is to be fixed for the duration of the pension and must not be varied unless variation is authorised by the Social Security Legislation or the Regulator.

#### 10.17 **Reduction in minimum and maximum payments and other changes**

- (a) Despite anything else in these Governing Rules or any documentation setting out the terms and conditions of a Benefit, a Benefit provided by the Trustee is subject to any change under the Standards applicable to that type of Benefit, including:
  - (i) a change to any minimum or maximum annual payment prescribed for that type of Benefit (including, for the avoidance of doubt, a reduction in a minimum payment or increase in a maximum payment which is not in fact necessary to adopt in order to comply with the Standards); and
  - (ii) a change to any term or condition that must apply to the Benefit in order for the Benefit to comply with the Standards;

and to the extent of any inconsistency between this rule and any other provision of these Governing Rules or any documentation setting out the terms and conditions of the Benefit, this rule prevails.

- (b) A change under the Standards includes, without limitation, a change implemented by way of temporary modification, declaration or in any other manner having regard to the definition of Standards in rule 29.89.
- (c) Where a Member in receipt of a Pension commits an act of bankruptcy or becomes an Insolvent Under Administration, any Pension paid to them by the Trustee from the Fund will immediately be limited to paying only the minimum amount each financial year.

#### 10.18 Variation of Benefit

The Trustee may pay an amount or adjust (by increasing or decreasing) a Member's Interest or any Account in the Fund for any Taxes, tax credits, tax deductions, rebates, offsets, reserves or other entitlements in relation to a Member including, without limitation, any deduction entitlements under section 295-470 of the ITAA 1997 (deductions for future liability to pay benefits) in respect of the death or disablement of a Member or under section 295-485 of the ITAA 1997 (anti-detriment deduction) but is not required to do so.

#### 10.19 Pensions and reversion

- (a) In respect of any Pension (including a Transition to Retirement Income Stream), the Trustee has power to:
- (i) convert a Pension to a Reversionary Pension even though it has been commenced as a non-Reversionary Pension;
  - (ii) convert a Reversionary Pension to a non-Reversionary Pension;
  - (iii) convert a Pension to an Automatically Reversionary Pension;
  - (iv) convert an Automatically Reversionary Pension to a non-Automatically Reversionary Pension;
  - (v) change a Reversionary Pension or an Automatically Reversionary Pension to revert to a different person or automatically revert to a different person;
  - (vi) convert a Pension to a different type of Pension; and
  - (vii) commute and roll-over a Pension to another Benefit;

and any change or conversion mentioned in this rule may occur at any time after a Pension has commenced, without the need to first commute the Pension. However, nothing in this rule gives the Trustee a discretion to vary an automatic reversion that has already occurred. Prior to converting a Defined Benefit Pension to a Reversionary Pension, the Trustee should consider obtaining the advice of an actuary and a lawyer to determine whether such a conversion can occur without adverse implications.

- (b) To the greatest extent permitted by the Standards, the Trustee is empowered to pay a Pension from an accumulation account (instead of from a pension account or interest), and is empowered to pay a Pension regardless of whether the benefits meet the definition of a superannuation income stream benefit.

#### 10.20 Automatically Reversionary Pension

- (a) Subject to rule 19, a Pension may be subject to conditions and limitations including a requirement that, on the death of the Member, a Dependant of the deceased Member is automatically entitled to receive the Pension and the Pension automatically reverts to that Dependant without the exercise of any discretion by the Trustee (**'Automatically Reversionary Pension'**). An Automatically Reversionary Pension can be implemented by way of a Trustee resolution, contract, an instrument executed by the Trustee or a BDBN. Where a Pension is an Automatically Reversionary Pension, upon the Member's death, the Trustee is compelled, bound and directed to continue paying the Pension to the nominated Dependant.
- (b) Subject to rule 19, where a Pension is not initially an Automatically Reversionary Pension, it may at any subsequent time prior to the death of the Pensioner be varied to become an Automatically Reversionary Pension. The Trustee may also determine to vary an Automatically Reversionary Pension to

a Pension that is not an Automatically Reversionary Pension, provided the variation is prior to the death of the Pensioner. Any such variation may be implemented by way of a Trustee resolution, contract, an instrument executed by the Trustee or a BDBN.

#### 10.21 Declaration of trust

The Trustee may pay a Benefit by declaring a trust in respect of a specified amount, specified assets or a specified proportion of a Member's Interest or Total Interests. If the Trustee does so, the recipient becomes absolutely entitled to the Benefit. Such a declaration of trust may be oral, recorded in written form by deed or any other method. The subject of such a trust then no longer forms part of the Fund, but rather is held on bare trust for the recipient. A Member may request such a payment. To the greatest extent permitted by law, the Trustee can determine that the trust takes effect (and therefore the payment occurs) upon or just before the occurrence of a future specified event, or at a specified time. The Trustee may also similarly effect an Asset Transfer by declaring a trust, and the Trustee has all the corresponding powers as apply to Benefits paid by declaration of trust.

#### 10.22 Payment Directive

In addition to other ways a Benefit can be paid, a Benefit is also paid when a Payment Directive occurs. Such a Benefit (comprising a value or one or more amounts or assets representing all or part of a person's Total Interests ('**Specified Property**')) is received, and the Member becomes absolutely entitled to the Benefit, when the Payment Directive occurs. Any such Benefit then no longer forms part of the Fund, but rather is held on bare trust. Despite any other provisions of this deed, a Payment Directive can be in relation to one or more specific assets, provided that the specific assets or amount does not exceed the value of the Member's Total Interests.

#### 10.23 Meaning of Payment Directive

A Payment Directive:

- (a) occurs either:
  - (i) immediately when a Relevant Representative notifies the Trustee that a Benefit is to be paid to a Member in respect of Specified Property; or
  - (ii) if the Trustee makes a resolution or decision that a Benefit is to be paid to a Member in respect of Specified Property on or immediately before the occurrence of a future specified event or time — on or immediately before the occurrence of the future specified event or time as the case may be;
- (b) can occur:
  - (i) orally or in writing, without any particular form of words having to be used and whether or not the Relevant Representative specifically knows the precise content of this rule; and
  - (ii) without the Trustee taking any action;
- (c) despite anything else, does not occur unless a relevant condition of release in the SISR is satisfied in relation to the Member; and
- (d) despite anything else, does not occur if the requisite number of Members specified in rule 3.2(a), determine in writing that the Payment Directive did not occur (even if the determination is retrospective).

## **10.24 Relevant Representative**

In relation to a Member, a Relevant Representative is any of the following:

- (a) the Trustee;
- (b) the Member;
- (c) a person who holds an enduring power of attorney granted by the Member, unless this is precluded by the nominating/appointing instrument or by a decision made in writing by the Member after the nominating/appointing instrument has already been executed; and
- (d) the Member's Member Representative;

but the Member's trustee in bankruptcy or any similar administrator or controlling person in the case of an Insolvent Under Administration or debt agreement can never be the Member's Relevant Representative.

## **10.25 Revocation of payment directive**

If a Member's Relevant Representative has made a resolution or decision that a Benefit is to be paid to a beneficiary in respect of Specified Property on or immediately before the occurrence of a future specified event or time, and the future specified event or time has not occurred yet, the Relevant Representative can revoke the resolution or decision in writing.

# **11. Lump Sums**

## **11.1 Trustee discretion**

Applications by Members for Benefits under this rule are subject to rule 1.1 and rule 10.

## **11.2 Eligibility**

If a Member:

- (a) Retires;
- (b) attains 65 years of age;
- (c) is Permanently Incapacitated;
- (d) meets the condition of release of Terminal Medical Condition; or
- (e) is otherwise eligible to receive a Lump Sum in accordance with the Standards;

the Member is eligible to receive a Lump Sum.

## **11.3 Death benefits**

If a Member dies, an Eligible Beneficiary or the deceased Member's LPR is eligible to receive a Lump Sum.

## **11.4 Variation**

A Member's Lump Sum may be varied by the Trustee utilising an amount in any other Account to fund such a Benefit.

## **12. Account-Based Pensions**

### **12.1 Trustee discretion**

Applications by Members for the commencement and payment of a Pension under this rule are subject to rule 10 (in particular rule 10.4 relating to the Transfer Balance Cap).

### **12.2 Eligibility**

If a Member:

- (a) meets the condition of release of Retirement;
- (b) attains 65 years of age;
- (c) meets the condition of release of Permanent Incapacity;
- (d) meets the condition of release of Terminal Medical Condition; or
- (e) is otherwise eligible to receive an Account-Based Pension in accordance with the Standards;

the Member is eligible to receive an Account-Based Pension.

### **12.3 Death benefits**

Subject to rule 18.1(h), if a Member dies, an Eligible Beneficiary is eligible to receive an Account-Based Pension from the Member's Benefit by way of reversion or a new Account-Based Pension.

### **12.4 Commutation and variation**

Subject to rules 1.1, 22 and 29.2 and the Standards:

- (a) the Trustee may commute or transfer the whole or any part of an Account-Based Pension to a Lump Sum or any other Benefit permitted by the Standards at any time; and
- (b) an Account-Based Pension may be varied by the Trustee as permitted by the Standards.

## **13. Transition to Retirement Income Streams**

### **13.1 Trustee discretion**

Applications by Members for the commencement and payment of a Pension under this rule are subject to rule 10 (in particular rule 10.5 relating to the income tax exemption).

### **13.2 Eligibility**

A Member is eligible to receive a Transition to Retirement Income Stream on or after attaining Preservation Age.

### **13.3 Retirement phase**

Unless the Trustee determines that rule 13.4 applies, a Transition to Retirement Income Stream is in retirement phase if:

- (a) the Member attains age 65; or

- (b) the Member satisfies one of the following conditions of release and notifies the Trustee of that fact:
  - (i) Retirement;
  - (ii) Permanent Incapacity; or
  - (iii) Terminal Medical Condition; or
- (c) any other applicable conditions prescribed by the Standards are met.

#### **13.4 Transition to Retirement Income Stream conversion**

If the Trustee determines that this rule applies, a Transition to Retirement Income Stream converts to an Account-Based Pension provided that rule 13.3 is satisfied.

#### **13.5 Death benefits**

Subject to rule 18.1(h), if a Member in receipt of a Transition to Retirement Income Stream dies, an Eligible Beneficiary is eligible to receive a Transition to Retirement Income Stream in retirement phase or an Account-Based Pension from the Member's Benefit by way of reversion or a new Account-Based Pension.

#### **13.6 Commutation and variation**

Subject to the limitations in rules 1.1, 22 and 29.105 and the Standards:

- (a) the Trustee may commute the whole or any part of a Transition to Retirement Income Stream to a Lump Sum or any other Benefit permitted by the Standards at any time, but the Lump Sum cannot be cashed unless the Standards permit; and
- (b) a Transition to Retirement Income Stream may be varied by the Trustee as permitted by the Standards.

### **14. Allocated Pensions**

#### **14.1 Restriction on commencement**

- (a) Applications by Members for the commencement of a Pension under this rule are subject to rule 10.
- (b) A Member may not, unless permitted by the Standards (including by way of reversion), commence to receive an Allocated Pension or a Non-Commutable Allocated Pension after 19 September 2007.

#### **14.2 Pensions commenced before 20 September 2007**

A Member may continue to be paid an Allocated Pension or a Non-Commutable Allocated Pension which was commenced before 20 September 2007.

#### **14.3 Death benefits**

Subject to rule 18.1(h), if a Member dies, an Eligible Beneficiary is eligible to receive an Allocated Pension from the Member's Benefit by way of reversion.

#### **14.4 Commutation and variation**

Subject to rules 1.1, 22 and 29.4 and the Standards:

- (a) the Trustee may commute or transfer the whole or any part of an Allocated Pension to a Lump Sum or any other Benefit permitted by the Standards at any time;
- (b) the Trustee may commence to pay an existing Allocated Pension as an Account-Based Pension without the Member commuting or transferring their existing Allocated Pension. A Member may request the Trustee in writing to convert their Allocated Pension to an Account-Based Pension; and
- (c) an Allocated Pension may be varied by the Trustee as permitted by the Standards.

### **15. Market Linked Pensions**

#### **15.1 Restriction on commencement**

- (a) Applications by Members for the commencement of a Pension under this rule are subject to rule 10.
- (b) A Member may not, unless permitted by the Governing Rules and the Standards, commence to receive a Market Linked Pension after 19 September 2007.
- (c) A Member is eligible to receive a Market Linked after 19 September 2007 if:
  - (i) it is purchased with a roll-over Benefit that resulted from the commutation of a pension that meets the standards of regulation 1.06(2), 1.06(7) or 1.06(8) of the SISR; or
  - (ii) the Member is otherwise permitted under the Standards to commence to receive a Market Linked Pension.

#### **15.2 Pensions commenced before 20 September 2007**

A Member may continue to be paid a Market Linked Pension which was commenced before 20 September 2007.

#### **15.3 Death benefits**

Subject to rule 18.1(h), if a Member dies, one Dependant of the Member who is eligible to receive a Market Linked Pension from the Member's Benefit by way of reversion.

#### **15.4 Commutation and variation**

Subject to the limitations in rules 1.1, 22 and 29.53(a)(iv) and the Standards:

- (a) the Trustee may commute the whole or any part of a Market Linked Pension to a Lump Sum or any other Benefit permitted by the Standards at any time;
- (b) a Market Linked Pension may be varied by the Trustee utilising an amount in any other Account to fund such a Pension; and
- (c) a Market Linked Pension commenced after 30 June 2017 will not qualify as a capped defined benefit income stream for Transfer Balance Cap and for capped defined benefit income stream purposes.



## **16. Temporary Incapacity Income Streams**

### **16.1 Trustee discretion**

Applications by Members for the payment of a Pension under this rule are subject to rule 10.

### **16.2 Eligibility**

If a Member:

- (a) suffers Temporary Incapacity; or
- (b) is otherwise eligible to receive a Temporary Incapacity Income Stream in accordance with the Standards;

then the Trustee may pay a Member a Temporary Incapacity Income Stream:

- (c) for the purpose of continuing (in whole or part) the gain or reward which the Member was receiving before the Temporary Incapacity; and
- (d) for a period not exceeding the period of incapacity from employment of the kind engaged in immediately before the Temporary Incapacity; or
- (e) for a purpose and for a period that otherwise complies with the Standards;

and the Trustee may vary or cease an income stream as it determines appropriate to ensure it complies with the Minimum Benefit rules and the Standards.

## **17. Miscellaneous Benefits**

### **17.1 Trustee discretion**

Applications by Members for the payment of a Benefit under this rule are subject to rule 10.

### **17.2 Other Benefits**

The Trustee may pay a Benefit to the Member to the extent permitted by the Standards, having regard to rule 7.16, if:

- (a) the Trustee determines that a Member is eligible to receive a Benefit not otherwise specified in these Governing Rules; and
- (b) the Benefit is or becomes permitted under the Standards.

### **17.3 Terminal Medical Condition**

If the Trustee determines that a Member has a Terminal Medical Condition, the Member is eligible to receive a Benefit allowed by the SISR.

### **17.4 Severe financial hardship**

If the Trustee determines that a Member is suffering severe financial hardship as prescribed by the SISR, the Member is eligible to receive a Benefit allowed by the SISR.

### **17.5 Compassionate grounds**

If the Regulator determines that a Member is eligible for a payment from the Fund on compassionate grounds, the Member is eligible to receive a Benefit allowed by the SISR.

## **17.6 Temporary residency**

If a Member who is a temporary resident of Australia permanently departs Australia in circumstances as prescribed by the SISR and requests in writing the release of their Benefits, the Member is eligible to receive a Benefit as allowed under the SISR in respect of cessation of temporary residency.

## **17.7 Small balances**

If a Member's Gainful Employment with a standard employer-sponsor of the Fund is terminated and the Member's preserved Total Interests at the time of termination is less than:

- (a) \$200; or
- (b) such other amount prescribed by the SISR;

the Member is eligible to receive a Benefit as permitted under rule 10.1.

## **17.8 Release authority**

If authorised by a release authority or such other method as may be allowed under the Standards, the Trustee may pay an amount to a Member, the ATO or other person permitted by the Standards, in accordance with rule 22.6(b).

# **18. Death benefits**

## **18.1 Payment of Benefit on death**

- (a) This rule 18 is subject to rules 10, 19 and 23.4.
- (b) Upon the death of a Member:
  - (i) if required by the Standards, the Trustee must pay or commence to pay the deceased Member's Interests as soon as practicable; and
  - (ii) the Trustee may only transfer or roll-over the deceased Member's Interests to an Approved Fund for the purposes of payment if permitted by the Standards.
- (c) In paying a Benefit under rule 18, the Trustee's discretion is absolute and unfettered, and:
  - (i) should have regard to but is not bound by any non-binding nomination by the Member;
  - (ii) must pay a deceased Member's Interests in favour of either or a combination of the following:
    - (A) the deceased Member's LPR; or
    - (B) one or more of the deceased Member's Dependants;
  - (iii) must, if unable to find either an LPR or a Dependant of the deceased Member, pay the deceased Member's Interests to an individual selected by the Trustee;
  - (iv) may pay a deceased Member's Interests in favour of such other person (including any natural person, company, association or body) as the Standards or the Regulator permits; and

- (v) may require any release (including a deed of release that forever releases the Trustee or any director from liability) from any recipient before making any payment, without the Trustee providing any reasons.
- (d) The Trustee must determine whether a Benefit paid under rule 18 in respect of a deceased Member's Interests should be any one or more of the following types:
  - (i) a single Lump Sum;
  - (ii) an interim Lump Sum and a final Lump Sum, the total of which must not exceed the Interests of the deceased Member in the Fund;
  - (iii) one or more Pensions;
  - (iv) one or more annuities acquired from one or more Approved Funds; or
  - (v) any other form permitted by the Standards.
- (e) The Trustee may, subject to rule 10.4, make any determination relating to the type, amount and the value of any particular assets or reserves in the Fund that will fund a Benefit paid under rule 18.
- (f) If a Benefit is paid under rule 18 as a Pension, the Trustee may determine the type of Pension, whether it is commutable or not, whether it is reversionary or not, and the Trustee may attach such other conditions and limitations to such Benefit as the Trustee determines.
- (g) If required by the Standards, the remaining balance of a Pension that was being paid prior to a deceased Member's death which is paid as a Benefit under rule 18 must commence to be paid or be paid out of the Fund, as the case may be, within the maximum period required by the Standards.
- (h) Unless otherwise permitted by the Standards, a Benefit paid under rule 18 to a Dependant who is a Child of a Member must be paid as a Lump Sum unless:
  - (i) the Child has not reached 18 years of age; or
  - (ii) the Child has reached 18 years of age and:
    - (A) is, at the time of the deceased Member's death, financially dependent upon the deceased Member and has not reached 25 years of age, provided that the Pension is paid to the Child as a Lump Sum on the earlier of the following:
      - (1) the day on which the Pension is commuted or the term of the Pension expires (unless the Pension is rolled-over to commence a new Pension); and
      - (2) the day on which the Child attains 25 years of age; or
    - (B) has a disability of the kind described in section 8(1) of the *Disability Services Act 1986* (Cth).
- (i) The Trustee may deal with a deceased Member's Interests either:
  - (i) in accordance with rule 22.7 to the extent required by the Standards; or
  - (ii) in any manner the Trustee determines, provided that the payment or application is in accordance with the Standards.

## 18.2 Evidence

The Trustee may require such evidence as it determines necessary (including by requiring such tests or documentation as the Trustee reasonably requires) in order to determine whether a person is eligible to receive Benefits under these Governing Rules or holds a particular position or role, including that of Dependant or LPR.

## 18.3 Anti-detriment payments

(a) Subject to the Standards, if a Benefit is paid under rule 18 as a Lump Sum to a deceased Member's:

- (i) LPR — to the extent to which the persons in rule 18.3(a)(ii) can reasonably be expected to benefit from the Member's estate; or
- (ii) to a person who was a Spouse or Child of a deceased Member at the time of death or payment,

the Trustee may increase the Lump Sum by the Tax Saving Amount, provided that the Member's death occurred prior to 1 July 2017 and the Lump Sum is provided by 1 July 2019.

(b) Subject to the Standards, the Trustee may make any adjustment to any Account in the Fund including any other Member's Interests in order to increase a Lump Sum in accordance with rule 18.3(a) and the Trustee may in doing so rely on, in addition to any other power or rule, rules 21.4, 23.4 and 6.1(c).

## 18.4 Member's deceased estate

For the avoidance of doubt, the deceased estate and/or LPR of a Member is a beneficiary of the Fund, even before the Member has died.

# 19. Binding Death Benefit Nominations

## 19.1 Making a BDBN

A Member may, prior to their death, make a written direction binding the Trustee as to the payment of one or more assets or amounts ('**BDBN Benefit**') representing all or part of their Total Interests on the death of the Member. Such a direction is referred to in these Governing Rules as a BDBN. The Trustee is bound, compelled and must follow directions contained in the BDBN. For the avoidance of doubt, the Member may specify in a BDBN matters including:

- (a) that the BDBN Benefit is to be paid on the Member's death to one or more of that Member's Dependents and/or LPR, to the exclusion of any other Dependents/LPR (and the direction given in the BDBN can be a cascading direction whereby substitute Dependents and/or LPR are to be paid any BDBN Benefit where the first named person cannot or will not receive the BDBN Benefit, and the BDBN is not limited in the number of cascading directions that can be specified);
- (b) subject to rule 10.6(a), the proportion of an Interest or the Member's Total Interests, the value, the particular assets, specified part or amount or Accounts in the Fund that will be used to pay the BDBN Benefit;
- (c) whether the BDBN Benefit is to be paid as a Lump Sum, Pension or combination of Lump Sum and Pension and, if a Pension is provided (subject to rule 18.1(h) and the ability to pay a Pension to a Dependant on death under the Standards) the type of Pension, whether it is commutable or not and

whether it is reversionary or not, and the Member may attach further limitations and conditions on the Pension; and

- (d) that different Interests are to be dealt with differently, including by streaming of different BDBN Benefits to different Dependants and/or LPR;

and to the extent that the BDBN does not specify a matter in paragraphs 19.1(a) to (d) (but only to that extent), the Trustee has a discretion with respect to that matter. For the avoidance of doubt, if the BDBN binds the Trustee with respect to who a BDBN Benefit is to be paid to, but the BDBN does not specify how the BDBN Benefit is to be paid, the Trustee has discretion as to how to pay, and the Trustee may choose to pay using a combination of methods.

## 19.2 **Form of BDBN**

- (a) In order to be effective, a BDBN must:
  - (i) be made by a Member and expressed to be binding in relation to the Member's superannuation interests upon death (whether or not the word 'binding' or a similar word is used);
  - (ii) be in writing (though no particular form of words or particular form of BDBN is required); and
  - (iii) be signed (including by way of Technology) and dated by the Member in the presence of two adult witnesses, neither of whom is mentioned as a Dependant in the BDBN or is an LPR of the Member.
- (b) A BDBN that refers to a Member's estate, deceased estate, trustee of the deceased estate, 'my estate' or similar words does not fail to be valid only because of these words, and the BDBN is taken to refer to the Member's LPR in substitution for such words.
- (c) A BDBN is not required to be signed on every page by the Member or the two adult witnesses, in order to be effective.
- (d) A BDBN does not cease to be binding on the Trustee merely because the requirements for the BDBN in the governing rules are subsequently amended and the BDBN does not satisfy those requirements as amended.
- (e) A BDBN may specify proportions or amounts using decimals, fractions, percentages or any other method of notation.

## 19.3 **Binding on Trustee**

After the death of a Member, the Trustee is bound to comply with the directions set out in a Member's BDBN, irrespective of whether, prior to the Member's death, the Trustee had approved the BDBN or been provided with the BDBN or any notice whatsoever of the BDBN. Further, a BDBN overrides a Reversionary Pension nomination to the extent of any inconsistency. However, the Trustee may, with the written consent of the recipient, vary the form of payment from a Pension to a Lump Sum, or vice versa.

## 19.4 **Revocation**

A Member may in writing revoke a BDBN made at any time prior to that Member's death, including by making a new BDBN that revokes the prior BDBN. Any revocation renders a BDBN void and inoperative in its entirety. The Trustee does not need to be notified in order for a revocation of a BDBN to be effective.

## 19.5 **Non-lapsing BDBNs**

- (a) Subject to any terms and conditions contained in the BDBN, a BDBN continues in full force and effect until it is revoked in accordance with rule 19.4,

regardless of the time period that has elapsed since the execution date of that BDBN and despite regulation 6.17A(7) of the SISR.

- (b) Despite rule 19.5(a), a Member may expressly direct that a BDBN expires after a certain time period. If the BDBN does not expressly state an expiry time period, rule 19.5(a) applies.

## **19.6 Enduring power of attorney and Member Representative**

Despite any conflict of interest, a Member Representative or a person appointed as an attorney under an enduring power of attorney may make, vary or revoke a BDBN on behalf of a Member, including where the Member Representative or attorney benefits, provided that the enduring power of attorney or the rules governing the Member Representative (including in the appointing instrument or document) do not expressly preclude same. This provision is for clarity and does not limit the Governing Rules in any other respect especially having regard to rules 28.1(f) and 29.50.

## **19.7 BDBNs subject to the Standards**

A BDBN will be rendered invalid to the extent that compliance with the BDBN would:

- (a) result in a contravention of the Standards that would cause the Trustee or the Fund to suffer a penalty or commit an offence; or
- (b) result in a deceased Member's Total Interests or any part thereof being paid:
  - (i) to a person who is neither a Dependant nor an LPR of that deceased Member unless this is permitted by the Standards; or
  - (ii) as a Pension to a Child of a deceased Member, unless the exception in rule 18.1(h) applies or the Standards otherwise permit;

and for the avoidance of doubt, a BDBN is not rendered invalid to the extent that it does not satisfy any requirement expressed in section 59 of the SISA or in regulation 6.17A of the SISR.

## **19.8 Disclaiming**

A person who benefits under a BDBN may disclaim all or part of any entitlement that they may otherwise become entitled to receive in respect of a BDBN within 60 days of being notified by the Trustee of their interest or such further period approved by the Trustee. The Trustee may reject any disclaimer by such a person and determine whether a disclaimer applies in respect of the person's entitlement in whole or in part.

# **20. Vesting and Membership classes**

20.1 Subject to the Standards, no Interest in respect of a Member, other than a Minimum Benefit, vests in a Member or a Dependant after the happening of any of the following events:

- (a) the Member committing an act of bankruptcy or becoming an Insolvent Under Administration;
- (b) the Member assigning, securing or charging their Interests in the Fund (or attempting to do so); or

- (c) the Member's Interests, whether by their own act, operation of law, an order of any court or tribunal, a direction by a Regulator or by any other cause, becoming payable to or vested in any other person, company, government or other organisation;

and the Trustee is empowered to pay or apply any amount covered by this rule 20 in any manner as the Trustee determines in its discretion from time to time provided that the payment or application is in accordance with the Standards.

20.2 The Trustee may, in its discretion and subject to the Standards, establish, maintain or terminate:

- (a) classes of Membership; or
- (b) vesting of contributions or Interests.

20.3 Rule 20.1 does not apply to any Interest that has already vested in a Member or that constitutes a Minimum Benefit.

## **21. Accounts and administration**

### **21.1 Establishment of Accounts**

The Trustee may establish any Account the Trustee determines appropriate (including establishing one or more Accounts in respect of a Member), including, without limitation:

- (a) a Member or Employer accumulation Account;
- (b) a Pension Account and an Account to monitor a Member's Transfer Balance Cap;
- (c) a reserve Account (including, without limitation, a Pension reserve, investment reserve, contribution reserve, insurance reserve, administration reserve and sundry reserve); and
- (d) any other Account, including any Sub-Account (whether formal or informal or notional or otherwise).

### **21.2 Trustee to maintain Accounts**

- (a) The Trustee must ensure that the Accounts are properly maintained and may set policies and procedures for maintaining the Accounts.
- (b) Subject to the Standards, the Accounts established by the Trustee must be managed by the Trustee. The Trustee may determine what amounts are transferred in to and out of an Account and make all other decisions including what assets are used to fund an Account. The Accounts may contain such amounts as follows:
  - (i) Member and Employer accumulation Account — which may include contributions made by or in respect of a Member (as applicable) in accordance with rule 9, transfers, allocations, allotments or roll-overs in respect of a Member in accordance with rule 22 and amounts from any other source permitted under the Standards;
  - (ii) Pension Account — assets funding a Pension;
  - (iii) reserve Account — the Trustee may access and obtain amounts for a reserve Account from contributions, Earnings, transfers and roll-overs under rule 22 and from any other source permitted under the Standards; and

- (iv) any other Account — any amount that the Trustee determines.
- (c) The Trustee may manage a reserve Account for any purpose permitted under the Standards, including:
  - (i) to fund the payment of a Pension (including maintaining any solvency, mortality, investment or other reserve to satisfy a current or non-current Pension liability);
  - (ii) to supplement any Account of any Member or class of Membership;
  - (iii) to accumulate amounts from Earnings and other sources to manage investment fluctuations and to utilise such reserves to supplement Earnings or for any other purpose that the Trustee determines;
  - (iv) to make a provision (including a provision under rule 23.4) for or to fund the payment of a Benefit on the death of a Member to their LPR or Dependants;
  - (v) to fund the payment of a Temporary Incapacity Income Stream or the payment of a Benefit on Permanent Incapacity;
  - (vi) to make provision for and to pay Disbursements;
  - (vii) to manage contributions to the Fund and assist in allocating such contributions to the relevant Member or class of Members and to the relevant period; and
  - (viii) to fund any other expense or liability or for any other purpose permitted under the Standards.
- (d) The Trustee may determine that any expenses incurred in relation to the Fund are to be partly or wholly charged against any one or more Accounts, including where an expense is charged to an Account to the exclusion of another Account or Accounts.
- (e) The Trustee may account for any applicable liability, provision, estimated cost of realisation or similar expense or contingency in valuing any Account or interest.

### 21.3 **Earnings**

- (a) Earnings may be credited or debited to any Account, unless supplemented by an allocation of an amount from a reserve Account or the Trustee determines otherwise, provided that:
  - (i) credits must not total an amount greater than Earnings in a period; and
  - (ii) debits must not total an amount greater than Earnings in a period.
- (b) Earnings may be debited or credited to the Accounts, as the case may require, in respect of each Financial Year or in respect of such other period as the Trustee determines.
- (c) The Trustee may make any assumption, determination or estimate or may rely on any general practice or Advice in crediting or debiting any Earnings.
- (d) Subject to the Standards, the Trustee may determine not to apply any further Earnings to or in respect of a Member or to or in respect of a particular Member Account on a request made by the Member to the Trustee in writing. A Member may withdraw a prior request at any time after which the Trustee may apply Earnings to or in respect of that Member at the Trustee's discretion.



- (e) In the exercise of its discretion in determining allocations of Earnings to each Account under this rule, the Trustee should have regard to the Standards and as many of the following as the Trustee determines is appropriate:
  - (i) the amount in each Account and the period the amount has been in the Fund;
  - (ii) any assets held in respect of a Member or class of Membership under rule 6.2 and any net income or loss from those assets;
  - (iii) length of Membership, investment strategies and any Advice;
  - (iv) the level of the Fund's reserves; and
  - (v) the composition of assets of the Fund in relation to assets set aside to meet certain liabilities of the Fund whether under rule 6.2 or for other purposes of the Fund and the extent to which Earnings are attributable to those assets;

and the Trustee may have regard to such other matters as the Trustee determines appropriate.

## 21.4 **Taxes**

- (a) The Trustee can allocate Taxes to any Account, including making any adjustments or determinations, even if the allocation is not proportionate to the Total Interests of Members.
- (b) The Trustee may make any assumption, determination, valuation or estimate or may rely on any general practice or Advice in dealing with or allocating any Taxes.

## 21.5 **Applying reserves**

- (a) The Trustee may apply all or any part of a reserve Account for any purpose permitted under the Standards in respect of any Member or class of Membership or the Fund generally, including without limitation funding a Tax Saving Amount.
- (b) In making a determination to apply an amount from a reserve Account under rule 21.5(a), the Trustee should first take into consideration, among other things, any implications such an application may have for any contribution or other cap.

# 22. **Transfers and roll-overs**

## 22.1 **Transfers and roll-overs into and within the Fund**

- (a) Subject to the Standards, the Trustee may, upon the written request of an Eligible Contributor, allow an Asset Transfer to be made in respect of a Member into or within the Fund. The Trustee may in its discretion waive the requirement for a request to be in writing.
- (b) An Asset Transfer may with the Trustee's consent be made from another Approved Fund, or an Account or Interest within the Fund, as the case may be.
- (c) The Trustee must not accept the rollover of an employment termination payment unless permitted by the Standards.

## **22.2 Transfers and roll-overs from the Fund**

- (a) Subject to the Standards, the Trustee may, upon receiving a written request from a Member or, if the Trustee otherwise determines, allow an Asset Transfer to be made in respect of a Member from the Fund within the time required by the Standards, unless the Fund is an SMSF in which case the Trustee may allow or refuse such an Asset Transfer on receipt of a request from a Member.
- (b) The Trustee may refuse to allow an Asset Transfer to an Approved Fund that is not a complying superannuation fund or one that the Trustee reasonably suspects may not be a complying fund.
- (c) An Asset Transfer may be made with Notional Assets passing from another Approved Fund, or an Account or Interest within the Fund, as the case may be.
- (d) In addition to any other power to withhold amounts, the Trustee may withhold any amount of Tax that the Trustee considers appropriate or that it must withhold, including an excess untaxed roll-over amount if withholding Tax is payable on the amount, unless otherwise required by the Standards.

## **22.3 Recording of transfers and roll-overs to Interests in the Fund**

In the event of the receipt of an Asset Transfer or the undertaking of an allotment in accordance with this rule, the Trustee must ensure the Accounts are appropriately adjusted to comply with the Standards.

## **22.4 Spouse contributions-splitting**

- (a) Subject to rule 8.6, this rule 22 and the Standards, the Trustee may, upon receiving a request from a Member, allot all or some of a splittable contribution that is a concessional contribution made by or in respect of the Member to or in respect of that Member's Spouse, provided that such allotment does not exceed the maximum amount that may be allotted as prescribed by the Standards.
- (b) Subject to the Standards, where a splittable contribution is allotted to a Member's Spouse in accordance with rule 22.4(a), the entire amount allotted to the Member's Spouse will form part of the Taxable Component of the Interest of the Member's Spouse.

## **22.5 Written request requirement**

- (a) A written request received from a Member must contain such information prescribed by the Standards to enable an Asset Transfer both to and from an Interest, an Account or an Approved Fund under this rule.
- (b) Before allowing an Asset Transfer, the Trustee may request such further information and documents as prescribed by the Standards as is necessary to facilitate the Asset Transfer if this is not provided by the Member in their written request. The Trustee may request an independent valuation report from an expert and such other evidence it determines.
- (c) The Trustee may, subject to the Standards, undertake an Asset Transfer even though the Member has not completed a written request or complied with this rule 22.

## **22.6 Mandatory transfers, commutations, roll-overs and release authorities**

- (a) Subject to the Standards, the Trustee may facilitate an Asset Transfer in respect of a Benefit which is required to be paid to or in respect of a Member of the Fund to an Approved Fund, an Account or as a Benefit determined by the Trustee if a Member has failed to provide instructions in relation to the Asset

Transfer within a reasonable time period of the Benefit first becoming payable. For the avoidance of doubt, this rule also applies in respect of an Asset Transfer under rule 8.8(g).

- (b) If the Trustee is given a release authority or like thing with which the Trustee is required to comply under the ITAA 1997, Schedule 1 of the *Taxation Administration Act 1953* (Cth) or as otherwise authorised under the Standards, the Trustee must, if required, facilitate an Asset Transfer in favour of the ATO or the Member, as the case requires, within 10 business days of the issue date of the release authority or as otherwise required by the Standards.
- (c) The Trustee is empowered to comply with any commutation authority issued by the Regulator or otherwise issued to the maximum available release amount under the Standards.
- (d) If the Trustee is permitted under the Standards, the Trustee may, following the request by a Member, facilitate an Asset Transfer to or in favour of a Member to enable them to manage a contribution or other cap.

## **22.7 Unclaimed money**

The Trustee must comply with any Standards relating to unclaimed money where a payment is required to be made in respect of a Member who cannot be located after the Trustee has made reasonable efforts and inquiries.

## **22.8 Discharge on transfer**

The receipt by the trustee of an Approved Fund of an Asset Transfer is a complete and final discharge to the Trustee and the Fund in respect of any liability to the Member in relation to their Benefit or the amount or value of the assets subject to that Asset Transfer.

## **22.9 Proportioning of Asset Transfer**

If the Trustee determines to allow an Asset Transfer, rule 10.4 applies to the Asset Transfer (except an Asset Transfer implemented under rule 22.6(b)) if required by the Standards as if the reference to Benefit in that rule was a reference to the Asset Transfer.

# **23. Disclosure, records, data standards and auditors**

## **23.1 Notifications and disclosure of information**

The Trustee should cause any notifications and information to be provided by or in respect of the Fund, as required from time to time by the Standards, including the following if necessary:

- (a) an appropriate notification upon a person becoming (including a product disclosure statement, if required) or ceasing to be a Member;
- (b) changes to the office of Trustee or directors of a Corporate Trustee;
- (c) annual disclosures at the end of each Financial Year (or relevant period) in respect of a Member, the Fund or other person;
- (d) changes to these Governing Rules, including the name of the Fund;
- (e) contact and other details for the Fund;

- (f) a copy of these Governing Rules, which is to be made available for inspection by each Member and any LPR or Member Representative of a Member, including a deceased Member;
- (g) notifications as to any Pension matters including commencement and commutation;
- (h) notifications regarding any contribution, excess contribution, contribution caps, Total Superannuation Balance, Transfer Balance Account, Transfer Balance, excess transfer balance, release authorities, commutation authorities or any similar or related notification; and
- (i) any other information specified by the Standards which must be provided to or may be requested by a Member, Employer, Regulator or any other person or entity at least once a year or at such other times as the Standards may prescribe.

## 23.2 **Record keeping and data and payment standards**

The Trustee must:

- (a) cause proper records to be maintained, and must cause the relevant notifications and annual or other returns to be lodged with the Regulator, the Members and any other relevant authority in accordance with the Standards;
- (b) keep a record of all Trustee minutes and decisions relating to the Fund for a period of at least ten years, or such longer period as may be required by the Standards;
- (c) keep a record of the Fund's Accounts, financial statements and returns for a period of at least five years, or such longer period as may be required by the Standards;
- (d) keep a record of any notice, declaration or election made or given by the Trustee or a Member in relation to any matter of the Fund for such period as required by the Standards; and
- (e) ensure compliance with duties provided under the Standards relating to superannuation data and payment matters (including SuperStream).

## 23.3 **Financial statements**

- (a) The Trustee must cause financial statements and any other required statement to be prepared as soon as practicable after the end of each Financial Year and at any other time as required by the Standards. To the extent required by the Standards, the financial statements must value the Fund's assets at market value, but to the extent that any trust law requiring market valuation can be excluded, it is excluded, and to the extent that the Regulator allows a more lenient method of determining or assessing market value, that method prevails unless the Trustee determines otherwise.
- (b) The Trustee may make any determination regarding the Fund's financial statements including the market value of any asset, liability, realisation cost or other item and whether the Fund is to be a reporting or non-reporting entity. The Trustee may rely on any Advice in relation to the financial statements.

## 23.4 **Provisions**

- (a) The Trustee may make provision or adjustment in the Accounts for, and may record in the Accounts the value or amount of, among other things:
  - (i) any Disbursements, liabilities, depreciation and amortisation;

- (ii) Taxes, tax credits, rebates, offsets including any provision for future income tax benefit or provision for deferred income tax; and
  - (iii) any other provision or adjustment the Trustee determines appropriate.
- (b) The Trustee may make any estimate or adjustment it determines appropriate in valuing any amount under rule 23.4(a).

## 23.5 Auditor

In accordance with the Standards and for each period required by the Standards, the Trustee must appoint an approved SMSF auditor (within the meaning of that term in the SISA) to:

- (a) audit the financial statements and the records of the Fund requiring audit;
- (b) report in writing to the Trustee; and
- (c) perform any required function.

## 24. Variation

24.1 The Trustee may at any time, by deed or written resolution, vary these Governing Rules in whole or in part and such variation applies on the date of variation or on a prospective or retrospective basis (including any provisions deemed to be included under rule 26), subject to rules 24.2 to 24.5.

24.2 Any variation to these Governing Rules must continue to ensure that:

- (a) the Trustee of the Fund is a Corporate Trustee; or
- (b) the sole or primary purpose of the Fund is the provision of Old-Age Pensions.

24.3 No variation can reduce a Member's Interests accrued before the date of the amendment unless the Trustee has the written consent of any Member whose Interests would be reduced or adversely affected.

24.4 Despite rule 24.3, a variation may reduce a Member's Interests accrued before the date of the amendment without obtaining the Member's consent if:

- (a) the reduction in Interests is required because of, and does not exceed the value of, any additional Tax or any costs payable by the Trustee in relation to the Fund;
- (b) the reduction is required to enable the Fund to comply with the Standards or as approved by the Regulator; or
- (c) the variation is otherwise authorised by the Standards;

and the Trustee need not observe any of the conditions in Trustee Law which may otherwise apply to the amendment or to the process of making the amendment.

24.5 A variation must not change or revoke a Member's prior BDBN without that Member's prior written consent. Further, a Member's prior BDBN made under the provisions of a prior deed or governing rules (including the Governing Rules) that has not been revoked and was otherwise valid and binding under the prior Governing Rules remains binding on the Trustee despite a different procedure or form applying under a varied deed or governing rules (including the Governing Rules), until the BDBN expires or is revoked.

24.6 A variation may implement conditions that:

- (a) restrict future variations;

- (b) require the consent of a third party; or
- (c) impose other conditions, limitations or restrictions that may be revocable or non-revocable.

## 25. Wind up

25.1 The Trustee is to wind up and terminate the Fund in the manner provided by this rule when any of the following events occur:

- (a) an agreement to wind up the Fund is made between all Members, the LPR of any deceased Member (in respect of whom an Interest remains in the Fund) and the LPR of any Member under a legal disability, subject to rule 8.10(d);
- (b) the Trustee decides that the continuation of the Fund is not reasonably justified; or
- (c) the Fund is required to be wound up to comply with the Standards.

25.2 The termination takes effect on a date ('**Wind up Date**') which is the date on which the first of the events described in rule 25.1 occurs, unless:

- (a) if the relevant event was the event referred to in rule 25.1(a) — all the Members, the LPR of any deceased Member (in respect of whom an Interest remains in the Fund) and the LPR of any Member under a legal disability; or
- (b) if the relevant event was another event referred to in rule 25.1(b) — the Trustee;

determines that the termination takes effect on some other date, which may be on a prospective or retrospective basis.

25.3 The Trustee must close the Membership of the Fund on the Wind up Date and determine the amount or value of assets available for satisfying the amount credited to the Accounts of each Member after taking into account and making necessary provisions for the Disbursements and losses related to winding up and finalising the Fund.

25.4 The Trustee:

- (a) must roll-over or transfer to an Approved Fund any Interest of a Member that the Trustee cannot pay to the Member that can be satisfied by the amount determined under rule 25.3 in respect of each Member and any applicable reserve or surplus;
- (b) may make any adjustment to each Member's Interest and any applicable reserve or surplus on account of any surplus or deficiency arising during the course of and before finalising the winding up of the Fund; and
- (c) may pay to each Member any Benefit that the Member requests, provided that:
  - (i) the Trustee must not roll-over or transfer a Member's Interests (or a part of them) if such a payment, roll-over or transfer would be inconsistent with the Standards; and
  - (ii) the Trustee may maintain any Interest in respect of a Member after the Fund is wound up subject to similar trusts as contained in these Governing Rules or roll-over or transfer the Member's Interests to an Approved Fund until the Member is eligible to be paid their Interests.

- 25.5 Where any amount remains after the winding up and roll-over or transfer of Interests (as contemplated in rule 25.4), the amount so remaining must, subject to the Standards, be paid to any person who has ever been a Member or to any other person or entity that the Trustee chooses in the proportions the Trustee considers reasonable and equitable.
- 25.6 The Fund must be administered and the assets distributed or paid upon a winding up so that the Fund does not infringe the Standards. Without limiting actions the Trustee may take in relation to a wind up, the Trustee may:
- (a) pre-pay expenses, Taxes or outgoings to facilitate a wind up prior to the end of a Financial Year;
  - (b) transfer an asset, including a life insurance policy or similar right to a Member; and
  - (c) make other decisions for the effective winding up of the Fund.
- 25.7 The payment, roll-over or transfer of a Member's Interests or other amount in accordance with this rule will, subject to the Standards, be a complete and final discharge of the Trustee and the Fund in respect of that Member.

## **26. Implied standards**

- 26.1 This rule 26 has a paramount effect to ensure that these Governing Rules and the Fund comply with the Standards. To the extent that the Standards:
- (a) empower the Trustee to do or not to do something that the Trustee would not otherwise have power to do;
  - (b) require the Governing Rules to contain a provision that is not contained or to not contain a provision which the Governing Rules do contain;
  - (c) require compliance by the Trustee with the minimum requirements of the Standards; or
  - (d) empower or allow the Trustee or a Member to obtain any concessional tax treatment, obtain a tax deduction, utilise an election, favourable rule or flexibility under superannuation law;
- all requisite provisions, having regard to the Fund's status at the relevant time, are implied as part of these Governing Rules from the date of their effect and to the extent of any inconsistency prevail over the express provisions of these Governing Rules.
- 26.2 If rule 26.1 no longer requires a provision referred to in rule 26.1 to override the provisions of these Governing Rules, then that provision ceases to have effect.
- 26.3 The Trustee is not to be taken to be in breach of these Governing Rules if the Trustee is in breach of a provision implied by rule 26.1 if the contravention of the Standards is waived or is not enforced by the Regulator or any competent jurisdiction.
- 26.4 Despite rule 26.1, the Trustee may, after taking the Advice of a lawyer experienced in superannuation, by resolution declare that any provision which would otherwise be implied by rule 26 is not be so implied.
- 26.5 Rule 26.1 applies from the date of commencement of these Governing Rules or, for any standard that applies after that time, the date the relevant standard commences to operate, as the case may be. However, the Trustee may decide that the Standards apply on a retrospective basis or in an amended way, either in whole or in part.

## **27. Applicable law**

These Governing Rules must be construed in accordance with the laws of the state or territory in which the Trustee resides or, if applicable, has its registered office and the Commonwealth of Australia and to the extent the courts and tribunals of those jurisdictions have application to the Fund, their jurisdictions are exclusive except to the extent that the parties to a proceeding agree to another jurisdiction. If the Trustee comprises individuals who reside in different jurisdictions, the applicable Australian state or territory is the one where the Members with the largest aggregate Total Interests reside, unless the parties agree otherwise.

## **28. Interpretation**

28.1 In these Governing Rules, unless the context requires otherwise or the Trustee determines otherwise:

- (a) words importing the singular include the plural and vice versa and words importing a gender include any gender;
- (b) a reference to a rule is a reference to a rule of these Governing Rules, and a reference to a rule can be a reference to a distinct rule, sub-rule, paragraph, sub-paragraph or the like to simplify references throughout these Governing Rules;
- (c) a reference to any asset, property or thing (including, but not limited to, any interest or right thereof) includes a part of that asset, property or thing or an interest therein but this does not mean that performance of part of an obligation is performance of the obligation;
- (d) a reference to a power or discretion in relation to any asset or thing (including, but not limited to, any interest or right thereof) includes a power or discretion with respect to part of the asset or thing;
- (e) a reference to an agreement or document includes all amendments or supplements to, or replacements or novations of, that agreement or document;
- (f) a reference to any person, company, association or body, including a reference to a party to any document or event, includes a reference to its respective authorised officers, agents, delegates, successors, assigns, LPR, executors and administrators, and also includes any governmental body or agency as may be relevant;
- (g) a reference to a person includes a reference to a natural person, a company or other legal person or entity;
- (h) a reference to any rule in these Governing Rules and any law, legislation, regulation, regulatory guide, modification order, ruling, law companion ruling, practical compliance guideline, circular, guideline, determination, regulatory bulletin or similar information includes a reference to the same as amended, consolidated, supplemented or replaced from time to time and references to legislation include any applicable regulations issued relating thereto;
- (i) a reference to the age of an individual must be read subject to any corresponding relevant law, and if any stated age is inconsistent with the relevant law, then the age in the relevant law prevails;
- (j) other parts of speech and grammatical forms of a word, expression or phrase defined in these Governing Rules have a corresponding meaning;



- (k) the use of a list in these Governing Rules, whether or not accompanied by the words include, includes or including operates without limiting the other items or examples that may apply but are not expressly listed;
- (l) the specific mention of a power, ability, discretion, method or similar thing is not to be interpreted as exhaustive or as excluding things not expressly mentioned;
- (m) a reference to a payment or similar terminology includes the value of any asset provided as well as a payment of money or cash;
- (n) a reference to an amount, percentage, proportion, fraction or number includes a reference to any of those concepts, whether or not the exact amount, percentage, proportion, fraction or number is known or needs to be ascertained;
- (o) a reference to a decision, consent, acceptance, resolution or like thing includes where this occurs implicitly by conduct;
- (p) tables of contents and headings are for convenience only, are not operative, and do not affect interpretation;
- (q) a reference to writing or a document includes writing or a document via Technology and a reference to a meeting includes a meeting using Technology or other means that do not require multiple people to be in close physical proximity;
- (r) these Governing Rules are to be interpreted subject to the Standards, and where a term of these Governing Rules uses or involves a particular term used in the Standards, that term has the same meaning as that in the Standards, unless a contrary intent is expressed in these Governing Rules;
- (s) a reference to a rule or provision that is in error is taken to be a reference to the most appropriate rule or provision;
- (t) if any question or dispute arises in respect of the Fund or in respect of the interpretation of the Governing Rules, the Trustee's determination on the matter is final and binding; and
- (u) to the greatest extent permitted by law, where the Standards or these Governing Rules require or contemplate that a:
  - (i) meeting or resolution is held or made;
  - (ii) proceeding or action occurs;
  - (iii) financial or other transaction occurs; or
  - (iv) document, minute, account, certificate, record or book is created, issued, transferred, signed, executed, notified, communicated, kept, stored, recorded, varied, verified, identified or otherwise dealt with;

this can occur by the use of Technology.

28.2 The date of the instrument that implements these Governing Rules is the date that instrument is executed, regardless of whether that date appears on the instrument, and the instrument does not need to be dated in order to be effective. The instrument can be executed in two or more counterpart documents (including to the greatest extent possible at law, by directors of a single company), which when read together form one instrument.

28.3 To the greatest extent permitted by law, the instrument that implements these Governing Rules is effective even if it has not been attested, or if it has not been attested by a witness who is not a party to the instrument.

- 28.4 To the greatest extent permitted by law, a Trustee or Member can sign a document pertaining to the Fund by means of writing or Technology or by directing another person to reproduce the Trustee's or Member's signature or mark, in the presence of the Trustee or Member, and any date or time entry on a document (including a resolution) is prima facie evidence of the date or time of making that document.
- 28.5 If any provision in these Governing Rules would constitute a fetter or limit of the Trustee's power or discretion in order to operate, then to that extent, the provision constitutes an effective fetter or limit.
- 28.6 No waiver by the Trustee of any of the provisions of these Governing Rules will be binding unless expressly made by the Trustee in writing, and any waiver will relate only to the matter to which it expressly relates and will not apply to any subsequent matter.

## 29. Definitions

Unless the Trustee determines otherwise or the context requires otherwise, the following words have the meanings shown below:

- 29.1 **Account** means an account or record of amounts held by the Trustee in the Fund, whether formal or informal, notional or otherwise, sub-account or whole account, whether Pension, accumulation, reserve or otherwise, including where the record is held or maintained in accounting records including in accounting software or using Technology;
- 29.2 **Account-Based Pension** includes a Transition to Retirement Income Stream in retirement phase and means a Pension:
- (a) that cannot be transferred to another person other than to a Reversionary Beneficiary on the death of a Member or of another Reversionary Beneficiary;
  - (b) where neither the capital value of nor the income from the Pension can be used as security for a borrowing;
  - (c) that does not permit the capital supporting the Pension to be added to by way of contribution or roll-over after the Pension has commenced;
  - (d) that is paid at least annually;
  - (e) where the total payments in a year in which there is an Account balance in respect of the Member, are at least the amount calculated under clause 1 of Schedule 7 of the SISR, and the total payments in a year:
    - (i) exclude payments by way of commutation but include payments under a Payment Split; or
    - (ii) include under a Payment Split but exclude amounts rolled over;

as the definition of an account-based pension in the SISR provides from time to time, having regard to item 16 of Schedule 1 of the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulations 2017* (Cth); and
  - (f) that can only be commuted, in whole or in part, in the following circumstances:
    - (i) the commutation results from the death of the pensioner or a reversionary pensioner; or
    - (ii) the sole purpose of the commutation is:
      - (A) to pay a superannuation contributions 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* (Cth); or
- (iii) for a commutation in part — the Account balance of the Pension, immediately after the commutation, is equal to or greater than the minimum payment amount calculated in accordance with Schedule 7 of the SISR, as reduced by the amount of payments (excluding amounts rolled over or amounts paid by way of commutation as provided by the definition of an account-based pension in the SISR from time to time) to the pensioner already made in the financial year in which the commutation occurs; or
- (iv) the Pension has paid, in the financial year in which the commutation takes place, at least the amount calculated using the following formula:

(minimum annual amount) x (days in payment period) ÷ (days in financial year)

where:

- (A) **days in financial year** means the number of days in the financial year (365 or 366) in which the commutation takes place;
- (B) **days in payment period** means the number of days in the period that begins on, if the Pension commenced in the financial year in which the commutation is to take place, the commencement day, or, otherwise, 1 July in that financial year and ends on the day on which the commutation is to take place; and
- (C) **minimum annual amount** means the minimum amount payable under the Pension, in the financial year, calculated in accordance with Schedule 7 of the SISR;

or that otherwise complies with such parts of the Standards as govern account-based pensions;

29.3 **Advice** includes all types of advice, representation and similar services including legal, accounting, investment, financial, actuarial, valuation, business, property or any other type of advice, whether provided in writing, verbally or by any other means, formally, informally, whether professional, expert or otherwise and whether paid for or not;

29.4 **Allocated Pension** means a Pension:

- (a) that commenced before 20 September 2007 and:
  - (i) that cannot be transferred to another person other than to a Reversionary Beneficiary on the death of a Member or of another Reversionary Beneficiary;
  - (ii) that neither the capital value of nor the income from the Pension can be used as security for a borrowing;
  - (iii) that is paid at least annually; and
  - (iv) in respect of payments from the Pension:

- (A) for a Pension that has a commencement day on or after 22 December 1992 and before 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, respectively, the maximum and minimum limits calculated in accordance with Schedule 1A of the SISR; or
- (B) 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 respective maximum and minimum limits for the year calculated in accordance with either Schedule 1A or 1AAB of the SISR;
- (v) that otherwise complies with regulations 1.06(1A), 1.06(4), 1.06(5), 1.06(9B) and 1.07A of the SISR and the Standards relating to allocated pensions; or
- (b) that commences on or after 20 September 2007 and otherwise complies with such parts of the Standards as govern allocated pensions;

29.5 **Approved Fund** means:

- (a) a superannuation fund (including this Fund, an SMSF, a Small APRA Fund and any other type of fund);
- (b) an eligible roll-over fund;
- (c) a retirement savings account;
- (d) the Superannuation Holding Accounts Special Account;
- (e) an insurance company;
- (f) a registered organisation or similar entity;
- (g) any other fund, entity or arrangement that is recognised under the Standards including a pension fund, annuity arrangement, life assurance or insurance policy;
- (h) a MySuper account; or
- (i) any other fund, entity or arrangement which, among other things, can accept a transfer, allocation, allotment or roll-over from the Fund of a Member's Interests or is authorised to transfer, allocate, allot or roll-over a Member's Interests to or in respect of the Fund in accordance with the Standards;

29.6 **Asset-Test Exempt Pension** means a Pension that is exempt from the assets test or income test in whole or in part or is entitled to some other advantage or concession including exemption from counting in whole or part towards the eligibility criteria for the Commonwealth Seniors Health Card under the Social Security Legislation;

29.7 **Asset Transfer** means a transfer, payment, commutation, allocation, allotment or roll-over (including an internal roll-over amount or the commutation or roll-over of a Pension), in whole or in part, made with money, assets or a deemed amount or value of assets ('**Notional Assets**') and may be in respect of a Member, class of Members or a period of time;

29.8 **ATO** means, as the case requires, the Australian Taxation Office, the Federal Commissioner of Taxation or, alternatively, some other official or body empowered with the administration of SMSFs and any of their authorised officers;

- 29.9 **Automatically Reversionary Pension** has the meaning given by rule 10.20(a);
- 29.10 **BDBN** has the meaning given by rule 19 and **Binding Death Benefit Nomination** has the same meaning;
- 29.11 **Benefit** means any amount paid or payable by the Fund to or in respect of a Member including a Lump Sum, a Pension, a Miscellaneous Benefit, a Temporary Incapacity Income Stream and any other payment under these Governing Rules but excludes a Defined Benefit Pension;
- 29.12 **Child** in relation to a Member includes, subject to the Standards;
- (a) an adopted child, a stepchild or an ex-nuptial child of the Member;
  - (b) a child of the Member's Spouse; and
  - (c) someone who is a child of the Member within the meaning of the Family Law Act;
- 29.13 **Company Rules** means the articles of association, constitution or governing rules of a Corporate Trustee;
- 29.14 **Concessional Contributions Cap** means the relevant concessional contributions limit applicable to the Member as prescribed for the relevant Financial Year or relevant period by the Standards;
- 29.15 **Contributing Employer** means, unless the Trustee determines otherwise, an employer who (or whose associate) employs a Member but only for so long as the employer (or associate) is eligible to contribute to the Fund in respect of that employment or for so long as the Member remains a Member of the fund, and the Trustee may notify the Contributing Employer that it may contribute to the Fund with the Notification to Contributing Employer Form;
- 29.16 **Corporate Trustee** has the same meaning as the term constitutional corporation in the SISA;
- 29.17 **Defined Benefit Fund** means a fund:
- (a) that has at least one Defined Benefit Member; and
  - (b) some or all of the contributions to which (out of which, together with earnings on those contributions, the Benefits are to be paid) are not paid into a fund, or accumulated in a fund, in respect of any individual member but are paid into and accumulated in a fund in the form of an aggregate amount;
- 29.18 **Defined Benefit Member** means a Member eligible, on retirement or termination of their employment, to be paid a Benefit defined, wholly or in part, by reference to either or both of the following:
- (a) the amount of:
    - (i) the Member's salary at a particular date, being the date of the termination of the Member's employment or of the Member's Retirement or an earlier date; or
    - (ii) the Member's salary averaged over a period before Retirement; or
  - (b) a specified amount;
- 29.19 **Defined Benefit Pension** means a pension under section 10 of the SISA, other than:
- (a) a Pension Funded by Assurance;
  - (b) an Account-Based Pension;

- (c) a Transition to Retirement Income Stream (whether in retirement phase or not)
- (d) an Allocated Pension;
- (e) a Market Linked Pension; or
- (f) any other Pension excluded from the definition of defined benefit pension in Division 9.2B of the SISR;

29.20 **Dependant** in relation to a Member means, in the opinion of the Trustee, any one or more of the following:

- (a) the Spouse of the Member;
- (b) any Child of the Member;
- (c) any person with whom the Member has an interdependency relationship as prescribed in the Standards;
- (d) any other person who is financially dependent (in whole or in part) upon the Member or if the Member is deceased, was financially dependent (in whole or in part) upon the deceased Member just before, at or after the time of the deceased Member's death; and
- (e) any other person who would be regarded as a dependant under the Standards at the relevant date;

29.21 **Disability Superannuation Benefit** has the meaning given by the ITAA 1997;

29.22 **Disbursements** means, unless the Trustee determines otherwise:

- (a) the direct costs of establishing, administering, managing, operating and terminating the Fund;
- (b) any administrative, insurance or Taxation costs which are or which relate to those direct costs; and
- (c) any other provision, cost or outgoing the Trustee determines.

29.23 **Disqualified Person** means, subject to the Standards:

- (a) an individual who:
  - (i) is an Insolvent Under Administration;
  - (ii) has been disqualified by the Regulator;
  - (iii) has at any time been the subject of a civil penalty order made under the Standards; or
  - (iv) has at any time been convicted of an offence involving dishonest conduct anywhere in the world; or
- (b) a body corporate which:
  - (i) has an individual who is a Disqualified Person as a director;
  - (ii) has had a receiver or receiver and manager appointed in respect of assets beneficially owned by the body;
  - (iii) has had an official manager, deputy official manager or administrator appointed in respect of the body;
  - (iv) has had a provisional liquidator appointed in respect of the body; or

- (v) has begun to be wound up; or
  - (c) any natural person who, or body corporate or other entity which, is otherwise prohibited under the Standards from acting as Trustee of the Fund;
- 29.24 **Earnings** means the positive or negative amount which the Trustee determines to be the income of the Fund less Disbursements (or any part thereof) either:
  - (a) for a Financial Year; or
  - (b) for any other period for which the Trustee may declare Earnings,

which may exclude amounts ('**Excluded Amounts**') determined by the Trustee to be treated as capital and include amounts ('**Included Amounts**') which the Trustee has determined to be income (including any profit or gain) which but for that determination would not be included in Earnings where Excluded Amounts and Included Amounts may be ordinary income, statutory income, assessable income, non-assessable income, exempt income or non-assessable non-exempt income or have other taxation attributes and may be positive or negative and may be due to timing or permanent differences or other adjustments and Earnings may also reflect unrealised gains or losses and notional amounts or assets including any franking credit, foreign tax credit, tax offset, rebate or similar advantage or disadvantage;
- 29.25 **Eligible Beneficiary**, upon the death of a Member, means a Dependant, a trustee for a Dependant, a Reversionary Beneficiary or other beneficiary who is eligible to receive Benefits in respect of a Member's participation in the Fund under rules 18, 19 or otherwise and **Eligible Beneficiaries** has a corresponding meaning;
- 29.26 **Eligible Contributor** means:
  - (a) a Member;
  - (b) a Relevant Spouse in respect of an Eligible Spouse;
  - (c) an Employer or an associate of an Employer;
  - (d) the Government, Regulator or similar entity or organisation; and
  - (e) any other contributor permitted, under the Standards, to make contributions, transfers, allocations, allotments or roll-overs to or in respect of the Fund;
- 29.27 **Eligible Spouse** means the Spouse of either:
  - (a) a Member; or
  - (b) another person, if permitted by the Standards;

on whose behalf contributions can be made to the Fund in accordance with the Standards and **Relevant Spouse** means the Spouse of that Member or person, as the case may be;
- 29.28 **Employee** means a person who is Gainfully Employed by an Employer;
- 29.29 **Employer** means a Contributing Employer or such other employer authorised by the Trustee to make contributions in respect of a Member who is an Employee;
- 29.30 **Family Court Act** means the *Family Court Act 1997* (WA);
- 29.31 **Family Law Act** means the *Family Law Act 1975* (Cth);
- 29.32 **Financial Agreement** has the meaning given by the Family Law Act;

- 29.33 **Financial Year** means a continuous 12 month period with a 30 June year end unless the Trustee is permitted to adopt a different 12 month period by the Standards and includes part of a Financial Year, as applicable;
- 29.34 **Flag Lifting Agreement** has the meaning given by the Family Law Act;
- 29.35 **Flagging Order** has the meaning given by the Family Law Act;
- 29.36 **Form** means the appropriate form in Part B of these Governing Rules. However, the Trustee may use or accept any document providing similar information or waive the requirement of completing a form;
- 29.37 **Full-Time Basis** means at least 30 hours each week or such other time or conditions as are prescribed as full-time by the Standards;
- 29.38 **Fund** means the fund governed by these Governing Rules;
- 29.39 **Funded by Assurance** means wholly determined by reference to policies of life assurance purchased or obtained by the Trustee solely for the purposes of providing Benefits to Members;
- 29.40 **Gainfully Employed** means employed or self-employed for gain or reward in any work, business, trade, profession, vocation, calling, occupation or employment within the meaning of the term gainfully employed in the Standards, and **Gainful Employment** has a corresponding meaning;
- 29.41 **General Transfer Balance Cap** has the meaning given by the ITAA 1997, and also means the **Transfer Balance Cap**, as the case requires;
- 29.42 **Governing Rules** means these rules (including any deemed provision under rule 26) and the Forms and includes if relevant any former rules, deed or document governing the establishment and operation of the Fund as amended from time to time;
- 29.43 **Insolvent Under Administration** has the meaning given by the SISA;
- 29.44 **Insurance Proceeds** means the proceeds of any insurance cover received by the Fund (including proceeds from insurance under rule 7.4), that are to be used to fund a Benefit (including any Pension Funded by Assurance) or for any other purpose the Trustee determines appropriate;
- 29.45 **Interest** means an amount, benefit or entitlement that exists in the Fund in respect of a Member (including a deceased Member), or a separate interest that is recognised by the ITAA 1997, and for the avoidance of doubt, if a Member receives one or more Pensions from the Fund, then each Pension is a separate Interest;
- 29.46 **ITAA 1936** means the *Income Tax Assessment Act 1936* (Cth);
- 29.47 **ITAA 1997** means the *Income Tax Assessment Act 1997* (Cth);
- 29.48 **Lease** includes a lease arrangement as defined in the SISA;
- 29.49 **Life Expectancy Term** means, in relation to a Market Linked Pension:
- (a) if the Market Linked Pension commenced before 20 September 2007:
    - (i) the life expectancy of the Member on the commencement day of the Pension;
    - (ii) the life expectancy of the Member on the commencement day calculated, at the option of the Member, as if the Member were up to five years younger on the commencement day;



- (iii) if the Pension has a commencement day on or after 1 January 2006, a period that is not less than the period available under rule 29.49(a)(i) and not more than the greater of the following periods:
  - (A) the maximum period available under rule 29.49(a)(ii);
  - (B) the period of years equal to the number that is the difference between the age attained by the Member at their most recent birthday before the commencement day, and 100; or
- (iv) if the Pension has a Reversionary Beneficiary who is a Spouse of the Member and the Spouse has a life expectancy greater than the Member and a period has not been nominated under rules 29.49(a)(i), 29.49(a)(ii) or 29.49(a)(iii):
  - (A) the life expectancy of the Spouse on the commencement day of the Pension; or
  - (B) the life expectancy of the Spouse calculated, at the option of the Member, as if the Spouse were up to five years younger on the commencement day of the Pension; or
  - (C) if the Pension has a commencement day on or after 1 January 2006, a period that is not less than the period available under rule 29.49(a)(iv)(A) and not more than the greater of the following periods:
    - (1) the maximum period available under either rule 29.49(a)(iv)(B); and
    - (2) the period of years equal to the number that is the difference between the age attained by the Spouse at their most recent birthday before the commencement day, and 100;

rounded up to the next whole number if the relevant life expectancy is not a whole number;

- (b) in accordance with regulation 1.06(1B) of the SISR, if the Market Linked Pension commences on or after 20 September 2007, the Life Expectancy Term must be a term calculated under 29.49(a), provided that the term chosen will not cause the minimum payment standards under Schedule 7 of the SISR to be contravened in any Financial Year of payment of the Market Linked Pension; or
- (c) such other term as permitted or required by the Standards;

29.50 **LPR** means the executor of the will or administrator of the estate of a deceased person, the trustee or administrator of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by a person, and LPR includes a person who, immediately after the death of a deceased person but before probate is granted, is the executor of the most recent validly made will of the deceased, but an LPR can never be, in relation to a person, that person's trustee in bankruptcy or any similar administrator or controlling person in the case of an Insolvent Under Administration or debt agreement, and the term legal personal representative has the same meaning as LPR;

29.51 **Lump Sum** means a Benefit or any component of it paid otherwise than as a Pension in accordance with these Governing Rules;

29.52 **Mandated Employer Contribution** means any contribution made pursuant to the *Superannuation Guarantee (Administration) Act 1992* (Cth), any shortfall component,

any contribution made under an industrial award or prescribed agreement or any other contribution requiring similar treatment under the Standards;

**29.53 Market Linked Pension** means a Pension:

- (a) that commenced before 20 September 2007:
  - (i) that is paid at least annually to the Member or to a Reversionary Beneficiary throughout a period equal to the Life Expectancy Term;
  - (ii) that the total amount of Pension payments in a year (excluding payments by way of commutation but including payments made under a Payment Split) is determined in accordance with Schedule 6 of the SISR;
  - (iii) that does not have a residual capital value;
  - (iv) that cannot be commuted except:
    - (A) if the commutation is made within six months after the commencement day of the Pension and the Pension is not funded from the commutation of an annuity or another Pension as prescribed by regulation 1.06(8)(d)(i) of the SISR;
    - (B) on the death of the Member or Reversionary Beneficiary, by payment of:
      - (1) a Lump Sum or a new Pension to one or more dependants of either the Member or Reversionary Beneficiary;
      - (2) a Lump Sum to the LPR of either the Member or Reversionary Beneficiary; or
      - (3) if, after making reasonable enquiries, the Trustee is unable to find a person mentioned in rules 29.53(a)(iv)(B)(1) or 29.53(a)(iv)(B)(2), a Lump Sum to another individual;
- provided that if the Member has opted for a Life Expectancy Term under rule 29.49(a)(iv), the Pension cannot be commuted until the death of both the Member and the Member's Spouse;
- (C) if the Lump Sum resulting from the commutation is transferred directly to the purchase of another Benefit as prescribed by regulation 1.06(8)(d)(iv) of the SISR;
- (D) to pay a superannuation contributions surcharge;
- (E) to give effect to an entitlement of a Non-Member Spouse under a Payment Split; or
- (F) for the purpose of paying an amount to give effect to a transfer in accordance with rule 22.6(b);
- (v) that on reversion does not have a reversionary component greater than 100% of the Account balance immediately before the reversion;
- (vi) that if commuted, the commutation amount cannot exceed the Account balance immediately before the commutation;

- (vii) that can only be transferred:
      - (A) on the death of the Member, to one of the Dependants of the Member or to the LPR of the Member; or
      - (B) on the death of the Reversionary Beneficiary, to one of the Dependants of the Reversionary Beneficiary or to the LPR of the Reversionary Beneficiary;
    - (viii) that the capital value of the Pension and the income from it cannot be used as security for a borrowing; and
    - (ix) that otherwise complies with regulations 1.06(1A), 1.06(8), 1.06(9), 1.06(9B), 1.06(10) and 1.07C of the SISR and the Standards relating to Market Linked Pensions; or
  - (b) that commences on or after 20 September 2007 in accordance with regulation 1.06(1B) of the SISR and:
    - (i) that is purchased with a roll-over superannuation Benefit that resulted from the commutation of an annuity or another Pension as prescribed by regulation 1.06(1B)(b) of the SISR;
    - (ii) that complies with regulation 1.06(9A) of the SISR; and
    - (iii) that complies with rule 29.53(a), except that regulation 1.06(1A) of the SISR does not apply; or
  - (c) that otherwise complies with such parts of the Standards as govern Market Linked Pensions;
- 29.54 **Member** means a person who has been admitted or approved by the Trustee as a member of the Fund in accordance with these Governing Rules and includes a deceased person who was a Member of the Fund immediately prior to his or her death and in respect of whom any Interest remains in the Fund and **Membership** has a corresponding meaning and the Trustee may, subject to the Standards, determine that a person is not a Member for all or certain circumstances even though he or she may have an Interest;
- 29.55 **Minimum Benefit** means the Member's minimum Interest which is required to be maintained in the Fund or another Approved Fund in accordance with the Standards;
- 29.56 **Member Representative** means a person appointed in accordance with rule 8.13 and having the powers given under these Governing Rules, including rule 8.10;
- 29.57 **Member Spouse** has the meaning given by the Family Law Act;
- 29.58 **Miscellaneous Benefit** means a Benefit arising in the circumstances described in rule 17;
- 29.59 **Non-Commutable Allocated Pension** means an Allocated Pension:
- (a) that commenced before 20 September 2007 and:
    - (i) that, if commuted, the resulting Lump Sum cannot be cashed unless:
      - (A) the purpose of the commutation is:
        - (1) to cash an unrestricted non-preserved benefit;
        - (2) to pay a superannuation contributions surcharge;
        - (3) to give effect to an entitlement of a Non-Member Spouse under a Payment Split; or

- (4) to ensure that a payment for the purpose of giving effect to a transfer in accordance with rule 22.6(b);
    - (B) before commutation, the Pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits under the SISR is 'Nil'; and
    - (ii) the Pension otherwise complies with the SISR and the Standards relating to Non-Commutable Allocated Pensions; or
  - (b) that commences on or after 20 September 2007 and otherwise complies with such parts of the Standards as govern Non-Commutable Allocated Pensions;
- 29.60 **Non-Concessional Contributions Cap** means the relevant non-concessional contributions limit applicable to a Member as prescribed by the Standards for the relevant Financial Year or period;
- 29.61 **Non-Member Spouse** has the meaning given by the Family Law Act;
- 29.62 **Notional Asset** has the meaning given in rule 29.7;
- 29.63 **Old-Age Pension** has the same meaning as that term has for the purposes of section 51(xxiii) of the *Australian Constitution*;
- 29.64 **Part-Time Basis** means, in relation to a Financial Year, Gainful Employment for at least 40 hours in a period of not more than 30 consecutive days in that Financial Year or such other time or conditions as are prescribed as part-time by the Standards;
- 29.65 **Part-Time Employment** means Gainful Employment for at least 10 hours and less than 30 hours each week or such other time or conditions as are prescribed as full-time by the Standards;
- 29.66 **Part VIIIAB Financial Agreement** has the meaning given by the Family Law Act;
- 29.67 **Part VIIIAB Termination Agreement** has the meaning given by the Family Law Act;
- 29.68 **Payment Directive** has the meaning given by rule 10.23;
- 29.69 **Payment Flag** has the meaning given by the Family Law Act;
- 29.70 **Payment Split** has the meaning given by the Family Law Act;
- 29.71 **Pension** includes a pension or annuity recognised by the SISR, a superannuation income stream recognised by the *Income Tax Assessment Regulations 1997* (Cth), an Old-Age Pension and such other periodic payment prescribed or permitted by the Standards and, except if these Governing Rules state otherwise, includes a pension that is a Reversionary Pension or annuity that is a reversionary annuity, and **Pensioner** and **Income Stream** have corresponding meanings;
- 29.72 **Permanent Incapacity** means, in relation to a Member, where the Trustee is reasonably satisfied that the Member's ill-health (whether physical or mental) makes it unlikely that the Member will engage in Gainful Employment for which the Member is reasonably qualified by education, training or experience, and **Permanently Incapacitated** has a corresponding meaning;

29.73 **Preservation Age** means, in relation to the Member's date of birth, the following age:

| Date of Birth                               | Preservation Age |
|---|------------------|
| Before 1 July 1960                          | 55 years         |
| During the year 1 July 1960 to 30 June 1961 | 56 years         |
| During the year 1 July 1961 to 30 June 1962 | 57 years         |
| During the year 1 July 1962 to 30 June 1963 | 58 years         |
| During the year 1 July 1963 to 30 June 1964 | 59 years         |
| After 30 June 1964                          | 60 years         |

or such other age prescribed as such by the Standards for the payment of all or part of a Member's Interests from the Fund on Retirement where the Trustee must be satisfied that the Member has ceased Gainful Employment and intends to never again become Gainfully Employed;

29.74 **Regulator** means:

- (a) in respect of SMSFs, the ATO; and
- (b) in respect of Small APRA Funds and other types of funds, the Australian Prudential Regulation Authority; and

as the case requires includes the Australian Securities and Investment Commission, the Chief Executive Medicare, Department of Human Services (also known as Centrelink) or, alternatively, some other body or official empowered under the law dealing with the administration of SMSFs or, if the Trustee determines, Small APRA Funds or some other type of fund;

29.75 **Relevant Representative** has the meaning given by rule 10.24;

29.76 **Retire** means:

- (a) in the case of a Member who has reached a Preservation Age that is less than 60 — if:
  - (i) an arrangement under which the Member was Gainfully Employed has come to an end; and
  - (ii) the Trustee is reasonably satisfied that the Member intends never to again become Gainfully Employed on a Full-Time Basis or engage in Part-Time Employment; or
- (b) in the case of a Member who has attained age 60 — if an arrangement under which a Member was Gainfully Employed has come to an end and:
  - (i) the Member attained that age on or before the ending of the employment; or
  - (ii) the Trustee is reasonably satisfied that the Member intends never to again become Gainfully Employed on a Full-Time Basis or engage in Part-Time Employment; or
- (c) in such other manner as may be prescribed by the Standards,

and **Retirement** has a corresponding meaning;

- 29.77 **Retirement Phase**, in relation to a superannuation income stream, has the meaning given by the ITAA 1997;
- 29.78 **Reversionary Pension** means a Pension that is paid on the death of a Member to an Eligible Beneficiary who has been nominated as the transferee of the Pension by a Member, and (where the nomination occurred before the Member's death) includes a Pension that is an Automatically Reversionary Pension and **Reversionary Beneficiary** has a corresponding meaning;
- 29.79 **RSE Licensee** has the meaning given by the Standards;
- 29.80 **Securities** includes:
- (a) securities as defined in section 92 of the *Corporations Act 2001* (Cth) and securities approved by the Trustee in any foreign country;
  - (b) shares, funds or stocks (of any class or description), units, interests in a managed investment fund, exchange traded fund, bonds, mortgages, debentures, notes, convertible notes, options (including exchange traded options), instalment warrants, hedges, foreign exchange or currency, indices (including tradeable indices), futures contracts, derivative contracts, contracts for difference or other like securities or arrangements in or in respect of a corporation, other entity or asset, whether listed or unlisted, exchange traded or otherwise, fully or partly paid up, secured or unsecured, registered or unregistered, and regardless of what underlying asset the value of any security or like investment is derived from;
  - (c) an interest (including units) in any trust or trust fund;
  - (d) any promissory note, bill of exchange, bill of lading, cheque or other negotiable or transferable instrument; and
  - (e) an asset or investment that is recognised as a Security where the Trustee invests in a foreign country;
- and **Security** and any reference to an exchange in relation to Securities or stocks or a similar term have corresponding meanings;
- 29.81 **SISA** means the *Superannuation Industry (Supervision) Act 1993* (Cth);
- 29.82 **SISR** means the *Superannuation Industry (Supervision) Regulations 1994* (Cth);
- 29.83 **Small APRA Fund** means a fund with fewer than five members with an RSE Licensee and that otherwise complies with the Standards in relation to such funds;
- 29.84 **SMSF** has the same meaning as the term 'self managed superannuation fund' in the Standards;
- 29.85 **Social Security Legislation** means the *Social Security Act 1991* (Cth) and the *Veterans' Entitlement Act 1986* (Cth);
- 29.86 **Splittable Payment** has the meaning given by the Family Law Act;
- 29.87 **Splitting Order** has the meaning given by the Family Law Act;
- 29.88 **Spouse** in relation to a Member includes, subject to the Standards:
- (a) another person (whether of the same sex or a different sex) with whom the Member is in a relationship that is registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901* (Cth) as a kind of relationship prescribed for the purposes of that section; and
  - (b) another person who, although not legally married to the Member:

- (i) lives with the Member; or
- (ii) had lived with the Member immediately prior to the Member's death;

on a genuine domestic basis in a relationship as a couple and if there is more than one Spouse the Trustee must determine which spouse is entitled to be treated as the Spouse exclusively or, alternatively, how they are to share the entitlement of a Spouse between them;

29.89 **Standards** means any relevant provisions in the following as the context requires:

- (a) any applicable provisions in the SISA and the SISR;
- (b) any applicable provisions in the ITAA 1936, ITAA 1997, *Taxation Administration Act 1953* (Cth) and any applicable regulations made pursuant thereto which must be complied with so that:
  - (i) the Fund obtains concessional tax treatment; and
  - (ii) an Employer or Member retains any entitlement to a tax deduction or tax benefit unless the Employer or Member, as the case may be, elects or chooses not to take a tax deduction or tax benefit;
- (c) any applicable provisions in the *Superannuation Guarantee (Administration) Act 1992* (Cth), *Income Tax (Transitional Provisions) Act 1997* (Cth), *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016* (Cth), *Superannuation (Excess Transfer Balance Tax) Imposition Act 2016* (Cth), *Bankruptcy Act 1966* (Cth), *Corporations Act 2001* (Cth), Social Security Legislation and Family Law Act;
- (d) any applicable Trustee Law which may impact on the Fund but excluding any Trustee Law which imposes any obligation on the Trustee to have regard to any matters aside from the obligations contained in these Governing Rules in:
  - (i) exercising powers of investment granted under these Governing Rules;
  - (ii) exercising any other power granted under these Governing Rules, including without limitation a power to vary the Governing Rules or change the Trustee;
  - (iii) complying with an obligation contained in these Governing Rules; or
  - (iv) relating to vesting of assets on a change of trustee or on any other matter required to implement a change of trustee or variation of these Governing Rules;

unless the Trustee Law cannot lawfully be so excluded;
- (e) any applicable rule of common law, equity or legal or administrative requirement;
- (f) if it favours the Fund or beneficiaries or the Trustee determines it appropriate, any proposed or other applicable provision regulating or relating to superannuation, including in an Australian Government budget or announcement, explanatory statement, explanatory memorandum accompanying any bill or instrument; and
- (g) if it favours the Fund or beneficiaries or the Trustee determines it appropriate, any proposed or other applicable ruling, interpretation, circular, guideline, determination, pronouncement, statement, law companion guideline, practical compliance guideline, direction or materials of the Regulator;

- 29.90 **Superannuation Agreement** has the meaning given by the Family Law Act;
- 29.91 **Taxable Component** has the same meaning as it does in the ITAA 1997;
- 29.92 **Taxes** includes any liability or provision for a liability for a tax, division 293 tax, surcharge, excess transfer balance tax, foreign capital gains withholding tax, no TFN tax, duty, excise, levy, goods and services tax or withholding tax or liability, including any general interest charge, shortfall interest charge, additional penalty or tax (including any liability for tax on a contribution or allocation of reserves made in excess of the relevant contribution caps or level of Member's income as prescribed by the Standards including any other tax including any tax or impost imposed by any state, territory, local government or other government body (including in relation to any superannuation which is now treated as property under the Family Law Act), unless the Member must or elects to pay the liability) or, if the Trustee determines, any similar liability or provision, and **Tax** and **Taxation** have corresponding meanings;
- 29.93 **Tax Free Component** has the same meaning as it does in the ITAA 1997;
- 29.94 **Tax Saving Amount** in relation to a deceased Member's Interests means the amount in excess of the deceased Member's actual Interests that the Trustee could have paid if no tax had been payable on amounts that have been included as assessable income at any time under Subdivision 295-C of the ITAA 1997 or the former section 274 of the ITAA 1936, having regard to:
- (a) amounts included in the assessable income of the Fund;
  - (b) amounts included in the assessable income of any other fund, trust or superannuation or retirement entity or account of which the deceased Member was a member or in which he or she held any interest;
  - (c) the amount of any foregone earnings (whether including or excluding expenses) that could be expected to have accrued if no tax had been payable on the amounts described in paragraphs (a) and (b) of this rule;
  - (d) such other amounts or factors as may be permitted under the Standards; and
  - (e) to the extent that the amounts form part of the deceased Member's Interests in the Fund. The Trustee must determine the value of any Tax Saving Amount in accordance with the Standards and if the Standards prescribe or recognise more than one method for this purpose, the Trustee may adopt a method it determines appropriate;
- 29.95 **Technology** means any means of:
- (a) information transfer, storage, recording, verification or identification; or
  - (b) communication;
- whether electronic or otherwise, and includes without limitation:
- (c) video and/or audio means whether telephone, wireless, computer-based or otherwise; or
  - (d) email or electronic or computer-based information storage or recording;
- 29.96 **Temporary Incapacity** means, in relation to a Member who has ceased to be Gainfully Employed (including a Member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the Member to be Gainfully Employed), ill-health (whether physical or mental) that caused the Member to cease to be Gainfully Employed but does not constitute Permanent Incapacity, or such other meaning provided by the Standards;
- 29.97 **Temporary Incapacity Income Stream** means a Benefit that:



- (a) cannot be commuted;
- (b) is paid at least monthly;
- (c) does not have a residual capital value; and
- (d) is such that the total amount paid each month is fixed or varies only:
  - (i) for the purpose of complying with the SISA and the SISR; and
  - (ii) during any period of 12 months by a rate not exceeding either:
    - (A) 5% per annum; or
    - (B) the rate of increase in the last Consumer Price Index (All Capital Cities) for a quarter to be published by the Australian Statistician before the end of that period of 12 months compared with the Consumer Price Index (All Capital Cities) published for the same quarter in the preceding year;

or that otherwise complies with such parts of the Standards as govern such income streams;

29.98 **Terminal Medical Condition** in relation to a person at a particular time means a condition where the following circumstances exist:

- (a) two registered medical practitioners have certified, jointly or separately, that the person suffers from an illness, or has incurred an injury, that is likely to result in the death of the person within a period (**'Certification Period'**) that ends not more than 24 months after the date of the certification;
- (b) at least one of the registered medical practitioners is a specialist practising in an area related to the illness or injury suffered by the person; and
- (c) for each of the certificates, the Certification Period has not ended;

or if it is otherwise defined under the Standards, it will have the meaning given by the Standards;

29.99 **Termination Agreement** has the meaning given by the Family Law Act;

29.100 **Total Interests** in relation to a Member, means the sum total of all Interests in the Fund attributable to that Member;

29.101 **Total Superannuation Balance** has the meaning given by the ITAA 1997;

29.102 **Transfer Balance** has the meaning given by the ITAA 1997;

29.103 **Transfer Balance Account** has the meaning given by the ITAA 1997;

29.104 **Transfer Balance Cap** has the meaning given by the ITAA 1997, and also means the **General Transfer Balance Cap**, as the case requires;

29.105 **Transition to Retirement Income Stream** means an Account-Based Pension:

- (a) that complies with the following:
  - (i) allows total payments (excluding payments by way of commutation but including payments under a Payment Split) made in a Financial Year to amount to no more than 10% of the Pension Account balance:
    - (A) on 1 July in the Financial Year in which the payment is made; or

- (B) if that year is the year in which the Pension commences, then on the commencement day; and
  - (ii) if commuted, the resulting Lump Sum of which cannot be cashed unless:
    - (A) the purpose of the commutation is:
      - (1) to cash an unrestricted non-preserved benefit; or
      - (2) to pay a superannuation contributions surcharge; or
      - (3) to give effect to an entitlement of a Non-Member Spouse under a Payment Split; or
      - (4) to ensure that a payment may be made for the purpose of giving effect to a transfer in accordance with rule 22.6(b); or
    - (B) before commutation, the Pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits under the SISR is 'Nil'; or
    - (C) the purpose of the commutation is to satisfy an obligation to pay an amount to the ATO under section 20F(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Cth); or
  - (b) that otherwise complies with such parts of the Standards as govern transition to retirement income streams;
- 29.106 **Trustee** means the trustee that holds office as trustee of the Fund as replaced or substituted from time to time and, as the context requires, Trustee also means:
- (a) in the case of a Corporate Trustee, that company, or the directors of that company collectively or individually, but the meaning of Trustee does not include a person who has merely been nominated as a Successor Trustee and has not yet been appointed under rule 3.3(d); and
  - (b) in the case that the Trustee is one or more natural persons, those natural persons either collectively or individually; and
- 29.107 **Trustee Law** means whichever of the *Trustee Act 1958* (Vic), the *Trustee Act 1925* (NSW), the *Trusts Act 1973* (Qld), the *Trustee Act 1936* (SA), the *Trustees Act 1962* (WA), the *Trustee Act 1898* (Tas), the *Trustee Act 1925* (ACT) and the *Trustee Act* (NT) apply to the Fund or any other Commonwealth, state or territory legislation of like effect that may apply.

## 30. Severance

These Governing Rules are and must be construed as severable and so if any provision or any part of a provision is, at any time, found or declared void or invalid then the remaining part of that provision, if any, and all other provisions of these Governing Rules remain valid, binding and enforceable.

## PART B (Forms)

### FORM 1

## Application for Membership

|                  |  |                     |  |
|------------------|--|---------------------|--|
| <b>FUND NAME</b> |  |                     |  |
| <b>FULL NAME</b> |  | <b>TAX FILE No.</b> |  |
| <b>ADDRESS</b>   |  |                     |  |

I apply to the Trustee for admission as a Member of the Fund and, in consideration of this:

1. I confirm that I am a trustee or a director of a corporate trustee unless I am specifically excepted from this requirement under the Standards (eg, due to a legal disability such as under 18 years or being of unsound mind). I accept the responsibilities and liabilities of being a trustee or a director of a corporate trustee to a superannuation fund.
2. I agree to be bound by the provisions of the Fund's Governing Rules. I acknowledge that the expressions and meanings in this Application are identical to those used in the Governing Rules.
3. I agree that, unless I provide notice to the Trustee in writing, I do not require any insurance to be held within the Fund in respect of me.
4. I undertake to provide any relevant information or documentary evidence and agree to submit to health and medical tests as requested from time to time by the Trustee related to my Membership of the Fund.
5. I nominate the following, each being my LPR and/or a Dependant (eg, spouse, children and/or a person who is financially dependent on me or in an interdependency relationship with me), to be paid all Interests that I have in the Fund on my death in the designated proportions. I understand that this non-binding nomination is overridden by any binding death benefit nomination on my death:

| NAME | RELATIONSHIP | % OF INTEREST |
|------|--------------|---------------|
|      |              |               |
|      |              |               |
|      |              |               |

6. I acknowledge that the Trustee may collect my tax file number ('TFN') under the Standards.
7. I understand that the Trustee will only use the TFN for legal purposes. This includes finding or identifying my superannuation Interests if other information is insufficient, and calculating tax on any eligible termination payment I may be entitled to.
8. I understand that it is not an offence to omit my TFN from this application. But if I do omit to provide it now or later, contributions may not be able to be made by me or on my behalf to the Fund. I may also pay more tax on my Interests (ie, my entitlement in the Fund) than I would otherwise have to pay (but which may be later credited to a later assessment of tax) and I may lose Interests which are more difficult to find or to amalgamate with other Interests I am entitled to.
9. I acknowledge that the Trustee may provide any TFN disclosed to the Trustee to the trustee of any other superannuation fund to which my Interests are transferred in the future or to the Australian Taxation Office. However, I understand that my TFN will not be passed on in the event I direct the Trustee in writing not to disclose my TFN and, in any event, my TFN will be treated as confidential in accordance with the *Privacy Act 1988* (Cth).
10. I authorise the Trustee to retain and store information on my behalf despite any contrary provision in any privacy legislation.
11. I declare that the information I provide to the Trustee will be true and correct. I acknowledge that it is my responsibility to inform the trustee of any error or changes regarding these matters.

|                  |             |
|------------------|-------------|
| <b>SIGNATURE</b> | <b>DATE</b> |
|                  |             |

FORM 2

## Notification to Contributing Employer

From the Trustee:

|                 |  |
|-----------------|--|
| FUND NAME       |  |
| TRUSTEE NAME    |  |
| TRUSTEE ADDRESS |  |

To an Employer:

|                    |  |
|--------------------|--|
| EMPLOYER'S NAME    |  |
| EMPLOYER'S ADDRESS |  |

The Trustee wishes to notify the Employer that:

1. the Fund is a resident regulated superannuation fund under the *Superannuation Industry (Supervision) Act 1993* (Cth) ('SISA');
2. the Trustee is not subject to a direction from the Australian Prudential Regulation Authority or the Australian Taxation Office pursuant to section 63 of the SISA that would prevent the Trustee accepting employer or other contributions;
3. the Trustee has not been subject to such a direction before or since the date of this application; and
4. the Trustee will accept contributions from the Employer;

and the Employer is noted as a **Contributing Employer** to the Fund.

|                       |  |
|-----------------------|--|
| DATE                  |  |
| SIGNED BY THE TRUSTEE |  |

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