

duration of the pension and shall not be varied unless variation is authorised by the Social Security Legislation or the Regulator.

LUMP SUMS

11.

11.1. Trustee discretion

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

11.2. Regular Benefits

If a Member:

- (a) Retires;
- (b) attains 65 years of age; or
- (c) is otherwise entitled to a Lump Sum in accordance with the Standards;

the Member is entitled to receive a Lump Sum.

11.3. Death Benefits

If a Member dies, a Beneficiary is entitled to receive a Lump Sum.

11.4. Disability Superannuation Benefit

If a Member becomes Totally and Permanently Disabled, the Member is entitled to receive a Lump Sum.

11.5. Variation

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

ACCOUNT-BASED PENSIONS

12.

12.1. Trustee Discretion

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

12.2. Regular Benefits

If a Member:

- (a) Retires;
- (b) attains 65 years of age; or
- (c) is otherwise entitled to an Account-Based Pension in accordance with the Standards;

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

12.3. Death Benefits

Subject to rule 10.5(d), if a Member dies, a Beneficiary is entitled to receive an Account-Based Pension from the Member's Benefit.

12.4. Disability Superannuation Benefits

If a Member becomes Totally and Permanently Disabled, the Member is entitled to receive an Account-Based Pension.

12.5. Commutation and Variation

Subject to rules 1.1 and 22 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 Pension permitted by the Standards at any time; and
- (b) an Account-Based Pension may be varied by the Trustee as permitted by the Standards.

TRANSITION TO RETIREMENT INCOME STREAMS

13.

13.1. Trustee Discretion

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

13.2. Regular Benefits

A Member is entitled to an Account-Based Pension on or after attaining Preservation Age if the Pension is paid as a Transition to Retirement Income Stream. A Transition to Retirement Income Stream may continue to be paid as an Account-Based Pension on satisfying rule 12.2.

13.3. Commutation and Variation

Subject to the limitations in rules 1.1, 22 and 29.81 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; and
- (b) a Transition to Retirement Income Stream may be varied by the Trustee as permitted by the Standards.

ALLOCATED PENSIONS

14.

14.1. Trustee Discretion

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

14.2. Regular Benefits

If a Member:

- (a) Retires;

- (b) attains 65 years of age; or
 - (c) is otherwise entitled to an Allocated Pension in accordance with the Standards;
- the Member is entitled to receive an Allocated Pension.

14.3. Non-Commutable Allocated Pensions

A Member is entitled to an Allocated Pension on or after attaining Preservation Age if the Pension is paid as a Non-Commutable Allocated Pension. A Non-Commutable Allocated Pension may continue to be paid as an Allocated Pension on satisfying rule 14.2.

14.4. Death Benefits

Subject to rule 10.5(d), if a Member dies, a Beneficiary is entitled to receive an Allocated Pension from the Member's Benefit.

14.5. Disability Superannuation Benefits

If a Member becomes Totally and Permanently Disabled, the Member is entitled to receive an Allocated Pension.

14.6. Commutation and Variation

Subject to rules 1.1 and 22 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 Pension 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 if permitted by the Standards; and
- (c) an Allocated Pension may be varied by the Trustee as permitted by the Standards.

MARKET LINKED PENSIONS

15.

15.1. Trustee discretion

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

15.2. Regular Benefits

If a Member:

- (a) Retires;
 - (b) attains 65 years of age; or
 - (c) is otherwise entitled to a Market Linked Pension in accordance with the Standards;
- the Member is entitled to receive a Market Linked Pension.

15.3. Non-Commutable Pensions

A Member is entitled to a Market Linked Pension on or after attaining Preservation Age if the Market Linked Pension is paid as a Non-Commutable Pension. A Non-Commutable Pension may continue to be paid as a Market Linked Pension on satisfying rule 15.2.

15.4. Death Benefits

Subject to rule 10.5(d), if a Member dies, a Beneficiary is entitled to receive a Market Linked Pension from the Member's Benefit.

15.5. Disability Superannuation Benefits

If a Member becomes Totally and Permanently Disabled, the Member is entitled to receive a Market Linked Pension.

15.6. Commutation and Variation

Subject to the limitations in rules 1.1, 22 and 29.48(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; and
- (b) a Market Linked Pension may be varied by the Trustee utilising an amount in any other Account to fund such a Pension.

TEMPORARY INCAPACITY INCOME STREAMS

16.

16.1. Trustee discretion

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

16.2. Regular Benefits

If a Member:

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

the Member is entitled to receive a Temporary Incapacity Income Stream for such period and amount as determined by the Trustee.

MISCELLANEOUS BENEFITS

17.

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

If:

- (a) the Trustee determines that a Member is entitled to a Benefit not otherwise specified in this Deed; and
- (b) the Benefit is permitted under the Standards;

the Trustee may pay such a Benefit to the Member to the extent permitted by the Standards, having regard to rule 7.14.

17.3. Severe Financial Hardship

If the Trustee determines that a Member is suffering severe financial hardship as prescribed by the SISR, the Member is entitled to receive a payment of such amount allowed by the SISR.

17.4. Compassionate Grounds

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

17.5. 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 entitled to such Benefits as allowed under the SISR in respect of cessation of temporary residency.

17.6. Small Balances

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

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

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

DEPENDANTS AND SUCCESSION

18.

If a Member has not provided the Trustee with a BDBN pursuant to rule 19 the Trustee may on or after the death of a Member in respect of the deceased Member's Interest:

- (a) subject to rule 10.5(d), determine whether the Interest is to be paid as a Lump Sum or a Pension or both; and
- (b) subject to rules 10.4 and 10.5(d), make any determination relating to the type, amount and the value of any particular assets or reserves in the Fund that will fund the payment of the Interest; and
- (c) if a Pension is provided (subject to rule 10.5(d) and the ability to pay a Pension on death to a Dependant under the Standards), determine the type of Pension, whether it is commutable or not, whether it is reversionary or not (including, if permitted by the Standards, whether an Allocated Pension is paid as a reversionary Account-Based Pension in accordance with rule 14.6(b)), and the Trustee may attach such other conditions to such Benefit as the Trustee determines; and
- (d) the Trustee shall:
 - (i) have regard to but shall not be bound by any nomination by the Member;
 - (ii) pay a Member's Interest in favour of either or both of the following:
 - (A) the Member's LPR; or
 - (B) one or more of the Member's Dependants (including one or more Preferred Dependants); and

- (iii) provided that if the Trustee has not, after making reasonable enquiries, found either an LPR, or a Dependant of the Member, pay the Member's Interest to an individual selected by the Trustee; or
- (e) pay a Member's Interest in favour of such other person (including any company, association or body) as the Standards or the Regulator permits; or
- (f) deal with the Interest either:
 - (i) in accordance with rule 22.7 to the extent required by the Standards; or
 - (ii) by cancelling the Interest and crediting the value of it to a reserve Account in the Fund to the extent permitted by the Standards.

BINDING DEATH BENEFIT NOMINATIONS

19.

19.1. Establishment of Binding Death Benefit Nominations

A Member may, prior to their death, provide the Trustee with a BDBN. The Member may specify in such BDBN:

- (a) that their Interest is to be paid on their death to one or more of that Member's Dependants or LPR, to the exclusion of any other Dependant or LPR;
- (b) subject to rule 10.4(a), the proportion of the Member's Interest, the value, the particular assets, any specified part or amount, the Accounts or the reserves in the Fund that will be used to pay the Interest to the persons in rule 19.1(a);
- (c) whether the amount is to be paid to each person in rule 19.1(a) as a Lump Sum, Pension or combination of Lump Sum and Pension and, if a Pension is provided (subject to rule 10.5(d) 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
- (d) any matter, other than what is covered in rules 19.1(a) to 19.1(c), to which the Trustee may consent.

19.2. Requirements for Binding Death Benefit Nominations

A BDBN must:

- (a) be in writing;
- (b) be signed, and dated, by the Member in the presence of two adult witnesses, neither of whom is mentioned as a Dependant or LPR in the BDBN; and
- (c) contain a declaration signed and dated by both the witnesses stating that the BDBN was signed by the Member in their presence.

19.3. Binding Death Benefit Nomination shall bind Trustee

Subject to rule 19.6, the Trustee shall be bound, on or after the death of a Member, to comply with the instructions set out in a valid BDBN (or a copy thereof) that has been received by the Trustee from that Member.

19.4. Revocation of Binding Death Benefit Nominations

A Member may revoke a BDBN made at any time prior to that Member's death by:

- (a) preparing a new BDBN and providing it to the Trustee, and this shall have the effect of revoking in its entirety and rendering completely inoperative any prior dated BDBN of that Member; or
- (b) notifying the Trustee in writing that the Member revokes their BDBN, and this shall have the effect of revoking in its entirety and rendering completely inoperative any prior dated BDBN of that Member.

19.5. Self Managed Superannuation Funds

If the Fund is an SMSF, a BDBN shall, subject to any terms and conditions contained in the BDBN which may otherwise render it void or inoperative, continue 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 the maximum duration of three years being specified in regulation 6.17A(7) of the SISR (which is applicable to BDBNs in relation to superannuation funds that are not SMSFs).

19.6. Binding Death Benefit Nominations subject to the Standards

The Trustee shall not be bound to comply with a BDBN and such BDBN will be rendered invalid to the extent that to comply with the BDBN would:

- (a) result in a breach of the Standards that would cause the Trustee or the Fund to suffer a penalty or commit an offence; or
- (b) result in a Member's Interest or any part thereof being paid:
 - (i) to a person who is, in the Trustee's reasonable opinion, neither a Dependant nor an LPR of that Member; or
 - (ii) as a Pension or a reversionary Pension to a child of a Member, where the Member dies on or after 1 July 2007, unless the exception in rule 10.5(d) applies or the Standards otherwise permit.

VESTING AND MEMBERSHIP CLASSES

20.

20.1. Subject to the Standards, no Interest in respect of a Member, other than a Minimum Benefit, shall vest 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 person under administration;
- (b) the Member assigning, securing or charging their Interest in the Fund (or attempting to do so); or
- (c) the Member's Interest whether by their own act, operation of law, an order of any court or otherwise becoming payable to or vested in any other person, company, government or other organisation;

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

20.2. Subject to rule 6.2(b), 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 shall not apply to any Interest that has already vested in a Member or that constitutes a Minimum Benefit.

ACCOUNTS AND ADMINISTRATION

21.

21.1. Establishment of Accounts

The Trustee may establish any Account the Trustee deems appropriate, including, without limitation:

- (a) a Member or Employer accumulation Account;
- (b) a Pension Account;
- (c) a reserve Account (including, without limitation, a Pension reserve, investment reserve and sundry reserve); and
- (d) any other Account, including any sub-Account.

21.2. Trustee to maintain Accounts

- (a) The Trustee shall ensure that the Accounts are properly maintained and may set policies and procedures for recording movements in respect of the Accounts.
- (b) Subject to the Standards, the Accounts established by the Trustee shall be managed by the Trustee and may contain such amounts as follows:
 - (i) Member and Employer accumulation Account: contributions made by or in respect of a Member (as applicable) in accordance with rule 9 and transfers, allocations, allotments or roll-overs in respect of a Member in accordance with rule 22;
 - (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 which 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 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 fund the payment of a Benefit on the death of a Member to their Dependants;
 - (v) to fund the payment of a Temporary Incapacity Income Stream or the payment of a Benefit on Total and Permanent Disablement;

- (vi) to make provision for and to pay Disbursements; and
- (vii) to fund any other liability;

and the Trustee may determine what amounts are transferred in to and out of a reserve Account and make all other decisions including what assets are used to fund these Accounts.

21.3. Earnings

- (a) Earnings may be credited or debited to any Account provided that:
 - (i) credits shall not total an amount greater than Earnings in a period; and
 - (ii) the debits shall not total an amount greater than Earnings in a period;unless supplemented by an allocation of an amount from a reserve Account or the Trustee determines otherwise.
- (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 or estimate 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 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 shall have regard to, among other things:
 - (i) the Standards;
 - (ii) the amount in each Account;
 - (iii) 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;
 - (iv) length of Membership;
 - (v) investment strategies;
 - (vi) any professional or expert advice; and
 - (vii) the exchange and segregation of the assets of the Fund, if any, as assets set aside to meet Pension liabilities of the Fund under rule 6.2 or for other purposes of the Fund and the extent to which Earnings are attributable to those assets.

21.4. 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.
- (b) In making a determination to apply an amount from a reserve Account under rule 21.4(a), the Trustee shall first take into consideration any implications such application may have for a Member's Concessional Contributions Cap or Non-Concessional Contributions Cap.

TRANSFERS, ROLL-OVERS AND INTERNAL ROLL-OVERS

22.

22.1. Transfers and Roll-Overs into the Fund

- (a) Subject to the Standards, the Trustee may, upon the written request of an Eligible Contributor or, if the Trustee otherwise determines, allow a transfer, allocation, allotment or roll-over (including an internal roll-over amount or the commutation or roll-over of a Pension) ('**Asset Transfer**') to be made in respect of a Member into or within the Fund.
- (b) An Asset Transfer may be made with money, assets or a deemed amount or value of assets ('**Notional Assets**') passing from another Approved Fund, or an Account or Interest within the Fund, as the case may be.
- (c) The Trustee shall not accept a directed termination payment on or after 1 July 2007 unless permitted by the Standards.

22.2. Transfers and Roll-Overs from the Fund

- (a) Subject to the Standards, the Trustee shall, 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
- (b) The Trustee may refuse to allow an Asset Transfer to an Approved Fund that is not a complying superannuation 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) The Trustee shall withhold an amount from 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 shall ensure the Accounts are appropriately adjusted to comply with the Standards.

22.4. Spouse Contributions-Splitting

- (a) Subject to rule 8.5, 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 shall 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.
- (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 and Roll-Overs

- (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.
- (b) If the Trustee is given a release authority, the Trustee shall facilitate an Asset Transfer in favour of the Commissioner or the Member, as the case requires, within 30 days after receiving the release authority or as otherwise required by the Standards.

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 making reasonable efforts and inquiries.

22.8. Discharge on Transfer

The receipt by the trustee of an Approved Fund of an Asset Transfer shall be 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 shall apply to the Asset Transfer (except an Asset Transfer effected 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.

DISCLOSURE, RECORDS AND AUDITORS

23.

23.1. Notifications and Disclosure of Information

The Trustee shall 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 the provisions of this Deed, including the name of the Fund;
- (e) contact and other details for the Fund;

- (f) a copy of this Deed, which shall be available for inspection by each Member; and
- (g) 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. Records and Record Keeping

The Trustee shall:

- (a) cause proper records to be maintained, and shall 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; and
- (c) keep a record of the Fund's Accounts, financial statements and returns for a period of at least five years.

23.3. Financial Statements

- (a) The Trustee shall cause a statement of financial position, statement of financial performance and any other required financial statements to be prepared as soon as practicable after the end of each Financial Year and at any other times if necessary.
- (b) The Trustee may make any determination regarding the Fund's financial statements including whether to record the financial statements at cost or market value and whether the Fund is to be a reporting or non-reporting entity.

23.4. Provisions

- (a) The Trustee may make provision or adjustment in the Accounts for, among other things, all Disbursements, liabilities, Taxes, tax credits, rebates, offsets, depreciation, amortisation or revaluations as the Trustee considers appropriate.
- (b) The Trustee may adjust a Member's Interest or any Account in the Fund for any Taxes, tax credits, tax deductions, rebates, offsets or other entitlements in relation to a Member including, without limitation, any deduction entitlements under sections 295-470 and 295-485 of the ITAA 1997 (deductions for future liability to pay benefits and deductions for increased amount of superannuation lump sum death benefit) in respect of the death or disablement of a Member.
- (c) The Trustee may make any estimate or adjustment it deems appropriate in valuing any amount under rules 23.4(a) and 23.4(b).

23.5. Auditor

The Trustee must appoint an Auditor for each Financial Year or as required under the Standards within the time required by the Standards to:

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

VARIATION

24.

- 24.1. The Trustee may at any time, by deed or written resolution, vary this Deed and such variation shall apply 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 24.4.
- 24.2. Any amendment to this Deed shall 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 amendment shall reduce a Member's Interest accrued before the date of the amendment unless the Trustee has the written consent of any Member whose Interest would be reduced or adversely affected.
- 24.4. Despite rule 24.3, an amendment may reduce a Member's Interest accrued before the date of the amendment without obtaining the Member's consent if:
- (a) the reduction in Interest is required because of, and does not exceed the value of, any additional Tax payable on the Fund's Earnings due to such things as changes in Taxation laws;
 - (b) the reduction is required to enable the Fund to comply with the Standards or the Regulator provides its written approval to the reduction; or
 - (c) the amendment 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.

WINDING-UP

25.

- 25.1. The Trustee shall wind-up and terminate the Fund in the manner provided by this rule when the first of the following events occurs:
- (a) agreement to wind-up the Fund is obtained between all Members and Beneficiaries of any unpaid Interest within the Fund of any deceased Member;
 - (b) the Trustee decides that the continuation of the Fund is not reasonably justified;
 - (c) the Fund is required to be wound-up to comply with the Standards; or
 - (d) there are no Interests in respect of any Member, deceased or otherwise, within the Fund;
- and the date when the first of the above events occurs, shall be referred to as the Wind-up Date.
- 25.2. The Trustee shall 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.

25.3. The Trustee:

- (a) shall 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 25.2 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;
 - (i) provided that:
 - (A) the Trustee shall not roll-over or transfer a Member's Interest (or a part of it) if such a payment, roll-over or transfer would be inconsistent with the Standards; and
 - (B) the Trustee may maintain any Interest in respect of a Member after the Fund is wound-up subject to similar trusts as contained in this Deed or roll-over or transfer the Member's Interest to an Approved Fund until the Member is entitled to be paid their Interest.

25.4. Where any amount remains after the winding-up and roll-over or transfer of Interests (as contemplated in rule 25.3), the amount so remaining shall, 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.

25.5. The Fund shall be administered and the assets distributed or paid upon a winding-up so that the Fund does not infringe the Standards.

25.6. The payment, roll-over or transfer of a Member's Interest or other amount in accordance with this rule shall, subject to the Standards, be a complete and final discharge of the Trustee and the Fund in respect of that Member.

IMPLIED STANDARDS

26.

26.1. This rule 26 shall have a paramount effect to ensure that this Deed and the Fund complies with the Standards. To the extent that the Standards:

- (a) empower the Trustee to do something that the Trustee would not otherwise have power to do or is not otherwise required to comply with;
- (b) require compliance by the Trustee with the minimum requirements of the Standards; or
- (c) impose a less onerous requirement than this Deed;

those provisions shall, having regard to the Fund's status at the relevant time, be implied as part of this Deed and to the extent of any inconsistency prevail over the express provisions of this Deed.

26.2. If rule 26.1 no longer requires a provision referred to in rule 26.1 to override the provisions of this Deed, then that provision shall cease to have effect.

- 26.3. The Trustee is not to be taken to be in breach of this Deed 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 shall not be so implied.
- 26.5. Rule 26.1 shall apply on a prospective basis from the date of commencement of this Deed 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 shall apply on a retrospective basis or in an amended way, either in whole or in part.

APPLICABLE LAW

27. This Deed shall be construed in accordance with the laws of the state or territory in which the Trustee resides and the Commonwealth of Australia and to the extent the courts and tribunals of those jurisdictions have application to the Fund, their jurisdictions shall be 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, unless the parties agree otherwise, the one where the individual with the largest total Account balance resides.

INTERPRETATION

28. In this Deed, unless the context otherwise requires or the Trustee determines otherwise:
- 28.1. a reference to any person, company, association or body includes a reference to its respective authorised officers, agents, delegates, successors, assigns, LPR, executors and administrators;
- 28.2. references to any provision of the Deed, law, regulation, temporary modification order, ruling, circular or guideline are references to same as amended, consolidated, supplemented or replaced from time to time;
- 28.3. words importing any one gender include all genders and words importing the singular include the plural and vice versa;
- 28.4. 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 this Deed;
- 28.5. the table of contents and headings shall not be taken into account in the interpretation of this Deed;
- 28.6. if any question or dispute arises in respect of the Fund or in respect of the interpretation of the Deed, the Trustee's decision on the matter shall be final and binding;
- 28.7. references to the age of a Member or other person shall be read subject to the Standards, and if any stated age is inconsistent with the Standards, then the age in the Standards prevails; and
- 28.8. a reference to a word or term in this Deed, if that word or term has a defined meaning under the Standards but no express meaning in this Deed, has the same meaning as given by the Standards.

DEFINITIONS

29. The following words shall, unless the Trustee determines otherwise or the context requires otherwise, have the meanings shown below:

29.1. **Account** is a record of amounts held by the Trustee in the Fund;

29.2. **Account-Based Pension** means a Pension that commences on or after 1 July 2007:

(a)

(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 do not permit the capital supporting the Pension to be added to by way of contribution or roll-over after the Pension has commenced;

(iv) that is paid at least annually; and

(v) the total payments in a year (including any payments made under a Payment Split) 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; or

(b) that otherwise complies with regulations 1.06(9A)(a), 1.06(9A)(c), 1.06(9A)(d), 1.06(9B), 1.07D of the SISR and the Standards relating to Account-Based Pensions; or

(c) that otherwise complies with such parts of the Standards as govern Account-Based Pensions;

29.3. **Acting Trustee** has the same meaning given to it in the Standards;

29.4. **Actuary** means a practising member of the Institute of Actuaries of Australia or any other actuary approved by the Standards;

29.5. **Allocated Pension** means a Pension that commences before 20 September 2007:

(a)

(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 any 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 any 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 Schedule 1AAB of the SISR; or
 - (b) 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
 - (c) that otherwise complies with such parts of the Standards as govern Allocated Pensions;
- 29.6. **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; or
 - (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) which, among other things, can accept a transfer, allocation, allotment or roll-over from the Fund of a Member's Interest or is authorised to transfer, allocate, allot or roll-over a Member's Interest to or in respect of the Fund in accordance with the Standards;
- 29.7. **Approved Trustee** has the same meaning as that term is defined in the Standards;
- 29.8. **APRA** means the Australian Prudential Regulation Authority, and its authorised officers;
- 29.9. **Asset-Test Exempt Pension** means a Pension that is exempt from the assets test or income test in whole or in part under the Social Security Legislation;
- 29.10. **ATO** means the Australian Taxation Office, the Commissioner or, alternatively, some other official or body empowered with the administration of SMSFs and any of their authorised officers;
- 29.11. **Auditor** means an auditor who is:
- (a) registered under the *Corporations Act 2001* (Cth);
 - (b) a member or, if the Standards require, a fellow of:
 - (i) CPA Australia;
 - (ii) The Institute of Chartered Accountants in Australia;
 - (iii) the National Tax and Accountants Association Ltd;
 - (iv) the National Institute of Accountants; or
 - (v) the Association of Taxation and Management Accountants;

- (c) an Auditor-General of the Commonwealth, a State or Territory; or
 - (d) a person that otherwise qualifies to act as an auditor under the Standards;
- 29.12. **BDBN** means a written direction binding the Trustee as to the payment of all or part of a Interest on or after the death of a Member that complies with rule 19 and **Binding Death Benefit Nomination** has a corresponding meaning;
- 29.13. **Beneficiary** means a Dependant, a trustee for a Dependant, a Member's LPR, a Reversionary Beneficiary or other beneficiary who is entitled to Benefits in respect of a Member's participation in the Fund under rules 18, 19 or otherwise and **Beneficiaries** has a corresponding meaning;
- 29.14. **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 the provisions of this Deed but excludes a Defined Benefit Pension;
- 29.15. **Commissioner** means the Federal Commissioner of Taxation authorised under the *Taxation Administration Act 1953* (Cth) or any other Commonwealth law;
- 29.16. **Concessional Contributions Cap** means the relevant concessional contributions limit applicable to the Member as prescribed for the relevant Financial Year by the Standards;
- 29.17. **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;
- 29.18. **Corporate Trustee** means a trading or financial corporation formed within the limits of the Commonwealth under the jurisdiction of the Commonwealth under section 51(xx) of the *Commonwealth of Australia Constitution Act* eligible to act as a trustee of a regulated superannuation fund in accordance with the Standards;
- 29.19. **Deed** means the attached provisions, these rules (including any deemed provision under rule 26) and the Forms, including if relevant any former deed or document governing the establishment and operation of the Fund as amended from time to time;
- 29.20. **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;
- 29.21. **Defined Benefit Member** means a Member entitled, 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;

- 29.22. **Defined Benefit Pension** means a pension under section 10 of the SISA, other than:
- (a) a Pension Funded by Assurance; or
 - (b) an Account-Based Pension; or
 - (c) an Allocated Pension; or
 - (d) a Market Linked Pension; or
 - (e) any other Pension excluded from the definition of defined benefit pension in Division 9.2B of the SISR;
- 29.23. **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 including any step-child, any ex-nuptial child and any adopted child;
 - (c) any person with whom the Member has an interdependency relationship as prescribed in the Standards;
 - (d) any other person who is financially dependent upon the Member or if the Member is deceased, was financially dependent upon the Member at or after the time of the Member's death; and
 - (e) any other person who would be regarded as a dependant under the Standards at the relevant date;
- 29.24. **Disability Superannuation Benefit** means a Benefit paid if a Member suffers Total and Permanent Disablement;
- 29.25. **Disbursements** means, unless the Trustee determines otherwise:
- (a) the direct costs of establishing, administering, managing, operating and terminating the Fund; and
 - (b) any administrative, insurance or Taxation costs which are or which relate to those direct costs;
- 29.26. **Disqualified Person** means, subject to the Standards:
- (a) an individual who:
 - (i) has died;
 - (ii) is an insolvent under administration;
 - (iii) has been disqualified by the Regulator;
 - (iv) has at any time been the subject of a civil penalty order made under the Standards; or
 - (v) 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;
- 29.27. **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 positive or negative and may be due to timing or permanent differences or other adjustments and Earnings may also reflect unrealised gains or losses;
- 29.28. **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;
- 29.29. **Eligible Spouse** means the Spouse of whichever of:
- (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;
- 29.30. **Employee** means a person who is Gainfully Employed by an Employer;
- 29.31. **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;
- 29.32. **Family Law Act** means the *Family Law Act 1975* (Cth) and any applicable regulations relating thereto;
- 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. **Form** means the appropriate form in Part B of this Deed. However, the Trustee may use or accept any document providing similar information or waive the requirement of requiring a form to be completed;

- 29.35. **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;
- 29.36. **Fund** means the fund governed by this Deed;
- 29.37. **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;
- 29.38. **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;
- 29.39. **Insurance Proceeds** means the proceeds of an insurance policy received by the Fund in respect of a Member as a result of:
- (a) death;
 - (b) Total and Permanent Disablement;
 - (c) Temporary Incapacity; or
 - (d) any other event;

that is to be used to fund a Benefit (including any Pension Funded by Assurance) or for any other purpose the Trustee considers appropriate;

- 29.40. **Interest** means a Member's entitlement in the Fund within the meaning of that term in the ITAA 1997;
- 29.41. **ITAA 1936** means the *Income Tax Assessment Act 1936* (Cth) and any applicable regulations relating thereto;
- 29.42. **ITAA 1997** means the *Income Tax Assessment Act 1997* (Cth) and any applicable regulations relating thereto;
- 29.43. **Lease** means a lease arrangement as defined in the SISA;
- 29.44. **Life Expectancy Term** means, in relation to a Market Linked Pension:
- (a) if the Market Linked Pension commences before 20 September 2007:
 - (i) the life expectancy of the Member on the commencement day of the Pension; or
 - (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; or
 - (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 29.44(a)(i) and not more than the greater of the following periods:
 - (A) the maximum period available under rule 29.44(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 Pensioner 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 29.44(a)(i), 29.44(a)(ii) or 29.44(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 29.44(a)(iv)(A) and not more than the greater of the following periods:
 - (1) the maximum period available under either rule 29.44(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; or

- (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 shall be a term calculated under 29.44(a), provided that the term chosen will not cause the minimum payment standards under Schedule 7 of the SISR to be breached in any Financial Year of payment of the Market Linked Pension; or
- (c) such other term as permitted or required by the Standards;

29.45. **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, but excludes the legal personal representative of a Disqualified Person, and **Legal Personal Representative** has a corresponding meaning;

29.46. **Lump Sum** means a Benefit or any component of it paid otherwise than as a Pension in accordance with this Deed;

29.47. **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;

29.48. **Market Linked Pension** means a Pension:

- (a) that commences 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 any 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)(A) 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; or
 - (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 29.48(a)(iv)(B)(1) or 29.48(a)(iv)(B)(2), a Lump Sum to another individual;

provided that if the Member has opted for a Life Expectancy Term under rule 29.44(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) 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:
 - (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; and

- (ii) that otherwise complies with rule 29.48(a), except that regulation 1.06(1A) of the SISR shall not apply to a Pension commenced under this rule 29.48(b); or
 - (c) that otherwise complies with such parts of the Standards as govern Market Linked Pensions;
- 29.49. **Member** means a person who has been admitted by the Trustee as a member of the Fund in accordance with the provisions of this Deed and, if the Trustee determines, includes a reference to a former Member or a reference to a Beneficiary 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 be entitled to an Interest;
- 29.50. **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;
- 29.51. **Miscellaneous Benefit** means a Benefit arising in the circumstances described in rule 17;
- 29.52. **Non-Commutable Allocated Pension** means an Allocated Pension that commences before 20 September 2007:
 - (a)
 - (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; 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 give 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 otherwise complies with such parts of the Standards as govern Non-Commutable Allocated Pensions;
- 29.53. **Non-Commutable Pension** means a Pension that commences before 20 September 2007:
 - (a)
 - (i) that meets the Standards in relation to Market Linked Pensions, as the case may be; and
 - (ii) if the Pension is commuted under rule 29.48(a)(iv)(A), the resulting Lump Sum cannot be cashed unless:
 - (A) the purpose of the commutation is to cash an unrestricted non-preserved benefit; 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'; and
- (iii) the Pension otherwise complies with the SISR and the Standards relating to the payment of Non-Commutable Pensions; or
- (b) that otherwise complies with such parts of the Standards as govern Non-Commutable Pensions;
- 29.54. **Non-Concessional Contributions Cap** means the relevant non-concessional contributions limit applicable to the Member as prescribed for the relevant Financial Year by the Standards;
- 29.55. **Non-Member Spouse** has the same meaning as that term has under the Family Law Act;
- 29.56. **Old-Age Pension** has the same meaning as that term has for the purposes of section 51(xxiii) of the *Commonwealth of Australia Constitution Act*;
- 29.57. **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;
- 29.58. **Part-Time Employment** means Gainful Employment for at least ten hours and less than 30 hours each week or such other time or conditions as are prescribed as full-time by the Standards;
- 29.59. **Payment Split** has the same meaning as that term has under the Family Law Act or as agreed to by the parties in an agreement contemplated by that Act;
- 29.60. **Pension** means a periodic payment prescribed or permitted by the Standards and, except if this Deed states otherwise, includes an annuity or pension which is a reversionary annuity or Reversionary Pension, and **Income Stream** has a corresponding meaning;
- 29.61. **Pension Age** has the same meaning given to that term in the Social Security Legislation or such other age acceptable to the Trustee provided that it is permitted under the Standards;
- 29.62. **Preferred Dependant** means, in respect of a Benefit paid as a result of a Member's death, a Dependant nominated by that Member in their Application for Membership Form or in a subsequent written notification to the Trustee that has not since been revoked or amended and that does not bind the Trustee's discretion;
- 29.63. **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 Interest 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;

29.64. **Regulator** means:

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

as the case requires includes the Australian Securities and Investment Commission, the Department of Family and Community Services (also known as Centrelink and formerly the Department of Social Security) 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;

29.65. **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 — an arrangement under which a Member was Gainfully Employed has come to an end on or after the Member attaining that age; or
- (c) any other requirements under the Standards that govern Members retiring;

and **Retirement** has a corresponding meaning;

29.66. **Reversionary Pension** means a Pension payable to a Beneficiary who succeeds to the entitlement of a Member to a Pension, and **Reversionary Beneficiary** and **Reversionary Pensioner** have corresponding meanings;

29.67. **Securities** means securities as defined in section 92 of the *Corporations Act 2001* (Cth) and securities approved by the Trustee in any foreign country;

29.68. **SMSF** has the same meaning as the term 'Self Managed Superannuation Fund' in the Standards;

29.69. **SISA** means the *Superannuation Industry (Supervision) Act 1993* (Cth);

29.70. **SISR** means the *Superannuation Industry (Supervision) Regulations 1994* (Cth);

29.71. **Small APRA Fund** means a fund with fewer than five members with an Approved Trustee and that otherwise complies with the Standards in relation to such funds;

29.72. **Social Security Legislation** means the *Social Security Act 1991* (Cth), the *Veterans' Entitlement Act 1986* (Cth) and any applicable regulations, rulings or guidelines made pursuant thereto, as relevant;

29.73. **Spouse** in relation to a Member means, subject to the Standards, a person married to the Member or a person who, although not legally married to the Member:

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

on a bona fide domestic basis as husband or wife and if there is more than one Spouse the Trustee shall 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;

- 29.74. **Standards** mean any relevant provisions in or proposed changes to the following as the context requires:
- (a) any applicable provisions in the SISA and the SISR;
 - (b) any applicable provisions in the ITAA 1936, the ITAA 1997 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 unless the Employer or Member, as the case may be, elects or chooses not to take a tax deduction;
 - (c) any applicable provisions in the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Bankruptcy Act 1966* (Cth), the *Corporations Act 2001* (Cth), the Social Security Legislation, the Family Law Act and any applicable regulations made pursuant thereto;
 - (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 this Deed in either:
 - (i) exercising powers of investment granted under this Deed;
 - (ii) exercising any other power granted under this Deed; or
 - (iii) complying with an obligation contained in this Deed;unless the Trustee Law cannot lawfully be so excluded;
 - (e) any applicable common law, law of equity, or legal requirement the Trustee considers relevant; and
 - (f) if the Trustee considers it appropriate, any other applicable provision regulating or relating to superannuation funds, including any explanatory statement or explanatory memorandum accompanying or proposed change to the provisions referred to in rules 29.74(a) to 29.74(e);
- 29.75. **Taxable Component** has the same meaning as it does in the ITAA 1997;
- 29.76. **Taxes** includes any liability or provision for a liability for a tax, surcharge, duty, excise, levy, goods and services tax including any additional penalty or tax (including any liability for tax on a contribution made in excess of the relevant contribution limits prescribed by the Standards that the Member elects or nominates for the Trustee to pay) or, if the Trustee determines, any similar liability or provision, and **Taxation** has a corresponding meaning;
- 29.77. **Tax Free Component** has the same meaning as it does in the ITAA 1997;
- 29.78. **Temporary Incapacity** means physical or mental ill-health that has caused the Member to cease Gainful Employment (including a Member who has ceased to receive any gain or reward under a continuing arrangement for the Member to be Gainfully Employed) or which otherwise qualifies as Temporary Incapacity (or its equivalent) under the SISR which does not qualify as permanent incapacity under the SISR;

29.79. **Temporary Incapacity Income Stream** means a Benefit that:

- (a)
 - (i) cannot be commuted;
 - (ii) is paid at least monthly;
 - (iii) does not have a residual capital value; and
 - (iv) is such that the total amount paid each month is fixed or varies only:
 - (A) for the purpose of complying with the SISA and the SISR; and
 - (B) during any period of 12 months by a rate not exceeding either:
 - (1) 5% per annum; or
 - (2) 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
- (b) that otherwise complies with such parts of the Standards as govern such income streams;

29.80. **Total and Permanent Disablement** means, in relation to a Member:

- (a) if the Member has ceased to be Gainfully Employed, ill-health (whether physical or mental) if the trustee is reasonably satisfied that the Member is unlikely, because of the ill-health, ever again to engage in Gainful Employment for which the Member is reasonably qualified by education, training or experience; or
- (b) any other circumstances which are acceptable to the Trustee and are acceptable under the Standards;

and **Totally and Permanently Disabled** has a corresponding meaning;

29.81. **Transition to Retirement Income Stream** means an Account-Based Pension that commences on or after 1 July 2007:

- (a)
 - (i) that allows total payments (including 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;
 - (ii) 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; 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 give 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
 - (iii) the Pension otherwise complies with the SISR and the Standards relating to Non-Commutable Allocated Pensions; or
 - (b) that otherwise complies with such parts of the Standards as govern Transition to Retirement Income Streams;
- 29.82. **Trustee** means the natural person, company or other entity who holds office as trustee of the Fund including any substitute, successor co-trustee or replacement trustee from time to time; and
- 29.83. **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 1893* (NT) apply to the Fund or any other Commonwealth, State or Territory legislation of like effect that may apply.

SEVERANCE

- 30.** The provisions of this Deed are and shall be construed as severable and so if any provision or any part of the provision shall, at any time, be found or declared void or invalid then the remaining part of the provision, if any, and all other provisions of this Deed shall remain valid, binding and enforceable.