

**SUPERANNUATION FUND
TRUST DEED**

**Borthwick
Superannuation Fund**

Date of Deed: 24 SEPTEMBER 2007

Our ref: 1856:74280 (SMSF20062007)

THIS DEED is made on 24 SEPTEMBER 2007

BY: TIMOTHY BORTHWICK WIGHT and **AMANDA-JAYNE WIGHT** both of 18 Ferguson St, Upwey, Victoria 3158 ('Trustee')

RECITALS:



- A The Trustee establishes the Borthwick Superannuation Fund ('Fund') on the date shown above, in accordance with this Deed as a self managed superannuation fund with the flexibility of becoming another type of superannuation fund.
- B The Trustee has agreed to act as trustee of the Fund and will hold the Fund's property on trust in accordance with this Deed.
- C Subject to rule 1, the purpose of the Fund is to provide superannuation benefits to Members, and in the event of their death, for their Dependants and to act for any other purposes as permitted from time to time under the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation Industry (Supervision) Regulations 1994* (Cth).
- D The Trustee desires 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).

PROVISIONS:

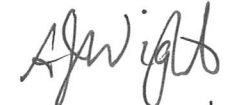
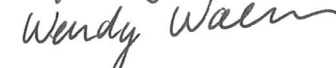
- 1. The Trustee establishes the Fund as a trust to be administered in accordance with this Deed.
- 2. The Trustee confirms that it will act as the initial Trustee of the Fund in accordance with this Deed.
- 3. The Deed shall be varied in accordance with rule 24. This Deed shall be subject to the definitions in rule 29.

EXECUTED as a deed.

SIGNED SEALED AND DELIVERED by)
TIMOTHY BORTHWICK WIGHT in the)
presence of the following witness:)

SIGNED SEALED AND DELIVERED by)
AMANDA-JAYNE WIGHT in the presence of)
the following witness:)

FUND PURPOSE

1.

- 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 shall 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 shall 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, this Deed shall be read subject to the Fund's status at the relevant time.

FUND ASSETS

2.

- 2.1. The assets of the Fund shall consist of all the cash, investments, insurances and other rights or entitlements held in trust by the Trustee under the provisions of this Deed and shall include:
 - (a) any money or assets transferred into the Fund;
 - (b) any contribution (in money or 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 shall have an absolute discretion in determining which assets shall be applied to provide funds for any amount which becomes payable in respect of a particular Member.
- 2.3. Every outgoing Trustee shall 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.

TRUSTEE

3.

3.1. Trustee

The Fund shall be vested in the Trustee and the Trustee shall hold the Fund assets subject to the provisions of this Deed. The Trustee shall be such individuals, Corporate Trustee, Approved Trustee, Acting 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 and this rule, the Members may, by deed or written resolution, appoint a Trustee who is not a Disqualified Person and who has consented to that appointment in writing.
- (b) Subject to rules 3.2(c) and 3.2(d), the LPR shall exercise the decision making in relation to the appointment of a Trustee, which may include the LPR, if there is an LPR of a deceased Member (in respect of whom an Interest remains in the Fund) or an LPR of a Member under a legal disability.
- (c) A Member who is an individual Trustee may, by deed or other written instrument, nominate an LPR to act as a Trustee ('**Successor Trustee**') in the event of the Trustee's death or the Trustee coming under a legal disability. This nomination is subject to the LPR consenting in writing to the appointment (whether at the time of nomination or appointment) as Successor Trustee, and the appointment is effective until the first of any of the following events occur:
 - (i) the Successor Trustee resigns by giving written notice to the other trustees;
 - (ii) Benefits in respect of the Member commence to be payable in the event of the Member's death; or
 - (iii) the Member ceases to be under a legal disability.

Any Successor Trustee shall have the same voting rights as the Member would have otherwise had as Trustee or Member, as the case may be.

- (d) 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 shall:
 - (i) 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; or
 - (ii) satisfy such alternative test that is permitted by the Standards providing for such situations as:
 - (A) single Member SMSFs;
 - (B) if a Member has died;
 - (C) if a Member suffers from a legal disability (including a person under a legal disability because of age);
 - (D) if a Member is under a legal disability due to age and does not have an LPR;

- (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
- (iii) 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 a Small APRA Fund the Trustee shall:
 - (i) be an Approved Trustee authorised to act as trustee of the Fund; or
 - (ii) satisfy such other requirements permitted by the Standards or the Regulator.
- (f) 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 shall satisfy such of the requirements prescribed by the Standards or the Regulator in relation to the Trustee and the decision making of the Trustee.
- (g) Subject to the Standards, the Regulator may appoint an Acting Trustee on such terms and conditions as the Regulator may specify.

3.3. Vacancy

Subject to the Standards, the office of a Trustee shall:

- (a) become vacant if:
 - (i) the Trustee resigns as trustee by executing a deed or written resolution or in some other manner authorised by the Standards;
 - (ii) the Trustee becomes a Disqualified Person, unless that person can continue in office by compliance with guidelines of the Regulator or otherwise in accordance with the Standards;
 - (iii) Members who either individually or in total have aggregate Account balances greater than half of the total value of all Account balances in the Fund attributable to Members may, by deed or written resolution, remove an individual trustee, Corporate Trustee or Approved Trustee as the case may be, from office;
 - (iv) if the Fund is an SMSF, an individual trustee or a Corporate Trustee can no longer comply with the requirements of being a trustee of such a fund (unless that person or company can continue in office by compliance with guidelines of the Regulator or otherwise in accordance with the Standards for any extended period); or
 - (v) if the Fund is a Small APRA Fund, the Approved Trustee can no longer satisfy the requirements of being a trustee of a Small APRA Fund unless the Trustee can continue in office by compliance with guidelines of the Regulator or otherwise in accordance with the Standards; and
- (b) if necessary to comply with the Standards, be filled as soon as practicable on any vacancy.

3.4. Notification Requirements

If required by the Standards and subject to rule 23.2, a declaration, notification or other document prescribed by the Standards shall be completed and lodged with the Regulator within the required time on a change in the office of Trustee or change in the directorship of a Corporate Trustee.

3.5. Decisions — Individual Trustees

If the Trustee comprises:

- (a) no more than two individuals, trustee decisions shall require unanimous approval; or
- (b) more than two individuals, trustee decisions shall require majority approval;

and if there is any deadlock in making any decision, each trustee's vote shall be weighted in relation to the value of each of their respective total Account balances (if any) in the Fund unless the Standards prescribe otherwise.

3.6. 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 confer or communicate via any means as the Trustees by resolution approve including any electronic means, and a resolution passed by such a conference or communication method shall, notwithstanding that the Trustees are not present together in the same place at the same time, be deemed to have been passed at a Trustees' meeting held on the day on which and the time at which the conference or communication was last held;
- (b) if there is any interruption to a conference of Trustees using any of the means set out in rule 3.6(a), 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) minutes of any conference or Trustees' meeting may be confirmed by facsimile, email or by such other means as the Trustees by resolution approve; and
- (d) if all the Trustees have signed a document or separate documents containing a statement that they are in favour of a resolution of the Trustees in the terms set out in the document, a resolution in those terms shall be taken to have been passed at a Trustees' meeting held at the time at which the document was signed by the last Trustee required to sign that document.

3.7. Decisions and Meetings — Corporate Trustees

Where the Trustee comprises a Corporate Trustee, Trustee decisions and meetings shall be in accordance with the articles of association, constitution or governing rules of the Corporate Trustee unless the Standards prescribe otherwise.

3.8. Trustee Remuneration

Subject to rule 5 and the Standards:

- (a) during any period while the Fund is an SMSF, neither a director of a Corporate Trustee nor an individual who is a Trustee shall be entitled to receive remuneration from the Fund for their services unless remuneration is permitted under the Standards;

- (b) subject to rule 3.8(a), any trustee engaged in any profession or business may, notwithstanding their office of Trustee, act in a professional capacity, and shall be entitled to charge and be paid not more than a commercial rate for all professional and other charges for any business or work or act done by them, their firm, or their company, in connection with the Fund including acts which a trustee could have done personally; and
- (c) subject to rule 3.8(a), a Trustee shall not be required to make an election between professional charges and any commission or fees otherwise authorised by the Members, statute or a court of law and an Approved Trustee or acting trustee shall be entitled to its normal fees, charges and commissions including any amounts authorised by legislation.

TRUSTEE'S DUTIES

- 4.** The Trustee must:
 - 4.1. act honestly in relation to all matters concerning the Fund;
 - 4.2. 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;
 - 4.3. ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Members;
 - 4.4. keep the money and other assets of the Fund separate from any money and assets, respectively:
 - (a) that is held by the Trustee personally;
 - (b) that is money or assets of an employer or an associate; or
 - (c) that is otherwise not part of the Fund;
 - 4.5. 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;
 - 4.6. formulate 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:
 - (a) 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;
 - (b) 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;
 - (c) the liquidity of the Fund's investments having regard to the Fund's expected cash flow requirements; and
 - (d) the ability of the Fund to discharge its existing and prospective liabilities;
 - 4.7. 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;

- 4.8. provide Members with access to any prescribed information and prescribed documents in accordance with the Standards; and
- 4.9. ensure that, where necessary under the Standards, a derivatives risk statement and related documentation is prepared and complied with.

TRUSTEE'S INDEMNITY

5.

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

- (a) arising from a breach of trust or otherwise, unless the loss was caused by the Trustee's own fraud or dishonesty;
- (b) suffered as a result of relying on any professional 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, 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 this Deed; or
- (e) suffered by the Fund or any Member as a result of:
 - (i) no or insufficient or inadequate 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 policy for whatever reason;

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 shall:

- (a) be 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 as required by the Standards; and
- (b) have a lien on and may use the assets of the Fund to satisfy this indemnity unless prohibited by regulation 13.13 or 13.14 or Part 5 of the SISR or otherwise by the Standards.

5.3. Unless otherwise agreed between interested parties, the Trustee's costs of obtaining advice, including legal, accounting, investment, financial, actuarial or other advice and all related assistance and information shall be met by the Fund.

INVESTMENT

6.

6.1. Fund Investments

- (a) Subject to rules 2 and 4 and the Standards, the Trustee shall 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:
- (i) any investment taken to be prudent under Trustee Law;
 - (ii) any 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;
 - (iii) on deposit or on loan, with or without security, at such rate of interest and upon such terms as the Trustee may consider reasonable;
 - (iv) the purchase or acquisition of any real or personal property and in particular (but not limited to) any chattels, machinery, plant, stock-in-trade, patents, trade marks, registered designs and copyrights or any interest in them;
 - (v) the giving or taking of leases, licences or options over real or personal property or any interest in respect of them;
 - (vi) the discounting of loans, mortgages, contracts, hire purchase agreements or leases;
 - (vii) the purchase or acquisition in any way of shares or stock (of any class or description) or of any type of bond, mortgage, debenture, note, option, instalment warrant, hedge, foreign exchange or currency, futures or derivative contract, or other like security or arrangement in or in respect of a company, other entity or asset, whether listed or unlisted and whether it is fully or partly paid up and whether secured or unsecured, registered or unregistered;
 - (viii) on deposit with or on 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;
 - (ix) in financial instruments and the Trustee may draw, make, accept, endorse, discount, issue or otherwise deal with any promissory note, bill of exchange, bill of lading, cheque or other negotiable or transferable instrument;
 - (x) any policy or annuity whether by proposal, purchase or otherwise, and any choses in action, and any interests for life or any lesser term or in reversion;
 - (xi) the purchase or acquisition of or subscription for any unit or sub-unit in any unit 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 contingent or reserve liability;
 - (xii) any business (including a business of primary production) 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 to carry on the business on behalf of the Trustee; or

- (xiii) any other investments which are acceptable under the Standards.
- (b) The Trustee shall not be empowered or authorised to:
- (i) make loans to a Member or a relative of a Member;
 - (ii) borrow money on behalf of the Fund;
 - (iii) acquire assets, including any insurance policy, from an Employer, a Member, a related trust or any other related party; or
 - (iv) make loans, Leases or investments to or in an Employer, Member, a related trust or any other related party;

unless authorised by the Standards and only to the extent (if any) allowed by the Standards.

6.2. Separately Identifiable Assets

The Trustee may deal with specific assets of the Fund in respect of particular Members on a temporary or permanent basis in accordance with rules 6.2(a) or 6.2(b) respectively.

- (a) The Trustee may segregate an asset of the Fund from time to time as follows:
- (i) acquire and maintain any specific assets for the purposes of paying any Benefit and acquire and deal with any insurance, annuities or similar arrangements for any Member;
 - (ii) establish, change or discontinue any sub-fund or class of Membership within the Fund with separately identifiable assets, Members and liabilities with interests in such part only held by the Members in that sub-fund or class of Membership as may be the case;
 - (iii) alter, exchange and segregate current Pension assets from non-current Pension assets and deal with the Fund as different sub-funds, segments or partitions in respect of current or non-current Pension assets;
 - (iv) 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
 - (v) if a specific asset is held for a Member or a class of Members, the value of the asset and the Earnings on such asset shall be reflected in the Accounts for that Member or class of Members or such other Accounts as the Trustee determines.
- (b) Notwithstanding any other provisions in this Deed, the Trustee may quarantine any asset of the Fund on an ongoing basis as follows:
- (i) the Trustee may establish any sub-fund or class of Membership within the Fund with separately identifiable assets and Members and the Trustee shall record such assets in the Accounts of the Members of the particular sub-fund or class of Membership;
 - (ii) the Earnings on such assets shall only be reflected in the Accounts for those Members for whom the particular asset is held. Any Taxes and expenses payable in respect of the particular asset shall be debited to the Accounts of those Members for whom the asset or investment is held; and

- (iii) such assets shall not be transferred out of the Accounts of those Members under rule 22, other than for the purpose of providing a Benefit to those Members in accordance with this Deed.
- (c) 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 the value made under this rule shall bind 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.

POWERS

7.

- 7.1. The Trustee has an absolute 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 the provisions of this Deed, the Trustee shall have an absolute and uncontrolled discretion to exercise or refrain from exercising all powers, authorities and discretions.
- 7.2. Unless otherwise required under this Deed or under the Standards, the Trustee is not obliged to give reasons for its acts or omissions.
- 7.3. The Trustee has the power, having regard to the Fund's status at the relevant time, to do anything that a trustee of a superannuation fund is permitted to do under the Standards and at law, including the power to:
 - (a) settle, compromise, commence, carry on or defend proceedings or submit to arbitration any claims, matters or things relating to the provisions of this Deed or the rights of any Member;
 - (b) 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 shall be in the name of the Trustee or, if the Trustee shall so determine, in the name of the Member in accordance with the Standards;
 - (c) pay all Disbursements;
 - (d) sell, vary, improve, renovate or repair any investment and may exchange any investment for another investment;
 - (e) 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;
 - (f) pay calls on shares or stock or units forming part of the Fund and to accept transfers of shares or Securities;
 - (g) assent to and concur in any arrangement, sale, transfer or exchange of any shares, stock, debentures or other 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 shares, stock, debentures or other 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;
 - (h) subject to rule 6.1(b), lend money and to 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;

- (i) subject to rule 6.1(b), borrow money and obtain similar financial assistance to pay Benefits or to settle Securities or for any other purposes permitted under the Standards;
- (j) indemnify or undertake to 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;
- (k) insure or re-insure any risks, contingencies or liabilities of the Fund with any insurance company, mortgage insurance company, re-insurance company, any other entity willing to accept or underwrite the risk or any other fund as the Trustee determines;
- (l) underwrite or sub-underwrite any risks, contingencies or liabilities including any under a superannuation arrangement conducted by an Employer if there exists the possibility of transfers of Employees to the Fund;
- (m) procure the registration or recognition of the Trustee or the Fund in any country or place outside the jurisdiction of its place of incorporation or establishment, as the case may be;
- (n) 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; or
- (o) generally do any other act or thing as the Trustee considers necessary or expedient in respect of the management and administration of the Fund and to further the interests of the Fund.

7.4. The Trustee may exercise any of its powers or rights even if the Trustee is an Employer or a Member, an associate of an Employer or a Member, a related party or related trust or has a direct or personal interest in or benefit in the exercise of the power or right provided that the power or right is exercised in good faith and is in accordance with the Standards.

7.5. The Trustee may:

- (a) take out and maintain insurance over risks and liabilities in respect of the Fund including insurance:
 - (i) on the lives, disability and working capacity of Members;
 - (ii) in respect of the Fund's assets or trustee liabilities; and
 - (iii) in order to provide Benefits to Members and, on their death, to their Dependants or LPR;
- (b) transfer any insurance policy, annuity contract or other similar entitlement in the Fund to a Member in respect of any Benefit entitlement under the provisions of this Deed and the Trustee may determine the value, if any, that is attributable to the entitlement transferred;
- (c) reduce or abandon insurance cover in relation to a Member who consents thereto or whose age, ill health or other circumstances makes it too costly or impracticable to effect or continue such cover; and
- (d) meet the cost of insurance out of the Fund unless otherwise agreed between interested parties.

- 7.6. The Trustee may withhold Tax from any Benefit, contributions, Earnings, gains, assets, Disbursement or other payment received, receivable or paid or payable by the Fund and obtain and furnish any information and deal in or pay any Tax.
- 7.7. 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.
- 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 considers appropriate.
- 7.9. Subject to the Standards and this Deed, 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 or transfer.
- 7.10. Subject to the Standards, the Trustee may delegate any functions, duties, discretions or obligations to any person, entity, custodian or organisation by enduring power of attorney, resolution or otherwise for any purposes and with any powers, 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 considers appropriate.
- 7.11. Subject to rule 8.4 and the Standards, the Trustee shall comply with and do all things necessary to give effect to orders, agreements or arrangements (whether formal or informal) including:
- (a) splitting orders, Payment Splits or interest splits;
 - (b) binding financial agreements and any superannuation agreements;
 - (c) flagging orders or flag-lifting agreements; and
 - (d) any similar orders or agreements for de facto relationships made pursuant to the Family Law Act.
- 7.12. The Trustee shall 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 7.11, and the Trustee shall, subject to the Standards, be entitled to charge reasonable fees and charges for such acts, matters or things.
- 7.13. 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 discretion, is frivolous, vexatious, fanciful or of little or no substance, even if the matter does not involve any legal action or third party, the Trustee can recover any expense or cost in relation to the administration, dispute resolution or any dealing in relation to that Member from their Account or interest in the Fund and shall not be under any obligation to notify that Member or any other Member of the Fund or person in relation thereto.
- 7.14. If the terms and conditions of a Pension or Lump Sum provided by this Fund are not expressly prescribed in this Deed either in whole or in part, the Trustee shall 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.
- 7.15. The Trustee shall 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.

MEMBERSHIP

8.

8.1. Eligibility

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 8.4, a Spouse who becomes entitled to a Benefit or Interest in the Fund under an order or agreement made pursuant to the Family Law Act;
- (e) subject to rule 8.5, a Spouse who is entitled to contributions-splitting;
- (f) an Eligible Spouse; or
- (g) any other person authorised under the Standards.

8.2. Requirements for Membership

The Trustee shall only admit an applicant for Membership:

- (a)
 - (i) if the applicant has provided an Application for Membership Form to the Trustee, unless the Trustee determines that the applicant may apply for Membership by such other means the Trustee considers appropriate; and
 - (ii) subject to rule 3.2, if the Fund is an SMSF, the applicant is not a Disqualified Person and they intend to be appointed as an individual trustee or director of a Corporate Trustee, as the case may be, of the Fund; or
- (b) if the applicant (or person to be appointed as an individual trustee or director of a Corporate Trustee in place of the applicant under rule 8.2(a)(i)) and the Fund satisfy such other requirements as are prescribed by the Standards or the Regulator.

8.3. Conditional admission

The Trustee may admit an applicant as a Member of the Fund and attach special conditions to their Membership or Interest in the Fund.

8.4. Family Law — New Interests

Despite any other provision of this Deed and unless the Trustee determines otherwise in relation to a request under regulation 7A.05 of the SISR, a new interest in the Fund shall not be created for a Non-Member Spouse.

8.5. Spouse Contributions-Splitting

Despite any other provision of this Deed, 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.

8.6. Evidence

Each applicant for Membership and each Member shall give to the Trustee full and accurate information and produce the documents and other evidence, including submitting to the health and medical checks and tests, as the Trustee may reasonably and lawfully require from time to time in connection with their Membership of the Fund.

8.7. Cessation

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

- (a) when the Trustee determines that they have been paid all of their Interest from the Fund;
- (b) in relation to that Member's death; when the Trustee determines that all of the deceased Member's Interest has been paid or otherwise applied by the Fund towards the Beneficiaries of the deceased 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 agreement made pursuant to that Act;
- (f) if the Standards require cessation of Membership, then at such time as the Standards require; or
- (g) when the Trustee shall otherwise reasonably determine.

8.8. Members bound by Deed

Members shall be bound by the provisions of this Deed even though they have not read or obtained a copy of same upon becoming a Member of the Fund.

CONTRIBUTIONS

9.

9.1. The Trustee may accept contributions to the Fund of:

- (a) money;
- (b) securities listed on a prescribed stock exchange in Australia or elsewhere that are authorised by the Standards, subject to rule 6.1(b)(iii);
- (c) business real property, as that term is defined under the Standards; and
- (d) any other asset, subject to rule 6.1(b)(iii);

in respect of one or more Members by an Eligible Contributor only if and to the extent that the contributions are permitted under the Standards, but is under no obligation to do so.

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.

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) 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 contributions, unless otherwise permitted by the Standards, if:
- (a) the Member's tax file number has not been provided to the Trustee, unless it is provided within 30 days of the Trustee receiving the contribution; or
 - (b) the contributions exceed the amount of the Member's Non-Concessional Contributions Cap.
- 9.6. If the Trustee receives an amount that is inconsistent with rule 9.5, then the Trustee shall return the amount to the Member within 30 days, or such other period prescribed by the Standards, of the Trustee becoming aware that the amount was received in a manner inconsistent with rule 9.5.
- 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 shall only be made to the Fund in amounts and at times acceptable to the Trustee.
- 9.9. The Trustee is authorised:
- (a) to reject any amount, in full or in part, tendered as a contribution to the Fund;
 - (b) without being bound to give any reason for its decision, to return to the contributor the whole or any part of a contribution, together with any Earnings thereon, which, in the Trustee's opinion:
 - (i) could prejudice the Fund's ability to comply with the Standards,
 - (ii) could cause the Fund to become another type of fund, or
 - (iii) that may otherwise be returned to the Member in accordance with the Standards; and
 - (c) to request information or documentary evidence to ensure the contributor is eligible to contribute to the Fund if the information provided in the application for Membership of a Member is, in the Trustee's opinion, insufficient for these purposes.
- 9.10. Subject to the Standards, the Trustee may hold rejected contributions and other amounts which do not form part of the Fund as a bare trustee for the contributor or the person otherwise entitled to the amounts.

BENEFITS

10.

10.1. Benefit election

If a Member becomes entitled to the payment of a Benefit from the Fund, 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 this Deed 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 total sum of balances of the Member's Accounts.

10.2. Requirements of election

Unless the Trustee determines otherwise, an election under rule 10.1 shall 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. 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 10.5(d), to whom and what other terms or conditions the Member would wish the Pension to be subject to.

10.3. Trustee's discretion

If a Trustee receives a request to provide a Benefit to a Member, the Trustee shall, subject to the Standards and any BDBN, determine the following:

- (a) whether such Benefit will be provided by the Fund to the Member as requested;
- (b) the amount of the Benefit;
- (c) the timing and frequency of any payment or payments, as the case may be;
- (d) if relevant, the commencement day of the Benefit;
- (e) which Account the Benefit is to be paid out of; and
- (f) any other characteristics necessary to provide the Benefit under the Standards;

provided that any such determination is subject to any specific requirements that the Benefit be provided in a particular manner or form. Should the Trustee determine that such a Benefit will not be provided, the request by the Member may be disregarded.

10.4. Proportioning of Interest and Benefits

- (a) If required by the Standards, where the Trustee determines to provide a Benefit to a Member on or after 1 July 2007, the Trustee shall:
 - (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 Taxable Component of the Benefit (and, in the case of a Pension, each payment made from the Pension) correspond to the proportions of those components comprise the Member's Interest as provided in rule 10.4(a)(i).

- (b) The relevant time for determining the value of the Member's Interest and the amount of the Tax Free Component and Taxable Component 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) Rule 10.4(a) shall not apply, or shall apply 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; or
 - (vii) in any other case provided by the Standards.

10.5. Payment of Benefit on Death

- (a) Upon the death of a Member, if required by the Standards, the Trustee shall pay, commence to pay or transfer to an Approved Fund for the purposes of payment, the deceased Member's Interest as soon as practicable pursuant to rule 18 and rule 19.
- (b) A Benefit paid under rule 10.5(a) in respect of a deceased Member's Interest shall 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 shall not exceed the Interest 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.

- (c) If required by the Standards, the remaining balance of a Pension or Reversionary Pension paid under rule 10.5(a) shall be paid out of the Fund within the maximum period required by the Standards.
- (d) Unless otherwise permitted by the Standards, a Benefit paid under rule 10.5(a) to a Dependant who is a child of a Member, where the Member dies on or after 1 July 2007, shall 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 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 1936* (Cth).

10.6. Preservation of Interest

The Trustee shall 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 Commissioner 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.

10.7. Form of benefits

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

10.8. Member's debt

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

10.9. 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.

10.10. Discharge

- (a) This rule is subject to rule 10.11.
- (b) The payment of all of a Member's Interests to or on behalf of a Member or a transfer to an Approved Fund of all of a Member's Interests shall be 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, entitlements and interests in the Fund.
- (c) If any Benefit is payable to a person who lacks legal capacity or is a Disqualified Person ('**Recipient**'), the Trustee may, subject to the Standards, pay a Benefit to the Recipient's Beneficiary, parent, guardian, or LPR, or may establish a trust for the Recipient with a suitable trustee ('**Payee**') and pay a Benefit to the Recipient's trust.
- (d) Where a Benefit is paid to a Payee in accordance with rule 10.10(c), it shall be subject to such terms and provisions as the Trustee determines, with associated costs of same being payable out of the Benefit, and:
 - (i) if the Payee is a professional person or carrying on a business, the Payee shall be entitled, subject to rule 3.8, to act as Payee and to charge fees accordingly;
 - (ii) the Payee shall be entitled to pay or apply the Benefit or any part of it 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; and
 - (iii) the receipt by the Payee shall be a complete and final discharge to the Trustee for the application or payment.

10.11. Overpayment of Benefit

Despite anything to the contrary in rule 10.10, if an overpayment of any Benefit is made to or in respect of a Member, the Trustee shall, subject to the Standards:

- (a) reduce the Member's Benefit by the amount of the overpayment;
- (b) recover any amounts overpaid to the Member or any other party that has received the Benefit; or
- (c) undertake any such other measures to rectify the overpayment as the Trustee sees fit.

10.12. Asset-Test Exempt Pension

During any period in which a Benefit is provided as a Pension that is an Asset-Test Exempt Pension:

- (a) the Trustee shall 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 shall be limited by the maximum rate set by the Social Security Legislation and shall be fixed for the