

# Deed of Replacement

Graeme Pollard Staff  
Superannuation Fund

# Graeme Pollard Staff Superannuation Fund

Date

Party

Jopol Pty Ltd ACN 001 301 006 of 61 Conway Street, Lismore, New South Wales  
(Trustee)

Recitals

A By trust deed dated 10 June 1981 as amended by deeds of variation dated 28 November 1982 and 1 August 1990 (**Trust Deed**), a superannuation fund known as the Graeme Pollard Staff Superannuation Fund (**Fund**) was established.

B The Trustee is the trustee of the Fund.

C Rule 12 of the Trust Deed provides:

## ***12. AMENDMENTS***

### *12.1 Amendment*

*Subject to sub-Rules 12.2 and 12.3, the Trustees may from time to time by deed or by resolution amend, vary, modify, add to, revoke or delete all or any of the provisions contained in this Trust Deed (including this Rule and the Rules generally). Any amendment, variation, modification, addition to, revocation or deletion so made and for the time being in force may, if so stated, be of the same validity as if it had been originally contained in this Trust Deed and may in like manner be amended, varied, modified, added to, revoked or deleted.*

### *12.2 Compliance with Standards*

*The Trustees shall be empowered consistent with Rule 12.1 provided that the Trustees satisfy such minimum standard prescribed pursuant to section 7 or otherwise of the OSS Act in relation to the variation, modification, addition, revocation or deletion of all or any of the provisions of this Trust Deed including the obtaining of the consent of the Commissioner or the Members if appropriate.*

### *12.3 Notice*

*Following any amendment, variation, modification, addition to, revocation or deletion of any of the provisions contained in this Trust Deed, the Trustees shall give to each Member in the appropriate form such information as is prescribed to be given to Members in the Regulations pursuant to section 7 or otherwise of the OSS Act.*

12.4 Amendment Consistent with OSS Act

Any matter which is:-

- (a) *prescribed in the OSS Act or Regulations as being a reference to the satisfying of the superannuation fund conditions or as being a reference to the minimum standard that must be complied with in order to ensure for the Fund the maximum available relief from taxation; and*
- (b) *is required to be included in this Trust Deed;*

*in respect of any matter noted in section 5 or listed in section 7 or otherwise of the OSS Act shall be deemed to be included herein and to the extent that any provision of the Trust Deed is contradicting or otherwise mutually exclusive to a provision of the Trust Deed which is deemed to be included pursuant to this Rule 12.4 the two provisions shall as far as possible be interpreted together and to the extent that they cannot be interpreted together the provision of the Trust Deed which is deemed to be included pursuant to this Rule 12.4 shall prevail and take precedence and the other provision shall as is necessary be read down or be deemed to have been excluded from this Deed PROVIDED THAT in such circumstances the Trustee may, as they in their absolute discretion consider appropriate, determine that any one or more of the provisions of the Trust Deed that would otherwise have been deleted pursuant to the provisions of this Deed, be deemed not to have ever been so deleted.'*

- D The Trustee wishes to replace the Trust Deed to update the governing rules of the Fund in light of recent changes to superannuation law.

**Terms of this Deed**

- 1 The Trustee hereby declares that with effect on and from the date of this Deed, the Trust Deed shall be repealed and replaced in its entirety with the trust deed attached as Annexure A.
- 2 The Trustee declares and confirms, in accordance with rule 12 of the Trust Deed, that the proposed replacement will not reduce or adversely affect the rights of any Member in relation to an accrued benefit or any amount of any accrued benefit payable to any Member or beneficiary in the Fund.
- 3 The Trustee declares that, in all other respects, the trusts of the Fund are confirmed.

**Executed as a Deed**

EXECUTED by JOPOL PTY LTD ACN  
001 301 006 in accordance with the  
Corporations Act 2001 by being signed by the  
following officers:

x *Graeme J Pollard*  
Signature of director

x GRAEME JOSEPH POLLARD  
Name of director *(please print)*

x *Judith M Pollard*  
Signature of director / company secretary

x JUDITH M POLLARD  
Name of director / company secretary *(please print)*

# Annexure A

# Graeme Pollard Staff Superannuation Fund

# Graeme Pollard Staff Superannuation Fund

## Contents

<b>Contents</b>	<b>i</b>
<b>Part 1 - How to read this Deed</b>	<b>1</b>
<b>1 Overview of Deed</b>	<b>1</b>
<b>2 Definitions</b>	<b>2</b>
<b>3 Interpretation of other matters</b>	<b>9</b>
3.1 Clause headings and index	9
3.2 Legislation	9
3.3 Plural and gender of words	9
3.4 A person includes a body corporate	9
3.5 Dispute as to interpretation	10
3.6 Severance	10
3.7 Fund Subject to Superannuation Law at all times	10
3.8 Requirements of the Statutory Authority	10
<b>4 Other provisions to note</b>	<b>10</b>
4.1 Exercise of powers and rights	10
4.2 Benefits secured	10
<b>5 Governing law</b>	<b>11</b>
<b>6 Dispute resolution</b>	<b>11</b>
6.1 Enquiries and complaints mechanism	11
6.2 Trustee to implement decision	11
<b>Part 2 - The Fund</b>	<b>12</b>
<b>7 Structure of the Fund</b>	<b>12</b>
7.1 Establishment	12
7.2 Fund vested in Trustee	12
7.3 Class of Members	12
7.4 Composition of the Fund	12
<b>Part 3 - Trustees</b>	<b>13</b>
<b>8 Covenants</b>	<b>13</b>
<b>9 Appointment and change of Trustee</b>	<b>13</b>
9.1 Purpose of Fund	13
9.2 Self Managed Superannuation Funds and Approved Trustee Funds	13
9.3 Appointment of Trustee	14
9.4 Ceasing to act as Trustee	14
9.5 Continuity of office	15
9.6 Quorum of Individual Trustees	15
9.7 Remuneration of Trustee	15
9.8 Confidentiality of Information	15
9.9 Member may be Trustee	15
<b>Part 4 - Other Persons in Fund</b>	<b>16</b>
<b>10 Appointment and removal of other persons</b>	<b>16</b>

10.1	Appointment	16
10.2	Removal	16
<b>Part 5 - Powers of Trustees</b>		<b>17</b>
<b>11</b>	<b>Investment powers of Trustees</b>	<b>17</b>
11.1	Investment strategy	17
11.2	Power of investment	17
11.3	Power to hold investment in different names	18
11.4	Disclosure of Trustee's interest in investment	18
11.5	Specific investments	18
<b>12</b>	<b>Trustees' powers generally</b>	<b>19</b>
12.1	General powers	19
12.2	Discretion of Trustee	21
12.3	Power of delegation	21
<b>13</b>	<b>Liability and indemnification of Trustee</b>	<b>21</b>
13.1	Liability	21
13.2	Indemnity	21
13.3	Limitation of clause	21
<b>Part 6 - Fund Accounts</b>		<b>22</b>
<b>14</b>	<b>Trustee to open Accounts</b>	<b>22</b>
<b>15</b>	<b>Accumulation Account</b>	<b>22</b>
15.1	Establishment	22
15.2	Amounts to be credited	22
15.3	Amounts to be debited	22
<b>16</b>	<b>Pension Account</b>	<b>23</b>
16.1	Establishment	23
16.2	Amounts to be transferred	23
16.3	Amounts to be credited	23
16.4	Amounts to be debited	23
<b>17</b>	<b>Income Account</b>	<b>23</b>
17.1	Establishment	23
17.2	Amounts to be credited	23
17.3	Amounts to be debited	24
17.4	Trustee to determine Earnings and Fund Earning Rate	24
17.5	Distribution of Earnings	24
17.6	Trustee to notify Members	24
<b>18</b>	<b>Fluctuation Account</b>	<b>24</b>
18.1	Establishment	24
18.2	Transfers to Fluctuation Account	24
18.3	Separation of Account moneys	24
18.4	Use of Fluctuation Account	24
18.5	Adjustment of Member Account	25
<b>19</b>	<b>Reserve Accounts</b>	<b>25</b>
<b>20</b>	<b>Specific investments</b>	<b>25</b>
20.1	Recording of specific investments	25



20.2	Allocation of Earnings and costs for specific investments	25
<b>21</b>	<b>Valuation of Fund</b>	<b>25</b>
<b>Part 7 - Record Keeping</b>		<b>27</b>
<b>22</b>	<b>Records, Reports and Audit</b>	<b>27</b>
22.1	Trustee obligations	27
22.2	Provision of information	27
22.3	Information and documents for Tribunal	28
22.4	Directions of Statutory Authority	28
<b>Part 8 - General Matters</b>		<b>29</b>
<b>23</b>	<b>Policies of Insurance</b>	<b>29</b>
23.1	Member Policies	29
23.2	Member may request a specific Policy	29
23.3	Trustee to effect Policy if required	29
23.4	Premiums	29
23.5	Limitation on liability of Trustee	29
<b>24</b>	<b>Payment of Taxation and Levies</b>	<b>29</b>
24.1	Deduction of Taxation on Benefit	29
24.2	Taxation on Contributions and Shortfall Components	29
<b>Part 9 - Membership of the Fund</b>		<b>30</b>
<b>25</b>	<b>Membership</b>	<b>30</b>
25.1	Eligibility for Membership	30
25.2	Application for Membership	30
25.3	Admission to Membership without application	30
25.4	Members and Beneficiaries to provide information	30
25.5	Member bound by Deed	30
25.6	Member to be medically examined	30
<b>26</b>	<b>Membership notification requirements</b>	<b>31</b>
26.1	Product Disclosure Statements	31
26.2	Disclosure and reporting requirements	31
26.3	Former Member notices	31
26.4	Inspection of Deed and other Documents	31
26.5	Meetings and Members	31
<b>27</b>	<b>Ceasing to be a Member</b>	<b>31</b>
<b>Part 10 - Contributions to the Fund</b>		<b>32</b>
<b>28</b>	<b>Contributions to the Fund</b>	<b>32</b>
28.1	Eligibility to make Contributions	32
28.2	Amount of Contributions	32
28.3	Superannuation Guarantee legislation	32
<b>29</b>	<b>General provisions concerning Contributions</b>	<b>32</b>
29.1	Form of Contribution	32
29.2	Obligations to contribute	32
29.3	Limitation on commencing Contributions	32
29.4	Limit on Contributions	32
29.5	Ineligible Contributions	33

29.6	Contributions Splitting	33
<b>30</b>	<b>Transfers from and to Approved Benefit Arrangements</b>	<b>35</b>
30.1	Transfers from Approved Benefit Arrangements	35
30.2	Transfers to Approved Benefit Arrangements	35
30.3	Roll-Overs	35
30.4	Trustee to protect Preservation on roll over	36
<b>Part 11 - Benefits</b>		<b>37</b>
<b>31</b>	<b>Types of Benefits</b>	<b>37</b>
31.1	Benefit Entitlement	37
31.2	Election	37
31.3	Benefit Entitlement – with cashing restrictions	37
31.4	Transfer of Policy as Benefit	37
31.5	Transfer In-Specie as Benefit	37
<b>32</b>	<b>Preservation</b>	<b>37</b>
<b>33</b>	<b>Payment of Unrestricted Non-Preserved Amount</b>	<b>37</b>
<b>34</b>	<b>Payment of additional Benefits</b>	<b>38</b>
<b>35</b>	<b>Retention of Benefit in Fund</b>	<b>38</b>
<b>36</b>	<b>Compulsory payment of Benefits</b>	<b>38</b>
<b>37</b>	<b>Voluntary payment of Benefits</b>	<b>38</b>
<b>38</b>	<b>Pension Benefit</b>	<b>39</b>
<b>39</b>	<b>Reduction of Member's Benefit</b>	<b>39</b>
<b>40</b>	<b>Statement of Unclaimed Benefits</b>	<b>40</b>
<b>41</b>	<b>Limitation on payment</b>	<b>40</b>
<b>42</b>	<b>Forfeited Benefits</b>	<b>40</b>
42.1	Forfeiture	40
42.2	Application of forfeited money	40
42.3	Forfeiture Account	40
42.4	Treatment of money in Forfeiture Account	40
42.5	Unclaimed Benefits Account	41
<b>43</b>	<b>Death Benefits</b>	<b>41</b>
43.1	Application	41
43.2	Payment if Non-Binding Death Benefit Nomination	41
43.3	Payment if Binding Death Benefit Nomination	41
43.4	Commutation of Income Stream	41
<b>44</b>	<b>Death Benefit Nominations</b>	<b>41</b>
44.1	Non-Binding Death Benefit Nomination	41
44.2	Binding Death Benefit Nomination	42
<b>45</b>	<b>Payment if no Binding Death Benefit Nomination</b>	<b>42</b>
<b>46</b>	<b>Payment if Binding Death Benefit Nomination is invalid or ineffective</b>	<b>43</b>

<b>Part 12 - Family Law</b>	<b>44</b>
47 <b>Information to Members and Non-Member Spouses</b>	<b>44</b>
48 <b>Trustee may create new interest for Non-Member Spouse</b>	<b>44</b>
49 <b>Non-Member Spouse may request transfer of interest</b>	<b>44</b>
50 <b>Family Law fees</b>	<b>44</b>
51 <b>Satisfaction of entitlement</b>	<b>45</b>
<b>Part 13 - Termination of Trust</b>	<b>46</b>
52 <b>Termination</b>	<b>46</b>
52.1    Events of termination	46
52.2    Notice to Members and Closing Date	46
52.3    Order of payment	46
52.4    Payment if Member Dies	47
52.5    Surplus	47
52.6    Form of Payment	47
52.7    Payment to other Persons	47
<b>Part 14 - Deed Amendment</b>	<b>48</b>
53 <b>Amendment of Deed</b>	<b>48</b>
53.1    Method of Amendment	48
53.2    Notification of Members of Amendment	48
<b>Schedule 1</b>	<b>49</b>

# Graeme Pollard Staff Superannuation Fund

**Date** The day stated in Schedule 1 as the Date of Deed.

**Party**

The person, persons or corporation named and described in Schedule 1 as Trustee (“the Trustee”)

**Recitals**

- A The Trustee wishes to establish and maintain a superannuation fund named in Schedule 1 as Name of Fund (“the Fund”) solely for the purpose of providing superannuation benefits for its Members and for their Dependants in the event of the death of a Member and for any other purposes permitted by the Superannuation Law.
- B The Trustee will act as trustee of the Fund and has consented to act as the Fund's trustee in accordance with the powers and subject to the provisions of this Deed.
- C The Trustee has agreed to conduct the Fund in such a manner so as to ensure that the Fund at all times attracts any income tax concessions that may apply to superannuation funds.

**Terms of this Deed**

## Part 1 - How to read this Deed

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### 1 Overview of Deed

This Deed explains the way in which the Fund will operate and the roles and the responsibilities of each of the Trustees and any person, company or entity associated with or having some responsibility under this Deed.

The Deed comprises fourteen parts. Each part deals with a specific aspect of the Fund. These parts are described as follows:

<b>Part number</b>	<b>Description</b>
Part 1.	How to read this Deed
Part 2.	The Fund
Part 3.	Trustees
Part 4.	Other persons in the Fund
Part 5.	Powers of Trustees
Part 6.	Fund Accounts

Part 7.	Record keeping
Part 8.	General matters
Part 9.	Membership of the Fund
Part 10.	Contributions to the Fund
Part 11.	Benefits
Part 12.	Family Law
Part 13.	Termination of Trust
Part 14.	Deed amendment

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## 2 Definitions

In this Deed, unless the context otherwise requires:

**Account** means any one of the following: Accumulation Account, Income Stream Account, Income Account, Equalisation Account, Forfeiture Account, any other accounts required to be opened or maintained by the Trustee in accordance with the Superannuation Law or any other accounts the Trustee decides to establish and maintain;

**Accumulation Account** means the Account established on behalf of each Member or Beneficiary as described in clause 15;

**Actuary** means the actuary (if any) for the time being appointed pursuant to the provisions of this Deed;

**Administration Manager** means a person appointed as administration manager of the Fund in accordance with clause 10.1(c);

**Allot** has the same meaning given to that term in the SIS Regulations;

**Annuity** means a Benefit payable by instalments that satisfies the meaning of Annuity in regulation 1.05 of the SIS Regulations or any other provision of the Superannuation Law;

**Applicant** means a Member who makes a contributions splitting application under clause 29.6;

**Approved Benefit Arrangement** means a fund or benefit arrangement other than the Fund including without limitation another Complying Superannuation Fund, an Approved Deposit Fund and an Annuity arrangement into which or from which assets can be transferred into or from the Fund without causing the Fund to be in breach of or to fail to comply with the Superannuation Law and includes an Eligible Roll-Over Fund;

**Approved Deposit Fund** in relation to a year of income means a fund which is a complying approved deposit fund in accordance with the Taxation Act;

**Approved Trustee** means a trustee approved by the Australian Prudential Regulation Authority or such other body or person as shall have responsibility for the administration of superannuation funds other than Self Managed Superannuation Funds;

**Auditor** means the auditor for the time being appointed under clause 10.1(d) of this Deed;

**Authorised Deposit-taking Institution** has the same meaning as in the Banking Act 1959 (Cth);

**Beneficiary** means a person who is presently and absolutely entitled or has a contingent right to receive a Benefit under the provisions of this Deed at any given time and includes a Member, a Dependent or a Pensioner;

**Benefit** means any amount which is payable by the Trustee out of the Fund in accordance with this Deed to or in respect of a Member;

**Benefit Entitlement** means any amount held in the Fund which may become payable to a Member, Dependant or Beneficiary but to which the person has not become absolutely and indefeasibly entitled and it shall include a contingent right to payment of an amount;

**Binding Death Benefit Nomination** means a nomination made by a Member in relation to the payment or application of a death benefit that is binding on the Trustee in accordance with the Superannuation Law;

**Compassionate Ground** has the same meaning given to that term in the Superannuation Law;

**Complying Superannuation Fund** in relation to a year of income means a fund which is a complying superannuation fund in accordance with the Superannuation Law;

**Constitutional Corporation** has the same meaning given to that term in the Superannuation Law;

**Contributions** means payments to the Fund by Members, Employers and other Permitted Entities in accordance with the provisions of this Deed prior to the deduction of any Taxation payable in respect of those Contributions;

**Corporations Act** means the Corporations Act 2001 (Cth);

**Deed** means this deed and any alterations, additions, amendments, modifications or variations to it;

**Dependant** in relation to a Member or former Member means:

- (a) the Spouse of the Member or former Member or the widow or widower of a deceased Member;
- (b) any child of a Member or former Member;
- (c) any person with whom the Member is in an Interdependency Relationship; or

(d) any other person who, in the opinion of the Trustee, was financially dependant on the Member at the relevant time;

**Directors** means (where the Trustee is a Constitutional Corporation) the directors or board of management for the time being of the Trustee as the case requires;

**Disclosure Document** means any document required to be given under the Corporations Act to a person applying to be a Member;

**Earnings** means all net income and net capital gains derived from the assets of the Fund whether realised or unrealised after deducting any capital losses and such allowances for expenses and Taxation as the Trustee considers appropriate;

**Employee** has the same meaning given to that term in the SIS Act;

**Employer** has the same meaning given to that term in the SIS Act;

**Employment Termination Payment** has the same meaning as in the Taxation Act.

**Family Law** means the Payment Splitting arrangements under the Superannuation Law;

**Financial Assistance** means any financial assistance granted to the Fund in accordance with Part 23 of the SIS Act;

**Financial Year** means a period of twelve months ending on 30 June or such other period of twelve months as the Trustee shall determine;

**Fluctuation Account** means the account established pursuant to clause 18;

**Forfeiture Account** means the account established pursuant to clause 42.3;

**Full-Time Gainful Employment** in relation to a Member means a Member who is in Gainful Employment on a full-time basis within the meaning of the Superannuation Law;

**Fund** means the fund established by this Deed;

**Fund Earning Rate** means the earning rate for the Fund (which may for the purposes of this Deed be negative) determined under of clause 17.4 after taking into account such provisions or reserves for future contingencies as the Trustee considers reasonable;

**Fund Year** means a period of twelve months ending on 30 June, or such other period ending on such other date as the Trustee may determine from time to time;

**Gainful Employment** in relation to a Member means engagement in any business, trade, profession, vocation, calling, occupation or employment for personal gain to the extent required by the Superannuation Law;

**Guarantee Act** means the Superannuation Guarantee Charge Act 1992 which incorporates the Superannuation Guarantee (Administration) Act 1992 and any regulations made to that Act;

**Income Stream** means:

- (a) a Pension;
- (b) an Annuity; or
- (c) a Benefit payable in a form other than as a Superannuation Lump Sum as permitted by the Superannuation Law;

**Individual Trustee** means a natural person who is appointed to be a Trustee of the Fund;

**Insured Member** means any Member who has a Policy effected in his or her name by the Trustee;

**Insurer** means any insurer with whom the Trustee effects a Policy or Policies;

**Interdependency Relationship** has the meaning attributed to it in the Superannuation Law;

**Investment Manager** means a person appointed as an Investment Manager of the Fund in accordance with clause 10.1(a);

**Legal Personal Representative** has the same meaning as is given to the expression in the SIS Act;

**Levy** includes a levy payable by the Fund to the Commissioner in accordance with the Superannuation Supervisory Levy Act 1991, the Superannuation (Fund Assistance Levy) Act 1993 and any other legislation or regulations which impose a levy or levies on the Fund;

**Maximum Splittable Amount** has the same meaning given to that term in the SIS Regulations;

**Member** means a person who has been admitted as a member of the Fund under clause 25;

**Member Account** means a Member's Accumulation Account or Pension Account as the case may be;

**Membership** means a Member's or Beneficiary's membership of the Fund;

**Nominated Beneficiary** means one or more Dependants or Legal Personal Representatives of a Member nominated by the Member as the Nominated Beneficiary;

**Non-Binding Death Benefit Nomination** means a nomination made by a Member in relation to the payment or application of a death benefit that is not binding on the Trustee;

**Non-Concessional Contribution** has the same meaning as in the Taxation Act

**Non-Member Spouse** in relation to a Member has the same meaning given to that term in the Superannuation Law. A person ceases to be a Non-Member Spouse when:

- (a) the entitlement of the Non-Member Spouse in respect of a Payment Split is paid to the Non-Member Spouse or transferred or rolled over in accordance with the Superannuation Law; or
- (b) he or she becomes a Member;



**Normal Retirement Age** means the age of 65 years or such other age being not less than 55 years as is acceptable to or required by the Superannuation Law and as the Trustee shall determine;

**Part-Time Gainful Employment** in relation to a Member means a Member who is in Gainful Employment on a part-time basis within the meaning of the Superannuation Law;

**Payment Flag** has the same meaning given to that term in the Superannuation Law;

**Payment Split** has the same meaning given to that term in the Superannuation Law and includes a Payment Split in accordance with the SIS Regulations;

**Pension** includes a Benefit payable by instalments that satisfies the meaning of Pension in regulation 1.06 of the SIS Regulations or any other provision of the Superannuation Law;

**Pensioner** means a member who is entitled to receive or has applied to receive Benefits payable to the Member as a Pension and shall include a Reversionary Beneficiary in receipt of a Pension;

**Pension Account** means the account established in respect of a Pensioner in accordance with clause 16;

**Permanent Incapacity** has the same meaning given to that term in the Superannuation Law;

**Permitted Entity** means any person or entity permitted under the Superannuation Law to make a Contribution in respect of a Member;

**Policy** means any policy of assurance including a policy on the life of a Member for endowment, term, disablement, accident or sickness insurance, effected either as an individual policy or as a group policy (in which case in relation to a Member or a former Member, Policy means the particular assurance on the life of the Member or former Member) and includes any policy covering any two or more of those risks and it further includes any policy which provides that Benefits shall be payable to the Trustee on the death or disablement of a Member provided that the acquisition of any such policy is not prohibited by Superannuation Law;

**Preservation Age** means:

for a person born before 1 July 1960	55 years of age
for a person born during the year 1 July 1960 to 30 June 1961	56 years of age
for a person born during the year 1 July 1961 to 30 June 1962	57 years of age
for a person born during the year 1 July 1962 to 30 June 1963	58 years of age
for a person born during the year 1 July 1963 to 30 June 1964	59 years of age
for a person born after 30 June 1964	60 years of age

**Preserved** means the prohibition against paying any amount held in the Fund before a Member reaches Preservation Age or is otherwise entitled to be paid that amount in accordance with the Superannuation Law and "Preserve" has a corresponding meaning;

**Preserved Payment** means a payment made to the Fund by an Employer, a Permitted Entity or a Member or by transfer from an Approved Benefit Arrangement which is required to be Preserved in order for the Fund to be a Complying Superannuation Fund;

**Relative**, in relation to a Member or former Member, means any of the following:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of that Member or former Member or of the Spouse of the Member;
- (b) the Spouse of any person specified in paragraph (a); or
- (c) any child of any of the persons specified in paragraph (a) or (b);

**Reserve Account** means the account established pursuant to clause 19;

**Retires from Employment** means retirement as defined by the Superannuation Law for the payment of Benefits;

**Retires from Gainful Employment** means actual retirement by a Member from Gainful Employment or retirement as defined for the purposes of the Superannuation Law for the payment of Benefits;

**Reversionary Beneficiary** means a Dependant nominated by a Pensioner (and in default of a nomination by the Pensioner, a Dependant nominated by the Trustee) who is eligible to receive a Benefit on the death of a Pensioner;

**RSE Licensee** has the same meaning given to that term in the SIS Act;

**Self Managed Superannuation Fund** means a superannuation fund which satisfies the requirements of a self managed superannuation fund set out in the Superannuation Law;

**Severe Financial Hardship** has the same meaning given to that term in the Superannuation Law;

**Shortfall Component** has the same meaning given to that term in Section 64 of the Guarantee Act;

**SIS Act** means the Superannuation Industry (Supervision) Act 1993 (Cth);

**SIS Regulations** means the Superannuation Industry (Supervision) Regulations 1994 (Cth);

**Splittable Contribution** has the same meaning given to that term in the SIS Regulations;

**Spouse** means:

- (a) a person legally married to a Member at any time; or

- (b) a person who, although not legally married to the Member, in the opinion of the Trustee lives with a Member on a bona fide domestic basis as the husband or wife of the Member and, in relation to a deceased Member, the term widow or widower includes such a person,

EXCEPT THAT where a person has more than one Spouse, the Trustee shall determine which one or more of them shall be deemed to be that person's Spouse, and, if one or more person is so deemed to be a Spouse, the Trustee shall determine the proportions in which a Benefit payable to each Spouse is to be divided between them where a Binding Death Benefit Nomination has not been made;

**Statutory Authority** means, as the case requires, the Commissioner of Taxation, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission or such other regulatory body or person as shall have responsibility for the administration of superannuation;

**Superannuation Law** means any requirement under the SIS Act, the SIS Regulations, the Occupational Superannuation Standards Act 1987, the Occupational Superannuation Standards Regulations, the Family Law Act 1975, the Corporations Act, the Corporations Regulations, the Taxation Act, the Financial Sector (Collection of Data) Act 2001, the Financial Institutions Supervisory Levies Collection Act 1998, and any other present or future legislation which the Trustee must comply with in order for the Fund:

- (a) to qualify for concessional Taxation treatment as a Complying Superannuation Fund;  
or
- (b) to meet any other requirement of the Statutory Authority,

and includes any proposed requirements, rulings, announcements or obligations which the Trustee believes will have effect retrospectively;

**Superannuation Lump Sum** has the same meaning as in the Taxation Act;

**Taxation Act** means the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997 and the Income Tax (Transitional Provisions) Act 1997 and any regulations issued under those Acts;

**Taxation** includes income tax, pay-roll tax, land tax, stamp duty and any other taxes, duties or surcharges paid or payable by the Trustee on behalf of the Fund or a Member or, where applicable, by any Member, former Member, Dependant or Beneficiary;

**Taxed Splittable Contribution** has the same meaning given to that term in the SIS Regulations;

**Temporarily Totally Disabled** means disablement as a result of illness, accident or injury which commences at or prior to a Member attaining the age of 65 years or the Member's Normal Retirement Age (whichever is the earlier) and which causes the Member to be continuously absent from the Member's profession, trade, business, occupation or employment for such period as any Policy effected in respect of the Member in respect of total disablement requires provided that the Trustee expects the Member's disablement to be temporary and "Temporary Total Disablement" has a corresponding meaning;

**Temporary Incapacity** has the same meaning given to that term in the Superannuation Law;

**Total and Permanent Disablement** means ill health (whether physical or mental) where the Trustee is reasonably satisfied that the Member is unlikely, because of the ill-health, ever again to engage in Full-Time Gainful Employment or Part-Time Gainful Employment for which the Member is reasonably qualified by education, training or experience;

**Tribunal** means the Superannuation Complaints Tribunal established under the Superannuation (Resolution of Complaints) Act 1993;

**Trustee** means the trustee or trustees for the time being of the Fund whether original, additional or substituted which are appointed in accordance with clause 9 of this Deed;

**Unclaimed Benefits** means those Benefits described as Unclaimed Money under Part 22 of the SIS Act;

**Unrestricted Non-Preserved Amount** means an amount including a roll-over payment payable to or in respect of a Member which is not required to be Preserved or at the time of payment is no longer required to be Preserved under the Superannuation Law and is an Unrestricted Non-Preserved Benefit as that term is defined in the SIS Regulations, including Subdivision 6.1.4 of the SIS Regulations;

**Untaxed Splittable Contribution** has the same meaning given to that term in the SIS Regulations; and

**Vested Benefit** means any Benefit that has vested to the benefit of a Member in accordance with the Superannuation Law.

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## **3 Interpretation of other matters**

### **3.1 Clause headings and index**

The headings and index in this Deed are for convenience and reference only and shall not affect the interpretation of this Deed.

### **3.2 Legislation**

A reference to any act of parliament or regulation or to any section or provision of such legislation, includes any statutory modification or re-enactment or any statutory provision substituted therefor and by-laws, regulations or other statutory instruments issued under them.

### **3.3 Plural and gender of words**

The singular includes the plural and vice versa and one gender includes the other gender.

### **3.4 A person includes a body corporate**

A reference to a person includes a body corporate.

### **3.5 Dispute as to interpretation**

If any dispute arises as to the interpretation of any of the provisions of this Deed or as to the rights or obligations of the Member or any other person hereunder, then (except to the extent otherwise expressly provided in the Deed) the decision of the Trustee shall be final and binding.

### **3.6 Severance**

If:

- (a) any provision of this Deed is void or voidable or unenforceable in accordance with its terms, but would not be void, voidable, unenforceable or illegal if it were read down and is capable of being read down, the provision must be read down accordingly; or
- (b) notwithstanding clause 3.6(a), a provision of this Deed would still be void, voidable, unenforceable or illegal:
  - (i) if the provision would not be void, voidable, unenforceable or illegal if a word or words were omitted, that word or those words must be severed; and
  - (ii) in any other case, the whole provision must be severed,and the remainder of this Deed will be of full force and effect.

### **3.7 Fund Subject to Superannuation Law at all times**

- (a) The provisions contained in this Deed are at all times subject to the Superannuation Law and are deemed to incorporate the Superannuation Law to the extent necessary for the Trustee and the Fund to qualify for concessional Taxation treatment or to satisfy any other requirements of the Statutory Authority.
- (b) In the event that there is an inconsistency between the Deed and the Superannuation Law, the Superannuation Law shall prevail to the extent of the inconsistency.

### **3.8 Requirements of the Statutory Authority**

Any references to any requirements, consents or approvals being required to be given by the Statutory Authority or for the purposes of satisfying the Superannuation Law, shall mean requirements, consents or approvals of the Statutory Authority or under the Superannuation Law.

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## **4 Other provisions to note**

### **4.1 Exercise of powers and rights**

All powers, rights, decisions, discretions, appointments or other authorisations of whatsoever nature or kind granted to or conferred on the Trustee by, under or for the purposes of this Deed, may be fully and effectively exercised, made, done or performed by or on behalf of a Trustee:

- (a) where the Trustee is a Constitutional Corporation, by resolution of the Directors in accordance with its constitution or by any person or persons having the authorisation of such Directors to act on their behalf; or
- (b) where the Trustee consists of Individual Trustees, by unanimous resolution or, if required by the Superannuation Law, by a majority of persons holding the office of Trustee,

notwithstanding any direct or personal interest the Trustee may have in the exercise of the powers, rights, decisions, discretions, appointments or other authorisations and provided that any requirements of the Superannuation Law are satisfied.

#### **4.2 Benefits secured**

The rights of the Members or their Dependants who receive Benefits payable under this Deed shall be secured within the meaning of the Superannuation Law.

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### **5 Governing law**

This Deed shall be governed and construed in accordance with the laws of New South Wales. The Trustee, Members, Beneficiaries and Employers hereby submit to the exclusive jurisdiction of the courts of New South Wales and of any court competent to hear appeals therefrom.

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### **6 Dispute resolution**

#### **6.1 Enquiries and complaints mechanism**

The Trustee shall ensure that there are in force arrangements to deal with enquiries and complaints from Members, Dependants or Beneficiaries in the circumstances and within the time limits required by the Superannuation Law.

#### **6.2 Trustee to implement decision**

Subject to the Trustee's rights to determine in its discretion to appeal against any decision of a court or tribunal, the Trustee shall ensure that it implements any decision of a court or tribunal as required by that court or tribunal.

## Part 2 - The Fund

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### **7 Structure of the Fund**

#### **7.1 Establishment**

By this Deed, the Trustee establishes the Fund which is known by the name, and commences on the Date of Establishment, stated in Schedule 1.

#### **7.2 Fund vested in Trustee**

The Fund shall at all times be vested in the Trustee and managed by the Trustee upon the terms and conditions and subject to the trusts, powers, authorities and discretions contained in this Deed.

#### **7.3 Class of Members**

The Trustee shall have the power to create any additional class or classes of Membership with such rights, entitlements, conditions of eligibility and Benefits as the Trustee thinks appropriate.

#### **7.4 Composition of the Fund**

The gross assets of the Fund shall consist of all cash, investments and other property for the time being held and received by or on account of the Trustee upon the trusts of this Deed.

## Part 3 - Trustees

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### 8 Covenants

The Trustee must perform and observe the covenants, trusts conditions and obligations of this Deed as and to the extent they are included in the Deed or deemed to be included in the Deed by the Superannuation Law.

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### 9 Appointment and change of Trustee

#### 9.1 Purpose of Fund

Subject to the Superannuation Law, the Trustee shall at all times be a Constitutional Corporation, or where the Trustee is not a Constitutional Corporation, the sole or primary purpose of the Fund shall be the provision of old-age pensions as that term is defined in section 51(xxiii) of the Commonwealth of Australia Constitution Act.

#### 9.2 Self Managed Superannuation Funds and Approved Trustee Funds

- (a) Notwithstanding anything contained in this clause 9, at any time whilst the Fund is a Self Managed Superannuation Fund, a person shall not be eligible to be:
- (i) the Trustee; or
  - (ii) where the Trustee is a Constitutional Corporation, a Director of the Trustee, of the Fund unless the following provisions in this clause 9.2 are satisfied.
- (b) Subject to clause 9.2(d), where the Fund is a Self Managed Superannuation Fund with one Member, the Trustee must either be:
- (i) a Constitutional Corporation where:
    - (A) the Member is the sole director of the Constitutional Corporation; or
    - (B) the Member is one of only two directors of the Constitutional Corporation, and the Member and the other director are relatives; or
    - (C) the Member is one of only two directors of the Constitutional Corporation, and the Member is not employed by the other director; or
  - (ii) two Individual Trustees comprising the Member and another person who is either:
    - (A) a relative of the Member; or
    - (B) not an employer of the Member.
- (c) Subject to clause 9.2(d), if the Fund is a Self Managed Superannuation Fund with more than one Member, the Trustee must be:



- (i) a Constitutional Corporation where each Member is a director of the Constitutional Corporation and each director is a Member; or
  - (ii) Individual Trustees where each Member is an Individual Trustee and each Individual Trustee is a Member of the Fund.
- (d) The requirements in Clauses 9.2(b) and (c), are subject to any alternative tests or exceptions to the general rules outlined in those clauses, contained in section 17A(3) of the SIS Act, or any other Superannuation Law.
- (e) For the purposes of clause 9.2(c), no Member of the Fund may be employed by another Member of the Fund unless permitted by the Superannuation Law.
- (f) If the Fund has fewer than 5 Members and is not a Self Managed Superannuation Fund, the Trustee must be an Approved Trustee or a RSE licensee that is a Constitutional Corporation.

### **9.3 Appointment of Trustee**

- (a) Subject to the Superannuation Law, a majority of Members may, by deed or other written instrument, appoint a person or persons as Trustee provided that the person or persons consent to the appointment in writing and gives any other consents or declarations required by the Superannuation Law.
- (b) The Legal Personal Representative of:
- (i) a deceased Member;
  - (ii) a Member who has lost legal capacity; or
  - (iii) a Member who has appointed that Legal Personal Representative as their attorney under an enduring power of attorney,
- may exercise the Member's decision-making power, on the appointment of a Trustee, on behalf of the Member.
- (c) Where a Member is under the age of 18 years, a parent or guardian of the Member is permitted to exercise that Member's power to appoint a Trustee.
- (d) If the Fund has no remaining Members and no other person in this clause 9.3 has the power to appoint a Trustee on behalf of the last person ceasing to be a Member, the Legal Personal Representative of the last Member to have a Legal Personal Representative shall have the power to appoint a Trustee.

### **9.4 Ceasing to act as Trustee**

A Trustee shall immediately cease to act as Trustee of the Fund:

- (a) if, being an individual, he or she dies or otherwise loses his or her legal capacity;
- (b) if, being a Constitutional Corporation, it is placed into receivership or liquidation or an administrator is appointed over its affairs;

- (c) if the Trustee is disqualified from holding office as a trustee by operation of the Superannuation Law or is removed or suspended from office under the Superannuation Law;
- (d) if the Trustee resigns as Trustee of the Fund by notice in writing to a majority of the Members; or
- (e) subject to the Superannuation Law, if the person is removed from office by notice in writing given by no less than two-thirds of the Members to the Trustee.

#### **9.5 Continuity of office**

Any person who acts as Trustee shall, on ceasing to be Trustee under this clause 9, do everything necessary to vest the Fund in the remaining or new Trustee or Trustees and shall deliver all records and other books to the remaining or new Trustee or Trustees.

#### **9.6 Quorum of Individual Trustees**

A quorum of Trustees shall be such number of Trustees as shall be agreed upon or as required by the Superannuation Law.

#### **9.7 Remuneration of Trustee**

Unless permitted by the Superannuation Law, during any time the Fund is a Self Managed Superannuation Fund, no Trustee of the Fund may receive remuneration from the Fund or from any person for any duties or services performed by the Trustee in relation to the Fund in its capacity as Trustee of the Fund.

#### **9.8 Confidentiality of Information**

The Trustee and every Employer shall, as far as possible, treat as confidential all information disclosed to or gained by it in the course of administering the Fund or otherwise in connection with this Deed.

#### **9.9 Member may be Trustee**

No Individual Trustee, Director or officer of a Constitutional Corporation or Employee of an Employer shall by virtue of their office or the powers delegated to them by the Trustee be disqualified from being a Member of the Fund or from exercising rights or deriving any Benefits as a Member of the Fund.

## Part 4 - Other Persons in Fund

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### 10 Appointment and removal of other persons

#### 10.1 Appointment

Subject to the Superannuation Law and the law generally, the Trustee may appoint in writing one or more persons, as appropriate, as:

- (a) Investment Manager, who shall have powers, discretions and authority relating to the purchase, sale, management, investment, administration, valuation, retention and transposition of that part of the Fund entrusted to the Investment Manager;
- (b) Actuary, who shall be a Fellow of the Institute of Actuaries of Australia or a firm or company of Actuaries of which at least one member or director (as the case requires) is such a Fellow;
- (c) Administration Manager, who shall have power to carry out some or all of the administration of the Fund;
- (d) Auditor, who is appropriately qualified and is independent according to any criteria specified in the Superannuation Law;
- (e) Custodian, who shall have such powers, discretions and authorities relating to holding the legal title and the custody of title, deeds and any documents of any nature whatsoever or relating to the custody of any part of the assets of the Fund provided that person is not prohibited in so acting under the Superannuation Law; and
- (f) such other consultants, officers or attorneys as may be desirable for the proper management and administration of the Fund.

#### 10.2 Removal

The Trustee may remove from office any person or company appointed to any position under this clause 10 and shall remove such person or company when so required by the Superannuation Law.

## Part 5 - Powers of Trustees

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### 11 Investment powers of Trustees

#### 11.1 Investment strategy

The Trustee shall from time to time formulate and give effect to one or more investment strategies having regard to the Fund's circumstances provided that such investment strategies are formulated and effected in accordance with the Superannuation Law.

#### 11.2 Power of investment

Subject to the Superannuation Law and the Fund's investment strategy, the Trustee shall have power at the Trustee's absolute discretion from time to time to invest the whole or any part of the Fund's assets in any one or more of the following investments as if the Trustee was the absolute owner beneficially entitled and nothing in this clause hereinafter appearing shall be construed as limiting in any way the generality of the foregoing:

- (a) in the acquisition by original subscription or by purchase or otherwise of debentures, debenture stock, whether secured or unsecured, or secured or unsecured notes or other loan instruments of any corporation wheresoever situated or incorporated and payable or repayable in whatsoever currency and whether bearing interest or not;
- (b) in the acquisition by original subscription or by purchase or otherwise of the shares or stocks whether ordinary, preferred, deferred, redeemable or otherwise and whether partly or fully paid or having any liability thereon of any corporation wheresoever situated or incorporated and expressed in whatsoever currency;
- (c) in the purchase of or at interest upon the security of such shares, stocks, funds, securities, land or other investment or property of whatsoever nature and wheresoever situated (other than such an investment of a wasting or speculative nature) and whether income producing or not and whether fully or partly paid up or involving liabilities or not or in loans upon personal credit with or without security as the Trustee in the Trustee's absolute discretion think fit and to the intent that the Trustee shall have the same power in all respects;
- (d) in the acquisition by original subscription or by purchase or otherwise of interests or rights, whether partly paid or not and whether having liability thereon or not, in corporations not having a share capital wheresoever situated or incorporated;
- (e) in the acquisition of securities of any Country or of any State, Territory or Colony whether by original subscription, purchase or otherwise;
- (f) in the acquisition of securities of any statutory or municipal body wheresoever situated and for any period whatsoever and whether by original subscription, purchase or otherwise;
- (g) in the acquisition by original agreement or by purchase or otherwise of options and rights to take up shares or stock whether ordinary, preferred, deferred, redeemable or otherwise and whether partly or fully paid or having any liability thereon of any

corporation wheresoever situated or incorporated or to take up interests or rights whether having liability thereon or not incorporations not having a share capital wheresoever situated or incorporated;

- (h) in the acquisition of units or sub-units of any unit trust whether by original subscription, purchase or otherwise;
- (i) in the acquisition by any means whatsoever of land or interest in land of any tenure, improved or unimproved and wheresoever situated;
- (j) on loan to any person or deposited with any person whatsoever or wheresoever situated with or without security and for any period whatsoever;
- (k) on deposit with any Authorised Deposit-taking Institution for any period whatsoever;
- (l) in erection of buildings or structures or the making of improvements on land with any tenure improved or unimproved and wheresoever situated;
- (m) on any Policy or Annuity with an Insurer and any choses in action, interest for life or any lesser term or any reversion or otherwise arising and whether as original Policy holder or by assignment; and
- (n) in any other investments which the Trustee considers appropriate and which satisfy the Superannuation Law,

with full power to vary, replace, or otherwise deal with such investments as fully and effectively as a person absolutely and beneficially entitled dealing with their own property may do so, PROVIDED THAT the Trustee shall not invest in loans to or give any financial assistance to a Member or a relative of a Member unless the Fund was established before 16 December 1985 and, until 1 July 1994, the Trustee had express power under the governing rules of the Fund to lend money or give financial assistance to Members or their relatives.

### **11.3 Power to hold investment in different names**

Any investment may be held in such names including the name of a nominee (whether an individual or a corporation) as the Trustee shall from time to time determine.

### **11.4 Disclosure of Trustee's interest in investment**

The Trustee and any Director shall disclose details of any interest in any investment in the manner prescribed under the Corporations Act and the Superannuation Law whenever they have a direct or indirect interest in the investment or may benefit directly or indirectly from it.

### **11.5 Specific investments**

Subject to clauses 11.1 and 11.2, the Trustee may, with or without the consent of a Member or Beneficiary, make separate investments as the Trustee may determine in respect of certain Members or Beneficiaries or certain classes of Members or Beneficiaries of the Fund or in respect of different classes for certain Members or Beneficiaries.

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## 12 Trustees' powers generally

### 12.1 General powers

Subject always to the Superannuation Law and without prejudice to the powers vested in the Trustee by this Deed or otherwise, the Trustee shall have the following powers to be exercised or not by the Trustee in the Trustee's absolute discretion:

- (a) to institute, conduct, defend, compound or abandon any legal proceedings by or against the Fund or the Trustee or otherwise concerning the affairs of the Fund and also to compound and allow time for payment or satisfaction of any debts due or of any claims or demands by or against the Fund, and to commence, carry on and defend legal proceedings in order to recover damages against any person arising out of any loss suffered by any Member or former Member or Beneficiary as a result of any negligence, default, remission, breach of duty or breach of the terms of this Deed;
- (b) to carry on a business;
- (c) to refer any claims or demands by or against the Fund to arbitration and to observe and perform any awards arising from such arbitration;
- (d) to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
- (e) to open bank accounts and to retain on current or deposit account at any bank such moneys as it considers proper and to make procedures for the operation of such bank accounts including the signing and endorsing of cheques in connection therewith;
- (f) to enter into a leasing arrangement with any person, including (but not limited to):
  - (i) a finance lease;
  - (ii) an operating lease; or
  - (iii) a hire-purchase agreement;
- (g) to determine who shall be entitled to sign receipts, acceptances, endorsements, release, contracts and documents on the Fund's behalf;
- (h) to pay Benefits out of the Fund to a Member or a Dependant;
- (i) to decide who are Dependents for the purposes of this Deed;
- (j) in case of the mental or physical ill-health or incapacity of any person entitled to Benefits, to pay or apply such Benefits or any part thereof at the Trustee's discretion to or for the benefit of such person and the Dependents of such person or any of them as the case may be without being responsible for seeing to the application of payments under this sub-clause or payments made in the exercise of any other power vested in the Trustee by this Deed;

- (k) to indemnify or give any guarantee, or undertake to indemnify or give any guarantee to any person, company, government or institution in respect of any claims, matters or things relating to the Fund or to the rights of Members, former Members or Beneficiaries in respect of the Fund provided that an indemnity or guarantee shall only be provided to the extent that it is not limited by or contrary to the Superannuation Law;
- (l) to pay and advance out of the Fund all costs, expenses and outgoings (including Taxation) of and incidental to the management and administration of the Fund;
- (m) to pay and advance out of the Fund the professional fees (if any) in respect of the provision of its services as Trustee of the Fund;
- (n) to take and act upon the opinion of any legal practitioner, whether in relation to the interpretation of this Deed or any other document or statute or as to the administration of the trusts hereby declared, without being liable to any Member or his or her Dependants in respect of any act done by in accordance with such opinion;
- (o) to insure and keep insured as it sees fit any liability of the Trustee (or, where the Trustee is a Constitutional Corporation, any of its Directors or officers) or the liability of the Fund to indemnify and reimburse the Trustee (or, where the Trustee is a Constitutional Corporation, any of its Directors or officers);
- (p) to insure or re-insure any risk, contingencies or liabilities of the Fund with any Insurer, mortgage insurance company or re-insurance company;
- (q) to provide a full or partial release to any person in respect of matters that have arisen or may arise in respect of the Fund;
- (r) to purchase an Annuity from an Insurer in order to provide all or a part of the Pension payable in respect of a Member and any such Annuity shall be in the name of the Trustee or, if the Trustee shall so determine, in the name of the Member or former Member;
- (s) to enter into any agreement or provide any notice or make any election or undertake any other action whether revocable or irrevocable which would or may have the effect of committing the Trustee to conduct the Fund at all times as a Complying Superannuation Fund;
- (t) to seek modifications of or exemptions from the application of the Superannuation Law to the Fund;
- (u) to accept Contributions and any Shortfall Component from any person authorised to make Contributions or pay the Shortfall Component in the Deed or in accordance with the Superannuation Law; and
- (v) to borrow from any person, company, trust, government or institution on terms satisfactory to the Trustee and to the extent that it is not limited by or contrary to the Superannuation Law.

## **12.2 Discretion of Trustee**

Subject to any exceptions in the Superannuation Law, despite any other provision in this Deed no discretion under the rules of this Fund can be exercised by a person other than the Trustee, unless the Fund is a Self Managed Superannuation Fund.

## **12.3 Power of delegation**

The Trustee may delegate to any person, or where there is more than one Trustee to any one or more Trustee, any of the powers, duties and discretions conferred on the Trustee under this Deed upon such terms and conditions as the Trustee shall determine and the Trustee may vary, limit or revoke any such delegation provided that any such delegation shall only be undertaken in accordance with the Superannuation Law.

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# **13 Liability and indemnification of Trustee**

## **13.1 Liability**

The Trustee (and when the Trustee is a Constitutional Corporation, its Directors or officers) shall not be liable for any act or default done or omitted to be done in the exercise of their powers, duties or discretions, or for any losses or expenses incurred by the Fund due to the insufficiency or deficiency of any security in or upon which any of the moneys of the Fund shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom any moneys or securities shall be deposited, or for any loss suffered as a result of relying on any professional advice or assistance, or for any other loss, damage or misfortune whatever EXCEPT if that person fails to act honestly, or intentionally or recklessly fails to exercise the degree of care and diligence that the person is required to exercise, or incurs a monetary penalty in respect of a civil penalty order under the Superannuation Law.

## **13.2 Indemnity**

The Trustee (and when the Trustee is a Constitutional Corporation, its Directors or officers) shall be indemnified and shall, subject to the Superannuation Law, have a lien on the Fund for such indemnity against all liabilities incurred by them through any act, omission or mistake in connection with the exercise of the powers, duties and discretions vested in them under this Deed or in the proper performance of their duties under this Deed, EXCEPT if that person fails to act honestly, or intentionally or recklessly fails to exercise the degree of care and diligence that the person is required to exercise, or incurs a monetary penalty in respect of a civil order under the Superannuation Law.

## **13.3 Limitation of clause**

This clause 13 shall only operate to exempt a person from liability and provide an indemnity to the extent that such an exemption from liability or provision of indemnity would not be limited by or inoperative under the Superannuation Law.



## Part 6 - Fund Accounts

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### 14 Trustee to open Accounts

The Trustee shall open and operate the Accounts and such other accounts as the Trustee decides to establish and operate.

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### 15 Accumulation Account

#### 15.1 Establishment

The Trustee shall establish an Accumulation Account in respect of each Member or Beneficiary.

#### 15.2 Amounts to be credited

The Trustee shall credit to the Accumulation Account such amounts as are required by this Deed and the Superannuation Law including:

- (a) Contributions;
- (b) such portion of the Earnings (if positive) as the Trustee determines in accordance with clause 17.5;
- (c) amounts received by transfer from Approved Benefit Arrangements;
- (d) proceeds of any Policy or Annuity attributable to the Member;
- (e) any Financial Assistance received by the Fund that is attributable to the Member;
- (f) any amounts transferred or Allotted from other Accounts;
- (g) any Levy or Shortfall Component paid in respect of the Member; and
- (h) such other amounts as the Trustee determines and is permitted by the Superannuation Law.

#### 15.3 Amounts to be debited

The Trustee shall debit the Accumulation Account with such amounts as are required by this Deed and the Superannuation Law including:

- (a) Benefits paid to Members or Beneficiaries;
- (b) such portion of the Earnings (if negative) as the Trustee determines in accordance with clause 17.5;
- (c) amounts transferred to Approved Benefit Arrangements;

- (d) any Taxation calculated in accordance with clause 24 attributable to the Member for whom the Accounts or Account has been established;
- (e) any amounts transferred or Allotted to other Accounts;
- (f) any costs or expenses attributable to the Member including the cost of any Policies effected by the Trustee in respect of the Member; and
- (g) such other amounts as the Trustee determines and is permitted by the Superannuation Law.

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## **16 Pension Account**

### **16.1 Establishment**

Where the Trustee determines to pay all or any of the Benefits to the Member as a Pension, the Trustee shall establish a Pension Account in respect of the Member.

### **16.2 Amounts to be transferred**

The Trustee shall transfer to the Pension Account such assets of the Fund or amounts as are determined in accordance with this Deed which the Trustee believes are necessary in order to provide the Member's Benefit as a Pension.

### **16.3 Amounts to be credited**

The Trustee shall credit to the Pension Account such portion of the Earnings (if positive) as the Trustee determines in accordance with clause 17.5, and such other amounts as the Trustee determines and is permitted by the Superannuation Law.

### **16.4 Amounts to be debited**

The Trustee shall debit to the Pension Account such amounts as are required by this Deed and the Superannuation Law including Benefits paid to Members or Beneficiaries, such portion of the Earnings (if negative) as the Trustee determines in accordance with clause 17.5, and such other amounts as the Trustee determines and is permitted by the Superannuation Law.

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## **17 Income Account**

### **17.1 Establishment**

The Trustee shall establish an Income Account for the Fund.

### **17.2 Amounts to be credited**

The Trustee shall credit the Income Account with such amounts as are required by this Deed and the Superannuation Law including the Earnings (if positive) determined in accordance with clause 17.4 and any proceeds from Policies or Financial Assistance not credited to any other Account.

### **17.3 Amounts to be debited**

The Trustee shall debit the Income Account with such amounts as are required by this Deed (including any amounts required under clause 21(b)) and the Superannuation Law including any losses on sale of investments, any Taxation or Levy not attributed to a Member Account and the cost of any Policy not credited to a Member Account.

### **17.4 Trustee to determine Earnings and Fund Earning Rate**

At the end of each Fund Year or at such other time as the Trustee considers it appropriate or as the Superannuation Law requires, the Trustee shall determine:

- (a) the Earnings of the Fund in respect of the period since the previous such determination; and
- (b) the Fund Earning Rate.

### **17.5 Distribution of Earnings**

Subject to clauses 18 and 20 and the Superannuation Law, the Fund Earning Rate determined in clause 17.4 shall be used to determine, at the Trustee's discretion, the proportion of the Earnings to be credited or debited to other Accounts (such as Member Accounts, Pension Accounts or Reserve Accounts) from the Income Account.

### **17.6 Trustee to notify Members**

The Trustee shall, when required by the Statutory Authority or the Superannuation Law, notify the Members of the basis of the calculation of the Fund Earning Rate.

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## **18 Fluctuation Account**

### **18.1 Establishment**

The Trustee may establish a Fluctuation Account.

### **18.2 Transfers to Fluctuation Account**

The Trustee shall transfer to the credit of the Fluctuation Account any amount remaining in the Income Account after distribution of Earnings pursuant to clause 17.5.

### **18.3 Separation of Account moneys**

Amounts credited to the Fluctuation Account shall not form part of any Member Account and any income earned by the Fund on the moneys held in the Fluctuation Account shall be credited to the Fluctuation Account.

### **18.4 Use of Fluctuation Account**

The Fluctuation Account shall be used for the following purposes:

- (a) as part of a reserving strategy to stabilise investment earnings;

- (b) to supplement the Fund Earning Rate; and
- (c) to pay any Taxation.

### **18.5 Adjustment of Member Account**

The Trustee may make, in its discretion and in accordance with the Superannuation Law, adjustments to the credit of a Member Account to reflect the Fund Earning Rate applying at the date of payment.

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## **19 Reserve Accounts**

Subject to the Superannuation Law, the Trustee may establish and maintain one or more Reserve Accounts and operate such accounts in accordance with rules it may specify from time to time for purposes including to separate:

- (a) assets funding a Pension from assets that are needed for solvency reasons as instructed by an Actuary or as otherwise determined by the Trustee;
- (b) assets funding a Pension into various classes to comply with the rules of the relevant Pension or to obtain favourable taxation treatment; or
- (c) some assets of the Fund from other assets to establish any other type of reserve account permitted by the Superannuation Law.

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## **20 Specific investments**

### **20.1 Recording of specific investments**

Where the Trustee invests separately in respect of certain Members or Beneficiaries in accordance with clause 11.5, the Trustee shall record on whose behalf such specific investments are made for the purposes of determining allocation to the Member Account.

### **20.2 Allocation of Earnings and costs for specific investments**

The Member Account of the relevant Member or Beneficiary shall be credited with any income and profit and debited with any costs, charges or Taxation in proportions applicable to any specific investment made pursuant to clause 20.1, in accordance with the Superannuation Law.

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## **21 Valuation of Fund**

At the end of each Fund Year or at such other time as the Trustee considers it appropriate or as the Superannuation Law requires, the Trustee shall:

- (a) make a valuation of all of the assets of the Fund (including the value of any Policy held by the Fund);
- (b) transfer any surplus or deficiency in the valuation of assets, other than specific investments in accordance with clause 20.2, to the Income Account; and

- (c) ensure that the records and Accounts of the Fund reflect the valuation of each asset.

## Part 7 - Record Keeping

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### 22 Records, Reports and Audit

#### 22.1 Trustee obligations

The Trustee shall:

- (a) keep accounts and issue receipts in respect of all money and any other assets received into and disbursed from the Fund and of all dealings in connection with such money or assets;
- (b) collect and promptly pay to the credit of an account in the name of the Fund kept with a bank, building society, or other financial institution or into a trust account of a solicitor, accountant, investment manager or administration manager, all moneys due to or received on behalf of the Fund;
- (c) pay such premiums to Insurers as are required to maintain any Policies or Annuities;
- (d) keep and retain in safe custody all records, books, accounts, minutes, reports and other documentation for such period required by the Superannuation Law;
- (e) prepare and lodge all documents required by the Superannuation Law;
- (f) ensure the Fund is audited at the end of each Fund Year or at such other time as is required by the Superannuation Law and ensure that the Auditor provides such certificates as are required by the Statutory Authority in accordance with the Superannuation Law;
- (g) once in each Fund Year, report on the affairs of the Fund to the Member in such form as may required by the Superannuation Law;
- (h) produce any books or information relating to the Fund and make suitable arrangements for access to premises where the books or information are kept for the purposes of inspection in accordance with the Superannuation Law; and
- (i) record against a Member's Benefit or Benefit Entitlement, a Payment Flag that has been validly served on the Trustee in accordance with the Superannuation Laws until such time as it is validly lifted.

#### 22.2 Provision of information

The Trustee shall provide to:

- (a) Employers;
- (b) the Statutory Authority;
- (c) the Actuary;

- (d) the Auditor;
  - (e) Members; and
  - (f) any other persons specified in the Superannuation Law,
- any information or documentation required by the Superannuation Law.

### **22.3 Information and documents for Tribunal**

The Trustee shall do all things necessary to comply with its obligations to the Tribunal under the Superannuation (Resolution of Complaints) Act 1993.

### **22.4 Directions of Statutory Authority**

The Trustee shall comply with any direction or requirement of the Statutory Authority or Tribunal in relation to the Fund including, but not limited to, the acceptance of Contributions into the Fund, the disposal of assets of the Fund, the appointment of an investigator to the Fund and the conduct of an investigation into the Fund.

## Part 8 - General Matters

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### **23 Policies of Insurance**

#### **23.1 Member Policies**

The Trustee may at its absolute discretion effect Policies with an Insurer and may secure the Benefit of a Member by means of an individual Policy or Policies or a group Policy or Policies or partly in one and partly in another.

#### **23.2 Member may request a specific Policy**

Where a Member requests in writing the Trustee to effect a Policy of a specified type in respect of the Member, the Trustee must effect such Policy except if it is of the opinion that the Policy is not in the best interests of the Member or the Dependants of the Member and provided that the Member has not in writing withdrawn, cancelled or altered the Member's original request.

#### **23.3 Trustee to effect Policy if required**

If the Trustee has informed a Member that a Policy of a specified type will be effected in respect of a Member, the Trustee must effect the Policy except if the Member has requested the Trustee in writing not to effect the same.

#### **23.4 Premiums**

Any premiums for a Policy effected shall, if the Trustee considers it appropriate, be debited to an Insured Member's Accumulation Account.

#### **23.5 Limitation on liability of Trustee**

Where a Trustee is not required to exercise the power to effect a Policy or Policies, the Trustee shall not be responsible or liable to a Member, a Member's Legal Personal Representative or Dependant if the Trustee determines not to exercise the power to effect such Policy or Policies.

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## **24 Payment of Taxation and Levies**

#### **24.1 Deduction of Taxation on Benefit**

The Trustee shall deduct from any Benefit payable to any Member or Beneficiary pursuant to this Deed any Taxation required to be deducted from it.

#### **24.2 Taxation on Contributions and Shortfall Components**

The Trustee or, with the agreement of the Trustee, any other appropriate organisation may deduct any Taxation payable in relation to a Contribution or Shortfall Component prior to the Contribution or Shortfall Component being credited to the Accumulation Account of the Member.



## Part 9 - Membership of the Fund

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### **25 Membership**

#### **25.1 Eligibility for Membership**

- (a) The Trustee may admit any person who applies for membership in the Fund provided that his or her admission would not cause the Fund to breach the Superannuation Law.
- (b) If the Trustee accepts a person's application for Membership, the person will become a Member from such date and on such terms and conditions as the Trustee may in its absolute discretion determine.

#### **25.2 Application for Membership**

Each application for Membership is to be made by the relevant applicant in such form as the Trustee may from time to time approve.

#### **25.3 Admission to Membership without application**

The Trustee may, subject to Superannuation Law, admit a person as a Member even though he or she has not applied for membership in accordance with clauses 25.1 and 25.2.

#### **25.4 Members and Beneficiaries to provide information**

Each applicant for Membership and any Beneficiary shall whenever requested by the Trustee furnish such information as the Trustee deems necessary for the purposes of any investigations in connection with the Fund provided that where the Trustee is or becomes aware that the information so furnished is incorrect or misleading or any relevant information has been deliberately withheld, the Trustee may in its absolute discretion alter or amend the Benefits to amounts which would have been determined had full and accurate information been supplied.

#### **25.5 Member bound by Deed**

Each Member shall by virtue of his or her application be deemed to have consented to be bound by the provisions of this Deed.

#### **25.6 Member to be medically examined**

For the purposes of effecting, increasing or otherwise varying any Policy or Annuity, the Trustee may from time to time require any Member or any person who has applied to become a Member to be medically examined or to submit other evidence of health or to provide proof of age to the satisfaction of the Insurer or to take such steps as may be required for the aforesaid purposes. If any Member or person who has applied to become a Member refuses to undergo such medical examination or to undertake any other step which may reasonably be required for such purposes or if he or she omits to do anything which would or might prejudice the Policy or result in the Policy moneys or any part thereof not becoming payable, the Trustee may adjust the Benefit to be provided by the Fund for and in respect of that Member or person in such manner as the Trustee considers appropriate.

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## **26 Membership notification requirements**

### **26.1 Product Disclosure Statements**

The Trustee shall give to all new Members a Disclosure Document containing information and details relating to the Fund as is required by the Superannuation Law.

### **26.2 Disclosure and reporting requirements**

The Trustee shall provide annually to Members, former Members and Beneficiaries, such information in writing and copies of accounts, records and documents of the Fund as are required by the Superannuation Law.

### **26.3 Former Member notices**

- (a) The Trustee shall give to former Members or their Legal Personal Representatives a written statement containing such information and details relating to the Benefits of the former Member as is required to be provided by the Superannuation Law.
- (b) No Member or Dependent of a Member shall be entitled to obtain information in respect of any details or the operation of the Fund or on any matter which may relate to the conduct of the Fund which, in the opinion of the Trustee, would be inappropriate to disclose other than as is provided for by this clause 26.

### **26.4 Inspection of Deed and other Documents**

A copy of this Deed or any other documents as required by the Superannuation Law shall be made available for inspection by any Member or Beneficiary on the request of that Member or Beneficiary and, unless otherwise required by the Superannuation Law, it shall be sufficient for this clause 26.4 to make a copy of this Deed or such documents available to the Member or the Beneficiary for inspection at the office of the Trustee or at the place of business of an Individual Trustee during hours when the office or business is open.

### **26.5 Meetings and Members**

The Trustee shall notify the Members from time to time of the manner, time and place in which meetings of the Members of the Fund held in accordance with the provisions of the Superannuation Law and for the purposes of this Deed are to be called and conducted.

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## **27 Ceasing to be a Member**

A Member ceases to be a Member of the Fund on the first of the following to occur:

- (a) the Trustee determines that the Member has been paid all of his or her Benefit from the Fund;
- (b) where the Member dies, the Trustee determines that the deceased Member's Benefit has been paid to the deceased Member's dependants or Legal Personal Representative;
- (c) the Trustee determines that the Member's continued membership would cause the Fund to cease complying with Superannuation Law; or
- (d) the Trustee determines, on reasonable grounds, that the Member should cease to be a Member.

## Part 10 - Contributions to the Fund

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### **28 Contributions to the Fund**

#### **28.1 Eligibility to make Contributions**

Subject to the consent of the Trustee and the provisions of clause 29, Contributions to the Fund may be made by a Member, an Employer or any other Permitted Entity.

#### **28.2 Amount of Contributions**

Subject to the provisions of clause 29 and the Superannuation Law, the Trustee may receive such amount by way of Contributions as may be determined from time to time by each contributor.

#### **28.3 Superannuation Guarantee legislation**

Where the Trustee accepts Contributions in accordance with the Guarantee Act, the Trustee shall provide all such certificates, reports and other information as shall be required by the Guarantee Act.

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### **29 General provisions concerning Contributions**

#### **29.1 Form of Contribution**

A Contribution made under this Part 10 may be made either in cash or by transfer of an asset or assets provided that the assets transferred are authorised investments and are transferred upon the terms and conditions provided under the Superannuation Law and the acquisition of the assets is not prohibited by the Superannuation Law.

#### **29.2 Obligations to contribute**

- (a) Subject to the requirements of the Superannuation Law and in the absence of any agreement to the contrary, no Member, Employer or Permitted Entity shall be under an obligation to make a Contribution to the Fund in respect of any Fund Year.
- (b) Subject to the Superannuation Law, a Member may remain a Member of the Fund notwithstanding that no Contributions are made in respect of that Member for any Fund Year.

#### **29.3 Limitation on commencing Contributions**

The Trustee shall refuse to accept Contributions to the Fund by or in respect of a Member if the Fund is not authorised by the Superannuation Law to accept Contributions made on the Member's behalf.

#### **29.4 Limit on Contributions**

The Trustee shall refuse to accept any Contributions or Shortfall Component if:

- (a) the Contributions are not otherwise authorised to be made, or are in excess of the amount of Contributions that can be made, on the Member's behalf by the Superannuation Law;

- (b) acceptance of the Contribution or Shortfall Component would prevent the Fund from qualifying as a Complying Superannuation Fund; or
- (c) the Statutory Authority directs the Trustee not to accept any Contributions by an Employer or any Shortfall Component in accordance with Superannuation Law.

## 29.5 Ineligible Contributions

If any Contribution or Shortfall Component is accepted by the Fund in breach of the provisions of this Part 10, the Trustee shall refund such Contribution or Shortfall Component as required by the Superannuation Law, less any:

- (a) Taxation payable, or which the Member has validly authorised the Trustee to pay, to the Statutory Authority;
- (b) charge which an Insurer may have made in respect of any extra cover which it has provided in relation to those Contribution or Shortfall Components; and
- (c) reasonable administration charges,

and the Trustee shall debit the Member's Account accordingly.

## 29.6 Contributions Splitting

- (a) This clause 29.6 does not apply to a Benefit:
  - (i) that is subject to a Payment Split; or
  - (ii) on which a Payment Flag is operating.
- (b) Subject to the Superannuation Law, an Applicant may, in a Financial Year, apply to the Trustee in writing in such form (if any) as the Trustee may require, to roll over or transfer out of the Fund or Allot an amount of the Applicant's Benefits, for the benefit of the Spouse of the Applicant, that is equal to an amount of the Splittable Contributions made by, for, or on behalf of the Applicant in:
  - (i) the previous Financial Year; or
  - (ii) the Financial Year in which the application is made provided that the entire Benefit of the Applicant is to be rolled over or transferred in that Financial Year.
- (c) Subject to the SIS Regulations, an application under clause 29.6(b) is invalid:
  - (i) if in the Financial Year in which it is made:
    - (A) the Applicant has already made an application in respect of the relevant Financial Year; and
    - (B) the Trustee is:
      - (1) considering the application; or
      - (2) has given effect to the application; or
  - (ii) if the amount of any Benefits to which the application relates exceeds the Maximum Splittable Amount; or

- (iii) subject to clause 29.6(d), if the Spouse of the Applicant:
  - (A) is aged 65 years or more; or
  - (B) is aged between the relevant Preservation Age and 65 years and satisfies item 101 in Schedule 1 of the SIS Regulations.
- (d) Notwithstanding clause 29.6(c)(iii), an application is not invalid under that clause if the application includes a statement by the Applicant's Spouse that the Spouse is aged:
  - (i) between the relevant Preservation Age and 65 years, and does not satisfy item 101 in Schedule 1 of the SIS Regulations; or
  - (ii) less than the relevant Preservation Age.
- (e) The Applicant must specify, in the application, the amount from his or her:
  - (i) Taxed Splittable Contributions; or
  - (ii) Untaxed Splittable Contributions; or
  - (iii) both,

that the Applicant seeks to split for the benefit of his or her Spouse.
- (f) The Trustee may at its discretion accept an application made under clause 29.6(a) if:
  - (i) the application complies with clauses 29.6(a) to (e); and
  - (ii) the Trustee has no reason to believe that the statement referred to in clause 29.6(d) is untrue; and
  - (iii) the amount to which the application relates does not exceed the Maximum Splittable Amount for the relevant Financial Year.
- (g) Where the Trustee accepts an application under this clause 29.6, the Trustee must as soon as practicable, and in any case within 90 days after receiving the application, roll over or transfer to an Approved Benefit Arrangement or Allot the amount of the Splittable Contribution that is the subject of the application for the benefit of the Applicant's Spouse.
- (h) Before the Trustee Allots any amount under clause 29.6(g) for the benefit of the Spouse:
  - (i) the Trustee must ensure that the requirements of clause 9.2 are satisfied where the Fund is a Self Managed Superannuation Fund; and
  - (ii) either, the Spouse must:
    - (A) be a Member; or
    - (B) apply to become and be accepted as a Member.
- (i) Subject to the Superannuation Law, if an Applicant requests a split of:
  - (i) his or her Untaxed Splittable Contributions, the Trustee can only give effect to the application where the amount specified in the application is less than or equal to the Non-Concessional Contributions that would form part of any

Superannuation Lump Sum that would be payable if the Applicant withdrew his or her entire Benefits on or before 5 April 2007; or

- (ii) his or her Taxed Splittable Contributions, the Trustee can only give effect to the application where the amount specified in the application is less than or equal to the Concessional Contributions that may be split under the Superannuation Law that would form part of any Superannuation Lump Sum that would be payable if the Applicant withdrew his or her entire Benefits at the time the Trustee gave effect to the application.

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## **30 Transfers from and to Approved Benefit Arrangements**

### **30.1 Transfers from Approved Benefit Arrangements**

The Trustee may make such arrangements as it thinks fit with any Member or the trustee of any Approved Benefit Arrangement, to transfer any assets to the Fund and may make arrangements about any other matter which, at the option of the Trustee, is incidental to or consequent upon the admission of such person to the Membership of the Fund provided that if an Approved Benefit Arrangement from which such assets are transferred is one in which the payment of Benefits is otherwise required by Superannuation Law to be deferred until the attainment of a particular age or the occurrence of a specified event, then the Member shall not be entitled to receive from the Fund any part of that Benefit that is attributable to those assets at a date earlier than that on which they would have been entitled to receive the same from the said Approved Benefit Arrangement.

### **30.2 Transfers to Approved Benefit Arrangements**

The Trustee may:

- (a) if requested by the Member, in lieu of part or all of any other Benefit to which the Member may be entitled under this Deed, transfer to the trustee of another Approved Benefit Arrangement such portion of the assets of the Fund as the Trustee in its discretion determines not exceeding such amount as the Trustee considers equivalent in value to the Benefit being provided to the Member to the extent that it has accrued;
- (b) transfer a Benefit which has become payable to a Member to an Approved Benefit Arrangement selected by the Trustee where a Member has not provided instructions to the Trustee on the payment or transfer of the Benefit within a reasonable period of the Benefit first becoming payable;
- (c) transfer some or all of any amount which is the subject of an application by a Member under clause 29.6 that has been accepted by the Trustee to the trustee of an Approved Benefit Arrangement; and
- (d) transfer any other asset or amount in the Fund that it approves including any reserves, surplus or unallocated amounts in the Fund to another account or reserve in the Fund or to another Approved Benefit Arrangement.

### **30.3 Roll-Overs**

The Trustee may, upon receiving a written request from a Member to:

- (a) pay all or any of the Benefit of the Member in the Fund to any Approved Benefit Arrangement or back into the Fund in a manner permitted by the Superannuation Law; or

- (b) roll over an amount which is the subject of an application by a Member under clause 29.6 that has been accepted by the Trustee to the trustee of an Approved Benefit Arrangement; or
- (c) retain or apply all or any of the Benefit of the Member within the Fund in a manner permitted by the Superannuation Law,

pay, apply or retain the Benefit in accordance with that election or application.

#### **30.4 Trustee to protect Preservation on roll over**

Where a Member or Former Member has a Preserved Payment Benefit in the Fund which forms part of the amount transferred or rolled over to an Approved Benefit Arrangement, the Trustee shall ensure that the governing rules of the Approved Benefit Arrangement provide that the amount of the Preserved Payment Benefit must be preserved and vested in accordance with the Superannuation Law.

## Part 11 - Benefits

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### 31 Types of Benefits

#### 31.1 Benefit Entitlement

Where a Member becomes entitled, in accordance with this Deed and Superannuation Law, to a Benefit and there are no cashing restrictions that apply to the Benefit under Superannuation Law, the Member may elect in writing to the Trustee to be paid the Benefit in one or more of the forms permitted by Superannuation Law including:

- (a) **(Lump Sum)** one or more lump sums; or
- (b) **(Income Streams or other permissible forms)** one or more Income Streams or such other form of Benefit permissible by the Superannuation Law.

#### 31.2 Election

Unless otherwise agreed to by the Trustee, the election provided by the Member for the purposes of clause 31.1 must be in writing and state the amount to be paid and the extent to which the amount is to be paid as any one or more types of Benefit permitted to be paid by Superannuation Law and this Deed and must be provided to the Trustee before the Benefit commences to be paid to the Member, but is not binding on the Trustee.

#### 31.3 Benefit Entitlement – with cashing restrictions

Subject to Superannuation Law, where a Member becomes entitled to a Benefit in accordance with clause 36 or 37 of this Deed, and there are cashing restrictions that apply to the Benefit under Superannuation Law, the Trustee must pay that Benefit in accordance with such cashing restrictions.

#### 31.4 Transfer of Policy as Benefit

Where a Member or a Beneficiary is entitled to be paid a Benefit and such Benefit includes any interest in a Policy of any kind on the life of the Member or Beneficiary, the Trustee may transfer the Policy to the Member or Beneficiary or to the Dependents.

#### 31.5 Transfer In-Specie as Benefit

The Trustee may, with the consent of a Member or Beneficiary to whom a Benefit is payable, transfer assets of the Fund of an equivalent value to such Member or Beneficiary in lieu of paying the whole or any part of the amount otherwise payable pursuant to the provisions of this Deed.

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### 32 Preservation

The Trustee shall Preserve such amounts of Contributions in respect of Members or Beneficiaries on such terms and conditions as are required by the Superannuation Law.

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### 33 Payment of Unrestricted Non-Preserved Amount

Notwithstanding any other provisions in this Deed which may be construed to the contrary and subject to the Superannuation Law:



- (a) a Member may elect at any time to withdraw the whole or any part of the Unrestricted Non-Preserved Amount of that Member by giving notice to the Trustee in such form and manner as may be determined by the Trustee from time to time; and
- (b) the minimum Unrestricted Non-Preserved Amount which may be withdrawn by a Member pursuant to clause 33(a) shall be determined by the Trustee and notified to Members of the Fund.

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### **34 Payment of additional Benefits**

In circumstances where a Member ceases to be a Member of the Fund, the Trustee may determine to pay, in addition to amounts otherwise payable under this Deed, such part of the Fluctuation Account, which the Trustee considers equitable, to the Member's Accumulation Account for purposes of payment of a Benefit.

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### **35 Retention of Benefit in Fund**

Where a Member or Beneficiary does not require Benefits to be paid immediately, the Trustee may, in its absolute discretion, retain all or any part of any Benefit payable under this Part 11 in the Fund until the Member or Beneficiary entitled to the Benefit requests that the Benefit is paid to that Member or Beneficiary or until they are required to be paid under Superannuation Law or this Deed.

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### **36 Compulsory payment of Benefits**

The Trustee of the Fund must pay a Member's Benefits as soon as practicable after the occurrence of any of the following:

- (a) the Member dies; or
- (b) payment of the Benefit is required in accordance with the provisions of this Deed or the Superannuation Law,

whichever shall occur first.

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### **37 Voluntary payment of Benefits**

Subject to Superannuation Law, a Member may elect to receive a Benefit on or after the occurrence of any of the following events:

- (a) if the Member Retires from Gainful Employment;
- (b) if the Member suffers Permanent Incapacity;
- (c) if the Member suffers Temporary Incapacity;
- (d) if the Member being a temporary resident permanently departs Australia in circumstances described in the SIS Regulations, including regulation 6.20A or 6.20B, and requests in writing the release of his or her Benefits;
- (e) if the Member's Gainful Employment with an employer who had, or any of whose associates had, at any time, contributed to the Fund in relation to the Member is terminated;

- (f) if the Member suffers Severe Financial Hardship;
- (g) if the Member attains age 65;
- (h) the Trustee determines that some or all of the Member's Benefit may be released on Compassionate Grounds;
- (i) if the Member attains Preservation Age; or
- (j) any other condition of release permitted by Superannuation Law.

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### **38 Pension Benefit**

The following provisions apply to the payment of a Pension:

- (a) Where the whole or part of a Member's Benefit is payable in the form of a Pension, the Trustee may, subject to the Superannuation Law, provide a Benefit to the Member as any one or more types of Pension permitted by the Superannuation Law.
- (b) Subject to Superannuation Law, where the whole or part of a Member's Benefit is payable in the form of a Pension, the Trustee shall provide the Pension under the governing rules of the Fund (including, but not limiting, this Deed, trustee resolutions or any pension agreement).
- (c) Where an instalment of Pension is payable in respect of a Member and the amount standing to the credit of the Member's relevant Pension Account is less than the instalment payable, the lesser amount shall be paid and the Trustee's liability in respect of the payment of the Pension shall be discharged.
- (d) Notwithstanding the foregoing provisions of this clause 38, where a Benefit is payable as a Pension, the Trustee may at its discretion apply an amount representing the capital value of such Benefit in the purchase of an Annuity in its name and may arrange for payments thereunder to be made directly to the Member but may assign the Annuity to the Member if so requested and if permitted by Superannuation Law.

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### **39 Reduction of Member's Benefit**

- (a) Notwithstanding anything herein contained, the Member's Benefit may, in the absolute discretion of the Trustee, be reduced by:
  - (i) all amounts, whether actual or contingent, owing by the Member to an Employer or to the Trustee at the time when the Benefit becomes payable or applicable in accordance with this Deed or the Superannuation Law;
  - (ii) the amount of any loss incurred by an Employer in consequence of the Member's proven fraud, dishonesty, misconduct or negligence; or
  - (iii) the amount of any costs of all proceedings, civil or criminal, incurred by an Employer in attempting to recover any amount owing by the Member to the Employer or in respect of his proven fraud, dishonesty, misconduct or negligence,

provided that this clause 39 shall not be relied upon to reduce the Member's Benefit below the amount required in accordance with the Superannuation Law to be vested in the Member.

- (b) A statement in writing signed by an Employer and given to the Trustee specifying the amount owing by a Member to the Employer or the amounts of any loss or costs incurred by the Employer in respect of a Member and requesting that the Member's Benefit be reduced by such amount, shall be sufficient authority to the Trustee to thereby reduce the amount of the Member's Benefit and the Trustee shall then be entitled to pay to the relevant Employer all amounts actually owing or incurred as aforesaid and shall be entitled to retain any amount contingently owing pending the occurrence or non-occurrence of the contingency, whether the amount in question is dealt with in accordance with this clause 39 or paid as a Benefit in respect of the relevant Member.

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## **40 Statement of Unclaimed Benefits**

The Trustee shall give to the Statutory Authority a statement of Unclaimed Benefits and shall pay any Unclaimed Benefits to the Statutory Authority at such time and in such manner as is required by the Superannuation Law.

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## **41 Limitation on payment**

Notwithstanding any other provision in this Deed, the Trustee shall not pay any Benefits to Members, Dependants or Beneficiaries if such payment would cause the Fund to breach the Superannuation Law.

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## **42 Forfeited Benefits**

### **42.1 Forfeiture**

Benefits payable out of the Fund shall, subject to the Superannuation Law, be forfeited if:

- (a) without the prior approval of the Trustee, the Member or Beneficiary purports to assign, alienate or charge such Benefits or part thereof; or
- (b) required by the *Bankruptcy Act 1966*.

### **42.2 Application of forfeited money**

The whole of the Benefits forfeited by a person under clause 42.1 shall be applied by the Trustee for the benefit of a Member and his or her Dependants or any one or more of them as the Trustee in its absolute discretion so determines.

### **42.3 Forfeiture Account**

The Trustee shall have power at any time to establish a Forfeiture Account of the Fund and shall transfer to the credit of the Forfeiture Account any amounts forfeited pursuant to the reasons above or otherwise forfeited in accordance with this Deed or the *Bankruptcy Act 1966*.

### **42.4 Treatment of money in Forfeiture Account**

Whilst any moneys are held in the Forfeiture Account, they shall not form part of any other Account and any income derived by the Fund in respect of moneys held in the Forfeiture Account shall be credited to the Forfeiture Account.

## **42.5 Unclaimed Benefits Account**

The Trustee shall, subject to Superannuation Law, be entitled to treat as unclaimed and to forfeit and to transfer to the Unclaimed Benefits Account, any moneys in the Fund standing to the credit of any Member whose whereabouts are unknown to it and if, after making such enquiries as it deems appropriate, it is unable to positively trace any person entitled to the benefit of such moneys.

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## **43 Death Benefits**

### **43.1 Application**

This clause 43 applies to a Member's Benefit payable on or following the death of a Member pursuant to clause 36(a).

### **43.2 Payment if Non-Binding Death Benefit Nomination**

Subject to clause 43.3, a Member's Benefit may be paid or applied, on or following the death of the Member, as the Trustee in its absolute discretion decides but subject always to Superannuation Law including by way of one or more Annuities, one or more Income Streams or one or more Superannuation Lump Sums or any combination of such methods of payment (in each case upon such terms as the Trustee may decide) either:

- (a) to such one or more of the Nominated Beneficiaries (if any) designated in the most recent Non-Binding Death Benefit Nomination made by the Member, or other Dependants of the Member and in such proportions as the Trustee in its absolute discretion decides; or
- (b) to one or more of the Legal Personal Representatives of the Member.

### **43.3 Payment if Binding Death Benefit Nomination**

Subject to clause 43.4, if a Member had made a Binding Death Benefit Nomination that at the date of death was valid in accordance with the Superannuation Law, any Benefit payable on or following the death of the Member shall be payable by the Trustee in accordance with that Binding Death Benefit Nomination.

### **43.4 Commutation of Income Stream**

Notwithstanding any other clause of this Deed and subject to the Superannuation Law, the Trustee may, and must where required by Superannuation Law, discharge its liability to a Member, Dependant or Beneficiary in respect of a Pension by paying to the Member, Dependant or Beneficiary a lump sum equal to the amount of the Benefits payable to the relevant Member, Dependant or Beneficiary.

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## **44 Death Benefit Nominations**

### **44.1 Non-Binding Death Benefit Nomination**

A Member may at any time make a Non-Binding Death Benefit Nomination designating one or more Dependants or Legal Personal Representatives as a Nominated Beneficiary of any Benefit payable by the Trustee on or following the death of the Member provided that:

- (a) a Member wishing to designate a Nominated Beneficiary shall do so by providing a written notice to the Trustee in such form as the Trustee approves from time to time; and
- (b) subject to the Superannuation Law, such a nomination shall not be binding on the Trustee.

#### **44.2 Binding Death Benefit Nomination**

- (a) A Member may make a Binding Death Benefit Nomination to the Trustee that:
  - (i) is in writing;
  - (ii) is signed, and dated, by the Member in the presence of 2 witnesses, being persons:
    - (A) each of whom has turned 18 years; and
    - (B) neither of whom is a person mentioned in the notice; and
  - (iii) contains a declaration signed, and dated, by the witnesses stating that the notice was signed by the Member in their presence.
- (b) Subject to the Superannuation Law, a Member may in a Binding Death Benefit Nomination nominate:
  - (i) the person or persons to whom their Benefit shall be paid so long as that person or each of those persons are a Legal Personal Representative or Dependant of the Member;
  - (ii) the proportions in which the Benefit will be paid to that person or each of those persons; and
  - (iii) the manner in which those benefits shall be paid to the person or each of those persons.
- (c) A Binding Death Benefit Nomination may be confirmed, amended or revoked at any time by the Member and will otherwise be effective until revoked.
- (d) A Binding Death Benefit Nomination may be revoked by making a later valid Binding Death Benefit Nomination or by otherwise revoking it by notice in writing given to the Trustee.

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#### **45 Payment if no Binding Death Benefit Nomination**

Subject to clause 43.3 and the Superannuation Law, any Benefit payable on the death of a Member may be paid or applied as the Trustee in its absolute discretion decides, by way of one or more Annuities, one or more Pensions or other periodical payment or by one or more lump sum payments or any combination of such methods of payment (in each such case upon such terms as the Trustee may decide) either:

- (a) to such one or more of the Nominated Beneficiaries (if any) designated in a Non-Binding Death Benefit Nomination made by the Member, or one or more of the other Dependants of the Member and in such proportions as the Trustee in absolute discretion decides; or

(b) to one or more of the Legal Personal Representatives of the Member.

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**46 Payment if Binding Death Benefit Nomination is invalid or ineffective**

Subject to the Superannuation Law, if a Member had made a Binding Death Benefit Nomination that at the date of death is invalid or ineffective, the Binding Death Benefit Nomination will be treated as a Non-Binding Death Benefit Nomination made at the date of making the Binding Death Benefit Nomination whether or not validly or effectively binding at the date of making same.

## Part 12 - Family Law

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### 47 Information to Members and Non-Member Spouses

If a Member's Benefit or Benefit Entitlement becomes subject to a Payment Split, the Trustee shall provide the Member and the Non-Member Spouse with such notices and information, and in such form, as is required by the Superannuation Law.

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### 48 Trustee may create new interest for Non-Member Spouse

- (a) The Trustee may admit a Non-Member Spouse in respect of a Payment Split as a Member:
    - (i) if the Non-Member Spouse requests the Trustee to do so in writing in accordance with the Superannuation Law and in the form prescribed by the Trustee; or
    - (ii) on its own initiative in the circumstances permitted by the Superannuation Law.
  - (b) If the Trustee admits a Non-Member Spouse as a Member under this clause 48, the Trustee shall reduce the Member's Benefit Entitlement in respect of the Payment Split by the amount required by the Superannuation Law and otherwise as determined by the Trustee in accordance with the Superannuation Law.
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### 49 Non-Member Spouse may request transfer of interest

If the Non-Member Spouse in respect of a Payment Split is not admitted as a Member under clause 48, the Trustee shall:

- (a) either:
    - (i) transfer or roll over the entitlement of the Non-Member Spouse to an Approved Benefit Arrangement; or
    - (ii) pay the entitlement of the Non-Member Spouse to the Non-Member Spouse if permitted or required by the Superannuation Law; and
  - (b) reduce the Member's Benefit Entitlement in respect of the Payment Split by the amount required by the Superannuation Law and otherwise as determined by the Trustee in accordance with the Superannuation Law.
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### 50 Family Law fees

- (a) In addition to its other powers under this Deed, the Trustee may charge reasonable fees in respect of any action taken by the Trustee which is permitted or required by Family Law and for which the Trustee is entitled to charge fees.
  - (b) The Trustee shall be entitled to recoup those fees in accordance with the Superannuation Law from:
    - (i) a Member's Benefit Entitlement; or
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- (ii) the entitlements of the Non-Member Spouse.

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## **51 Satisfaction of entitlement**

- (a) The payment, transfer or roll over of the entitlement of a Non-Member Spouse in accordance with this Part 12 shall be a complete discharge of the Trustee in respect of any liability to that Non-Member Spouse and the Member in respect of that Non-Member Spouse for the amount paid, transferred or rolled over.
- (b) In addition to its other powers under this Deed, the Trustee may deduct from the amount to be paid, transferred or rolled over the amount of any Taxation that is calculated by the Trustee to be payable in respect of the entitlement of the Non-Member Spouse.



# Part 13 - Termination of Trust

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## 52 Termination

### 52.1 Events of termination

The trusts hereby declared shall cease and terminate and the Fund shall be wound up as hereinafter provided upon the happening of any of the following events:

- (a) if there are no Members in the Fund and the Trustee resolves to terminate the Fund;
- (b) all Members agree to terminate the Fund;
- (c) the Trustee decides that it would not be reasonable to continue to operate the Fund; or
- (d) the Fund is required to be terminated to comply with the Superannuation Law.

### 52.2 Notice to Members and Closing Date

Upon the trusts ceasing and terminating in accordance with clause 52.1, the Trustee shall give notice in writing to each Employer and the Members, if any, that the Fund shall be wound up on a specified date, such date being no later than any date on which the Fund is required by clause 52.1(d) to be terminated (hereinafter called the "Closing Date"). As from the Closing Date:

- (a) no further Contribution shall be made by any Employer or any Member, other than arrears of Contributions due to the Closing Date; and
- (b) arrears of Contributions, if any, shall be called in immediately.

### 52.3 Order of payment

Upon the trusts ceasing and terminating in accordance with clause 52.1, the Trustee, subject to clause 52.7, shall make such provision out of the Fund after meeting expenses and liabilities as is necessary to provide for the payment of the following Benefits in the following order of priority:

- (a) payments which on or before the Closing Date had become payable to retired Members or Dependants;
- (b) payments to each Member who is still in employment and has attained his Normal Retirement Date equal to his Member's Accumulation Account;
- (c) payment to each Member who is still in the employment of the Employer and has not attained his Normal Retirement Date equal to his Benefit had he resigned immediately prior to the Closing Date; and
- (d) payment to each Member who is still in the employment of the Employer of such amount of the assets of the Fund then remaining as the Trustee considers equitable after taking into account payments determined under clauses 52.3(b) and 52.3(c) as can be paid without being regarded as excessive amounts having regard to the Superannuation Law.

#### **52.4 Payment if Member Dies**

Where a Member dies before receiving a Benefit to which he has become entitled pursuant to clause 52.3, such Benefit shall be paid in accordance with clause 43.

#### **52.5 Surplus**

If a surplus remains after providing Benefits for Members and their Dependants in terms of clause 52.3, such surplus shall, subject to the requirements of any Superannuation Law and clause 52.7, be paid by the Trustee to or for the benefit of:

- (a) any Members;
- (b) any former Members;
- (c) any Dependants of any such Members or former Members;
- (d) the Legal Personal Representatives (in their capacity as such) of any such Members, former Members or Dependants; or
- (e) any Employer,

as the Trustee in its absolute discretion determines and, if provided to or for two or more persons, in such proportions as the Trustee in its absolute discretion determines, subject, in the case of clause 52.5(a) and 52.5(d), to clause 52.3.

#### **52.6 Form of Payment**

Subject to clause 52.7, the payments to be provided under clauses 52.3 and 52.5 may be made in cash, Policies, participation in any other Approved Benefits Arrangement or otherwise as determined by the Trustee, but shall not be payable to or for the benefit of a Member unless and until he ceases to be in the employment of the Employer other than for personal maintenance and support in case of hardship.

#### **52.7 Payment to other Persons**

If any payment of Benefits provided under clauses 52.3 and 52.5 is otherwise required by the Superannuation Law to be deferred until the attainment of a particular age or the occurrence of a specified event, then the Member shall not be entitled to receive from the Fund any part of the Benefit which is required to be so deferred and the Trustee shall make any of the following arrangements with respect to the Benefits required to be deferred:

- (a) transfer the Benefit to another Complying Superannuation Fund if that Fund does not permit the payment of the Benefit prior to the attainment of the particular age or the specified event;
- (b) purchase an Annuity with the Benefits commencing no earlier than the particular age or specified event or which otherwise satisfies the Superannuation Law;
- (c) transfer the Benefits to an Approved Deposit Fund if that Fund does not permit the payment of the Benefit prior to the attainment of the particular age or the specified event; or
- (d) purchase a non-commutable Pension payable for life in the name of the Member but only if the Member has permanently retired from the employment.

## Part 14 - Deed Amendment

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### **53 Amendment of Deed**

#### **53.1 Method of Amendment**

- (a) Subject to clause 53.1(b) and 53.1(c) and the Superannuation Law, the Trustee may at any time by resolution or by instrument in writing amend, alter, vary, modify or delete with immediate, prospective or, to such extent as the law allows, retrospective effect from time to time any or all of the provisions of the Deed.
- (b) No reduction of the accrued Benefit of a Member shall be made without their consent in writing.
- (c) No amendment may be made pursuant to clause 53.1(a) which would cause the trusts contained in the Deed to fail by reason of the application of the rule against perpetuities.
- (d) No amendment may be made pursuant to clause 53.1(a) that would allow a person other than a Constitutional Corporation to be eligible to be appointed as a Trustee unless the governing rules provide and will continue to provide after the amendment that the Fund has as its sole or primary purpose, the provision of old-age pensions.

#### **53.2 Notification of Members of Amendment**

As soon as practicable after the Deed has been amended pursuant to clause 53.1, the Trustee shall give to each Member a written statement explaining the nature and purpose of the amendment and the effect (if any) of the amendment on the entitlement of the Member.

**EXECUTED** as a deed.

# Graeme Pollard Staff Superannuation Fund

## Schedule 1

**Date of Deed:** The ~~x~~ *7<sup>th</sup>* day of ~~x~~ *August* 2008

**Name of Fund:** Graeme Pollard Staff Superannuation Fund

**Trustees:** Jopol Pty Ltd ACN 001 301 006 of 61 Conway Street, Lismore, New South Wales

**Date of Establishment:** The 10th day of June 1981