

Self Managed Superannuation Fund

Trust Deed





Dack Superannuation Fund

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Ref: 046349

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THIS TRUST DEED is made on the Date of this Deed specified in the Schedule.

PARTIES:

1. The person named as the Founder in the Schedule ("the Founder")
2. The person named as the Trustee in the Schedule ("the Trustee")

RECITALS:

- A. This Deed contains the governing rules of an indefinitely continuing superannuation fund ("the Fund") known by the name specified in the Schedule.
- B. This Deed requires that:
 - (i) the Fund have the sole or primary purpose of providing Old-Age Pensions and may also have the ancillary purpose of providing other Benefits described in this Deed; **AND, OR IN THE ALTERNATIVE,**
 - (ii) the Fund have a Corporate Trustee as the Trustee of the Fund.
- C. The Founder has requested the Trustee to act as the Trustee of the Fund and the Trustee has consented to act as the Trustee of the Fund.
- D. This Deed reflects the intention of the Founder and the Trustee that the Fund operate as an Australian complying regulated self managed superannuation fund and comply with the Act in order that the Fund is eligible for Concessional Taxation Treatment.

THIS DEED WITNESSES:

1. **DEFINITIONS**

1.1 **Defined Terms in this Deed**

In this Deed, unless the context otherwise requires:

"Account" means any account established and maintained by the Trustee under this Deed for administering the Fund on behalf of the Members, and includes any Accumulation Account, Equalisation Account, Income Account, or Pension Account, as described in this Deed.

"Account-Based Pension" means a pension that meets the definition, description and standards of an account-based pension under the SIS Regulations, and specifically Regulations 1.03(1) and 1.06(9A).

"Australian complying regulated self managed superannuation fund" means a trust or fund that is a:

- (a) superannuation fund within the meaning of section 10 of the SIS Act;
- (b) regulated superannuation fund within the meaning of section 19 of the SIS Act;
- (c) self managed superannuation fund within the meaning of section 17A of the SIS Act;
- (d) complying superannuation fund within the meaning of section 45 of the SIS Act; and
- (e) Australian superannuation fund within the meaning given by section 295-95 of the Tax Act.

"Balance Date" means 30 June in each year or any other date that the Trustee determines to be the balance date of the Fund for accounting purposes in any year.

"Beneficiary" means a Member or Dependant or any other person who is entitled to be paid a Benefit from the Fund.

"Beneficiary Nomination" means a Three Year Binding Nomination; a Non-lapsing Binding Nomination; a Beneficiary Statement of Wishes; or any other form of written nomination given by a Member to the Trustee stating how the Member directs or wishes the Trustee to pay all or part of a Benefit in respect of the Member on the death of the Member.

"Beneficiary Statement of Wishes" means any written nomination howsoever called given by a Member to the Trustee stating how the Member wishes the Trustee to pay all or part of a Benefit in respect of the Member on the death of the Member.

"Benefit" means any amount which is, or may become payable, by the Trustee to a Beneficiary as a benefit from the Fund under this Deed, subject to the Trustee being satisfied of the Beneficiary's entitlement to receive the Benefit under the Act, and includes a Retirement Benefit, Preservation Age Benefit, Death Benefit, Permanent Incapacity Benefit, Temporary Incapacity Benefit, and Benefit payable on account of a Member (who is a temporary resident) permanently departing Australia or suffering severe financial hardship or compassionate grounds, as described in this Deed, or any other benefit that the Act permits to be paid from the Fund.

"Child Contribution" means a payment to the Fund made as a contribution on behalf of a Member by a parent, grandparent or other relative of that Member, and permitted by the Act.

"Co-contribution Act" means the Superannuation (Government Co-contribution for Low Income Earners) Act 2003.

"Commencement Date" means the date of commencement of the Fund specified in the Schedule.

"Directors" means the directors of any Corporate Trustee or of any Employer, as the case requires, and **"Director"** means one of them.

"Eligible Person" means any individual who is:

- (a) Gainfully Employed;
- (b) a spouse, child, grandchild or relative of a Member; or
- (c) permitted to be a member of an Australian complying regulated self managed superannuation fund or to have Contributions made on behalf of that person without contravening the Act.

"Employee" means a person who is an employee within the meaning of section 12 of the SGA Act.

"Employer" means any employer or its associates as defined in the Tax Act who is admitted by the Trustee to participate as an employer-sponsor of the Fund or from whom the Trustee accepts an Employer Contribution, and includes an Employer specified in the Schedule.

"Employer Contribution" means a gross payment to the Fund made as an employer contribution on behalf of a Member by the Member's Employer.

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

"Financial Year" means a period of twelve months ending on the Balance Date.

"Fixed Term Pension" means a pension payable for a fixed term based on the life expectancy of the primary Pensioner or his or her Spouse that meets the standards prescribed by the SIS Regulations, and specifically Regulations 1.06(7) and 1.07B.

"Flexi Pension" means a pension (also known as a "commutable lifetime pension") that meets the standards prescribed by the SIS Regulations, and specifically Regulations 1.06(6) and 1.07B.

"Founder" means the party named as the Founder in this Deed or any person who subsequently assumes the role of Founder under this Deed.

"Gainfully Employed" means in respect of a person, employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment, and includes:

- (a) a person who is an Employee;
- (b) if the person has reached age 65, the person has been so employed or self-employed on at least a part time basis during the Financial Year, by having worked at least 40 hours in a period of not more than 30 consecutive days in that Financial Year; or
- (c) any other meaning of "Gainfully Employed" under the Act.

"Non-commutable Pension" means a non-commutable pension (including pensions known as a "Non-commutable Market-Linked Pension" or a "Non-commutable Term Allocated Pension") as defined in, and that meets the standards prescribed by, the SIS Regulations, and specifically Regulation 6.01(2).

"Non-concessional Contributions Cap" has the meaning given by section 292-85 of the Income Tax Act.

"Non-lapsing Binding Nomination" means a written nomination howsoever called given by a Member to the Trustee directing how the Trustee is to pay all or part of a Benefit in respect of the Member on the death of the Member, and which:

- (a) expressly indicates that the nomination does not lapse, expire or terminate merely by expiration of time; or
- (b) does not indicate that the nomination will lapse, expire or terminate automatically on a specified date or upon expiration of a specified period from the date of the nomination.

"Old-Age Pension" means an old-age pension as defined by the Act and paragraph 51(xxiii) of the Constitution of the Commonwealth of Australia.

"Pension" means a Benefit that is provided by the Fund as a pension or superannuation income stream in accordance with the Act, and payable by instalments out of a Pension Account maintained for and on behalf of a Pensioner, and includes an Old-Age Pension, an Account-Based Pension, an Allocated Pension, a Lifetime Pension, a Fixed Term Pension, a Flexi Pension, a Market-Linked Pension, a Non-commutable Allocated Pension, Non-commutable Pension and Non-commutable Income Stream, or Transition to Retirement Income Stream, as described in this Deed or any other pension or superannuation income stream as described in or defined by the Act.

"Pensioner" means a Member who is in receipt of a Pension.

"Permanent Incapacity" in relation to a Member:

- (a) who has ceased to be Gainfully Employed, 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 Gainful Employment for which the Member is reasonably qualified by education, training or experience; or
- (b) if there is any applicable Policy of Insurance, has the meaning assigned to the term "Permanent Incapacity" (or the term "Total and Permanent Disability" or any other equivalent term) in that Policy of Insurance that insures the Member for that contingency; or
- (c) means permanent incapacity as defined in the Act;

and **"Permanently Incapacitated"** has a corresponding meaning.

"Spouse Contribution" means a gross payment made to the Fund as an eligible spouse contribution on behalf of a Member by a Spouse of that Member as permitted by the Act.

"SSA Act" means the Small Superannuation Accounts Act 1995 (Cth).

"Superannuation Lump Sum" means a Benefit that is not a superannuation income stream benefit that is paid from a superannuation income stream within the meaning of the Tax Act.

"Taxation" means any tax, surcharge, levy, impost or duty, that is paid or payable by, or allowable taxation deduction to, the Trustee on behalf of the Fund or any Member or any Beneficiary in respect of any Benefit, or any person in respect of any Contribution, including income tax, capital gains tax, payroll tax, land tax, goods and services tax and stamp duty.

"Temporary Incapacity" in relation to a Member:

- (a) who has ceased to be Gainfully Employed (including a Member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the Member to be Gainfully Employed), means ill-health (whether physical or mental), that caused the Member to cease to be Gainfully Employed but does not constitute Permanent Incapacity; or
- (b) if there is any applicable Policy of Insurance, has the meaning assigned to the term "Temporary Incapacity" (or the term "Temporary Disability" or any other equivalent term) in that Policy of Insurance that insures the Member for that contingency; or
- (c) means temporary incapacity as defined in the Act;

and **"Temporarily Incapacitated"** has a corresponding meaning.

"Three Year Binding Nomination" means any written nomination howsoever called given by a Member to the Trustee directing how the Trustee is to pay all or part of a Benefit in respect of the Member on the death of the Member, and which expressly indicates that the nomination will lapse, expire, or terminate automatically on a date or upon expiration of a period which is three years from the date of the nomination, unless and until the nomination is earlier revoked by the Member.

"Transition to Retirement Income Stream" means a pension that meets the definition, description and standards of a transition to retirement income stream under the SIS Regulations, and specifically Regulations 1.06(9A) and 6.01(2).

"Trustee" means the party named as the Trustee in this Deed or any person who subsequently assumes the role of the trustee of the Fund under this Deed.

"Trustee Act" means the Trustee Act 1958 (Vic) or the equivalent legislation of any other State or Territory of Australia relating to trustees and which is applicable to the Trustee.

"Unclaimed Money Act" means the Superannuation (Unclaimed Money and Lost Members) Act 1999 (Cth).

3. **FUND IS SUBJECT TO REQUIREMENTS OF THE ACT**

3.1 **Deemed Inclusion of Relevant Act Provisions**

This Deed must be read and construed as if all relevant requirements of the Act (including any relevant standards prescribed in the Act) with which the Fund or the Trustee must comply in order for the Fund:

- (a) to obtain and maintain the status of an Australian complying regulated self managed superannuation fund; and
- (b) to qualify for Concessional Taxation Treatment or any other relevant benefit or concession; and
- (c) to ensure that neither the Fund nor the Trustee becomes liable for any penalty or obligation for which they would not otherwise be liable;

are deemed to be included in this Deed.

3.2 **Trustee must Comply with Act**

To the extent that any relevant requirements of the Act impose obligations upon the Trustee in carrying out the role of Trustee of the Fund, the Trustee must comply with those obligations. Without limitation to foregoing, in relation to the Trustee's exercise of its powers, discretions, authority and obligations relevant to the management, administration and control of the Fund under this Deed:

- (a) the Trustee may do anything that it is permitted to do or not restricted from doing under the Act;
- (b) the Trustee must do everything that it is required to do under the Act in order to satisfy a relevant requirement of the Act; and
- (c) the Trustee must refrain from doing anything that it is prohibited from doing under the Act, or which would cause a breach of, or non-compliance with, a relevant requirement of the Act.

3.3 **Inconsistency between Deed and Act**

If there is any inconsistency between a provision of this Deed and a relevant requirement of the Act, the latter will prevail over the former to the extent of that inconsistency.

4. **GOVERNING LAW**

This Deed is governed by the laws of the State or Territory of Australia in which this Deed is executed and all interested persons accept the jurisdiction of the Courts of that State or Territory.

7.3 **No Amendment to Change Purpose**

Notwithstanding any other provision in this Deed to the contrary, the Trustee must not make or allow to be made any amendment to this Deed which would have the effect, whether expressly or by implication, that the Fund no longer has or will not continue to have:

- (a) the sole or primary purpose of providing Old-Age Pensions; **AND, OR IN THE ALTERNATIVE,**
- (b) a Corporate Trustee.

7.4 **Fund to be "Australian Complying Regulated Self Managed Superannuation Fund"**

- (a) The Trustee and Founder intend that the Fund will maintain, and operate in a manner that satisfies, each of the elements of an Australian complying regulated self managed superannuation fund as defined in this Deed.
- (b) The Trustee must procure and ensure that any relevant requirements of the Act for an Australian complying regulated self managed superannuation fund are satisfied and complied with, including any requirement as to:
 - (i) the composition or structure of the Trustee, the Members or the relationship between them;
 - (ii) the acceptance of Contributions by or on behalf of Members; and
 - (iii) the ordinary location of the management and control of the Fund.

7.5 **Tax File Number, Australian Business Number and Goods & Services Tax**

If required by the Act, the Trustee must as soon as practicable after the Commencement Date (and within any prescribed period required by the Act) make application on behalf of the Fund to the relevant Responsible Authority:

- (a) for a Taxation File Number (TFN);
- (b) for an Australian Business Number (ABN); and
- (c) if applicable, for registration for Goods & Services Tax (GST).

- (e) upon that person committing an act of bankruptcy or being declared a bankrupt or entering into any arrangement or composition with that person's creditors or becoming an insolvent under administration under or pursuant to the Bankruptcy Act 1966 (Cth) or any other law of the Commonwealth of Australia relating to insolvency;
- (f) upon that person being convicted of a criminal offence in respect of dishonest conduct; or
- (g) where a civil penalty order as defined by the Act is made in relation to the person.

8.5 **Cessation from Office of Corporate Trustee**

A company ceases to hold the office of a Corporate Trustee:

- (a) upon the resignation of the company as Corporate Trustee by notice in writing given to the Founder;
- (b) upon the removal of that company as Corporate Trustee under clause 8.3 by notice in writing given to the company;
- (c) upon the company being disqualified from holding office as Corporate Trustee within the meaning of the Act;
- (d) upon the appointment of a receiver, receiver and manager, official manager, administrator, agent for a mortgagee, provisional liquidator or liquidator in respect of its property or the approval by a court of a scheme of arrangement providing for its dissolution, or it entering into any other form of insolvency administration; or
- (e) where a Responsible Officer of the company has been disqualified from holding office pursuant to clause 8.4 or pursuant to any requirement of the Act at all times during the immediately preceding period of 28 days.

8.6 **Trustee may be a Member**

An Individual Trustee or Responsible Officer of a Corporate Trustee is not disqualified from also being a Member or from exercising rights or deriving any Benefit as a Member.

8.7 **Consent to Appointment**

A person must not be appointed as a Individual Trustee or Director of a Corporate Trustee unless the person has consented in writing to the appointment.

8.11 **Legal Personal Representative with Enduring Power of Attorney**

If a person is a Legal Personal Representative of a Member because the person holds an enduring power of attorney granted by the Member, then that person may act as an Individual Trustee or Director of a Corporate Trustee in place of that Member during the period that the person holds the enduring power of attorney granted by the Member.

9. **PROCEEDINGS OF TRUSTEE**

9.1 **Meetings**

- (a) The Trustee may meet, adjourn and regulate its meetings as the Trustee sees fit.
- (b) In the case of a Corporate Trustee, if the terms of its Constitution are inconsistent with the terms of this Deed, the terms of this Deed will prevail to the extent of the inconsistency.
- (c) Without limiting the foregoing, any Individual Trustee or Director of a Corporate Trustee may call a meeting by giving at least 14 days notice in writing to each other Individual Trustee or Director of a Corporate Trustee specifying:
 - (i) the date, time and place for the meeting;
 - (ii) the agenda and proposed resolutions for the meeting.

9.2 **Quorum for Meeting of Trustee**

- (a) A meeting of the Trustee must only exercise any powers or discretions exercisable by the Trustee under this Deed if a Quorum is present.
- (b) The Quorum is the number of persons representing at least 66% in number of:
 - (i) in the case of a Corporate Trustee, the total number of Directors of the Corporate Trustee; and
 - (ii) in the case of Individual Trustees, the total number of Individual Trustees.

9.7 Chairperson's Duty

The Chairperson may act as Chairperson of each meeting of the Trustee at which the Chairperson is present. If the Chairperson is not present in person at a meeting or if at the time of a meeting there is no Chairperson a person shall be appointed by a resolution of the Trustee to act as Chairperson of that meeting.

9.8 Voting Entitlement

- (a) Each person holding office as an Individual Trustee or as a Director of a Corporate Trustee has one vote on any question.
- (b) The Chairperson does not have a casting vote on any question.
- (c) The Founder may direct, either prior to or immediately following the vote on any question, that the vote be cast or recast, as the case may be, with each person having a number of votes corresponding to the withdrawal benefit amount of that person's Benefit in the Fund.
- (d) If a resolution concerns the exercise of discretion by the Trustee concerning the payment of a Death Benefit following the death of a Member and where the Member has not left a Beneficiary Nomination or has left a Beneficiary Nomination which is not valid, either:
 - (i) the resolution requires a unanimous decision of all Individual Trustees or Directors of a Corporate Trustee including the Legal Personal Representative representing the deceased Member; or
 - (ii) in the absence of a unanimous decision of all Individual Trustees or Directors of a Corporate Trustee including the Legal Personal Representative of the deceased Member, the resolution of the Trustee shall be to pay the Death Benefit to the Legal Personal Representative of the deceased Member.

9.9 Minutes of Meeting

- (a) The Trustee must keep or cause to be kept proper minutes of meetings of the Trustee which are entered in a book maintained for that purpose.
- (b) The Trustee must endeavour to ensure that all minutes of meetings of the Trustee:
 - (i) are dated;
 - (ii) are sufficiently detailed and accurate to record the nature of business discussed, the decisions of the Trustee and the reasons for those decisions;
 - (iii) identify any documents that have been presented to the Trustee and considered by the Trustee before the making of any decision; and

10. TRUSTEE'S DISCRETION

10.1 No Requirement to Give Reasons

The Trustee is not bound to give to any person any reason for or explanation of the Trustee's exercise, non-exercise or partial exercise of any power or discretion by the Trustee.

10.2 Unfettered Discretion

The Trustee has an absolute and unfettered discretion and is not bound to act subject to the direction of any other person (unless otherwise expressly required by the Act) in the exercise or non-exercise or partial exercise of any power or discretion by the Trustee.

10.3 Trustee's Decision Final

The decision of the Trustee in relation to any dispute on the interpretation of this Deed or the rights or obligations of a Member or the Trustee or any other person under this Deed will be final and binding on all interested persons.

10.4 Exercise of Discretion by Person Other than Trustee

Unless permitted by the Act, a discretion given to the Trustee must not be exercised by the Founder or any other person without the consent of the Trustee.

11. PROTECTION AND INDEMNITY OF THE TRUSTEE

11.1 Limitation of Liability - General

Subject to clause 11.2, the Trustee will not personally be liable for any claim, liability, cost, loss, damage or expense incurred by or arising out of any act or omission in connection with this Deed or the Fund or the exercise or performance of the Trustee's powers, discretions and duties.

11.2 Liability for Certain Conduct

Clause 11.1 does not exempt the Trustee from, and the Trustee will be liable for, any claim, liability, cost, loss, damage or expense which is a direct result of an act or omission by the Trustee involving:

- (a) the Trustee failing to act honestly in any matter concerning the Fund;
- (b) the Trustee intentionally or recklessly failing to exercise, in relation to any matter affecting the Fund, the degree of care and diligence that the Trustee was required to exercise; or
- (c) the Trustee incurring liability for a monetary penalty under a civil penalty order.

- (f) to formulate and give effect to an Investment Strategy that has regard to the whole of the circumstances of the Fund including, but not limited to, the following:
 - (i) the risk involved in making, holding, and realising, and the likely return from, the Fund's investments having regard to its objectives and its expected cash flow requirements;
 - (ii) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
 - (iii) the liquidity of the Fund's investments having regard to its expected cash flow requirements;
 - (iv) the ability of the Fund to discharge its existing and prospective liabilities;
- (g) if there are any monies in the Equalisation Account of the Fund - to formulate and to give effect to a strategy for their prudential management, consistent with the Fund's Investment Strategy and the Fund's capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- (h) to allow a Beneficiary access to any information or any documents which are prescribed by the Act; and
- (i) to comply with any other covenant that is prescribed by the Act.

13. **COVENANTS BY DIRECTORS OF A CORPORATE TRUSTEE**

- (a) If the Fund has a Corporate Trustee, each of its Directors covenant to exercise a reasonable degree of care and diligence for the purpose of ensuring that the Trustee carries out the covenants described in clause 12.
- (b) On the basis that the Directors have participated in the passing of a resolution authorising the Trustee to execute this Deed, this clause shall be deemed to operate as if the Directors were parties to this Deed.
- (c) The reference in this clause to a reasonable degree of care and diligence refers to the degree of care and diligence that a reasonable person in the position of a Director of the Trustee would exercise in the Trustee's circumstances.

14. **RECORDS OF CHANGES OF TRUSTEE / REPORTS TO MEMBERS**

14.1 **Changes of Trustee and Consents**

The Trustee must keep, and retain for at least the minimum period required by the Act, up to date records of all changes of the Trustee, and changes of any Directors of any Corporate Trustee, of the Fund and of all consents given by the Individual Trustees or the Directors, as the case may be.

15.5 Members Bound by Deed

Every Member is deemed to have consented to be bound by this Deed as it relates to the rights and obligations of the Member.

15.6 Trustee to Notify Members of their Rights

The Trustee must notify each Member in writing of that Member's rights to receive Benefits from the Fund and of any other information in the form and at the times required by the Act.

15.7 Trustee may Impose Conditions on Members

The Trustee may impose, remove or vary any conditions on the rights and obligations of a Member.

15.8 Classification of Different Classes of Members

- (a) The Trustee may classify Members into different classes of membership with rights and entitlements pertaining to each class as the Trustee may determine from time to time.
- (b) The Trustee must advise a Member of any class of membership to which that Member belongs and of the rights and entitlements pertaining to that class and of any subsequent change to that class or rights.
- (c) If the Trustee does not create different classes of membership, then all Members will be classified as ordinary Members in one class of membership.

16. MEETINGS OF MEMBERS**16.1 Members may Convene Meeting**

The Members may convene, meet, adjourn and regulate a meeting of Members as the Members see fit.

16.2 Trustee Convening Meeting

The Trustee may convene a meeting of Members and must convene a meeting of Members upon receiving a written notice of request for a meeting from the Founder or a Member.

17. CESSATION OF MEMBERSHIP

17.1 Triggering Events

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

- (a) the date on which payment of all the Member's Benefits is made or dealt with by the Trustee to or on behalf of the Member;
- (b) the date of death of the Member;
- (c) the date that the Trustee reasonably determines in accordance with any relevant requirement of the Act.

17.2 Member's Rights not Affected

A Member's cessation of Membership will not affect or exclude:

- (a) any rights or obligations of that Member which accrued prior to the date of cessation; and
- (b) any rights or obligations of that Member as a former Member on and from the date of cessation.

18. MEMBERS PROVIDING INFORMATION TO TRUSTEE

18.1 Upon Request by Trustee

If requested by the Trustee, a Member must provide to the Trustee any information that the Trustee considers necessary or desirable for the purposes of any investigation or otherwise in connection with the Fund, including undergoing medical examination by a medical practitioner acceptable to the Trustee.

18.2 Member's Failure to Comply

If a Member fails to comply with the request by the Trustee, the Trustee may suspend the acceptance of any Contributions in respect of that Member or withhold any Benefits payable in respect of that Member or impose any other conditions on the membership of that Member as the Trustee considers necessary or appropriate, but subject to the requirements of the Act.

18.3 Information Incorrect or Misleading

If a Member provides information to the Trustee which affects or is likely to affect the Benefit payable to or in respect of the Member and the information supplied is incorrect or misleading or any relevant information is in the opinion of the Trustee deliberately withheld by the Member, the Trustee may alter or amend the Benefit of that Member in a manner that the Trustee considers necessary or appropriate, but subject to the requirements of the Act.

- (iii) making an informed judgment about the management and financial condition of the Fund;
 - (iv) making an informed judgment about the investment performance of the Fund; or
 - (v) understanding the particular investments of the Fund;
- (e) **Cessation of Membership**
- information to a Member, or if the Member has died, to each Beneficiary receiving a Benefit as a result of the death of the Member, in respect of the Member's cessation of membership; and
- (f) **Superannuation Splitting under Family Law Act**
- information in respect of any splitting of a Member's Benefit under the Family Law Act.

19.3 **Limitation on Disclosure**

Unless required by the Act, the Trustee is not required to disclose:

- (a) internal working documents of the Fund; or
- (b) information or documents that would disclose personal information of another person if, in the circumstances, the disclosure would be inappropriate or unreasonable; or
- (c) trade secrets or confidential information having commercial value that would be reduced by the disclosure; or
- (d) information or documents for which the Fund owes another person a duty of non-disclosure.

19.4 **What, When and How Information is Provided**

The Trustee must comply with the Act in relation to any information that is required to be disclosed as to:

- (a) what information is provided;
- (b) when the information is provided; and
- (c) how the information is provided.

19.5 **Product Disclosure Statements – Information Knowledge of Members**

The Trustee may assume that a Member has received, or has, and knows that they have, access to, all of the information that a product disclosure statement would be required to contain, unless the Member is able to satisfy the Trustee on reasonable grounds to the contrary.

21.3 Compound Debts

To compound and allow time for payment or satisfaction of any debt due to the Fund and of any claim or demand by or against the Fund;

21.4 Arbitration

To refer any claim or demand by or against the Trustee to arbitration and observe and perform the award of the arbitrator;

21.5 Receipts and Discharges

To make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;

21.6 Bank Accounts

To open and maintain bank accounts for the Fund and to make regulations for the operation of such bank accounts including the signing and endorsing of cheques;

21.7 Seek Advice

To act on the advice of any Qualified Advisor (whether or not that advice was obtained by the Trustee) in relation to any matter concerning the Fund without being liable to any person in respect of anything done or omitted to be done by the Trustee in good faith based on that advice;

21.8 Borrow Money, Give Indemnity and Security

To give undertakings and indemnities, enter into contracts and incur obligations relating to the Fund as the Trustee thinks fit, including but without limitation, borrowing money, giving a guarantee or indemnity in respect of any obligation assumed or undertaken by the Trustee in connection with the Fund and to secure such obligation by charge or mortgage or any other form of encumbrance over all or part of the Fund;

21.9 Receive Distributions, Dividends and Gifts

To receive any distribution (from a family trust or otherwise), dividend or gift which is tendered to the Fund.

21.10 Maintain Property

To repair, paint, alter, rebuild, improve and generally maintain any property real or personal and whether freehold or leasehold for the time being comprising part of the Fund;

21.11 To Pay Rates and Taxes

To pay all rates taxes costs charges insurance premiums expenses and outgoings of whatever nature payable in connection with the maintenance upkeep and management of the property comprising the Fund;

22. INVESTMENT OF THE FUND

22.1 General Investment Powers of the Trustee

Subject to clause 23, the Trustee may in the name of the Trustee or in the name of any nominee selected by the Trustee invest the whole or any part of the Fund in any investment or manner of investment (whether in Australia or elsewhere or whether involving liability or not) which the Trustee considers to be a suitable investment or manner of investment for the Fund and which complies with the Investment Strategy and the Act.

22.2 Specific Investment Powers of the Trustee

The Trustee may invest the Fund in any one or more of the following:

- (a) **authorised Trustee investments:** any investment from time to time authorised by the laws of the Commonwealth of Australia or any State or Territory of Australia for the investment of trust monies;
- (b) **on deposit:** on deposit with any bank, building society, credit co-operative, trustee company or other registered financial institution or with any other person approved by the Responsible Authority or any Employer in any type of account either with or without security at such rate of interest and on such terms as the Trustee may determine;
- (c) **acquisition of securities:** in the acquisition by subscription or by purchase or otherwise of fully or partly paid shares, stock, options, debentures, bonds, notes or other securities or obligations howsoever called in any company (including any Employer);
- (d) **acquisition of units:** in the acquisition of units, sub-units or other fractional interests howsoever called whether divided or undivided in or of any unit trust (whether fixed or flexible) or other scheme in the nature of a unit trust;
- (e) **acquisition of property:** in the acquisition of any property (whether real or personal) or any interest in property whether or not such property or interest in property is subject to any mortgage, charge or other encumbrance or is acquired or purchased for profit or is producing income at the date it is acquired or purchased;
- (f) **acquisition of mortgages:** in the acquisition of mortgages over freehold or leasehold property either by direct loan or by purchase at a discount or otherwise; or
- (g) **derivative transactions:** in derivative transactions but subject to clause 23.8.

22.3 Dealing with Investments as Beneficial Owner

The Trustee may deal with any investment of the Fund as authorised by this Deed as fully and effectively as a person absolutely and beneficially entitled to and dealing with his own property may do so.

22.6 Prudent Investment Rules

Subject to clause 23, and without limiting the matters that the Trustee may take into account when exercising a power of investment, the Trustee must, so far as they are appropriate to the circumstances of the Fund, have regard to:

- (a) the purposes of the Fund and the needs and circumstances of the Beneficiaries;
- (b) the desirability of diversifying the Fund's investments;
- (c) the nature of and risk associated with the existing investments and property of the Fund;
- (d) the need to maintain the real value of the capital or income of the Fund;
- (e) the risk capital or income loss or depreciation;
- (f) the potential for capital appreciation;
- (g) the likely income return and timing of income return;
- (h) the length of the term of the proposed investment;
- (i) the probable duration of the Fund;
- (j) the liquidity and marketability of the proposed investment during, and on the determination of the term of the proposed investment;
- (k) the aggregate value of the Fund;
- (l) the effect of the proposed investment in relation to the tax liability of the Fund;
- (m) the likelihood of inflation affecting the value of the proposed investment or other property of the Fund;
- (n) the costs (including commissions, fees, charges and duties payable) of making the proposed investment; and
- (o) the results of a review of existing trust investments.

23. COMPLIANCE WITH THE ACT - INVESTMENTS

23.1 General Requirement

The Fund may only be invested in a manner and form which will not cause the Fund or the Trustee to be in breach of any relevant requirement of the Act.

- (a) The Trustee must give directions to the Members (or each Member of the class of Members):
 - (i) identifying the investment objectives of each of the Investment Strategies;
 - (ii) providing all information which the Trustee reasonably believes a person would reasonably need for the purpose of understanding the objectives, effect of, and any risk involved in, each of those Investment Strategies, as if each Investment Strategy offered was the Investment Strategy for the Fund as a whole;
 - (iii) providing full information of the range of directions that can be given by the Trustee and the circumstances in which they can be changed;
 - (iv) identifying the particular Investment Strategy the Trustee will adopt for a Member (or each Member of a class of Members) if no choice is made by the Member (or each Member of the class of Members), unless it is a condition of membership that the Member must choose a particular Investment Strategy or combination of Investment Strategies.
- (b) If determining two or more individual Investment Strategies to offer as a choice to Members, the Trustee must give proper consideration to:
 - (i) all matters contained in the Trustee's covenant in clause 12(f); and
 - (ii) the circumstances of the Fund as a whole in making the Member Investment Choice available as part of the Fund's Investment Strategy; and
 - (iii) a continued and regular monitoring of changes in circumstances of the Fund as a whole to assess whether it remains appropriate.
- (c) If the Trustee offers Member Investment Choice, the Trustee must if required by the Act advise the Responsible Authority of the number of Investment Strategies which are offered as choices.
- (d) The Trustee may cease to offer or make any variation to the offering of Member Investment Choice. If so, the Trustee must:
 - (i) give Members the opportunity to provide further directions to the Trustee; and
 - (ii) advise Members of the default Investment Strategy that will be adopted unless the Member instructs otherwise.

26. DELEGATION BY TRUSTEE

26.1 Trustee's Right to Delegate

Subject to clause 26.3, the Trustee may delegate any power, discretion or obligation exercisable by the Trustee (including any power or obligation which the Trustee has a duty to exercise and the power of delegation) to any person ("the Delegate") in a manner and on terms that the Trustee thinks fit.

26.2 Variation or Revocation to Delegation

The Trustee may vary or revoke any delegation and may exercise any power in conjunction with, or to the temporary or permanent exclusion of, the Delegate.

26.3 Delegation Subject to the Act

The Trustee must not make any delegation or allow any delegation to remain where the delegation contravenes the Act.

26.4 Scope of Delegation

The Delegate may only perform those duties and only has those powers that the Trustee expressly delegates to the Delegate.

27. APPOINTMENT OF ACTUARY, AUDITOR, CUSTODIAN, INVESTMENT MANAGERS AND QUALIFIED ADVISORS

27.1 Actuary

The Trustee must if necessary appoint an Actuary to provide actuarial advice from time to time.

27.2 Auditor

- (a) The Trustee must appoint in writing an Auditor to perform an audit of the Fund under the Act.
- (b) The Trustee must agree with the Auditor on the scope of the audit to be conducted which should include:
 - (i) the Auditor's reporting obligations under the Act;
 - (ii) verification of the Fund's assets, their legal title and their valuation; and
 - (iii) verification of Members' Benefits.

27.3 Custodian

The Trustee may appoint in writing a Custodian to carry out custodial services on behalf of the Fund subject to compliance with the Act.

28. REMUNERATION OF TRUSTEE AND REIMBURSEMENT FOR ADMINISTRATION EXPENSES

28.1 No Right to Charge Fees

For as long as the Fund is a self managed superannuation fund under section 17A of the SIS Act:

- (a) no Individual Trustee is entitled to charge or to receive professional fees or other remuneration from the Fund or any other person for any trustee duties or services performed by the Individual Trustee in that capacity in relation to the Fund;
- (b) no Corporate Trustee is entitled to charge or to receive professional fees or other remuneration from the Fund or any other person for any trustee duties or services performed by the Corporate Trustee in that capacity in relation to the Fund; and
- (c) no Director of the Corporate Trustee is entitled to charge or to receive professional fees or other remuneration from the Fund or any other person (including the Corporate Trustee) for any trustee duties or services performed by the Director in that capacity in relation to the Fund.

28.2 Indemnity and Reimbursement

The Trustee is entitled to be indemnified by and reimbursed from the Fund for and in respect of:

- (a) all costs, charges and expenses incurred or to be incurred in connection with the acquisition, registration, custody, disposal of or other dealings with the investments of the Fund;
- (b) all fees, wages and expenses of any Auditor, Actuary, Qualified Advisor, Investment Manager or Custodian from time to time engaged by the Trustee under this Deed;
- (c) all Taxation paid or payable by the Trustee in connection with the Fund and any Member on any account whatsoever;
- (d) all costs, charges and expenses incurred or to be incurred in relation to the preparation, maintenance and distribution of any accounting records, returns, reports or other documents in relation to the Fund; and
- (e) any other costs, charges and expenses incurred or to be incurred in relation to the management or administration of the Fund.

31. **AUDIT OF THE FUND**

31.1 **Audit to be Conducted each Financial Year**

If required by the Act, the accounting statements of the Fund prepared in respect of each Financial Year must be audited by an Auditor appointed by the Trustee.

31.2 **Auditor to be Given Access to Documents/Information**

The Trustee must give the Auditor access to any accounting records and accounting statements and other documents and information connected with the Fund as requested by the Auditor to enable the Auditor to complete the audit.

32. **ANNUAL RETURNS ETC TO RESPONSIBLE AUTHORITY**

The Trustee must in respect of each Financial Year and within the time required by the Act give to the Responsible Authority:

32.1 **Annual Return**

an annual return in a form prescribed by the Act;

32.2 **Trustee Certificate**

a trustee certificate in a form prescribed by the Act;

32.3 **Audit Certificate**

the audit certificate given to the Trustee by the Auditor; and

32.4 **Other Documents or Information**

any other documents or information which may be required by the Act, or are requested by the Responsible Authority, to be given to the Responsible Authority.

33. **COMPLAINTS PROCEDURE**

33.1 **If Required by the Act**

The Trustee must, if required by the Act, establish and maintain arrangements for complaints and enquiries by Members.

33.2 **Rights of Beneficiaries**

A Beneficiary has the right to make enquiries into, or complaints about, the operation or management of the Fund in relation to that Beneficiary.

33.3 **Trustee to Deal within 90 Days**

The Trustee must deal with any enquiries or complaints within 90 days after they were made.

35.3 **Debits to Accumulation Accounts**

The following amounts may be debited to the appropriate Accumulation Account of a Member:

- (a) any Benefit paid to a Member or a Beneficiary in respect of the Member;
- (b) any amount transferred or rolled over from the Fund in respect of the Member to another Approved Superannuation Entity;
- (c) the investment return (if negative) of the Member's Benefit as determined by the Trustee;
- (d) the costs of any Policy of Insurance or Annuity obtained in respect of the Member;
- (e) the proportion of any amount payable as Taxation in respect of Contributions to the Fund or income of the Fund credited to the Member's Accumulation Account or arising as a result of a Rollover Payment to or from another Approved Superannuation Entity as the Trustee may determine;
- (f) the proportion of any amount representing the reimbursement to the Trustee of costs, charges, or expenses incurred by the Trustee pursuant to this Deed as the Trustee may determine;
- (g) any amount payable to the Trustee in respect of the Trustee's indemnity contained in this Deed;
- (h) any amount transferred from an Accumulation Account to a Pension Account in respect of a Member; and
- (i) any other amounts as the Trustee may from time to time determine.

36. **INCOME ACCOUNT**

36.1 **Establishment**

The Trustee must establish and maintain an Income Account for the Fund as the Trustee sees fit.

36.2 **Credits**

The Income Account may be credited with the following:

- (a) all income, investment earnings and profits of the Fund in each Financial Year;
- (b) any credits arising out of any adjustment made by the Trustee pursuant to this Deed;
- (c) the proceeds of any Policy of Insurance if the Trustee determines that the proceeds should not be credited to a Member's Accumulation Account;

37.3 Investment Return on Equalisation Account

Any amount held in the Equalisation Account does not form part of any Accumulation Account or Pension Account and any investment return (positive or negative) derived by the Fund on the Equalisation Account shall be credited or debited to the Equalisation Account from the Income Account.

37.4 Purpose and Use includes Reserves

- (a) The Equalisation Account may be used by the Trustee for the purpose of:
 - (i) stabilising investment earnings of the Fund in accordance with the Fund's Investment Strategy; or
 - (ii) the benefit of any Member or Beneficiary or former Member or Beneficiary, including augmenting an Accumulation Account on any basis that does not breach the Act; or
 - (iii) for such other purposes that are not prohibited by this Deed or the Act as the Trustee may determine in its discretion.
- (b) The Trustee may create and operate separate Equalisation Accounts dealing with:
 - (i) investment reserves;
 - (ii) contribution reserves;
 - (iii) miscellaneous reserves;
 - (iv) pension reserves; or
 - (v) any other reserve that is permitted by the Act.

38. CALCULATION OF INVESTMENT RETURN AND EARNINGS

- (a) Following each Balance Date, the Trustee may determine the investment return and investment earnings of the Fund for that Financial Year.
- (b) Subject to the requirements of the Act, the Trustee must determine the investment return to be credited or debited to a Member's Benefit in a way that is fair and reasonable as between all the Members of the Fund and the various kinds of Benefit of each Member of the Fund.
- (c) At any point in time during a Financial Year the Trustee may calculate and determine as it sees fit in a way that is fair and reasonable as between all Members of the Fund the investment return and investment earnings of the Fund for the purpose of applying that investment return in calculating the withdrawal benefit of a Member at that time.

41. **INSOLVENCY OF TRUSTEE**

If a receiver, receiver and manager, official manager, liquidator, voluntary administrator or any other form of insolvency administrator ("the Administrator") is appointed to, or assumes control over all or part of the assets of the Trustee, then:

- (a) notwithstanding anything express or implied to the contrary in this Deed or in the instrument under which the Administrator has been appointed, all authorities, powers and discretions which are by this Deed vested in or exercisable by the Trustee will, for the duration of the appointment of the Administrator, be vested in and exercisable by the Members by resolution on behalf of that Trustee and not by the Administrator until such time as a new Trustee is appointed; and
- (b) the Administrator must do anything reasonably required by the Members to vest the control and assets of the Fund in the new Trustee appointed by the Members, and the Administrator must act in a manner that is fair and reasonable for the benefit of the Members of the Fund.

42. **MEMBER CONTRIBUTIONS**

The Trustee may accept any Member Contribution as long as the Contribution is permitted by the Act.

43. **EMPLOYER CONTRIBUTIONS**

43.1 **Employer may Contribute**

The Trustee may accept any Employer Contribution in respect of a Member as long as the Contribution is permitted by the Act.

43.2 **Contributions Pursuant to Agreement with Trustee**

If an Employer contributes to the Fund in respect of a Member under any agreement with the Trustee under which the Employer agrees, or is required, to pay Contributions to the Fund, the Employer must separately specify to the Trustee the amount of those Contributions under the Agreement and the amount of Contributions (if any) made pursuant to clause 43.1.

44. **OTHER CONTRIBUTIONS**

The Trustee may accept any other Contributions to the Fund made by or in respect of a Member, including any Child Contribution, Government Contribution, or Spouse Contribution as long as the Contribution is permitted by the Act.

- (ii) reduced to account for any reasonable administration costs and transaction costs that are reasonably related to the acceptance of the Excessive Contribution and do not exceed the true cost of an arm's length transaction.
- (c) If the Trustee has accepted an Excessive Contribution and, subject to paragraph (a), elects not to refund the Excessive Contribution, or the Trustee is prohibited by the Act from refunding the Excessive Contribution, to the Member, the Trustee:
 - (i) must, if required to do so by the Act; or
 - (ii) may, if permitted to do so or if not prohibited from doing so, under the Act;

use and release, in accordance with a release authority under the Tax Act given to the Trustee, so much of the Excessive Contribution from the Member's Accumulation Account balance as is necessary to pay the Fund's liability for the additional tax (including Medicare levy) that is payable in respect of the Excessive Contribution. The balance of the Excessive Contribution must remain in the Member's Accumulation Account in the Fund.

45.5 **Employer to remit Contributions Promptly**

All Contributions made on behalf of a Member (including by an Employer deducting an amount from the salary or wages payable to the Member) must be paid to the Trustee in the manner and within the timeframe required by the Act.

45.6 **Allocation of Contributions**

If required by the Act, all Contributions in respect of a Member received by the Trustee in a month must be allocated to that Member by crediting the Accumulation Account of the Member within 28 days after the end of the month, or if that is not reasonably practicable, within such longer period as is reasonable in the circumstances.

46. **CONTRIBUTION SPLITTING**

The Trustee may allow a Member to request the Trustee to split the Contributions made in respect of that Member:

- (a) after the end of each Financial Year, in respect of contributions for the previous Financial Year; and
- (b) in the Financial Year in respect of which the contributions are made where the Member is closing the Member's account in the Fund;

with the split amount transferred to the benefit of the Member's Spouse, as long as the contribution split is made in a manner and form that is permitted by the Act.

49.2 Amount

The Preservation Age Benefit will be the amount determined by the Trustee subject to the requirements of the Act but must not exceed the balance of the Member's Accumulation Account.

49.3 Manner of Payment - Lump Sum or Pension

Subject to the conditions of preservation and any other relevant requirements of the Act, the Member may elect to receive the Preservation Age Benefit as any one or more of the following forms (as they are defined in the Act):

- (a) a Transition to Retirement Income Stream;
- (b) a Non-commutable Allocated Annuity;
- (c) a Non-commutable Allocated Pension;
- (d) a Non-commutable Annuity; or
- (e) a Non-commutable Pension.

If the Member does not make the election, then the Benefit will be paid as a Transition to Retirement Income Stream.

50. DEATH BENEFITS

50.1 Entitlement

A Death Benefit is payable from the Fund in respect of a Member when the Member dies.

50.2 Amount

The Death Benefit is the aggregate of:

- (a) the balance of the Member's Accumulation Account as at the date upon which payment is made ("**Accumulation Account Balance**"); **plus**
- (b) if as a result of the Member's death, the Trustee receives the proceeds of any Policy of Insurance effected on behalf of the Member under this Deed ("**Insurance Proceeds**");
 - (i) subject to the requirements of the Act, a proportion expressed as a percentage (which percentage may be anything from 0% to 100% inclusive) of the Insurance Proceeds that the Trustee and the Member have agreed in writing prior to the death of a Member, will be included in the Death Benefit which becomes payable upon the death of that Member ("**Agreed Proportion**"); or

50.4 Beneficiary Nomination

- (a) The Trustee must allow a Member to make a Beneficiary Nomination in accordance with this Deed.
- (b) A Member who wishes to make a Beneficiary Nomination may request the Trustee to provide to the Member the information that the Trustee reasonably believes that the Member reasonably needs for the purpose of understanding the Member's rights to make a Beneficiary Nomination in accordance with this Deed, and the Trustee must comply with that request.
- (c) A Member who has given a Beneficiary Nomination to the Trustee may:
 - (i) amend or revoke the Beneficiary Nomination by giving to the Trustee a notice of amendment or revocation of that Beneficiary Nomination; or
 - (ii) replace the existing Beneficiary Nomination by giving to the Trustee a new Beneficiary Nomination made after the date of the existing Beneficiary Nomination.
- (d) Unless sooner revoked by the Member, a Three Year Binding Nomination given to the Trustee ceases to have effect at the end of the period of 3 years after the day it was first signed, or last confirmed or amended, by the Member.
- (e) If an item of information given by a Member in a Three Year Binding Nomination is not sufficiently clear to allow the Trustee to pay the Death Benefit in accordance with the Three Year Binding Nomination, the Trustee must seek from the Member a written statement to clarify the item as soon as practicable after the Trustee receives the Three Year Binding Nomination.
- (f) The Trustee is not responsible or liable to a Member or that Member's estate or any other person for any consequence arising from the Member's Beneficiary Nomination being invalid or ineffective due to the Beneficiary Nomination:
 - (i) having ceased to have effect; or
 - (ii) nominating a Nominated Beneficiary who at the time of the Member's death is not the Legal Personal Representative or a Dependant of the Member or otherwise not permitted under the Act to be the recipient of the Member's Death Benefit.

- (ii) any one or more of the Dependants of the deceased Member; or
- (iii) the Legal Personal Representatives of the deceased Member;

in such proportions between all or any of the above persons or categories of persons as the Trustee may determine in its discretion, but in so doing the Trustee may have regard to the wishes of the deceased Member as to the intended recipient of the Death Benefit evidenced by the Beneficiary Nomination.

52. **PERMANENT INCAPACITY BENEFITS**

52.1 **Entitlement**

A Member is entitled to receive from the Fund a Permanent Incapacity Benefit if the Member suffers Permanent Incapacity.

52.2 **Amount**

The Permanent Incapacity Benefit is:

- (a) the balance of the Member's Accumulation Account at the date upon which payment is made; and
- (b) the proceeds of any Policy of Insurance effected on behalf of the Member under this Deed that becomes payable upon the Member suffering Permanent Incapacity and is received by the Trustee; and
- (c) provided that, subject to the requirements of the Act, prior to the Permanent Incapacity of a Member, the Trustee and that Member may

agree in writing that the Permanent Incapacity Benefit which becomes payable upon the Permanent Incapacity of the Member is to be an amount other than the aggregate of the balance of the Member's Accumulation Account at the date upon which payment is made and the proceeds of any Policy of Insurance effected under this Deed on behalf of that Member and received by the Trustee ("the Other Amount"), and if so agreed, then the Permanent Incapacity Benefit payable by the Trustee upon the Permanent Incapacity of that Member must be the Other Amount.

52.3 **Manner of Payment - Lump Sum or Pension**

- (a) The Member may elect to receive the Permanent Incapacity Benefit as a lump sum or as a Pension or in the purchase of an Annuity or partly as one or more of those forms. If the Member does not make the election, then the Benefit will be paid as a Pension.
- (b) If a Member is incapable of making an election under this clause, the election may be made on behalf of the Member by the Member's legally appointed attorney or guardian.

54.2 **Amount and Manner of Payment**

Unless otherwise expressly provided in this Deed or required or prohibited by the Act, the amount of the Benefit and the manner in which it is paid to or in respect of the Member must be determined by the Trustee subject to the requirements of the Act but must not exceed the balance of the Member's Accumulation Account as advised to the Member by the Trustee.

54.3 **Temporary Residents Permanently Departing Australia**

If a Member was the holder of an eligible temporary resident visa within the meaning of the Act that has expired or that has been cancelled and the Member has departed from Australia, the Trustee must upon receiving a request from the Member and being satisfied of the foregoing pay that Member's Benefit to that Member as a single lump sum in a time and manner as permitted by the Act and after withholding or deducting any Taxation or other charges that the Trustee is required or entitled to withhold or deduct.

55. **BENEFITS PAYABLE AS A PENSION**

55.1 **Payment of Pension**

A Benefit that is payable as a Pension must be paid to the Pensioner as a Pension in accordance with this Deed but always subject to the requirements of the Act.

55.2 **Type of Agreed Pension and Pension Agreement**

- (a) The Trustee and the Pensioner may agree to any type, manner or form of Pension being provided to the Pensioner that suits the needs of the Pensioner, subject to the requirements of this Deed and the Act.
- (b) If the Trustee and the Pensioner agree on a particular type of Pension to be provided to the Pensioner (the "Agreed Pension"), the terms, conditions or governing rules of the Agreed Pension must be recorded and evidenced in writing, whether by formal written agreement, minutes or other document ("the Pension Agreement") including specifying any particular rules and requirements of the Act governing the Agreed Pension (the "Agreed Pension Rules") that must be included in the Pension Agreement.
- (c) Any Pension Agreement made under this clause must be read and construed in conjunction with and will be deemed to form part of this Deed as between the Trustee and the Pensioner but does not otherwise constitute an amendment to this Deed.

55.6 Conditions Applicable to All Pensions

The following conditions apply to the payment of any Pension from the Fund:

- (a) the Pension must be paid from the balance of the Pension Account of the Pensioner;
- (b) the payments of the Pension are made at least annually;
- (c) the Pension must not be able to be transferred to any person unless the Act permits; and
- (d) the capital value of the Pension and the income from the Pension must not be used as security for any borrowing unless the Act permits.

55.7 Variation to Pension Amount

The Trustee may vary the Pension from time to time as long as the variation:

- (a) complies with any relevant requirement of the Act;
- (b) is in accordance with any on-going actuarial advice that is required to be obtained or maintained; and/or
- (c) complies with any Pension Agreement for that Pension.

55.8 Limitation on Pension Amount

The total instalments of a Pension payable in respect of a Pensioner must not exceed the balance of the Pensioner's Pension Account at the relevant time.

55.9 Death of Pensioner

Subject to any Agreed Pension Rules made in a Pension Agreement under clause 55.2(b), if a Pensioner dies leaving an amount in credit in the Pension Account of the Pensioner:

- (a) if a Nominated Beneficiary has been nominated by the Pensioner, the Trustee must, unless otherwise requested to the contrary by the Nominated Beneficiary, pay to the Nominated Beneficiary the balance of the Pension Account (either as a Pension or commuted to a lump sum) provided that the amount does not exceed an amount calculated in accordance with the requirements of the Act; or
- (b) if no Nominated Beneficiary has been nominated, the balance of the Pension Account must be paid to any one or more of the Dependants of the Pensioner as the Trustee may determine and/or to the Legal Personal Representative of the Pensioner, subject to the requirements of the Act.

55.15 Lifetime Pension

If the Agreed Pension is a Lifetime Pension, then the following rules also apply to that Lifetime Pension:

- (a) the Agreed Pension Rules in the Pension Agreement that apply to that Lifetime Pension must specify all of the requirements of the minimum "pension standards" specified in the Act which must be met for the Agreed Pension to qualify as a Lifetime Pension; and
- (b) if necessary, the Trustee must obtain and act upon an actuarial certificate obtained from an Actuary as to the appropriate amount and manner of the payments of the Lifetime Pension after taking all relevant factors and assumptions into account, including the Pensioner's life expectancy, any Investment Strategy guidelines for that Lifetime Pension, the balance of the Pensioner's Pension Account, and any prudential requirements imposed on the Trustee by the Act in order that the Trustee can meet the requirements specified in paragraph (a) above.

55.16 Fixed Term Pension

If the Agreed Pension is a Fixed Term Pension, then the following rules also apply to that Fixed Term Pension:

- (a) the Agreed Pension Rules in the Pension Agreement that apply to that Fixed Term Pension must specify all of the requirements of the "minimum standards" specified in the Act which must be met for the Agreed Pension to qualify as a Fixed Term Pension;
- (b) if necessary, the Trustee must obtain and act upon an actuarial certificate obtained from an Actuary as to the appropriate amount and manner of the payments of the Fixed Term Pension after taking all relevant factors and assumptions into account, including the Pensioner's life expectancy, any Investment Strategy guidelines for that Fixed Term Pension, the balance of the Pensioner's Pension Account, and any prudential requirements imposed on the Trustee by the Act in order that the Trustee can meet the requirements specified in paragraph (a) above.

55.17 Market-Linked Pension

If the Agreed Pension is a Market-Linked Pension, then the Agreed Pension Rules in the Pension Agreement that apply to that Market-Linked Pension must specify all of the requirements of the "minimum standards" specified in the Act which must be met for the Agreed Pension to qualify as a Market-Linked Pension.

55.18 Non-commutable Allocated Pension

If the Agreed Pension is a Non-commutable Allocated Pension as defined in the Act, then the Agreed Pension Rules in the Pension Agreement that apply to that Non-commutable Allocated Pension must also specify all of the requirements of the "minimum standards" specified in the Act which must be met for the Agreed Pension to qualify as a Non-commutable Allocated Pension.

56.2 **Transfer of Policy of Insurance**

If a Benefit is payable to a Beneficiary and the Benefit includes any interest in a Policy of Insurance, the Trustee may in its absolute discretion and in lieu of surrendering the Policy of Insurance assign the Policy of Insurance to that Beneficiary. The value of the Policy of Insurance as at the date of assignment must be debited as a payment made to the Beneficiary in the relevant Accumulation Account or Pension Account. Neither the Trustee nor an Employer is responsible for payment of any further premiums which become payable under the Policy of Insurance on and from the date of assignment.

57. **RESTRICTIONS ON PAYMENT OR DEALINGS WITH BENEFITS**

57.1 **Compliance with the Act**

- (a) The Trustee must not pay or deal with any Benefit or other amount from the Fund to or in respect of any Beneficiary in any circumstances which would cause the Trustee or the Fund to be in breach of any relevant requirement of the Act.
- (b) The Trustee may pay or deal with any Benefit to or in respect of a Member if the Trustee's action is permitted under this Deed or under the Act in respect to a member of an Australian complying regulated self managed superannuation fund.

57.2 **Trustee Must Act**

The Trustee must do anything necessary that the Trustee sees fit including adjusting the amount or terms of payment of Benefits in order to comply with any relevant requirements of the Act.

58. **CONDITIONS FOR PAYMENT OF PRESERVED BENEFITS**

58.1 **Entitlement to Preserved Benefit**

A Beneficiary is only entitled to receive a Benefit comprising preserved benefits within the meaning of, and as permitted by, the Act.

58.2 **Unrestricted Non-Preserved Benefits**

The Trustee may pay to a Beneficiary at any time any part of a Member's Benefit comprising unrestricted non-preserved benefits within the meaning of, and as permitted by, the Act.

58.3 **Member may Request Transfer**

A Member may request the Trustee to transfer the preserved Benefit to another Approved Superannuation Entity selected by the Member and in which the Member is a participant or eligible to participate.

60.3 **Payment of Special Unpreserved Benefits**

If an interest which is transferred to the Fund from an Approved Superannuation Entity was not a preserved Benefit in the Approved Superannuation Entity, then subject to the compliance with the Act and any other conditions pertaining to the payment of that interest, that interest may be paid by the Trustee to the Beneficiary of that interest at the request of that Beneficiary.

60.4 **Member Subject to Fund**

A person whose interest in another Approved Superannuation Entity is transferred to the Fund under this clause becomes a Member and is subject to the rights and obligations of this Deed. If the Trustee so determines the Member becomes a Member of the Fund effective from the date on which the Member's interest was transferred to the Fund.

61. **TRANSFERS TO APPROVED SUPERANNUATION ENTITIES**

61.1 **Trustee may Transfer with Member's Consent or Request**

- (a) The Trustee may if requested by a Member, or if the Member consents subject to any conditions that the Trustee determines, transfer to any Approved Superannuation Entity in which the Member is or will be a participant or eligible to participate any Benefit of that Member as at the date of transfer ("the Transferred Amount").
- (b) If the Trustee requires further information in relation to the Member's request, the Trustee must within 10 working days after receiving the request, ask the Member for the information. If the Trustee has not received the information within 10 working days after making the request, the Trustee must make reasonable further inquiries of the Member to obtain the information.

61.2 **Trustee may Transfer without Member's Consent**

Subject to the requirements of the Act, the Trustee may, and where required by the Act must, without the Member's request or consent, transfer to any Approved Superannuation Entity in which the Member is or will be a participant or eligible to participate the Benefit of that Member as at the date of transfer ("the Transferred Amount").

61.3 **Receipt of Transferred Amount**

The receipt by the proper officer of the other Approved Superannuation Entity of the Transferred Amount will be a sufficient discharge to the Trustee. Neither the Trustee nor any Employer is responsible for the payment or disposal by the trustees of the other Approved Superannuation Entity of the Transferred Amount.

63.3 **Winding up of the Fund**

On and from the Termination Date:

- (a) no further Contributions may be made or accepted other than any arrears of Contributions due prior to the Termination Date;
- (b) the Trustee must call up and collect any arrears of Contributions;
- (c) the Trustee must pay out of the Fund any expenses incurred by or on behalf of the Fund;
- (d) the Trustee must distribute the balance of the Fund in a manner that the Trustee considers appropriate in accordance with the Deed until all Benefits which are or could become payable to Beneficiaries have been paid, applied or dealt with by the Trustee;
- (e) the Trustee must otherwise continue to administer the Fund in accordance with the Deed;
- (f) if a surplus in the Fund remains after the payment of all Benefits to Members or their Dependants, the Trustee must distribute the surplus to or for the benefit of any Members or former Members, any Dependants of those Members or former Members, or the Legal Personal Representatives of any such Members, former Members, or Dependants, as the Trustee determines in its discretion; and
- (g) the Trustee must take all other necessary steps, including lodging a final return with the Responsible Authority, to wind up the Fund in accordance with the requirements of the Act.

64. **DISSOLUTION OF THE FUND**

Upon the satisfactory winding up of the Fund by the Trustee pursuant to clause 63.3, the Fund will be deemed to be dissolved.

65. **AVAILABILITY OF DEED**

The Trustee must keep a copy of this Deed and make it available for inspection during normal business hours by any person who is, or was within the preceding 12 months, a Beneficiary.

66. **AMENDMENT OF DEED**

66.1 **Who may Amend**

The Trustee may and must at the request of the Founder at any time amend, add to, vary or rescind any of the provisions of this Deed (including this clause) ("the Amendment") subject to this clause and the compliance with the Act.

66.8 **Restriction on Amendments**

An Amendment must not be made to this Deed (including an Amendment to this clause) if it would have the effect or result that the Fund does not have or will not continue to have:

- (a) the sole or primary purpose of providing Old-Age Pensions as provided in this Deed; **AND OR IN THE ALTERNATIVE,**
- (b) a company as the Corporate Trustee of the Fund.

67. **REPLACEMENT OF THE FOUNDER**

67.1 **Founder may Replace**

- (a) The Founder may at any time by written instrument (including a will) resign from the position and/or appoint another person to hold the position of Founder (in place of or jointly with the current Founder).
- (b) Upon the death of a person holding office as Founder, the office of a Founder held by that person will be held and exercised by:
 - (i) the Legal Personal Representatives of the deceased person; or
 - (ii) if the will of the deceased person nominates another person to act as Founder, that other person.

67.2 **Trustee may Replace**

If at any time there is no Founder or the Founder ceases to be willing to act as Founder or, in the opinion of the Trustee, the Founder (if a natural person) is incapacitated to such an extent as to render him unable to properly discharge the functions of the Founder, the Trustee may with the consent of a resolution of the Members appoint a person to be the Founder.

67.3 **Members may Replace**

The Members may by resolution resolve that:

- (a) the person holding the office of Founder is removed and replaced by a person nominated by the Members who has consented to act as Founder; or
- (b) one or more persons nominated by the Members who have consented to act is appointed as Founder jointly with the current Founder.

Any removal or appointment under this clause becomes effective upon giving notice of the removal or appointment, as the case may be, to the Trustee and the current Founder.

72. FAMILY LAW PROCEEDINGS

72.1 Operation of this Clause

- (a) Without limitation to clause 3 of this Deed, the Trustee must act in conformity with any obligations imposed on the Trustee under the Family Law Act ("the Act") even if this Deed does not authorise that act or prohibits that act.
- (b) An expression that is defined in the Act will have the same meaning when that expression is used in this clause.

72.2 Superannuation Agreement

- (a) The Trustee must comply with the Act in giving effect to a superannuation agreement that is in force and made under the Act between a Member and a non-member spouse of that Member.
- (b) Whenever any splittable payment becomes payable in respect of a superannuation interest identified in the superannuation agreement which is not an unsplittable interest:
 - (i) the Trustee must pay to the non-member spouse the amount (if any) calculated in accordance with the Act; and
 - (ii) the Trustee must make a corresponding reduction in the Benefit Entitlement of the Member to whom the splittable payment would have been made but for the payment split.
- (c) The payment of the entitlement of the non-member spouse under a payment split must, if required by the SIS Act, be made by the Trustee to a regulated superannuation fund or retirement savings account for the benefit of the non-member spouse.

72.3 Court Order

The Trustee must comply with any order made by a court that imposes obligations on the Trustee under the Act.

72.4 Request for Information

The Trustee must comply in the manner prescribed by the Act with any proper application made to the Trustee under the Act by an eligible person for information about the superannuation interest of a Member.

73. PRIVACY

The Trustee must comply, and ensure that the Fund complies, with all relevant requirements of the Privacy Act to the extent that they are applicable to the Trustee or the Fund.

**SCHEDULE
PARTICULARS OF THE FUND**

NAME OF THE FUND: Dack Superannuation Fund

DATE OF THIS DEED: 30/04/2010

**COMMENCEMENT DATE
OF THE FUND:** 30 April 2010

FOUNDERS: Peter Dack
Margaret Dack

TRUSTEES: Peter Dack
Margaret Dack

NOTE:

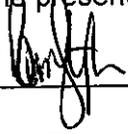
The Fund Reference Number is: 046349

The drafting of this Trust Deed has been undertaken by:
Madgwicks, Lawyers, Level 19, 535 Bourke Street, Melbourne Vic. 3000
Ref: Mr Rick Goldberg

EXECUTED by the Parties as a Deed on the Execution Date:

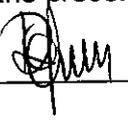
BY THE FOUNDER
- INDIVIDUALS

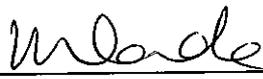
SIGNED SEALED and DELIVERED
by the said
Peter Dack
in the presence of:


_____ Witness

)
)
) (X) 
_____)

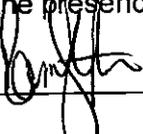
SIGNED SEALED and DELIVERED
by the said
Margaret Dack
in the presence of:


_____ Witness

)
)
) (X) 
_____)

BY THE TRUSTEE
- INDIVIDUALS

SIGNED SEALED and DELIVERED
by the said
Peter Dack
in the presence of:


_____ Witness

)
)
) (X) 
_____)

SIGNED SEALED and DELIVERED
by the said
Margaret Dack
in the presence of:


_____ Witness

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