



TheStrategistGroup

## Yardy Superannuation Fund

**Deed of Establishment**

**And**

**Rules of the Fund**

**The Strategist Group Pty Ltd**

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Revenue and Corporate Law*

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## INTRODUCTION

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This booklet contains:

- a Deed establishing Yardy Superannuation Fund,
- the Rules of the Fund

The booklet also contains commentaries on the meaning of the Deed and the various Rules. The purpose of these commentaries is to enable Members of the Fund to understand clearly how the Fund is to operate, their rights and entitlements under the Fund's Rules, and their obligations and responsibilities as both a Member and possibly a Trustee of the Fund.

Those commentaries do not form part of the Deed or the Rules but are designed to assist the Trustee or Trustees and Member or Members of the Fund understand the Deed and the various Rules.

The Rules must be followed. If they are not followed the Fund might be deemed not to be a Complying Superannuation Fund for taxation purposes and as a consequence may not be entitled to any income tax concessions. Further there may be instances where if the Trustee or Trustees do not follow the Rules they will be liable to civil or criminal penalties.

### **The Purpose of the Fund**

The Rules allow either individual Members to be Trustees of the Fund or a company all the directors of which are Members of the Fund to be appointed as a Trustee of the Fund.

The Rules allow a Member to decide whether that Member should personally be a Trustee or whether that Member should be a director of a company of which he or she is a Trustee. Factors which a Member should consider when deciding whether that Member should be a Trustee or whether that Member should be a director of a company which is a Trustee include:

- ease of changing the directors of a company compared to ease of changing the Trustees of the Fund (the latter is slightly more difficult);
- perpetual succession of a company (meaning that difficulties caused by the death of a Trustee may be avoided);
- the administrative convenience of a company.

Were a company to be the Trustee of the Fund the provisions contained in the Constitution of that company should not be inconsistent with the provisions contained within the Rules.

### **Appointment of Experts**

The superannuation and taxation laws (particularly as they apply to superannuation funds) are extremely complicated. If they are breached a fund might not be a Complying Superannuation Fund (which would mean that it would not be concessionally taxed) whilst the trustees of the fund might be subject to financial and criminal penalties.

The Rules allow the Trustee to appoint managers, advisors, and to engage other experts to assist the Trustee in the management of the Fund.

### **Estate Planning**

A key purpose of the Fund is to provide death benefits on the death of a Member.

The Fund may form part of but is not a substitute for a Member's individual estate planning. Estate planning involves more than mere establishment of a superannuation fund; rather it involves all of wills, trusts (including testamentary trusts), employee share acquisition plans (to allow succession

of ownership of a private company) and the establishment of superannuation funds. Part of estate planning may consist of providing the Trustee with a Death Benefit Nomination.

### **Contributions**

The Rules allow the Fund to accept contributions from Members, their spouses, their employers, or from any other person (provided acceptance of those contributions would not cause the Fund not to be a Complying Superannuation Fund).

The contributions can be (again provided this does not cause the Fund not to be a Complying Superannuation Fund):

- cash,
- shares (particularly listed company shares),
- property,
- units in a unit trust or other managed investment fund.

### **Investments**

The Trustee must establish an investment strategy for investment of contributions made to the Fund and the earnings on those contributions.

Subject to the establishment of an investment strategy the Trustee has broad investment powers; broadly he or she can make any investment provided any such investment does not cause the Fund not to be a Complying Superannuation Fund.

The Trustee or Trustees can create separate investment strategies for each Member of the Fund. The Trustee or Trustees can also adopt different investment strategies in respect of any one Member. Alternatively the Trustee can adopt a "pooled investment strategy" for all or a group of Members of the Fund.

### **Reserves**

The Trustee may from time to time establish such Reserves as the Trustee believes appropriate. Any such Reserves can (broadly speaking) be used by the Trustee to meet payment of any administration, general or abnormal expense of the Fund (including any taxation expense). A Reserve can also be used to fund the payment of a pension to a Member of the Fund.

### **General Administration of the Fund**

The Trustee is responsible for the day-to-day administration of the Fund (including all accounting, lodgement of taxation and other returns, the investment of contributions, and the payment of benefits). The Rules allow the Trustee to delegate the administration of these responsibilities to a Manager. The Rules require the Trustee to appoint an independent auditor to audit the annual financial records of the Fund.

### **Winding Up**

The Fund may continue indefinitely whilst there are Members of the Fund. On termination of the Fund (normally being on that date as is determined by the Trustee) all of the assets of the Fund are (after payment of any liabilities) at the discretion of the Trustee to be distributed to either the Members, former Members, any other persons, or paid to charities or public benevolent institutions.

## Yardy Superannuation Fund

Establishment of the Fund

### THE RULES OF THE FUND

#### WHAT THESE RULES ARE ABOUT

#### LIFECYCLE OF FUND

##### Trustees and Members

- Rule 1:            *Who may be a Trustee*
- Rule 2:            *Appointment and removal of a Trustee*
- Rule 3:            *Compulsory retirement of a Trustee*
- Rule 4:            *Resignation of a Trustee*
- Rule 5:            *Remuneration of a Trustee*
- Rule 6:            *Trustee's decisions and meetings*
- Rule 7:            *Trustees' minutes*
- Rule 8:            *Trustee's covenants*
- Rule 9:            *Who may become a Member*
- Rule 10:           *Application Form*
- Rule 11:           *Receipt of an Application Form*
- Rule 12:           *A Member may provide the Trustee with a Binding Death Benefit Nomination*
- Rule 13:           *A Member may provide the Trustee with a Non-Binding Death Benefit Nomination*
- Rule 14:           *Ceasing to be a Member*
- Rule 15:           *Members bound by the Rules*
- Rule 16:           *The Trustee must keep Member's Accounts*
- Rule 17:           *Additions to Member's Accounts*
- Rule 18:           *Subtractions from Member's Accounts*

##### Operation of the Fund

##### Contributions and Rollovers

- Rule 19:           *Who can make contributions*
- Rule 20:           *The Trustee need not accept contributions*
- Rule 21:           *The Trustee may accept a roll-over*
- Rule 22:           *The Trustee may transfer a Member's Benefits*

**Investments**

- Rule 23: *The Trustee must set an investment strategy*
- Rule 24: *The Trustee must invest the assets of the Fund*
- Rule 25: *A Member can request the Trustee to invest contributions separately or jointly*
- Rule 26: *Authorised investments (and powers of the Trustee)*
- Rule 27: *The assets of the Fund are to be held in the Trustee's name*
- Rule 28: *The Trustee must not borrow*

**Reserves**

- Rule 29: *The Trustee may establish a Reserve*

**Taxation**

- Rule 30: *Payment of tax and allocation to Member's Accounts*
- Rule 31: *Becoming a Regulated Superannuation Fund*

**Insurance**

- Rule 32: *The Trustee may establish an insurance plan*
- Rule 33: *The Trustee may self insure*
- Rule 34: *The Trustee has discretion as to application of any insurance proceeds*

**Annual Accounts**

- Rule 35: *The Trustee must prepare annual accounts*

**Benefits Payable to a Member (Other Than on Incapacity or Death)**

- Rule 36: *Benefits payable to a Member*
- Rule 37: *Payment and repayment of Benefits*
- Rule 38: *Payment of a Lump Sum Benefit*
- Rule 39: *Payment of a pension benefit*

**Incapacity**

- Rule 40: *Member to advise Trustee of incapacity*
- Rule 41: *Benefits payable for Temporary Incapacity*
- Rule 42: *Benefits payable for Permanent Incapacity*

**Death Benefits**

- Rule 43: *What must happen on death of a Member (including change of Trustee)*
- Rule 44: *Payment of a Death Benefit*

**Conversion of Benefits**

Rule 45: *Conversion of a Lump Sum Benefit into a Pension Benefit*

Rule 46: *Conversion of a Pension Benefit into a Lump Sum Benefit*

**Purpose**

Rule 47: *The Fund must satisfy the sole purpose test*

**Termination**

Rule 48: *The Trustee may terminate the Fund*

**Amendments**

Rule 49: *The Trustee may amend the Deed or the Rules*

**Governing Law**

Rule 50: *The governing law is to be nominated by the Trustee*

**Status of the Act**

Rule 51: *The Act is paramount*

**Interpretation**

Rule 52: *Rules as to interpretation*

**Definitions**

Rule 53: *Definitions*

Establishment of the Fund

#### **EXPLANATION**

*A superannuation fund is a form of trust. Trusts are normally required to be established by deed. By execution of this Deed the Trustee formally establishes the Fund.*

*To benefit from concessional taxation rules the sole purpose of the Fund must be the provision of superannuation or retirement benefits to Members (or relatives of deceased Members). It must not carry on a business.*

#### **Establishment of Yardy Superannuation Fund**

#### **THE DEED**

**This Deed** is made on 3 / 3 / 23.

**BY:** P & S Yardy Pty. Ltd. ACN:103 692 208("the Trustee").

#### **WHEREAS**

5. The Trustee wishes to establish Yardy Superannuation Fund ("the Fund").
6. The Trustee intends that the Fund should be a "complying superannuation fund" for the purposes of the Income Tax Assessment Act 1936.
7. By execution of this deed the Trustee signifies its consent to its appointment as the first trustee of the Fund.
8. The Trustee intends that the Fund should be a "self managed superannuation fund" as defined for the purposes of the Superannuation Industry (Supervision) Act 1993.

#### **Now it is Hereby Agreed:**

#### **Establishment of the Fund**

5. The Trustee hereby agrees to receive contributions and any other amounts paid to it on behalf of members and will hold those contributions and any income thereon according to the Rules of the Fund.

#### **Name of the Fund**

6. The Fund will be known as Yardy Superannuation Fund (the "Fund").

#### **Rules of the Fund**


7. The Rules of the Fund are those rules annexed hereto.

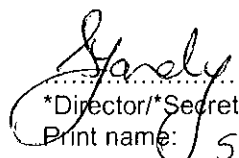
#### **Purpose of the Fund**

8. Subject to the Rules the purpose of the Fund is to provide individual personal benefits, pensions or retiring allowances upon the death or retirement of a member, provided that:
  - (iv) that purpose would not cause the Fund not to be a complying superannuation fund (as defined for the purposes of the Income Tax Assessment Act 1936),
  - (v) that purpose is a purpose contained in the Rules,
  - (vi) if the trustees of the Fund are natural persons the sole or primary purpose of the Fund is to provide old age pensions (as defined for the purposes of the Superannuation Industry (Supervision) Act 1993).

**EXECUTED AS A DEED**

**EXECUTED** for and on behalf of  
**P & S Yardy Pty. Ltd. A.C.N. 103 692 208** as the Trustee in the presence of:

  
.....  
\*Sole Director/\*Sole Secretary  
Print name: *PHILIP JOHN YARDY*

  
.....  
\*Director/\*Secretary/\*Witness  
Print name: *SHARON VERONICA YARDY*

\*Strike out if not applicable and witness where sole director



## **THE RULES OF THE FUND**

### **WHAT THESE RULES ARE ABOUT**

The Fund has been established by deed. Also required are Rules which will determine how the Fund is to operate, who can make contributions to the Fund, who can be Members of the Fund, the rights of Members to contributions to and the income of the Fund, and when and how Members can access those contributions and income. Rules are also required as to who can be a Trustee of the Fund and the obligations of any such Trustee.

Further unless the Rules contain specific covenants as detailed in the Superannuation Industry (Supervision) Act 1993 (which is one of those acts defined as "the Act") the Fund will not be a "Complying Superannuation Fund" (and as a consequence could not take advantage the concessional tax rules).

### **LIFECYCLE OF THE FUND**

The Rules are arranged (broadly speaking) according to what should be the lifecycle of the Fund. In summary the Rules contain provisions relating to:

#### **Appointment of a Trustee**

The Fund must have a Trustee (Rules 1 to 4 state who can be a Trustee, when a Trustee must retire, and how). Rule 5 states that normally a Trustee must not receive remuneration. Rule 6 determines – when there is more than one Trustee - how the decisions of the Trustees are to be made.

The first Trustee is appointed by execution of the Deed.

#### **Acceptance of Members**

Rules 9 to 11 provide for the admittance of Members to the Fund.

#### **Members Accounts**

Having accepted Members the Trustee should establish Member's Accounts (Rules 16 to 18). It is by way of the Member's Accounts that the Trustee records what has been received on account of individual Members and the entitlements of individual Members.

#### **Receipt of Contributions**

The Fund will receive contributions on behalf of Members. Rules 19 and 20 provide for receipt by the Trustee of contributions on behalf of Members. The Trustee is also allowed (Rule 21 ) to accept rollovers. Contributions can be of cash or property.

#### **Investments**

The Trustee having received contributions must invest those contributions. Rules 23 to 28 explain how the Trustee is to invest those contributions (and any earnings on those contributions).

#### **Reserves**

The Trustee might decide that all the income of the Fund should not be allocated to individual Members. That unallocated income can be used to establish a Reserve. The Trustee might wish to establish Reserves so as to meet future contingencies (such contingencies including any Pension obligations assumed by the Trustee). Rule 29 allows the Trustee to establish such Reserves.

#### **Taxation**

Having received contributions, and earned income from the investment of the contributions, the Trustee will be liable to Tax. Rule 30 allows (but does not require) the Trustee to allocate Tax liabilities to the accounts of individual Members. Rule 31 is to ensure that the Trustee makes the Fund a Regulated Superannuation Fund (so that it can receive various taxation concessions).

## **Insurance**

Rules 32 to 34 require the Trustee to establish an insurance plan, allow the Trustee to self insure, and confer discretion upon the Trustee as to the application of any insurance proceeds.

## **Annual Accounts**

Rule 35 requires the Trustee to prepare annual accounts. These must be audited.

## **Benefits payable to a Member (other than on incapacity or death)**

Having received contributions, earned income on the contributions, established Reserves, and paid Tax, the Trustee will be able to determine what Benefits should be paid to Members. Rules 36 to 39 allow a Trustee to pay Lump Sum Benefits or a Benefit which is a pension.

## **Incapacity**

Rule 41 allows the payment of a pension to a Member who is Temporarily Incapacitated. Rule 42 allows the payment of a Lump Sum Benefits or a Benefit which is a pension to a Member who is Permanently Incapacitated.

## **Death**

Rule 43 states what a Trustee must do on death of a Member (and allows for the temporary replacement of a Trustee following the death of a Member). Rules 12 and 13 allow the Trustee to accept death benefit nominations (this should be made at the time a Member becomes a member of the Fund). Rule 44 allows for payment of death benefits to dependants or the Legal Personal Representative of a deceased Member.

## **Conversion of Benefits**

Rules 45 and 46 allow the conversion of a Lump Sum Benefit into a Benefit which is a pension and a Benefit which is a pension benefit into a Lump Sum Benefit.

## **Termination**

Rule 48 determines when the Fund will terminate.

## **Amendments**

Rule 49 allows the Trustee to amend the Deed or the Rules. Given the state of flux of the Australian superannuation system a Trustee and Members should expect that the Rules will need to be amended from time to time.

## **Governing law**

Rule 50 simply states that the governing law is normally that law as nominated by the Trustee. If there is more than one Trustee and there is a dispute as to what should be the governing law it is that law as is determined by a vote of the Members (the governing law is that law which is applied in interpreting the Deed and Rules of the Fund).

If there is no such determination the governing law is the law of New South Wales.

## **Status of the Act**

The Fund has been established so that it is a Complying Superannuation Fund – that is it has been established in the expectation that the income and capital gains of the Fund will receive concessional taxation treatment. That concessional taxation treatment will only be achieved if the provisions of certain legislation are adhered with – subsequently Rule 51 is designed to ensure that legislation overrides any specific provision of the Rules.

**Interpretation and definitions**

Rules 52 and 53 provide guidance as to how the Rules are to be interpreted, and provide definitions, as to the various terms used in the Rules. If a word is capitalised that word will be defined.

Some of the Rules are accompanied by explanations. While the explanations form part of the Rules they may only be taken into account in interpreting a Rule:

- in considering the purpose or object underlying a Rule; or
- to confirm that the meaning of a Rule is its ordinary meaning conveyed by its text taking into account the purpose or object underlining the Rule; or
- in determining a Rule's meaning if the Rule is ambiguous or obscure; or
- in determining the Rule's meaning if the ordinary meaning conveyed by its text, taking into account its context in the Rules and the purpose or object underlying the Rule leads to a result that is manifestly absurd or is unreasonable.

## **Trustees and Members**

### **Rule 1: Who may be a Trustee?**

#### **EXPLANATION**

*Normally only members of the Fund (to ensure the Fund is a Complying Superannuation Fund) may be Trustees of the Fund or directors of a company, which is a Trustee of the Fund.*

*The Trustee is involved in the day to day running of the Fund including accounting for all transactions and movements in the Fund, ensuring that Member Account balances are kept up to date and the monitoring of the compliance of the Fund with the relevant superannuation, taxation and social security laws. The Trustee is also responsible for the preparation of the various compliance activities required by the Regulator including, amongst other things the lodgement of income tax returns, superannuation surcharge returns, business activity statements and goods and services tax returns. The Trustee may delegate its administrative and compliance responsibilities to a Manager although the ultimate responsibility always rests with the Trustee.*

*At all times there must be a Trustee of the Fund.*

*The Rules contain provisions (so as to ensure that the Fund complies with the Act), which determine the eligibility of a person or a company to be a Trustee.*

*The general rule is that:*

- *only individuals who are Members can be Trustees, or*
- *only a company all the directors of which are Members can be a Trustee.*

*Members should decide whether they wish to be Trustees personally or whether they wish to be represented by a company of which they are directors.*

*Costs will be minimised if the Members personally are Trustees rather than a company being a Trustee of the Fund.*

*However a company may have advantages which Members might believe could offset the costs of establishment and maintenance of a company. These advantages include:*

- *a corporate Trustee is able to pay Members either a Lump Sum Benefit or a Benefit which is a pension. However if the Trustee is an individual or individuals the primary purpose of the Fund must be the provision of a Benefit which is a pension,*
- *a company is indefinitely continuing (this means that it might be easier to deal with the assets of the Fund on the retirement or death of a Member of the Fund),*
- *it may be commercially more convenient for a company rather than a group of individuals to act as the Trustee of the Fund.*

*If a company is appointed Trustee of the Fund the constitution of that company should be comparable with the Rules.*

- 1.1 Subject to Rule 43 below (which applies on death of a Member or if a Member has a Legal Personal Representative) and except as allowed by Rule 1.5 below an individual may only be a Trustee of the Fund if the individual is a Member of the Fund.
- 1.2 Subject to Rule 43 below (which applies on the death of a Member or if the member has a Legal Personal Representative) and except as allowed by Rule 1.5 below a company may only be a Trustee of a Fund if all the directors of the company are Members of the Fund.
- 1.3 An individual cannot be a Trustee of the Fund if:
  - (a) at any time:

- (i) the individual was convicted of an offence against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of dishonest conduct; or
  - (ii) a civil penalty order was made in respect of the person; or
- (b) the person is an insolvent under administration; or
- (c) a Regulator has disqualified the person (for the purposes of section 120A of the Superannuation Industry (Supervision) Act 1993).
- 1.4 A company cannot be a Trustee of the Fund if:
- 1.4.1 (a) the company knows, or has reasonable grounds to suspect, that a person who is, or is acting as a Responsible Officer of the company has been disqualified by the Regulator (for the purposes of section 120A of the Superannuation Industry (Supervision) Act 1993), and
- (b) the company knows or has reasonable grounds to suspect that:
- (i) the person is not eligible under section 126B(1) of the Superannuation Industry (Supervision) Act 1993 to apply to APRA for a declaration waiving his or her status as a disqualified person; or
  - (ii) the person is so eligible but will not make an application under subsection 126B(3) of the Superannuation Industry (Supervision) Act 1993 within the period allowed for the purpose;
- 1.4.2 a receiver, or a receiver and manager, has been appointed in respect of property owned by the company;
- 1.4.3 an official manager, deputy official manager or administrator has been appointed in respect of the company,
- 1.4.4 a provisional liquidator has been appointed in respect of the company;
- 1.4.5 the company has begun to be wound up.
- 1.5 Notwithstanding Rule 1.1 and Rule 1.2 above
- 1.5.1 if there is only one person who is a Member of the Fund:
- (i) a relative of a Member may also be a Trustee, or
  - (ii) a person who is not the employer of a Member may also be a Trustee, or
  - (iii) a company of which the Member is the sole director may be the Trustee, or
  - (iv) a company of which the Member is one of only 2 directors of the company and the Member and the other director are relatives may be the Trustee, or
  - (v) a company of which the Member is one of only 2 directors of the company, and the Member is not an employee of the other director may be a Trustee;
- 1.5.2 if the Member is under a legal disability the Legal Personal Representative of the Member may be a Trustee;
- 1.5.3 if the Member is under a legal disability a company of which the Legal Personal Representative of that Member is the sole director or of which the sole directors are Members and Legal Personal Representatives of Members may be a Trustee;
- 1.5.4 if a Member of the Fund is under 18 years of age a parent, guardian or a Legal Personal Representative of the Member may be a Trustee;
- 1.5.5 if a Member of the Fund is under 18 years of age a company of which a parent, guardian or the Legal Personal Representative of that Member is the sole director or of which the

sole directors are Members and parents, guardians or Legal Personal Representatives of Members may be a Trustee;

1.5.6 if the Regulator appoints a person as a Trustee of the Fund that person may be a Trustee;

1.5.7 Subject to paragraph 1.5.6 a person or company shall not be appointed as a Trustee unless they have provided the Trustee with a written consent to that appointment.

**Rule 2: Appointment and removal of a Trustee**

2.1 Each Member of the Fund may appoint some person (including himself) or some company (provided that individual or company is eligible pursuant to Rule 1 above to be appointed a Trustee of the Fund) as a Trustee of the Fund and that person or company shall be deemed for the purposes of these Rules to be that Member's Representative.

2.2 Each Member of the Fund may remove a person or a company (unless that company has also been appointed as a Trustee by some other Member of the Fund) as a Trustee of the Fund.

2.3 If a Member removes any person or company as a Trustee of the Fund pursuant to paragraph 2.2 above that Member may appoint some other person or company as a Trustee of the Fund in lieu of that person or company so removed as a Trustee of the Fund provided that other person or company is eligible pursuant to Rule 1 above to be appointed as a Trustee of the Fund.

**Rule 3: Compulsory retirement of a Trustee**

A person or company is by this rule removed as a Trustee of the Fund:

- (i) if the Trustee is a person – on that person ceasing to be a Member of the Fund;
- (ii) if the Trustee is a company – subject to Rule 43 below on all the directors of the company ceasing to be Members of the Fund;
- (iii) if the Trustee is prohibited from being a Trustee by reason of either Rule 1.3 or Rule 1.4 (unless the Trustee is allowed to be a Trustee by reason of some other Rule or by reason of some provision of the Act); or
- (iv) if the continued appointment of the Trustee as a Trustee will cause the Fund not to be a Complying Superannuation Fund.

**Rule 4: Resignation of a Trustee**

A Trustee is deemed to have forthwith resigned as a Trustee of the Fund:

- (i) if that Trustee is an individual – on the individual ceasing to be a Member or a Representative of a Member, or
- (ii) if that Trustee is a company – on any of the directors of the company ceasing to be a Member or a Member's Representative.

**Rule 5: Remuneration of a Trustee**

5.1 Subject to paragraph 5.2 below a Trustee shall not be entitled to be remunerated for acting as a Trustee of the Fund.

5.2 Where a Trustee provides professional services as part of its day-to-day activities and the Fund engages the Trustee to provide similar professional services the Trustee may (unless prohibited by the Act) charge the Fund a fee commensurate with any fee it normally charges for the provision of similar professional services for the services provided to the Fund.

5.3 A Trustee is entitled to apply the assets of the Fund in indemnification of the Trustee for expenses incurred by the Trustee in managing or administering the Fund (and will be entitled to be indemnified by any subsequent Trustee) for any expenses incurred by the Trustee in managing or administering the Fund provided:

- (i) the Trustee acted honestly in the matter in respect of which the Trustee seeks indemnification; or

- (ii) the Trustee did not intentionally or recklessly fail to exercise, in relation to the matter in respect of which the Trustee seeks indemnification, the degree of care and diligence that the Trustee was required to exercise.

5.4 A Trustee has a lien on any property of the Fund for all costs, which the Trustee is entitled to, pursuant to paragraph 5.3 above to be indemnified.

**Rule 6: Trustee's decisions and meetings**

6.1 If there is only one Trustee every decision made by that Trustee, pursuant to the Rules shall be recorded by the Trustee and notice of that decision must be provided to all Members within 60 days of the making of that decision. The Trustee shall retain a note as to the making of the decision for ten years from the date of the making of the decision.

6.2 If there is more than one Trustee, then every decision made by the Trustees pursuant to these Rules shall be made at a meeting of which at least 21 days written notice has been given by the Manager to each of the Trustees unless the Trustees unanimously agree that the meeting may be held on some earlier date or that the provisions of clause 6.7 prevail. Such written notice must:

- (i) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that would be used to facilitate this); and  
(ii) state the general nature of the business of the meeting.

6.3 At least 21 days notice of the meeting shall be given by the Manager to the Trustees (by mail, fax number or the electronic address nominated by each Trustee) unless the Trustees unanimously agree that some lesser notice may be given of the meeting.

6.4 At any meeting of the Trustee a Trustee shall be entitled to cast that number of votes:

- (a) as is equal to the nearest number of whole dollars of all Members' Accounts of those Members of which that Trustee is that Member's Representative; or  
(b) if the Trustees who are Member's Representatives for (at least 75% of the Members) / (of Members whose credit balances of their Members' Accounts) as those Trustees determine.

6.5 A resolution shall not be passed at any meeting of the Trustees unless it is passed by the casting of a majority of the votes entitled to be cast by Trustees who are present at that meeting.

6.6 A Trustee may appoint a person to act as that Trustee's proxy at any meeting of the Trustees.

6.7 Notwithstanding clause 6.2 if the Trustees unanimously agree, any decision of the Trustees may be made by unanimous agreement of the Trustees in writing.

**Rule 7: Trustees' minutes**

**EXPLANATION**

*If there is more than one Trustee the Trustee must meet to make decisions about events that occur in relation to the Fund. Matters discussed and resolved at every such meeting must be minuted and held for a period of not less than ten years.*

*The events that should be decided (if there are more than one Trustee) at such a meeting include:*

- *the appointment of various professional advisors to the Fund,*
- *the establishment of the Fund's cash account,*
- *the setting of an investment objective and strategy for the Fund,*
- *the admission of Members to the Fund,*
- *the acquisition and disposal of investments pursuant to the Investment Strategy,*
- *the approval of the making of a benefit payment to a Member (including a payment of a pension),*

- *the payment of a death benefit to a dependent or Legal Personal Representative of a Deceased Member,*
- *the acceptance of a Binding Death Benefit Nomination form and the establishment of a policy in relation thereto,*
- *the retirement of Members as Members of the Fund,*
- *the establishment of Member's Accounts, accounts of the Fund, audit reports and any notifications to Members required under the Rules or the Act,*
- *the creation of any reserves.*

Where there is more than one Trustee minutes shall be taken of every meeting of those Trustees. Those minutes shall be held for a period of not less than ten years from the date of the meeting.

**Rule 8: Trustee's covenants**

**EXPLANATION**

*The Act requires that the rules of a Regulated Superannuation Fund contain certain covenants (if the rules do not contain these covenants the rules are deemed to contain those covenants). Whilst in the present instance some of those covenants are contained within other Rules they have been reiterated here to highlight the code of conduct, which a Trustee must adopt as a Trustee of the Fund.*

A Trustee by accepting appointment as a Trustee of the Fund covenants to:

**Act honestly**

- (i) to act honestly in all matters concerning the Fund;

**Care**

- (ii) to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another with whom the person felt morally bound to provide;

**Act in the interests of the Members**

- (iii) to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Members;

**Keep money separate**

- (iv) to keep the money and other assets of the Fund separate from any money and assets, respectively:
- (a) that are held by the Trustee personally, or
  - (b) that are money or assets, as the case may be, of a Standard Employer - Sponsor, or an Associate of a Standard Employer - Sponsor, of the Fund;

**Not to hinder functions**

- (v) to ensure that the Trustees duties and powers are performed and exercised in the best interests of the Members;

**Not to enter into contracts restricting powers**

- (vi) not to enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in properly performing or exercising the Trustee's functions and powers;

**Formulation of an Investment Strategy**

- (vii) 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:



- (a) 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 ;
- (b) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
- (c) the liquidity of the Fund's investments having regard to its expected cash flow requirements;
- (d) the ability of the Fund to discharge its existing and prospective liabilities;

### **Reserves**

- (viii) if there are any Reserves of the Fund – to formulate and give effect to a strategy for the prudential management, consistent with the Fund's investment strategy and its capacity to discharge liabilities (whether actual or contingent) as and when they fall due;

### **Information**

- (ix) to allow a Member access to Prescribed Information or any Prescribed Documents.

### **Rule 9: Who may become a Member**

#### **EXPLANATION**

*Subject to the Rules there are no restrictions on who can be a Member of the Fund. This means that a person may become a Member of the Fund at any age and even if no contribution has been made to the Fund on account of that Member (this provision may however be overridden by any requirement of the Act).*

The Trustee may in its absolute discretion admit a person as a Member of the Fund provided:

- (a) that person has provided the Trustee with an Application Form and has agreed to be bound by the Rules,
- (b) admission of that person as a Member of the Fund would not cause the Fund not to be a Complying Superannuation Fund,
- (c) the person is eligible to act and accept appointment as a Trustee of the Fund or is eligible to be and is willing to accept its appointment as a director of a company which is eligible to or that person's Legal personal Representative or if that person is a minor that person's parent or guardian is eligible to act and accept appointment as a Trustee of the Fund or is eligible to be and is willing to be appointed as a director of a company which is eligible to be and will accept appointment as a Trustee of the Fund.

### **Rule 10: Application Form**

#### **EXPLANATION**

*Prospective Members will be required to provide the Trustee with an Application Form. It is envisaged that the Application Form will (amongst other things) require a prospective Member to agree:*

- *to be bound by the Rules of the Fund,*
- *to be a Trustee of the Fund or a director of a company which is a Trustee of the Fund (unless there is a specific exemption applicable under the Act),*
- *to provide information to the Trustee as required including medical information subject to the rules of any applicable privacy legislation,*
- *to provide the Trustee, as soon as possible after admission as a Member of the Fund with a death benefit nomination.*

The Application Form will be that form as the Trustee determines who can also require an applicant for membership of the Fund to make such consents, to provide such information and to submit to such medical examinations as the Trustee reasonably determines.

**Rule 11: Receipt of an Application Form**

11.1 On receipt of an Application Form:

- (a) the Trustee will determine whether or not to admit a person as a Member of the Fund;
- (b) the Trustee may admit a person as Member of the Fund subject to such conditions applicable to that person's membership of the Fund as the Trustee in his or her absolute discretion may determine;
- (c) the Trustee may before admitting a person as a Member of the Fund require the person to produce such documents and evidence, and submit to such medical examination and checks, as the Trustee may reasonably and lawfully require.

11.2 Within 6 weeks of receipt of an Application Form the Trustee shall advise the person applying for membership of the Fund whether or not that person has been accepted for admission as a Member of the Fund and whether or not any conditions will be attached to that person's membership of the Fund.

11.3 If the Trustee has admitted the person to membership of the Fund subject to conditions as to that person's membership of the Fund that person can within 6 weeks of notification by the Trustee pursuant to clause 11.2 above either accept or reject that membership.

**Rule 12: A Member may provide the Trustee with a Binding Death Benefit Nomination****EXPLANATION**

*The Trustee may accept a Binding Death Benefit Nomination. A Binding Death Benefit Nomination requires the Trustee to provide a Member's Benefits on or after the death of the Member to those dependants or Legal Personal Representatives nominated by the Member.*

*If the Trustee decides to accept a Binding Death Benefit Nomination from a Member then the Trustee is required to put in place a binding death benefit nomination policy that is to be sent to all members as a "Notice of Binding Death Benefit Nomination for Members".*

*Before accepting a Member's Binding Death Benefit Nomination, the Trustee should assess the cash flow requirements that may be faced by the Fund in the event of the Member's death and any death benefit becoming payable. If the Trustee is of the view that the Trustee may face a cash flow problem the Trustee may:*

- (i) limit the scope of the binding death benefit payout,
- (ii) re-assess the Fund's insurance plan and increase any life insurance cover.

*Any Binding Death Benefit Nomination may be amended by the Member at any time provided the Trustee is notified in writing of that amendment.*

*A Binding Death Benefit Nomination ceases to have effect on that date 3 years after it was first signed or last confirmed or updated by the Member.*

12.1 A Member may provide the Trustee with a Binding Death Benefit Nomination or a replacement to a prior Binding Death Benefit Nomination.

12.2 A Binding Death Benefit Nomination:

- (a) must be in writing,
- (b) must require the Trustee to provide any benefits in respect of the Member, on or after the death of the Member, to a Legal Personal Representative or a dependant of the Member (provided the Trustee gives the Member that information as specified in paragraph 12.3 below),
- (c) must be signed, and dated, by the Member in the presence of 2 witnesses, being persons:
  - (i) each of whom has turned 18; and
  - (ii) neither of whom is a person capable of benefiting under the notice.

- (d) must contain a declaration signed, and dated, by the witness stating that the notice was signed by the Member in his or her presence.

12.3 The Trustee must give to a Member information that the Trustee reasonably believes the Member reasonably needs for the purpose of understanding the right of that Member to require the Trustee to provide any benefits in respect of the Member, on or after the death of the Member, to the Legal Personal Representative or a dependant of that Member.

12.4 The Trustee may accept or reject a Binding Death Benefit Nomination.

**Rule 13: A Member may provide the Trustee with a Non-binding Death Benefit Nomination**

A Member may provide the Trustee with a Non-binding Death Benefit Nomination requesting the Trustee in his discretion to provide benefits on death of the Member to persons named by the Member in that nomination.

**Rule 14: Ceasing to be a Member**

**EXPLANATION**

*A Member will (in the absence of any determination by the Trustee) only cease being a Member:*

- *if the Member dies (although this does not mean that the Benefits payable to the Legal Personal Representative of the Member – see Rule 44 - will be limited to the amount of any balance held for the benefit of that Member as at the date of death of the Member),*
- *within three months of the Member ceasing to be eligible to be a Trustee of the Fund (or ceasing to be eligible to be a director of a company which is a Trustee of the Fund).*

*Otherwise a Member will only cease being a Member of the Fund if the Trustee determines that the Member should not be a Member of the Fund.*

*Instances where this may occur might be where a Member is or is likely to be bankrupt, where there is a conflict between the Member and other Members of the Fund, or where the Member's continued membership of the Fund would cause the Fund not to be a Complying Superannuation Fund.*

Subject to the Act a Member shall be deemed to have ceased to be a Member of the Fund on the first to occur of the following:

- (a) upon the Trustee determining that the Member shall no longer be a Member of the Fund;
- (b) the death of the Member;
- (c) that date being three months from the date a Member became ineligible to be a Trustee of the Fund or to be a director of a company which is a Trustee of the Fund (unless the Member is otherwise eligible to be a Trustee of the Fund or a director of a company which is a Trustee of the Fund because of some particular provision of the Act).

**Rule 15: Members bound by the Rules**

By applying for membership of the Fund a Member agrees to be bound by the terms of the Deed and the Rules (and to do everything which should be done by the Member to give effect to the Rules).

**Rule 16: The Trustee must keep Member's Accounts**

**EXPLANATION**

*The Trustee must keep an individual account for each Member. An account may be either a Member's Accumulation Account or a Member's Pension Account. More than one account may be kept for each Member.*

16.1 The Trustee must keep accounts for each Member which record contributions received, income derived, reserves allocated, benefits paid and all other amounts to be debited or credited to the Member's Account according to the Rules.

- 16.2 More than one Member's Account can be kept for a Member.
- 16.3 The Member's Account can be an Accumulation Account or a Pension Account. On the last day of each month or such other time as the Trustee might determine the Trustee shall credit to a Member's Account:
- (i) the amount of contributions received by the Trustee and which are to be held on account of the Member;
  - (ii) in the discretion of the Trustee the amount of such earnings as the Trustee believes are applicable to the balance of that Member's Account as at the beginning of that month;
  - (iii) such other amounts including allocations of Reserves as the Trustee might so determine.

**Rule 17: Additions to Member's Accounts**

**EXPLANATION**

*Additions to a Member's Account will normally represent contributions, roll-overs or earnings. The amount of earnings to be credited to a Member's Account may depend on the investment strategy (in particular whether the Trustee has adopted a pooled investment or separate investment strategy) adopted by the Trustee and whether or not the Trustee has created any Reserves.*

On the last day of each month or such other time as the Trustee might determine the Trustee shall credit to a Member's Account:

- (i) the amount of contributions received by the Trustee and which are to be held on account of the Member;
- (ii) in the discretion of the Trustee the amount of such earnings as the Trustee believes are applicable to the balance of that Member's Account as at the beginning of that month;
- (iii) such other amounts including transfers to the fund and allocations of Reserves as the Trustee might so determine.

**Rule 18: Subtractions from Member's Accounts**

On the last day of each month or such other time as the Trustee might determine the Trustee shall debit to a Member's Account:

- (i) the amount of any losses as the Trustee believes are applicable to the balance of that Member's Account as at the beginning of that month;
- (ii) the amount of any payments of benefits made to the Member made from that account;
- (iii) at the discretion of the Trustee the amount of any Taxes payable by the Trustee attributable to any earnings credited to that account and any contributions credited to that account;
- (iv) any other amount including transfers from the fund and expenses incurred by the Trustee as Trustee which the Trustee believes should be debited to the Member's Account.

**Operation of the Fund**

**Contributions and Roll-Overs**

**Rule 19: Who can make contributions**

**EXPLANATION**

*The Trustee of the Fund may accept contributions from:*

1. *the Member;*
2. *the Member's employer;*
3. *the Member's spouse;*
4. *a relative of the member;*
5. *the employer of the spouse or relative of the member;*
6. *the Regulator;*
7. *the Government;*

8. *any other person or entity,*

*so long as the acceptance of any such contribution would not cause the Fund not to be a Complying Superannuation Fund.*

A person may make contributions to the Fund for the benefit of a Member or Members provided the Fund will not by reason of acceptance of those contributions:

- (i) be deemed not to be a Complying Superannuation Fund, or
- (ii) be in breach of the Act.

**Rule 20: *The Trustee need not accept Contributions***

20.1 The Trustee need only accept contributions to the Fund on account of a Member if the Trustee in his sole discretion believes that the Fund should accept any such contributions. The Trustee shall not accept contributions to the Fund on account of a Member if the acceptance of such contributions would cause the Fund not to be a Complying Superannuation Fund.

20.2 Such contributions might be in cash or kind (except that the Trustee shall not accept contributions in kind if the acceptance of those contributions in kind would cause the Fund not to be a Complying Superannuation Fund).

**Rule 21: *The Trustee may accept a roll-over***

**EXPLANATION**

*At any time a Member may request the Trustee to accept a transfer ("roll over") from another Superannuation Entity. When making such a request the Member shall provide the Trustee with the following:*

- (a) *advice as to the total transfer or rollover amount;*
- (b) *advice as to where, when and how the transfer or rollover amounts are to be made including if the transfer or rollover amount is to be paid in cash or assets to the Fund; and*
- (c) *all the relevant documentation required under the superannuation and taxation laws to make the transfer or rollover effective.*

*The Trustee has absolute discretion in respect of whether to accept any transfer or rollover amount and if accepted can make any such acceptance subject to any conditions. Where the Trustee resolves to accept a Member rollover or transfer particularly if the transfer or rollover is an asset, the Trustee must ensure that the transfer of the asset to the Fund does not breach the Act and that all documentation allows the Fund to be properly audited.*

A Member may request that the Trustee accept the transfer to the Fund of assets (including cash) to be held on behalf of the Member from another Superannuation Entity. The Trustee shall in his sole discretion determine whether or not to accept the whole or part of such amount and whether or not any conditions should apply to the acceptance of that transfer.

**Rule 22: *The Trustee may transfer a Member's Benefits***

If a Member:

- (a) requests the Trustee to transfer all or part of a Member's Benefits to another Superannuation Entity, and
- (b) the Trustee is satisfied that any such transfer of all or part of a Member's Benefit will not cause the Fund not to be a Complying Superannuation Fund,

then the Trustee shall within sixty days of receiving that request transfer that whole or that part of the Member's Benefits to that other Superannuation Entity.

## INVESTMENTS

### **Rule 23:            *The Trustee must set an investment strategy***

#### EXPLANATION

*The Trustee must set an investment strategy. That strategy must be in writing. This is a requirement of the Act. Rule 23 ensures that not only must the Trustee set an investment strategy but that the Trustee must invest the assets of the Fund so as to meet the purposes of that strategy.*

- 23.1     The Trustee must 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 an investment, 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 (or part of the Fund's) investments as a whole including the extent to which the investments are diverse or involve the entity in being exposed to risks from inadequate diversification;
  - (iii)     the liquidity of the Fund's investments having regard to its expected cash flow requirements; and
  - (iv)      the ability of the Fund to discharge its existing and prospective liabilities.
- 23.2     The investment strategy must be documented in writing and must be held at the offices of the Trustee.
- 23.3     The investment strategy may consist of one strategy for the entirety of the Fund or separate strategies for the various parts of the Fund.
- 23.4     The Trustee may amend an investment strategy from time to time. If the Trustee amends an investment strategy all Members affected by any such amendment shall be forthwith advised in writing of all details of the amendment to that strategy.
- 23.5     A Member may at any reasonable time request the Trustee to produce the investment strategy to him for inspection and if asked the Trustee will so produce that investment strategy to the Member for inspection by the Member.
- 23.6     In setting the investment strategy the Trustee may act on the advice of an investment advisor provided the Trustee reasonably believes that the advisor is qualified and has the necessary skills to provide such advice.

### **Rule 24:            *The Trustee must invest the assets of the Fund***

The Trustee must as allowed by these Rules invest all contributions and earnings received by the Trustee whilst those contributions and earnings are under the control of the Trustee.

### **Rule 25:            *A Member can request the Trustee to invest contributions separately or jointly***

#### EXPLANATION

*A Member can request the Trustee to either invest the balance of that Member's Member's Account separately ("a single investment strategy") or else to invest the whole or part of that Member's Member's Account jointly ("a pooled investment strategy") with the investment of all or part of the balance of some other Members' Member's Accounts. The Trustee need not accede to that request.*

A Member can request the Trustee to invest contributions and transfers made to the Fund for the benefit of that Member and income on those contributions and transfers separately from any other investment of the Fund. The Trustee in his or her sole discretion can decide whether or not to accede to that request.

### **Rule 26:            *Authorised investments (and powers of the Trustee)***

- 26.1     Unless otherwise prohibited by these Rules or the Act and subject to Rule 26.2 below the Trustee shall have all the powers over and in respect of the assets of the Fund and the investments

thereof, which it could exercise if it were the absolute and beneficial owner of the asset. In investing the assets of the Fund the Trustee shall exercise that diligence and prudence as an ordinary prudent man of business would exercise in conducting his own affairs. In investing the assets (or in paying any benefits) notwithstanding any other provision of these Rules the Trustee must not breach the Act.

- 26.2 The Trustee must not intentionally acquire an asset from a Member or from a Related Party of a Member of the Fund, except if the acquisition of which would not otherwise cause the Fund not to be a Complying Superannuation Fund.
- 26.3 Unless otherwise prohibited by the Rules or the Act and subject to Rule 26.2 above the Trustee shall have the power to apply or invest any moneys requiring or available to be invested under these Rules in any investment of whatsoever kind or nature as the Trustee in its discretion shall think fit notwithstanding that any such investment is not by law authorised for the investment of trust moneys or that the investment does not produce income or that no dividend or interest is payable in respect thereof and whether or not the investment shall involve waste or be subject to liability with or without security and otherwise upon and subject to any terms or conditions as the Trustee shall in its absolute discretion think fit. In particular, without restricting the generality of the foregoing, the Trustee shall have the power to apply or invest any moneys requiring or liable to be invested under these Rules either alone or in partnership or co-ownership with any person or persons:
- (a) Authorised investments: in any one or more of the investments from time to time sanctioned by law in any State or Territory of Australia for the investment of trust moneys;
  - (b) Real and personal property: in the acquisition of real or personal property or any interest therein and without limiting the generality thereof of any patent, copyright, design, formula, secret process, concession, trademark and other like right or privilege in Australia or in any other country and although the acquisition is not made primarily for the production of income;
  - (c) Property development: in developing and turning to account any real or personal property or any interest therein, or any property right or interest which is or may be subject to these trusts and without limiting such generality by constructing, reconstructing, maintaining or improving any buildings or by laying out and preparing land for subdivision, conversion to strata or similar title and for buildings;
  - (d) Shares: in the acquisition of fully or partly paid shares including; redeemable, preference or redeemable preference shares, stock debentures, debenture stock bonds, units, securities or obligations or any interest, with or without deferred, restricted, qualified or special rights relating thereto and whether or not there is or is not a liability in respect of any such shares, units, securities or interests, of or in any public proprietary or no liability company, association, firm, mutual fund or unit trust wherever incorporated or formed, whether carrying on business in Australia or in any other country, or in giving any guarantee or otherwise becoming a proprietor of a company limited by guarantee;
  - (e) Option and rights: in the acquisition of options, entitlements or rights to any of the securities mentioned in paragraph (d) of this sub-clause;
  - (f) Deposit: on fixed deposit or at call with any bank, savings bank, building society, company, corporation or firm wherever incorporated or situated and wherever carrying on business;
  - (g) Insurance: in the acquisition of any policy of assurance or insurance of any kind whatsoever;
  - (h) Loans: in making loans to any person or company;
  - (i) Precious objects: in the purchase of gold, silver, works of art, coins, stamps, furniture, ornaments, precious objects, jewellery and antiques;
  - (j) Commodity contracts: in the acquisition of foreign currencies, hedging contracts, commodity contracts and also options or future contracts of any kind which are quoted on a recognised stock exchange;
  - (k) Permanent building society: in the lodgement of moneys with a permanent building society wherever situated by taking up shares therein or depositing funds therewith;
  - (l) Deferred property: in the acquisition of any reversionary or deferred property or rights of any description.
- 26.4 The Trustee shall have the power, which it may exercise from time to time in its discretion, to change or vary any investment for the time being forming part of the Fund.

- 26.5 In the administration of the Fund and in the exercise of the powers, authorities and discretions conferred by the Deed, by the Rules or by law the Trustee shall have the following powers (which shall be in addition to any other powers, authorities and discretions vested in him or her by another provision of the Deed, the Rules or by law and which shall not be limited by, or be construed so as to be limited by any other powers, authorities and discretions otherwise provided by the Deed, the Rules or by law):
- (a) Generally deal with Fund: to sell, call in, convert into money, grant options or rights to purchase, mortgage, charge, sub-charge, or otherwise deal with or dispose of or transfer any item or asset comprising the whole or part of the Fund;
  - (b) Real property: to acquire, dispose of, exchange, mortgage, sub-mortgage, lease, sub-lease, let, grant, release or vary any right or easement or otherwise deal with real property of any estate or interest therein;
  - (c) Personal property: to acquire, dispose of, exchange, hire, lease, let, mortgage or otherwise deal with the property of any estate or interest therein;
  - (d) Lease: to rent premises from any person, acquire the interest of any lessee in any lease, purchase, hire, take on lease, grant leases, sub-leases, tenancies or rights of any nature whatsoever in and to any realty or estate or interest therein, motor vehicles, computer hardware and software, fixtures and fittings, furniture, utensils, plant and equipment and other personal property of any other description;
  - (e) To let: to lease and let property owned by the Fund or held by the Trustee pursuant to the provisions of these Rules for such period at such rental and to those persons and upon such terms and conditions in all respects as the Trustee may decide, to accept surrenders from, and to make allowances to and arrangements with a lessee or tenant with or without consideration as the Trustee may think fit;
  - (f) Employment: to engage or employ persons including a person having an interest in or who is the holder of an office in the Trustee, or obtaining other assistance as the Trustee may deem requisite, to provide staff, amenities and to vary and terminate any contract of employment;
  - (g) Engage experts: to employ or engage agents or professionals in the execution of the trusts and powers and instead of acting personally from time to time to employ or engage and pay out of the trust fund such managers, agents, advisers, solicitors, barristers, auditors, accountants, brokers, surveyors or other persons, to transact any business or to do any act required to be done in connection with the administration of the trusts declared in the Rules, and to act upon the opinion or advice of any such person without being responsible for any loss or damage occasioned by acting in accordance therewith;
  - (h) To lend: subject to these Rules and the Act to lend and advance moneys;
  - (i) Bank accounts: to open in the name of the Fund or in the name of any person or corporation as nominee of the Trustee, or in the joint names of the Trustee and another, any cheque, savings or other bank account with any bank or financial institution wherever situated, as the Trustee thinks fit, with full power to operate on any such account including but without limiting the generality of the foregoing, power to sign, draw and endorse cheques and other negotiable or transferable instruments on any account and to close the same;
  - (j) Management expenses: to pay out of the assets or the income of the Fund all costs charges and expenses incidental to the management of the Fund or to the exercise of any power authority or discretion herein contained or in carrying out or performing the trusts of the Rules which the trustee considers appropriate;
  - (k) Pay general expenses: to pay insurance premiums, rates, taxes, rents, and outgoings in connection with any real or personal property of the Fund and to manage such property and effect repairs as the Trustee may consider necessary or advisable;
  - (l) Corporate securities: with respect to any company in which the Trustee holds shares, stocks, debentures, options, convertible notes or is otherwise interested or concerned ("securities") to exercise the following powers in addition to powers conferred by law:
    - (i) to pay calls on securities or to permit securities to be forfeited and sold;
    - (ii) to purchase securities and to take up securities of a new issue;
    - (iii) to attend meetings personally or by proxy, attorney or representative and vote at the discretion of the Trustee;
    - (iv) to sell securities at such price and upon such terms with or without security as the Trustee thinks fit;
    - (v) to assent to or to join in any arrangement relating to the sale, transfer or exchange of any securities, or modifying any rights, privileges or interests in relation to the securities, to agree to any scheme or arrangement for the increase



- or reduction of the value or amounts of any shares or stock or of the capital of any company for which any securities form the whole or any part, or by which any such securities are substituted or given in exchange, either wholly or partly for other securities, whether in the same company or not, for any such purpose to deposit, surrender or exchange any scrip or documents of title relating to the securities and generally to manage and deal with any securities as if the Trustee owned them beneficially; and
- (vi) to agree in respect of a winding up with the liquidator of the company or any member of such company or any other person, in all things as the trustee shall think fit, for the division or partition in kind or specie of the assets or property of whatsoever nature of the company and to accept any of the assets and property in payment or satisfaction of any interest of the Trustee in the company with power to pay any moneys by way of equality of division or partition;
  - (m) Unit trust interests: to acquire units or sub-units of any fixed or flexible unit trust whatsoever either by way of application, purchase or by way of settlement by the Trustee in the establishment of such unit trust and to exercise all rights including voting rights and perform all obligations as a holder of any units in such trust and to accept all distributions by the trustee of such unit trust;
  - (n) Franchises: to acquire by means of purchase or otherwise and to sell, dispose, relinquish or otherwise deal in franchises, franchise agreements, licenses or things of like nature relating to subject matters of all kinds;
  - (o) Subdivision of property: to partition or agree to the partition of or to subdivide or agree to the subdivision of property of any kind which, or any interest in which, may for the time being be subject to these trusts and to pay moneys by way of equality or partition;
  - (p) Maintain property: to maintain and preserve in good and substantial order and condition any real or personal property of the Fund or otherwise held by the Trustee according to the Rules and to pay or defray those costs;
  - (q) Power to set aside: to set aside out of the income or capital of the Fund from time to time such money as may in the opinion of the Trustee be sufficient to meet any debt or obligation due or accruing;
  - (r) Superannuation and bonuses: to pay bonuses, gratuities or retirement benefits or to establish and support or aid in the establishment and support of schemes providing superannuation, death and retirement benefits or any one or more of such benefits in respect of employees or ex-employees of the Trustee including in the case of a corporate Trustee directors or other holders of any office of the company and the dependants of any of such persons and for the benefit of employees and their dependants of any company or person associated with the Trustee;
  - (s) Future contracts and options: to engage brokers and commission agents and vary and determine the terms of any such engagement and either directly or through any broker or agent in any market in any part of the world buy sell, open, close-out or otherwise deal in futures contracts of all kinds, to enter into, vary, exercise, abandon or sell any put or call option or rights, or to place bids, make offers, hedge and effect orders including buying, selling, straddle, switch and stop-loss order, to tender and take delivery of commodities and currencies which are the subject of any futures contract or option, and otherwise to do and perform all things so as to operate on, utilise or deal with the facilities of any stock or futures exchange;
  - (t) Trustee's power to deal with itself: notwithstanding any rule or law or equity to the contrary, to acquire as property of the Fund real or personal property the legal and beneficial interest in which is at the date of such acquisition the absolute property of the Trustee PROVIDED THAT any property so acquired is acquired for a consideration being not greater than the current market value of the property and upon which such acquisition the beneficial interest in and to the property shall be held by the Trustee according to the Rules;
  - (u) Policies: to effect or acquire policies of life assurance of any kind on the life of any person or in respect of sickness, disability or accident to any person; to pay premiums transfer, surrender, change the status of and deal with these policies in any manner whatsoever, whether or not these policies are individual policies on the life of one person or a group policy on the lives of two or more persons; to purchase or enter into insurance or investment bonds whether or not the bonds are linked to a policy over the life of any person;
  - (v) Agency and licenses: to apply for, purchase and hold any permit, agency or licence which may be desirable or required to enable or facilitate the carrying on of any business

- which the Trustee is empowered to engage in and to surrender, relinquish, sell, vary or assign the same;
- (w) Choses-in-action: to acquire choses-in-action including debts and obligations of all kinds for value or by way of gift or at a discount or at a premium and to assign, release, vary, relinquish or otherwise deal with the choses-in-action in any way whatsoever on such terms and conditions as the Trustee may see fit;
  - (x) Receive gifts: to receive property by gift inter-vivos or by will or under the provisions of any other trust or otherwise from any person as an addition to the trust fund, whether subject to liabilities or not and to hold these gifts according to the Rules and to administer such additions under these provisions;
  - (y) Legal proceedings: to institute, join in and defend proceedings at law or by way of mediation or arbitration and to proceed to the final end and determination of, or to compromise the same and to compromise and settle any such dispute or proceedings for such consideration and upon the terms and conditions as the Trustee may decide;
  - (z) Intellectual property: to apply for, purchase or otherwise acquire and to sell patents, patent rights, copyrights, trade marks, designs, formulas, licenses, concessions, know-how and the like, conferring any exclusive or non-exclusive or limited right to use of any other intellectual property rights and to use, exercise, develop or grant licenses in respect of or otherwise turn to account the property rights or information so acquired;
  - (aa) Release of powers: by irrevocable deed to renounce and release any power conferred on the Trustee under the Rules in respect of the whole or any part of the Fund or the income or any part thereof. Upon such renunciation and release any power or powers shall be deemed to be at an end and no longer exercisable by the Trustee to the extent of the renunciation and release;
  - (bb) Incidental powers: to do all such other things as may be incidental to the exercise of the powers, rights, discretions and authorities hereby conferred on the Trustee.

26.6 A Trustee who is a natural person may become a director of any company in which any moneys forming part of the Fund are from time to time invested and may receive the remuneration attached to such office without being liable to account for it.

26.7 Subject to the terms of these rules the Trustee may exercise or concur in exercising all powers and discretions given under this deed or by law notwithstanding that it or any person being a director or shareholder of the Trustee has or may have a direct or indirect interest in the result of exercising such powers or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.

**Rule 27:            *The assets of the Fund are to be held in the Trustee's name***

**EXPLANATION**

*The Act as well as the Rules of this Fund require that all the assets of the Fund be in the Trustee's name and held separately from any assets held by the Trustee personally, a Member personally or by an employer of a Member of the Fund. No Member has any entitlement to a specific asset of the Fund.*

27.1 All the assets of the Fund must be held in the Trustee's name and must be held separately from any assets held by the Trustee personally, a Member personally or by an employer of a Member of the Fund.

27.2 No Member shall have any entitlement to a specific asset of the Fund nor can a Member direct a Trustee:

- (i) to allocate a specific asset or asset interest to a Member's Account;
- (ii) to apply a specific asset to pay either a lump sum or pension benefit on behalf of a Member; or
- (iii) to transfer a specific asset as a Death or Disablement benefit.

**Rule 28:            *The Trustee must not borrow***

**EXPLANATION**

*Normally the Trustee cannot borrow. This is a prohibition imposed by the Act. These Rules reflect that prohibition.*

*This prohibition may prevent the Trustee from acquiring a particular investment.*

28.1 Except as otherwise provided by this Rule the Trustee must not:

- (a) borrow money; or
- (b) maintain an existing borrowing of money.

28.2 This Rule does not prohibit the Trustee borrowing money if:

- (a) the purpose of the borrowing is to enable the Trustee to make a payment to a Member which the Trustee is required to make by law or by the Rules and which, apart from the borrowing, the Trustee would not be able to make; and
- (b) the period of the borrowing does not exceed 90 days; and
- (c) if the borrowing were to take place, the total amount borrowed by the Trustee would not exceed 10% of the value of the assets of the Fund.

28.3 This Rule does not prohibit the Trustee from borrowing money if:

- (a) the purpose of the borrowing is to enable the Trustee to make a payment of surcharge or advance instalment which the Trustee is required to make under the Superannuation Contributions Tax (Assessment and Collection) Act 1997 and which, apart from the borrowing, the Trustee would not be able to make; and
- (b) the period of the borrowing does not exceed 90 days; and
- (c) if the borrowing were to take place, the total amount borrowed by the Trustee would not exceed 10% of the value of the assets of the Fund.

28.4 This Rule does not prohibit the Trustee from borrowing money if:

- (a) the purpose of the borrowing is to enable the Trustee to cover settlement of a transaction for the acquisition of any of the following:
  - (i) bonds, debentures, stock, bills of exchange or other securities;
  - (ii) shares in a company;
  - (iii) units in a unit trust;
  - (iv) future contracts;
  - (v) forward contracts;
  - (vi) interest rates swap contracts;
  - (vii) currency swap contracts;
  - (viii) forward exchange rate contracts;
  - (ix) forward interest rate contracts;
  - (x) a right or option in respect of such a security, share, unit, contract or policy;
  - (xi) any similar financial instrument;
  - (xii) foreign currency; and
- (b) both:
  - (i) at the time the relevant investment decision was made, it was likely that the borrowing would not be needed; and
  - (ii) the borrowing is not taken, under a written determination made by the Regulator, to be exempt from this paragraph; and
- (c) the period of the borrowing does not exceed 7 days; and
- (d) if the borrowing were to take place, the total amount borrowed by the Trustee would not exceed 10% of the value of the assets of the Fund.

## Reserves

### **Rule 29:**            *The Trustee may establish a Reserve*

#### **EXPLANATION**

*The Trustee has a discretion as to whether a Reserve should be created. A Reserve may be created to meet an expected liability of the Fund (particularly where it is expected that such liabilities should not be charged to a Member's Account) including a liability to pay a pension to a Member.*

*At the time of establishment of a Reserve the Trustee should determine whether the Reserve is:*

1.        *An investment reserve from which earnings will be allocated to a Member's Account.*
2.        *A contributions reserve where invested contributions are put on account of a specific group of Members.*
3.        *A pension reserve to which amounts are put (generally on the advice of an actuary) so as to ensure that the Trustee has retained sufficient funds to pay pensions to Members.*
4.        *A miscellaneous reserve to which amounts are put so as to provide the Fund with funds to be held in reserve for unexpected contingencies or not otherwise held for the Members.*

*The Trustee should determine at the time of establishment of a reserve:*

1.        *What amounts are to be debited or credited to the reserve;*
2.        *The investment strategy to be adopted for that reserve; and*
3.        *The proposed application of that reserve.*

The Trustee may from time to time establish such reserve accounts and credit and debit amounts to those accounts as it considers appropriate (except that it may not establish a reserve or debit or credit any amount to a reserve account if that establishment, debiting, or crediting would cause the Fund not to be a Complying Superannuation Fund).

If the Trustee establishes a Reserve the Trustee must also formulate and give effect to a strategy for their prudential management consistent with the Fund's Investment Strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due.

## Taxation

### **Rule 30:**            *Payment of Tax and allocation to Member's Accounts*

- 30.1     The Trustee must pay all Tax properly assessed to the Trustee (but must not pay any Tax not properly assessed).
- 30.2     The Trustee may in its discretion debit to a Member's Account that Tax payable by the Trustee:
  - (i)        as a consequence of the receipt by the Trustee of a contribution for the benefit of a Member;
  - (ii)       payable on any income allotted to a Member's Account; and
  - (iii)      any Tax which the Trustee reasonably believes will be payable as a consequence of a payment to a Member.

### **Rule 31:**            *Becoming a Regulated Superannuation Fund*

#### **EXPLANATION**

*The tax concessions contained in the Income Tax Assessment Act 1936 only apply to a fund, which is a "Complying Superannuation Fund". A fund will not be a "Complying Superannuation Fund" if it is not a "Regulated Superannuation Fund".*

The Trustee may determine that the Fund should be a Regulated Superannuation Fund. If the Trustee determines that the Fund should be a Regulated Superannuation Fund the Trustee shall do all things necessary to cause the Fund to be a Regulated Superannuation Fund.

## Insurance

### **Rule 32: The Trustee may establish an insurance plan**

#### EXPLANATION

*The Trustee may establish an insurance plan for the Fund and its Members. The insurance plan may provide, amongst other things, lump sum or annuity cover payable in the event of a Member's death or disablement where the Trustee is required to pay a death or disablement benefit to the Member or to the Member's Legal Personal Representative.*

The Trustee may establish an insurance plan for the benefit of the Fund so as to enable the Fund to make payments (including Death Benefit payments) to the Members.

### **Rule 33: The Trustee may self-insure**

#### EXPLANATION

*The insurance plan may also require the Trustee to self-insure the Fund (so as to enable the Trustee to pay a benefit to a Member or to a Member's Legal Personal Representative). In the event that the Trustee seeks to self-insure the Trustee should:*

1. *engage an actuary skilled to provide advice to the Fund;*
2. *determine the scope of the Fund's self insurance needs;*
3. *establish a self insurance reserve; and*
4. *set a separate investment strategy for the self insurance reserve.*

The Trustee must determine whether he should enter into any insurance policy for the benefit of the Fund (including a policy to enable the Fund to pay a Benefit to a Member). The Trustee need not insure if the Trustee determines that he should not insure.

### **Rule 34: The Trustee has discretion as to the application of any insurance proceeds**

#### EXPLANATION

*When the Trustee insures the life of a Member and the Member dies, the proceeds of the policy are property of the Trustee. The Trustee has sole discretion as to application of any life insurance policy subject to any superannuation law as at the time. Such applications include but are not limited to:*

- *the payment of a pension to a dependant of a deceased Member. The type, duration and size of any pension payments and residual capital value are to be determined by the Trustee with advice from a qualified actuary. The Trustee may also impose conditions on the pension payments including that the pension is to commence on the happening of some event or at some period of time; and*
- *creation of a miscellaneous reserve for future allocation to other Members or a transfer to other reserves or such other amounts as the Trustee sees fit; and*
- *such other purposes as is allowed under the superannuation laws at the time of distribution.*

34.1 Subject to the Act the Trustee has absolute discretion as to the application of any insurance proceeds received by the Fund.

34.2 No Member of the Fund has any interest in any insurance proceeds which might be received by the Fund.

## Annual Accounts

### **Rule 35:            *The Trustee must prepare annual accounts***

- 35.1     The Trustee must keep such accounting records as correctly record and explain the transactions of the Fund.
- 35.2     Such accounting records are to be kept in such form and supported by such documentation as enable those accounting records to be properly audited.
- 35.3     The Trustee must as soon as practical after the end of each Financial Year:
- 35.3.1    ensure that a balance sheet is prepared recording the assets and liabilities of the Fund as at the preceding 30 June;
- 35.3.2    cause a profit and loss account to be prepared recording the profit derived or loss incurred by the Fund for the preceding Financial Year (or part of the year if the Fund were not in existence for a full year);
- 35.3.3    cause the balance sheet and profit and loss account to be audited by an Approved Auditor; and
- 35.3.4    cause all tax returns and other statements required to be lodged pursuant to the Act by the Fund to be lodged as and when required to be lodged by the Act;

## **Benefits Payable to a Member (other than on Incapacity or Death)**

### **Rule 36:            *Benefits payable to a Member***

#### **EXPLANATION**

*If the Trustee of the Fund is a corporation Members can elect whether to receive a lump sum benefit or a pension benefit (or both a lump sum benefit and a pension benefit). If the Trustee of the Fund is not a corporation the principal purpose of the Fund must be the provision of pension benefits. Whether the Trustee can pay a Temporary Incapacity Benefit or a Permanent Incapacity Benefit or not will determine upon whether the Trustee has insured the Member (for such incapacity) or has established sufficient reserves to enable it to pay any such Benefit.*

A Member or a dependant of a Member or the Legal Personal Representative of a Member may be entitled to receive one or more of:

- (i)           a Lump Sum Benefit;
- (ii)          a Pension Benefit;
- (iii)         a Temporary Incapacity Benefit; and
- (iv)         a Permanent Incapacity Benefit,

provided that any such payment of a Benefit would not cause the Fund not to be a Complying Superannuation Fund or would not be a breach of the Act.

### **Rule 37:            *Payment and repayment of Benefits***

#### **EXPLANATION**

*The Act contains rules as to both the minimum and maximum ages at which benefits can be paid.*

- 37.1     The Trustee must not pay a Benefit to a Member if the payment of that Benefit would cause the Fund not to be a Complying Superannuation Fund.
- 37.2     If a Benefit is paid to a Member and the Trustee subsequently determines that the Benefit should not have been paid to the Member the Member shall forthwith on demand by the Trustee pay to the Trustee the amount of that Benefit.



**Rule 38: Payment of a Lump Sum Benefit****EXPLANATION**

*Normally Lump Sum Benefits can only be paid to a Member on retirement of the Member (provided the Member is at least 55 years of age) or if the Member turns 65 years of age. The Trustee may also be able to make payments to a Member on compassionate grounds or if that Member is suffering severe financial hardship.*

On the request of a Member and subject to Rule 37 a Member can at any time request the Trustee to pay to the Member and the Trustee to pay to the Member that amount or part of that amount as is then equal to the credit balance of that Member's Accumulation Account. The Trustee can also determine whether the whole or any part of a Reserve should also be paid to the Member.

**Rule 39: Payment of a pension benefit****EXPLANATION**

*The Rules allow the Trustee to pay pensions. The Trustee can decide whether the pension should be an allocated, complying, lifetime or fixed term pension, and non-complying lifetime or fixed-term (flexi) pension.*

In lieu of payment of a single Lump Sum Benefit to a Member as allowed by Rule 38 above the Trustee may in his absolute discretion determine to pay the balance of an amount credited to a Member's Accumulation Account by way of pension (or by way of other periodic payments) or by way of payment of a pension (or other periodic payments) and payment of a lump sum amount or by way of payment of both a Lump Sum Benefit and a pension.

**Incapacity****Rule 40: Member to advise Trustee of incapacity**

- 40.1 As soon as practical after becoming incapacitated the Member or the Member's Legal Personal Representative shall advise the Trustee of that Member's incapacity. The Member shall submit to whatever medical examination might reasonably be required by the Trustee.
- 40.2 On receipt of that advice and notice of the result of any such medical examination the Trustee shall determine whether the Member has been Temporarily Incapacitated or Permanently Incapacitated.

**Rule 41: Benefits payable for Temporary Incapacity****EXPLANATION**

*The Trustee can pay a Member a pension provided that the amount of that pension is not greater than the amount the Member was receiving from Gainful Employment. An amount received from Gainful Employment would include salary, wages, a share of the profit of a partnership, a distribution from a trust, a bonus, or any other form of benefit.*

- 41.1 Where the Trustee is of the opinion that the Member is suffering from Temporary Incapacity the Trustee may pay a pension to the Member for a period commencing from the time of that Temporary Incapacity to the earlier of:
- (i) that date the Member is re-engaged in that employment engaged in by the Member immediately before the Member became Temporarily Incapacitated;
  - (ii) that date the Trustee forms an opinion that the Member has become permanently incapacitated; or
  - (iii) the date of the death of the Member.
- 41.2 Subject to the Act the amount of the pension (referred to at Rule 41.1 above) shall be no more than that amount which the Member was receiving from his Gainful Employment before that Temporary Incapacity.

**Rule 42: Benefits payable for Permanent Incapacity**

If the Trustee is of the view that a Member has been Permanently Incapacitated the Trustee may in his absolute discretion:

- (i) pay all of any credit balance of the Member's Accumulation Account to the Member;
- (ii) pay part of that credit balance of the Member's Accumulation Account to the Member and the balance of the Member's Accumulation Account (as increased from time to time) to the Member as a pension; or
- (iii) pay all of the Member's Accumulation Account (as increased from time to time) to the Member as a pension.

**Death Benefits**

*A purpose of the Fund is to provide benefits to a Member's dependants or Legal Personal Representative upon the death of the Member. If the Trustee is not a corporation that purpose must be the sole or primary purpose.*

**Rule 43: What must happen on death of a Member (including a change of Trustee)**

43.1 On death of a Member:

- (i) if the Member was a Trustee of the Fund – the deceased Member's Legal Personal Representative is by reason of this Rule appointed a Trustee of the Fund for the period from the date of death of the Member until the date of payment of any Benefits payable as a consequence of the death of the Member; and
- (ii) if the Member were a director of a company which is a Trustee of the Fund – that company may continue as a Trustee of the Fund from the date of death of the Member until the date of payment of any Benefits payable as a consequence of the death of the Member provided the Legal Personal Representative of the Member is appointed as a director of the company for any such period and provided the company is otherwise eligible pursuant to these Rules to be a Trustee of the Fund.

43.2 The Trustee shall determine whether it holds a Death Benefit Nomination or a replacement to a prior Death Benefit Nomination signed by the deceased Member.

43.3 The Trustee shall pay such Death Benefits as it is required to pay by reason of Rule 44 below.

**Rule 44: Payment of a Death Benefit on death of a Member****EXPLANATION**

*The Trustee may pay out additional death benefits to a dependant beneficiary of a deceased Member additional to the credit balance of that Member's Accumulation Account. This additional benefit may be paid from any Reserve of the Fund including but not limited to an investment reserve, a contribution reserve, a miscellaneous reserve, or a pension.*

44.1 If a Member dies, and:

- (i) if the Member has not made a Binding Death Benefit Nomination – the Trustee shall distribute the credit balance of the Member's Accumulation Account to such one or more of the Member's dependants as the Trustee in his absolute discretion determines (or if there is no dependant of a Member alive to that Member's Legal Personal Representative). In exercising that discretion the Trustee must consider but is not bound by any Non-binding Death Benefit Nomination previously supplied by the deceased Member to the Trustee; or
- (ii) if the Member has made a Binding Death Benefit Nomination – the Trustee shall distribute the credit balance of the Member's Accumulation Account to such of those persons as the Member shall have nominated (or if any such person not be living to that person's Legal Personal Representative).



44.2 Notwithstanding Rule 44.1 above the Trustee is authorised to pay such additional amount to a dependant of a deceased Member as the Trustee in his absolute discretion (unless prohibited by the Act) determines.

### **Conversion of Benefits**

**Rule 45: Conversion of a Lump Sum Benefit into a Pension Benefit**

If allowed by the Act the Trustee shall if requested by a Member convert any Lump Sum Benefit payable to the Member into a Pension Benefit payable to the Member.

**Rule 46: Conversion of a Pension Benefit into a Lump Sum Benefit**

If allowed by the Act the Trustee shall if requested by a Member convert any Pension Benefits payable to the Member into a Lump Sum payable to the Member.

### **Purpose**

**Rule 47: The Fund must satisfy the sole purpose test**

### **EXPLANATION**

*A Fund will not be a Regulated Superannuation Fund unless it passes a "sole purpose test" (being the satisfaction of "core purpose" and "ancillary purpose" tests).*

The Trustee must ensure that the Fund is maintained:

- (i) solely for one or more of the sole purposes, or
- (ii) for one or more of the Core Purposes and for one and more of the Ancillary Purposes.

### **Termination**

**Rule 48: The Trustee may terminate the Fund**

### **EXPLANATION**

*On termination of the Fund the Trustee should:*

*Step One Have the Fund audited.*

*Step Two Determine the market valuation of the Fund's assets.*

*Step Three Pay out all expenses of the Fund including any Taxes, administration costs, government imposts or other expenses plus any expense incurred to wind up the Fund.*

*Step Four Declare a final distribution amount, being an amount remaining after completion of Steps One, Two and Three.*

*Any final distribution amount may subject to the Act be distributed by the Trustee to any of:*

- (a) *Members and former Members of the Fund;*
- (b) *relatives of any Member or former Member;*
- (c) *any legal estate of a Member or former Member;*
- (d) *any other person; or*
- (e) *a charity or public benevolent institution.*

48.1 The Fund shall be wound-up and terminated on the first to occur of that date:

- (i) on which all the Members unanimously agree;
- (ii) on which the Trustee resolves that the Fund should be wound up and terminated;
- (iii) the Fund must be wound up for the purpose of the Act; and
- (iv) the Fund having had Members ceases to have Members.

48.2 The Trustee shall on Termination Date:

- (i) as soon as practicable sell, call in and convert the investments and property of the Fund;
- (ii) pay out any debts and liabilities of the Fund; and
- (iii) pay out any amounts due by the Fund to the Members.

48.3 If no amounts are due to Members the Trustee may in its discretion pay out the balance of the Fund to such other persons, charities or public benevolent institutions as it might determine.

## Amendments

**Rule 49:** *The Trustee may amend the Deed or the Rules*

### EXPLANATION

*Given that constant changes are made to the Act it is important that the Rules of the Fund are able to be amended (so as to ensure continued compliance with the Act).*

The Trustee may in his absolute discretion amend the Deed or the Rules (in whole or in part) including by way of replacement provided:

- (i) the Trustee gives all the Members twenty one days notice of any proposed change to the Deed or the Rules and explains the reason for the proposed change to the Deed or the Rules;
- (ii) if there be more than one Member of the Fund the change is made at a meeting of the Trustees of the Fund (or if the Trustee be a company at a meeting of the directors of the company) of which at least 21 days notice (which time may include that time referred to at paragraph (i) above) has been given to all the Members (or unless all the Members unanimously agree that lesser notice can be given);
- (iii) if there is more than one Member of the Fund the change is agreed to by at least 75% in number of the Members or if the Trustee is a company the change is agreed to by at least 75% in number of the directors of the company;
- (iv) any change to the Deed or the Rules does not cause the Fund not be a Complying Superannuation Fund or be in breach of the Act;
- (v) the amendment does not reduce the amount of any benefit accrued or accruing to a Member as at the date of amendment unless the Member has in writing consented to any such amendment; and
- (vi) the amendment does not allow a person other than a Constitutional Corporation to be eligible to be appointed as a Trustee unless the Rules then provide and will continue to provide after the amendment is made that the Fund has as its sole or primary purpose the provision of old age pensions; or
- (vii) the amendment does not allow the sole or primary purpose of the Fund to be a purpose other than the provision of old age pensions unless the Rules provide and will continue to provide after the amendment is made that the Trustee must be a Constitutional Corporation.

## Governing Law

**Rule 50:** *The governing law is to be nominated by the Trustee.*

The Deed and the Rules are to be interpreted according to that law the Trustee nominates or if the Trustee makes no nomination according to that law as the Members might determine or if the Members make no such determination according to the laws of New South Wales.

## Status of the Act

**Rule 51:** *The Act is paramount*

### EXPLANATION

*The Act is defined (in the Definitions) as the Superannuation Industry (Supervision) Act, the various income tax acts, and regulations made pursuant to all of those acts. If the provisions of the Act are not*

*adhered to the Fund might lose its status as a Complying Superannuation Fund (with the result that it would not be concessional tax). The Trustee might also be subject to a fine or criminal penalty. This Rule is designed to protect the status of the Fund, both in the event that the Rules of the Fund and the provisions of the Act contain some accidental inconsistency but more importantly, in case the provisions of the Act change (and it is almost certain that the provisions of the Act will change).*

The Rules are subject to the Act. If there is any inconsistency between the provisions of the Act and the Rules the provisions of the Act shall prevail. The Trustee shall not act contrary to any provision of the Act.

## **Interpretation**

### **Rule 52: Rules as to interpretation**

52.1 Explanations accompanying a Rule may only be taken into account in interpreting a Rule:

- (i) in considering the purpose or object underlying a Rule; or
- (ii) to confirm that the meaning of a Rule is its ordinary meaning conveyed by its text taking into account the purpose or object underlying the Rule; or
- (iii) in determining a Rule's meaning if the Rule is ambiguous or obscure; or
- (iv) in determining the Rule's meaning if the ordinary meaning conveyed by its text, taking into account its context in the Rules and the purpose or object underlying the Rule leads to a result that is manifestly absurd or unreasonable.

52.2 A reference to any person or body shall include references to its respective authorised officers, agents, delegates, successors, assigns, executors and administrators.

52.3 Words importing any one gender include all genders and words importing the singular number include the plural and vice versa.

52.4 In determining whether the Fund will or will not be a Complying Superannuation Fund or Self Managed Superannuation Fund the Trustee shall only consider whether or not any course of action to be followed by the Trustee in relation to the Fund would or would not cause the Fund not to be a Complying Superannuation Fund or self Managed Superannuation Fund and must not take into account any discretion which might or might not be exercised by the Regulator.

52.5 A reference to a provision of an act includes a reference to any similar provision in any successor Act.

## Definitions

### Rule 53:

### Definitions

Act	The Superannuation Industry (Supervision) Act 1993, the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997, The Social Security Act 1991, all regulations made for the purposes of the foregoing acts, and any successor acts and all regulations made for the purposes of any successor acts to the foregoing acts.
Ancillary Purposes	"Ancillary purposes" as defined in section 62 of the Superannuation Industry (Supervision) Act 1993.
Application Form	An application form as referred to at Rule 10.
Approved Auditor	An auditor who is an Approved Auditor as defined in the Superannuation Industry (Supervision) Act 1993 or any successor Act.
APRA	The Australian Prudential Regulation Authority or any successor authority to that authority.
Associate	A person who is an associate as defined by section 12 of the Superannuation Industry (Supervision) Act 1993.
Accumulation Account	An account to which a Lump Sum Benefit paid to a Member should be debited.
Benefit	A benefit payable by the Fund.
Binding Death Benefit Nomination	A death benefit nomination as referred to in Rule 12.
Business Real Property	In relation to an entity, means: <ul style="list-style-type: none"> <li>(e) any freehold or leasehold interest of the entity in real property; or</li> <li>(f) any interest of the entity in Crown land, other than a leasehold interest, being an interest that is capable of assignment or transfer; or</li> <li>(g) if another class of interest in relation to real property is prescribed by the regulations for the purposes of this paragraph – any interest belonging to that class that is held by the entity;</li> <li>(h) where the real property is used wholly and exclusively in one or more businesses (whether carried on by the entity or not), but does not include any interest held in the capacity of beneficiary of a trust estate.</li> </ul>
Constitutional Corporation	A body corporate which is <ul style="list-style-type: none"> <li>(b) a trading corporation formed within the limits of the Commonwealth of Australia (within the meaning of paragraph 51(xx) of the Constitution of the Commonwealth of Australia),</li> <li>(b) a financial corporation formed within the limits of the Commonwealth of Australia (within the meaning of paragraph 51(xx) of the Constitution of the Commonwealth of Australia).</li> </ul>
Complying Superannuation Fund	A Fund, which is a complying superannuation fund for the purposes of the Act.
Core Purposes	"Core purposes" is defined in section 62 of the Superannuation Industry (Supervision) Act 1993.

Deed	The deed establishing Yardy Superannuation Fund as from time to time amended.
Dependant	In relation to a person includes the spouse and any child of the person.
Financial Year	A year ended 30 June or that period of twelve months adopted by majority resolution of a meeting of the Members by the Members as the Fund's financial year.
Fund	The superannuation fund established by the Deed.
Gainful Employment	An Employment or engagement for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.
Investment Strategy	An investment strategy set pursuant to Rule 23.
Legal Personal Representative	The executor of the will or administrator of the estate of a deceased person, the trustee of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by a person.
Lump Sum Benefit	A benefit which is payable to a Member pursuant to Rule 38.
Member's Benefit	The amount of a Benefit payable to a Member.
Manager	The person or entity appointed by the Trustee to manage the Fund.
Market Value	The amount that a willing buyer of an asset could reasonably be expected to pay to acquire the asset from a willing seller if the following assumptions were made: <ul style="list-style-type: none"> <li>(e) that the buyer and the seller dealt with each other at arm's length in relation to the sale;</li> <li>(f) the sale occurred after proper marketing of the asset;</li> <li>(g) the buyer and seller acted knowledgeably and prudentially in relation to the sale.</li> </ul>
Member	A person who is a member of the Fund.
Member's Account	An account established pursuant to Rule 38.
Member's Accumulation Account	An account kept for a Member the balance of which is the amount, which can be paid to the Member as a Lump Sum Benefit.
Member's Representative	That person or company which is deemed by Rule 2.1 to be a Member's Representative.
Normal Retirement Age	The sixty-fifth birthday of the Member or such other age as the Trustee might determine.
Non-binding Death Benefit Nomination	A death benefit nomination as referred to in Rule 13.

Permanently Incapacitated	In relation to a Member means a Member who has ceased to be Gainfully Employed because of ill-health (whether physical or mental) where the Trustee is reasonably satisfied that that Member is unlikely, because of the ill health, ever again to Gainfully Employed in any employment for which that Member is reasonably qualified by education, training or experience.
Pension	A Benefit, which is a pension for the purposes of the Act.
Pension Account	An account to which the payment of a Pension to a Member should be debited.
Permanent Incapacity Benefit	A Benefit payable pursuant to Rule 42.
Prescribed Documents	Any documents, which are prescribed documents for the purposes of the Superannuation Industry (Supervision) Act 1993.
Prescribed Information	Any information which is prescribed information for the purposes of the Superannuation Industry (Supervision) Act 1993.
Regulated Superannuation Fund	A superannuation fund, which is a regulated superannuation fund as defined within section 19 of the Superannuation Industry (Supervision) Act 1993.
Regulator	APRA, the Commissioner of Taxation or the Secretary of the Department of Family and Community Services.
Related Party	A person who is a related party as defined for the purpose of the Superannuation Industry (Supervision) Act 1993.
Reserve	A reserve established pursuant to Rule 29.
Responsible Officer	(a) a director of the body, or (b) a secretary of the body; or (h) an executive officer of the body.
Self Managed Superannuation Fund	A fund, which is a "self-managed superannuation fund" as defined for the purpose of the Superannuation Industry (Supervision) Act 1993.
Spouse	In relation to a person includes another person who although not legally married to the person lives with the person on a genuine domestic basis as the husband or wife of the person.
Rules	The rules of the Fund.
Standard Employer-Sponsor	A person who is a standard employer-sponsor as defined by the Superannuation Industry (Supervision) Act 1993.
Superannuation Entity	(a) a Regulated Superannuation Fund, or (b) an approved deposit fund, or (c) a pooled superannuation trust.

Tax	Any tax levied by any taxation law including any surcharge levied pursuant to the Superannuation Contributions Tax Act 1997 (or any successor legislation).
Temporarily Incapacitated	In relation to a Member means a Member who has ceased to be Gainfully Employed because of ill-health (whether physical or mental) but does not mean a Member who is Permanently Incapacitated.
Temporary Incapacity Benefit	A benefit payable pursuant to Rule 41.
Termination Date	The date on which the Trustee terminates the Fund.
Trustee	A person or company appointed a trustee of the Fund.