

- (b) The Trustees may transfer any preserved benefit to another superannuation fund nominated by the Member, an approved deposit fund nominated by the Member, a deferred annuity nominated by the Member or such other superannuation entity as the Superannuation Conditions allow.
- (c) If the Fund holds benefits that were not the subject of preservation prior to the date of or the date of adoption or application of this Deed then nothing in this Deed operates in a way that has the effect of preserving those benefits unless the Superannuation Conditions require it.

24.8 Member otherwise has no interest:

Except as provided in this Deed and subject to the Superannuation Conditions, a Member, Dependant or Personal Representative have no right to or interest in the Fund.

24.9 Trustees to determine amount to pay benefits:

Upon the happening of an event as the result of which there arises an absolute or contingent right to the payment of a benefit in accordance with this Deed to or in respect of a Member, Dependant or Personal Representative either immediately or at some future date the Trustees must determine the amount required to meet that liability and any balance of the Member Accounts in excess of that amount may be transferred to the Forfeited Benefits Account subject to paragraph 25.1(b) unless the Trustees otherwise resolve.

24.10 Member to provide evidence of entitlement:

The payment of any benefit must be subject to the person claiming the same producing such evidence, doing such acts and executing such documents as the Trustees may reasonably require and the Trustees may postpone the payment of any benefit until the requirements of this paragraph have been met.

24.11 Trustees may transfer assets in specie:

Subject to the Superannuation Conditions, the Trustees may, with the agreement of the Member or Beneficiary to whom a benefit is payable, transfer investments of the Fund of equivalent value to such benefit in lieu of payment of the same in money. The Trustees may take into account such associated costs, taxes or other expenses of such transfer as they think fit and make adjustments accordingly.

24.12 Unclaimed monies:

If the Trustees cannot find a person entitled to a benefit then that benefit or part of that benefit may be paid or otherwise dealt with by the Trustees in such manner as the Superannuation Conditions permit.

24.13 Unpaid benefits:

In the circumstances prescribed by the Superannuation Conditions the Trustees may pay an unpaid benefit to an eligible rollover fund, or to the Commissioner or other body prescribed by the Superannuation Conditions.

Forfeited Benefits Account

25.1 Forfeited benefits account may be kept:

- (a) The Trustees may keep an account for the receipt of amounts forfeited from Member Accounts and any other credit balances that cannot be otherwise allocated under the

provisions of the Deed. The account is to be known as the Forfeited Benefits Account.

- (b) A benefit may not be forfeited if that would result in the fund failing to comply with the definition of a self managed superannuation fund in the SIS Act or the Superannuation Conditions.

25.2 Application of forfeited benefits:

The Trustees may in their absolute discretion apply amounts held in the Forfeited Benefits Account in the manner and to the purposes permitted by the Superannuation Conditions and, if permitted, these may include:

- (a) welfare benefits to assist in events of financial hardship, sickness, accident or other misfortune causing hardship;
- (b) supplementary benefits for retired Members;
- (c) additional benefits for current Members on an equal basis, or on a pro rata basis among all Members or, among Members on the basis of economic needs;
- (d) payment of administrative expenses of the Fund;
- (e) payment of a Member's own contribution to relieve hardship;
- (f) payment to an Employer in recompense for loss or damage as the consequence of employee misconduct;
- (g) payment to an Employer in the form of assessable income.

Provided that the Trustees, if the Superannuation Conditions require it, may not apply any amount so held which is attributable to the contributions of an Employer to the provision of any benefit or advantage for any Member who is not its Employee without the consent of that Employer and where the Trustees have given notice of not less than twenty one (21) days to an Employer of the Trustees intention to so apply any amount and the Employer has not responded the Employer is deemed to have consented to that application.

25.3 Equalisation Account:

- (a) The Trustee may at any time establish an Equalisation Account of the Fund and may transfer to the credit of that account any forfeited benefits or any amounts from an income account in the Fund.
- (b) Any monies held in the Equalisation Account do not form part of any Member Account and any income derived by the Fund on the monies held in the Equalisation Account is to be credited to the Equalisation Account.
- (c) The Equalisation Account is to be used by the Trustee in accordance with any applicable investment strategy relating to reserves to stabilise the investment earnings of the Fund and to provide for such contingencies as the Trustees consider appropriate.

(d) This Rule 25.3 is subject to the Superannuation Conditions.

Benefits charged with payments due to Employer

26.1 The following provisions are subject to the Superannuation Conditions and apply to the extent to which they are not inconsistent with it.

26.2 Charge:

Subject to the Superannuation Conditions, the benefit payable in respect of a Member is to be charged with the payment to the Principal Employer of that Member of -

- (a) all amounts owing by him or her to the Principal Employer;
- (b) any loss incurred by the Principal Employer in consequence of the Member's fraud, dishonesty or misconduct; and
- (c) the costs of all proceedings civil or criminal incurred by the Principal Employer in recovering any amount owing by him or her to the Principal Employer or in respect of the Member's fraud, dishonesty or misconduct.

26.3 Evidence:

A statement in writing signed by the Principal Employer or by the directors (if a company) or by two partners (if a firm) of that Employer stating the amount charged and requesting that the same be paid to the Principal Employer is sufficient authority to the Trustees to pay such amount to the Principal Employer.

26.4 Lien:

Despite any other provision contained in this Deed to the contrary, though subject to the Superannuation Conditions, the Trustees have at the date of payment of a benefit to a Member a lien over that benefit in respect of:-

- (a) all amounts owed by the Member to the Fund; and
- (b) any loss or expense incurred by the Trustees in consequence of the Member's fraud, dishonesty, misappropriation or other misconduct in respect of the Fund including the costs to the Trustees of recovering the same where the loss, expense or costs have been quantified and constituted a debt owing by the Member to the Trustees in their capacity as Trustees.

26.5 Certificate:

A certificate signed by the Trustees stating the amount of the lien over the Member's benefit claimed by the Trustees is prima facie evidence in the hands of the Trustees against all claimants of the amount owing to the Fund under the preceding sub-paragraph and is sufficient authority to the Trustees to retain in the Fund out of the amount of benefit to which the Member would otherwise be entitled the amount of such lien and the balance, if any, of the benefit which is not so retained in the Fund must be paid to or in respect of the Member.

Application of Benefits in Certain Cases

27.1 Member's insanity and other events:

This provision applies separately to vested and non-vested benefits and only if the Superannuation Conditions do not prohibit it. If a Beneficiary in the Trustee's opinion:-

- (a) who assigns or charges or attempts to assign or charge any benefit;
- (b) whose interest in any benefit, whether by the Member's or Beneficiary's own act, operation of law, an order of any Court or otherwise becomes payable to or vested in any other person, company, government or other public authority;
- (c) who is insolvent or who commits or has committed an act of bankruptcy;
- (d) who for any reason is unable personally to receive or enjoy the whole or any portion of a benefit or who, in the opinion of the Trustees is incapable of managing the person's affairs;
or
- (e) who in the opinion of the Trustees commits any fraud or is guilty of dishonesty or defalcation,

the Member ceases to be presently or presumptively entitled to his or her benefit or such part of that benefit as the Trustees in their absolute discretion determine provided however that this sub-paragraph only applies to the extent that it is not limited by or inoperative under the Act or the Bankruptcy Act provided further that the Trustees will only recognise an assignment or charge of a benefit where it is acceptable under the Act.

27.2 Payments:

In any of the events mentioned in the preceding sub-paragraph and if the Superannuation Conditions do not prohibit it, the Trustees may pay to the Dependent of the Member:

- (a) the whole or such part of the benefit, or
- (b) any vested benefit

as the Trustees, in their absolute discretion, determine and may apply the balance of such benefits then remaining in the hands of the Trustees for the maintenance and support of such Member or Dependant as the Trustees in their absolute discretion may determine provided that any such payment or application by the Trustees for the maintenance and support of a Member while such Member continues to be employed is to be made only for the purposes of and in such circumstances as warrant the relief of hardship as may be permitted by the Superannuation Conditions. Any amounts not applied under this paragraph may be transferred to the Forfeited Benefits Account by the Trustees.

27.3 Discharge:

The payment or application of any monies pursuant to the preceding sub-paragraph is a complete discharge to the Trustees therefor.

Transfer of Benefits

28.1 Trustees to make arrangements with prior employer and Trustee:

- (a) Subject to the Superannuation Conditions the Trustees may at the request of an Employee or Member and with the consent of his or her Employer, if any, make such arrangements as they think proper with that previous Employer or the Trustee of any other superannuation fund or entity for the payment or transfer to the Fund of monies or assets and other rights and benefits of and arising in relation to the membership by such person in such other superannuation fund or entity.
- (b) The Trustees may make arrangements about any matter in relation to such payment or transfer which in their opinion is necessary and may also make such arrangements as are necessary to enable such Employee to be admitted to membership of the Fund, if that person is not a Member.
- (c) A payment or transfer may be made to the Trustees of a successor fund without the consent of the relevant Member if permitted by the SIS Act.

28.2 The Trustees must hold any monies or assets so paid or transferred to them from another superannuation fund according to the terms and conditions of this Deed subject to paragraph 21.2.

28.3 Application of transferred amounts:

On any such payment or transfer of monies or assets -

- (a) the amount of the entitlement of the Member concerned is to be credited to his or her Member Account in the manner resolved between the Member, the Trustees and the Trustees of the Fund from which the Member is transferring provided that any such monies or assets which represent a benefit which has vested in the Member is to be credited to his or her account as a vested benefit;
- (b) the amount which by the terms and rules of such other superannuation fund is required to be preserved is to be identified and held by the Trustees as a Preserved Portion under this Deed.
- (c) except to the extent required by the Superannuation Conditions, the money or assets so transferred must not be subject to preservation. Where the Fund holds benefits that were not the subject of preservation in a prior Fund then nothing in this Deed is to have the effect of preserving those benefits unless the Superannuation Conditions require it.

28.4 Application of benefits on Member leaving Fund:

The money and assets comprising any benefit payable to a Member on leaving the Fund may with the approval of such Member be paid or transferred to or invested in (as the case may be):-

- (a) another superannuation fund nominated by the Member of which such Member is or intends to become a Member and which satisfies the Superannuation Fund Conditions; or
- (b) an approved deposit fund nominated by the Member which satisfies the Approved Deposit Fund Conditions set out in the Superannuation Conditions; or

- (c) a deferred annuity nominated by the Member which does not pay benefits except in circumstances in which by the Superannuation Conditions or by this Deed benefits are payable to that person;
- (d) such other superannuation entity as the Superannuation Conditions permit.

The receipt of the Trustee of that other fund or scheme or the corporation issuing the policy is a complete discharge to the Trustees in respect of any money or assets so paid or transferred.

28.5 Application of preserved benefits:

The money and assets comprising any Preserved Portion of a benefit payable to a Member at a date after his or her leaving the Fund may be:

- (a) retained in the Fund; or
- (b) transferred to a superannuation entity provided that such transfer is not inconsistent with the Superannuation Conditions.

The receipt of the Trustees of that other fund or scheme or the corporation issuing the policy is a complete discharge to the Trustees in respect of any money or assets so paid or transferred.

Disclosure of Information

- 29. The Trustees must provide such information, reports or otherwise to such persons, superannuation entities or otherwise as may be necessary to comply with the Superannuation Conditions.

Notices

- 30. Notices may be given by the Trustees to Members and Dependents either personally or by sending the same by pre-paid letter posted to the address last known to the Trustees or the address last known to the Employer.

Principal and Associated Employers

31.1 Approval of Associated Employers:

Subject to the Superannuation Conditions the Trustees with the approval of the Principal Employer, if any, may permit any company, person or firm as an Associated Employer to contribute to the Fund. Unless inconsistent with the Superannuation Conditions, an Associated Employer is deemed to be bound by the Deed and the Rules on such payment of a contribution. The Trustees may require the Associated Employer to make application to join in a form approved by the Trustees.

31.2 Cessation:

Subject to the Superannuation Conditions an Employer ceases to be an Associated Employer on:-

- (a) The Employer ceasing to be an Employer of any Member; or
- (b) The Employer determining to cease contributing to the Fund; or

- (c) The Employer's becoming bankrupt or being placed into liquidation or receivership or ceasing to carry on a business.
 - (d) The Employer giving written notice of ceasing to be an Associated Employer to the Trustees and to each Member who is employed by that Employer.
 - (e) The Trustees giving written notice of cessation to the Associated Employer.
- 31.3 A Member who is an employee of an Employer that has ceased to be an Associated Employer does not by reason of that event cease to be a Member.
- 31.4 **Appointment and cessation of Principal Employer:**
- (a) Subject to the Superannuation Conditions, a Principal Employer of the Fund may cease to occupy that role by giving written notice to the Trustees of that fact and that cessation takes effect from the date that notice is so given.
 - (b) Another entity may become the Principal Employer by written agreement of the Trustees and the Members with the consent of any then current Principal Employer.

Employers Rights Not Restricted

- 32.1 **Employer's rights unaffected:**
Nothing herein contained in any way restrict the rights of an Employer to determine the employment of a Member (or remove from office any director who is a Member) at any time and the fact that such Member is a Member is not to be taken as a guarantee of their employment, or continuance in office.
- 32.2 **Damages:**
The benefits to which a Member might claim to be entitled hereunder are to be disregarded in assessing damages in any action which may be instituted by such Member against the Employer in respect of their dismissal.
- 32.3 **Workers compensation:**
Nothing contained in this Deed is to affect the right of a Member or their Personal Representative or other person to claim damages or compensation at Common Law or under Workers' Compensation Acts or any other Statute in force governing compensation to a Member injured or dying from any accident arising out of and in the course of their employment with the Employer and any benefits payable hereunder are not to be reduced by reason of any payment that may be made in respect of such damages or compensation.

Winding up of Fund

- 33.1 **Winding up:**
Subject to the Superannuation Conditions and if so required, with the Trustees' consent, the Fund is to be wound up by the Trustees as at a date determined by them on the occurrence of any of the following events:-
- (a) if there are no assets of the Fund; or
 - (b) if there are no Beneficiaries of the Fund and no Associated Employers and no Principal Employers; or

- (c) if in respect of each Associated Employer and Principal Employer, if any, an order is made or a resolution is passed for the winding up of such Employers and there are no Beneficiaries.
- (d) if the Trustees (with the consent of the Principal Employer, if any,) resolve to wind up the Fund.
- (e) if the Fund has a Principal Employer who is the only contributing employer and gives written notice requesting that the Fund be wound up to the Trustees and each Member.

33.2 Priorities:

Subject to the Superannuation Conditions and if so required, with the Trustees' approval, the assets of the Fund on its winding up are to be applied in the following order of priority and for the following purposes to the extent to which those assets will allow:-

- (a) firstly, in the payment of liabilities in respect of the administration and other costs associated with the winding-up proceedings;
- (b) secondly, in the discharge of all liabilities other than liabilities in respect of benefits payable to or in respect of Beneficiaries;
- (c) thirdly, in securing the minimum guaranteed benefits of Members;
- (d) fourthly, in securing for each Member the amounts standing to the credit of -
 - (i) their Member Contribution Accounts;
 - (ii) the Vested Portion of their Employer Contribution Accounts; and
 - (iii) any Preserved Portion of their Member Accounts in excess of the amount secured under (i) and (ii) above; and
- (e) lastly, in the distribution of any remaining balance to such of the Beneficiaries, and to any of the Employers in such proportions as in the opinion of the Trustees is appropriate in the circumstances and in accordance with the Superannuation Conditions.

33.3 Subject to vesting and preservation:

Subject to the Superannuation Conditions and in so far as it is within the power of the Trustees to so do, in dealing with the benefit of any Member in a winding up of the Fund the Trustees must observe all the provisions of this Deed relating to the vesting, transfer, payment and preservation of benefits and must not act otherwise than as permitted by those provisions.

Complaints

34. Establishment of complaints procedure:

If required by the Superannuation Conditions, the Trustees will establish such reasonable procedures under which enquiries and complaints may be dealt with.

Schedule

The Rules

Interpretation

1.1 Matters covered by Rules:

These Rules relate to the following matters concerning the Fund:-

- (a) membership of the Fund;
- (b) the kinds of benefit provided by the Fund;
- (c) the circumstances of payment of benefits;

1.2 Superannuation Conditions:

These Rules are subject to the SIS Act.

Membership

2.1 Eligibility:

Any Eligible Person may make application in writing to the Trustees in a form approved by the Trustees from time to time to join the Fund however if a proposed Member is employed by a Principal Employer then the Principal Employer's consent to membership must be obtained by the Trustees before admission of a Member, subject to the Act and the Superannuation Conditions.

2.2 Trustees may refuse:

The Trustees may accept or refuse any application for membership in the Trustees absolute discretion and is not required to assign any reason for any refusal.

2.3 Trustees to give notice:

A person becomes a Member when the Trustees give notice in writing to that person that such application has been approved and accepted, however notice to the Members named in the reference schedule is not required.

2.4 Member bound by Deed:

A person upon becoming a Member is deemed to have consented to and to be bound by the provisions of the Deed and Rules.

2.5 Cessation of membership:

Subject to the Superannuation Conditions a person ceases to be a Member on the happening of the first of the following:-

- (a) death, however subject to the SIS Act the deceased Member's legal personal representative is deemed to be a Member on that death;
- (b) when the total of all amounts payable under this Deed and Rules in respect of the Member's membership has been paid;

- (c) when under this Deed and Rules any benefit payable to the Member or any person on the Member's account ceases to be payable; or
- (d) when the Trustees so resolve, subject however to the Superannuation Conditions and the SIS Act.

2.6 **Minors:**

- (a) A minor may be a Member of the fund subject to the Act;
- (b) the minor's parent or guardian must make the application for the minor to become a Member in a form approved by the Trustee;
- (c) decisions in relation to the minor's membership must be made by the minor's parent or guardian until the minor is 18 years or after the minor is 16 years provided that the parent or guardian notifies the fund that the minor will be making decisions in relation to the minor's membership;
- (d) when the minor is 18 years the minor becomes a director of the Trustee of the fund (or a Trustee) provided that the Trustee has done everything necessary to appoint the minor as a director of the Trustee (or as a Trustee).

Payment of Benefits

3.1 **Compulsory Payment of Benefits**

The following provisions are subject to the SIS Act and Regulation and any terms defined herein have the same meaning as in subdivision 6.3.1 of the Regulations to the SIS Act:

- (1) (i) Subject to subparagraph (3) (and to the extent, if any, that SIS Regulation 6.21(1A) applies after 1 July 2007), a Member's benefits in the Fund (other than the Member's post-65 employer-financed benefits) must be paid as soon as practicable after the occurrence of any of the following events:
 - (a) the Member:
 - (i) has attained age 65 but not age 75; and
 - (ii) is not gainfully employed to at least a part-time equivalent level;
 - (b) the Member:
 - (i) had, on 30 June 2004, reached age 75; and
 - (ii) has not, since 1 July 2004, continued to be gainfully employed for at least 30 hours a week;
 - (c) the Member has reached age 75, and the Member's 75th birthday occurs on or after 1 July 2004;
 - (d) the Member dies.
 - (ii) This provision 3.1(1)(i) applies on and from 1 July 2007. Subject to subparagraph (3) a member's benefits must be cashed as soon as practicable after the member dies.
- (1A) Subject to subparagraph (3) (and to the extent, if any, that SIS Regulation 6.21(1A) applies after 1 July 2007), a Member's post-65 employer-financed benefits in the Fund must be paid as soon as practicable after the occurrence of any of the following events:
- (a) where:
 - (i) the Member has reached age 65 but not age 75; and

- (ii) the Member is not gainfully employed to at least a part-time equivalent level; and
 - (iii) mandated employer contributions have ceased to be made, and are not liable to be made, in respect of the Member to:
 - (A) the fund; or
 - (B) another regulated superannuation fund; or
 - (C) an RSA; or
 - (D) an EPSSS;
 - (b) where:
 - (i) the Member has attained age 75; and
 - (ii) mandated employer contributions have ceased to be made, and are not liable to be made, in respect of the Member to:
 - (A) the fund; or
 - (B) another regulated superannuation fund; or
 - (C) an RSA; or
 - (D) an EPSSS;
 - (c) where the Member dies.
- (1B) During the period 10 May 2006 to 30 June 2007 a member's benefit (other than post-65 employer-financed benefits) are not required to be cashed in accordance with SIS Regulations 6.21(1)(a), 6.21(1)(b) or 6.21(1)(c); and a members post-65 employer financed benefits are not required to be cashed in accordance with SIS Regulations 6.21(1A) or 6.21(1A)(b).
- (1C) The cashing of a member's benefits (including the member's post-65 employer-financed benefits) by the Trustee during the period 10 May 2006 to 30 June 2007 is not a breach of SIS Regulation 6.21.
- (2) The form in which benefits may be paid under this paragraph is any one or more of the following forms:
- (a) in respect of each person to whom benefits are paid:
 - (i) a single lump sum; or
 - (ii) an interim lump sum (not exceeding the amount of the benefits ascertained at the date of an event mentioned in subparagraph (1) (or (1A) before 1 July 2007) and a final lump sum (not exceeding the balance of the benefits as finally ascertained in relation to the event).
 - (b) a pension or 2 or more pensions (one or more pensions post 30 June 2007);
 - (c) the purchase of an annuity or 2 or more annuities (one or more annuities after 30 June 2007).
- (2A) If a member dies on or after 1 July 2007, subparagraphs (2) (b) (i) and (ii) apply to an entitled recipient only if, at the time of the member's death, the entitled recipient:
- (a) is a dependant of the member; and
 - (b) in the case of a child of the member:
 - (i) is less than 18 years of age; or
 - (ii) being 18 or more years of age:
 - (A) is financially dependent on the member and less than 25 years of age; or
 - (B) has a disability of the kind described in subsection 8 (1) of the *Disability Services Act 1986*.

- (2B) If benefits in relation to a deceased member are being paid to a child of the deceased member in the form of a pension or annuity in accordance with SIS Regulation 6.21 (2A) (see paragraph 3.21(2A) of these rules), the benefits must be cashed as a lump sum on the earlier of
- (a) the day on which the annuity or pension is commuted, or the term of the annuity or pension expires (unless the benefit is rolled over to commence a new annuity or pension); and
 - (b) the day on which the child attains the age of 25;
unless the child has a disability of the kind described in subsection 8(1) of the *Disability Services Act 1986* on the day that would otherwise be applicable under SIS Regulation 6.21 (2B)(a) or (b).
- (3) For the purposes of subparagraphs (1) (and (1A) before 1 July 2007), it is sufficient if, instead of being paid, the benefits are rolled over as soon as practicable for immediate cashing.
- (3A) Subject to SIS Regulations 6.22B, 7A.13, 7A.17 and 7A.18, a member's benefits must not be cashed in favour of a person other than a member or the member's legal personal representative:
- (a) unless:
 - (i) the member has died; and
 - (ii) the conditions of SIS Regulation 6.22 (2) or (3) are satisfied; or
 - (b) (post 30 June 2007) unless the conditions of SIS regulation 6.22(4) are satisfied.
- (3B) The conditions of SIS Regulation 6.22 are satisfied if the benefits are cashed in favour of either or both of the following:
- (a) the member's legal personal representative;
 - (b) one or more of the member's dependants.
- (3C) The conditions of SIS Regulation 6.2 are satisfied if:
- (a) the Trustee has received a release authority under section 292-410 of the *Income Tax Assessment Act 1997* in respect of the member; and
 - (b) the benefits are cashed in favour of the Commissioner of Taxation in accordance with the authority.
- (3D) A member's benefit may be cashed in favour of a person other than the member if:
- (a) the cashing is expressly permitted by the Regulator in a written approval for the purposes of Section 62(1)(b)(v) of the Act; and
 - (b) the benefits are cashed only to the extent of that approval.
- (4) Benefits that were post-65 employer-financed benefits in the source from which they were received continue to be post-65 employer-financed benefits in the fund.
- (5) Post-65 employer-financed benefits, in relation to a Member of a regulated superannuation fund as at a particular date, means the sum of:
- (a) the amount of the mandated employer contributions made to the fund in respect of the Member in respect of the period commencing when the Member reached age 65 and ending on that date; and
 - (b) the amount of the mandated employer contributions made to another regulated superannuation fund or to an EPSSS or an RSA in respect of the Member in respect

of that period, if the benefits arising in respect of those contributions were transferred or rolled over to the fund during that period; and
(c) the amount of the investment earnings on those amounts during that period; less the costs applicable to those amounts during that period.

- (6) For the purpose of the above Rule, a person is gainfully employed at a part-time equivalent level if the person was gainfully employed for at least 240 hours during the financial year that ended on the last occurring 30 June

3.2 Payment on retirement or at age 65:

To the extent only permitted by the Act, the Member's benefit may be paid to a Member who has not reached the Member's preservation age if the Trustees so determine.

3.3 Payment of benefit by pension

- (a) The benefit payable under this Rule 3 may, in the discretion of the Trustees, be paid by way of a pension in accordance with these rules, however, (subject to any permitted commutations by Members and beneficiaries to lump sums under rule 3.4) if the Trustee is not, at the time the benefit becomes payable, a constitutional corporation then payment of the benefit is subject to paragraph 3.2 of the Deed.
- (b) Paragraph 3.2 of the Deed does not require the Trustees to commence a pension before providing a benefit in the form of a lump sum only if such lump sum may be paid instead of a pension in accordance with the Commissioner's rulings, determinations or opinions in relation to section 19 of the SIS Act.

3.4 Conditions of Commutation

Subject to the Act and to paragraph 3.2 of the Deed and despite any other provision of the Rules if so required by the Act, on the written application of a Member, Pensioner or Reversionary Beneficiary, the Trustees must commute to a lump sum benefit the whole or any part of a pension payable from the Fund to such person provided that:-

- (a) the commutation of the pension is permitted by the Act;
- (b) the amount of the commuted benefit including the value of any remaining pension payable is subject to the provisions of paragraph 24 of the Deed.

3.5 Payment of Lump Sum Benefit:

The Trustees may pay the amount of the lump sum benefit in respect of the pension being commuted under rule 3.4 to the Pensioner or the Reversionary Beneficiary who applied for the commutation but subject to paragraph 3.2 of the Deed and to any other applicable provisions of this Deed and to the Superannuation Conditions.

3.6 Adjustment of Pension following Commutation:

Following the commutation of a part of a pension under rule 3.4, the Trustees must reduce the total amount of the instalments of any pension payable to the Pensioner by such amount as the Trustees consider appropriate and subject to the Act and SIS Regulations.

Benefit Payable on Death

4.1 Benefit payable on death:

- (a) If a Member dies before payment or commencement of payment of a benefit under rule 3, the amount of the Member's Benefit will be held by the Trustees on trust, subject to this Rule 4 and the SIS Act, for the benefit of one or more of the Member's Dependants in the shares and proportions as the Trustees, in their absolute discretion, determine.
- (b) The Trustees will take account of any nomination of beneficiaries made by the Member, but will not be bound by it unless it is a binding nomination under paragraph 24 of the Deed and subject to that paragraph 24 and to the SIS Act, in the discretion of the Trustees, the benefit payable will be paid by lump sum or pension or a combination of both.

4.2 Payment to legal personal representative:

If the Trustees are unable to establish within 6 months after the Member's death, or such other period as may be permitted by the Act, that there are any Dependants, the Member's benefit will be paid to the Member's legal personal representative.

4.3 Payment other than to Dependant or legal personal representative:

If, after making inquiries that the Trustees regard as reasonable, the Trustees are unable to establish that there are any Dependants or a legal personal representative of the deceased Member, the Trustees may, if permitted by the Act, pay the benefit to a person or persons selected by the Trustees.

4.4 Forfeited benefits:

Subject to sub-rule 4.3, if a grant of probate or letters of administration is not made in respect of the estate of the Member within 3 years after the Member's death (or any longer period the Trustees determine), the benefit payable under this Deed will be treated as a forfeited benefit, and will be applied in the manner provided for in the Act or, in the absence of any provision, will be applied by the Trustees as a forfeited benefit.

- 4.5 Subject to the SIS Act the Member's benefit or any part of it as the Trustees determine, may be paid to a reserve account in the Fund.

Benefit Payable on Disablement

5.1 Benefit payable on total disablement:

Subject to the Act provisions of these rules, if, before a benefit is paid or commences to be paid under rule 3, the employment of an employer sponsored Member is terminated as a result of the Member being totally permanently disabled or if a non-employer sponsored Member becomes totally permanently disabled, the Member's Benefit will be paid to the Member or, if the Member is unable to manage his or her own affairs, to any of the Member's Dependants, and in any proportions as the Trustees, in their absolute discretion, determine.

5.2 Proceeds of temporary total disablement insurance policy:

Subject to the Superannuation Conditions and paragraph 24 of the Deed, if, before a benefit becomes payable under sub-rule 5.1, the proceeds of a temporary total disablement insurance policy on the life of the Member becomes payable, the proceeds of the policy will be paid to the Member or, if the Member is unable to manage his or her own affairs, to any of the Member's dependants, and in any proportions, as the Trustees, in their absolute discretion, determine. If the

SIS Act permits it and if the Trustees so determine part of the Member's benefit may be paid to a Member in accordance with the SIS Act and not otherwise.

6. Benefit payable on dismissal

If an employer sponsored Member is dismissed from the employment of the Principal Employer for misconduct involving fraud or dishonesty, the benefit payable to that Member, subject to the Act, will be the amount of the Member's contribution account (if any) plus the amount of the Member's vested Employer's contribution account (if any) plus any other vested benefit plus the additional part (if any) of the Employer's contribution account which the Trustees, in their absolute discretion, determine. Any preserved benefit will be paid on the terms and conditions set out in rule 8 in relation to that benefit.

7. Benefit payable to an Employer Sponsored Member on termination of employment before retiring age:

Subject to the Superannuation Conditions, if the employment by the employer of an employer sponsored Member is terminated before the retiring age otherwise than in the circumstances referred to in rules 4, 5 or 6:

- (a) the amount of the Member's contribution account; plus
- (b) that part (if any) of the amount of the Member's Employer's contribution determined by the Trustees; plus
- (c) such part (if any) of the amount of the Member's Employer's contribution account which the Trustees, in their absolute discretion, determine, (with the balance of that account to be applied as a forfeited benefit); plus
- (d) the amount of the Member's vested Employer's contribution account; plus
- (e) any other vested benefit not otherwise payable under this Deed, will, if the Member has attained the age prescribed on the Act as being the preservation age for that Member and is retiring from the workforce, be paid to the Member. If the Member has not attained the age prescribed in the Act as being the preservation age for that Member or, having attained that age, has not retired from the workforce, the Trustees will pay or commence to pay the Member only that part of the benefit payable which is not a preserved benefit.

8. Payment of preserved benefit:

Subject to the SIS Act, if any part of the benefit payable under rules 6 or 7 is a preserved benefit and if the Member has not attained the age prescribed in the Act as being the preservation age for that Member or, having attained that age, has not retired from the workforce, the Trustees will either:

- (a) retain the Member's preserved benefit in the fund and pay the benefit plus earnings on it to the Member after the Member retires from the workforce and attains the age prescribed by the Act as being the preservation age for that Member) and requests that the benefit be paid to him or her. The Trustees must pay or commence to pay the preserved benefit in accordance with the SIS Act;

- (b) if the Member requests that their preserved benefit be transferred to another superannuation fund or to an approved deposit fund, transfer the benefit in accordance with paragraph 28 of the Deed;
- (c) in its discretion, pay the preserved benefit to the Member by a non-commutable pension or annuity for the life of the Member; or
- (d) if the Member so requests, apply the preserved benefit to purchase a deferred annuity to be held by the Trustees until the Member attains the age prescribed in the SIS Act as being the preservation age for that Member; and
 - (i) under which the first annuity payment is not to be made until on or after the Member attains the age prescribed in the Act as being the preservation age for that Member provided that payment of the annuity instalments will commence no later than the attainment by the Member of the age of 65 years or in any other circumstances as are permitted by the Act; and
 - (ii) which cannot be surrendered or assigned (except to make a payment in accordance with paragraph 28 of the Deed) until the Member attains the age prescribed in the Act as being the preservation age for that Member; and
 - (iii) which cannot be mortgaged or encumbered in any manner.

Subject to the Act, if the amount of the Member's preserved benefit does not exceed the amount that is prescribed under the Act, it may be paid to the Member on termination of his or her employment and paragraphs (a), (b), (c) and (d) of this rule 8 will not apply to the benefit.

9. Deferment of payment of benefit

Subject to the Superannuation Conditions, the payment of any benefit payable under rules 6 or 7 which is not a preserved benefit or payable under rules 3.1 or 5.1 may, at the request of the Member and with the consent of the Trustees, be deferred until the Member requests payment of the benefit. However, the deferred benefit will be paid to the Member in accordance with rules 4 or 5 if the Member dies, or becomes permanently disabled, or attains age 65, or in accordance with rule 3, or in accordance with the requirements of the Act. Earnings of the fund will be allocated to the deferred benefit in accordance with these Rules, subject to the SIS Act.

10. Payment of benefits to minors

Subject to the Superannuation Conditions, where a person to whom benefits are payable is a minor, the Trustees may pay the benefit to any other person for application on behalf of that minor and the receipt of the person to whom the benefit is so paid will be a complete discharge to the Trustees in respect of that benefit.

11. Deduction of income tax

The Trustees may deduct from any benefit payable the amount of any tax that is calculated by the Trustee to be payable in respect of that benefit and will remit any amount deducted as may be required by law.

Mode of Payment of Benefits

12. Lump sum or pension

Benefits payable under rules 3, 5, 6 or 7 will be paid in a lump sum or by way of pension, in the discretion of the Trustee, unless any part of the benefit is required by the Act to be paid by way of lump sum or pension and subject to paragraph 3.2 of the Deed.

Pension Conditions

13.1 Trustee's discretion

Subject to rules 12 and 16, where a benefit is payable under rules 3, 5, 6 or 7 by way of pension, the Trustees will, in their absolute discretion, determine the amount of the pension and the manner in which and the period for which it is paid. The pension must be paid at least annually. The annual amount of the pension cannot be greater than any maximum nor less than any minimum amount stated in the Act. The pension must be paid on a basis that complies with the requirements of the Act.

13.2 Cessation of payments

When the Member's benefit is reduced to nil, the pension payable under these rules ceases to be payable and the person who was receiving the pension ceases to be entitled to any further benefits and, if a Member, ceases to be a Member.

13.3 Commutation of pension

Subject to the Act, the recipient of a pension under these rules may commute the whole or part of a pension to a lump sum payment, by applying in writing to the trustee. The commutation must comply with the requirements of the Act.

13.4 Benefit payable to spouse on death of Member

(a) If a Member to whom a pension is being paid and who is survived by a spouse dies, the Trustees may determine to pay to the spouse until the spouse's death or, until the Member's benefit is reduced to nil (if that occurs before the spouse's death) a pension of the amount as the deceased Member's spouse and the Trustees agree on from time to time or, if there is no agreement, of any amount and on terms and conditions as the Trustees determine. If however the pension has to be paid on some other basis for the fund to comply with the Act, it must be paid on that basis. The annual amount of the pension will not be greater than any maximum nor less than any minimum amount stated in the Act.

(b) A pension payable to a Member's spouse pursuant to this sub-rule 4 will commence on the date of the Member's death.

13.5 Payment to Member's dependants

(a) If a Member in receipt of a pension who does not have a spouse, or to whose spouse a pension is not paid under sub-rule 4 dies, or if a Member's spouse to whom a pension was payable under sub-rule 4 dies, the balance of the Member's benefit (if any) will be paid in a lump sum to such of the Member's Dependents as the Trustees, in their absolute discretion, determine.

(b) If payment of part or all of the benefit does not comply with the requirements of the Act, the proportion of the benefit that does not so comply will be treated as a forfeited benefit and will be applied in the manner stated in paragraph (d) of this rule.

- (c) If the Trustees are unable to establish within the time required by the SIS Act after the death of a Member or the Member's spouse (if a pension was being paid to the Member's spouse) that there are any Dependants, the benefit payable under this sub-rule 5 will be paid to the Member's or the Member's spouse's legal personal representative in the discretion of the Trustees. If a grant of probate or letters of administration in respect of the estate of the deceased Member or the deceased Member's spouse is not made within 3 years of his or her death (or any longer period as the Trustees determine as the SIS Act provides), the benefit payable under this rule will be treated as a forfeited benefit and applied in the manner stated in paragraph (d) of this rule, subject however to the SIS Act.
- (d) A forfeited benefit will be applied in the manner provided for in the Act or, if there is no provision, will be applied by the Trustees as a forfeited benefit.

13.6 No assignment or encumbrance

- (a) Pensions payable from the fund cannot be assigned or otherwise transferred by the person receiving the pension (except to the extent provided for in sub-rule 4) and cannot be mortgaged or encumbered in any manner.
- (b) Neither the capital value (if any) of any pension payable from the fund nor any income from it, may be used as a security for a borrowing.

13.7 Annuities

The Trustees may, in their absolute discretion (including where an old-age pension is required to be paid), provide pensions payable under these rules by applying a Member's benefit to the purchase of an annuity that meets the requirements of the Act.

13.8 Imputation credits

Subject to the Superannuation Conditions, the Trustees may, in their absolute discretion, debit amounts to the accounts of Members to whom current pensions are not being paid and credit corresponding amounts to the accounts of Members to whom current pensions are being paid to compensate the latter for not obtaining the benefit of dividend imputation credits on investments in the form of shares in companies.

14. Benefit payable on the grounds of financial hardship

Subject to the Superannuation Conditions, the Trustees may, in their absolute discretion, pay part or all of the Member's benefit to a Member who is not entitled to be paid a benefit under the balance of these rules, if the Trustees are satisfied that the Member would suffer financial hardship if part or the whole of his or her benefit is not paid to the Member. If the Act so requires, payment must first be approved by the Commissioner.

15. Benefit payable in other circumstances

The Trustees may, but only if consistent with the SIS Act as it applies to the Fund, pay part or all of a Member's benefit to a Member, or such other person as may be entitled to that benefit, despite these rules.

Complying Pensions

16.1 Interpretation:

- (a) The Trustees may by resolution determine to pay the following types of pensions and in accordance with the following provisions however they are subject to the Superannuation Conditions and to the SIS Act.
- (b) The Trustees are not bound to pay the pensions referred to in this rule however if they do so resolve then the Trustees must comply with the applicable provisions and those provisions apply despite the provisions of any other rule, unless the Trustees otherwise determine.
- (c) Where a provision of the following rules refers to “rules” and where these governing rules do not specify or do not sufficiently specify the matter to which the provision refers, the Trustees may, subject to the SIS Act, determine that matter by resolution, whether or not the matter refers to the size of the payments of a benefit in a year being fixed, variations to allow payments under a payment split, the amount of any reversionary benefit or determination as to who is entitled to a reversionary benefit or reversionary pension or the amount of same or anything else. Any such resolution of Trustees shall be deemed to be part of and included in these rules.
- (d) If the SIS Act prohibits the payment of a particular pension (for example, some defined benefit pensions cannot be paid in some circumstances by funds with less than 50 members) then the following provisions do not permit the payment of any such prohibited pension unless permitted by the SIS Act.
- (e) To the extent that the provisions in this rule are inconsistent with the SIS Act, they are varied and are deemed to be included in these rules. Subject to the SIS Act the Trustees may pay any other pension that is not prohibited by the SIS Act and the Superannuation Conditions.
- (f) The Trustees may declare in writing a rule specifying the terms of a pension paid or to be paid in accordance with the SIS Regulations and such rule shall apply to that pension and the recipient’s consent must be obtained if required by the SIS Act or the Superannuation Conditions. Without limiting the form of writing such writing may include a deed signed by the Trustees and the Member or other applicable recipient.

16.2 Pensions:

- (1) A benefit may be paid as a pension if:
 - (a) it meets the standards of SIS Regulation 1.06(9A) (see paragraph 16.2(9A)) of these Rules; and
 - (b) in the case of rules to which SIS Regulation 1.06(9A)(a) applies (see paragraph 16.2(9A)(a) of these Rules) — the rules also meet the standards of SIS Regulation 1.07D (see paragraph 16.3D of these Rules); and
 - (c) in the case to which SIS Regulation 1.06(9A)(b) applies – the rules also meet the standards of SIS Regulation 1.07B (see paragraph 16.3B of these Rules).
- (1A) A benefit that is commenced to be paid before 20 September 2007 may be paid as a pension if:
 - (a) it is provided under these rules in accordance with Regulation 1.06 (2), (4), (6), (7) or (8) (see paragraph 16.2(2), (4), (6), (7) and (8) of these Rules); and

- (b) where the primary beneficiary became entitled to the benefit on or after 20 September 1998 under these rules that meets the provisions of SIS Regulation 1.06(7) (see paragraph 16.2(7)), the commencement day is to be the day when the primary beneficiary became entitled to the pension; and;
 - (c) for a benefit that is provided under these rules that meet the provisions of SIS Regulation 1.06(4) — the rules also meet the standards of regulation 1.07A (see paragraph 16.3A of these Rules); and
 - (d) for a benefit that is provided under these rules that meet the provisions of Regulation 1.06 (2), (6) or (7) (see paragraphs 16.2(2) (6) and (7)) — the rules also meet the provisions of regulation 1.07B (see paragraph 16.3(B) of these Rules); and
 - (e) for a benefit that is provided under the rules that meet the provisions of Regulation 10.6 (8), and has a commencement day on or after 20 September 2004 — the rules also meet the provisions of regulation 1.07C (see paragraph 16.3C of these Rules).
- (1B) A benefit may be paid as a pension if it commenced to be paid on or after 20 September 2007 and:
- (a) the benefit meets the standards of:
 - (i) Regulation 1.06(7) or (8) (see paragraph 16.2(7) and (8)); and
 - (ii) Regulation 1.06(9A) (see paragraph 16.2 (9A)); and
 - (b) the benefit was purchased with a rollover superannuation benefit that resulted from the commutation of:
 - (i) an annuity provided under a contract that meets the standards of SIS Regulation 1.05(2), (9) or (10); or
 - (ii) a pension provided under rules that meet the standards of SIS Regulation 1.06 (2), (7) or (8) (see paragraph 16.2 (2), (7) and (8)); or
 - (iii) a pension provided under terms and conditions that meet the standards of SIS Regulation 1.07(3A) of the RSA Regulations; and
 - (c) for a benefit that arises under rules that meet the standards of SIS Regulation 1.06(7) — the rules also meet the standards of Regulation 1.07B (see paragraph 16.3(B)); and
 - (d) for a benefit that arises under rules that meet the standards of SIS Regulation 1.06(8) — the rules also meet the standards of Regulation 1.07C (see paragraph 16.3(C)).

Lifetime Pensions

- (2) This type of pension is called a lifetime pension:
- (a) the pension must be paid at least annually throughout the life of the primary beneficiary in accordance with paragraphs (b) and (c) and, if there is a reversionary beneficiary:
 - (i) throughout the reversionary beneficiary's life; or
 - (ii) if he or she is a child of the primary beneficiary or of a former reversionary beneficiary under the pension — at least until his or her 16th birthday; or

- (iii) if the person referred to in subparagraph (ii) is a full-time student at age 16 — at least until the end of his or her full-time studies or until his or her 25th birthday (whichever occurs sooner); and
- (b) the size of payments of benefit in a year is fixed by the Trustees, allowing for variation only:
 - (i) as the Trustee determines in its discretion; or
 - (ii) to allow commutation to pay a superannuation contributions surcharge; or
 - (iii) to allow an amount to be paid under a payment split and reasonable fees in respect of the payment split to be charged; and
- (c) unless the Regulator otherwise approves, the sum payable as benefit in each year to the primary beneficiary or to the reversionary beneficiary, as the case may be, is:
 - (i) if CPI_c is not less than CPI_p — not less than SP_p ; or
 - (ii) if CPI_c is less than CPI_p — not less than:

$$\frac{CPI_c}{CPI_p} \times SP_p$$

where:

CPI_c means the quarterly CPI first published by the Australian Statistician for the second-last quarter before the day on which payment is to be made.

CPI_p means the quarterly CPI first published by the Australian Statistician for the same quarter in the immediately preceding year.

SP_p means the sum payable in the immediately preceding year; and

- (d) the pension does not have a residual capital value; and
- (e) the pension cannot be commuted except:
 - (i) if the pension is not funded from the commutation of:
 - (A) an annuity that meets the standards of subregulation 1.05(2), (3), (9) or (10) of the SIS Regulations; or
 - (B) another pension that meets the standards of this subregulation or subregulation (3), (7) or (8); or
 - (C) a pension that meets the standards of subregulation 1.07(3A) of the RSA Regulations

and the commutation is made within 6 months after the commencement day of the pension; or

- (ii) if the commutation is made to the benefit of a reversionary beneficiary on the death of the primary beneficiary — within one of the following periods after the commencement day of the pension:
 - (A) if the primary beneficiary's life expectancy on the commencement day, rounded up to the next whole number, is a period less than 20 years — that period;
 - (B) in any other case — 20 years; or

- (iii) if the Superannuation lump sum resulting from the commutation is transferred directly for the purpose of purchasing another benefit provided under:
 - (A) rules that meet the provisions of this subregulation or subregulation (3), (7) or (8); or
 - (B) a contract that meets the provisions of subregulation 1.05 (2), (3), (9) or (10) of the SIS Regulations; or
 - (C) terms and conditions that meet the standards of subregulation 1.07(3A) of the RSA Regulations; or
 - (iv) to pay a superannuation contributions surcharge; or
 - (v) to give effect to an entitlement of a non-member spouse under a payment split; or
 - (vi) to pay an amount to give effect to a release authority under S292-415 or S292-80C of the Tax Act (1997), in respect of the primary beneficiary; and
 - (f) if the pension reverts or is commuted, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion or the commutation; and
 - (g) the pension is not able to be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary; and
 - (h) the capital value of the pension and the income from it, cannot be used as security for a borrowing.
- (3) For the purpose of determining whether rules meet the provisions in SIS Regulation 1.06(2) (see paragraph 16.2(2)), it is immaterial that:
- (a) if the primary beneficiary dies within the period used for SIS Regulation 1.06(2)(e)(ii) (see paragraph 16.2(e)(ii)), a surviving reversionary beneficiary may obtain a payment equal to the total payments that the primary beneficiary would have received, if the primary beneficiary had not died, from the day of the death until the end of the period; and
 - (b) if the primary beneficiary dies within the period used for SIS Regulation 1.06(2)(e)(ii) and there is no surviving reversionary beneficiary, an amount, not exceeding the difference between the sum of the amounts paid to the primary beneficiary and the sum of the amounts that would have been so payable in the period, is payable to the primary beneficiary's estate; and
 - (c) if the primary beneficiary dies within the period used for SIS Regulation 1.06(2)(e)(ii) and there is a surviving reversionary beneficiary who also dies within that period, there is payable to the reversionary beneficiary's estate an amount determined as described in paragraph (b) as if that paragraph applied to the reversionary beneficiary.

Allocated Pensions

- (4) (a) This type of pension is called an allocated pension:
- (b) the size of payment of benefits in a year is not fixed;
- (c) the provisions of SIS Regulation 1.06(2)(g) & (h) (see paragraphs 16.2(2)(g) and (h)) are met; and
- (d) payments must be made at least annually; and

- (e) for a pension that has a commencement day on and after 22 December 1992 and before 1 January 2006 — the payments in a year (excluding payments by way of commutation but including payments made under a payment split) are not larger or smaller in total than, respectively, the maximum and minimum limits calculated in accordance with Schedule 1A of the SIS Regulations; and
 - (f) for a pension that has a commencement day on or after 1 January 2006 — the payments in a year (excluding payments by way of commutation but including payments made under a payment split) are not larger or smaller in total than the following:
 - (i) for payments made during the period starting on 1 January 2006 and ending on 30 June 2006 — the respective maximum and minimum limits for the year calculated in accordance with 1 of the following Schedules:
 - (A) Schedule 1A;
 - (B) Schedule 1AAB;
 - (ii) for payments made on or after 1 July 2006 — the respective maximum and minimum limits for the year calculated in accordance with Schedule 1AAB.
- (5) For the purpose of determining whether rules meet the provisions of SIS Regulation 1.06(4) (see paragraph 16.2(4)), it is immaterial that:
- (a) (i) the commencement day of the pension occurs on or after 1 June in a financial year; and
 - (ii) these rules do not provide for the payment of an amount in that financial year that meets the standard for the minimum amount in that subregulation; or
 - (b) these rules do not ensure that the payments in the year in which the pension is to end meet the standard for the minimum amount in that subregulation.

Defined Pensions

- (6) (a) This type of pension is called a defined pension:
- (b) the size of the payments of benefit in a year is fixed, allowing for variation only as specified in the rules or to allow payments to be made under a payment split; and
- (c) the commencement day is on or after 1 July 1994;
- (d) the provisions of SIS Regulation 1.06(2)(f), (g) and (h) (see paragraphs 16.2(2)(f), (g) and (h)) must be met; and
- (e) except in relation to payments, by way of commutation for superannuation contributions surcharge, variation in payments from year to year does not exceed, in any year, the average rate of increase of the CPI in the preceding 3 years; and
- (f) payments in accordance with the contracted size are to be made at least annually; and
- (g) the pension can be commuted — except if conversion is in relation to a commutation to pay a superannuation contributions surcharge, the conversion to a lump sum is limited to a sum that is not greater than the sum determined by applying the appropriate pension valuation factor under Schedule 1B of the SIS Regulations to the pension as if the commencement day were the day on which the commutation occurs.

Life Expectancy Pensions:

(7) This type of pension is called a life expectancy pension:

(a) for a pension that has a commencement day before 20 September 2004:

- (i) if the life expectancy of the primary beneficiary on the commencement day is less than 15 years — the pension is to be paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to the primary beneficiary's life expectancy on the commencement day, rounded up, at the primary beneficiary's option, to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years; or
- (ii) if the life expectancy of the primary beneficiary on the commencement day is 15 years or more — the pension is to be paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period that is not less than 15 years but not more than the primary beneficiary's life expectancy on the commencement day, rounded up, at the primary beneficiary's option, to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years; and

(b) for a pension that has a commencement day on or after 20 September 2004:

- (i) the pension is to be paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to the primary beneficiary's life expectancy on the commencement day, rounded up to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years; or
- (ii) the pension is to be paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to the primary beneficiary's life expectancy mentioned in subparagraph (i) calculated, at the option of the primary beneficiary, as if the primary beneficiary were up to 5 years younger on the commencement day; or
- (ia) if the pension has a commencement day on or after 1 January 2006 — the pension is paid at least annually to the primary beneficiary or reversionary beneficiary throughout a period that is not less than the period available under subparagraph 16.2 (7)(b)(ii), and not more than the greater of the following periods:
 - (A) the maximum period available under subparagraph 16.2 (7)(b)(ii);
 - (B) the period of years equal to the number that is the difference between the age attained by the primary beneficiary at his or her most recent birthday before the commencement day, and 100; or
- (iii) if:
 - (A) the pension is a pension that reverts to a surviving spouse on the death of the primary beneficiary; and
 - (B) the life expectancy of the primary beneficiary's spouse is greater than the life expectancy of the primary beneficiary; and
 - (C) the primary beneficiary has not chosen to make an arrangement mentioned in subparagraph (i), (ii) or (ia) for the pension;

the pension is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to:

- (D) the life expectancy of the spouse on the commencement day; or
- (E) the life expectancy of the spouse calculated, at the option of the primary beneficiary, as if the spouse were up to 5 years younger on the commencement day;
- (F) if the pension has a commencement day on or after 1 January 2006 – a period not less than the period available under sub-subparagraph 16.2(7)(b)(iii)(D), and not more than the greater of the following periods:
 - (I) the maximum period available under sub-subparagraph 16.2(7)(b)(iii)(E);
 - (II) the period of years equal to the number that is the difference between the age attained by the spouse at his or her most recent birthday before the commencement day, and 100;

at the option of the primary beneficiary, and rounded up to the next whole number if the life expectancy of the spouse does not consist of a whole number of years; and

- (c) the total amount of the payment, or payments, to be made in the first year after the commencement day (not taking commuted amounts into account) is fixed and that payment, or the first of those payments, relates to the period commencing on the day the primary beneficiary became entitled to the pension; and
- (d) the total amount of the payments to be made in a year other than the first year after the commencement day (not taking commuted amounts into account) does not fall below the total amount of the payments made in the immediately preceding year (the *previous total*), and does not exceed the previous total:
 - (i) if CPI_c is less than or equal to 4% — by more than 5% of the previous total; or
 - (ii) if CPI_c is more than 4% — by more than $CPI_c + 1\%$;

where:

CPI_c is the change (if any), expressed as a percentage, determined by comparing the quarterly CPI first published by the Australian Statistician for the second-last quarter before the day on which the first of those payments is to be made and the quarterly CPI first published by the Australian Statistician for the same quarter in the immediately preceding year;

and

- (e) the total amount of the payments to be made in a year in accordance with paragraph (c) or (d) may be varied only:
 - (i) to allow commutation to pay a superannuation contributions surcharge; or
 - (ii) to allow an amount to be paid under a payment split and reasonable fees in respect of the payment split to be charged; and
- (f) the pension does not have a residual capital value; and
- (g) the pension cannot be commuted except:
 - (i) if the pension is not funded from the commutation of:
 - (A) an annuity that meets the standards of subregulation 1.05(2), (3), (9) or (10) of the SIS Regulations; or

- (B) a pension that meets the standards of this subregulation or subregulation (2), (3) or (8); or
 - (C) a pension that meets the standards of subregulation 1.07(3A) of the RSA Regulations;

and the commutation is made within 6 months after the commencement day of the pension; or
- (ii) subject to subparagraph (iv), by payment, on the death of the primary beneficiary, to the benefit of a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the primary beneficiary; or
- (iii) subject to subparagraph (iv), by payment, on the death of a reversionary beneficiary, to the benefit of another reversionary beneficiary, or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; or
- (iv) for subparagraphs (ii) and (iii), if the primary beneficiary has opted, under subparagraph (b) (iii), for a period worked out in relation to the life expectancy of the primary beneficiary's spouse — the pension cannot be commuted until the death of both the primary beneficiary and the spouse; or
- (v) if the Superannuation lump sum resulting from the commutation is transferred directly to the purchase of another benefit that is:
 - (A) an annuity provided under a contract that meets the provisions of subregulation (2), (3) (9) or (10); or
 - (B) a pension that is provided under rules that meet the provisions of subregulation 16.2 (2), (3) or (8) or this subregulation; or
 - (C) a pension that is provided under terms and conditions that meet the provisions of subregulation 1.07 (3A) of the RSA Regulations; or
- (vi) to pay a superannuation contributions surcharge; or
- (vii) to give effect to an entitlement of a non-member spouse under a payment split; or
- (viii) to pay an amount to give effect to a release authority under S292-415 or S292-80C of the Tax Act (1997), in respect of the primary beneficiary; and
- (h) if the pension reverts, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion; and
- (i) if the pension is commuted, the commuted amount cannot exceed the benefit that was payable immediately before the commutation; and
- (j) the pension cannot be transferred to a person except:
 - (i) on the death of the primary beneficiary, to a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the primary beneficiary; or
 - (ii) on the death of a reversionary beneficiary, to another reversionary beneficiary or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; and
- (k) the capital value of the pension, and the income from it, cannot be used as security for a borrowing.

Market Linked Pensions

- (8) (a) This type of pension is called a market linked pension:
- (i) it is to be paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to the primary beneficiary's life expectancy on the commencement day of the pension, rounded up to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years; or
 - (ii) it is to be paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to the primary beneficiary's life expectancy mentioned in subparagraph (i) calculated, at the option of the primary beneficiary, as if the primary beneficiary were up to 5 years younger on the commencement day; or
 - (iia) if the pension has a commencement day on or after 1 January 2006 – the pension is paid at least annually to the primary beneficiary or reversionary beneficiary throughout a period that is not less than the period available under subparagraph 16.2 (8)(a)(i), and not more than the greater of the following periods:
 - (A) the maximum period available under subparagraph 16.2 (8)(a)(ii);
 - (B) the period of years equal to the number that is the difference between the age attained by the primary beneficiary at his or her most recent birthday before the commencement day, and 100; or
 - (iii) if:
 - (A) the pension reverts to a surviving spouse on the death of the primary beneficiary; and
 - (B) the life expectancy of the primary beneficiary's spouse is greater than the life expectancy of the primary beneficiary; and
 - (C) the primary beneficiary has not chosen to make an arrangement mentioned in subparagraph (i), (ii) or (iia) for the pension;the pension is to be paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to:
 - (D) the life expectancy of the spouse on the commencement day; or
 - (E) the life expectancy of the spouse calculated, at the option of the primary beneficiary, as if the spouse were up to 5 years younger on the commencement day;
 - (F) if the pension has a commencement day on or after 1 January 2006 – a period not less than the period available under sub-subparagraph 16.2 (8)(a)(iii)(D), and not more than the greater of the following periods:
 - (I) the maximum period available under sub-subparagraph 16.2 (8)(a)(iii)(E);
 - (II) the period of years equal to the number that is the difference between the age attained by the spouse at his or her most recent birthday before the commencement day, and 100;at the option of the primary beneficiary, and rounded up to the next whole number if the life expectancy of the spouse does not consist of a whole number of years; and

- (b) the total amount of the payments to be made in a year (excluding payments by way of commutation but including payments made under a payment split) is determined in accordance with Schedule 6 of the SIS Regulations; and
- (c) the market linked pension does not have a residual capital value; and
- (d) the market linked pension cannot be commuted except:
 - (i) if the pension:
 - (A) is not funded from the commutation of:
 - (I) an annuity that is provided under a contract that meets the standards of subregulation 1.05 (2), (3), (9) or (10) of the SIS Regulations; or
 - (II) another pension that is provided under rules that meet the standards of this subregulation, or subregulation 16.2 (2), (3) or (7); or
 - (III) another pension that is provided under terms and conditions that meet the standards of subregulation 1.07 (3A) of the RSA Regulations; and
 - (B) the commutation is made within 6 months after the commencement day of the pension; or
 - (ii) subject to subparagraph (iii), on the death of the primary beneficiary or reversionary beneficiary, by payment of:
 - (A) a lump sum or a new pension to one or more dependants of either the primary beneficiary or reversionary beneficiary; or
 - (B) a lump sum to the legal personal representative of either the primary beneficiary or reversionary beneficiary; or
 - (C) if, after making reasonable enquiries, the provider of the pension is unable to find a person mentioned in sub-subparagraph (A) or (B) — a lump sum to another individual; or
 - (iii) for subparagraph (ii), if the primary beneficiary has opted, under subparagraph (a) (iii), for a period worked out in relation to the life expectancy of the primary beneficiary's spouse — the market linked pension cannot be commuted until the death of both the primary beneficiary and the spouse; or
 - (iv) if the Superannuation lump sum resulting from the commutation is transferred directly to the purchase of another benefit that is:
 - (A) an annuity provided under a contract that meets the standards of subregulation 1.05 (2), (3), (9) or (10) of the SIS Regulations; or
 - (B) a pension that is provided under rules that meet the standards of this subregulation, or subregulation 16.2 (2), (3) or (7); or
 - (C) a pension that is provided under terms and conditions that meet the standards of subregulation 1.07 (3A) of the RSA Regulations; or
 - (v) to pay a superannuation contributions surcharge; or
 - (vi) to give effect to an entitlement of a non-member spouse under a payment split; or
 - (vii) to pay an amount to give effect to a release authority under S292-415 or S292-80C of the Tax Act (1997), in respect of the primary beneficiary; and

- (e) if the market linked pension reverts — it does not have a reversionary component greater than 100% of the account balance immediately before the reversion; and
- (f) if the market linked pension is commuted — the commutation amount cannot exceed the account balance immediately before the commutation; and
- (g) the market linked pension can be transferred only:
 - (i) on the death of the primary beneficiary:
 - (A) to 1 of the Dependants of the primary beneficiary; or
 - (B) to the legal personal representative of the primary beneficiary; or
 - (ii) on the death of the reversionary beneficiary:
 - (A) to 1 of the Dependants of the reversionary beneficiary; or
 - (B) to the legal personal representative of the reversionary beneficiary; and
- (h) the capital value of the market linked pension, and the income from it, cannot be used as security for a borrowing.
- (9) Rules mentioned in subregulation (8) of regulation 1.06 are not prevented from meeting the standards of that subregulation by reason only that the rules provide that, if the commencement day of the pension is on or after 1 June in a financial year, no payment is required to be made for that financial year.

Simple Super Pensions – with effect from 1 July 2007

- (9A) This pension (*the pension*) meets the standards of SIS Regulation 1.06(9A) if it is paid at least annually, and that:
 - (a) for a pension in relation to which there is an account balance attributable to the beneficiary — the total of payments in any year (including under a splitting order) is at least the amount calculated under clause 1 of Schedule 7 of the SIS Regulations; and
 - (b) for a pension that is not described in paragraph (a):
 - (i) both of the following apply:
 - (A) the pension cannot have a residual capital value, commutation value or withdrawal benefit greater than 100% of the purchase price of the pension; and
 - (B) the total of payments in any year (including under a splitting order) is at least the amount calculated under clause 2 of Schedule 7 of the SIS Regulation; or
 - (ii) each of the following applies:
 - (A) the pension is payable throughout the life or for a fixed term of years that is no greater than the difference between the beneficiary's age on the commencement day and the age of 100;
 - (B) there is no arrangement for an amount (or percentage of the purchase price) to be returned to the recipient when the payment of the pension ends;
 - (C) the total payments from the pension in the first year (including under a payment split) is at least the amount calculated under clause 2 of Schedule 7 of the SIS Regulations;
 - (D) the total of payments from the pension in a subsequent year cannot vary from the total of payments in the previous year unless the variation is as a result of an indexation arrangement or the transfer of the pension to another person;

- (E) if the pension is commuted, the commutation amount cannot exceed the benefit that was payable immediately before the commutation; or
 - (iii) the rules meet the standards of regulation 1.06(2); and
 - (c) the pension is transferable to another person only on the death of the beneficiary (primary or reversionary, as the case may be); and
 - (d) the capital value of the pension and the income from it cannot be used as a security for a borrowing.
- (9B) Rules for the provision of a benefit do not meet the standards of any of Regulations 1.06(2) to (9A) (see paragraphs 16.2(2) to 16.2(9A)) if, in relation to the death of the beneficiary on or after 1 July 2007, the pension is transferred to a person who would not be eligible to be paid a benefit in the form of a pension under SIS Regulation 6.21(2A) or (2B).
- (10) Despite subregulation 9 of the *Income Tax Regulations 1936*, for a pension that has a commencement day on or after 20 September 2004 and on or before 31 December 2004, one of the following life tables are to be used in ascertaining the life expectancy of a person under this regulation:
 - (a) the most recently published Australian Life Tables;
 - (b) the *1995-97 Australian Life Tables*.
- (11) In this regulation:

indexation arrangement, in relation to a pension, means an arrangement specified in the rules for the provision of the pension that:

 - (a) either:
 - (i) results in the total amount of pension payments in each year increasing by the same percentage factor; or
 - (ii) results in the total amount of pension payments in each year being adjusted in line with movements in:
 - (A) the Consumer Price Index; or
 - (B) an index of average weekly earnings published by the Australian Statistician; and
 - (b) ensures that, unless APRA otherwise approves, an adjustment is made at least annually to the amount of the pension payments.

Non-Commutable pensions

- (12) (a) This type of pension is called a non-commutable pension:
 - (i) it meets the standards of regulation 1.06(2), (7) or (8) (see paragraph 16.2(2), (7) and (8) of these Rules); and
 - (ii) if the pension is commuted under paragraph 1.06(2)(e)(i), (7)(g)(i) or (8)(d)(i) (see paragraphs 16.2(e)(i), (7)(g)(i) and (8)(d)(i) of these Rules), the resulting superannuation lump sum cannot be cashed unless:
 - (A) the purpose of the commutation is to cash an unrestricted non-preserved benefit; or

- (B) before commutation, the pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted preserved benefits is “Nil”.

Non-Commutable allocated pensions

- (b) This type of pension is called a non-commutable allocated pension where:
 - (i) the provisions of regulation 1.06 (4) are met (see paragraph 16.2(4) of these Rules); and
 - (ii) if the pension is commuted, the resulting superannuation lump sum cannot be cashed unless:
 - (A) the purpose of the commutation is:
 - (I) to cash an unrestricted non-preserved benefit; or
 - (II) to pay a superannuation contributions surcharge; or
 - (III) to give effect to an entitlement of a non-member spouse under a payment split; or
 - (IV) to ensure that a payment may be made to give effect to a release authority under S292-14 or S292-80C Tax Act (1997); or
 - (B) before commutation, the pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted preserved benefits is “Nil”.

16.2B Transition to Retirement Income Streams

This is a pension the rules of which:

- (i) are rules
 - (A) to which regulation 1.06 (9A) applies (see paragraph 16.2(9A) of these Rules); and
 - (B) that meet the standards of regulation 1.06 (9A); and
 - (ii) allow total payments (including payments under a payment split) made in any financial year to amount to no more than 10% of the pension account balance.
 - (A) on 1 July in the financial year in which the payment is made; or
 - (B) if that year is the year in which the pension commences – on the commencement day; and
 - (iii) comply with paragraph (b) of the definition of ***non-commutable allocated pension*** in SIS Regulation 6.01 (see paragraph 16.2(12)(b) of these Rules), as if it were such a pension.

16.3 Periods when beneficiary may not receive benefits

A benefit is not taken not to meet the provisions of SIS Regulation 1.06 (see paragraph 16.2 of these rules) by reason only that payments of benefit to the beneficiary have been properly suspended during a period when the beneficiary is the holder of a paid public office.

16.3A Commutation of allocated annuities and pensions

- (1) This provision applies in relation to the rules in paragraph 16.2(1)(c) for a benefit (in this regulation called the *pension*).

- (2) The pension cannot be commuted, in whole or in part, unless:
- (a) the commutation results from the death of an annuitant or pensioner or a reversionary annuitant or reversionary pensioner; or
 - (b) the sole purpose of the commutation is:
 - (i) to pay a superannuation contributions surcharge; or
 - (ii) to give effect to an entitlement of a non-member spouse under a payment split; or
 - (iii) to meet the rights of a client to return a financial product under Division 5 of Part 7.9 of the *Corporations Act 2001*; or
 - (ba) for a commutation in part – the account balance of the pension immediately after the commutation in part, would be equal to or would exceed the minimum limit under Schedule 1AAB, whichever is applicable to the pension under SIS Regulation 1.06(4) as reduced by the amount of payments to the pensioner already made in the financial year in which the commutation in part would occur; or
 - (c) the pension has paid, in the financial year in which the commutation is to take place, at least the minimum amount under subregulation (3) (see next paragraph).
- (3) For paragraph (2)(c) (see next paragraph), the minimum amount is calculated using the formula:

$$\text{Minimum annual amount} \times \frac{\text{Days in payment period}}{\text{Days in financial year}}$$

where:

Days in payment period means the number of days in the period that:

- (a) begins on:
 - (i) if the annuity or pension commenced in the financial year in which the commutation is to take place — the commencement day; or
 - (ii) otherwise — 1 July in that financial year; and
- (b) ends on the day on which the commutation is to take place.

Days in financial year means the number of days in the financial year in which the commutation is to take place (365 or 366).

Minimum annual amount for the financial year means:

- (a) for an annuity mentioned in SIS Regulation 1.07A(1)(b) — the minimum limit worked out in accordance with clause 2 of Schedule 1A or 1AAB of the SIS Regulations as the case may be as if the annuity account balance was the amount of the annuity account that is allocated by the annuity provider to make payments whose size is not fixed, in accordance with subparagraph 1.05 (8) (c) (ii) of the SIS Regulations; and
- (b) otherwise — the minimum limit worked out in accordance with clause 2 of Schedule 1A or 1AAB as the case may be of the SIS Regulations;

rounded to the nearest 10 whole dollars.

16.3B Commutation of other annuities and pensions

- (1) This provision applies subject to the SIS Regulations from 1 July 2007 in relation to rules of a superannuation fund mentioned in SIS Regulation 1.06(1)(c) (see paragraph 16.2(1)(c) of these rules) or SIS Regulation 1.06(1A)(d) (see paragraph 16.2(1A)(d)) for a benefit (in this regulation called the *pension*).
- (2) For this provision, other than for SIS Regulation 1.07(B)(5) (see paragraph 16.3B(5)), the *payment year* for an annuity or pension means the period of 12 months that begins on the day after:
 - (a) the commencement day; or
 - (b) the anniversary of the commencement day.
- (3) The pension cannot be commuted, in whole or in part, unless:
 - (a) the commutation results from the death of an annuitant or pensioner or a reversionary annuitant or reversionary pensioner; or
 - (b) the sole purpose of the commutation is:
 - (i) to pay a superannuation contributions surcharge; or
 - (ii) to give effect to an entitlement of a non-member spouse under a payment split; or
 - (iii) to meet the rights of a client to return a financial product under Division 5 of Part 7.9 of the *Corporations Act 2001*; or
 - (c) the annuity or pension has paid, in the payment year in which the commutation is to take place, at least the minimum amount under SIS Regulation 1.07B(4) (see next paragraph).
- (4) For paragraph (3)(c) (see previous paragraph), the minimum amount is calculated using the formula:

$$\text{Minimum annual amount} \times \frac{\text{Days in payment period}}{\text{Days in payment year}}$$

where:

Days in payment period means:

- (a) the number of days in the period that:
 - (i) begins on:
 - (A) the day after the anniversary of the commencement day that occurs before the day on which the commutation is to take place; or
 - (B) if the annuity or pension commenced on the day before the start of the payment year in which the commutation is to take place — the day after the commencement day; and
 - (ii) ends on the day on which the commutation is to take place; or
- (b) if SIS Regulation 1.07B(5) applies (see next paragraph) — 1 day.

Days in payment year means the number of days in the payment year in which the commutation is to take place (365 or 366).

Minimum annual amount means:

- (a) for an annuity mentioned in SIS Regulation 1.07B(1)(b) — the minimum amount that the annuity would pay as fixed-size payments in the payment year if the annuity were not commuted; and
 - (b) otherwise — the minimum amount that the annuity or pension would pay in the payment year if the annuity or pension were not commuted.
- (5) If the commencement day for an annuity or a pension is the day on which the commutation of the annuity or pension is to take place:
- (a) the payment year is taken to commence on the commencement day and end on the day before the anniversary of the commencement day; and
 - (b) there is taken to be 1 day in the payment period.
- (6) If, to calculate the minimum annual amount, it is necessary to use a future unknown value of the CPI, that value is taken to be equal to the CPI for the last known quarter.

16.3C **Commutation of market linked income stream**

- (1) This provision applies in relation to the following:
- (a) a contract mentioned in SIS Regulation 1.05(1)(g) of the SIS Regulations for a market linked annuity;
 - (b) rules mentioned in SIS Regulation 1.06(1A)(e) (see paragraph 16.2(1A)(e)) for a market linked pension.
- (2) The pension cannot be commuted, in whole or in part, unless:
- (a) the commutation results from the death of an annuitant or pensioner or a reversionary annuitant or reversionary pensioner; or
 - (b) the sole purpose of the commutation is:
 - (i) to pay a superannuation contributions surcharge; or
 - (ii) to give effect to an entitlement of a non-member spouse under a payment split; or
 - (iii) to meet the rights of a client to return a financial product under Division 5 of Part 7.9 of the *Corporations Act 2001*; or
 - (ba) for a commutation in part – the account balance of the annuity or pension, immediately after the commutation in part, would be equal to or would exceed the total payment amount calculated in accordance with Schedule 6 of the SIS Regulations, as reduced by the amount of income payments already made in the financial year in which the commutation in part would occur; or
 - (c) the annuity or pension has paid, in the financial year in which the commutation is to take place, at least the minimum amount under Regulation 1.07C(3) (see next paragraph).
- (3) For paragraph (2)(c) (see previous paragraph), the minimum amount is calculated using the formula:

$$\text{annual amount} \times \frac{\text{Days in payment period}}{\text{Days in financial year}}$$

where:

annual amount for the financial year means the amount worked out in accordance with Schedule 6 of the SIS Regulations for the annuity or pension, rounded to the nearest 10 whole dollars.

days in payment period means the number of days in the period that:

- (a) starts on:
 - (i) if the annuity or pension commenced in the financial year in which the commutation is to take place — the commencement day; or
 - (ii) in any other case — 1 July in that financial year; and
- (b) ends at the end of the day on which the commutation is to take place.

days in financial year means the number of days in the financial year in which the commutation is to take place.

16.3D Commutation of superannuation income stream

- (1) For Regulation 1.06(1)(b) (see paragraph 16.2(1)(b) of these Rules), a benefit meets the standards of this regulation if, under the applicable rules, the pension cannot be commuted, in whole or in part, except in the following circumstances:
 - (a) the commutation results from the death of the annuitant or pensioner or a reversionary annuitant or reversionary pensioner; or
 - (b) the sole purpose of the commutation is:
 - (i) to pay a superannuation contributions surcharge; or
 - (ii) to give effect to an entitlement of a non-member spouse under a payment split; or
 - (iii) to meet the rights of a client to return a financial product under Division 5 of Part 7.9 of the *Corporations Act 2001*; or
 - (c) for a commutation in part — the account balance of the pension, immediately after the commutation, is equal to or greater than the minimum payment amount calculated in accordance with Schedule 7 of the SIS Regulations, as reduced by the amount of income payments, if any, already made in the financial year in which the commutation occurs; or
 - (d) the pension has paid, in the financial year in which the commutation takes place, at least the minimum amount prescribed by subregulation (2) (see paragraph 16.3D(2) below).
- (2) For paragraph (1)(d), the minimum amount is the amount calculated using the formula:

$$\text{Minimum annual amount} \times \frac{\text{Days in payment period}}{\text{Days in financial year}}$$

where:

Days in payment period means the number of days in the period that:

- (a) begins on:
 - (i) if the pension commenced in the financial year in which the commutation is to take place — the commencement day; or
 - (ii) otherwise — 1 July in that financial year; and
- (b) ends on the day on which the commutation is to take place.

Days in financial year means the number of days in the financial year (365 or 366) in which the commutation takes place.

Minimum annual amount means the minimum amount payable under the annuity or pension, in the financial year, calculated in accordance with Schedule 7 of the SIS Regulations.

17. **Pension Reserves**

Subject to the Act, where it considers it appropriate the Trustee may:

- (a) obtain the advice of an actuary regarding the amount of pension payments, any variation to the amount of those payments, commutations, the establishment, monitoring or treatment of pension reserves in accordance with this Rule 17, or any other relevant matter;
- (b) establish pension reserves in relation to the funding of pension obligations relating to particular beneficiaries;
- (c) where a pension benefit liability to which a pension reserve relates no longer exists, or the amount of the pension reserve exceeds the expected liability, arrange for any assets or excess assets in the pension reserve to be applied in any manner whatsoever that the Trustee considers fair and reasonable, including for the general purposes of the Fund, but having special regard to the interests of the beneficiary to whom the pension benefit related and that Beneficiary's dependants.

18. **Death benefits:**

- (a) This Rule applies if the terms of a particular pension do not provide for the consequences for payment of the pension on the death of the pension recipient.
- (b) Where this Rule applies, then unless the Trustee otherwise determines and subject to the Act, if any amount is payable in respect of the pension recipient on the pension recipient's death, it will be dealt with in accordance with any binding nomination or if there is no binding nomination, as the Trustees determine.

Provision of defined benefit pensions

19.1 In this rule 19 and subject to Part 9 Division 9.2B of the SIS Regulations:

Defined benefit pension means a pension under section 10 of the SIS Act, other than:

- (a) a pension wholly determined by reference to policies of life assurance purchased or obtained by the Trustee of a regulated superannuation fund solely for the purposes of providing benefits to Members of that fund; or
- (b) an allocated pension; or
- (c) an account-based pension.

19.2 The fund may provide a defined benefit pension only:

- (a) to a person:
 - (i) who, on 11 May 2004, was a Member of the Fund; and
 - (ii) who, before 31 December 2005:
 - (A) retires (within the meaning of subregulation 6.01 (7) of the SIS Regulations) on or after attaining age 55; or
 - (B) attains age 65; and
 - (iii) who, after 11 May 2004 and before 31 December 2005, becomes entitled to be paid a defined benefit pension pursuant to these rules; and

- (b) if the first pension payment is made within 12 months after the day when the person became entitled to the pension,

unless the SIS Act otherwise permits the payment of a defined pension (for example under SIS Regulation 9.04F).

Deduction for detrimental payments after Member's Death

- 20. For the purposes of Section 295-485 of the Income Tax Assessment Act 1997, if a Member dies and a benefit is paid as a consequence, the Trustees may do all such things and make such allowances or payments as may be necessary or desirable to give to the recipient of that benefit, the benefit of any deduction permitted under the Section.

Conversion of Pensions

- 21. At the request of a Member, Pensioner or Reversionary Beneficiary, or their legal personal representative, as may be applicable and subject to the SIS Act and the Superannuation Conditions, the Trustees may;
 - (a) convert any pension whether an allocated pension or any other type of pension to an account based pension or any other pension and any such pension may be so converted with or without commuting the pension that is being converted.
 - (b) cease payment of a pension;
 - (c) take such other action as may be necessary or desirable as determined by the Trustees to give full effect to this provision.

REFERENCE SCHEDULE

Name of Fund:-

Prasad-Gatt Superannuation Fund

Parties:-

(a) Trustee(s):-

PRASAD, Derek

Unit 3

6 Clyde Street

Rydalmere NSW 2116

GATT, Kerrie Anne

Unit 3

6 Clyde Street

Rydalmere NSW 2116

(b) Initial Member(s):-

PRASAD, Derek

Unit 3

6 Clyde Street

Rydalmere NSW 2116

GATT, Kerrie Anne

Unit 3

6 Clyde Street

Rydalmere NSW 2116

(c) Principal Employer (if any):-

Executed as a deed on the date appearing on page 1.

Signed Sealed and Delivered by

Prasad, Derek

in their capacity as Trustee in the presence of:

DP x

WITNESS x

Signed Sealed and Delivered by

Gatt, Kerrie Anne

in their capacity as Trustee in the presence of:

KG x

WITNESS x

Signed Sealed and Delivered by

Prasad, Derek

in their capacity as Initial Member in the presence of:

DP x

WITNESS x

Signed Sealed and Delivered by

Gatt, Kerrie Anne

in their capacity as Initial Member in the presence of:

KG x

WITNESS x