

CLIENTS COPY

SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993

**SUPERANNUATION TRUST DEED  
FOR**

**Prasad-Gatt Superannuation Fund**

**Grzic & Co  
402 Victoria Road  
Rydalmere NSW 2116**

**Ph: 02 98980600**

## **Table of Contents**

### **Parties**

### **Background**

### **Fund Establishment**

<b>Interpretation</b>	<b>1</b>
2.1 Interpretation	
2.2 Headings	
2.3 Meanings	
2.4 Inconsistencies with the Superannuation Conditions	
2.5 Proper Law	
2.6 Saving Provision	
2.7 Trustee Must Comply with the Law	
2.8 Power to comply with Family Law	
 <b>Sole Purpose Test</b>	 <b>7</b>
3.1 Core Purposes	
3.2 Sole Purpose	
 <b>Constitution of Fund</b>	 <b>7</b>
4.1 Trusts	
4.2 Perpetuities	
 <b>Notice of Election</b>	 <b>7</b>
5. Trustees to give notice to become a regulated fund	
 <b>Statutory Covenants</b>	 <b>7</b>
6. Statutory Covenants	
 <b>Statutory Requirements</b>	 <b>9</b>
7. Self Managed Superannuation Fund	
 <b>Alterations to the Deed</b>	 <b>9</b>
8.1 Methods to alter Deed	
8.2 Effective Date	
8.3 Prohibition	
8.4 Notice to be given to Members following alteration	

<b>Trustees</b>	<b>10</b>
9.1	Written consent of Trustee required
9.2	Consent of new Members to Trustees
9.3	Chairperson
9.4	Number of Trustees
9.5	Meetings of Members
9.6	Decisions of Trustees
9.7	Basic Equal Representation Rule
9.8	Vacancy in Office of Trustee
9.9	Members to fill vacancy
9.10	(a) Members may remove Trustees (b) Members may replace Trustees
9.11	Self Managed Superannuation Fund Conditions
9.12	Additional Trustees
9.13	Principal Employer
 <b>Limitation of Liability</b>	 <b>12</b>
10.1	(a) Limitation (b) Exceptions
10.2	(a) Indemnity (b) Payment and reimbursement
 <b>Approval of Members and Employers Generally</b>	 <b>13</b>
11.	(a) Approval of Members/Associated Employers generally
11.	(b) Written notice to Members/Associated Employers
11.	(c) Trustee meeting to table responses
11.	(e) Requisite majority
11.	(f) Notification to Members/Associated Employers
11.	(g) Strict compliance not essential
11.	(h) Written Resolution
 <b>Trustees not to be Subject to Direction</b>	 <b>14</b>
12.1	Directions
12.2	Direction taken to be a request
 <b>Investments</b>	 <b>14</b>
13.1	Investment Strategy
13.2	Loans
13.3	Acquisition of assets from Members
13.4	Borrowing
13.5	In-house assets
13.6	Arms' length dealing required
13.7	Power to invest as if natural persons
13.8	Other investment powers

13.9	Nominees for Trustees	
13.10	Continuation of loans to Members	
<b>Investment Choice</b>		<b>16</b>
14.1	No obligation	
14.2	Investment Strategy	
14.3	Trustees must monitor	
14.4	Earning rate	
14.5	Selection and direction	
14.6	Member document	
14.7	Asset specific investments	
14.8	Advice to Members	
<b>Powers of Trustees</b>		<b>18</b>
15.1	Discretion powers of Trustees	
15.2	Trustees actions subject to Superannuation Conditions	
15.3	Additional powers	
<b>Notification of significant adverse effects</b>		<b>19</b>
16.	Trustees to give notice of significant adverse effect	
<b>Insurance</b>		<b>19</b>
17.1	Life Insurance	
17.2	Annuities	
17.3	Powers	
17.4	Evidence to be provided by Member for insurance	
17.5	Premiums	
<b>Accounts</b>		<b>19</b>
18.1	Trustees to keep accounting records	
18.2	Balance sheet	
18.3	Accounts and statements to be prepared	
18.4	Audit	
18.5	Maintenance of reserves	
18.6	Records to be kept by Trustees	
<b>Payments to Contributors</b>		<b>20</b>
19.	Payments to Associated Employer	
<b>Rollover</b>		<b>20</b>
20.	Trustees may pay rollovers	

<b>Member Accounts</b>	<b>21</b>
21.1 Trustees to keep Member and employer accounts	
21.2 Power to retain prior categories of membership and vesting	
21.3 Accounts may be kept	
21.4 Details of accounts	
<b>Segregated Current Pension Assets</b>	<b>22</b>
<b>Valuation of the Fund and Allocation of Profits or Loss</b>	<b>22</b>
22.1 Valuation	
22.2 Profit or loss distribution	
22.3 Other debits	
<b>Contributions</b>	<b>23</b>
23.1 Employer contributions	
23.2 Employer sponsors	
23.3 Member contributions	
23.4 Acceptance of contributions	
23.5 Conditions for accepting contributions	
23.6 Contributions by Members aged 65-70	
23.7 Contributions by Members aged 70-75	
23.8 Contributions by Members aged over 75	
23.9 Contributions made after relevant period	
23.9A Acceptance of contributions — on and from 1 July 2007 (see paragraph 23.4(c))	
23.10 Child Contributions	
23.11 E.T.P.	
23.12 Entries & Membership	
23.13 (a) Contributions in Cash or Assets	
23.13 (b) No Obligation to Contribute	
23.13 (c) Ineligible Contributions	
23.13 (d) Non-acceptance of Contributions	
23.14 Allocation of Contributions	
<b>Spouse contributions – splitting amounts</b>	<b>27</b>
23.15 Application to roll over, transfer or allot an amount of contributions	
23.16 Decision on application	
<b>Benefits</b>	<b>28</b>
24.1 Maximum Benefits	
24.2 Additions	
24.3 Vesting	
24.4 Application of benefits	
24.5 Member's request	
24.6 Binding Nominations	
24.6A Non-lapsing death benefit nomination - Death Benefit requested rule	

24.7	Preserved Benefits	
24.8	Member otherwise has no interest	
24.9	Trustees to determine amount to pay benefits	
24.10	Member to provide evidence of entitlement	
24.11	Trustees may transfer assets in specie	
24.12	Unclaimed monies	
24.13	Unpaid benefits	
<b>Forfeited Benefits Account</b>		<b>31</b>
25.1	Forfeited benefits account may be kept	
25.2	Application of forfeited benefits	
25.3	Equalisation Account	
<b>Benefits charged with payments due to Employer</b>		<b>33</b>
26.1	Provisions subject to Superannuation Conditions	
26.2	Charge	
26.3	Evidence	
26.4	Lien	
26.5	Certificate	
<b>Application of Benefits in Certain Cases</b>		<b>34</b>
27.1	Member's insanity and other events	
27.2	Payments	
27.3	Discharge	
<b>Transfer of Benefits</b>		<b>35</b>
28.1	Trustees to make arrangements with prior employer and Trustee	
28.2	Transferred amounts to be held subject to Deed	
28.3	Application of transferred amounts	
28.4	Application of benefits on Member leaving Fund	
28.5	Application of preserved benefits	
<b>Disclosure of Information</b>		<b>36</b>
<b>Notices</b>		<b>36</b>
<b>Principal and Associated Employers</b>		<b>36</b>
31.1	Approval of Associated Employers	
31.2	Cessation	
31.3	Membership unaffected by Employer cessation	
31.4	Appointment and cessation of Principal Employer	

<b>Employers Rights Not Restricted</b>	<b>37</b>
32.1 Employer's rights unaffected	
32.2 Damages	
32.3 Workers compensation	

<b>Winding up of Fund</b>	<b>37</b>
33.1 Winding Up	
33.2 Priorities	
33.3 Subject to vesting and preservation	

<b>Complaints</b>	<b>38</b>
34 Establishment of complaints procedure	

## **Schedule The Rules**

<b>Interpretation</b>	<b>39</b>
1.1 Matters covered by Rules	
1.2 Superannuation Conditions	

<b>Membership</b>	<b>39</b>
2.1 Eligibility	
2.2 Trustees may refuse	
2.3 Trustees to give notice	
2.4 Member bound by Deed	
2.5 Cessation of membership	
2.6 Minors	

<b>Payment of Benefits</b>	<b>40</b>
3.1 Compulsory Payment of Benefits	
3.2 Payment on retirement or at age 65	
3.3 Payment of benefit by pension	
3.4 Conditions of Commutation	
3.5 Payment of Lump Sum Benefit	
3.6 Adjustment of Pension following Commutation	

<b>Benefit Payable on Death</b>	<b>44</b>
4.1 Benefit Payable on Death	
4.2 Payment to legal personal representative	
4.3 Payment other than to Dependant or legal personal representative	
4.4 Forfeited benefits	
4.5 Member's Benefit may be paid to reserve account	

<b>Benefit Payable on Disablement</b>	<b>44</b>
5.1	Benefit payable on total disablement
5.2	Proceeds of temporary total disablement insurance policy
6.	Benefit payable on dismissal
7.	Benefit payable to an Employer Sponsored Member on termination of employment before retiring age
8.	Payment of preserved benefit
9.	Deferment of payment of benefit
10.	Payment of benefits to minors
11.	Deduction of income tax
 <b>Mode of Payment of Benefits</b>	 <b>47</b>
12.	Lump sum or pension
 <b>Pension Conditions</b>	 <b>47</b>
13.1	Trustee's discretion
13.2	Cessation of payments
13.3	Commutation of pension
13.4	Benefit payable to spouse on death of Member
13.5	Payment to Member's dependants
13.6	No assignment or encumbrance
13.7	Annuities
13.8	Imputation credits
14.	Benefit payable on the grounds of financial hardship
15.	Benefit payable in other circumstances
 <b>Complying Pensions</b>	 <b>49</b>
16.1	Interpretation
16.2	Pensions
	Lifetime Pensions
	Allocated Pensions
	Defined Pensions
	Life Expectancy Pensions
	Market Linked Pensions
	Simple Super Pensions – with effect from 1 July 2007
	Non-Commutable pensions
	Non-Commutable allocated pensions
16.2B	Transition to Retirement Income Streams
16.3	Periods when beneficiary may not receive benefits
16.3 A	Commutation of allocated annuities and pensions
16.3 B	Commutation of other annuities and pensions
16.3 C	Commutation of market linked income stream
16.3 D	Commutation of superannuation income stream

<b>Pension Reserves</b>	<b>66</b>
17. Pension Reserves	
<b>Death Benefits</b>	<b>66</b>
18. Death Benefits	
<b>Provision of defined benefit pensions</b>	<b>66</b>
19. Defined benefit pension	
<b>Deduction for detrimental payments after Member's Death</b>	<b>67</b>
20. Trustees may give benefit of deduction	
<b>Conversion of Pensions</b>	
21. Trustees may convert pensions	<b>67</b>

THIS DEED is dated this 26TH day of JUNE 2008

## **PARTIES**

The several parties named in the Reference Schedule attached to this Deed.

## **BACKGROUND**

- A. The parties to this Deed wish to establish and maintain an indefinitely continuing superannuation fund for the purposes of the provision of benefits for Member(s) and their dependants in accordance with the Superannuation Industry (Supervision) Act 1993.
- B. The Trustee(s) named in the Reference Schedule is the first Trustee(s).
- C. The Initial Member(s) named in the Reference Schedule are the first Member(s) of the Fund and the Principal Employer, if any, named in the Reference Schedule is the Principal Employer.
- D. It is intended that the Fund will be administered as a self managed superannuation fund regulated under the provisions of the Superannuation Industry (Supervision) Act 1993.

The parties agree as follows:-

### **Fund Establishment**

- 1.1 The parties to this Deed hereby establish a superannuation fund which is to be known by the name referred to in the Reference Schedule ("the Fund").
- 1.2 The Fund commences and comes into operation on the date of this Deed.
- 1.3 The Trustees must hold the Trust Fund upon the Trusts contained in this Deed.

### **Interpretation**

- 2.1 In this Deed unless the context otherwise requires words importing gender include any gender and words importing number include the singular number and the plural number. The following words have the meanings unless the contrary intention appears and subject to paragraph 2.3:-

**"Act"** means the Superannuation Industry (Supervision) Act, 1993, the Tax Act, Veterans' Entitlements Act 1986, Social Security Act 1991, Part VIIIB Family Law Act 1975, Corporations Act 2001 and any other legislation (as may be amended from time to time) governing superannuation funds from time to time and any re-enactment thereof and includes regulations from time to time made thereunder and the determinations from time to time of the Commissioner.

**"Account-based pensions"** means a pension first provided on or after 1 July 2007 in accordance with SIS Regulations.

**"Associated Employer"** means any company, person or firm which the Trustees admit (including, subject to the Superannuation Conditions, by acceptance of a contribution from an

employer of a Member) under this Deed or the Rules of the Fund to participate as a contributing Employer to the Fund.

**"Auditor"** means an approved Auditor as defined in Section 10 of the SIS Act.

**"Beneficiary"** means a Member, Dependant or other person entitled to receive a benefit under this Deed.

**"Cashing Restrictions"** has the meaning in SIS Regulation 6.01(2).

**"Constitutional Corporation"** has the meaning in Section 10(1) of the SIS Act.

**"Commissioner"** means the Regulator defined in the Act and includes the Commissioner of Taxation, the Australian Prudential Regulation Authority, or the Australian Securities & Investments Commission, as may be appropriate having regard to the provisions of the Act and the nature of the Fund, or any other governmental authority responsible for administering or regulating the laws or rules relating to the concessional taxation of Superannuation Funds.

**"Deed"** means this Deed and the Rules or any alteration to, addition to or variation made to it from time to time except where the context otherwise requires.

**"Dependant"** has the meaning in the SIS Act.

**"Eligible Person"** means any person in respect of whom the trustees may accept contributions under the SIS Act or who may otherwise become a member of the Fund under the SIS Act.

**"Employee"** has the meaning in Section 10 of the SIS Act.

**"Employer"** has the meaning in Section 10 of the SIS Act.

**"Employer-Sponsored Fund"** has the meaning in Section 16(3) of the SIS Act.

**"Employer-Sponsored Member"** means a Member who is an employee of a contributing employer.

**"Employment"** means gainful employment, part-time employment and full-time employment and includes the services of an independent contractor and all senses of the word employ include the same meaning.

**"Equalisation Account"** means an account kept in accordance with paragraph 25.3.

**"Financial Year"** means the accounting period selected by the Trustees for the Fund. It must not exceed twelve months and may at times be less than twelve months.

**"Full-time"**, in relation to being gainfully employed, means gainfully employed for at least 30 hours each week or otherwise as may be provided by the SIS Act.

**"Gainfully Employed"** has the meaning in the SIS Regulations.

**"Guarantee Act"** means the Superannuation Guarantee (Administration) Act 1992.

**"Mandated Employer Contributions"** has the meaning in the SIS Act.

**"Market Linked Pension"** means a pension paid under Rule 16.

**"Member"** means an Eligible Person who has been admitted to the Fund and where the context so requires or permits or the SIS Act or Superannuation Conditions requires, includes a Past Member, a former Member and a Pensioner or their legal personal representative.

**"Member's Benefit"** in respect of a Member is the net amount standing to the Member's credit in that Member's accounts including the employer's contribution account (if any), the Member's contribution account and the vested employer's contribution account (if any) plus the realisable value (if any) at that time of any policy of insurance owned by the Trustees on the life of that Member or paid for out of that Member's employer's contribution account (if any), Member's contribution account or vested employer's contribution account (if any) or other Member's account.

**"Minor"** means a person under 18 years of age.

**"Member Financed Benefits"** has the meaning in the SIS Act.

**"Non-member spouse"** in relation to a superannuation interest that is subject to a payment split, means the person who is the non-member spouse in relation to the interest under Part VIIIB of the Family Law Act 1975.

**"Old-Age Pensions"** has the same meaning as in paragraph 51(xxiii) of the Constitution.

**"Part-time"** has the meaning that applies in the circumstances referred to in the SIS Act.

**"Past Member"** means a former Member who still has a right to receive a benefit from the Fund.

**"Payment Split"** has the meaning given by Section 90MD of the Family Law Act 1975.

**"Pension Benefit Account"** means an account that provides a retirement benefit.

**"Pensioner"** means a retired Member, Past Member of the Dependant of a deceased Member, Past Member or Pensioner who is in receipt of or who is entitled to a pension.

**"Personal Representative"** or **"Legal Personal Representative"** means in relation to a Member a person who satisfies the Trustees that such person is entitled to represent the Member and to give valid receipts and discharges on the Member's behalf and in relation to a deceased Member the person who has been granted probate of a will or letters of administration of an estate of that Member.

**"Preserved"** means the portion of an account or a benefit that is preserved for the benefit of a Member under the Superannuation Conditions.

**"Primary Beneficiary"** has the meaning in the SIS Act.

**"Regulated Superannuation Fund"** has the meaning in the SIS Act.

**"Reserve Account"** means the account referred to in paragraph 18.1(d).

**"Retire"** means to cease to be engaged in the employment in which the Member is for the time being engaged and "Retirement" has a corresponding meaning subject to the SIS Regulations and to Regulation 3.01(7)(b).

**"Retirement Age" "Retirement Date" and "Retiring Age"** mean the sixty-fifth birthday or such other date or age as the Trustees determine, that is consistent with the SIS Act.

**"Reversionary Beneficiary"** has the meaning in the SIS Act.

**"Rules"** means the Rules set out in the Schedule to the governing rules and includes any additions, variations and modifications thereto.

**"Segregated Current Pension Assets"** has the meaning given from time to time by the Tax Act.

**"SIS Act"** means the Superannuation Industry (Supervision) Act 1993 as amended from time to time and regulations from time to time made thereunder.

**"SIS Regulations"** mean the regulations made under the SIS Act as amended from time to time and includes any applicable modification declaration.

**"Splittable Contribution"** has the meaning in Part 6 of the SIS Regulation.

**"Spouse"** in relation to a person, includes another person, although not legally married to the person, lives with the person on a genuine domestic basis as the husband or wife of the person and any person who is a spouse for the purposes of the Act.

**"Standard"** means a standard prescribed by the SIS Act.

**"Standard Employer-Sponsor"** has the meaning in the SIS Act.

**"Standard Employer-Sponsored Fund"** has the meaning in the SIS Act.

**"Superannuation Conditions"** subject to 2.4 means any provision which may be applicable to the Fund under the Act, the Tax Act or other laws or rulings of the Commissioner which must or may be met for the Fund to be treated with the most concessional taxation treatment available or to be treated in any manner which, in the opinion of the Trustees, is concessional and includes conditions which must be met for the Fund to become or remain a self managed superannuation fund.

**"Superannuation lump sum"** has the meaning given in SIS Regulation 1.03(1) (See Section 995-1 of the 1997 Tax Act).

**"Tax Act"** means Income Tax Assessment Act 1936 or 1997 as may be applicable.

**"Trustees"** means the Trustees or the Trustee for the time being of the Fund and **"Trustee"** has the same meaning.

**"Vested Portion"** means the portion of an account or benefit that is vested for the benefit of a Member including any such portion which is preserved for the benefit of a Member and any such portion which has been transferred in respect of a Member to the Fund from another superannuation fund as a vested benefit.

**2.2 Headings:**

The headings in this Deed and the Rules are for convenience and reference only and are not to affect its interpretation.

**2.3 Meanings:**

- (a) Any word or expression which is defined in the Act has in this Deed the meaning ascribed to it by the Act and to the extent that a meaning ascribed to a word or expression within this Deed is inconsistent with the meaning ascribed to it by the Act the meaning ascribed by the Act prevails unless the contrary intention appears provided that where more than one meaning may be ascribed then the Trustees may determine which of those meanings applies.
- (b) This Deed will be read and construed on the basis that the provisions of the SIS Act are incorporated to the extent that they impose requirements on the Trustees or are required by that Act to be so incorporated, but this Deed will not be so read or construed and no provision or regulation will be so incorporated if to do so would constitute a breach of the power granted by this Deed to vary, add to or rescind its provisions. To the extent not prohibited by the SIS Act, the Trustees may however by resolution determine that a provision of the SIS Act does not apply, either generally to the Fund or in respect of any particular application and the Deed must be construed accordingly.
- (c) If a provision of this Deed refers to a provision of a statute or regulation then it shall be construed as referring to that provision as may be made whether before or after this Deed and as may be amended, enacted or replaced from time to time.

**2.4 Inconsistencies with the Superannuation Conditions:**

Where it appears to the Trustees that there is any inconsistency or difference between:-

- (a) any provision of any applicable legislation or other laws and another provision or provisions;
- (b) the rulings of the Commissioner and other rulings of the Commissioner;
- (c) the Acts or laws referred to in (a) and the rulings referred to in (b);
- (d) the Rules and this Deed,

then the Trustees may determine, either generally or in respect of any particular application, in their absolute discretion, which provision or ruling applies and the Deed must be construed accordingly and subject to such determination and to the Act, if there is any inconsistency between the Rules and the Deed the Deed shall prevail.

**2.5 Proper Law:**

This Deed and the Rules are governed and construed and take effect in accordance with the laws of the State or Territory of residence of the Trustee (however Section 35(b) of the South

Australian Trustees Act 1936 does not apply to this Deed). Any person having or claiming any interest under this Deed must submit to the jurisdiction of the Courts of that State or Territory.

**2.6 Saving Provision:**

To the extent any provision of this deed would be void or invalid, but for this paragraph ("an invalid provision"):

- (a) where a reading down or limitation of the operation of the invalid provision would remove the voidness or invalidity, that must be done in constructing the Deed;
- (b) where it is not possible to apply paragraph (a), the invalid provision is severed from the Deed;
- (c) in any event, an invalid provision does not affect the continued operation of the remainder of the Deed.

**2.7 Trustee must Comply with the Law:**

The Trustees must not do or fail to do anything as Trustees of the fund that would result in either a breach of law, including the Act or the fund ceasing to qualify as a self managed fund under superannuation law or to qualify for concessional tax treatment under the Tax Act, even if the Trustees are otherwise empowered or obliged and this provision applies despite any other provision.

**2.8 Power to comply with Family Law**

- (a) the Trustee may in accordance with the Act:
  - (i) provide a Non-Member Spouse (as defined in the SIS Act) or any other person with information (including without limitation, information in relation to a Member's benefits) in the Trustee's possession;
  - (ii) give effect to a payment split, superannuation agreement, payment flag, flag lifting agreement (within the meaning of those expressions in Part VIIIB of the Family Law Act 1975) or any other agreement or court order made pursuant to Part VIIIB of the Family Law Act 1975 in relation to a Member and his or her benefits in the Fund (including, without limitation, commuting a pension or annuity payable from the Fund) (**payment split**);
  - (iii) create a new interest in the Fund for the Non-Member Spouse at the request of the Non-Member Spouse (or such other circumstances permitted by the SIS Act) and reduce the amount of a Member's benefits by the value of the benefits that the Non-Member Spouse has in the newly created interest;
  - (iv) apportion the "minimum benefits", "preserved benefits", "restricted non-preserved benefits" and "unrestricted non-preserved benefits" (within the meaning of those expressions in the SIS Act) as between the Member's benefits and the interest created, or the transferable benefits (within the meaning of the SIS Act) rolled over or transferred, for the Non-Member Spouse;
  - (v) at the request of the Non-Member Spouse (or without such a request in the circumstances permitted by the SIS Act) rollover or transfer the transferable benefits to another Benefit Arrangement to be held for the benefit of the Non-Member Spouse;
  - (vi) withholding the payment or the transfer of a Member's benefit;
  - (vii) preserve a Non-Member Spouse's entitlements;
  - (viii) pay to a Non-Member Spouse the amount to which the Non-Member Spouse is

- entitled under the payment split;
- (ix) the Trustee may subject to the SIS Act charge and/or deduct from a Member's benefits or the entitlements of a Non-Member Spouse, a fee for the costs of administering a payment split or a flagging order, rolling over or transferring a transferable benefit or payment to a Non-Member Spouse.
  - (b) The Trustee must treat the Non-Member Spouse as a Member where required by the SIS Act;
  - (c) The Trustee may do anything else whatsoever that it considers necessary to comply with the SIS Act and Part VIIIB of the Family Law Act 1975.

### **Sole Purpose Test**

#### **3.1 Core Purposes:**

The Trustees must ensure that the Fund is maintained solely for one or more of the core purposes or both one or more of the core purposes and for one or more of the ancillary purposes provided in the Act.

#### **3.2 Sole Purpose:**

Despite any other provision of this Deed, the Trustee must be a constitutional corporation unless the Trustees are individuals and in that event and despite any other provision of this Deed the sole or primary purpose of the fund is the provision of old-age pensions

### **Constitution of Fund**

#### **4.1 Trusts:**

All assets of the Fund are vested in the Trustees who stand possessed of the same upon trust to apply the same in the manner and for the objects and purposes of the Fund as set out in this Deed and any amendment.

#### **4.2 Perpetuities:**

The Fund must be terminated if the rule of law known as the rule against perpetuities applies to the Fund, on the expiration of the maximum period allowed under that rule for the duration of the trusts established under this Deed.

### **Notice of Election**

#### **5. Trustees to give notice to become a regulated fund:**

The Trustees must give to the Commissioner within the period provided by the Superannuation Conditions a written notice in the approved form and signed in the manner required by the SIS Act electing that the Act is to apply in relation to the Fund.

### **Statutory Covenants**

#### **6. Statutory Covenants:**

The purpose of this paragraph is explanatory only. The effect of Section 52 of the SIS Act is that the Trustees covenant as follows in accordance with the SIS Act:-

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

- (b) to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
- (c) to ensure that the Trustees' duties and powers are performed and exercised in the best interests of the beneficiaries;
- (d) to keep the money and other assets of the Fund separate from any money and assets, respectively:-
  - (i) that are held by the Trustees personally; or
  - (ii) that are money or assets, as the case may be, of a standard employer-sponsor, or an associate of a standard employer-sponsor, of the Fund;
- (e) not to enter into any contract, or do anything else, that would prevent from, or hinder the Trustees in, properly performing or exercising the Trustees' functions and powers; this does not prevent the Trustees from engaging or authorising persons to do acts or things on behalf of the Trustees.
- (f) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including, but not limited to, the following:
  - (i) the risk involved in making, holding and realising, and the likely return from the Fund's investments having regard to its objectives and its expected cash flow requirements;
  - (ii) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
  - (iii) the liquidity of the Fund's investments having regard to its expected cash flow requirements;
  - (iv) the ability of the Fund to discharge its existing and prospective liabilities;
- (g) if there are any reserves of the Fund - to formulate and to give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- (h) to allow a beneficiary access to any information or documents prescribed under the SIS Act.
- (i) to observe such covenants as are prescribed to be included in the governing rules of the Fund prescribed by the Act.

## **Statutory Requirements**

### **7. Self Managed Superannuation Fund:**

Subject to paragraph 3.2 and despite any other provision of this Deed, the Trustees are empowered to do all things necessary to be done by them to ensure that the Fund satisfies the conditions applicable to self managed superannuation funds regulated in accordance with the Act.

## **Alterations to the Deed**

### **8.1 Methods to alter Deed:**

Subject to this paragraph 8 and the Superannuation Conditions this Deed and the Rules may be amended:

- (a) by deed executed by the Trustees; or
- (b) by oral resolution of the Trustees and subject to compliance with the Superannuation Conditions; or
- (c) in relation to the Rules, in addition to the above, in any other manner permitted by the Rules;
- (d) and in any event if there is a Principal Employer its written consent must be obtained to any amendment unless this requirement is inconsistent with the SIS Act or the Superannuation Conditions.

### **8.2 Effective Date:**

An amendment under this paragraph takes effect from the date (prospective or retrospective) specified in the resolution or if not specified on the date on which the resolution is made.

### **8.3 Prohibition:**

If the Act prohibits it, this Deed must not be amended in such a way that:

- (a) a person other than a constitutional corporation would be eligible to be appointed as Trustee unless the Deed or any amending deed, provides and will continue to provide after the amendment is made, that the Fund has, as its sole or primary purpose, the provision of old-age pensions; or
- (b) the sole or primary purpose of the Fund would be a purpose other than the provision of old-age pensions unless the Deed or any amending deed provides and will continue to provide after the amendment is made, that the Trustee must be a constitutional corporation.

### **8.4 Notice to be given to Members following alteration:**

The Trustees must give to each Member such information or notice in respect of the amendments as may be required by the Superannuation Conditions.

## **Trustees**

### **9.1 Written consent of Trustee required:**

A person is not eligible for appointment as a Trustee, or, if the Trustee is a corporate Trustee, as a director of that corporate Trustee, unless the person has consented in writing to the appointment.

### **9.2 Consent of new Members to Trustees:**

A person joining the Fund as a Member consents, as a condition of joining the Fund, to the Trustees, at the date of the Member so joining, continuing to act as Trustees and to being appointed as a Trustee or if the Trustee is a body corporate, to being appointed as a director of that body corporate (unless that Member is under a legal disability or otherwise not entitled to become a Trustee under the SIS Act.)

### **9.3 Chairperson:**

The Chairperson of any meeting of the Trustees or of the body corporate sole Trustee does not have any second or casting vote.

### **9.4 Number of Trustees:**

The number of Trustees must be such number as does not exceed the maximum number and is not less than the minimum number permitted by the SIS Act necessary for the fund to satisfy the provisions applicable to self managed superannuation funds.

### **9.5 Meetings of Members:**

The Trustees may establish procedures and policies for the regulation of meetings of Members.

### **9.6 Decisions of Trustees:**

If required by the Superannuation Conditions, a decision of:

- (a) the individual Trustees of the Fund; or
- (b) the Board of Directors of the Corporate Trustee of the Fund;

must be taken not to have been made, or to be of no effect, if fewer than two thirds of the total number of the Trustees or Directors, as the case requires, voted for it. Otherwise a majority vote is sufficient.

### **9.7 Basic Equal Representation Rule:**

Compliance with Rule: The Fund must, if required by the Superannuation Conditions, comply with the basic equal representation rule.

### **9.8 Vacancy in Office of Trustee:**

- (a) The office of a Trustee or of a director of a body corporate sole Trustee ipso facto, becomes vacant if the Superannuation Conditions require it or upon the Trustee's or director's:
  - (i) death;
  - (ii) mental incapacity;
  - (iii) retirement by written notice to the Members and any other Trustee;
  - (iv) becoming a disqualified person within the meaning of the Act;

- (v) suspension or removal under the Act;
  - (vi) tenure of the Trustee's position expires;
  - (vii) continuance in office would result in the fund no longer satisfying the conditions of the SIS Act applicable to self managed superannuation funds.
- (b) Pending any appointment of a Trustee where a Member has died the deceased Member's legal personal representative may with the consent of any other Members, act as Trustee in place of the deceased Member/Trustee (or director of a corporate trustee) in any period commencing on the Member's death and ending on the date the Member's benefits become payable.
  - (c) Pending any appointment of a Trustee where a Member is under a legal disability the Member's legal personal representative may with the consent of any other Members, act as Trustee in place of that Member/Trustee (or director of a corporate trustee) in any period when the Member is under a legal disability or the legal personal representative has an enduring power of attorney from that Member and ending on the date the Member's benefits become payable.
  - (d) The parent or guardian of a Member who is under 18 and who does not have a legal personal representative may be appointed as a Trustee.
  - (e) Sub-paragraphs (b), (c) and (d) are subject to the SIS Act.

**9.9 Members to fill vacancy:**

Any vacancy in Trustees or board of a corporate trustee must be filled within 90 days after it occurred where the Superannuation Conditions require it, or such other time as permitted under the Superannuation Conditions. Any vacancy may, subject to the Superannuation Conditions (and if required by the Superannuation Conditions with the consent of the Trustees), be filled by a resolution of a two-thirds majority of Members and may also be effected by Deed signed by or on behalf of the Members and signed by the new Trustee.

**9.10 (a) Members may remove Trustees:**

Subject to the Superannuation Conditions and if required by them, with the Trustees' consent, the Trustee or, where there is more than one, a Trustee, may be removed by a two-thirds majority of the Members and such removal is effective upon the passing of a resolution to that effect in accordance with this Deed.

**(b) Members may replace Trustees:**

At the time of making a resolution under sub-paragraph (a) above the Members may (with the written consent of the appointee or appointees) by resolution made and effected in like manner appoint a Trustee or Trustees to replace the person or persons so removed.

**9.11 Self Managed Superannuation Fund Conditions:**

- (a) Any appointment or removal of a Trustee(s) or a director of a body corporate Trustee must be made in such manner as will satisfy the provisions of the SIS Act applicable to self managed superannuation funds.

- (b) Subject to the SIS Act, in addition to any other method provided in this Deed, a Trustee or Trustees or an additional Trustee(s) may be appointed and a Trustee(s) removed by a Deed giving effect to such appointment or removal, signed by the Members, the Trustee(s) to be appointed and the Trustee(s) at that time.

**9.12 Additional Trustees:**

Additional Trustees may be appointed, subject to the Superannuation Conditions, by a resolution of a 2/3rds majority of members or by Deed signed by or on behalf of the Trustees and the Members.

**9.13 Principal Employer:**

If the Fund has at the relevant time a Principal Employer then its consent must be obtained to any appointment or removal of Trustees unless this requirement is inconsistent with the SIS Act or the Superannuation Conditions.

### **Limitation of Liability**

**10.1 Limitation:**

- (a) Subject to paragraph 10.1 (b), no Trustee or, where the Trustee is a corporation, any of its directors or officers, will be personally liable for any loss or detriment whatsoever incurred by any person in connection with the Fund for any reason.

**Exceptions:**

- (b) Paragraph 10.1 (a) does not apply to the extent that the loss or detriment is due to the Trustee's, director's or officer's dishonesty or wilful or reckless failure to exercise the degree of care and diligence that the Trustee, director or officer was required to exercise.

**10.2 Indemnity:**

- (a) The Trustee and, where the Trustee is a corporation, its directors and officers are entitled, to the maximum extent permitted by the Act, and by law, to be indemnified from the Fund against all liabilities incurred by each of them in connection with the execution, attempted execution, or in respect of non-execution of the Trustee's powers and discretions under this Deed.

**Payment and reimbursement:**

- (b) Subject to the Act, the Trustee and its directors and officers may recover from the Fund amounts necessary:-
  - (i) to meet the indemnities referred to in paragraph 10.2; and
  - (ii) to meet all liabilities whatsoever in connection with the Fund and the exercise of their powers and duties under or in connection with this Deed.

For this purpose and to the maximum extent permitted by the Act, the Trustee and its directors and officers have, and may exercise, a lien over the Fund.

## **Approval of Members and Employers Generally**

11. (a) **Approval of Members/Associated Employers generally:**

Subject to the Superannuation Conditions where under the terms of this Deed there is required in relation to the exercise by the Trustees of any power or authority or there is otherwise required the resolution, consent, approval or agreement (herein referred to as "resolution") of the Members or Associated Employer(s) generally the passing or rejection of that resolution must be determined in accordance with the succeeding provisions of this sub-paragraph unless all Members or Associated Employers of the Fund at the time of signature have signified their consent in writing otherwise.

(b) **Written notice to Members/Associated Employers:**

The Trustees of their own motion or upon written requisition by not fewer than ten percent of the Members/Associated Employers must give written notice by pre-paid ordinary mail to each Member/Associated Employer:-

- (i) specifying the matter in respect of which resolution is sought;
- (ii) setting out a comprehensible explanation of the reasons for which the resolution is sought;
- (iii) specifying the effect of the provisions of this sub-paragraph in relation to the determination of the resolution;
- (iv) containing provision for the Members/Associated Employers indication of the passing or rejection of the resolution;
- (v) containing a stamped addressed envelope to the Trustees.

(c) **Trustee meeting to table responses:**

- (i) Upon the date which is fifteen (15) clear ordinary business days from the date upon which the notices under sub-paragraph (b) were posted to the Members/Associated Employers the Trustees must at a duly convened meeting of the Trustees table the responses of the Members/Associated Employers received by the Trustees and in the event that the requisite majority of responses indicates the passing of the resolution it must be passed and in the event that the requisite majority of such responses indicates the rejection of the resolution it must be rejected.

- (ii) Any Member/Associated Employer is entitled to attend as an observer a meeting of the Trustees under this sub-paragraph.

- (d) The Trustees must retain the responses with the Minutes of the Meeting at which they were tabled.

(e) **Requisite majority:**

In the provisions of this sub-paragraph the expression "requisite majority" means:-

- (i) in the case where a two-thirds majority is required - two-thirds or more of the responses;

- (ii) in any other case - one-half or more of the responses.
- (f) **Notification to Members/Associated Employers:**  
The Trustees must within fourteen (14) days of any meeting held under the provisions of this sub-paragraph notify all Members/Associated Employers of the result thereof.
- (g) **Strict compliance not essential:**  
Any resolution made under this paragraph is not invalidated by reason of any or want of strict compliance with these provisions unless it is shown that there has or may be caused thereby some substantial and irremediable injustice.
- (h) **Written Resolution:**  
Despite this Rule 11 the Members may unanimously resolve to give their approval by signing a document or identical documents to the requisite effect.

### **Trustees not to be Subject to Direction**

#### **12.1 Directions:**

If the Superannuation Conditions so require, the Trustees, despite anything in this Deed to the contrary, must not be subject, in the exercise of any of the Trustees' powers under the Deed, to direction by any other person.

#### **12.2 Direction taken to be a request:**

If any provision in this Deed is inconsistent with the preceding sub-paragraph then, despite such provisions, the Trustees must treat the direction as a request and the Trustees are not bound by such provision or request.

### **Investments**

#### **13.1 Investment Strategy:**

The Trustees must formulate and give effect to an investment strategy in accordance with the SIS Act. Subject to the SIS Act a reserve account may have a separate investment strategy (see Rule 6(g)).

#### **13.2 Loans:**

The Trustees may not lend money to Members unless the Act permits loans to Members.

#### **13.3 Acquisition of assets from Members:**

The Trustees must not intentionally acquire an asset from:

- (a) a Member of the Fund; or
- (b) a relative of a Member of the Fund.

unless the Superannuation Conditions permit.

#### **13.4 Borrowing:**

- (a) The Trustees may borrow money or maintain an existing borrowing of money subject to the Superannuation Conditions.

#### **Instalment Warrants:**

- (b) The Trustees may borrow money, or maintain a borrowing of money, under any arrangement permitted under Section 67(4A) of the SIS Act (or any other applicable provision or rulings of the Commissioner) and subject to the SIS Act, enter into and execute all documents and do all such things as may be necessary to give effect to or which may be ancillary to any such arrangement including the variation and transposing of such investments and may enter into any applicable arrangements that are not prohibited by the SIS Act in connection with any relevant debt instalment trust.

#### **13.5 In-house assets:**

The Trustees must take all reasonable steps to ensure that the in-house assets rules applicable to the fund, if any, are complied with and may only invest in in-house assets if permitted by the Act. Subject to those conditions the Trustees may continue to hold any existing in-house asset.

#### **13.6 Arms' length dealing required:**

The Trustees must not, if prohibited by the Superannuation Conditions, make investments unless the Trustees and the other party to the relevant transaction are dealing with each other at arms' length in respect of the transaction.

#### **13.7 Power to invest as if natural persons:**

- (a) Subject to the SIS Act, the Trustees may make any investment that a natural person may make.
- (b) The Trustees have power to sell, vary or transpose any investment/asset of the Trust.
- (c) All investments by the Trustees are subject to compliance with the Superannuation Conditions.

#### **13.8 Other investment powers:**

Without limiting the generality of the preceding sub-paragraph but subject to the limitation in it and subject to the Superannuation Conditions, the Trustees may invest in: -

- (a) any investment authorised by the laws of Australia or of any of its States or Territories for the investment of trust funds;
- (b) the purchase of or subscription for preference or other shares or stock or preference or other share or stock options in any company registered in Australia or in any other country;
- (c) the purchase of units or sub units of property or other investment trusts or other common fund;
- (d) deposits with any bank, life insurance company or building society or on loan to any company, organisation or person not being a Member;
- (e) policies of insurance, assurance, endowment, deposit administration or investment;
- (f) the purchase of annuities and deferred annuities from a life insurance company or other organisation;

- (g) the purchase of any real estate in Australia;
- (h) deposits with or loans to an Employer;
- (i) instalment warrants;
- (j) any other investment whether or not similar to any of the above which the Trustees consider to be appropriate.

**13.9 Nominees for Trustees:**

Any investment may be held in such names including the name of a nominee or custodian (whether an individual or corporation) as the Trustees from time to time determine to the extent not prohibited by the Superannuation Conditions.

**13.10 Continuation of loans to Members:**

The Trustees may continue any loans transferred in respect of a Member from another superannuation fund under conditions that will not cause the Fund to fail to satisfy the Superannuation Conditions.

### **Investment Choice**

**14.1 No obligation:**

- (a) The Trustees are not obliged to provide investment choice to Members or Beneficiaries of the Fund except as required by the SIS Act;
- (b) The Trustees may however in their absolute discretion determine to provide investment choice subject to the Superannuation Conditions either generally or only in respect of certain Members or Beneficiaries or certain classes of Members or Beneficiaries of the Fund.

**14.2 Investment Strategy:**

- (a) Where the Trustees determine to provide investment choice, they must establish an investment strategy for each of the investment choices available to Members and Beneficiaries and where appropriate must allocate or designate particular assets of the Fund to be held in accordance with that strategy they must notify Members and Beneficiaries of the investment objectives of each of those strategies and provide any other information required for this purpose by the Superannuation Conditions to enable Members and Beneficiaries to make an informed decision regarding the effect of and risks associated with, each of those investment strategies;
- (b) The notification provided must include the various directions that a Member or a Beneficiary can give to the Trustees under paragraph 14.6 and the circumstances in which any such directions can be given or altered.

**14.3 Trustees must monitor:**

The Trustees must monitor each of the investment strategies established under paragraph 14.2 and the assets held in accordance with each strategy in order to ensure that each of those investment strategies is appropriate at all times in respect of Members or Beneficiaries or classes of Members or Beneficiaries to whom each of those strategies is available.

**14.4 Earning rate:**

The Trustees must determine a fund earning rate and allocate the earnings of the Fund to each Member's Account in accordance with the investment strategy applicable to the Member or Beneficiary as the Trustees determine or if the Superannuation Conditions or the SIS Act require it, in proportion to the amount standing to the credit of the Member's or Beneficiary's Account at the beginning of the fund year in respect of which the allocation is being made, appropriate adjustment being made for amounts (if any) credited or debited to those Accounts during that year.

**14.5 Selection and direction:**

- (a) A Member or Beneficiary of the Fund, may, where the Trustees have determined to offer investment choice in accordance with paragraph 14.1, select one or more of the investment strategies formulated by the Trustees under paragraph 14.2 and direct the Trustees to invest part or the whole of the monies held in respect of that person in accordance with the strategy or strategies selected by that person under this paragraph.
- (b) Any directions by the Member or Beneficiary must only be given in accordance with the Superannuation Conditions and the Trustees must ensure that the Member or Beneficiary is provided with such information as required by the Superannuation Conditions in order to enable the Member or Beneficiary to make an informed decision.

**14.6 Member document:**

- (a) A Member or Beneficiary who wishes to select one or more investment strategies pursuant to paragraph 14.2 must give to the Trustees such documents as the Trustees require and must clearly set out details of the investment strategy or strategies selected by the Member or Beneficiary.
- (b) The Trustees are not bound to act on any such document if it breaches any of the requirements of the Superannuation Conditions.

**14.7 Asset specific investments:**

- (a) Except to the extent permitted by the Superannuation Conditions, the Trustees are not bound to make a particular investment in respect of a Member or Beneficiary of the Fund.
- (b) Where a Member or Beneficiary wishes to select particular investments, (whether those investments comprise one or more assets), a request to the Trustees must be made for an additional investment strategy or strategies for those particular investments ("asset specified investment strategy") to be formulated by the Trustees and for that strategy or those strategies to be made available to that Member or Beneficiary in accordance with paragraph 14.2.
- (c) The Trustees may in their absolute discretion approve or reject any requests made under this paragraph.

**14.8 Advice to Members:**

The Trustees must, if required by the SIS Act, advise Members and Beneficiaries of the investment strategy or strategies which will be adopted by the Trustees in respect of those

- (b) keep its accounting records so as to enable the preparation of the accounts and statements in accordance with the Superannuation Conditions.
- (c) keep its accounting records so as to enable those accounts, statements and returns to be conveniently and properly audited in accordance with the Superannuation Conditions.
- (d) keep a reserve account to which may be credited or debited such amounts as the Trustees determine from time to time subject to the Superannuation Conditions.

**18.2 Balance sheet:**

The Trustees must as soon as practicable after the expiration of each Financial Year cause to be drawn up such:

- (a) balance sheets and statements of financial position;
- (b) operating statements;
- (c) other financial accounts and statements as are required by the Superannuation Conditions; and/or
- (d) such other statements as the Trustees think fit.

**18.3 Accounts and statements to be prepared:**

The Trustees may prepare such accounts and statements additional to those described in this paragraph as are required by the Superannuation Conditions or otherwise, as they think fit.

**18.4 Audit:**

If required by the Superannuation Conditions, the Trustees must ensure that the accounts and statements of the Fund are audited.

**18.5 Maintenance of reserves:**

The Trustees may, if they consider it desirable to do so, maintain reserves of the Fund.

**18.6 Records to be kept by Trustees:**

The Trustees must keep such minutes, records and reports as they consider appropriate for the proper administration of the Fund and such further records, minutes and reports as may be required by the Superannuation Conditions.

### **Payments to Contributors**

**19. Payments to Associated Employer:**

The Trustees may pay an amount or permit an amount to be paid out or transferred in specie to any contributor to the Fund only if not prohibited by the SIS Act or the Superannuation Conditions.

## **Rollover**

### **20. Trustees may pay rollovers:**

The Trustees may pay benefits to an eligible rollover fund or other fund as permitted by the Superannuation Conditions.

## **Member Accounts**

### **21.1 Trustees to keep Member and employer accounts:**

Subject to complying with the Superannuation Conditions, the Trustees may keep such accounts in respect of Member and employer contributions (if any) as they think fit including accounts in respect of segregated current pension assets.

### **21.2 Power to retain prior categories of membership and vesting:**

- (a) Where under any prior governing rules of this Fund or under any fund from which a benefit has been transferred, provision was made for categories of membership or for vesting of contributions, the Trustees may, in their absolute discretion continue to apply or adopt those provisions or provisions similar thereto as the Trustees may reasonably determine.
- (b) The Trustees may treat that benefit so transferred in that manner despite the provisions of this Deed, it being the intention of this provision to give the Trustees the power to retain and continue to treat that benefit in a similar manner to its treatment under those prior or other governing rules.
- (c) This provision is subject to compliance with the Superannuation Conditions.

### **21.3 Accounts may be kept:**

The Trustees may cause to be kept in respect of each Member a Member Account which may contain such particulars as the Trustees determine.

### **21.4 Details of accounts:**

Each Member Account may include -

- (a) An Employer Contribution Account showing -
  - (i) contributions by any Associated Employer to that account;
  - (ii) sums which the Trustees determine to be credited or debited to the account in order to provide the benefits payable to or in respect of the Member in accordance with the Deed and Rules;
  - (iii) the portion of the account that is currently irrevocably vested for the Member (the Vested Portion); and
  - (iv) the portion of the account that is preserved and the conditions of such preservation (the Preserved Portion);
- (b) A Member Contribution Account showing -
  - (i) contributions by the Member to that account;

- (ii) sums which the Trustees determine are properly to be credited or debited to the account in order to provide the benefits payable to or in respect of the Member in accordance with the Deed and Rules;
  - (iii) the portion of the account that is currently irrevocably vested for the Member (the Vested Portion); and
  - (iv) the portion of the account that is preserved and the conditions of such preservation (the Preserved Portion); and
- (c) Any such Account may, subject to the Superannuation Conditions, be debited or credited and such other entries may be made or particulars recorded as the Trustees deem to be appropriate including provisions for reserves.
- (d) Without limiting the discretion in (c) and subject to the SIS Act and the Superannuation Conditions, the Trustees may debit and or credit such accounts, amounts which the Trustees determine are appropriately created or debited including a payment split under S 90 MD Family Law Act, splittable contributions, amounts to be transferred to a reserve account under this Deed, expenses, losses and benefit payments (whether lump sum or pension) and taxes.

#### **Segregated Current Pension Assets**

- 21.5 The Trustees may in accordance with the Tax Act, transfer and segregate any of the assets of the fund for the sole purpose of discharging the current pension liabilities of the fund out of those assets or any other purpose permitted by the Superannuation Conditions or SIS Act.
- 21.6 The transfer values and annual valuations of the segregated current pension assets must be determined as may be required by the Tax Act.
- 21.7 The Trustees may, in accordance with the Tax Act or other applicable laws or Superannuation Conditions, re-transfer assets segregated in order to meet the requirements of the Tax Act applicable to the segregated current pension assets.
- 21.8 The Trustees may do or cause all such things to be done as may be necessary for the Trustees to segregate pension assets or to comply with the provisions of the Tax Act necessary to transfer contributions to a life insurance company or pooled superannuation trust to permit taxation of those contributions in the hands of such company or trust in accordance with the Tax Act or other applicable laws or Superannuation Conditions.
- 21.9 The Trustees may create such Pension Benefit accounts in respect of pensions payable under this Deed as the Trustees determine.
- 21.10 The Trustees may take any action not prohibited by the Tax Act or the SIS Act to revert segregated assets so that they are no longer segregated and with the consent of the relevant Member where required.

## **Valuation of the Fund and Allocation of Profits or Loss**

### **22.1 Valuation:**

The Trustees must at the end of each Financial Year if required by the Superannuation Conditions and may at any time value the assets and liabilities of the Fund and any surplus or deficiency including unrealised gains or losses revealed by such valuation must be separately credited or debited to the profit and loss account of the Fund. For the purpose of effecting a valuation the Trustees have an absolute discretion in selecting the valuation basis for any asset or liability provided that such basis must not be one which causes the Fund to fail to satisfy the Superannuation Conditions.

### **22.2 Profit or loss distribution:**

The Trustees may in their absolute discretion determine the amount of profit or loss of the Fund that must be credited or debited to and amongst the Member Accounts and any other accounts that the Trustees nominate in such proportions and such manner as the Trustees decide and may set formulae or interest rates for this purpose provided that the Trustees must in the exercise of their discretions under this paragraph act in a manner that is in accordance with the Superannuation Conditions. If the Trustees maintain reserves the Trustees may first determine what amount of the profit or loss is to be allocated to the reserve accounts, and the balance (if any) credited or debited in accordance with this Deed.

### **22.3 Other debits:**

Subject to the Tax Act and the Superannuation Conditions, the Trustees may debit any accounts of the Fund in respect of taxation liabilities or any other outgoings in such manner as the Trustees determine.

## **Contributions**

### **23.1 Employer contributions:**

Each Associated Employer, if any, and Principal Employer, if any, must contribute to the Fund pursuant to an arrangement between such Employer and the Trustees in respect of the Employer's Employee who is a Member of the Fund.

### **23.2 Employer sponsors:**

The arrangement referred to in the preceding paragraph is that the Employer must pay or cause to be paid into the Fund from time to time on a basis agreed with the Trustees contributions or other monies as may be required in accordance with the Rules and subject to compliance with the Superannuation Conditions provided however that the Trustees may refuse to accept any contributions.

### **23.3 Member contributions:**

Subject to the Superannuation Conditions and this Deed, each Member may contribute to the Fund (whether in specie or otherwise, subject to the Superannuation Conditions) such amount or otherwise as is agreed between the Member and the Trustees.

### **23.4 Acceptance of contributions:**

- (a) Despite this Rule 23, the Trustees may accept any contribution from any contributor unless the Act or Superannuation Conditions do not permit it or if such acceptance would cause the fund not to comply with the SIS Act or fail to satisfy the provisions of the SIS Act applicable to self managed funds.

(b) Sub-paragraphs 23.5 to 23.9 (inclusive) cease to apply on and from 1 July 2007 and are subject to the SIS Act and SIS Regulations.

(c) Sub-paragraph 23.9A applies on and from 1 July 2007 subject to the SIS Act and SIS Regulations.

**23.5 Conditions for accepting contributions:**

Subject to the SIS Regulations and sub-paragraphs 23.4 and 23.9 the Trustees may accept contributions that are made in respect of a Member who:

(a) is under age 65.

(b) was 64 between 10 May 2006 and 5 September 2006 whether or not gainfully employed on at least a part time basis and the contributions are in respect of the period 10 May 2006 to 30 June 2007.

(c) was 74 between 10 May 2006 and 5 September 2006 if the member was gainfully employed on at least a part time basis in either the 2005/2006 or 2006/2007 financial year and the contributions are in respect of the period 10 May 2006 to 30 June 2007.

**23.6 Contributions by Members aged 65-70:**

Subject to sub-paragraphs 23.4 and 23.9, the Trustees may accept contributions that are made in respect of a Member who has reached age 65 but not age 70 (age 75 on and from 1 July 2007) only if:

(a) the contributions are mandated employer contributions; or

(b) the Member has been gainfully employed on at least a part-time basis during the financial year in which the contributions are made.

**23.7 Contributions by Members aged 70-75:**

This provision does not apply on and from 1 July 2007.

Subject to sub-paragraphs 23.4 and 23.9, the Trustees may accept contributions that are made in respect of a Member who has reached age 70 but not age 75 only if:

(a) the contributions are mandated employer contributions; or

(b) the contributions are made by the Member in respect of the Member and the Member has been gainfully employed on at least a part-time basis during the financial year in which contributions are made.

**23.8 Contributions by Members aged over 75:**

Subject to sub-paragraphs 23.4 and 23.9, the Trustees may accept contributions that are made in respect of a Member who has reached age 75 only if the contributions are mandated employer contributions.

**23.9 Contributions made after relevant period:**

The Trustees may accept contributions if permitted by the SIS Regulations in respect of a Member if the Trustees are reasonably satisfied that the contribution is in respect of the relevant

period during which, the fund may accept the contribution in respect of that Member, even though the contribution is actually made after that period.

**23.9A Acceptance of contributions — on and from 1 July 2007 (see paragraph 23.4(c))**

- (1) The Trustees may subject to paragraph 23.4(a) accept contributions that are made in respect of a member in accordance with the following table and regulations (2), (3) and (7) of SIS Regulation 7.04.

Item	If the member ...	the fund may accept contributions that are made in respect of the member if ...
1	is under 65	contributions that are made in respect of a member.
2	is not under 65, but is under 70	contributions that are made in respect of a member that are (a) mandated employer contributions; or (b) if the member has been gainfully employed on at least a part-time basis during the financial year in which the contributions are made: (i) employer contributions (except mandated employer contributions); or (ii) member contributions
3	is not under 70, but is under 75	contributions that are made in respect of the member that are: (a) mandated employer contributions; or (b) if the member has been gainfully employed on at least a part-time basis during the financial year in which the contributions are made - contributions received on or before the day that is 28 days after the end of the month in which the member turns 75 that are: (i) employer contributions (except mandated employer contributions); or (ii) member contributions made by the member.
4	is not under 75	mandated employer contributions

- (2) In addition to paragraph 23.9A (1) (SIS Regulation 7.04(1)), the Trustees must not accept any member contributions if the member has not quoted (for superannuation purposes) his or her tax file number to the fund.
- (3) In addition to paragraph 23.9A(1) (SIS Regulation 7.04(1)), the Trustees must not accept any fund-capped contributions in a financial year in respect of a member that exceed:
- (a) if the member is 64 or less on 1 July of the financial year – three times the amount of the non-concessional contributions cap (as defined in the SIS Regulations); or
  - (b) if the member is 65 but less than 75 on 1 July of the financial year – the non-concessional contributions cap (as defined in the SIS Regulations).
- (4) If the Trustees receive an amount in a manner that is inconsistent with sub-paragraph (1), (2) or (3):

- (a) the fund must return the amount to the member within 30 days of becoming aware that the amount was received in a manner that is inconsistent with sub-paragraph (1) or (2); and
  - (b) the Trustees may, and are empowered to comply with the provisions of SIS Regulation 7.04(4)(b).
- (5) If the Trustees comply with SIS Regulation 7.04(4) (See paragraph 23.9A (4)), the fund is taken not to have contravened the Act or the SIS Regulations in relation to the acceptance of the amount or in relation to the return of the money to the member.
- (6) The Trustees may accept contributions in respect of a member if the Trustee is reasonably satisfied that the contribution is in respect of a period during which, under an item in the table above (SIS Regulation 7.04(i)), the fund may accept the contribution in respect of that member, even though the contribution is actually made after that period.
- (7) In this provision 23.9A:  
***non-concessional contributions cap*** means the amount mentioned in subsection 292-85 (2) of the *Income Tax Assessment Act 1997*.  
***quoted (for superannuation purposes)*** has the same meaning as in the *Income Tax Assessment Act 1997*.  
***tax file number*** has the meaning given by section 299W of the SIS Act.

#### 23.10 Child Contributions

The Trustee may accept child contributions in respect of a child if permitted by the Act.

#### 23.11 E.T.P.:

The Trustees may receive such eligible termination payments as the Trustees accept from time to time provided that such payment would not result in the fund:-

- (i) no longer complying with the conditions applicable to self managed superannuation funds; or
- (ii) no longer complying with the Superannuation Conditions

and further provided that the Trustees may in any event refuse to accept such payment or contribution.

#### 23.12 Entries & Membership:

Subject to the Superannuation Conditions, in respect of any receipt:-

- (a) the Trustees may make such relevant entries in the accounts of the fund as they deem appropriate; and
- (b) despite other provisions of this Deed may admit to membership of the fund as necessary in the Trustees' opinion such persons as may be entitled to such contributions or eligible termination payments.

**23.13 (a) Contributions in Cash or Assets:**

Any contribution made by a Member or an Associated Employer must be made to the Trustees within the period in respect of which it is paid either in cash or by transfer of an asset or assets provided that the assets transferred must be investments permitted by this Deed. Any such transfer of an asset must be made upon the terms and conditions required by the Superannuation Conditions, and must not be made if the Trustees or an agent or delegate of the Trustees is prohibited by the Superannuation Conditions from acquiring the asset.

**(b) No Obligation to Contribute:**

In the absence of any agreement to the contrary neither a Member nor an Employer are under any obligation to make a contribution to the Fund and a Member may remain a Member of the Fund notwithstanding a contribution is not made in respect of that Member in respect of any year.

**(c) Ineligible Contributions:**

If the Trustees at any time ascertain that any contribution has been accepted in breach of the provisions of the Act, the Trustees must refund such contribution within any time period which may be required by the Act, less any deductions the Trustees are permitted to make.

**(d) Non-acceptance of Contributions:**

The Trustees may, subject to the Act and the Superannuation Conditions, return any contribution even if such contribution is permitted to be accepted by the Trustees under the SIS Act.

**23.14 Allocation of Contributions**

Within 28 days (or within a longer period that is reasonable in the circumstances if within 28 days it is not reasonably practicable to so allocate or such other period as the Commissioner permits) of the end of the month of receipt of a contribution the Trustee must allocate the contribution to a Member of the fund.

**Spouse contributions – splitting amounts**

**23.15 Application to roll over, transfer or allot an amount of contributions**

- (1) Subject to the SIS Regulations and in particular Division 6.7, a Member may, in a financial year, apply to the trustee to roll over, transfer or allot an amount of benefits, for the benefit of the Member's spouse, that is equal to an amount of the splittable contributions made by, for, or on behalf of the Member in:
  - (a) the last financial year that ended before the application; or
  - (b) the financial year in which the application is made – where the Member's entire benefit is to be rolled over or transferred in that year.
- (2) The applicant must specify, in the application, the amount of the benefit from the following:
  - (a) the Member's taxed splittable contributions;
  - (b) the Member's untaxed splittable contributions;that the Member seeks to split for the benefit of the Member's spouse.

**23.16 Decision on application**

- (1) The Trustee may accept an application only if it is made in accordance with the SIS Regulations.

- (2) If the Trustee accepts an application in accordance with this provision the Trustee must, subject to the Regulations, and in any case within the period prescribed by the SIS Regulations, roll over, transfer or allot the amount of benefits for the benefit of the receiving spouse.
- (3) The Trustee is permitted to do all such things as may be necessary to give effect to these provisions and words in these provisions have the same meaning as contained in Division 6.7 of the SIS Regulations.

### **Benefits**

#### **24.1 Maximum Benefits:**

Unless the Trustees, otherwise and subject to the Superannuation Conditions unanimously resolve the liability (if any) of the Trustees to make payments to or for any Member, Dependant, Personal Representative or Beneficiary must not in any event exceed the lesser of:-

- (a) the benefits provided under the Deed in respect of such Member, Dependant, Personal Representative or Beneficiary; and
- (b) the total balances of the relevant Member Accounts and any insurance proceeds received by the Trustees in respect of the Member.

#### **24.2 Additions:**

Despite any provision in the Deed and subject to the Superannuation Conditions, the Trustees, may from time to time or at any time commence to provide or add to:-

- (a) the vesting in or for Members within any Employer Contribution Accounts held for their benefit; or
- (b) any death, ill health or disability insurance policies upon the life of any Member.

#### **24.3 Vesting:**

There vests in each Member:

- (a) the amounts required to be vested by the Superannuation Conditions;
- (b) the amounts, if any, already vested in that Member pursuant to any rules of the Fund applicable prior to the date of this Deed;
- (c) any amount not otherwise vested which the Trustees with the consent of the Member's Employer (if any) agree is to be vested including any benefits or amounts transferred to the Fund as a vested benefit from another superannuation fund.

#### **24.4 Application of benefits:**

The benefits payable to or in respect of Members, Dependents and Personal Representatives in accordance with the Deed must be paid or applied to or for the benefit of such one or more of those Beneficiaries in the form of lump sums, pensions or annuities as provided in the Rules and in such manner as the Trustees may in their absolute discretion decide provided that such payments do not cause the Fund to fail to satisfy the Superannuation Conditions, nor conflict with

paragraph 3.2 and is subject to any valid notice given to the Trustees by a Member pursuant to paragraph 24.6.

**24.5 Members request:**

Subject to the Superannuation Conditions and paragraph 3.2 and despite the Rules, when a benefit is payable as a pension the Member may by written notice to the Trustees request payment of such benefit as an immediate or deferred lump sum and while the Trustees will take due consideration of a request the Trustees decision with respect to the form of any benefit payment will be final. If the Trustees at the relevant time are individuals then the Trustees must comply with the Member's request despite this paragraph 24.5 and despite the Rules.

**24.6 Binding Nominations:**

- (a) Subject to the Superannuation Conditions, the Trustees consent to the ability of a Member to make a binding nomination to pay benefits to a designated Dependant and the Trustees agree to give effect to such notice.
- (b) The purpose of the following sub-paragraph is explanatory and it applies subject to the provisions of the SIS Act. If the Trustees are unable to lawfully act upon the Member's notice referred to below then the Trustees may pay the relevant benefit to the Member's legal personal representative or to the Member's Dependants or any one or more of them and in such proportions as the Trustees in their absolute discretion determine, not being inconsistent with the SIS Act.
- (c) Subject to sub-paragraph 24.6(i) a Member may require the Trustees to provide any benefits in respect of that Member, on or after the death of that Member, to the legal personal representative or a Dependant of the Member if the Trustees give the Member information under sub-paragraph 24.6(d).
- (d) The Trustees must give to the Member information that the Trustees reasonably believe the Member reasonably needs for the purpose of understanding the right of that Member to require the Trustees to provide the benefits.
- (e) Subject to sub-paragraph 24.6(i) the Trustees must pay a benefit in respect of the Member, on or after the death of that Member, to the person or persons mentioned in a notice given to the Trustees by that Member if:
  - (i) the person, or each of the persons, mentioned in the notice is the legal personal representative or a Dependant of that Member; and
  - (ii) the proportion of the benefit that will be paid to that person, or to each of those persons, is certain or readily ascertainable from the notice; and
  - (iii) the notice is in accordance with sub-paragraph 24.6(g); and
  - (iv) the notice is in effect.
- (f) A Member who gives notice under sub-paragraph 24.6(e), may:-
  - (i) confirm the notice by giving to the Trustees a written notice, signed and dated by the Member to that effect; or

- (ii) amend or revoke the notice by giving to the Trustees notice, in accordance with sub-paragraph 24.6(g) of the amendment or revocation.
- (g) For the purposes of sub-paragraphs 24.6(e)(iii) and 24.6(f)(ii), the notice:-
  - (i) must be in writing; and
  - (ii) must be signed and dated by the Member in the presence of 2 witnesses, being persons:-
    - i. each of whom has turned 18; and
    - ii. neither of whom is a person mentioned in the notice; and
  - (iii) must contain a declaration signed and dated by the witnesses stating that the notice was signed by the Member in their presence.
- (h) Unless sooner revoked by the Member, a notice under sub-paragraph 24.6(e) ceases to have effect at the end of the period of 3 years after the day it was first signed or last confirmed or amended by the Members.
- (i) If an item of information given by a Member in a notice under sub-paragraph 24.6(e) is not sufficiently clear to allow the Trustees to pay the benefit, the Trustees must seek from the Member a written statement to clarify the item as soon as practicable after the Trustees receive the notice.

**24.6A Non-lapsing death benefit nomination – Death Benefit requested rule:**

If the Trustees are given a written notice by a Member requesting that benefits be paid following the death of that Member to a person or persons or other permitted payees then the Trustees must:

- (a) by written resolution, accept the terms of the Member's notice; or
- (b) give written notice to the Member of a proposed rule in respect of the death benefit specifying the terms thereof in accordance with the Member's request

AND on the date of that resolution referred to in (a) or the date of the written acceptance by the Member of the death benefit rule referred to be (b), the Trustees are bound by those terms unless and until that Member and the Trustees otherwise in writing agree or until a later binding nomination in accordance with the SIS Act is given to the Trustees or a later non-lapsing nomination is given effect under (a) or (b).

**24.7 Preserved Benefits:**

- (a) Any benefit which is subject to preservation or has been preserved under the Superannuation Conditions, an agreement made by the Trustees or this Deed and the Rules, must not be paid to or in respect of the Member at a date earlier than allowed from time to time under the Superannuation Conditions.