

# **S & S Pathak Super Fund**

**SMSF Trust Deed**

Prepared for

**Sagnik Mookerjee & Associates**

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Prepared by:

**hunt&hunt**

Gateway  
1 Macquarie Place  
Sydney NSW 2000

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# Schedule

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**Creation Date:** .....2.7.13.....

**Fund Name:** S & S Pathak Super Fund

**Meeting Address:** 7 Newnes Close Glenwood NSW 2768

**Trustee:**  
Sohinee Pathak  
Sandeep Pathak

**Members:**  
Sohinee Pathak  
Sandeep Pathak

**SIGNED SEALED and DELIVERED** by the  
said **Sohinee Pathak** as Trustee

in the presence of:

Jaspreet Singh Bains

Please Print Name of Witness

**SIGNED SEALED and DELIVERED** by the  
said **Sandeep Pathak** as Trustee

in the presence of:

Jaspreet Singh Bains

Please Print Name of Witness

Sohinee Pathak

Sohinee Pathak

J.S. Bains

Signature of Witness

Sandeep Pathak

Sandeep Pathak

J.S. Bains

Signature of Witness

# Trust Deed

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**THIS DEED** is made on the date specified in the Schedule by the person or persons named in the Schedule to this Deed.

## **RECITALS**

The Trustees wish to establish a self-managed superannuation fund for the benefit of those people who become Members of the Fund on the terms and conditions set out in this Deed.

### **A. Establishment**

The Trustee by this Deed establishes the Fund as a Self Managed Superannuation Fund. The Fund will be vested in the Trustees and will at all times be held, controlled and managed by the Trustees subject to the trusts, powers and provisions of this Deed and the Rules.

The Fund was established on the date specified in the Schedule.

### **B. Trustee**

The Trustees consent to act as trustees of the Fund with effect from the date specified in the Schedule and acknowledge by execution of this Deed that they have read and agree to be bound by this Deed and the Rules.

### **C. Fund Details**

The Fund will be in existence from the date specified in the Schedule and will be known by the name in the Schedule or such other name as the Trustees might in writing determine.

### **D. Fund Deed and Rules**

This Deed includes the Rules. The Rules are those attached to this Deed as amended from time to time.

### **E. Purpose of the Fund**

The Fund is to be maintained for the sole purpose of providing superannuation benefits for its Members and their Dependants.

### **F. Compliance**

The Trustee must ensure that the Fund, from the date of creation, continues its status as a Complying Self Managed Superannuation Fund as defined by and for the purposes of the *Superannuation Industry (Supervision) Act 1993*.

# Rules of the Fund

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## 1. DEFINITIONS

In this Deed the following words or expressions have the meaning thereafter ascribed to them:

<b>Act</b>	The <i>SIS Act 1993</i> , the <i>Tax Act</i> , the <i>Corporations Act 2001</i> (Cth), the <i>Family Law Act 1975</i> (Part VIII B), the <i>Social Security Act 1991</i> , the <i>Veterans' Entitlements Act 1986</i> , any successor acts and all regulations made pursuant to the foregoing acts.
<b>Ancillary Purposes</b>	Those purposes as defined in section 62 of the <i>SIS Act</i> including the purpose of providing such benefits as the Regulator approves in writing.
<b>Application Form</b>	An application form provided by the Trustees for prospective members to complete and submit to the Trustees.
<b>Associate</b>	Has the meaning given by the <i>Act</i> .
<b>Auditor</b>	An auditor who is an Approved Auditor as defined in section 10(1) of the <i>SIS Act</i> or any successor <i>Act</i> or otherwise determined by the Regulator.
<b>Asset</b>	Means any asset that the Trustees hold for the purposes of the Fund.
<b>Benefit</b>	An entitlement payable or distributable by the Fund which may include a Pension or lump sum payment or transfer of an Asset.
<b>Benefit Arrangement</b>	Means any fund or arrangement established to receive superannuation contributions or amounts arising from such contributions. For example, it includes a superannuation fund, approved deposit fund, retirement savings account and the Superannuation Holding Accounts Special Account established under the <i>Small Superannuation Accounts Act 1995</i> (Cth).
<b>Beneficiary</b>	Includes Members and any person entitled at the relevant time to receive a payment from the Fund in respect of a Member and any other person who is a Beneficiary for the purposes of the <i>Act</i> .
<b>Binding Death Benefit Nomination</b>	A direction given to the Trustees by a Member in accordance with and subject to Rule 19 in such form and manner as the Trustees may from time to time specify which is a binding direction for the purposes of the <i>Act</i> as to payment of the Member's Death Benefit in the event of the Member's death.
<b>Child</b>	Includes an adopted child, a step child, an ex-nuptial child, a child of the Spouse of the Member and a child of the Member within the meaning of the <i>Family Law Act 1975</i> (Cth).
<b>Complying Superannuation Fund</b>	A Self Managed Superannuation Fund which is compliant with Section 42A of the <i>SIS Act</i> .
<b>Constitutional Corporation</b>	A body corporate which is a trading or non-trading entity or financial corporation which is formed within the meaning of paragraph 51(xx) of the <i>Constitution of the Commonwealth of Australia</i> and to include a company incorporated under the provisions of the <i>Corporations Act 2001</i> .

	(b) the sale occurred after proper marketing of the asset; and the buyer and seller acted knowledgeably and prudently in relation to the sale.
<b>Member</b>	Any person accepted by the Trustees as a member of the Fund and who has not ceased to be a Member and includes a person in receipt of a pension from the Fund.
<b>Member's Account</b>	An account established and maintained by the Trustees on behalf of a Member in accordance with Rule 17.
<b>Member's Accumulation Account</b>	A Member's Account established by the Trustees, to accumulate the investments and earnings of the Member.
<b>Member's Pension Account</b>	A Member's Account established by the Trustees from which the payment of a Pension will be debited.
<b>Non-Binding Death Benefit Nomination</b>	A nomination given to the Trustees by a Member in such form and manner as the Trustees may from time to time specify the direction of which the Trustees can but are not bound to follow in the event of the Member's death.
<b>Old age pensions</b>	Has the meaning given by the Act.
<b>Payment Split</b>	Has the meaning given to that term in Part VIII B of the <i>Family Law Act 1975</i> (Cth).
<b>Pension</b>	Means a benefit taken to be a pension payable by the Fund in accordance with the <i>SIS Act</i> .
<b>Pension Dependants</b>	Those entitled recipients specified in reg 6.21 (2A) and (2B) of the SIS Regulations.
<b>Permanent Incapacity</b>	In relation to a Member means ill health (whether physical or mental) where the Trustees are reasonably satisfied that the Member is unlikely, because of the ill health, to engage in Gainful Employment for which the Member is reasonably qualified by education, training or experience.
<b>Policy</b>	Means an insurance policy arranged by the Trustees in accordance with Rule 24.
<b>Product Disclosure Statement (PDS)</b>	A statement which provides a description of the features and benefits of the Fund.
<b>Preserved Benefits</b>	Means any part of an amount held in the Fund in respect of the Member that the Act requires to be retained in the Fund or another complying Benefit Arrangement until the Member has retired from the work force and attained the age specified by the Act, or until such other circumstances as the Act permits.
<b>Regulated Superannuation Fund</b>	A superannuation fund that is regulated as defined within section 19 of the <i>SIS Act</i> .
<b>Regulator</b>	The Commissioner of Taxation or any person or entity appointed to regulate the Fund as defined in section 10(1) of the <i>SIS Act</i> .

- (f) the *Anti-Money Laundering and Counter-Terrorist Financing Act 2006* (Cth);
- (g) any replacement or additional Commonwealth or State law; and
- (h) any other present, future or proposed legal requirements with which the Trustees:
  - (1) are legally obliged to comply; or
  - (2) must comply to obtain the maximum Tax concessions available to the Fund.

**Tax** Includes all actual or anticipated tax, Surcharge, levy or impost on income, capital gains and superannuation contributions, stamp, financial institutions, registration and other duties, bank accounts debits tax, goods and services tax and other taxes, levies, imposts, deductions and charges together with interest, fines and penalties (if any) and charges, fees or other amounts made or payable in respect of them

**Tax Act** Either or both of the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* (as the case may be including any replacement, modification of supplement to those Acts).

**Taxable Component** Has the meaning given by section 995-1(1) of the *Tax Act*.

**Temporary Incapacity** In relation to a Member, who has ceased to be gainfully employed (including a Member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the Member to be gainfully employed) means ill-health (whether physical or mental) that caused the Member to cease to be gainfully employed but does not constitute Permanent Incapacity)

**Termination Date** The date on which the Fund terminates.

**Trustee** A person or company that has been appointed a trustee of the Fund. Where there is more than one trustee it refers to each trustee for the time being of the Fund. The expression also includes replacement or additional trustees.

## 2. PURPOSE OF THE FUND

- 2.1. The Trustees must ensure that the Fund is maintained for one or more of the Core Purposes or for one or more of the Core Purposes and for one or more of the Ancillary Purposes permitted under the *S/S Act* and for no other purpose.
- 2.2. If the Trustee is not a company the sole or primary purpose of the Fund is the provision of old age pensions.
- 2.3. The Trustees must cause the Fund at all times to be a Regulated Superannuation Fund.

- 3.10.** A body corporate cannot be a Trustee if that body corporate is a disqualified person under the *S/S Act*:
- (a) the company knows, or has reasonable grounds to suspect, that a director is a disqualified person under the *S/S Act* and the disqualification has not been waived or revoked;
  - (b) an administrator or provisional liquidator has been appointed;
  - (c) a receiver, or a receiver and manager has been appointed over the property beneficially owned by the company; and
  - (d) the company has begun to be wound up.
- 3.11.** If a Member of the Fund is a person who is under a legal disability because of age and does not have a LPR and a parent or guardian of that Member is a Trustee in place of the Member, then the Trustee of the Fund cannot be a body corporate.

## **4. COMPLIANCE WITH SUPERANNUATION LAW**

### **4.1. The provisions of this clause 4 override any other provisions of this Deed**

The Trustees must comply with the requirements of the Superannuation Law and are fully empowered (without being obliged) to comply with any provision or standard of the Superannuation Law which is not a requirement.

### **4.2. Power to comply with the Superannuation Law**

- (a) The Trustees may:
  - (1) do anything that the Trustees are required to do or that the Trustees consider necessary, expedient or desirable to comply with any requirement of the Superannuation Law (including expending monies of the Fund); and
  - (2) refrain from doing anything (including, without limitation, delaying or refusing any request or transaction in connection with a Beneficiary's interest in the Fund) that would result in a breach of, or the Trustees breaching, a requirement of the Superannuation Law.
- (b) The Trustees may rely on anything (including any statutory presumptions available to it) in the Superannuation Law, to the extent that the Trustees are entitled to do so in their capacity as trustee of the Fund.
- (c) The Trustees are entitled to be indemnified out of the assets of the Fund for any Liabilities that the Trustees properly incur pursuant to this clause.

### **4.3. Deemed compliance**

The Trustees are deemed to comply with the Superannuation Law and this Deed if the Regulator:

- (a) is satisfied that the Trustees have complied with the Superannuation Law;
- (b) determines that the Fund will be treated as if it had complied with the Superannuation Law; or
- (c) has advised the Trustees that it will not take action against the Trustees or the Fund in respect of a failure to comply with the Superannuation Law.

- (d) the company and its directors have read and understood the PDS and agree to be bound by the Rules of the Fund; and
  - (e) the company or its directors are not a disqualified company or person under the *SIS Act*.
- 5.3.** Subject to the provisions of these Rules and in particular Rule 3.11, where the Trustees accept a person as a Member that person or a parent or guardian of that person who is under a legal disability because of age and does not have a LPR or a LPR of that person is appointed as a Trustee unless that person or a LPR of that person becomes a director of a company which is the Trustee.
- 5.4.** On retirement of a Trustee one of the following is appointed Trustee in place of the Trustee who has retired (provided the person or company is not already a Trustee):
- (a) if the retiring Trustee is a person, another person who is a Member or a LPR of that Member or a parent or guardian of that Member who is under a legal disability because of age and does not have a LPR or a company of which that Member or LPR of that member is a director; and
  - (b) if the retiring Trustee is a company, a company all the directors of which are Members or are the LPR's of Members, or all the persons who are Members or in place of a Member the LPR of that Member or a parent or guardian of that Member who is under a legal disability because of age and does not have a LPR.

## **6. TRUSTEE REMOVAL**

- 6.1.** A Trustee will hold office until:
- (a) the Trustee retires in accordance with this Rule
  - (b) being a Constitutional Corporation, it goes into liquidation or has a receiver appointed or enters into administration;
  - (c) the Trustee is removed, or ceases to be eligible to act as Trustee under the *Act*; or
  - (d) being a natural person, the Trustee dies
- 6.2.** A Trustee may retire at any time.
- 6.3.** If the Fund has only one Member, a person who is not a Member and who is a Trustee may retire as a Trustee provided that another person who is a Relative of the Member or is a person who is not an employer of the Member is appointed as a Trustee.
- 6.4.** A company may retire as a Trustee provided:
- (a) all the directors of that company are appointed as Trustees; or
  - (b) another company is appointed as a Trustee where all directors of the resigning company are also directors of the company being appointed as Trustee.
- 6.5.** A Trustee may retire as Trustee of the Fund so long as a new Trustee has first been appointed as a Trustee of the Fund.
- 6.6.** A person or company is removed as Trustee:
- (a) if a Member is the Trustee, when that person ceases to be a Member;

- 8.2. Written notice of meetings must be given to each Trustee at their last nominated mail, facsimile or email address stating the:
- (a) place, date and time for the meeting; and
  - (b) the general reason for the meeting.
- 8.3. If a Trustee is able to attend the meeting through a communication link established by telephone, audio or audio-visual communication or other approved device, all proceedings will be valid and effective as if that person were physically present.
- 8.4. At any meeting of Trustees a quorum will be formed with the presence of those Trustees who represent Members, the balance of whose Member's Accounts in aggregation exceeds one half of the aggregated amount of all Member's Account balances.
- 8.5.
- (a) The Trustees will determine by majority approval at the first meeting of Trustees one of the following as the method by which Trustees will be entitled to cast votes at all meetings of Trustees:
    - (1) each Trustee being entitled to cast the number of votes nearest to the number of whole dollars of that Member's Account the Trustee represents and any amounts in Reserve that an actuary has determined might be transferred to the Member's Account to pay a Pension, but no less than one vote each; or
    - (2) each Trustee being entitled to cast one vote each.
  - (b) If the Trustees fail to make a determination in accordance with clause 8.5(a), clause 8.5(a)(2) will apply.
  - (c) If clause 8.5(a)(2) applies and there is a deadlock in making any Trustee decision, the deadlock shall be resolved by weighting each Trustee's votes nearest to the number of whole dollars of that Member's Account the Trustee represents and any amounts in Reserve that an actuary has determined might be transferred to the Member's Account to pay a Pension, but no less than one vote each
- 8.6. A resolution will be passed by a majority of votes of those who are present at the meeting and who are entitled to vote.
- 8.7. A person may appoint, in writing, another person to act as that person's proxy at any Trustee meeting.
- 8.8. If a written resolution has been signed by all persons entitled to attend a Trustee meeting, the resolution in the terms stated will be deemed as passed at the time and date which the document was last signed by any such person. More than one identical written resolution, each of which has been signed by one or more persons, will constitute one document.

## 9. TRUSTEE RECORDS AND REGISTERS

The Trustee must create and keep such records and registers of the Fund and decisions made as are required by this Deed and the *Act*.

- (e) agree to any arrangement relating to the sale, transfer or exchange of any securities, or modifying any rights, privileges or interests in relation to the securities, to agree to any scheme or arrangement for the increase or reduction of the value or amounts of any shares or stock or of the capital of any company in which any securities form the whole or any part of the Fund, or by which any such securities are substituted or given in exchange, either wholly or partly for other securities, whether in the same company or not, for any such purpose to deposit, surrender or exchange any scrip or documents of title relating to the securities and generally to manage and deal with any securities as if the Trustee owned them beneficially; and
- (f) agree in respect of a winding up with the liquidator of a company or any member of such company or any other person, in all things as the Trustee will decide, for the division or partition in kind or specie of the assets or property of whatsoever nature of the company and to accept any of the assets and property in payment or satisfaction of any interest of the Trustee in the company with power to pay any moneys by way of equality of division or partition;

**Custodian:** the appointment of a custodian to hold the legal title of any asset which has been acquired or is to be acquired by the Trustees on such terms as the Trustees think fit;

**Debt:** if the Trustees believe that funds are required to be set aside to cover any liability or debt, to meet that liability or debt from the assets of the Fund, provided the Trustees are permitted by Superannuation Law;

**Delegation:** the Trustees may delegate to any one or more persons, firms or companies on such terms as the Trustees may think fit any of the authorities, powers and discretions conferred upon the Trustees. Without limiting this general power the Trustees may:

- (a) appoint from time to time any one or more persons, firms or companies as the Trustees may think fit to act as Manager, custodian or investment manager subject to such conditions as the Trustees may from time to time determine;
- (b) delegate to and confer upon the Manager, custodian or investment manager such authorities, power or discretions, including the Trustees' power of delegation, as the Trustees may think fit;
- (c) pay out of the Fund to any Manager, custodian, investment manager or other delegate such remuneration for its services as the Trustees consider proper; and
- (d) remove from time to time any Manager, custodian or investment manager.

**Expenses:** to pay expenses from the assets, Reserves or income of the Fund, including:

- (a) Management expenses: including all costs, charges and expenses relating to management of the Fund, which may include acquiring the services of specialists or administrators;
- (b) General expenses: including all costs, charges and expenses in connection with any real or personal property, which may include insurance premiums, rates, taxes, rent, repairs and any other expense the Trustees may consider necessary;

**Power of attorney:** in the exercise of all or any of the powers herein confirmed upon the Trustees to appoint an attorney and to execute any power of attorney or such other instrument that the Trustees consider necessary for the exercise of those powers;

**Property:** to maintain and preserve in good condition any:

- (a) real property: and to acquire, dispose of, exchange, strata title, subdivide, mortgage, sub-mortgage, lease, sub-lease, grant, release or vary any right or easement or otherwise deal with any interest in real property;
- (b) personal property: and to acquire, dispose of, exchange, hire, lease, mortgage or otherwise deal with any interest in personal property;

**Release of powers:** by irrevocable deed to renounce and release any power conferred on the Trustees under the Rules in respect of the whole or any part of the Fund or the income or any part thereof;

**Specialists:** to employ or engage and pay from the Fund, agents or professionals including such managers, agents, self managed superannuation fund advisers, solicitors, barristers, auditors, accountants, brokers, surveyors or other persons to transact any business or to do any act required to be done in connection with the administration and management of the Fund, to act upon the opinion or advice of these agents or professionals without being responsible for any loss or damage occasioned by so acting;

**Subdivision of Property:** to partition or to subdivide any property or interest in property which may be subject to these trusts and to pay moneys by way of equality or partition;

**Trustee's power to deal with itself:** notwithstanding any rule or law or equity to the contrary, and provided the in-house assets rules are complied with:

- (a) to acquire, as property of the Fund, the legal and beneficial interest in real or personal property which is, at the date of acquisition, the absolute property of the Trustee provided that any property so acquired is acquired for a consideration not greater than the current Market Value of the property and upon such acquisition the beneficial interest in the property will be held by the Trustee according to the Rules;
- (b) to dispose of any beneficial interest in property of the Fund to itself;
- (c) to lease to the Fund any real or personal property the legal and beneficial interest in which is at the date of such acquisition the absolute property of the Trustee; and
- (d) to lease any property of the Fund to itself;

**Unit trust interests:** to acquire units or sub-units of any fixed or flexible unit trust whether by way of application or purchase or by way of settlement by the Trustee in the establishment of such unit trust and to exercise all rights and perform all obligations and receive all distributions as a holder of any units in such a trust.

- 10.2.** These powers will be in addition to any other powers, authorities and discretions vested in the Trustee by another provision of the Deed, the Rules, or by Superannuation Law.



### **13. TRUSTEE MAY RECEIVE GIFTS OR DISTRIBUTIONS**

A gift or distribution made to the Fund may be accepted and allocated to Earnings, a Reserve or a Member's Account or applied for any purpose as the Trustees determine including the payment of a Pension to a Member or Pension Dependant in the event of the Member's death, provided the status of the Fund as a Complying Superannuation Fund is not affected or compromised.

### **14. MEMBERS**

**14.1.** The Trustees have absolute discretion as to who is admitted as a Member provided:

- (a) that person or that person's LPR or that person's parent or guardian (where that person is under a legal disability because of age and does not have a LPR) has provided the Trustees with an Application Form and has read and agreed to be bound by the Deed and Rules of the Fund;
- (b) the admittance of that person as a Member would not affect or compromise the Fund's status as a Complying Superannuation Fund; and
- (c) the person or LPR of the person applying will accept the appointment as Trustee or director of a company that is the Trustee and is not a disqualified person; or
- (d) a parent or guardian of that person, where that person is under a legal disability because of age and does not have a LPR, will accept the appointment as Trustee and is not a disqualified person.

**14.2.** The Trustees must admit any person as a Member where that person will be paid a Pension from the Fund.

**14.3.** If the Fund is a sole member Fund, the Member may give written notice to the Trustees stating that no other Member will be admitted to the Fund.

**14.4.** If a Member transfers a property to the Fund, the Member may give written notice to the Trustees stating that the property is to be held specifically for that Member with no other Member to obtain an interest in that property. The Trustees may decline to accept that transfer or may accept that transfer on terms and conditions at the discretion of the Trustees and any expenses of the Fund attributable to that property will be payable from the Member's Account.

**14.5.** A parent or guardian of a Member who is a Trustee of the Fund in place of that Member (because that Member is under a legal disability because of age and does not have a LPR), may exercise on behalf of that Member any rights or functions which that Member could exercise under the Rules (except those referred to in Rule 19.2) provided such exercise is permitted by the *Act* and will not affect or compromise the Fund's status as a Complying Superannuation Fund.

### **15. MEMBERS APPLICATION**

**15.1.** The Trustees will not admit any person as a Member of the Fund unless that person has submitted an Application Form. The Trustees are not required to admit a person who the Trustees do not believe has read or understood the Rules or the Deed or who has not agreed to be bound by the Deed and Rules of the Fund.

**17.3.** A record of the tax free and Taxable Components of a Member's Account must be kept by the Trustees.

**17.4.** The Trustees will, subject to any restrictions imposed by the *Act*, add to a Member's Account the following received on behalf of the Member or attributable to the Member's Account:

- (a) Contributions received; and
- (b) Earnings; and
- (c) Splittable Contributions; and
- (d) Payment Split; and
- (e) Reserves; and
- (f) the proceeds of any Policy; and
- (g) any other amount which the Trustees with the consent of the Member determine will be credited to the Member's Account.

**17.5.** The Trustees will subject to any restrictions imposed by the *Act* deduct from a Member's Account the following:

- (a) any costs or fees and any other liabilities attributed to it;
- (b) Losses of the Fund;
- (c) Benefit payments paid to that Member or persons entitled to receive them or transferred to another Benefit Arrangement;
- (d) Tax payable;
- (e) Excess Contributions Tax liability;
- (f) Splittable Contributions;
- (g) Payment Split; and
- (h) Any other amount including an amount to be transferred to a Reserve Account which the Trustees with the consent of the Member, determine will be debited to the Member's Account.

## **18. CONTRIBUTIONS**

**18.1.** The Trustees may accept any Contributions made on behalf of a Member or a Spouse of a Member by any person, entity or government body so long as the acceptance by the Fund of that contribution:

- (a) will not compromise or affect the Fund's status as a Complying Superannuation Fund; or
- (b) is permitted by the *Act*.

**18.2.** The Trustees are required to comply with the provisions of the *Act* concerning any Excess Contributions Tax imposed on a Member.

- (d) A Member may confirm, amend or revoke the nomination by written notice given to the Trustees.
- (e) The Trustees must not comply with any nomination or direction that would compromise or affect the Fund's status as a Complying Superannuation Fund.
- (f) A Binding Death Benefit Nomination and any revocation or amendment to it must:
  - (1) be in writing;
  - (2) require that all Benefits would be payable to one or more of a LPR or a Dependant of the Member; and
  - (3) be signed by the Member in the presence of more than one person:
    - (A) each of whom has turned 18 years of age; and
    - (B) neither of whom is a person mentioned in the Binding Death Benefit Nomination.
- (g) If proceedings, for dissolution of a Member's marriage to a spouse, under the *Family Law Act 1975* or some similar foreign legislation have commenced, then any nomination which states that the Benefit is to be paid to that spouse of the Member will be deemed to be revoked.
- (h) A Binding Death Benefit Nomination will have an indefinite term unless the Member has stipulated otherwise or the nomination is revoked by written notice to the Trustees.

### **19.3. Death Benefit Request**

- (a) A Member or the Legal Personal Representative of the Member may provide the Trustee with a notice in writing requesting the Trustee to establish a Death Benefit Rule that requires the Trustee to pay Benefits in the event of the death of the Member in a manner and form that the Member or the Legal Personal Representative of the Member so chooses; including whether the Benefit is to be a Lump Sum Benefit, a Pension Benefit or combination of both.
- (b) The Trustee may accept or reject any notice referred to at Rule 19.3 (a) and must reject if the Trustee holds a Binding Death Benefit Nomination from that Member. If the Trustee accepts the notice, the Trustee shall be bound to act in accordance with that Death Benefit Rule that would be established as a consequence of accepting the notice.
- (c) A Member, or the Legal Personal Representative of the Member, may provide the Trustee with a notice in writing requesting the Trustee to delete or amend a Death Benefit Rule that was previously established at the request of the Member and, if amended, the Trustee shall act in accordance with that amended Death Benefit Rule.
- (d) The Trustee shall not accept any notice referred to at Rule 19.3 (a) or (c) if that would cause the Fund to become a Non-Complying Self Managed Superannuation Fund.

### **Incapacity**

- 20.9.** The Member is to advise the Trustees of incapacity:
- (a) if a Member becomes incapacitated that Member or their LPR will advise the Trustees as soon as practicable. The Trustees may request the Member submit to any reasonable medical examinations, as it sees fit;
  - (b) upon receipt of any documentation required by the Trustees regarding a Member's incapacity, the Trustees at their sole discretion will determine whether or not the Member suffers Temporarily Incapacity or Permanent Incapacity.

### **Temporary Incapacity**

- 20.10.** If the Trustees are reasonably satisfied that a Member suffers Temporary Incapacity, it may choose to pay a Benefit in the manner and for no more than the amount permitted by the *Act* to the Member from the time of that Temporary Incapacity to the earlier of:
- (a) the date the Member is re-instated in similar employment the Member was previously engaged in prior to suffering the Temporary Incapacity;
  - (b) the date on which the Trustees believe the Member commenced to suffer Permanent Incapacity;
  - (c) the date of death of the Member; or
  - (d) such other time permitted under the *Act*.

- 20.11.** The Trustees, in their sole discretion, may deduct an amount from a Reserve Account or any of the Member's accounts to pay the Temporary Incapacity Benefit.

### **Permanent Incapacity**

- 20.12.** If the Trustees are reasonably satisfied that a Member suffers Permanent Incapacity the Trustees may pay all or part of any of a Member's Accounts to the Member, or if permitted by the *Act*, to a Dependant or Pension Dependant or LPR of the Member whether as a lump sum or a Pension or a combination of both, in its absolute discretion.
- 20.13.** The Trustees in their sole discretion may allocate any amount from any Reserve Account held in the Fund to pay the Benefit on the Member's Permanent Incapacity.

### **Death of a Member**

- 20.14.** On the death of a Member:
- (a) if the member was a Trustee or a director of the corporate Trustee, the Member's LPR will be appointed as a replacement Trustee or a director of the corporate Trustee until the date Benefits payable on the death of the Member commence to be payable provided that the LPR is eligible to act as Trustee and has consented to act as Trustee; and
  - (b) the Trustees may transfer or continue to pay any Pension previously payable to a Member to such Pension Dependents of the Member as are permitted by the *Act* to receive the Pension.

- (a) the risk and liquidity involved in making, holding and realising and likely return from the Fund's investments having regard to the Funds objectives and expected cash flow requirements;

- (a) **Authorised investments:** in any one or more investments as sanctioned by law in any State or Territory of Australia relating to the investment of trust moneys;

- (b) will have power, as an expense of the Fund, to pay out of the Fund assets to that investment manager such remuneration for its services as the Trustees considers proper; and
  - (c) will have power to remove that investment manager.
- 21.15. No investment manager appointed by the Trustees will be entitled to take any part in the proceedings or deliberations of the Trustees.
- 21.16. No delegation of powers and discretions and authorities under this clause, however, will be made in the breach of any of the provisions of the *Act* and in particular must be in accordance with s102 of the *S/S Act*.

#### **Trustee not bound to act personally**

- 21.17. The Trustees are not bound in any case to act personally but are at liberty to employ any person to act as manager, lawyer, accountant, clerk, contractor, workman, or employee or any agent to transact any business. The Trustees may determine the remuneration to be paid and allowed for those services.

#### **Trustee to appoint Auditor**

- 21.18. On establishment of the Fund and in every year of income of the Fund, the Trustees must appoint an Auditor to audit the Fund who must give the Trustees a report in the form required by the *Act*.

## **22. OPERATION AND ADMINISTRATION**

### **Fund Compliance**

- 22.1. If Trustees are aware or notified by the Auditor, an adviser to the Fund or the Regulator of the Fund that it may lose its status as a Complying Superannuation Fund the Trustees must:
- (a) liaise with the Auditor, adviser or Regulator to implement a compliance plan to ensure the Fund's status as a Complying Superannuation Fund will be maintained;
  - (b) notify all Members of any action required under the compliance plan; and
  - (c) take any such action as required under the compliance plan within a reasonable time frame and before the lodgement of the Fund's next regulatory return.

### **Fund Insolvency**

- 22.2. If the Trustees are notified by the Auditor or the Fund's actuary or become aware the Fund is or may become insolvent, the Trustees must:
- (a) liaise with the actuary or Auditor to determine a solvency plan to ensure the Fund's solvency, including but not limited to reducing any Members' Accounts or Members' Benefits;
  - (b) notify Members of any action required under the solvency plan; and
  - (c) take such action as is required under the solvency plan prior to the lodgement of the Fund's next regulatory return.

**22.13.** The Trustees must keep accounts and statements for a minimum period of 5 years after the end of the Financial Year to which they relate.



**24.6.** This clause is:

- (a) for the protection of the Trustees and the Fund; and
- (b) not to be taken as conferring any rights on Beneficiaries in respect of benefits additional to those conferred under other provisions of this Deed.

## **25. CHANGES**

### **Amendment of the Deed or the Rules**

**25.1.** The Trustees may in their absolute discretion amend vary or alter any provision of this Deed or the Rules (in whole or in part) by way of written resolution provided:

- (a) any change to the Deed will not affect or compromise the Fund's status as a Complying Superannuation Fund and is not in breach of the *Act*;
- (b) the amendment does not reduce the amount of any Benefit accrued or accruing to a Member as at the date of amendment unless the Member or the LPR of the Member has in writing consented to any such amendment;
- (c) the amendment does not amend the term of a Pension unless the Member or the LPR of the Member who accepted the term of the Pension has in writing consented to any such amendment;
- (d) the amendment does not allow a person other than a Constitutional Corporation to be eligible for appointment as a Trustee unless the Rules provide and will continue to provide after the amendment is made that the Fund has as its sole or primary purpose the provision of old age pensions, and
- (e) the amendment does not allow the sole or primary purpose of the Fund to be a purpose other than the provision of old age pensions unless the Rules provide and will continue to provide after the amendment is made that the Trustee must be a Constitutional Corporation.

## **26. GOVERNING LAW**

The law applicable to the Fund is the law of the State or Territory of the Commonwealth of Australia where the Trustee resides.

## **27. STATUS OF THE ACT**

In every respect, these Rules are subject to the provisions of the *Act*. Any Rule, to the extent that it affects or compromises the Fund's status as a Complying Superannuation Fund, will not apply and will have no force or effect. If there is any inconsistency between the provisions of the *Act* and these Rules, the provisions of the *Act* will prevail. Provided there is no inconsistency between the provisions of these Rules and the *Act*, any authority or discretion given to the Trustee by the *Act* will be incorporated into these Rules as if it were a Rule.

## **28. TERMINATION OF THE FUND**

**28.1.** The Fund will be terminated on the first to occur of the following:

- (a) the Trustees resolve that the Fund should be wound up and terminated;
- (b) the Fund must be wound up for any purposes under the *Act*;

- (b) A reference to one gender includes a reference to all other genders.
- (c) Headings of clauses are included for the sake of convenience only and will not affect the interpretation of the clauses to which they relate.
- (d) References to any statute or statutory provision include that statute or statutory provision as amended, extended, consolidated or replaced by subsequent legislation and any orders, regulations, instruments or other subordinate legislation made under the relevant statute.
- (e) The words "including", "includes", "such as" and "for example" should be read as if followed by the words "without limitation".
- (f) The word person means and includes a natural person, a company, a firm or any other legal entity whether acting as a trustee or not.
- (g) A reference to 'interest', 'earnings' or 'investment returns' or such other similar term can refer to either positive or negative 'interest', 'earnings' or 'investment returns'.
- (h) If an expression is defined in the *Act*, but is not defined in this Deed, then that expression will have the meaning given to it in the *Act*.
- (i) The Deed will bind each party's legal personal representatives, successors and assigns.
- (j) When a party comprises two or more person the rights and obligations of such persons pursuant to this Deed will enure for the benefit of and bind all of them jointly and each of them severally.